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2. *Conflict of Laws.* There is no inconsistency between act and the application to a case arising under it in state court of a general state law giving attorney a lien on client's cause of action and rendering defendant directly liable to attorney. *Dickinson v. Stiles* 631

3. *Id.* Where this question called to attention of state trial and supreme courts and discussed by latter, upon intervention by attorney in action wherein complaint stated case under the act, this court has jurisdiction by writ of error to review judgment sustaining lien. *Id.*

4. *Boiler Inspection Act.* Is a "statute enacted for the safety of employees" within meaning of § 4 of Liability Act. *Great Northern Ry. v. Donaldson* 121

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5. *Id.* When feature of construction renders a boiler unsafe, within the definition of § 2, the fact that it has not been disapproved by federal inspector does not absolve carrier from liability. *Id.*

6. *Id.* Where, in action to recover damages for death resulting from injuries received by reason of boiler explosion upon engine upon which decedent was employed, there was evidence tending to prove that boiler was unsafe, request for instruction stating that no safety statute was applicable, and submitting question of assumption of risk, *held* inconsistent with § 4 of Employers' Liability Act and § 2 of Boiler Inspection Act. *Id.*

7. *Id.* *Assumption of Risk.* Instruction to effect that if jury believed from a fair preponderance of evidence that boiler was not in proper condition, etc., defined by Boiler Act, due to defendant's negligence, there would be no assumption of risk, but if employee had actual knowledge of such defects or they were so plainly visible that in reasonable exercise of his faculties he should, and might be presumed to, have known them, then he assumed the risk, *held* more favorable to defendant than law required. *Id.*

8. *Proximate Cause.* That brakeman, who was killed by a rear-end collision while in caboose of standing train, would have escaped if he had been at his post to give warning, as his duty required, does not make his neglect the only proximate cause of his death, if collision due also to negligent operation of train coming from behind. *Union Pacific R. R. v. Hadley* 330

9. *Negligence.* If defendant's conduct, viewed as a whole, warrants finding of negligence, trial court may properly refuse to charge concerning each constituent item mentioned by declaration, and leave question to jury. *Id.*

10. *Damages.* In action on behalf of widow of deceased employee, instruction that measure of damages should be such as would fairly and reasonably compensate her for loss of pecuniary benefits she might reasonably have received but for husband's death, *held* correct, as a general instruction, leaving defendant right to have it supplemented by another indicating that future benefits must be considered at their present value. *Louisville & Nashville R. R. v. Holloway.* 525

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11. *Id.* Defendant not entitled to instruction that, as matter of law, value of money to beneficiary should be measured by legal rate of interest, or that duration of future benefits could not have exceeded life expectancy of deceased as given by actuarial table. *Id.*
12. *Id.* Where evidence such as to justify jury in treating employee's contributory negligence as slight, or inconsequential in its effects, jury may properly find that nothing substantial should be deducted on account of it from damages; and fact that verdict is excessive will not warrant assumption of disobedience of court's instructions on apportionment. *Union Pacific R. R. v. Hadley*. 330
13. *Id.* Where state courts cut down excessive verdict upon assumption that excess was due to jury's failure to follow instructions on diminution of damages for contributory negligence, *held*, assumption not being justified by record, that their action did not invade province of jury, but was merely in exercise of power to require remittitur. *Id.*

ENCLOSURES. See **Public Lands, I.**

EQUAL PROTECTION OF THE LAWS. See **Constitutional Law, VII (7).**

EQUITY.

1. *Fraud. Insolvency. Sufficiency of Allegations.* General allegations of fraud and insolvency *held* not to supply the absence of facts entitling plaintiff to equitable relief. *Sears v. City of Akron* 242
2. *Injunction; to Restrain Administrative Board.* Transgression of its statutory power by administrative board is subject to judicial restraint, although guised as a discretionary decision within its jurisdiction. *Waite v. Macy*. . . 606
3. *Id.* In testing right of injunction against administrative officers, presumption that they will follow law, though set up in their answer, cannot be indulged where intention to obey illegal regulation of their superior is not directly disclaimed by them and is admitted by their counsel. *Id.*
4. *Id.* In absence of other adequate remedy for importer, the Tea Board constituted under Act of 1897 may be en-

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joined from excluding tea upon a test prescribed by Secretary of Treasury but not sanctioned by the statute. <i>Id.</i>	
<i>v. Macy</i>	606
5. <i>Id. Interstate Commerce Commission.</i> In suit to enjoin enforcement of order of Interstate Commerce Commission fixing rates, evidence held insufficient to establish that rate confiscatory. <i>Manufacturers Ry. Co. v. United States.</i>	457
6. <i>Id. Decree.</i> Decree of injunction which properly will be operative until law is changed may properly be expressed as perpetual. <i>International & G.N. Ry. v. Anderson Co.</i>	424
7. <i>Suit to Annul Will.</i> Texas county court has no equitable jurisdiction of suit <i>inter partes</i> to annul dispositions in will and partition property among plaintiffs as heirs, where title to land is involved and amount in controversy exceeds \$1,000. <i>Sutton v. English.</i>	199
Availability of injunction to restrain infringement of patent. See Patents for Inventions , 3.	

EROSION AND ACCRETION.

Effect upon boundary consisting of running stream. See **Boundaries**.

EVIDENCE. See **Interstate Commerce Acts; Judicial Notice; Presumptions.**

Burden of proof. See **Public Lands**, V, 3.

Where state courts have found sufficient evidence to sustain verdict for plaintiff in action under Employers' Liability Act this court will go no farther than to ascertain that there is evidence supporting the verdict. *Great Northern Ry. v. Donaldson* 121

EXCISE TAXES. See **Taxation.**

EXECUTIVE OFFICERS. See **Customs Law; Equity**, 2-5; **Indians** 2-4, 7, 9-12, 15; **Jurisdiction**, I, 5.

EXTRADITION.

Where person held for interstate rendition obtained *habeas corpus* on ground that he was not a fugitive from justice, held, that contention did not draw in question validity of authority exercised under arresting State by its governor in

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issuing his warrant and in holding petitioner for removal, but merely correctness of the exercise, and that judgment of the state court holding, on indictment and evidence, that petitioner was a fugitive, and dismissing *habeas corpus* was not reviewable by writ of error under Jud. Code, § 237. *Ireland v. Woods*..... 323

FEDERAL EMPLOYERS' LIABILITY ACT. See **Employers' Liability Act.**

FINDINGS OF FACT. See **Interstate Commerce Acts; Procedure.**

FOOD AND DRUGS ACT.

1. A bottled article labeled "Compound Ess Grape" but containing nothing from grapes, is adulterated within meaning of §§ 7-8; and also misbranded. *United States v. Schider*..... 519

2. In such case mere use of word "compound" is not a compliance with proviso in par. 4 of § 8. *Id.*

FORECLOSURE. See **Railroads, 2-6.**

FOREIGN CORPORATIONS:

Power of State to tax. See **Taxation, II.**
Service of process upon. See **Jurisdiction, II.**

FOREIGN RELATIONS. See **Constitutional Law, I; International Law.**

FOURTEENTH AMENDMENT. See **Constitutional Law, VII.**

FRANCHISES.

1. Grants of rights or privileges by State or its municipalities are strictly construed; what is not unequivocally granted is withheld; nothing passes by mere implication. *City of Mitchell v. Dakota Tel. Co.*..... 396

2. A grant of all right and authority that city "has capacity to grant," without a hint of limitation as to time, is a grant in perpetuity if city has right to grant perpetually. *Covington v. South Covington St. Ry. Co.*..... 413

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3. An ordinance entitled "prescribing the terms and conditions of street passenger railroads," providing for specific routes and declaring that "all contracts made under the provisions of this ordinance shall be for the term and period of twenty-five years," *held* not to be addressed to scope of future ordinances, and not to limit term, otherwise perpetual, of franchise for other routes granted by a later ordinance. *Id.*

4. One street railroad company held perpetual ordinance franchise, and another a limited one with but eight years to run with right to secure new franchise or compensation for property. An ordinance, entitled as granting right of way to first company over streets held by second, authorized first to contract for second's right and to "occupy and use" such streets, "subject to the conditions, limitations and restrictions" contained in ordinances regulating first company's rights in streets it already occupied, but, as condition, obliged first company to give up part of its line which would be but imperfectly supplied by the new rights even if they were perpetual. *Held*, that ordinance granted a perpetual franchise to first company, and was not merely consent that it acquire right of second. *Id.*

5. Where not otherwise construed by state court, legislation vesting streets in city and giving its authorities exclusive control over them and its council exclusive power to establish and regulate all sidewalks, streets, etc., is to be taken as empowering city to grant street railroad franchises in perpetuity. *Id.*

6. Provisions of ordinance fixing rates which water company, whose franchise had expired, might charge in future, providing for collection of charges in advance, and requiring installation of meters and hydrants, and imposing fines for violation of ordinance, *held* to confer, impliedly, privileges necessary to enable company to continue service, and so, as granting new franchise of indefinite duration, terminable by either city or company at such time and under such circumstances as would be consistent with duty owed to inhabitants. *Denver v. Denver Union Water Co.* 178

7. After granting nonexclusive right to use streets, etc., under which local telephone system was established, city passed ordinance granting privilege of operating "long

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distance telephone lines" "within and through" city for supplying facilities to communicate "by long distance telephone" or other electrical devices, with parties residing "near or at a distance from" the city, and then another changing the word "lines" to "system," and expressing proposed communication as with parties residing "in, near or at a distance from" the city. *Held* an unjustifiable implication to construe last ordinance as granting new term for local exchange system. *City of Mitchell v. Dakota Tel. Co.* 396

FRAUD. See **Equity**, 1; **Public Lands**, I, 4.

FUGITIVE FROM JUSTICE. See **Extradition.**

GOVERNMENT CONTRACTS. See **Contracts**, 3-7.

GRAZING LAWS. See **Constitutional Law**, VII, 2, 6, 15; **Public Lands**, III.

HABEAS CORPUS:

1. Where person held for interstate rendition obtained *habeas corpus* on ground that he was not a fugitive from justice, *held*, that contention did not draw in question validity of authority exercised under the arresting State by its governor in issuing his warrant and in holding petitioner for removal, but merely correctness of the exercise, and that judgment of state court holding, on indictment and evidence, that petitioner was a fugitive, and dismissing *habeas corpus*, was not reviewable by writ of error under Jud. Code, § 237. *Ireland v. Woods* 323

2. Limitations on right to review by this court apply in *habeas corpus* cases as in others sought to be reviewed under Jud. Code, § 237. *Id.*

HAGUE CONVENTIONS. See **International Law**, 7.

HEIRS:

Right of heirs of Indian allottees. See **Indians**, 2-7.

HOMESTEADS. See **Indians**, 7, 8; **Public Lands**, I.

IDAHO:

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Sheep and cattle segregation law is not unreasonable or arbitrary exercise of police power; does not deny due process and equal protection of laws; and is not in conflict with § 1 of act to prevent unlawful occupancy of the public lands. *Omaechevarria v. Idaho* 343

ILLINOIS:

Dram Shop Act upheld. *Eiger v. Garrity* 97

IMPAIRMENT OF CONTRACT OBLIGATION. See **Constitutional Law**, IV, VIII.

INDIAN COUNTRY. See **Indians**, 13.

INDIANS. See **Public Lands**, IV, 2, 3.

1. *Allotments. Restrictions on alienation. Power of Congress.* No doubt exists of constitutional authority of Congress to reimpose restrictions on alienation as by the Act of April 26, 1906. *Brader v. James* 88

2. *Allotments. Right of heirs; Conveyances.* Under § 7, Act of 1902, an Indian allotment held under trust patent and subject to restrictions on alienation imposed by Act of 1889, may, upon death of allottee, be conveyed by his heirs with approval of Secretary of Interior, and approved deed passes full title. *Egan v. McDonald* 227

3. *Id.* Where such conveyance was made in 1908, and Secretary approved it in 1909, *held*, that there was no law then in force making an adjudication of heirship a condition precedent to validity of conveyance. *Id.*

4. *Id.* Whether mere approval by Secretary would operate to convey a good title if it had appeared that deed was executed by a part of heirs only, not decided. *Id.*

5. *Allotments. Alienation by heir.* Cherokee Agreement of 1902 imposed no restriction, other than that of minority, upon alienation by heir of his interest in land allotted under § 20 in name of ancestor who died before receiving allotment. *Talley v. Burgess* 104

6. *Id.* Act of 1906 applied to allotments made before its date under § 20 of Cherokee Agreement, and required that a guardian's contract, made on May 11, 1906, to con-

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vey minor's interest be approved by United States court as condition to validity. *Id.*

7. *Id.* *Homesteads. Restrictions on alienation.* Under Supplemental Agreement of 1902, homestead allotment of full-blood Choctaw became free from restrictions imposed by § 12 at death of allottee, and heir, though a full-blood, might alienate without approval by Secretary of Interior; but by virtue of Act of 1906 the right in such case was again restricted so that such approval became necessary. *Brader v. James* 88

8. *Id.* In determining effect of Act of 1906 upon right of full-blood Indian to alienate, no distinction made between cases in which restrictions, previously imposed, were existent at date of act and those in which they had expired. *Id.*

9. *Oil and gas leases.* Oil and gas lease of restricted land of Creek full-blood not valid without approval of Secretary of Interior. *Anicker v. Gunsburg* 110

