

INDEX.

ABATEMENT:

PAGE

Bankruptcy proceedings do not abate by death of bankrupt.

Hull v. Dicks. 584

ACCOUNTS AND ACCOUNTING:

For infringing a patent. See **Judgments and Decrees; Patent**.

ACTIONS:

Form of and change of form of. See **Jurisdiction**.

By assignee, of chose in action. See **Assignee**.

By alien for death of relative. See **Alien; Treaty**.

Under § 7 of Anti-trust Act. See **Anti-trust Act**.

What constitutes suit against State. See **Constitutional Law**.

Immunity of State. See **Appearance; Porto Rico**.

Abatement. See **Abatement**.

To try question of title to land acquired by treaty. See **Parties**.

ACTS OF CONGRESS. See **Congress, Acts of**.

ADEQUATE REMEDY AT LAW. See **Injunction**.

AFRICAN RACE:

Entitled to equal accommodations in respect to all classes of car if separate cars for white and African races are required as in Oklahoma Separate Coach Act. *McCabe v. Atchison*,

Topeka & Santa Fe Ry. 151

ALASKA:

The provision in § 3 of the Alaska Act of August 24, 1912, providing that all laws passed by Congress establishing executive and judicial departments should remain in force until amended or repealed by Congress, related to the laws establishing such departments and not merely regulating procedure. The form of indictment was left open to amendment by the territorial legislature, and the act of the Alaska legislature of April 26, 1913, so amending § 43 of Title II, Alaska Code of Civil Procedure of March 3, 1899, that several charges can be joined in same indictment for similar offenses, is within power delegated by Congress to terri-

ALASKA—Continued.

PAGE

torial legislature under act of August 24, 1912. *United States v. Wigger* 276

ALIEN:

Weight of authority in this country and England is that alienage does not affect right to maintain action for death of relative and so *held* as to an action under Employers' Liability Act and distinguishing *Maiorano v. Balt. & Ohio R. R.*, 213 U. S. 268. *McGovern v. Phila. & Reading R. R.* . . . 389
See **Treaty**.

ALIENATION OF ALLOTTED LANDS. See **Indians**.

ALLOTMENTS TO INDIANS. See **Indians**.

AMENDMENT OF PLEADINGS. See **Pleading**.

AMENDMENT OF STATUTE. See **Criminal Appeals Act**.

ANTI-TRUST ACT OF JULY 2, 1890:

Action of unions and associations of which defendants were members in regard to use and circulation of "unfair" and "we don't patronize" lists, boycotts, strikes, union labels, etc., *held* to have amounted to a combination and conspiracy under the act. *Lawlor v. Loewe* 522
Circulation of such lists intended to put ban on those named therein among possible customers combined with view to joint action and intended to restrain, and which does restrain, interstate commerce is within the act. *Id.*
Verdict for damages in action under § 7 of the act may include those accruing after commencement of the action but as consequence of acts done before and constituting part of the cause of action. *Id.*
Introduction of newspapers and letters allowed in an action under § 7 of the act to bring home to defendants notice and to show direct results of their actions. *Id.*

APPEAL AND ERROR:

Frivolous Appeal: Contention that § 4180, Snyder's Comp. Laws Oklahoma, repugnant to Commerce Clause of Federal Constitution is frivolous; this court has no jurisdiction under § 237, Jud. Code. *Overton v. Oklahoma* 31
— Unless the record justifies assumption that conclusion of guilt only has been reached by disregarding proof, this court has no jurisdiction under § 237, Jud. Code. *Id.*
Power of Circuit Court of Appeals after its writ of error has

APPEAL AND ERROR—Continued.

PAGE

issued: After writ of error has issued from Circuit Court of Appeals to District Court in a criminal case the former can issue prohibition to the latter against entering order allowing new trial after end of term at which final judgment was entered. *United States v. Mayer.* 55

Practice on appeals from Court of Appeals of District of Columbia: Alleged sums not of fundamental or jurisdictional character which were waived expressly or by implication cannot be regarded as before this court. *Magruder v. Drury* 106
On appeals taken prior to adoption of Judicial Code, this court reviews only decree of the Court of Appeals and objections in lower court not brought forward in Court of Appeals are not reviewable here. *Id.*

Where writ is directed: When not allowed until after the record has been sent by the state Appellate Court to the trial court the writ of error from this court is directed to the trial court. *Sioux Remedy Co. v. Cope.* 197

Appeals from Porto Rico: Territorial Practice Act of 1874 governs appeals taken under § 35 of the Foraker Act from the District Court of the United States for Porto Rico and review by this court in actions at law as well as in equity are by appeal and not by writ of error unless there was a jury trial. *Porto Rico v. Emmanuel.* 251

Reviewing judgments in actions under Employers' Liability Act: If meaning of act not questioned and Circuit Court of Appeals affirmed District Court, this court only determines if plain error was committed in relation to the principle of general law involved; if record shows nothing supporting contention of plaintiff in error, judgment must be affirmed. *Yazoo & Miss. Valley R. R. v. Wright.* 376

Methods of review by this court: There is ample opportunity for review by this court of any judgment or decree of a lower court contemplated by the Circuit Court of Appeals Act of 1891, now embodied in the Judicial Code; but in the distribution of jurisdiction this court cannot review a judgment of the Circuit Court of Appeals other than by proceedings addressed to that court. *Shapiro v. United States.* 412

— This court cannot take a case in fragments; and, if reviewable on direct writ of error by reason of a constitutional question the whole case must come here. *Id.*

— Right of recourse to this court. *Sage v. Hampe.* 96

See **Criminal Appeals Act; Habeas Corpus; Jurisdiction, of this Court; New Trial; Removal of Causes.**

APPEARANCE:

PAGE

- Where state statute does not authorize waiver of State's exemption from suit, an appearance by an attorney for members of a state board does not amount to such a waiver; but *quære*, to what extent does the decree bind the board as to matters adjudicated in the suit between the other parties. *Farish v. State Banking Board*. 498
- Voluntary appearance in Federal court in a suit of which state and Federal courts have concurrent jurisdiction may amount to waiver if no objection is interposed to the Federal court being proper tribunal under § 33 of the Arizona Enabling Act. *Arizona & New Mexico Ry. v. Clark*. 669
- Validity of rule of State making special appearance under certain conditions general. *Western Indemnity Co. v. Rupp* 261

APPORTIONMENT OF PROFITS. See **Patents.****ARIZONA:**

- Under § 2535, subd. 6, Rev. Stat. Arizona, testimony of attending physician of plaintiff in suit for damages for personal injuries properly excluded because plaintiff had not testified with reference to communications made by him to attending physician. *Arizona & New Mexico Ry. v. Clark*. 669
- Construction of § 33 of the Enabling Act. See **Appearance.**

ARKANSAS:

- Act of Congress of April 28 putting laws of Arkansas in force in Indian Territory construed. *Taylor v. Parker*. 42
- Annual Franchise Tax statute of 1911 not unconstitutional as to provisions involved in *St. Louis S. W. Ry. v. Arkansas* 350
- In putting laws of Arkansas in force in Indian Territory Congress intended them to have same force and meaning that they had in Arkansas and that they should be construed as they had theretofore been by the highest court of that State; though put into effect by different Acts of Congress they were adopted not as unrelated but as a system. *Adkins v. Arnold*. 417
- Laws of Arkansas as to descent and distribution applied to lands under the Original and Supplemental Creek Agreements. *Washington v. Miller*. 422
- Sizemore v. Brady*. 441
- See **Constitutional Law; Indian Territory; Indians.**

ASSESSMENTS FOR BENEFITS. See **Taxes and Taxation.**

ASSIGNEE:

PAGE

Of interest of *cestui que trust* in estate not assignee of chose in action within meaning of Judicial Code, § 24. *Brown v. Fletcher*..... 589

ASSOCIATIONS:

Members of labor unions and associations are bound to know the constitutions of their societies and may be liable for the acts of the officers delegated by them to act for them. *Lawlor v. Loewe*..... 522
See **Anti-trust Act**.

ASSUMPTION OF RISK:

When question for jury. See **Employers' Liability Act**.
Validity of classification relative to. See **Ohio Workmen's Compensation Act**.

AUTOMOBILES. See **Maryland Motor Vehicle Law**.

BANK, OKLAHOMA GUARANTY FUND. See **Eleventh Amendment**.

BANKRUPTCY ACT OF 1898:

Trustees subrogated to liens acquired by creditors on assets of the bankrupt within four months of the petition. *Fallows v. Continental Savings Bank*..... 300

When propriety of the subrogation of the trustee to liens so acquired is sustained by the referee and both courts below this court accepts their action as correct. *Id.*

Bankruptcy proceedings once started do not abate, and under § 8 (proviso) in case bankrupt dies, widow and children have right to allowance from the portion of the estate remaining in hands of trustee. *Hull v. Dicks*... 584

The action of the court during the life of the bankrupt is binding on him and as to part of the estate distributed prior to his death the right of his widow and children to charge it with an allowance under § 8 is defeated. Such an allowance can only be made for property remaining at his death undistributed. *Id.*

The order for allowance must be duly made by the court in proceedings in which trustee as representing creditors has right to be heard. *Id.*

Allowance made for one year's support of widow and children from estate of a resident citizen of Georgia dying after adjudication and appointment, qualification and partial administration of trustee from the estate vested in the

BANKRUPTCY ACT of 1898—Continued.

