lative action aims at future changes by the establishment of some new rule. The establishment of rates is the making of new rules and is legislative. *Interstate Commerce Commission* v. *Cincinnati, Etc., R. R.,* 167 U. S. 479; *Railroad Commission* v. *P. & A. R. R.,* 24 Fla. 417; *San Diego Land Co.* v. *National City,* 174 U. S. 739, 750. The proceedings, being in their nature legislative, are not proceedings in a court which may not be enjoined by a federal court. *Southern R. R.* v. *Greensboro Ice Co.,* 134 Fed. 82; *McNeill* v. *Southern R. R.,* 202 U. S. 543; *Western Union Tel. Co.* v. *Myatt,* 98 Fed. 335; *Illinois Central R. R.* v. *Mississippi R. R. Commission,* 70 C. C. A. 617, 203 U. S. 335. The state may prescribe the rate for the railroad, but that rate must be reasonable, and it is the duty of the court to inquire into its reasonableness, and if it works a practical destruction to rights of property to restrain its operation. *Reagan* v. *Farmers' Loan & Trust Co.,* 154 U. S. 362; *Smythe* v. *Ames,* 169 U. S. 466; *Ex parte Young,* 209 U. S. 123; *Western Union Tel. Co.* v. *Myatt et al.,* 98 Fed. 335. A state cannot tie up a citizen of another state having property within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts. *Reagan* v. *Farmers' Loan & Trust Co.,* 154 U. S. 362; *Smythe* v. *Ames,* 169 U. S. 466. Article 720, Rev. Stat. U. S., is but declaratory of a rule of comity, *Evans* v. *Gorman,* 115 Fed. 399, but it is only reasonable that before United States courts should interfere the highest tribunal in the state should have spoken on the matter.

CRIMINAL LAW—LARCENY—FRAUDULENT USE OF LEGAL PROCESS.—An attorney, having obtained judgments on claims in his hands for collection, procured execution under which chattels were levied and placed in the warehouse. Afterwards, with knowledge of the satisfaction of the judgments, he removed the chattels and appropriated them to his own use. *Held,* conviction of larceny was sustainable, although legal process was used to secure possession of the goods. *People* v. *Frankenburg* (1908), — Ill. —, 86 N. E. 128.

This case sharply distinguishes those civil cases where an officer may be held for a mistake simply. Here there was no element of official action except as the writ was used as a means of perpetrating the crime. Larceny may be committed at common law where legal process is fraudulently and feloniously used for the purpose. *Aldrich* v. *The People,* 224 Ill. 622, 79 N. E. 964, 7 L. R. A. (N. S.) 1149, 115 Am. St. Rep. 166. So under the facts in the principal case the constable was also convicted of larceny. See *Luddy* v. *People,* 219 Ill. 413, 76 N. E. 581, and note in 3 L. R. A. (N. S.) 508, and for further discussion of the same principles *Tones* v. *State* (Tex. Crim. App.), 88 S. W. 217, 1 L. R. A. (N. S.) 1024. Fortunately, but few such cases have arisen, and to refute the defense that the taking under the execution was legal, at least not criminal at common law, a quotation from HAWKINS is in point: "In which cases (e. g., such as the principal case) the making use of legal process is so far from extenuating that it highly aggravates the offense by the abuse put on the law in making it serve the purposes of oppression and injustice." 1 HAWK. P. C., Chap. 33, § 8. Many

authorities, notably in New York, directly hold that where property is taken by means of some trick, fraud or false pretense from the possession of the owner, it is not necessary that it should be taken by trespass, thus apparently dispensing with the trespass which is generally deemed essential to constitute larceny. *People* v. *Hughes,* 91 Hun 354, 36 N. Y. Supp. 493; *People* v. *Sumner,* 33 App. Div. 338, 53 N. Y. Supp. 817, affirmed in 161 N. Y. 652, 57 N. E. 1120; *People* v. *Shaw,* 57 Mich. 403, 58 Am. Rep. 372, 24 N. W. 121; see 4 MICH. L. REV. 66.

CRIMINAL LAW—RECEPTION OF VERDICT—ACCUSED'S RIGHT TO BE PRESENT. —During his trial for murder the defendant was admitted to bail. He was present at the trial, but when the jury brought in its verdict of manslaughter he had voluntarily absented himself in the country. The rendition of the verdict in his absence is assigned as error. *Held,* in a capital felony case, the accused cannot waive the right to be present when the verdict is received, whether he be in jail or on bond, and the prisoner is discharged. *Sherrod* v. *State* (1908), — Miss. —, 47 South. 554.

The principal case is an excellent illustration of the extent to which rules *in favorem vitae* are applied. A leading principle that pervades the entire law of criminal procedure is that after indictment is found nothing shall be done in the absence of the prisoner. 1 BISH. CRIM. PROC., §§ 682-688. While this rule has at times, principally in the case of misdemeanors, been somewhat relaxed, yet in regard to felonies the supreme court of the United States has held that it is not within the power of the prisoner, either by himself or counsel, to waive the right to be personally present during the trial. *Lewis* v. *U. S.,* 146 U. S. 374, 13 Sup. Ct. 137, 36 L. Ed. 1013. And GIBSON, C.J., in *Prine* v. *Comm.,* 18 Pa. St. 105, says: "The right of a prisoner to be present at his trial is inherent and inalienable." The latter statement has been subject to criticism, and the better rule seems to be that being a right personal to the accused and established for his benefit, it may be waived by him in all cases other than capital. *State* v. *Jenkins,* 84 N. C. 812, 37 Am. Rep. 643; *Fight* v. *State,* 7 Ohio 181, 28 Am. Dec. 626; contra: *Cook* v. *State,* 60 Ala. 39, 31 Am. Rep. 31. The common law rule is founded on two reasons: 1. The right of the accused to be present and to see that the verdict is sanctioned by all the jurors; 2. In order that the accused, if convicted, may be under the power of the court and subject to its judgment. *Stubbs* v. *State,* 49 Miss. 722; *Cook* v. *State,* supra; *Smith* v. *State,* 59 Ga. 513; *State* v. *Outs,* 30 La. Ann. 1156; *Warren* v. *State,* 19 Ark. 214, 68 Am. Dec. 214. The decision in the principal case is in accord with all precedent, but only too plainly illustrates the degree of care required in such cases when the defendant is out on bail.

DEAD BODIES—POWER OF COURT TO ORDER EXHUMATION TO PROCURE EVIDENCE.—In a prosecution for homicide, the defendant filed a motion asking that a commission be appointed by the court to exhume the body of the deceased, in order that an autopsy might be made for the purpose of ascertaining the character of the wounds, their range and depth, etc., it being