10. *Id.* When two such leases, one of which approved, unsuccessful claimant to charge adversary as trustee must show that, as matter of law, Secretary erred both in approving the one lease and in refusing to approve other. *Id.*

11. *Id.* That plaintiff's lease was first filed with agency, and that it was recorded with county register of deeds, whereas defendant's was not; and any constructive notice coming therefrom; and effect of rule of Secretary of Interior providing for filing within thirty days of execution, are matters beside the case where it does not appear affirmatively that Secretary would have approved plaintiff's lease had he refused to approve defendant's. *Id.*

12. *Id.* Approval of such leases rests in exercise of discretion by Secretary; and action within his discretionary power is not vitiated by fact that reasons assigned were not wholly sound. *Id.*

13. *Indian country; effect of railroad grant.* Grant made by Act of 1889 to Big Horn Southern R. R. of right of way through Crow Reservation, whether amounting to mere easement, limited fee, or other limited interest, held not entitled to extinguish title of Indians in land comprised

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in such right of way, which therefore remains "Indian country" within meaning of Liquor Act of 1897. *United States v. Soldana* 530

14. *Trust funds.* Section 5 of Act of 1912 (37 Stat. 86), and regulations issued thereunder, contemplate supervision of expenditure of trust funds, but not control of property for which money was expended. *McCurdy v. United States* 263

15. *Id. State taxation of lands.* Acts of 1906 and 1912, respecting Osage Indians, do not authorize Secretary of Interior to impose restrictions upon private land purchased for non-competent allottee with his trust money previously released, and thus exempt it as a governmental instrumentality from state taxation. *Id.*

16. *Appropriation for civilization and self-support.* Congress, in acts making appropriations under general head for "current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes," having long made a practice of appropriating each year specifically for "civilization and self-support" of Chippewa Indians in Minnesota out of their trust funds under the Act of 1889, held, that the appropriation so expressed in the appropriation act for fiscal year 1915 was repeated for fiscal year 1916 by Joint Resolution of March 4, 1915. *Lane v. Morrison* 214

17. *Wills; federal jurisdiction.* Where probate of will of full-blood Creek Indian refused solely on ground of mental incapacity, questions sought to be raised under acts of Congress held immaterial for purposes of jurisdiction of this court. *Bilby v. Stewart* 255

INFANTS. See **Indians**, 5, 6; **Parent and Child**.

INFRINGEMENT. See **Patents for Inventions**.

INJUNCTION. See **Equity**, 2-5; **Patents for Inventions**, 3.

INSOLVENCY. See **Bankruptcy**; **Equity**, 1.

INSTRUCTIONS TO JURY. See **Employers' Liability Act**, 6, 7, 9-13.

INSURANCE:

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1. A law of a State, governing life insurance contract made locally between resident citizen and locally licensed foreign corporation, and prescribing how net value of policy shall be applied to avoid forfeiture if premium not paid, cannot be extended to prevent policyholder, while present in such State, and company from making and carrying out subsequent, independent agreement in company's home State, pursuant to its laws, whereby policy is pledged as security for a loan and afterwards canceled in satisfaction of the indebtedness. *New York Life Ins. Co. v. Dodge* 357
2. A life insurance policy, issued in Missouri to a resident and citizen of that State by New York corporation with Missouri license, provided that insured might obtain cash loans on security of policy on application at company's home office, subject to terms of its loan agreement, and that any indebtedness to company should be deducted in any settlement of policy or of any benefit thereunder. *Held*, that this imposed no obligation on company to make a loan subject to a Missouri nonforfeiture law governing policy and devoting three-fourths of its net value to satisfaction of premium indebtedness exclusively and extension of the insurance, in case of default. *Id.*
3. A loan agreement with insurer, a New York corporation, with pledge of policy as security, signed by insured and beneficiary, resident citizens of Missouri, *held* a valid New York contract and that foreclosure of the pledge under the laws of that State and the extinguishment of the reserve of the policy to satisfy the loan was defense to action on policy in courts of Missouri, notwithstanding a Missouri nonforfeiture statute was construed as continuing the insurance in force. *Id.*

INTEREST:

- As to when judgment of Court of Claims on claim against District of Columbia may include and bear interest. See *Sheckels v. District of Columbia* 338

INTERNATIONAL LAW. See **Constitutional Law, I.**

1. Every sovereign state is bound to respect independence of every other sovereign state and the courts of one country will not sit in judgment on acts of government of another done within its own territory. Redress of grievances by

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reason of such acts must be through means open to be availed of by sovereign powers as between themselves.

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2. Who is sovereign *de jure* or *de facto* of a foreign territory is a political question, determination of which by the political departments of government conclusively binds the judges. *Oetjen v. Central Leather Co.*..... 297

3. When a government which originates in revolution or revolt is recognized by the political department of our government as the *de jure* government of the country in which it is established, such recognition is retroactive in effect and validates all actions and conduct of government so recognized from commencement of its existence. *Id.*

4. Court notices judicially that United States recognized Government of Carranza as *de facto* government of Mexico on Oct. 19, 1915, and as *de jure* government on Aug. 31, 1917. *Id.*

5. The principle that the conduct of one independent government cannot be successfully questioned in the courts of another is as applicable to a case involving title to property brought within the custody of a court as to claims for damages based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. *Id. Ricaud v. American Metal Co.*..... 304

6. Fact that property seized and sold by authorities of a foreign government belonged to American citizen, not residing in the foreign country at the time, does not empower court of this country to reëxamine and modify their action. *Ricaud v. American Metal Co.*..... 304

7. *Semble*, that Hague Conventions do not apply to a civil war, and that regulations annexed to Convention of 1907 do not forbid such military seizure and sale of private property as is involved in this case. *Oetjen v. Central Leather Co.*..... 297

INTERSTATE COMMERCE. See **Interstate Commerce Acts; Taxation, II; III.**

As to what constitutes unconstitutional burdens on, see **Constitutional Law, III.**

INTERSTATE COMMERCE ACTS:

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I. Powers and Proceedings of Commission.

1. *Effect of findings.* A finding that railway is a common carrier does not mean that all of its property must be treated as employed in public service; portions used as private plant facility should not be considered in determining adequacy of a rate. *Manufacturers Ry. Co. v. United States* 457

2. *Id. Judicial interference.* Whether discrimination is undue, unreasonable or unjust is question of fact confided to judgment and discretion of Commission, and upon which its decisions, made basis of administrative orders operating *in futuro*, are not to be disturbed by courts except upon showing that they are unsupported by evidence, were made without hearing, exceed constitutional limits, or for some other reason amount to abuse of power. *Id.*

See 6, *infra*.

3. *Rate fixing; considerations.* In testing adequacy of interstate rates, it is error to base computation on receipts and expenses of carrier's entire business without considering adequacy of its charge for services not affected by the rate or their possibly private character. *Id.*

4. *Rate fixing; burden of proof of reasonableness.* The "increased rate clause" does not lay upon carrier burden of proving a new rate reasonable when that question is not involved in a hearing before Commission. *Id.*

5. *Joint rates; review by Commission.* In fixing joint rates it is within discretion of Commission to allow carriers to arrange divisions, as contemplated by first paragraph of § 15, subject to review by Commission. *Id.*

See 12, *infra*.

6. *Through routes and joint rates. Effect of findings.* In a proceeding to establish through routes and joint rates over a company operating terminals and held by Commission to be a common carrier, and certain trunk lines, *held*, that finding of Commission, based upon differences of location, ownership and operation, that there was no undue discrimination was not without evidentiary support and not an abuse of discretion; that Commission was justified in holding that not more than a specified amount per car should be

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added to trunk line rates for terminal; that in fixing maximum joint rate Commission properly assumed trunk line rates to be reasonable *per se*; and that complainants were entitled at most to have Commission consider nature and objects of St. Louis Terminal Association, in favor of which trunk lines were charged with unlawful discrimination, as circumstances bearing upon question of discrimination and questions pertinent thereto. *Id.*

7. *Suspensions of new rates.* Pending a proceeding involving inquiry as to how much could be allowed a terminal as divisions or absorptions by trunk line carriers, one of which, being a party, filed and published a tariff providing for absorptions of terminal's switching charges up to a certain rate per car which it had previously allowed and retracted and was in the position of attacking in the proceeding as illegal and excessive, a suspension by Commission of proposed absorption, for 120 days from effective date, and then for six months, to await its decision in pending inquiry, treating the one as ancillary to the other and as involving no different question on the merits, and, upon deciding the original matter within the 6 months, canceled the tariff without having given it a separate hearing, *held* proper and not inconsistent with provisions of § 15, par. 2, as amended. *Id.*

8. *Stoppage of trains; conflict of orders; power of state commission.* Power in state commission to order stop by interstate trains, not resulting in direct burden on interstate commerce, in pursuance of statute not aimed at such trains but specifying train service required at county seats, may coexist with the duty imposed on carriers respecting regulations for transportation facilities by Hepburn Act and Act of June 18, 1910, and jurisdiction of Interstate Commerce Commission over such matters, if order not in conflict with regulations of latter commission. *Gulf, Colorado &c. Ry. v. Texas* 58

9. *Recovery of damages; time for filing complaint.* Provision of § 16 that "all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after" is not a mere statute of limitations but is jurisdictional. *Louisville Cement Co. v. Interstate Com. Comm.* 638

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10. *Id.* The "cause of action accrues" to a shipper, within meaning of this provision, when the unreasonable charges are paid, not when the shipment is received or delivered by the carrier. *Id.*

11. *Id.* It having been definitely settled by prior decisions of this court that the time when a "cause of action accrues" is the time when suit may first be legally instituted upon it, it must be assumed that Congress, in using that expression without qualifying words, adopted the meaning thus attached to it. *Id.*

12. *Judicial interference; orders fixing joint rates.* District Court has no jurisdiction to exercise administrative authority when Commission has failed or refused to exercise it, or to annul orders of the Commission not amounting to an affirmative exercise of its powers. So *held* where the Commission fixed maximum joint rates for trunk lines and a terminal company, and the gravamen of the latter's suit was the failure to fix the divisions. *Manufacturers Ry. Co. v. United States* 457

13. *Id.* *Constitutional validity of rate-fixing order.* Although a rate-fixing order is not conclusive against attack upon the constitutional ground of confiscation, correct practice requires that the objection be made, and all evidence pertinent thereto adduced, before the Commission in the first instance if practicable. *Id.*

14. *Id.* *Order setting aside rate.* Where the Commission, after full hearing, sets aside a rate as unreasonably high, only a clear case would justify a court, upon evidence newly adduced but not newly discovered, in annulling Commission's action on ground of confiscation. *Id.*

15. *Id.* *Order fixing rates.* In suit in District Court to enjoin enforcement of order of Commission fixing rates, evidence *held* insufficient to establish that rate confiscatory. *Id.*

16. *Id.* *Evidence of reasonableness.* The voluntary adoption of a rate by a carrier is some evidence against the carrier that it is remunerative. *Id.*

17. *Id.* *Evidence of adequacy of rate.* Where a city leased for railway purposes land which in considerable part consti-

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tuted a public wharf, at a rental less than the fair annual value, presumption is that excess was granted to public and not to private interest of carrier, in capitalizing its assets for purpose of testing adequacy of rate. *Id.*

II. Duties, Rights and Liabilities of Carriers and Shippers.

1. *Limitation of liability. Uniform Live Stock Contract.* Stipulation in contract filed with Commission, limiting carrier's liability for unusual delay and detention caused by its own negligence to amount actually expended by shipper in purchase of food and water for stock while so detained, is illegal and not binding on shipper who executed contract and shipped for corresponding reduced tariff rate. *Boston & Maine R. R. v. Piper*..... 439
2. *Id.* Such stipulation contravenes principle that carrier may not exonerate itself from losses caused by own negligence, and is not within principle of limiting liability to an agreed valuation made basis of reduced rates. *Id.*
3. *Bill of lading; effect of filing.* Illegal conditions and limitations in bill of lading do not gain validity from filing of a form with Commission. *Id.*
4. *Terminal charges; equality of treatment.* Common use of facilities of St. Louis Terminal by fourteen trunk lines owning its capital stock, under a single arrangement by which they absorbed the terminal charges, held not as a matter of law to entitle another terminal company, having no trunk line and doing terminal switching alone, to precisely the same treatment. *Manufacturers Ry. Co. v. United States* 457
5. *Reparation.* Proper foundation for reparation held not laid in evidence in case. *Id.*
6. *Carmack Amendment, liability under.* An undertaking for proper care and service implied with company's contract to furnish cars to shipper cannot, in an action against a refrigerator car company for damages to goods in interstate transit, be a basis for liability under Carmack Amendment. *Emery & Co. v. American Refrigerator Co.* 634
7. *Live stock transportation act; excusable delay.* The "28 Hour Law" must be construed with view to carrying out

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its humanitarian purpose, but the exception in favor of the carrier must be given proper latitude and enforced in light of practical railroad conditions. *Chicago & N. W. Ry. v. United States* 512

8. *Id.* If, after the exercise of diligence and foresight to prevent accidents and delays and to overcome effect of any which may happen, with an honest purpose to secure unloading within the lawful period, unloading is actually prevented by storm or accident, the reasonable delay must be excused. *Id.*

9. *Car company; liability as common carrier.* A charge that a car company, by furnishing improper cars and service, failed in duty to railroad and to public, and so caused damage to goods in interstate transit, if it did not make out company a common carrier, stated no duty under the act but only one at common law. *Emery & Co. v. American Refrigerator Co.* 634

10. *Id. Assumption of liability of railroad.* Liability of car company under a contract assuming liability of railroad (if shipper could avail of it) would not make action against former for damages to goods in interstate transit one arising under the act. *Id.*

INTERSTATE COMMERCE COMMISSION. See **Interstate Commerce Acts; Jurisdiction, IV, (4).**

INTERSTATE RENDITION. See **Extradition.**

INTOXICATING LIQUORS:

1. State statute providing that judgment for damages recovered by wife against one selling intoxicating liquors to husband, shall be a lien upon premises where liquor sold, does not violate due process clause as against owner who leased, or knowingly permitted the use of, such premises for the sale of intoxicating liquors. *Eiger v. Garrity* 97

2. Such statute has effect of making tenant agent of landlord for its purposes; and latter not denied due process by taking judgment against tenant as conclusive upon amount of damages suffered and right to recover them, if, in proceedings to enforce lien, landlord allowed due opportunity

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to controvert rendition of such judgment and making of lease authorizing sale of intoxicating liquors, or his knowledge of such use of premises. *Id.*

3. Illinois Dram Shop Act upheld. *Id.*

4. "Indian country" within meaning of Act of 1897.