PAGE

- trustee under § 70 of the act pursuant to § 8 as provided by
 § 4041 of the Code of Georgia. *Hull v. Dicks* 584
 See **Judgments and Decrees.**

BILL OF EXCEPTIONS.

- Effect of absence of, on questions of evidence. *Porto Rico*
v. Emmanuel 251

BILL OF REVIEW:

- Relief prayed in bill of review for newly discovered evidence is a matter of sound discretion and not absolute right; even though evidence persuasive of error in former decree relief not allowed if resulting in mischief to innocent parties. *Hopkins v. Hebard* 287
 Function of such a bill is to relieve meritorious complainant from clear miscarriage of justice where court can see remedy applied without mischief to rights of innocent parties or unduly jeopardizing stability of judgments. *Id.*
 Bill refused in regard to decree establishing title to land under Tennessee patent, notwithstanding this court has decided it to be situated in North Carolina, but court should not make new decree in view of rights of innocent parties acquired under former decree. *Id.*
 Bills of review granted on two grounds: first, error of law apparent on the face of the record without further examination of matter of fact, second, new facts discovered since the decree which should materially affect it and probably induce a different result. *Scotten v. Littlefield* 407
 An aspect of the claim involved cannot be held back when the case is presented to the court, and later made the subject of a bill of review. *Id.*
 In this case a later decision decided upon principles different from those which determined the case sought to be reviewed held not to lay the foundation for bill of review on either of the grounds on which the bill should be granted. *Id.*

BOUNDARIES:

- Between states:* Slick Rock and Tellico Basin sections of boundary between North Carolina and Tennessee determined. *North Carolina v. Tennessee* 1
 — Marks on trees given weight as evidence in establishing a boundary line. *Id.*
Between land of private parties. See **Jurisdiction.**

BOYCOTTS. See **Anti-trust Act.**

BURDEN OF PROOF:

PAGE

Statute of Mississippi making happening of certain classes of accidents presumptive evidence of negligence simply shifts burden of proof and is a mere regulation of practice in regard to evidence, does not cut off substantial rights, is not denial of due process of law even when applied in a case involving an accident happening prior to its enactment. *Easterling Lumber Co. v. Wright*. 380

CARRIER. See **Common Carrier.**

CHANGE OF DOMICIL. See **Domicil.**

CHICAGO:

Assessment for street benefit held not unconstitutional. *Willoughby v. Chicago*. 45

CHICKASAW INDIANS. See **Indians.**

CHILDREN:

Of bankrupt entitled to allowance. See **Bankruptcy Act.**

CHOCTAW INDIANS. See **Indians.**

CHOSE IN ACTION. See **Assignee.**

CIRCUIT COURT OF APPEALS. See **Appeal and Error; Jurisdiction; Mandate.**

CITIZEN AND CITIZENSHIP:

May not be held for custody where there is no provision of common law or statute making an offense of the act charged. *Henry v. Henkel*. 219
Rights of citizens to pass through State in motor vehicles not interfered with by reasonable license fees imposed on motors. *Hendrick v. Maryland*. 610
Diverse giving Federal courts jurisdiction. See **Domicil; Jurisdiction; Jury; Laches; Practice.**

CLASSIFICATION:

Of subjects for police regulation and taxation. See **Constitutional Law; Equal Protection of the Law; Fourteenth Amendment.**

CLERK, FEES OF:

Provision in act of February 13, 1911, in regard to clerk's fees for supervising record apply to certain classes of interlocutory decrees. *Lovell-McConnell Co. v. Auto Supply Co.* 383

COAL MINES:

PAGE

Taxes on lessees of United States of mines in Oklahoma.
See **Taxes and Taxation**.

CODES. See **Criminal Code**; **Judicial Code**.

COLLATERAL ATTACK. See **Judgments and Decrees**.

COMBINATION IN RESTRAINT OF TRADE. See **Anti-trust Act**.

COMMERCE COURT. See **Interstate Commerce Commission**; **Jurisdiction**.

COMMERCE. See **Anti-trust Act**; **Constitutional Law**; **Interstate Commerce**.

COMMISSIONS OF TRUSTEES OF ESTATE:

This court will not disturb allowance made by auditor of District of Columbia and affirmed by both courts of the District. *Magruder v. Drury*. 106
Trustee cannot participate in commissions made by his firm on sales of investment to the estate. *Id.*

COMMON CARRIER:

May be required by State to furnish separate but equal accommodations to the white and African races—as in Oklahoma. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151
A receiver of a railroad corporation who carries on the business is in regard thereto a common carrier. *United States v. Nixon*. 231
Right to primarily determine whether a higher rate should be charged for a shorter than a longer distance was taken from the carrier by the amendment of § 4 of the Act to Regulate Commerce by the act of June 18, 1910, and primarily vested in the Interstate Commerce Commission. *United States v. Louisville & Nashville R. R.* 314
Common-law rule that carrier has option of demanding freight in advance or on delivery applies not only to shippers but also to connecting carriers; but this right may be modified by statutes preventing discrimination. *Wadley Southern Ry. v. Georgia*. 651
Order of Georgia Railroad Commission directing carrier cease discriminating by demanding freight in advance from some connecting carriers and not from others, not unconstitutional. *Id.*

See **Interstate Commerce Commission**; **Railroad**.

COMMON LAW:

PAGE

Even if contract is unenforceable at common law if Federal statute broad enough to prohibit it, this court has jurisdiction to review under § 237, Jud. Code. *Sage v. Hampe* . . . 99
Common-law rule as to right of carrier to demand freight in advance. See **Common Carrier; Pleading.**

COMPENSATION ACTS. See **Ohio Workmen's Compensation Act.**

COMPETITION:

When use of later manufacturer's name on goods manufactured by earlier established person of same name results in mistake and confusion, later man must take reasonable precaution to prevent such results. *L. E. Waterman Pen Co. v. Modern Pen Co.* 88
Only protection manufacturer can get against later person of same name manufacturing similar goods is to require latter to so use name in marking goods that they cannot be confused with goods manufactured by the former. *Id.*

CONDITIONS PRECEDENT:

Franchise based on carrying out of proposed plan which proved abortive fails and cannot be basis of declaring subsequent ordinances invalid as impairing obligation of contract. *Louisiana Ry. & Nav. Co. v. New Orleans* 164
See **Public Lands; Taxes; Taxes and Taxation.**

CONFLICT OF LAWS. See **Statutes; United States.**

CONGRESS:

Acts of, Construed and Applied: Alaska Code of March 3, 1899. *United States v. Wigger* 276
Arizona Enabling Act. *Arizona & New Mex. Ry. v. Clark* . . 669
Arkansas laws in Indian Territory. *Taylor v. Parker* 42
Anti-trust Act of 1890. *Lawlor v. Loewe* 522
Bankruptcy Act of 1898. *Hull v. Dicks* 584
Circuit Court of Appeals Act. *Shapiro v. United States* . . . 412
See **Appeal and Error.**
Copyright Act. *Dejonge v. Breuker* 33
Creek Indian Allotment Acts. See **Indians** 417
Criminal Appeals Act. See **Criminal Appeals Act** 625
Employers' Liability Acts of 1908 and 1910.
Garrett v. Louis. & Nash. R. R. 308
Yazoo & Miss. R. R. v. Wright 376

CONGRESS.—Continued.

	PAGE
<i>McGovern v. Phila. & Reading R. R.</i>	389
<i>Norfolk & West. Ry. v. Holbrook</i>	625
<i>Arizona & New Mex. Ry. v. Clark</i>	669
Fee Bill Amendment. <i>Lovell Co. v. Auto Supply Co.</i>	383
Foraker, Porto Rico Act. <i>Porto Rico v. Emmanuel</i>	251
Indians, Acts affecting. <i>Taylor v. Parker</i>	42
<i>Skelton v. Dill.</i>	206
<i>Adkins v. Arnold.</i>	417
<i>Washington v. Miller.</i>	422
<i>Sizemore v. Brady.</i>	441
Interstate Commerce Acts. <i>United States v. Louis. & Nash.</i>	
<i>R. R.</i>	314
<i>Berwind-White Co. v. Chicago & Erie R. R.</i>	371
Judicial Code, § 24. <i>Brown v. Fletcher.</i>	589
§ 37. <i>Gilbert v. David</i>	561
§ 237. See Appeal and Error.	
§ 238. <i>Gilbert v. David</i>	561
§ 294. <i>Brown v. Fletcher.</i>	589
Land Grant Act of 1866. <i>Mo., Kans. & Tex. Ry. v. United</i>	
<i>States</i>	37
Materialmen's Acts. <i>A. Bryant Co. v. N. Y. Steam Co.</i> . . .	327
Meat Inspection Act. <i>United States v. Lewis.</i>	282
Penal Code, § 195. <i>United States v. Erie R. R.</i>	513
Quarantine Acts of 1904 and 1913. <i>United States v. Nixon</i>	231
Tariff Act of 1907, § 28. <i>United States v. Salen.</i>	237
Territorial Practice Act of 1874. <i>Porto Rico v. Emmanuel.</i>	251
White Slave Traffic Act. <i>United States v. Portale</i>	27
<i>Acts Cited, Construed and Applied:</i> See Table of Statutes	
Cited at front of volume.	
<i>Consent of Congress not necessary:</i> Under Art. I, § 10, Cl. 3,	
of Federal Constitution to agreement between States made	
under provision of North Carolina deed of cession. <i>North</i>	
<i>Carolina v. Tennessee.</i>	1
<i>Construction of Acts of Congress:</i> A provision in act of Con-	
gress removing restrictions may indicate the understanding	
of Congress that such restrictions existed under earlier acts.	
<i>Taylor v. Parker.</i>	42
<i>Power of Congress:</i> <i>Quære</i> whether Congress has power to	
require witness in congressional inquiry to make material	
and non-criminatory disclosures and punish him for refusal	
so to do; that question should be decided by the trial court	
and not in <i>habeas corpus</i> proceedings on removal. <i>Henry</i>	
<i>v. Henkel</i>	219

CONGRESS.—*Continued.*

PAGE

— Over Indians. See **Indians.**

Validity of Acts: Every act of Congress is presumptively valid and should be so treated by a committing magistrate when it establishes an offense unless it is palpably void.