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JOINT RESOLUTIONS:

Effect of Joint Resolution continuing appropriations for former year contained in prior act. See *Lane v. Morrison* . . . 214

JUDGES. See **Canal Zone.****JUDGMENTS.** See **Jurisdiction, III; Procedure, III.**

1. A judgment heretofore rendered in a suit between States cannot later be attacked upon the ground that in original cases in this court one State cannot recover from another in a mere action of debt. *Virginia v. West Virginia* 565

2. The authority to enforce its judgments is of the essence of judicial power and this elementary principle applies to original jurisdiction in controversies between States. *Id.*

3. Judgment of trial court modified to correct clerical error appearing by trial court's opinion and concession of counsel. *Ibanez v. Hongkong Banking Corp.* 627

4. In suit in District Court by telephone company against city, involving question whether plaintiff's right to operate its city exchange system was included with its right to operate long distance system under a later, existing ordinance contract, or was confined to earlier ordinance contract which has expired, judgment of state court in another case between same parties, treating the ordinances as independent, if not actually conclusive must be treated as of much weight. *City of Mitchell v. Dakota Tel. Co.* 396

5. Decree of injunction which properly will be operative until law is changed may properly be expressed as perpetual. *International & G. N. Ry. v. Anderson Co.* 424

6. Claimant against District of Columbia, suing in Court of Claims under Act of 1880, not entitled to receive interest as such, save any that may accrue after rendition of judg-

JUDGMENTS—Continued.

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ment, where recovery not based upon contract expressly stipulating for interest. *Sheckels v. District of Columbia* 338

7. Provision of § 6 of Act of 1880 for satisfying such judgments with bonds bearing coupons for interest from date upon which the claims were due and payable, amounted to giving interest, at a limited rate, before and after judgment, where payment made in that mode; but as to amount of claim allowed, not so satisfied, interest prior to judgment not allowable. *Id.*

8. In a suit by G to enjoin R from using trademark on "straight" whiskey, claimed by former through prior appropriation, a former decree, set up by R claiming to be acting as agent of H, dismissing bill in former suit brought by G against predecessors of H, to enjoin them from using the same mark on "blended" whiskey, held a bar, notwithstanding the later suit related to "straight" whiskey and notwithstanding subsequent registration of trademark by plaintiff for "straight" whiskey. *Rock Spring Co. v. Gaines & Co.* 312

9. Judgment for damages from sale of intoxicants a lien on premises where sold. *Eiger v. Garrity* 97

JUDICIAL NOTICE:

1. Court notices judicially that United States recognized the Government of Carranza as *de facto* government of Mexico on Oct. 19, 1915, and as *de jure* government on Aug. 31, 1917. *Oetjen v. Central Leather Co.* 297
Ricaud v. American Metal Co. 304

2. Facts supplied by judicial notice may enable court to answer questions from Court of Appeals, where otherwise insufficiency of certificate would necessitate its return. *Ricaud v. American Metal Co.* 304

JURISDICTION:

- I. In General, p. 718.
- II. Jurisdiction over the Person, p. 719.
- III. Jurisdiction of this Court.
 - (1) Original, p. 720.
 - (2) Over District Courts, p. 721.
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IV. Jurisdiction of District Courts.

- (1) Removal Proceedings, p. 724.
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- (3) Under Contract Clause, p. 725.
- (4) As to Orders of Interstate Commerce Commission,
p. 725.
- (5) Suits Arising Under Patent Laws, p. 726.
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V. Jurisdiction of Court of Claims, p. 726.

VI. Jurisdiction of State Courts, p. 726.

VII. Jurisdiction of Supreme Court of District of Columbia,
p. 727.

For questions of Local Laws see III, (3); VI.

I. In General.

1. Propriety of exercise of political power is not subject to judicial inquiry or decision. *Oetjen v. Central Leather Co.* . . . 297
2. The courts of one country will not sit in judgment on the acts of the government of another done within its own territory. *Id.*
3. The principle that the conduct of one independent government cannot be successfully questioned in the courts of another is as applicable to a case involving title to property brought within the custody of a court as to claims for damages based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. *Oetjen v. Central Leather Co.* 297
Ricaud v. American Metal Co. 304
4. The fact that property seized and sold by authorities of a foreign government belonged to an American citizen, not residing in the foreign country at the time, does not empower court of this country to reëxamine and modify their action. *Ricaud v. American Metal Co.* 304
5. Courts may not interfere with the exercise by the Secretary of the Interior of discretionary power, but only to protect rights when they are invaded by clearly unauthorized action. *Anicker v. Gunsburg* 110
6. Courts must apply patent law as they find it, even if this result in damage to holders of patent rights. *Boston Store v. American Graphophone Co.* 8

JURISDICTION—Continued.

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| 7. A suit to restrain Assistant Postmaster General from annulling a contract and from interfering with its performance, his action being purely official, discretionary, and within the scope of his duties, <i>held</i> in effect a suit against the United States and therefore properly dismissed. <i>Wells v Roper</i> | 335 |
| 8. A transgression of its statutory power by an administrative board is subject to judicial restraint, although disguised as a discretionary decision within its jurisdiction. <i>Waite v. Macy</i> | 606 |
| 9. Courts not justified, except in clear case, in annulling order of Interstate Commerce Commission setting aside rate as unreasonably high. <i>Manufacturers Ry. Co. v. United States</i> | 457 |
| 10. A court cannot substitute its judgment for that of the Interstate Commerce Commission upon a purely administrative matter. <i>Id.</i> | |
| 11. Decisions of Interstate Commerce Commission as to whether a discrimination is undue and unreasonable or unjust, made basis of administrative orders operating <i>in futuro</i> , are not to be disturbed by the courts except upon showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. <i>Id.</i> | |

II. Jurisdiction over the person.

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| 1. General rule as to the doing of business which will subject a corporation to service of process is that business must be of nature warranting inference that corporation has subjected itself to the local jurisdiction, and is, by duly authorized officers or agents, present within State or district where service is attempted. <i>People's Tobacco Co. v. American Tobacco Co.</i> | 79 |
| 2. A revocation by a corporation of its designation of a former manager of a branch as its agent on whom process might be served, <i>held</i> effectual when executed by a vice-president without formal sanction by board of directors. <i>Id.</i> | |
| 3. Service of process in Louisiana on former manager there of corporation found to have undertaken in good faith to | |

JURISDICTION—Continued.

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carry out a decree of dissolution and to divest itself of a former branch business in that State, *held* ineffectual to bind the corporation. *Id.*

4. The fact that foreign corporation owns stock in local, subsidiary companies, does not bring it within a State for purpose of service of process upon it; nor does practice of advertising its wares in the State and sending into it its agents, who, without authority to make sales, to collect money or extend credit, merely solicit orders of the retail trade to be turned over to local jobbers, to whom corporation sells its goods and who charge retailers therefor. *Id.*

5. Louisiana Act of 1904, as amended in 1908, *held* inapplicable to foreign corporations which have withdrawn from the State and ceased to do business there at time of service of process. *Id.*

III. Jurisdiction of This Court.(1) *Original.*

1. The original jurisdiction conferred upon this court over controversies between States includes power to enforce its judgment by appropriate remedial processes, operating where necessary upon the governmental powers and agencies of a State. *Virginia v. West Virginia* 565

2. The authority to enforce its judgments is of the essence of judicial power and this elementary principle applies to original jurisdiction in controversies between States. *Id.*

3. Origin and purpose of constitutional provision reviewed. *Id.*

4. It was the clear intention of the Constitution to forestall for the future the dangers of state controversies by uniting with the power to decide them the power to enforce the decisions against States. To this power the reserved powers of the States necessarily are subordinate. *Id.*

5. The power to decide and enforce, comprehensively considered, are sustained by every authority of the Federal Government, judicial, legislative and executive, which may be appropriately exercised. *Id.*

6. Court will appoint commission to run, locate and designate boundary line between two States, and determine na-

JURISDICTION—*Continued.*

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ture and extent of erosions and accretions occurring in old channel of boundary river. *Arkansas v. Tennessee* 158

(2) *Over District Courts.*

7. Whether, in view of limitations of Constitution, Congress has power to exempt from state taxation land purchased for tribal Indian from mass of private property subject to state taxing power and jurisdiction, is a substantial constitutional question, affording ground for direct appeal from District Court. *McCurdy v. United States* 263

8. Upon direct appeal from District Court, based upon constitutional question, all questions involved are open for review and there is no occasion to consider constitutional question if case may be disposed of on other grounds. *Id.*

(3) *Over State Courts.*

9. If state supreme court treats federal questions as necessarily involved and decides them adversely to plaintiff in error, this court has jurisdiction to review them, although not specially characterized as federal questions by plaintiff in error in state courts. *Cissna v. Tennessee* 289

10. Jurisdiction exists to review judgment of supreme court of State where issues as to whether lands in question were owned by State, and whether they, and alleged trespasses upon them, were within State, were determined affirmatively through location of state boundary based upon interpretation of various treaties and acts of Congress. *Id.*

11. Whether two States, either by long acquiescence in practical location of their common boundary or by agreement otherwise evidenced, have changed the limits of their jurisdiction as laid down by authority of the general government in treaty or statute, is in its nature a federal question. *Id.*

12. Whether state court has correctly followed rules of erosion, accretion or avulsion applicable to interstate boundary streams so as to give proper effect to treaties and acts of Congress establishing a river as an interstate boundary, is a question of federal law. *Id.*

JURISDICTION—*Continued.*

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13. Where complaint states a cause under Federal Employers' Liability Act, but plaintiff fails to prove that employee was engaged in interstate commerce when injured, a contention that the case was removable from state to federal court because of diverse citizenship is not a claim of federal right of sufficient substance to afford this court jurisdiction to review a state court's judgment. *Great Northern Ry. v. Alexander* 276
14. Whether state court has obeyed local rule of practice requiring substitution of correct instructions for defective ones requested, is question of state law not reviewable in action under Employers' Liability Act. *Louis. & Nash. R. R. v. Holloway* 525
15. When not based upon an erroneous theory of federal law, refusal of state court to reverse judgment upon ground that damages are excessive is not reviewable in action under Employers' Liability Act. *Id.*
16. Where state courts have found sufficient evidence to sustain verdict for plaintiff in action under Employers' Liability Act, this court will go no farther than to ascertain that there is evidence supporting the verdict. *Great Northern Ry. v. Donaldson* 121
17. This court has jurisdiction to review judgment sustaining lien on client's cause of action given to attorney by state law, upon intervention of attorney in action under Employers' Liability Act, where question of inconsistency of such provision with that act was called to attention of state trial and supreme courts and discussed by latter. *Dickinson v. Stiles* 631
18. Upon error to state court in suit to recover back earnest-money on ground of unmerchantable title, in which vendor proved conveyance of land by certain heirs of Indian allottee thereof, which recited that they were the only heirs and was approved by the Secretary of the Interior, *held*, that whether burden was upon plaintiff to establish that there were other heirs, and whether suggestion that there may have been such rendered title unmerchantable, were questions of state law not reviewable by this court. *Egan v. McDonald* 227

JURISDICTION—Continued.

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19. If decision of state court rests upon ground of general law adequate to support it, independently of decision upon alleged violation of federal right, the case not reviewable here. <i>Municipal Securities Corporation v. Kansas City</i>	63
<i>Bilby v. Stewart</i>	255
20. Where probate of will of full-blood Creek Indian refused solely on ground of mental incapacity, questions sought to be raised under acts of Congress held immaterial. <i>Bilby v. Stewart</i>	255
21. Under Jud. Code, § 237, as amended, final judgment of state court not reviewable by writ of error if no treaty, statute or authority exercised under State or United States drawn in question. <i>Stadelman v. Miner</i>	544
22. Objection that judgment of state court ordering sale real estate denies due process to nonresident parties served by publication, in that order was made before service was complete under state statutes, does not draw in question validity of authority exercised under State, within meaning of § 237, Jud. Code, as amended. <i>Id.</i>	
23. Jurisdiction to review by writ of error under § 237, Jud. Code, as amended, confined to cases in which validity of treaty or statute of, or authority exercised under, United States is drawn in question, and decision against validity; and those in which validity of statute of, or authority exercised under, State drawn in question on ground of repugnancy to Constitution, treaties or laws of United States, and decision in favor of validity. When, however, state court's judgment upholds federal treaty, statute or authority against claim of invalidity, or denies validity of state statute or authority upon attack based on federal grounds, or when basis of this court's jurisdiction is claim of federal title, right, privilege or immunity, decided for or against party claiming, review can be had only by certiorari. <i>Ireland v. Woods</i>	323
24. Writ of error allowed as of right, in cases designated therefor by statute, when federal question real and substantial and an open one in this court; but certiorari is granted or refused in exercise of court's discretion. <i>Id.</i>	
25. Foregoing limitations apply in <i>habeas corpus</i> cases as in others sought to be reviewed under Jud. Code, § 237. <i>Id.</i>	

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26. Where person held for interstate rendition obtained *habeas corpus* on ground that he was not a fugitive from justice, *held*, that contention did not draw in question validity of authority exercised under the arresting State by its governor in issuing his warrant and holding petitioner for removal, but merely correctness of the exercise, and that judgment of state court holding, on the indictment and evidence, that petitioner was a fugitive, and dismissing the *habeas corpus*, was not reviewable by writ of error under Jud. Code, § 237. *Id.*

IV. Jurisdiction of District Courts.**(1) Removal Proceedings.**

1. Where complaint states cause under Federal Employers' Liability Act, failure of plaintiff to prove that employee was engaged in interstate commerce when injured will not leave case removable because of diverse citizenship appearing in complaint. *Great Northern Ry. v. Alexander* 276

2. A case arising under Federal Employers' Liability Act between citizens of different States not removable from a state to a federal District Court on either ground. *Id.*

3. In absence of fraudulent purpose to defeat removal, the status, with respect to removability, of a case alleged to be one arising under such act depends not upon what the defendant may allege or prove or what the court may, after hearing upon merits, *in invitum* order, but solely upon the form which the plaintiff voluntarily gives to his pleadings initially and as the case progresses. *Id.*

4. Upon theory that refrigerator car company, defendant in action for damages of less than \$3,000 to goods in interstate transit, and railroad were partners as to shipments, former would become common carrier *pro hac vice*, and the amount involved would be insufficient for purposes of removal to District Court. Act of 1914, amending Jud. Code, § 28. *Emery & Co. v. American Refrigerator Co.* 634

(2) Diversity of Citizenship. See (1), supra.

5. A suit which, in an essential feature, is suit to annul will, and which under state law is in character merely supplemental to proceedings for probate and cognizable only

JURISDICTION—Continued.

by probate court, is not within jurisdiction of District Court though diversity of citizenship exists and requisite jurisdictional amount is in controversy. *Sutton v. English* . . . 199

6. In suit in District Court to set aside testamentary dispositions and adjudge the property to plaintiffs and partition it among them as heirs, a defendant who, being also an heir, would share in the relief if obtained, should not be aligned as a plaintiff for the purpose of testing jurisdiction by diversity of citizenship, if such defendant be adversely interested as legatee. *Id.*

7. Court has jurisdiction of bill which, besides showing diverse citizenship, alleged that certain personal property of plaintiff had been forcibly taken from its possession in Mexico by unknown persons, was consigned to one of defendants in this country and was in possession of Collector of Customs, also a defendant, who unless restrained as prayed would deliver it to other defendants; and the fact, not mentioned in the bill, that the property had been seized, condemned and sold for war purposes by Constitutionalist forces in revolution in Mexico, whose government was later recognized by United States, did not deprive courts of jurisdiction to adjudicate upon validity of title thus acquired, though action of Mexican authorities must necessarily be accepted as a rule of decision. *Ricaud v. American Metal Co.* 304

(3) *Under Contract Clause.*

8. Court has jurisdiction over suit in which telephone company, occupying streets of a city under ordinances, seeks to enjoin, as unconstitutional, execution of later ordinance by which city declares company's rights at end, assumes power to terminate them, and declares purpose to take steps to secure removal of lines and exchange. *City of Mitchell v. Dakota Tel. Co.* 396

(4) *As to Orders of Interstate Commerce Commission.*

9. District Court has no jurisdiction under Commerce Acts to exercise administrative authority when Commission has failed or refused to exercise it, or to annul orders of the Commission not amounting to an affirmative exercise of its powers. So held where the Commission fixed maximum joint rates for trunk lines and a terminal company, and the

JURISDICTION—*Continued.*

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gravamen of the latter's suit was the failure to fix the divisions. *Manufacturers Ry. Co. v. United States* 457
 See I, 9, 10, 11, *supra*.

(5) *Suits Arising under Patent Laws.*

10. Where bill claimed protection for a price-fixing contract under the patent laws, and want of merit in claim was not so conclusively settled by decision when bill filed as to make claim frivolous, court had jurisdiction to determine whether suit arose under those laws. *Boston Store v. American Graphophone Co.* 8

(6) *Review of Master.*

11. Court may, upon exceptions, review findings of special master appointed by it. *Denver v. Denver Union Water Co.* 178

V. Jurisdiction of Court of Claims.

1. Jurisdiction under § 162, Jud. Code, is limited to claims based on ownership at time of seizure. *Thompson v. United States* 547

2. Where owner of cotton sold it to Confederate Government, accepting Confederate bonds in full payment and agreeing to care for and deliver it as ordered, and cotton was seized under Act of 1863 while still in his possession, *held* that he was neither owner nor lienor and there was no basis for suit by his administrator. *Id.*

3. Claimant against District of Columbia suing under Act of 1880, not entitled to receive interest as such, save any that may accrue after rendition of judgment, where recovery not based upon contract expressly stipulating for interest. *Sheckels v. District of Columbia* 338

4. Provision of § 6 of Act of 1880 for satisfying such judgments with bonds bearing coupons for interest from date upon which the claims were due and payable, amounted to giving interest, at a limited rate, before and after judgment, where payment made in that mode; but as to amount of claim allowed, not so satisfied, interest prior to judgment not allowable. *Id.*

VI. Jurisdiction of State Courts.

1. State court has jurisdiction to decide whether owner of railroad within its territory is under public duty to main-

JURISDICTION—Continued.

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tain offices and shops at particular places, even though it were assumed, as a rule of decision, that a foreclosure and confirmed sale in a federal court conferred immunity from obligation which that court alone could withdraw. *International & G. N. Ry. v. Anderson County* 424

2. Texas county court has no equitable jurisdiction of suit *inter partes* to annul dispositions in will and partition property among heirs, where title to land is involved and amount in controversy exceeds \$1,000. *Sutton v. English* . . 199

3. Texas district courts have no jurisdiction to annul by an original proceeding the action of a county court in probating a will, and a suit under Stats., Art. 5699, to contest validity of will so probated, must be brought in county court and calls for exercise of original probate jurisdiction. *Id.*

VII. Jurisdiction of Supreme Court of District of Columbia.

In absence of other modes of judicial review, court has power to direct Interstate Commerce Commission by mandamus to entertain and proceed to adjudicate a cause which it has erroneously declared not to be within its jurisdiction. *Louisville Cement Co. v. Interstate Com. Comm.* 638

JURY AND JURORS.

Instructions. See **Employers' Liability Act**, 6, 7, 9-13.

LAND GRANTS. See **Public Lands.**

LANDLORD AND TENANT. See **Intoxicating Liquors.**

LEASE:

Oil and gas leases in Indian lands. See **Indians**, 9-12.
 Liability of lessor of premises for sale of intoxicants under Illinois Dram Shop Act. See **Intoxicating Liquors.**

1. In estimating value of leasehold to lessee, taxes paid by lessor should not be deducted from the annual cost as measured by the gross rental. *Manufacturers Ry. Co. v. United States* 457

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2. Where a city leased for railway purposes land which in considerable part constituted a public wharf, at a rental less than the fair annual value, presumption is that excess was granted to public and not to private interest of carrier, in capitalizing its assets for purpose of testing adequacy of rate. *Id.*

LICENSE TAXES. See **Taxation.****LIENS.**

Judgment operating as lien on premises where intoxicants sold. See **Intoxicating Liquors.**

Acceptance of Confederate bonds in payment of, and agreement to care for and deliver as ordered, cotton sold Confederate Government, which was seized under Abandoned Property Act of 1863 while still in vendor's possession, does not constitute him owner or lienor within that act to support action in Court of Claims under Jud. Code, § 162.

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LIFE INSURANCE. See **Insurance.****LIMITATION OF LIABILITY.** See **Admiralty; Interstate Commerce Acts, II, 1, 2.****LIMITATIONS.** See **Franchises.**

1. A statute of limitations should be strictly construed in favor of the Government. *United States v. Whited & Whelless*..... 552

2. The limitation provision in the Act of 1891 relative to suits to vacate and annul patents was designed for security of patent titles and does not apply to action at law to recover value of patented land as damages for deceit practiced by defendant in procuring patent. *Id.*

3. Where there are two remedies for the protection of the same right, one may be barred and the other not. *Id.*

4. As to time within which complaints for recovery of damages shall be filed with Interstate Commerce Commission. See *Louisville Cement Co. v. Interstate Com. Comm.*..... 638

LIQUOR LAWS. See **Intoxicating Liquors.**

LIVE STOCK:

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- Validity of Idaho sheep and cattle segregation law. See *Omaechevarria v. Idaho* 343
- Twenty-eight Hour Law. See **Interstate Commerce Acts**, II, 7, 8.
- Limitation of liability of carrier on live stock contract. See **Interstate Commerce Acts**, II, 1, 2.

LOCAL BUSINESS. See **Constitutional Law**, III; **Jurisdiction**, II.

LOCAL LAW. See **Jurisdiction**, III, (3); VI.

MANDAMUS:

1. Not available to review erroneous denial of motion for substitution of party to suit in District Court. *Ex parte Slater* 128
2. Supreme Court of District of Columbia may direct Interstate Commerce Commission to entertain and proceed to adjudicate cause which it has erroneously declared not to be within its jurisdiction. *Louisville Cement Co. v. Interstate Com. Comm.* 638
3. Petition for mandamus should give a correct, uncolored statement of the matter concerning which it seeks relief. *Ex parte Slater* 128
4. Function of writ when directed to judicial officers. *Id.*
5. Is it available to compel state legislature to levy tax to satisfy judgment in an original case? *Virginia v. West Virginia*. 565

MANDATE. See **Procedure**, III.

MARITIME LAW. See **Admiralty**.

MASSACHUSETTS:

1. Stats. 1909, c. 490, Pt. III, § 56, imposing an annual excise upon every foreign corporation, for the privilege of doing local business, of a given per cent. of par value of its authorized capital stock, subject, however, to a maximum limit of \$2000, *held* valid, as to corporation doing local as well as interstate business. *Cheney Brothers Co. v. Massachusetts* 147

MASSACHUSETTS—Continued. PAGE

2. Tax exacted under § 1, c. 724, Stats. 1914, for privilege of doing local business, from a foreign corporation largely engaged in interstate commerce, and whose property and business were largely in other States, *held void*. *International Paper Co. v. Massachusetts* 135
Locomobile Co. v. Massachusetts. 146

MASTER AND SERVANT. See **Employers' Liability Act.**

MASTERS:

1. Right reserved to appoint master to examine and report concerning amount and method of taxation essential, and other means available, to satisfy judgment of this court in suit between States. *Virginia v. West Virginia* 565
 2. Findings of special master *held* not conclusive, but subject to review by District Court upon exceptions. *Denver v. Denver Union Water Co.* 178

MATERIALMEN'S ACTS:

- Groceries and provisions furnished government contractor for use of laborers are, under certain circumstances, materials used "in the prosecution" of the work within the meaning of the materialmen's Acts of 1894, 1905. *Brogan v. National Surety Co.* 257

MEASURE OF DAMAGES. See **Employers' Liability Acts,** 10-13. **Public Lands,** V, 2.

MEXICO. See **International Law,** 4.

MINORS. See **Indians,** 5, 6; **Parent and Child.**

MISSISSIPPI RIVER:

- As boundary between Arkansas and Tennessee. See **Boundaries.**

MONOPOLIES. See **Anti-Trust Act; Patents for Inventions.**

MORTGAGES AND DEEDS OF TRUST. See **Railroads,** 2-6.