Id.

Power of States to act in absence of legislation by Congress: State may prescribe uniform regulations for motor vehicles operating on its highways including those moving in interstate commerce. *Hendrick v. Maryland* 610

Reasonableness of State's action so far as it affects interstate commerce is always subject to inquiry, and is subordinate in that respect to will of Congress. *Id.*

CONSENT:

Effect of on judgments. *United States v. Mayer* 55

Magruder v. Drury 106

See **Judgments and Decrees.**

Of sovereignty to suit. See **Eleventh Amendment; Porto Rico.**

CONSPIRACY, CRIME OF:

A State may enact that a conspiracy to accomplish what an individual is free to do shall be a crime. *Drew v. Thaw* 432

CONSPIRACY IN RESTRAINT OF TRADE:

Under Anti-trust Act. *Lawlor v. Loewe* 522

CONSTITUTIONAL LAW:

I. General Principles:

1. *Determination of constitutionality:* The validity of a system of state law will be judged by its operation and effect upon rights secured by the Federal Constitution and offenses punished by Federal statutes. *United States v. Reynolds* 133

— Extent to which this court follows construction by state court of state statute and to which it exercises its independent judgment. *United States v. Reynolds* 133

St. Louis S. W. Ry. v. Arkansas 350

In determining the nature of a state tax and the constitutionality of the statute imposing it, this court regards substance rather than form and the controlling test is found in the operation and effect of the statute as employed and enforced. *St. Louis S. W. Ry. v. Arkansas* 350

2. *Who can raise question of constitutionality:* In order to raise question party must be personally affected and the bill

CONSTITUTIONAL LAW—Continued.

PAGE

must definitely allege how. This court does not pass on moot questions of law. *McCabe v. Atchison, Topeka &c. Ry.* . . . 151
Louisville & Nashville R. R. v. Finn. . . . 601
Jeffrey Mfg. Co. v. Blagg. . . . 571
Hendrick v. Maryland. . . . 610

3. *How question raised:* This court cannot take a case in fragments; and if reviewable here on direct error by reason of a constitutional question, the whole case must come here. *Shapiro v. United States* . . . 412

4. *Constitutionality favored.* If statute will bear two constructions, one within and the other beyond constitutional limitations, courts adopt the former. *Id.*

Statute may be sustained as to one part and not as to other parts, as constitutional if the provisions are independent and separable. *South Covington Ry. v. Covington.* . . . 537

— Statute will not be struck down as entirely unconstitutional if part that is unconstitutional is separable, nor will this court hold a part of the statute inseparable in advance of such a holding by the state court, if possible. *St. Louis S. W. Ry. v. Arkansas* . . . 350

— Where an ordinance has been held valid by state court as within the power of the municipality, this court can only hold it unconstitutional under the due process clause of the Fourteenth Amendment if it is a clear and unmistakable case of abuse of power. *Missouri Pacific Ry. v. Omaha.* . . . 121

Nor will such an ordinance be held invalid under Fourteenth Amendment because penalties for non-compliance are excessive and time allowance too short; if compliance physically impossible, court of equity will relieve. *Id.*

II. Congress, Powers and Duties of.

Whether Congress has power to compel witness in congressional inquiry to make material and non-criminatory disclosures and punish him for refusal so to do, *Quære*; that question should be decided by the trial court and not on *habeas corpus* proceedings. *Henry v. Henkel.* . . . 219

Consent of Congress not necessary under Art. I, § 10, Cl. 3, to agreement between States as to boundary entered into under provision of deed of cession of North Carolina of 1789. *North Carolina v. Tennessee* . . . 1

See **Congress.**

III. States.

1. *Status on admission to Union:* Oklahoma was admitted to

CONSTITUTIONAL LAW—Continued.

PAGE

Union on equal footing with other States and has same power to enact public legislation not in conflict with the Federal Constitution. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151

2. *Powers of*: See Commerce Clause; Fourteenth Amendment, *infra*; States.

3. *Suits against*: See Eleventh Amendment, *infra*.

IV. Contract Clause.

The impairment must be by subsequent legislation and not mere change in judicial decision to bring the question before this court. *Cleveland & Pittsburgh R. R. v. Cleveland* 50

An ordinance containing a suspensive condition and not granting any rights except in connection with a prepared plan which proved abortive confers no rights; and subsequent legislation cannot impair it. *Louisiana Ry. & Nav. Co. v. New Orleans.* 164

This court determines for itself whether a contract existed and whether later legislation impaired its obligation. *N. Y. Electric Lines v. Empire City Subway.* 179

V. Commerce Clause.

1. *What constitutes interstate commerce*: Whether given commerce is or is not interstate determined by actual facts and not mere arrangements of billing and plurality of carriers. *South Covington Ry. v. Covington* 537

— Uninterrupted transportation of passengers between States on same cars practically under same management and for single fare constitutes interstate commerce although tracks in each State owned by separate corporation. *Id.*

2. *State interference*: Oklahoma Separate Coach Law construed, in absence of different construction by state court, as relating exclusively to intrastate commerce and therefore not unconstitutional under commerce clause. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151

— State may not adopt such police measures as will exclude foreign corporations and other persons engaged in interstate commerce, or impose such conditions as will better their right to carry it on or subject them to unreasonable requirements in regard thereto. *Sioux Remedy Co. v. Cope* 197

— The right to demand and enforce payment of goods sold in interstate commerce is directly connected with, and essential, thereto. A State cannot impose unreasonable conditions as to recourse to courts of the State to enforce such

CONSTITUTIONAL LAW—Continued.

PAGE

payments. Some of the conditions imposed by South Dakota are unreasonable. *Id.*

— State may tax foreign or domestic corporation doing interstate or foreign business in form of privilege tax for exercising franchise if measured only by property within State, enforced only by ordinary means of collection, and payment be not made condition precedent for carrying on business including interstate. *St. Louis S. W. Ry. v. Arkansas* 350

— Provision for forfeiture of right to do any business, including interstate, for non-payment of privilege tax although measured by property within State, might render the statute imposing the tax unconstitutional under the commerce clause unless it were severable. *Id.*

— This court will not, in advance of decision of state court to that effect, construe such a provision as including interstate business or as not being severable. *Id.*

— Although State may not directly burden interstate commerce, it may, in exercise of police power and in absence of action by Congress, impose reasonable regulations for public health and safety. *Id.*

— A state or municipal ordinance regulating railway transportation may be constitutional under the commerce clause as to some provisions and not as to others. *Id.*

— Regulations requiring safety rails and prohibiting riding on platform only incidentally affect interstate commerce and are not unconstitutional. *Id.*

— Regulations limiting number of passengers, specifying number of cars to be run and temperature to be maintained do affect and burden interstate commerce and the last is unreasonable. *Id.*

— In absence of regulation by Congress, State may require registration of motor vehicles and impose reasonable license tax thereon without violation of commerce clause. *Hendrick v. Maryland* 610

— Reasonableness of State's action so far as it affects interstate commerce is always subject to inquiry and is subordinate in that respect to will of Congress. *Id.*

VI. Full Faith and Credit Clause.

Where validity of act of another State is not in question and controversy turns merely upon its interpretation and construction, no question arises under full faith and credit clause. *Western Indemnity Co. v. Rupp* 261

— State court recognizing validity of statute of another

CONSTITUTIONAL LAW—Continued.