- Capacity of minor to make mortgage. See **Philippine Islands.**

MUNICIPAL CORPORATIONS. See **Franchises; Streets and Highways; Street Railways; Water Companies.**

NATIONAL BANKS:

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1. Section 5209, Rev. Stats., punishing embezzlement, etc., does not apply to receiver appointed by Comptroller of Currency under § 5234. *United States v. Weitzel* 533
2. Such receiver is an officer of the United States and not an agent of the bank. *Id.*

NAVIGABLE WATERS. See **Boundaries; Waters.**

NEGLIGENCE. See **Employers' Liability Act.**

NOTICE. See **Constitutional Law, VII, (1)**
Constructive. See **Indians, 11; Public Lands, I, 4.**

OIL AND GAS LEASES. See **Indians, 9-12.**

ORDINANCES. See **Franchises.**

ORIGINAL JURISDICTION. See **Jurisdiction, III, (1).**

OSAGE INDIANS:

- Right of Secretary of Interior to impose restrictions upon private land purchased for non-competent allottee with trust money. See *McCurdy v. United States* 263

PARENT AND CHILD:

1. As to cases existing at time of enactment, Philippine Code of Civil Procedure did not displace system of parental control and usufructuary interest defined by Civil Code respecting property of minor children; and therefore the right of parent to emancipate minor children and thus endow them with capacity to make a valid mortgage of their real estate persisted notwithstanding Code of Civil Procedure. *Ibanez v. Hongkong Banking Corp.* 621
2. Section 581 of Code of Civil Procedure is construed broadly as relating not merely to court proceedings, but as expressly preserving existing powers and usufructuary rights of parents over property of minor children, existing under Civil Code. *Id.*

PARTIES:

1. A State is not affected by judicial determinations involv-

PARTIES—*Continued.*

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| ing a boundary in cases in which she is not a party. <i>Arkansas v. Tennessee</i> | 158 |
| 2. In suit in District Court to set aside testamentary dispositions and adjudge the property to plaintiffs and partition it among them as heirs, a defendant who, being also an heir, would share in the relief if obtained, should not be aligned as a plaintiff for the purpose of testing jurisdiction by diversity of citizenship, if such defendant be adversely interested as legatee. <i>Sutton v. English</i> | 199 |
| 3. Right of substitution upon death of party depends upon recognized legal and equitable principles to be judicially applied; and where, after due hearing, a motion is denied, the ruling, if erroneous, may be corrected upon appeal, but cannot be reviewed by mandamus. <i>Ex parte Slater</i> | 128 |
| 4. Death of one of the solicitors held to suspend, until substitution of party, proceedings under decree directing that sum in registry of court be distributed among several solicitors in proportion to their respective services and for retention of control by court to make and carry out the apportionment. <i>Id.</i> | |
| 5. Substitution of party, formerly effected by bill of revivor, or bill of that nature, is now ordered upon motion under new Equity Rule 45. <i>Id.</i> | |

PARTNERSHIP. See **Admiralty, 3; Carriers, 1.**

PATENTS FOR INVENTIONS:

Jurisdiction of District Court to entertain bill claiming protection for price-fixing contract under patent laws. See **Jurisdiction, IV, (5).**

1. Courts must apply the patent law as they find it; the remedy for damage or insufficient protection must come from Congress. *Boston Store v. American Graphophone Co.* 8
2. Act of June 25, 1910, does not automatically confer a general license on Government to use patented inventions or authorize their use at the will of private parties in the manufacture of things to be furnished under contracts between them and the United States. The act does not operate to relieve the contractor from liability to account

PATENTS FOR INVENTIONS—Continued.

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for the damages and profits arising from the infringement.	
<i>Cramp & Sons v. Curtis Turbine Co.</i>	28
<i>Marconi Wireless Co. v. Simon</i>	46
 3. Where appliances called for by a contract with the Government were so far incomplete that their making and furnishing would at most contribute to infringement by the Government in adjusting and using them for essential governmental purposes, the acts complained of would not be illegal or subject to injunction, in view of the Act of 1910. <i>Marconi Wireless Co. v. Simon</i>	46
 4. Where the lower court treated as irrelevant the nature of the infringement—whether direct or contributory, held that the case should be remanded for consideration and determination of the rights of the parties in the light of this court's construction of the Act of 1910, not overlooking petitioner's contentions that making the appliances for the Government before the contract was completed, and making them for persons other than the Government, would constitute direct infringements. <i>Id.</i>	
 5. Recent decisions denying right of patent owners, in selling patented articles, to reserve control over resale or use, were not rested upon any mere question of form of notice attached to articles or right to contract solely by reference to such notice, but upon fundamental ground that control of patent owner ended with passing of title. <i>Boston Store v. American Graphophone Co.</i>	8
 6. Where patent owner delivers patented articles to dealer by transaction which, essentially considered, is a completed sale, stipulations in contract that articles may not be resold at prices other or lower than those fixed by the patent owner are void under the general law, and are not within monopoly conferred, or remedies afforded, by the patent law. <i>Id.</i>	

PATENTS FOR LAND. See **Indians; Public Lands.**

PAYMENT:

Having given bond to secure a contract with Navy Department, claimant paid premiums after alleged compliance with condition, and sued to recover amount, contending that Secretary of Navy should have canceled the bond and noti-

PAYMENT—Continued.

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fied the surety. It not appearing that claimant had bound itself to continue paying premiums until Secretary so acted, *held*, that the payment was voluntary and gave no cause of action in Court of Claims. *Bethlehem Steel Co. v. United States* 523

PENALTIES AND FORFEITURES.

Railroad company not availing of opportunity given by state law to test validity of order of state commission cannot be relieved from cumulation of penalties due to its violations of order while awaiting proceedings by State. *Gulf, Colorado &c. Ry. v. Texas* 58

PERSONAL INJURY. See **Employers' Liability Act.****PHILIPPINE ISLANDS:**

1. As to cases existing at time of enactment, Code of Civil Procedure did not displace system of parental control and usufructuary interest defined by Civil Code respecting property of minor children; and therefore the right of parent to emancipate minor children and thus endow them with capacity to make a valid mortgage of their real estate persisted notwithstanding Code of Civil Procedure. *Ibanez v. Hongkong Banking Corp.* 621

2. Section 581 of Code of Civil Procedure is construed broadly as relating not merely to court proceedings, but as expressly preserving existing powers and usufructuary rights of parents over property of minor children, existing under Civil Code. *Id.*

3. Court accepts lower courts' interpretation of law (Civ. Code, Art. 1851) to effect that mere failure of creditor to sue when obligation in whole or in part matures does not extend its term, and that to extinguish surety's liability extension must be based on some new agreement by which creditor deprives himself of right immediately to enforce claim. *Ibanez v. Hongkong Banking Corp.* 627

PLEADING:

1. Petition for mandamus should give a correct, uncolored statement of the matter concerning which it seeks relief. *Ex parte Slater* 128

PLEADING — <i>Continued.</i>	PAGE
2. General allegations of fraud and insolvency <i>held</i> not to supply the absence of facts entitling plaintiff to equitable relief. <i>Sears v. City of Akron</i>	242
3. Substitution of party, formerly effected by bill of revivor, or bill of that nature, is now ordered upon motion under new Equity Rule 45. <i>Ex parte Slater</i>	128
4. Error in ruling denying plea in abatement in action to foreclose mortgage, setting up pending action to annul mortgage, <i>held</i> to have been harmless in view of judgment in the earlier action by which validity of mortgage correctly sustained. <i>Ibanez v. Hongkong Banking Corporation</i>	627
5. As to sufficiency of statement of facts in certificate from Circuit Court of Appeals. See <i>Ricaud v. American Metal Co.</i>	304

POLICE POWER:

1. A law primarily designed to preserve the peace is not an unreasonable or arbitrary exercise of the police power: so *held* as to Idaho sheep and cattle segregation law. *Omaechevarria v. Idaho* 343
2. Police power of a State extends over the federal public domain, at least in absence of legislation by Congress. *Id.*
3. Police power extends to requiring railroad companies, at own expense, to make streets and highways crossed by their tracks reasonably safe and convenient for public use. *Great Northern Ry. v. Clara City* 434

POLITICAL QUESTIONS. See **International Law.**

POSTMASTER GENERAL:

Suit to restrain Assistant. See **Actions and Defenses, 1.**

PRE-EMPTION SETTLEMENT. See **Public Lands, II.**

PRESUMPTIONS. See **Interstate Commerce Acts, I, 17.**

Presumption that administrative officers will follow the law not indulged where intention to obey an illegal regulation of their superior is not directly disclaimed by them and is admitted by their counsel. *Waite v. Macy* 606

PRINCIPAL AND SURETY. See **Bonds; Philippine Is-** PAGE
lands, 3.

PRIVILEGES AND IMMUNITIES. See **Constitutional**
Law, VI; VII (3).

PRIVILEGE TAXES. See **Taxation.**

PROBATE JURISDICTION. See **Jurisdiction, III, 20; IV,**
5, 6; VI, 2, 3.

PROCEDURE: See **Masters.**

I. Error, Appeal or Certiorari. See **Jurisdiction.**

II. Scope of Review.

1. There is no occasion to consider constitutional question if case may be disposed of on other grounds. *McCurdy v. United States* 263

2. In so far as it depends upon the testimony, verdict of jury, upon issues requested by complaining party, finding that state regulation as to location of railway offices and shops does not burden interstate commerce will be accepted. *International & G. N. Ry. v. Anderson Co.* 424

3. Court accepts lower courts' interpretation of Philippine law (Civ. Code, Art. 1851) to effect that mere failure of creditor to sue when obligation in whole or in part matures does not extend its term, and that to extinguish surety's liability extension must be based on some new agreement by which creditor deprives himself of right immediately to enforce claim. *Ibanez v. Hongkong Banking Corporation* 627

4. Where master appointed with consent of parties to take testimony and report it with findings of fact and conclusions of law, had heard issues fully and admitted all proffered evidence, and exceptions to findings raised no serious questions of fact, case not remanded to District Court because it erroneously declined to pass upon the exceptions. *Denver v. Denver Union Water Co.* 178

III. Scope and Form of Decree.

1. Form of mandate where, in suit to restrain a contractor with the Government from making and delivering appliances on the ground of infringement of petitioner's patent

PROCEDURE—Continued.

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rights, the lower court erroneously treated as irrelevant the nature of the infringement—whether direct or contributory.

Marconi Wireless Co. v. Simon 46

2. Intimated that, but for character of proceeding (mandamus) and doubt as to intent, damages would have been inflicted under Rule 23 on plaintiff in error for prosecuting writ of error. *Smith v. Jackson* 388

3. Judgment of trial court modified to correct clerical error appearing by trial court's opinion and concession of counsel. *Ibanez v. Hongkong Banking Corporation* 627

4. Decree of injunction properly expressed as perpetual. *International & G. N. Ry. v. Anderson Co.* 424

IV. Rehearing.

1. Case having been dismissed for want of federal question, court grants leave to file, and treats as filed, petition for rehearing, and orders that case stand for consideration on prior submission, the fact that federal question was raised and decided on former hearing in state court being shown by official report of its opinion which counsel failed to include in record or refer to in briefs and argument. *Stadelman v. Miner* 311

2. Attempt to raise federal question through application to file second petition for rehearing in state court comes too late. *Bilby v. Stewart* 255

V. Certificate from Circuit Court of Appeals.

1. Certificates of the facts constituting the basis for questions propounded should be prepared with care and precision. *Boston Store v. American Graphophone Co.* 8

2. The requirement as to statement of facts in a certificate from Circuit Court of Appeals is not complied with by a statement of what is "alleged and denied" by the parties in their pleadings, supplemented by statement that there was evidence tending to establish the facts as claimed by each party; nor should the questions be based upon an "assumed" statement of facts. *Ricaud v. American Metal Co.* 304

3. Facts supplied by judicial notice may enable court to answer questions from Court of Appeals, where otherwise insufficiency of certificate would necessitate its return. *Id.*

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VI. Substitution of Parties.

1. Right of substitution upon death of party depends upon recognized legal and equitable principles to be judicially applied; and where, after due hearing, a motion is denied, the ruling, if erroneous, may be corrected upon appeal, but cannot be reviewed by mandamus. *Ex parte Slater* 128
2. Death of one of the solicitors held to suspend, until substitution of party, proceedings under decree directing that sum in registry of court be distributed among several solicitors in proportion to their respective services and for retention of control by court to make and carry out the apportionment. *Id.*
3. Substitution of party, formerly effected by bill of revivor, or bill of that nature, is now ordered upon motion under new Equity Rule 45. *Id.*

VII. Objections; when to be Made.

Objection of unconstitutionality of rate-fixing order should be made, and all evidence pertinent thereto adduced, before the Interstate Commerce Commission in the first instance if possible. *Manufacturers Ry. Co. v. United States* . . 457

PROCESS, SERVICE OF. See **Jurisdiction**, II; III, 22.

PROXIMATE CAUSE. See **Employers' Liability Act**, 8.

PUBLIC CONTRACTS. See **Contracts**, 3-7.

PUBLIC LANDS:

- I. Homesteads; Fencing Laws; Bona Fides, p. 738.
- II. Pre-emption Settlement, p. 739.
- III. Occupancy for Grazing, p. 739.
- IV. Railroad Grants and Public Reservations, p. 740.
- V. Annulment of Patents, p. 741.
- VI. Police Power of States, p. 741.