PAGE

State, but, in absence of any decision of courts of that State holding otherwise, construing the statute as not having extraterritorial effect, does not deny it full faith and credit. *Id.*

— Party setting up statute of another State and intending to rely upon an authoritative judicial construction thereof in the State of origin, must prove it as matter of fact. *Id.*

— Rule that what is matter of fact in the state court is matter of fact here applies in such a case. *Id.*

— If state court has not denied full faith and credit to the statute of another State, this court has not jurisdiction to determine whether the interpretation given to such statute is or is not erroneous. *Id.*

VII. Eleventh Amendment.

A suit against the state Banking Board of Oklahoma to compel payments from and assessments for the Depositors' Guaranty Fund is a suit against the State within meaning of the Eleventh Amendment. *Lankford v. Platte Iron Works* . . 461
Am. Water Co. v. Lankford . . . 496
Farish v. State Banking Board . . 498

— If state statute does not authorize waiver of exemption from suit, appearance for members of a state board does not amount to such a waiver. *Farish v. State Banking Board* . . 498

— In such case, *quære* as to how far board is bound by its appearance as to matters adjudicated between private parties to the action. *Id.*

VIII. Thirteenth Amendment.

Peonage defined, and statutes of Alabama providing for compulsory service of one confessing crime to liquidate claim of surety paying fine imposed, held to be within prohibition of Thirteenth Amendment. *United States v. Reynolds* 133

IX. Fourteenth Amendment.

1. *Generally*: The constitution of the State is not taken up into the Fourteenth Amendment. *Pullman Co. v. Knott* . . . 23

— While State may restrict right of foreign corporation to sue in courts and engage in business within its limits, its power in this respect must, like all other state powers, be exercised within limits of the Federal Constitution and it may not impose unreasonable burdens. *Sioux Remedy Co. v. Cope* 197

2. *Due process of law*: Requirement in Florida statute that proper state officer fix amount of gross receipts on which tax

CONSTITUTIONAL LAW—*Continued.*

PAGE

- based in case party fails to make required report not deprivation of property without due process of law. *Pullman Co. v. Knott*. 23
- Where assessment for past improvement could be levied against original owners, purchasers take subject to same liability and assessment not deprivation of property without due process of law. *Willoughby v. Chicago*. 45
- Overruling its earlier decisions by state court does not amount to deprivation of property without due process of law where no vested rights are interfered with. *Id.*
- Railway company may be required by State, or municipality authorized by State, to construct overhead crossing at its own expense; consequent expense being compensated by public benefit is *damnum absque injuria* and not taking property without due process of law. *Mo. Pac. Ry. v. Omaha*. 121
- Such an ordinance does not deprive company of its property without due process of law, because it requires work done in somewhat more expensive, or in a different, manner from that by which the object sought could be accomplished. *Id.*
- Due process provision has regard not to matters of form but substance of right, and State may prescribe rules as to effect of special appearances in its courts even to the extent of making special appearances for the purpose of objecting to the jurisdiction amount under specified conditions to general appearance. *Western Indemnity Co. v. Rupp*. . . . 261
- Annual Franchise Tax of Arkansas, being measured exclusively on property within the State used in intrastate commerce, not deprivation of property without due process of law as being in effect a tax on property beyond the State. *St. Louis S. W. Ry. v. Arkansas*. 350
- State statute making happening of certain classes of accidents presumption of negligence, cuts off no substantial defense but is simply a rule of evidence and does not deny due process of law even if applied in trial of action for injuries sustained prior to enactment. *Easterling Lumber Co. v. Pierce*. 380
- Regulation in municipal ordinance requiring temperature in motor cars never to be below 50° Fahrenheit, held to be unreasonable and void. *South Covington Ry. v. Covington*. 537
- *Quære* whether order establishing rates made by state

CONSTITUTIONAL LAW—*Continued.*

PAGE

railroad commission without substantial evidence to support it is unconstitutional as depriving the company of its property without due process of law for want of opportunity to be heard. *Louis. & Nash. R. R. v. Finn* 601

— Order of reparation for extortionate rates is not a deprivation of property without due process of law for lack of opportunity to be heard or as made without evidence if the carrier is not refused right to introduce evidence and does not deny the statements of the shippers as to amounts but simply denies all liability on the ground that the established rates were reasonable. *Id.*

— This court will not hold McChord Act establishing the Kentucky State Railroad Commission unconstitutional as denying due process of law because it does not provide compulsory process for production of evidence, it not appearing in this action that the complaining carrier was deprived of any evidence by reason of such omission. *Id.*

— Although particular section of a state statute giving commission power to make orders does not provide for hearing, if the state court has construed that section as part of the law establishing the commission and which does provide for hearings, the statute is not unconstitutional as denying due process of law. *Wadley Southern Ry. v. Georgia* 651

— State may impose such penalties for violations of orders properly made by a duly appointed Commission as will enforce obedience thereto after they have been found lawful or the parties affected have had an opportunity to test their validity by judicial review, and unless unreasonably excessive they do not make the statute unconstitutional under the due process clause of the Fourteenth Amendment. *Id.*

— A statute, imposing such heavy penalties for non-compliance, that carrier cannot safely test it by judicial review, is unconstitutional; but if carrier does not seek judicial review and simply refuses compliance and defends a suit for penalty on the ground that it is void, it cannot in that suit set up the claim that the excessive penalties provision renders the statute and all orders made thereunder unconstitutional on that account. *Id.*

— Order of the State Railroad Commission of Georgia requiring a railroad to cease from demanding freight in advance from one connecting carrier when under similar conditions it does not require freight in advance from another carrier

CONSTITUTIONAL LAW—*Continued.*

PAGE

does not violate the due process clause of the Fourteenth Amendment. *Id.*

3. *Equal protection of the laws: Quære* whether classification of sleeping and parlor car companies, excluding carriers operating their own sleeping and parlor cars is so arbitrary as to be an unconstitutional denial of equal protection of the laws. *Pullman Co. v. Knott* 23

—— State tax good on existing facts will not be held unconstitutional upon hypothetical or unreal possibilities as denying equal protection of the laws. *Id.*

—— Essence of constitutional right to equal protection of the law is that it is a personal one and does not depend upon number of persons affected. Any individual deprived under state authority by a common carrier of facilities equal to those furnished to another under the same circumstances is denied equal protection of the laws. *McCabe v. Atchison Topeka & Santa Fe Ry.* 151

—— State statute fair on its face may be so administered by public authorities as to amount to denial of equal protection of the law to a particular class. *Id.*

—— No such discrimination appears to have been exercised in enforcing the Oklahoma Separate Coach Act. *Id.*

—— Oklahoma Separate Coach law held unconstitutional in some respects. *Id.*

—— State may require of carriers separate accommodations for white and African races to and from points wholly within the State, but all classes of accommodations must be equal for both races. *Id.*

—— Equal accommodations must be provided for both African and white races as to dining, sleeping and chair cars even though demand be small from African race. *Id.*

—— Equal protection clause does not impose an ironclad rule upon the States with respect to internal taxation or prevent double taxation not based on arbitrary distinctions. *St. Louis S. W. Ry. v. Arkansas.* 350

—— Classification of employers based on use of engines, locomotives, etc., in state statute abolishing fellow servant defense not denial of equal protection of law in Ch. 194, Mississippi Laws 1908. *Easterling Lumber Co. v. Pierce* 380

—— Classification based on number of employes employed in manufacturing establishment reasonable in statute abolishing defense of negligence of fellow servant. *Jeffrey Mfg. Co. v. Blagg* 571

CONSTITUTIONAL LAW—Continued.

PAGE

— Classification based on number of employés proper in a compensation act open to all employers of the number specified and abolishing defense of contributory negligence as to those not entering it and is not denial of equal protection of the law. *Id.*

— Ohio Compensation Act not unconstitutional in respects involved in this action as denying equal protection of law. *Id.*

— Graduated license fee in Maryland Motor Law on motor vehicles based on horse power not a denial of equal protection of the law. *Hendrick v. Maryland* 610

— Such a classification in Maryland Motor Law is not unreasonable. *Id.*

X. Privileges and Immunities of Citizens.

A state motor vehicle law imposing reasonable fees on motors including those of non-residents does not interfere with rights of citizens of the United States to pass through the State.

Hendrick v. Maryland 610

CONSTRUCTION:

General principles of: Grants from the government are strictly construed against the grantee. *Missouri, Kansas & Texas Ry. v. United States* 37

— Although statute may be ambiguous and repel accommodation the court must try to give coherence to its conflicting provisions and give effect to the intent of the legislature; so as to Federal Materialmen's Act. *A. Bryant Co. v. N. Y. Steam Fitting Co.* 327

— If statute will bear two constructions, one within, and the other beyond, constitutional limitations, courts should adopt the former as legislatures are presumed to act within their authority. *St. Louis S. W. Ry. v. Arkansas* 350

— To construe later statute as repealing earlier one by implication is not favored. *Washington v. Miller* 422

— Statute should not be so construed as to defeat the purpose for which it is passed. *United States v. Lewis* 282

— While public grants should be given fair and reasonable construction, courts should not extend them by implication beyond their clear intent. *Louisiana Ry. & Nav. Co. v. New Orleans* 164

See **Treaties.**

Of Penal Statutes. See **Criminal Law.**

Of Federal Statutes: Acts of Congress based on interna-

CONSTRUCTION—*Continued.*

PAGE

- tional agreement and which requires performance of acts to assist the contracting Governments should be liberally construed. *United States v. Portale*. 27
- Act of Congress granting lands not construed as including Indian lands if that construction would impute bad faith on part of United States Government in dealing with lands affected by a treaty. *Missouri, Kansas & Texas Ry. v. United States*. 37
- Subsequent acts of Congress removing restrictions may indicate understanding by Congress that such restrictions existed under earlier statutes. *Taylor v. Parker*. 42
- Provisions of Tariff Act relating to entries of merchandise should be construed in light of its purpose and of custom regulations applicable to the entry. *United States v. Salen*. 237
- Sub-sec. 10 of § 28 of Tariff Act of 1909 construed under rule that one of a number of acts required will not be held to relate to undefined extraneous matters when all of the others relate to defined subjects of the importation. *Id.*
- *Quære*, whether § 184, Penal Code, prohibiting carriage of letters otherwise than in the mail by carriers on post routes except under certain specified conditions is penal or remedial or should be construed liberally or strictly. *United States v. Erie R. R.*. 513
- Exception in § 184, Penal Code, construed as not including letters of officers of railroad company to officers of the telegraph company with which it has a contract and in whose profits it participates relating to immediate and day by day action is current, as distinguished from exceptional, business. *Id.*
- Congress in putting laws of Arkansas in effect in Indian Territory intended they should have same effect and be construed the same as they had thereupon been construed by the highest court of Arkansas. *Adkins v. Arnold*. 417
- Of State Constitutions and Statutes:** This court, in absence of other construction by the state court, construes the Oklahoma Separate Coach Act as relating exclusively to intrastate commerce and therefore not unconstitutional under the Commerce Clause of the Federal Constitution. *McCabe v. Atchison, Topeka & Santa Fe Ry.*. 151
- Highest court of State in construing state statute may depart from its former decisions if it deems them untenable.

CONSTRUCTION—*Continued.*

PAGE

— In that event, this court accepts latest construction and confines its attention to determining whether the statute as so construed is or is not unconstitutional. *Sioux Remedy Co. v. Cope*. 197

— In determining nature of state tax and constitutionality of statute imposing it, this court regards substance rather than form, and the controlling test is in the operation and effect of the statute as applied and enforced. *St. Louis S. W. Ry. v. Arkansas* 350

— This court is not bound by characterization given by the state court to a scheme of state taxation if it is not what the tax actually is in operation. *Id.*

— This court, in advance of construction to that effect by the state court, will not treat a provision in a state statute as inseparable if it might render the entire statute unconstitutional. *Id.*

— Where the state court in construing a state statute held that the establishment of rules for public utility corporations is a legislative function, this court, in the absence of a clear decision to the contrary, assumes that the same principle applies to rates and so construes the statute. *Detroit & Mackinac R. R. v. Mich. R. R. Comm.* 402

— Where ordinance enacted by municipality under state authority contains several provisions, some of which are, and some of which are not, unconstitutional as burdens on interstate commerce, the court can construe the provisions as separable and only strike down those that violate the constitutional prohibitions on state action. *South Covington Ry. v. Covington* 537

— State police statute imposing license fees must be construed as correct unless the contrary clearly appears. *Hendrick v. Maryland*. 610

— This court is bound by construction given to a state statute by the highest court of that State. *Wadley Southern Ry. v. Georgia* 651

Of agreements between States: States entering into agreement to appoint commissioners to fix disputed section of boundary presumed to know that commissioners will exercise judgment and when exercised the judgment will be binding. *North Carolina v. Tennessee*. 1

See **Congress, Acts of, Construed; Constitutional Law; Criminal Law; Criminal Appeals Act; Judicial Code; Jurisdiction; Public Policy.**

CONTRACTS:

PAGE

- Nature of:* Probative force necessary in order that evidence may show that the transaction was not conditional sale but mortgage. *Monagas v. Albertucci*. 81
- Legality of:* A contract tending to bring improper influence on or induce attempts to mislead an officer of United States is void as contrary to public policy. *Sage v. Hampe*. 99
- Liability on:* While one may contract that a future event over which he has no, or only limited, power, may come to pass, he is not liable for, nor can he be required to perform a contract which on its face required an illegal act on the part either of himself or another. *Id.*
- A contract that invokes prohibited conduct makes the contractor a contributor to such conduct. *Id.*
- Illegal under Federal statute:* Even if contract affecting Indian lands might be unenforceable at common law, if this court condemns it under a Federal statute by a construction of such statute, this court has jurisdiction under § 237, Jud. Code. *Id.*
- Impairment of Contract under Constitution:* Mere change of judicial decision does not amount to impairment. It must be by subsequent legislation. *Cleveland & Pittsburgh R. R. v. Cleveland*. 50
- Franchise lost by non-user not impaired by subsequent ordinance of revocation. *N. Y. Electric Lines v. Empire City Subway*. 179
- Franchise depending on general scheme of improvements which proved abortive held not to have been a contract within the protection of the contract clause of the Constitution. *Louisiana Ry. & Nav. Co. v. New Orleans*. . . . 164
- See **Constitutional Law; Franchises; Jurisdiction of this Court.**

Contracts with Government:

- Time of essence:* Although parties may agree that time is of the essence and stipulate for liquidated damages for delay, they may subsequently so modify those requirements that performance within time stipulated becomes unimportant. *Maryland Steel Co. v. United States*. 451
- Liability for delay:* Where there was no culpable delinquency on contractor's part in building a vessel for the United States or any detriment to the Government, but vessel was delivered, approved and paid for without protest on account of delay and Quartermaster General had orally waived time

CONTRACTS—Continued.

PAGE

limit, Government cannot recover damages for delay on stipulation in original contract. *Id.*

Modification by officer of United States: Where contract necessarily entered into and conducted by officers of United States, they have power to make it effective in its progress as well as in its beginning and Quartermaster General had discretion and power in this case to waive time limit in contract. *Id.*

See **Materialmen's Act.**

CONTRIBUTORY NEGLIGENCE:

See **Ohio Workmen's Compensation Act.**

COPYRIGHT:

Under §§ 4592, 4970, Rev. Stat., as they were prior to act of March 4, 1909, every reproduction of copyrighted work must bear statutory notice, even if several reproductions on sheet. *Dejonge v. Breuker*. 33

— Although a painting may be patentable as a design, if owner elects to copyright he must repeat the copyright notice on every reproduction. *Id.*

CORPORATIONS:

General: There is no distinction between corporations and natural persons in respect to necessity for taking precautions to prevent confusion in regard to use of name in similar goods manufactured by persons or corporations of the same name. *L. E. Waterman Co. v. Modern Pen Co.* 88

Power of State over Foreign Corporation: A corporation authorized by the State of its creation to engage in interstate commerce may not be prevented from coming into limits of another State for all legitimate purposes of interstate commerce including the enforcement in the courts of payment for goods sold in interstate commerce. *Sioux Remedy Co. v. Cope* 197

— A State may impose reasonable restrictions on foreign corporations to sue in its courts in regard to security for costs and procedure, but may not impose restrictions which will prevent the enforcement of payment for goods sold in interstate commerce, such as filing its certificate, paying recording fees and appointing resident agent as required by §§ 883-5, Rev. Codes, South Dakota, which amount to burdens on interstate commerce. *Id.*

— Arkansas Annual Franchise Tax not unconstitutional as to intrastate business. *St. Louis S. W. Ry. v. Arkansas* . . 350

CORPORATIONS—Continued.

PAGE

- Taxation of by State of origin:* New York state tax on transportation companies of the State for privilege of exercising corporate functions based on gross earnings of intrastate earnings exclusively held not violation of commerce clause. *Cornell Steamboat Co. v. Sohmer* 549
- Receiver of:* Receiver of corporation is not a corporation within the penal terms of the Quarantine Act of March 3, 1905, but is a carrier within the terms of the act after amendment in 1913. *United States v. Nixon* 231
- Right of stockholder to sue:* The right to restrain enforcement of a statute as unconstitutional is the right existing in the corporation itself, and stockholder cannot maintain it without clearly showing that he has exhausted all means within his power to obtain action by the corporation itself, and see Equity Rules. *Wathen v. Jackson Oil Co.* 635
- See **Removal of Causes.**

COSTS:

- Costs equally divided on affirmance of cross-appeals. *L. E. Waterman Co. v. Modern Pen Co.* 88
- State may subject foreign corporation resorting to its courts to compliance with reasonable conditions relating to question of costs and procedure. *Sioux Remedy Co. v. Cope* 197
- Where practice had not been established as to evidence in suit infringing a patented part of a machine where profits should be apportioned, case reversed and remanded for further action in accord with newly established practice without costs to either party. *Dowagiac Mfg. Co. v. Minnesota Plow Co.* 641

COURTS:

- Exercise of legislative functions:* Courts cannot exercise legislative functions in Michigan. *Detroit & Mackinac R. R. v. Michigan R. R. Comm.* 402
- Right to resort to:* State cannot impose such restrictions on foreign corporations engaged in interstate commerce as will prevent them from enforcing payment for goods sold in interstate commerce; but may impose reasonable conditions as to costs and procedure. *Sioux Remedy Co. v. Cope* 197
- Non-resident aliens may maintain suit under Employers' Liability Act for death of relative: *Quære* whether this is also a treaty right as to citizens of Italy and Great Britain. *McGovern v. Phila. & Reading R. R.* 389
- Decisions of state tribunals in regard thereto important

COURTS—Continued.