I. Homesteads; Fencing Laws; Bona Fides.

1. Enclosure of public land, accompanied by actual possession under claim of right and color of title, in good faith, is not obnoxious to Fence Act of 1885, nor subject, under

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Homestead Law, to be broken or entered for purpose of initiating homestead claim. *Denee v. Ankeny* 208

2. Attempt to establish settlement by stealth and retain it by force against one in peaceable possession as *bona fide* claimant is not countenanced by Homestead Law. *Id.*

3. In such case state law providing for summary restoration of possession so displaced without inquiry into title or right of possession, applies, and presents no conflict between state and federal laws. *Id.*

4. One who purchases under a receiver's receipt, issued upon a soldier's additional homestead entry, land, which is in the actual possession of another claiming from another source under recorded deeds, is constructively notified of that other's claim and of that other's rights as so revealed; and also—through the receiver's receipt—of the origin of his own title and therein of the fact that it was procured by means of affidavits falsely stating that the land was unoccupied, unimproved and unappropriated. *Krueger v. United States* 69

II. Pre-emption Settlement.

1. Lands within limits of incorporated city, whether actually occupied or sought to be entered as a townsite or not, were excluded from acquisition under Pre-emption Act. *Salt Lake Investment Co. v. Oregon Short Line* 446

2. Attempted pre-emption settlement on such land, and filing of declaratory statement in local land office, do not affect disposing power of Congress or operate to exclude tract from subsequent grant of right of way "through the public lands" containing no excepting clause. *Id.*

3. Act of 1877 did not confirm or provide for confirming such absolutely void pre-emption claims so as to disturb rights vested before date of act under a railroad right of way grant. *Id.*

III. Occupancy for Grazing. See I, *supra*.

1. The clause in § 1 of act to prevent unlawful occupancy of the public lands, prohibiting assertion of right to exclusive use and occupancy of any part of the public lands without claim or color of title made or acquired in good

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faith, prohibits merely the assertion of an exclusive right to use or occupation by force, intimidation, or by what would be equivalent in effect to an enclosure. *Omaechevarria v. Idaho* 343

2. Idaho sheep and cattle segregation law (Rev. Codes, 1908, § 6872) is not in conflict with clause in § 1 of act to prevent unlawful occupancy of the public lands, as, in so far as the exclusion of sheep from certain ranges approaches a grant, the result is incidental only. *Id.*

3. Congress has not conferred on citizens the right to graze stock on the public lands, their use for that purpose being merely by sufferance. *Id.*

4. Exclusion of sheep owners, under circumstances, from use of the public domain, provided for in Idaho sheep and cattle segregation law, does not interfere with any right of a citizen of the United States. *Id.*

IV. Railroad Grants and Public Reservations.

1. Act granting right of way to Utah Central Railroad Company applied to public lands over which road had been constructed within corporate limits of Salt Lake City but which never were occupied as a townsite or attempted to be entered as such. Townsite Act not inconsistent with this conclusion. *Salt Lake Investment Co. v. Oregon Short Line* . . . 446

2. Lands opposite line of Northern Pacific Railroad constituting an Indian reservation when line definitely located, were not embraced in grant made to company by Act of 1864. *Northern Pac. Ry. v. Wismer* 283

3. A reservation of public lands for and exclusively devoted to occupancy of tribe of Indians, made under direction and with approval of Commissioner of Indian Affairs, and approved by Secretary of Interior, held valid and effectual to exclude the lands from such grant, although not formally sanctioned by President until after railroad had filed its map of definite location. *Id.*

4. Land, part of odd-numbered section within primary limits but covered by a valid pre-emption filing at date of definite location of right of way, was excepted from grant

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made to Denver Pacific Railway & Telegraph Co. *Krueger v. United States* 69

5. One who under deed of such company and through mesne conveyances came into, and retained, possession of a parcel of land which, because of pre-emption filing, was excepted from the grant to the company, *held* to be in position to acquire full title by purchase under Adjustment Act of 1887 and regulations of Land Department. *Id.*

6. Effect of grant of right of way to Big Horn Southern Railroad Company through Crow Reservation. *United States v. Soldana* 530

V. Annulment of Patents.

1. The limitation provision in the Act of 1891 relative to suits to vacate and annul patents was designed for security of patent titles and does not apply to action at law to recover value of patented land as damages for deceit practiced by defendant in procuring patent. *United States v. Whited & Wheless* 552

2. Provision of Act of 1896 limiting Government's money recovery to minimum government price, not applicable in case in which Government seeks money damages because of deceit practiced in procuring patent under Homestead Law. *Id.*

3. Defense of *bona fide* purchase is affirmative; burden is on party making it, in suit by United States to cancel patent for fraud. *Krueger v. United States* 69

VI. Police Power of States.

Police power of a State extends over the federal public domain, at least in absence of legislation by Congress. *Omaechevarria v. Idaho* 343

PUBLIC WORKS. See **Contracts, 4-7.**

PURE FOOD AND DRUGS ACT. See **Food and Drugs Act.**

RAILROAD GRANTS. See **Public Lands, IV.**

RAILROADS. See **Carriers; Employers' Liability Act; PAGE Franchises; Interstate Commerce Acts; Public Lands; Taxation.**

1. Police power extends to requiring railroad companies, at own expense, to make streets and highways crossed by their tracks reasonably safe and convenient for public use by making sidewalk across right of way. *Great Northern Ry. Co. v. Clara City* 434
2. State court has jurisdiction to decide whether owner of railroad within its territory is under public duty to maintain offices and shops at particular places, even though it were assumed, as a rule of decision, that a foreclosure and confirmed sale in a federal court conferred immunity from obligation which that court alone could withdraw. *International & G. N. Ry. v. Anderson County* 424
3. Foreclosure and sale in federal court will not relieve purchaser from contractual or statutory duty, which rested on its predecessors under state law, to maintain offices and shops at a particular place, if state law holds obligation indelible by foreclosure. *Id.*
4. Prohibition against removal of offices and shops located by contract with county in consideration of county bond aid, extends, under Texas Act of 1889, to successor by mortgage foreclosure of contracting railroad. *Id.*
5. A statute providing that offices and shops shall be at place named in charter, or if no certain place there named then at such place as company shall have contracted to locate them, does not intend that a valid contract for location may be evaded by a purchasing company by naming another place in its charter filed under a general law. *Id.*
6. *Semble*, that contract to maintain offices and shops at a particular place survives mortgage foreclosure and sale where purchaser succeeds to mortgagor's franchise to be corporation; and that, generally speaking, state legislature, dealing with a local railroad corporation, has power to fix place of domicile and principal offices. *Id.*
7. Street railways and steam roads differentiated as respects municipal granting power. *Covington v. South Covington St. Ry. Co.* 413

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8. As to constitutional validity of order of state commission ordering stoppage of interstate trains. See **Constitutional Law**, III, 2-5.

RATES. See **Carriers**, 3; **Interstate Commerce Acts**; **Water Companies**.

RECEIVERS:

1. Bank in which special deposits were made construed as "receiver" within meaning of § 3647, California Pol. Code. *Spring Valley Water Co. v. San Francisco* 391
2. Receiver of national bank, appointed by Comptroller of Currency under Rev. Stats., § 5234, is an officer of the United States and not an agent of bank. *United States v. Weitzel* 533

REHEARING. See **Procedure**, IV.

REMITTITUR. See **Employers' Liability Act**, 13.

REMOVAL OF CAUSES. See **Jurisdiction**, III, 13; IV (1).

REPARATION. See **Interstate Commerce Acts**, II, 5.

RESIDENCE. See **Jurisdiction**, II.

Of corporation within meaning of § 7 of Sherman Act. See **Anti-Trust Act**, 4.

RES JUDICATA. See **Judgments**, 4, 8.

REVIVOR. See **Parties**, 5.

RIPARIAN RIGHTS. See **Waters**.

SALARIES AND ALLOWANCES. See **Canal Zone**.

SECRETARY OF THE INTERIOR. See **Indians**, 2-4, 7, 9-12, 15.

As to judicial interference with. See **Jurisdiction**, I, 5.

SECRETARY OF THE TREASURY. See **Customs Law**.

SERVICE OF PROCESS. See **Jurisdiction**, II; III, 22.

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Validity of Idaho law. See <i>Omaechevarria v. Idaho</i>	343

SHIPPING. See Admiralty.

STATES. See **Boundaries; Constitutional Law; Jurisdiction; Statutes; Taxation.**

1. The principle which forbids the production of state governmental inequality by affixing conditions to a State's admission is irrelevant to the question of power to enforce the contract in this case. *Virginia v. West Virginia* 565
2. Police power extends over the federal public domain, at least in absence of legislation by Congress. *Omaechevarria v. Idaho* 343

STATUTES. See Table of Statutes Cited, at front of volume; **Abandoned Property Act; Bankruptcy; Criminal Law; Employers' Liability Act; Extradition; Food and Drugs Act; Indians; Interstate Commerce Acts; Intoxicating Liquors; Jurisdiction; National Banks; Patents for Inventions; Public Lands.**

I. Principles of Construction.

1. In the construction of statutes defining crimes there can be no constructive offenses, and to warrant punishment the case must be plainly and unmistakably within the statute. *United States v. Bathgate* 220
2. Statutes creating and defining crimes are not to be extended by intendment upon ground that they should have been made more comprehensive. *United States v. Weitzel* . . 533
3. Intention of Congress is to be sought for primarily in language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture. *Thompson v. United States* 547
4. Presumed that intention to change law as declared by this court will be expressed by Congress in plain terms, rather than in such as are consonant with and within the scope of this court's previous decision. *Id.*
5. It has been the policy of Congress not to interfere with

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elections within a State except by clear and specific provisions. <i>United States v. Bathgate</i>	220
6. When the meaning of an expression has been definitely settled by prior decisions of this court it will be assumed that Congress in using that expression without qualifying words adopted the meaning thus attached to it. <i>Louisville Cement Co. v. Interstate Com. Comm.</i>	638
7. A statute of limitations should be strictly construed in favor of the Government. <i>United States v. Whited & Wheelless</i>	552
8. Grants of rights or privileges by State or its municipalities are strictly construed; what is not unequivocally granted is withheld; nothing passes by mere implication. <i>City of Mitchell v. Dakota Tel. Co.</i>	396

II. Particular Statutes.

1. <i>Act of August 13, 1894, 28 Stat. 278</i> , construed liberally for the protection of those who furnish labor or materials in the prosecution of public works; and neither that act, nor the amendatory act of 1905, is limited in application to labor and materials directly incorporated into the public work. <i>Brogan v. National Surety Co.</i>	257
2. <i>California Pol. Code, § 3647</i> , covers money placed in bank as special deposits pursuant to order of court and stipulation of parties to await outcome of litigation. <i>Spring Valley Water Co. v. San Francisco.</i>	391
3. <i>Idaho Sheep and Cattle Segregation Law</i> (Rev. Codes, 1908, § 6872) upheld. <i>Omaechevarria v. Idaho.</i>	343
4. <i>Illinois Dram Shop Act</i> (Rev. Stats., c. 43, § 10) upheld. <i>Eiger v. Garrity</i>	97
5. <i>Louisiana Act of 1904</i> (Laws, 1904, Act No. 54) as amended in 1908, providing for service of process, held not applicable to foreign corporations which have withdrawn from State. <i>People's Tobacco Co. v. American Tobacco Co.</i>	79
6. <i>Massachusetts Corporation Tax Law</i> (Stats. 1914, c. 724, § 1) held invalid. <i>International Paper Co. v. Massachusetts</i>	135
<i>Locomobile Co. v. Massachusetts</i>	146

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7. <i>Massachusetts Corporation Excise Law</i> (Stats. 1909, c. 490, Pt. III, § 56) held valid. <i>Cheney Brothers Co. v. Massachusetts</i>	147
8. <i>Minnesota Laws, 1913, c. 78, § 1</i> , requiring that sidewalks be built over railroad right of way, upheld. <i>Great Northern Ry. v. Clara City</i>	434
9. <i>Philippine Code of Civ. Proc., § 581</i> , construed broadly as relating not merely to court proceedings, but as expressly preserving existing powers and usufructuary rights of parents over property of minor children, existing under Civil Code. <i>Ibanez v. Hongkong Banking Corp.</i>	621
10. <i>Philippine Civ. Code, Art. 1851</i> , as to effect of failure of creditor to sue when obligation matures. <i>Ibanez v. Hongkong Banking Corp.</i>	627
11. <i>Texas Office-Shops Act of 1889</i> , prohibiting removal of offices and shops of railroads located by contract within a county in consideration of county bond aid, extends to successor by mortgage foreclosure of contracting railroad. <i>International & G. N. Ry. v. Anderson Co.</i>	424
12. <i>Texas Stats., Art. 5699</i> ; jurisdiction of suit to contest validity of will. <i>Sutton v. English</i>	199
13. <i>Virginia License Tax Law, Acts 1915, c. 148, p. 233</i> , upheld. <i>Armour & Co. v. Virginia</i>	1
14. <i>Virginia Corporation Privilege Tax Law</i> (Acts 1910, c. 53, § 38a), upheld as not arbitrary or unreasonable under all the circumstances, though case on border line. <i>General Railway Signal Co. v. Virginia</i>	500

STOCK GRAZING LAWS. See **Constitutional Law**, VII, 2, 6, 15; **Public Lands**, III.

STOCKHOLDERS. See **Jurisdiction**, II, 4.

STREET RAILWAYS. See **Franchises**, 2-5.

A street railroad is one of the ordinary incidents of a city and with respect to the municipal granting power stands on a different footing from steam railroads habitually run over separate rights of way. *Covington v. South Covington St. Ry. Co.*.....