PAGE

- element to be considered by this court in determining the intent of the State in a fund administered by a state board.
- Lankford v. Platte Iron Works* 461
- Validity of judgment rendered by courts of former sovereignty and effect of. *John Li Estate v. Brown*. 342
- Stability of judicial decree. See **Bill of Review**.
- Discretion. Granting Bill of Review is in discretion of the court. *Hopkins v. Hebard* 287
- Effect of judicial decree. See **Res Judicata; Stare Decisis**.
- Relations of court to jury. See **Jury**.
- Appellate courts. See **Appeal and Error**.
- What subject to judicial review and effect of want of opportunity. See **Judicial Review**.
- Generally. See **Jurisdiction**.

COVINGTON, KENTUCKY:

- Ordinance regulating traffic between Covington and Cincinnati, Ohio, held constitutional in part and unconstitutional in part as attempt to regulate interstate commerce.
- South Covington Ry. v. Covington* 537

CREEK INDIANS. See Indians.

CRIMINAL APPEALS ACT:

- Appeals taken under this act by United States:* Indictment based on White Slave Traffic Act. *United States v. Portale* 72
- On Peonage Acts. *United States v. Reynolds* 133
- On Quarantine Act. *United States v. Nixon*. 231
- On Tariff Act of 1909. *United States v. Salen*. 237
- On Alaska Territorial Code. *United States v. Wigger* . . 276
- On Meat Inspection Law. *United States v. Lewis* 282
- On § 184, Penal Code. *United States v. Erie R. R.* . . . 513
- Construction of:* When writ taken on single ruling, reversal is based on that alone without prejudice. *United States v. Portale* 27
- Statute on which indictment is based may be misconstrued not only by misinterpretation, but also by failing to apply its provision to an indictment which sets out facts constituting a violation of its terms. *United States v. Nixon* . . 231
- Error on part of the trial judge in dismissing indictment by construing the statute which as amended covered the offense while in its original form it did not cover it cannot be cured, nor can his decision be sustained, because the amendment was not called to his attention. *Id.*

CRIMINAL APPEALS ACT—Continued.

PAGE

— Right of the Government to an appeal cannot be defeated by trial court entering a general order of dismissal without referring to the statute involved or giving its reasons on which the decision is based. *Id.*

CRIMINAL CODE:

Section 184, construed in *United States v. Erie R. R.* 513
 Section 269 relating to peonage construed in *United States v. Reynolds* 133

CRIMINAL LAW:

Unless record justifies assumption that conclusion of guilt could only have been reached by disregarding proof, this court has no jurisdiction to review the judgment of the state court on writ of error; it is frivolous. *Overton v. Oklahoma* 31

Every act of Congress is presumptively valid and committing magistrate cannot treat as invalid a statutory declaration of what constitutes an offense unless the act is palpably void. *Henry v. Henkel* 219

Meaning of words is affected by their context and in a highly penal statute words will be interpreted in a narrower sense as referring to things of same nature as those described in an enumerated list, although standing alone they might have a wider range; so as to subd. 10 of § 28 of Tariff Act of 1909. *United States v. Salen* 237

Nor will such a penal statute be interpreted so as to spread a net for the unwary as well as the guilty by making it relate to unenumerated matters as well as those enumerated, thus fixing no standard by which to draw the line between innocent silence and felonious concealment. *Id.*

— A State may enact that conspiracy to accomplish what an individual is free to do shall be a crime. *Drew v. Thaw* . . . 432

Quære, whether § 184, Penal Code, prohibiting carrying letters otherwise than in the mail by carriers on post routes except under specified conditions is penal or remedial or whether it be liberally or strictly construed. *United States v. Erie Railroad* 513

The indictment: The statute on which the indictment is based must, as matter of law, be determined from facts charged, and the offense may be within one existing statute, even though not mentioned and another statute be referred to in the caption and on back of indictment. *United States v. Nixon* 231

CRIMINAL LAW—*Continued.*

PAGE

— While entries in caption and on back of indictment are convenient means of reference and of assistance in cases of doubt in determining what statute has been violated, they form no part of indictment itself. *Id.*

— Indictment must set out the facts and not the law. *Id.*

— As to form of indictment in Alaska, see *United States v. Wigger*. 276

Who is criminal: A receiver of a railroad corporation is not a corporation within the terms of a penal statute relating only to corporations, but is subject to its terms if such a statute includes common carriers. *United States v. Nixon* 231

When citizens may not be held for custody. *Henry v. Henkel* 219

Vacation of judgment. *United States v. Mayer*. 55

See **Appeal and Error; Conspiracy; Criminal Appeals Act; Indictment; Interstate Rendition; Judgments and Decrees; Mandate; Peonage; Tariff Act of 1909; White Slave Traffic Act.**

CUSTOM. See **Jury, Instructions to.**

CUSTOMS. See **Tariff.**

DAMAGES:

Damages accruing after commencement of suit in consequence of acts done before and constituting part of the cause of action allowed in action under § 7 of the Anti-trust Act.

Lawlor v. Loewe. 522

Normal measure of damages for infringing a patent is the value of what was taken and this may be shown by evidence of established royalties, or, if none, by what would be reasonable royalty. *Dowagiac Mfg. Co. v. Minnesota Plow Co.* 641

For suits for damages for injuries and for death of relatives, see **Employers' Liability Act.**

Liquidated damages for delay. See **Contract; Evidence; Pleadings.**

DAMNUM ABSQUE INJURIA:

Rule applied to compelling railroad company to construct viaduct over thoroughfare at its own expense. *Missouri Pacific Ry. v. Omaha*. 121

DANBURY HATTERS CASE:

See **Anti-trust Act.** *Lawlor v. Loewe*. 522

DE BACA:

Suits involving De Baca claims for lands within Territory acquired under Gadsden Treaty. *Lane v. Watts*. 17

- DECREE.** See **Judgments and Decrees.** PAGE
- DEFENSES.** See **Employers' Liability Act; Mississippi; Ohio Workmen's Compensation Act.**
- DEFINITIONS.** See **Words and Phrases.**
- DELEGATION OF POWER:**
 By Congress to territorial legislature of Alaska, extent of, construed. *United States v. Wigger* 276
- DEMURRAGE ON RAILROAD CARS.** See **Interstate Commerce Commission; Railroads.**
- DEPOSITORS' GUARANTY FUND.** See **Eleventh Amendment.**
- DESCENT AND DISTRIBUTION:**
 Provisions as to descent and distribution of lands of Creek Indians in Original and Supplemental Creek Agreements and statutes relating thereto construed. *Taylor v. Parker*. 42
Adkins v. Arnold 417
Washington v. Miller 422
Sizemore v. Brady 441
 There is no incompatibility between a general statute purporting to regulate descent and distribution of all lands within a Territory and a special statute directly regulating descent and distribution of a particular class of Indian lands therein. *Washington v. Miller*. 422
- DESIGNS.** See **Copyright.**
- DISCRETION OF COURT.** See **Bill of Review.**
- DISCRIMINATIONS AND PREFERENCES.**
 Against race. See **Oklahoma.**
 Denial of equal protection of the law. See **Common Carrier; Constitutional Law; Fourteenth Amendment; Georgia; Interstate Commerce Commission.**
- DISTRICT COURT.** See **Jurisdiction; Mandate.**
- DISTRICT OF COLUMBIA:**
 Commissions allowed to trustees of estates in. *Magruder v. Drury* 106
 Resident of, cannot claim discrimination against, in the motor vehicle law of another State, if he has not complied with the provisions of the law of the District in regard to

DISTRICT OF COLUMBIA—*Continued.*

PAGE

- motors if the citizens of all other States are required to conform to the provisions of the law of their respective States. *Hendrick v. Maryland*. 610
- Quære*, whether Maryland Motor Vehicle law does discriminate against the District of Columbia and is unconstitutional as denying equal protection of the law. *Id.*
- Appeals from Supreme Court of the District of Columbia. See **Appeal and Error**.

DOMESTIC RELATIONS:

- Widow and children of bankrupt resident of Georgia and dying pending proceeding entitled to allowance for year's support from the fund. *Hull v. Dicks*. 584
- See **Employers' Liability Act**.

DOMICIL:

- Change of domicile arises where there is a change of abode and absence of any present intention not to reside permanently or indefinitely in the new abode, even though there be a floating intention of returning to the former domicile. *Gilbert v. David*. 561

DOUBLE TAXATION:

- Power of State to impose. *St. Louis S. W. Ry. v. Arkansas* 350

DUE PROCESS OF LAW. See **Constitutional Law; Fourteenth Amendment; Interstate Commerce Commission**.

ELEVENTH AMENDMENT:

- A suit against the State Banking Board of Oklahoma to compel payments from and assessments for the Depositors' Guaranty Fund is a suit against the State. *Lankford v. Platte Iron Works*. 461
- American Water Co. v. Lankford*. 496
- Farish v. State Banking Board*. 498
- Where the state statute does not authorize waiver of exemption from suit, appearance for members of a state board does not amount to such a waiver. *Farish v. State Banking Board* 498
- Quære*, extent to which such appearance binds the board as to matters adjudicated in the suit between the individual parties. *Id.*

EMPLOYER AND EMPLOYÉ. See **Constitutional Law; Employers' Liability Act; Mississippi; Ohio Workmen's Compensation Law; Peonage**.

EMPLOYERS' LIABILITY ACTS:

PAGE

*Suits under the act in this volume:**Garrett v. Louis. & Nash. R. R.*..... 308*Yazoo & Miss. R. R. v. Wright.*..... 376*McGovern v. Phila. & Reading R. R.*..... 389*Norfolk & Western Ry. v. Holbrook.*..... 625*Arizona & New Mex. Ry. v. Clark.*..... 669

Construction of: The acts declare two distinct and independent liabilities resting on common foundation of wrongful injury (1) liability to injured employé for which he alone could recover; (2) liability in case of death of employé to his personal representative for benefit of surviving widow or husband and children, and if none, then of the parents, but only for pecuniary loss and damage resulting by reason of the death. *Garrett v. Louis. & Nash. R. R.*..... 308

— Scope of review where meaning of act not called in question and Circuit Court affirmed by Circuit Court of Appeals. *Yazoo & Miss. Valley R. R. v. Wright.*..... 376

— Alienage is not a condition affecting right of recovery under the act. *McGovern v. Phila. & Reading R. R.*..... 389

— Where there is conflict of evidence as to circumstances under which employé was killed question of assumption of risk was properly presented to the jury. *Id.*

— While trial court may instruct jury to take into consideration care and guidance father may give child and include pecuniary value thereof in verdict, it is not proper to give jury occasion for indefinite speculation by comparing right of actual beneficiaries with those of supposed plaintiffs who are merely next of kin. *Norfolk & Western Ry. v. Holbrook* 625

— Where death is instantaneous, beneficiaries can recover their pecuniary loss and nothing more. *Id.*

— Evidence of physician excluded under applicable statute of Arizona. *Arizona & New Mex. Ry. v. Clark.*..... 669

— Effect of voluntary appearance of parties in suit under Employers' Liability Act removed after statehood from an inferior Arizona territorial court to the Federal court. *Id.*

— Jurisdiction of Federal and state courts of cases under. *Id.*

EQUAL PROTECTION OF THE LAW. See **Constitutional Law; Fourteenth Amendment.**

EQUITY:

Court of equity may relieve party required to erect viaduct of unwarranted penalties for non-completion within pre-

EQUITY—Continued.

scribed time if too short a time is allowed. *Missouri Pacific Ry. v. Omaha* 121

See **Hawaii; Injunction; Pleadings.**

EQUITY RULES:

Under Equity Rule No. 27 (formerly No. 94) in order to confer jurisdiction on Federal courts of a suit by stockholder to enforce a remedy belonging to the corporation, the bill must allege not only that suit is not collusive for purpose of conferring jurisdiction, but that unsuccessful efforts have been made to induce corporation to bring the suit; a bare assertion that officers do not wish to obey a statute alleged to be unconstitutional, but fear excessive penalties is not sufficient. *Wathen v. Jackson Oil Co.* 635

ERROR AND APPEAL. See **Appeal and Error.**

EVIDENCE:

Marks on trees given weight as evidence in establishing boundary. *North Carolina v. Tennessee* 1

Must have probative force to be admitted to show that a transaction was not a conditional sale but mortgage. *Mona-gas v. Albertucci* 81

Common experience may be taken as a guide in teaching that financial damage is not always necessary consequence to the parent as result of death of adult son, and if such damage is not pleaded proof cannot be offered in regard thereto. *Garrett v. Louis. & Nash. R. R.* 308

When proofs go to matters not set up in bill the court cannot act upon them as grounds for decision. They are not put in contestation by the pleadings. *Id.*

In rebuttal, testimony properly admitted to disprove evidence of defendant as to equipment of locomotives with spark consumers. *Texas & Pacific Ry. v. Rosborough* 429

Newspapers and letters admitted under certain conditions in action for damages under § 7 of the Anti-trust Act to bring home to defendants notice and to show direct results of their acts. *Lawlor v. Loewe* 522

The cautious use of the word "proof" by trial judge in his charge in the popular way for evidence, not prejudicial in this case. *Id.*

One who cannot show that he is suffering from lack of compulsory process or that he will be prevented from providing evidence in a subsequent trial of the case cannot question the constitutionality of a statute because it does not provide

EVIDENCE—Continued.

PAGE

- for such compulsory process or because it restricts admission of evidence. *Louis. & Nash. R. R. v. Finn* 601
- What evidence proper to establish value of what was taken by infringement of patent. *Dowagiac Mfg. Co. v. Minnesota Plow Co.* 641
- Admissibility of evidence of attending physician excluded in action for personal injuries under applicable statute of Arizona. *Arizona & New Mexico Ry. v. Clark* 669
- Newly discovered.* See **Bill of Review; Burden of Proof; Pleadings.**

EXECUTION:

- When execution delivered to sheriff amounts to levy. *Fallows v. Continental Savings Bank* 300
- Duty of sheriff to levy. *Id.*

EXCEPTIONS. See **Jurisdiction.****EXTRADITION.** See **Interstate Rendition.****EXTRA-TERRITORIALITY OF STATUTE.** See **Statutes.****FACTS.** See **Jury.****FAIR TRADE.** See **Competition.****FATHER AND CHILD.** See **Employers' Liability Act; Bankruptcy.****FAVORED NATION CLAUSE.** See **Treaty.****FEDERAL INSTRUMENTALITIES.** See **Taxes and Taxation; United States.****FEDERAL QUESTION.** See **Jurisdiction of this Court.****FELLOW-SERVANT DEFENSE:**

- Abolished in Mississippi as to certain classes of employers. *Easterling Lumber Co. v. Pierce* 380
- See **Constitutional Law; Ohio Workmen's Compensation Law.**

FIFTH AMENDMENT:

- Action by Congress modifying or changing Original Creek Agreement not deprivation of property without due process of law as to allotments subsequently made. *Sizemore v. Brady* 441
- See **Constitutional Law.**

FLORIDA:

PAGE

Statutes of 1907 and 1913 imposing tax on sleeping car and parlor car companies not unconstitutional under Federal or state constitutions. *Pullman Co. v. Knott* 23

FOOD STUFFS. See **Meat Inspection Act.**

FORFEITURE FOR NON-PAYMENT OF TAX. See **Taxes.**

FOUNTAIN PEN CASE:

Involving use of name of Waterman in connection with fountain pens by rival manufacturers of same name. *L. E. Waterman Co. v. Modern Pen Co.* 88

FOURTEENTH AMENDMENT:

Cases involving due process and equal protection provisions:
 Florida tax on sleeping and parlor car companies. *Pullman Co. v. Knott* 23
 Omaha, Nebraska, Ordinance. *Missouri Pacific Ry. v. Omaha* 121
 Oklahoma Separate Coach Law. *McCabe v. Atchison, Topeka & Santa Fé Ry.* 151
 Kentucky rule of practice as to effect of special appearance. *Western Indemnity Co. v. Rupp* 261
 Mississippi Statute abolishing fellow-servant defense under certain conditions. *Easterling Lumber Co. v. Pierce* 380
 Covington, Kentucky, ordinance in regard to cars. *South Covington Ry. v. Covington* 537
 Ohio Workmen's Compensation Law. *Jeffrey Mfg. Co. v. Blagg* 571
 Kentucky Railroad Act. *Louis. & Nash. R. R. v. Finn* . . . 601
 Maryland Motor Vehicle Law. *Hendrick v. Maryland* . . . 610
 Mississippi Eight Hour Law. *Wathen v. Jackson Oil Co.* . . 635
 Georgia Railroad Law. *Wadley Southern Ry. v. Georgia* . . 651
 The constitution of the State is not taken up into the Fourteenth Amendment. *Pullman Co. v. Knott* 23
 Municipal ordinance otherwise valid and in exercise of police power can only be declared unconstitutional under due process clause in unmistakable case of arbitrary abuse of power. *Missouri Pacific Ry. v. Omaha* 121
 Fourteenth Amendment only takes from the State the right and power to classify subjects of legislation when the attempted classification is so arbitrary that the court can declare it beyond legislative authority. *Jeffrey Mfg. Co. v. Blagg* 571

FOURTEENTH AMENDMENT—Continued.

PAGE

- The due process provision of the Fourteenth Amendment has regard not to matters of form but of substance. *Western Indemnity Co. v. Rupp* 261
- See **Constitutional Law; Fourteenth Amendment.**

FRANCHISES:

- Franchises are given to be exercised for public good and failure to so exercise is ground for revocation. *N. Y. Electric Lines v. Empire City Subway* 179
- A street franchise which becomes operative on consent of the city is a property right but is not a nude pact; it rests upon the obligations to carry on the undertaking. *Id.*
- Franchises are made and received with the understanding that the recipient is protected by contractual right from the moment the grant is accepted and during the course and after performance. *Id.*
- Indefeasible interest only becomes vested under a franchise duly granted and actually exercised in conformity with the conditions, otherwise later legislation is not unconstitutional as impairing the obligation of the contract. *Id.*
- Whether in case of non-user proper course is to repeal franchise by subsequent ordinance, and test its validity in proceedings at law or by *quo warranto* is a matter of state law. *Id.*
- Effect of non-user on validity of subsequent ordinances. *Louisiana Ry. & Nav. Co. v. New Orleans* 164
- See **Ordinance.**

FRIVOLOUS APPEALS. See **Appeal and Error.**

FUGITIVE FROM JUSTICE. See **Interstate Rendition.**

FULL FAITH AND CREDIT:

- Case involving full faith and credit clause of the Federal Constitution. *Western Indemnity Co. v. Rupp* 261
- See **Jurisdiction.**

GADSDEN TREATY. See **Treaties.**

GEORGIA:

- Construction of the State Railroad Act of Georgia by the Supreme Court of the State followed, and the act held not unconstitutional as not providing for a hearing; also held commission has right to make order to prevent discrimination by enjoining carrier from refusing to accept goods from

GEORGIA—Continued.