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- STREETS AND HIGHWAYS.** See **Franchises.** PAGE
 Police power extends to requiring railroad companies, at own expense, to make streets and highways crossed by their tracks reasonably safe and convenient for public use by making sidewalk across right of way. *Great Northern Ry. v. Clara City* 434
- SUBROGATION.** See **Admiralty, 4.**
- SUBSTITUTION OF PARTIES.** See **Procedure VI.**
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- TAXATION:**
- Immunity of interstate commerce from state taxation. See **Constitutional Law, III, 6-10.**
 As to amount and method of taxation essential to satisfy judgment of this court in suit between States. See *Virginia v. West Virginia* 565
- I. Construction of Tax Acts.**
1. *Nature of Tax; on Property or Earnings.* In determining whether a state tax is to be viewed as a tax on property measured by earnings or a tax on earnings, the view of state court and legislature, though not conclusive, will not be rejected unless ill founded. *Cudahy Packing Co. v. Minnesota* 450
2. *Id. Double or Excessive Taxation.* A tax on a company owning freight cars which it furnished to railroads for a fixed compensation, held not to be deemed double or excessive from fact that receipts of railroads from shipments in such cars, less rental paid to owning company, were made a factor in valuing property on which railroads were taxed. *Id.*
- II. State Taxation. Legitimate Purposes and Subjects.**
1. *Immunity of Interstate Commerce.* Immunity from state taxation is universal and covers every class of such commerce, including that conducted by merchants and trading companies no less than what is done by common carriers. *International Paper Co. v. Massachusetts* 135
2. *Property Employed in Interstate Commerce.* A state tax on a company owning freight cars which were employed by

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railroads in hauling both interstate and intrastate commerce, *held* a property tax and not one on gross earnings burdening interstate commerce. *Cudahy Packing Co. v. Minnesota* 450

3. *Id.* Property constituting a freight car line, used or employed regularly and habitually in a State, is within the taxing power of that State, although chiefly devoted or applied to interstate transportation, and may be taxed at its real value as part of a going concern. *Id.*

4. *Foreign Corporations; Property Tax.* A State is wholly without power to impose a tax upon property of a foreign corporation beyond its jurisdiction, and it is of no moment whether the corporation be a carrier or a trading company. *International Paper Co. v. Massachusetts* 135

5. *Id. Excise Taxes.* Where material part of business conducted in State by foreign corporation is intrastate the company is subject to licensing power of State. *Dalton Adding Machine Co. v. Virginia* 498
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6. *Id.* A state law imposing a fee for the privilege of doing local business of \$1,000 on foreign corporations with capital over \$1,000,000 and not exceeding \$10,000,000, upheld. *General Railway Signal Co. v. Virginia* 500

7. *Id.* State may impose different rate of taxation upon foreign corporations for privilege of doing local business than it imposes upon primary franchises of own corporations; and, by merely licensing foreign corporation to engage in local business, and acquire local property, it does not surrender or abridge, *quoad* such corporation, its power to change and revise its taxing system and tax rates. *Cheney Brothers Co. v. Massachusetts* 147

8. *Id.* Massachusetts Stats., 1909, c. 490, Pt. III, § 56, imposing an annual excise upon every foreign corporation, for the privilege of doing business, of a given per cent. of par value of its authorized capital stock, subject, however, to a maximum limit of \$2000, *held* valid, as to corporation doing local as well as interstate business. *Id.*

9. *Id.* Activities *held* to constitute local business, affording bases for taxation. *Id.*

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10. *Id.* License tax imposed under law of Virginia of 1915, taxing merchants doing business in State on basis of amount of purchases, but excluding from its operation manufacturers taxed on capital by State, who offer their product for sale at place of manufacture, *held*, as applied to a foreign corporation and as computed on the basis of merchandise manufactured by it in other States and shipped into Virginia for sale at its agencies there, not to offend the equal protection clause, or abridge the privileges and immunities of the corporation guaranteed by Art. IV of the Constitution, and 14th Amendment, or constitute an unconstitutional burden on interstate commerce. *Armour & Co. v. Virginia* 1
11. *Id.* As to power of State in respect of license fees or excise taxes imposed on foreign corporations doing interstate as well as local business. See *International Paper Co. v. Massachusetts* 135
12. *Bank Deposits.* Money placed in bank as special deposits, pursuant to orders of District Court and stipulation of parties, to await outcome of litigation, *held* subject to assessment for taxation under § 3647, Pol. Code of California. *Spring Valley Water Co. v. San Francisco* 391
13. *Id.* Such deposits sufficiently described for purposes of assessment by numbers of the several cases in which made, and by designating court and parties; and facts that deposit in each case was not assessed separately, and that description included also case in which there was no deposit, do not vitiate assessment. *Id.*
14. *Indian Property.* Acts of 1906 and 1912, respecting Osage Indians, do not authorize Secretary of Interior to impose restrictions upon private land purchased for non-competent allottee with his trust money, previously released, and thus exempt it as a governmental instrumentality from state taxation. *McCurdy v. United States* 263

III. Unconstitutional Excises on Corporations.

1. *Excise Measured by Capital Stock.* License fee or excise of a given per cent. of par value of entire authorized capital stock of foreign corporation doing both local and interstate business and owning property in several States, is a tax on entire business and property of corporation, and is void both

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as an illegal burdening of interstate commerce and as a deprivation of property without due process of law. *International Paper Co. v. Massachusetts* 135

2. *Massachusetts Law.* Tax exacted under § 1, c. 724, Massachusetts Stats. 1914, for privilege of doing local business, from a foreign corporation largely engaged in interstate commerce, and whose property and business were largely in other States, held void. *International Paper Co. v. Massachusetts* 135
Locomobile Co. v. Massachusetts 146

3. *Burden on Interstate Commerce.* Where foreign corporation maintains and employs local office, with stock of samples and force of office and traveling salesmen, merely to obtain orders locally and in other States, subject to approval by home office, for its goods to be shipped directly to its customers from its home State, the business is part of its interstate commerce and not subject to local excise taxation; and action of such office in obtaining orders from customers residing in home State of corporation and in transmitting them to home State where they are approved and filled, is interstate intercourse in State where office is established. *Cheney Brothers Co. v. Massachusetts* 147

4. *Id.* That a local business stimulates interstate business and its abandonment would have the opposite effect does not make it any the less local. *Id.*

TAXES:

As element in estimating value of leasehold. See *Manufacturers Ry. Co. v. United States* 457

TEA BOARD. See **Customs Law.**

TELEPHONE COMPANIES. See **Franchises, 7.**

TENNESSEE:

Boundary line between Tennessee and Arkansas is middle of main channel of navigation of Mississippi as it existed in 1783, subject to such changes as have occurred through natural and gradual processes. *Arkansas v. Tennessee* 158
Cissna v. Tennessee. 289

TERMINALS. See **Interstate Commerce Acts.** PAGE

TEXAS:

1. County court has no equitable jurisdiction of suit *inter partes* to annul dispositions in will and partition property among heirs, where title to land is involved, and amount in controversy exceeds \$1,000. *Sutton v. English* 199
2. District courts have no jurisdiction to annul by an original proceeding the action of a county court in probating a will, and a suit under Stats., Art. 5699, to contest validity of will so probated, must be brought in county court and calls for exercise of original probate jurisdiction. *Id.*
3. Prohibition against removal of offices and shops located by contract with county in consideration of county bond aid, extends, under Act of 1889, to successor by mortgage foreclosure of contracting railroad. *International G. & N. Ry. v. Anderson County* 424

TITLE. See **Indians; International Law; Patents for Inventions; Public Lands.**

TRADEMARKS:

1. Trademark for one variety of goods includes other varieties of the same species. *Rock Spring Co. v. Gaines & Co.* . . . 312
2. An adjudication that, as against B, A is entitled, by prior appropriation, to use a trademark on "blended" whiskey, protects A, as against B, in its use on "straight" whiskey. *Id.*
3. In a suit by G to enjoin R from using trademark on "straight" whiskey, claimed by former through prior appropriation, a former decree, set up by R claiming to be acting as agent of H, dismissing bill in former suit brought by G against predecessors of H, to enjoin them from using the same mark on "blended" whiskey, *held* a bar, notwithstanding the later suit related to "straight" whiskey and notwithstanding subsequent registration of trademark by plaintiff for "straight" whiskey. *Id.*

TRUST FUNDS:

Supervision of trust funds of Indians. See **Indians**, 14, 15.

TRUSTS AND TRUSTEES. See **Indians.**

"TWENTY-EIGHT HOUR LAW." See **Interstate Commerce Acts**, II, 7, 8. PAGE

UNIFORM LIVE STOCK CONTRACT. See **Interstate Commerce Acts**, II, 1, 2.

UNITED STATES. See **Contracts**, 3-7.

1. Suit to restrain Assistant Postmaster General from annulling a contract held against United States. *Wells v. Roper* 335
2. Receiver of national bank, appointed by Comptroller of Currency under Rev. Stats., § 5234, is an officer of the United States and not an agent of bank. *United States v. Weitzel* 533
3. Right to use patented inventions. See **Patents for Inventions**.

VERDICT:

- In so far as it depends upon the testimony, verdict of jury, upon issues requested by complaining party, finding that state regulation as to location of railway offices and shops does not burden interstate commerce, will be accepted. *International & G. N. Ry. v. Anderson Co.* 424
- Remittitur. See **Employers' Liability Act**, 13.

VESSELS. See **Admiralty**.

WAR-MAKING POWER. See **Constitutional Law**, II, 3.

WARRANTY:

- Of seaworthiness of vessel. See **Admiralty**.

WATER COMPANIES:

1. Mere incorporation and organization under general laws of Ohio, with power to construct and operate hydro-electric power system at places designated, and to take water rights and riparian property for that purpose, does not imply contract between State and company that supply of water available shall not be diminished; and subsequent appropriation of the water by city under state authority held not to impair the obligation of the contract. *Sears v. City of Akron* 242
2. Right of appropriation of water, with power of condemnation, acquired by company organized under general laws

WATER COMPANIES—*Continued.*

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of Ohio, under which no property had been acquired, *held* subject to State's reserved power, and that an appropriation of the water by a city, under authority of the state legislature, was not an unconstitutional taking of the company's property. *Id.*

3. Provisions of ordinance fixing rates which water company, whose franchise had expired, might charge in future, providing for collection of charges in advance, and requiring installation of meters and hydrants, and imposing fines for violation of ordinance, *held* to confer, impliedly, privileges necessary to enable company to continue service, and so, as granting new franchise of indefinite duration, terminable by either city or company at such time and under such circumstances as would be consistent with duty owed to inhabitants. *Denver v. Denver Union Water Co.* 178

4. A net return of 4.3% of value of plant, afforded by ordinance rates, *held* insufficient, and that ordinance fixing such rates amounts to taking of company's property without due process of law. *Id.*

5. In valuing plant of public service company as basis for determining adequacy of rates fixed, it is proper to estimate land at present market value, and structures at the reproduction cost less depreciation; also the "going concern value." *Id.*

6. In determining whether rates fixed by ordinance allowed an adequate return, such water company's plant not to be valued as "junk," but as property useful and in use in the public service; nor is question of value greatly affected, if at all, by fact that there is neither right nor obligation to continue use perpetually, or for any long period that may be defined in advance. *Id.*

7. Whether, in Colorado, company under franchise contract to furnish water for a city, becomes owner of water rights initiated by it, not decided. *Id.*

WATERS:

Navigable river as boundary between States. See **Boundaries.**

Appropriation in Colorado. See **Water Companies, 7.**

WATERS—*Continued.*

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1. How land that emerges on either side of a navigable interstate boundary stream shall be disposed of as between public and private ownership is a matter to be determined according to the law of each State, under familiar doctrine that it is for the States to establish for themselves such rules of property as they deem expedient with respect to the navigable waters within their borders and the riparian lands adjacent to them. *Arkansas v. Tennessee* 158
2. Where no direct taking under power of eminent domain, a riparian owner complaining of act of a city in damming and diverting stream for municipal water supply, remitted to action at law for damages, unless injury clear and exceptional circumstances are present warranting resort to equity. *Sears v. City of Akron* 242

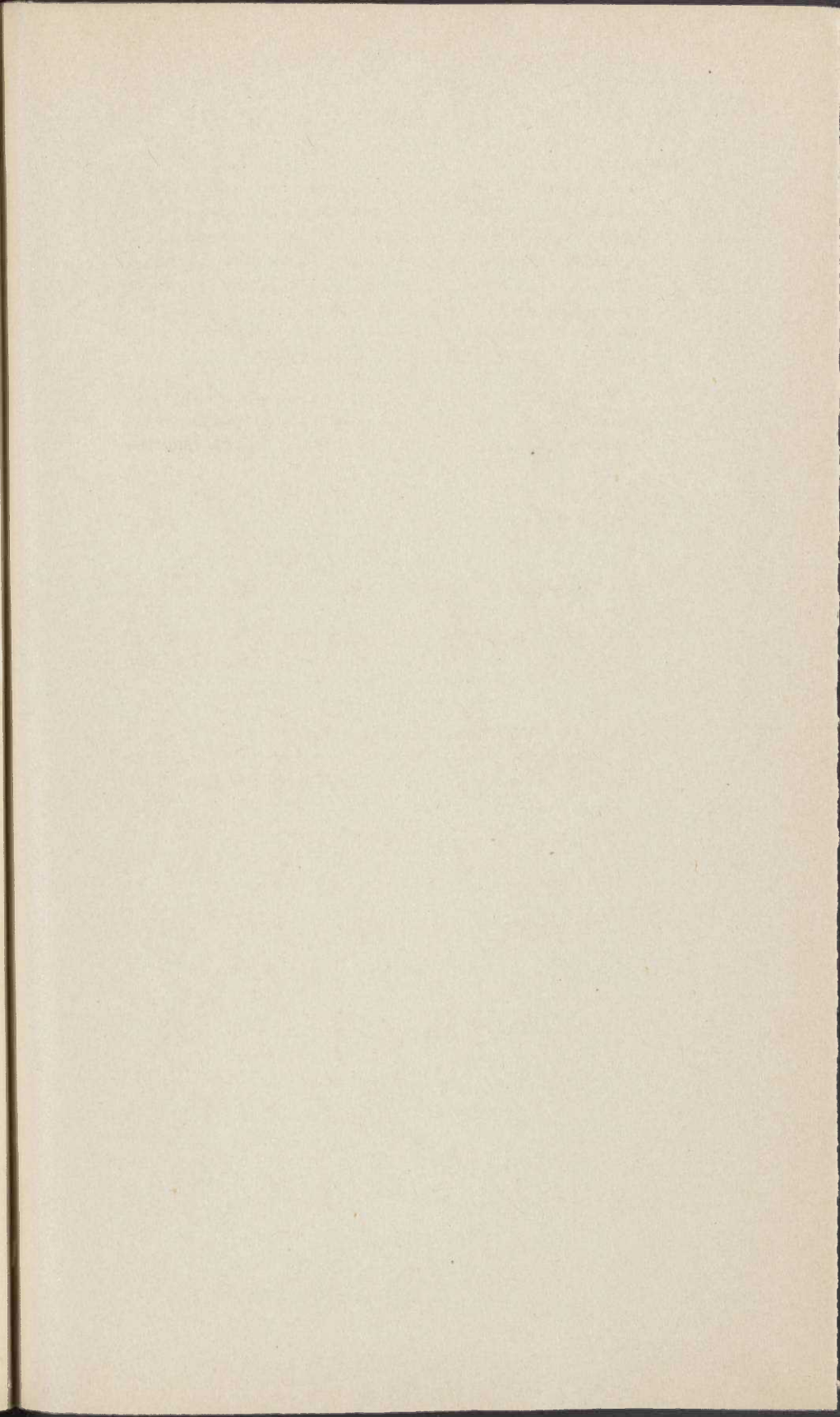
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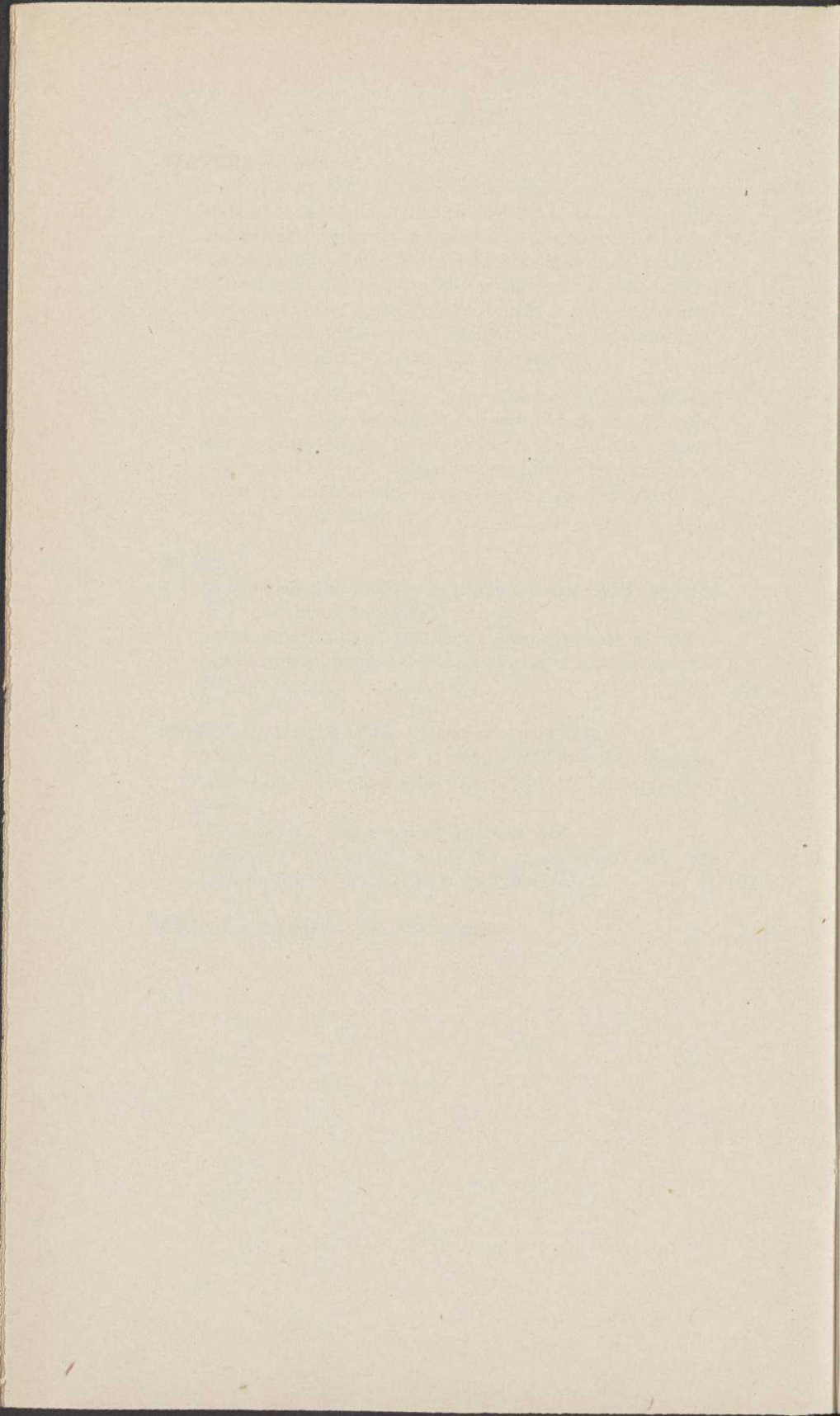
- As to jurisdiction of state and federal courts of suit to annul will. See *Sutton v. English* 199
- As to jurisdiction of this court where probate of will of Indian refused solely on ground of mental incapacity. See *Bilby v. Stewart* 255

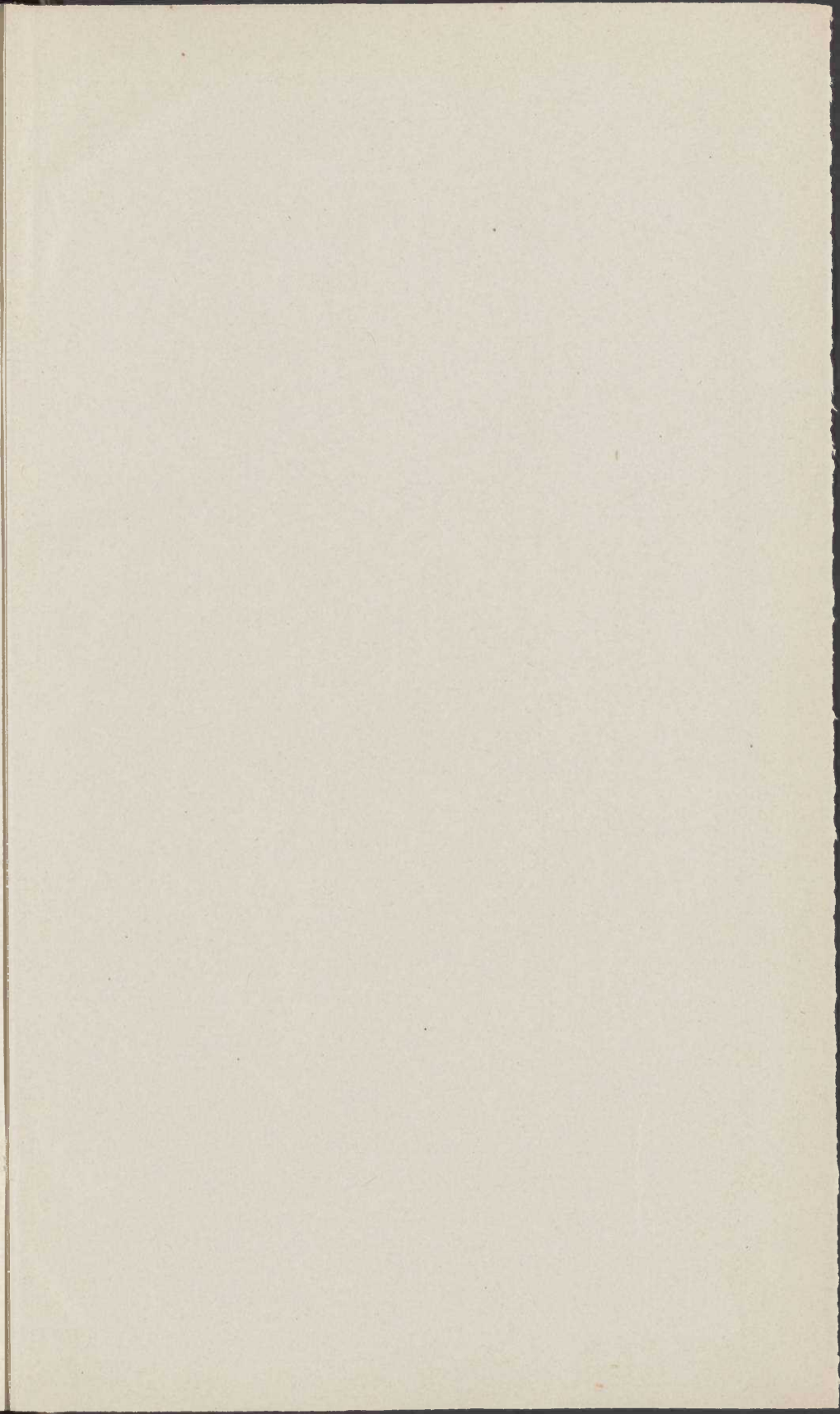
WORDS AND PHRASES. See **Statutes**, I, 3, 4, 6.

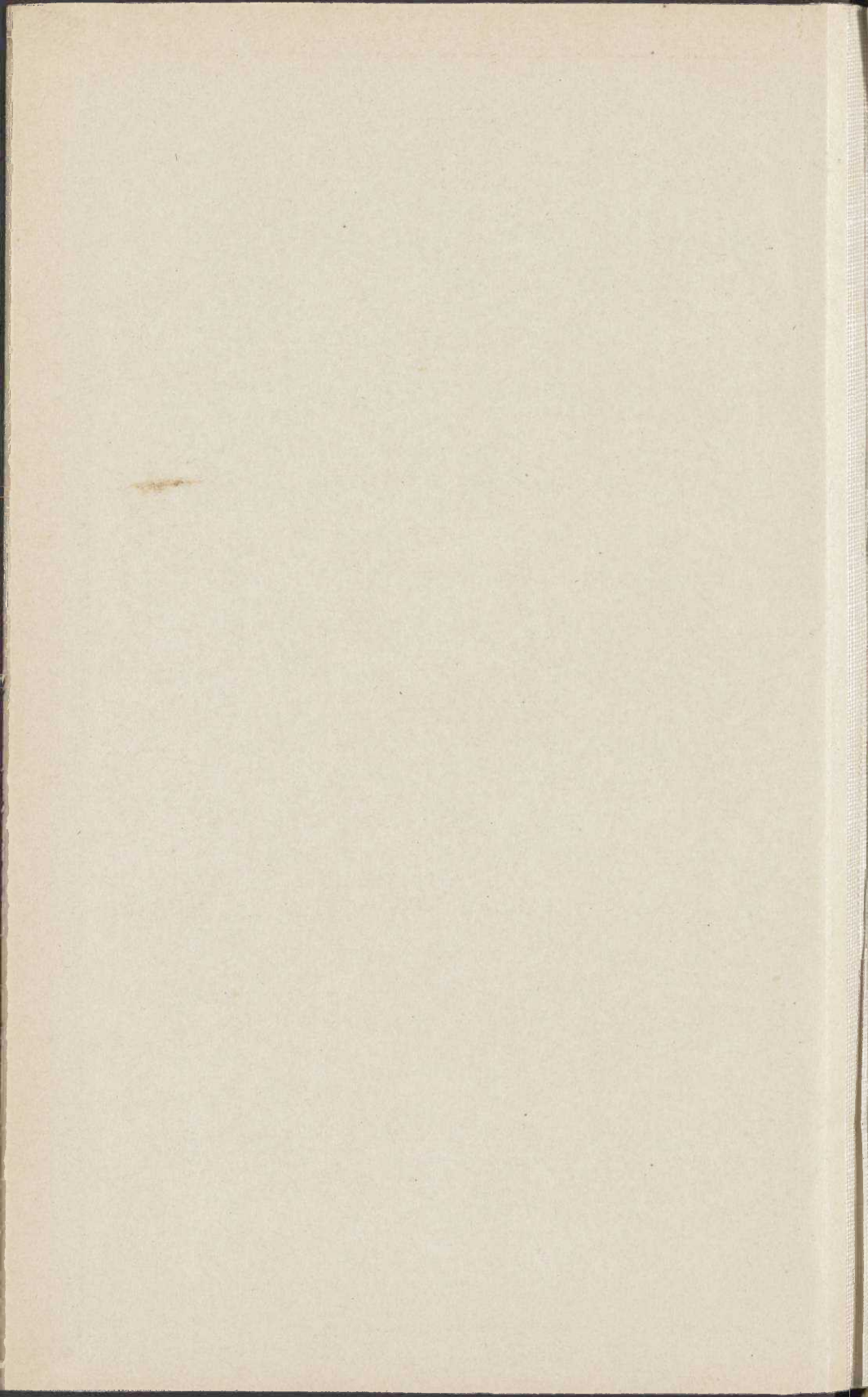
- "Cause of action accrues" as used in § 16 of Act to Regulate Commerce. See *Louisville Cement Co. v. Interstate Com. Comm.* 638
- "Compound." See **Food and Drugs Act**.
- "Resides or is found" as in § 7 of Sherman Act. See *People's Tobacco Co. v. American Tobacco Co.* 79

WRIT OF ERROR. See **Jurisdiction**.









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