PAGE

one carrier without payment in advance while accepting them from other carriers under similar conditions without such payment. *Wadley Southern Ry. v. Georgia* 651
Under § 4041, Georgia Code, widow and children of bankrupt dying pending proceedings, entitled to year's allowance from estate undistributed in hands of trustee pursuant to § 8 of the Bankruptcy Act. *Hull v. Dicks* 584

GOVERNMENT:

Contracts with. See **Contracts with Government**.
Immunity from suit. See **Eleventh Amendment**.
Instrumentalities of. See **United States**.
Of Michigan. See **Michigan; Taxes**.
Of Porto Rico. See **Porto Rico**.

GRANTS. See **Construction**.

GRANTS OF FRANCHISES. See **Franchises; Ordinances**.

GREAT BRITAIN:

Subject of Great Britain may maintain action under Federal Employers' Liability Act, and *quære*, whether it is not also a treaty right under favored nation clause and treaty with Italy. *McGovern v. Phila. & Reading R. R.* 389

GUARANTY, OKLAHOMA BANK. See **Eleventh Amendment**.

HABEAS CORPUS:

This court has not, as yet, announced any hard and fast rule as to how far it will go in passing on questions in *habeas corpus* proceedings. *Henry v. Henkel* 219

Barring exceptional cases, the hearing in *habeas corpus* proceedings is confined to the single question of jurisdiction and even that is not decided in every case. *Id.*

The rule that the hearing on *habeas corpus* is not in the nature of writ of error, and that the writ is not intended as a substitute for the functions of the trial court applies to a proceeding based on warrant for removal to another district. *Id.*

Whether Congress has power to compel witness in congressional inquiry to make material and non-criminatory disclosures and punish him for refusal to answer, are questions for the trial court and not on *habeas corpus* proceedings. *Id.*

Writ refused in intrastate rendition. *Drew v. Thaw* 432

See **Interstate Rendition; Indictment; Jurisdiction**.

HATTERS, THE DANBURY, CASE:

PAGE

Lawlor v. Loewe 522**HAWAII:**

The decision of Supreme Court of the Hawaiian Islands during the former independent sovereignty in a case construing a will, that a devise of lands was in fee and not in trust, should not be pronounced void or disturbed by the courts of the Territory on grounds mainly of form and procedure.

John Ii Estate v. Brown 342

Even if under the statute of the former sovereignty of Hawaii questions in equity cases could not be reserved, if the highest court did act on questions so reserved and entertained the cause it had authority to decide and its judgment cannot subsequently be attacked collaterally. *Id.*

HEARING:

Opportunity to be heard. See **Constitutional Law**;
Fourteenth Amendment; **Due Process**.

HEIRS. See **Indians**.

HIGHWAYS:

A State may prescribe conditions for use of its highways by motor vehicles. *Hendrick v. Maryland* 610
See **Maryland Motor Vehicle Law**.

HOMESTEADS. See **Public Lands**.

HUDSON RIVER:

Tow Boat Tax Case. *Cornell Steamboat Co. v. Sohmer* . . . 549

HUSBAND AND WIFE:

Right of widow of bankrupt to allowance. See **Bankruptcy**.

ILLINOIS:

Lien of mortgage on personal property expires three years after record subject to one extension for twelve months.

Fallows v. Continental Savings Bank 300

IMMUNITY FROM SUIT. See **Eleventh Amendment**;
Porto Rico.

INDIAN TERRITORY:

Land Grant Act of July 25, 1866, construed as to Indian lands and conditions regarding extinguishment of Indian title. *Missouri, Kansas & Texas Ry. v. United States* . . . 37

Act of April 28, 1904, putting laws of Arkansas in effect in Indian Territory construed. *Taylor v. Parker* 42

INDIAN TERRITORY—*Continued.*

PAGE

Provisions of the Original and Supplemental Creek Agreements in regard to descent and distribution of Creek lands under Creek laws and laws of Arkansas as put into effect in Indian Territory applied and construed. <i>Skelton v. Dill</i> . . .	206
<i>Adkins v. Arnold</i>	417
<i>Washington v. Miller</i>	422
<i>Sizemore v. Brady</i>	441

INDIANS:

Statute granting public lands or Indian lands which may become public lands will not be construed as including Indian lands afterwards allotted in severalty under a treaty made immediately before enactment of statute. To do so would impute bad faith of Government towards Indians. <i>Missouri, Kansas & Texas Ry. v. United States</i>	37
Restrictions on alienation of allotments under Choctaw and Chickasaw agreement ratified by Act of July 1, 1902, extended to devise by will. <i>Taylor v. Parker</i>	42
Restriction on alienation of lands allotted under Act of May 27, 1908, terminated by lapse of time as contemplated by law imposing them, were removed within meaning of excepting clause. <i>United States v. Bartlett</i>	72
One relying unsuccessfully as a defense to a contract to convey that an act of Congress restricting alienation on Indian lands made the conveyance invalid is entitled to come to this court. <i>Sage v. Hampe</i>	99
Restrictions upon alienation of allotments to Creek Indians under acts of March 1, 1901, and June 30, 1902, apply only to allotments made to citizens in their own right and do not apply to those made on behalf of deceased members of the tribe. <i>Skelton v. Dill</i>	206
<i>Adkins v. Arnold</i>	417
<i>Quære</i> , who are the true heirs of a Creek Indian child of mixed parentage who was born prior to March 1, 1901, and died before receiving his allotment? <i>Skelton v. Dill</i>	206
Provisions of the Original and Supplemental Creek Agreements in regard to descent and distribution construed in <i>Skelton v. Dill</i>	206
<i>Adkins v. Arnold</i>	417
<i>Washington v. Miller</i>	422
<i>Sizemore v. Brady</i>	441
Congress possesses plenary power to deal with Indian tribal lands and funds. <i>Sizemore v. Brady</i>	441

INDIANS—Continued.

PAGE

Original Creek Agreement was not grant *in præsent*i and until carried out, Congress had power to deal with it; and as to subsequent allotments could alter it without violating due process clause of Fifth Amendment. *Id.*

Exertion of administrative control of the Government over tribal property of tribal Indians is subject to change by Congress at any time before plan is carried into effect and while tribal relations last. *Id.*

State cannot place occupation tax or privilege tax on lessees of coal mines under loans made by United States pursuant to Choctaw and Chickasaw agreement of April 23, 1897; the lessees are instrumentalities of Federal Government.

Choctaw, Okla. & Gulf R. R. v. Harrison 292

See **Contract; Public Policy.**

INDICTMENT:

Several offenses of similar nature may be included in one indictment under the Alaska Criminal Code. *United States v. Wigger* 276

Questions as to sufficiency of indictment demanded in interstate rendition are for the trial court of the demanding State and not for courts of surrendering State on *habeas corpus*, and this even though indictment shows person indicted is insane. *Drew v. Thaw* 432

See **Criminal Appeals Act; Criminal Law.**

INFRINGEMENT OF PATENT. See **Patents.****INHERITANCE.** See **Descent and Distribution; Indians.****INJUNCTION:**

In order to justify granting injunction, complainants must show personal need of it and absence of adequate remedy at law. It is not sufficient that others of same class may be injured. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151

INSANE PERSON OR LUNATIC:

The courts of the State demanding surrender of a fugitive from justice, and not the courts of another State in *habeas corpus* proceedings, have jurisdiction to determine questions relating to sufficiency of indictment charging an admittedly insane person with crime. *Drew v. Thaw* 432

INSPECTION. See **Meat Inspection Act.****INSTRUCTIONS TO JURY.** See **Jury.**

INTENT:

As to change of domicil. See **Domicil**.

PAGE

INTERSTATE COMMERCE:

Cases involving construction and application of the commerce clause of the Federal Constitution in relation to, § 4180, Snyder's Comp. Laws, Oklahoma. <i>Overton v. Oklahoma</i>	31
Oklahoma Separate Coach Law. <i>McCabe v. Atchison, Topeka & Santa Fe Ry.</i>	151
South Dakota restrictions on foreign corporations. <i>Sioux Remedy Co. v. Cope</i>	197
Interstate Commerce Act. <i>United States v. Louis. & Nash. R. R.</i>	314
Arkansas state franchise tax. <i>St. Louis S. W. Ry. v. Arkansas</i>	350
Anti-trust Act of 1890. <i>Lawlor v. Loewe</i>	522
Covington, Kentucky, ordinance regulating cars, etc. <i>South Covington Ry. v. Covington</i>	537
New York transportation corporation tax. <i>Cornell Steamboat Co. v. Sohmer</i>	549
Maryland Motor Vehicle Act. <i>Hendrick v. Maryland</i>	610
Payment of state franchise tax cannot be made condition precedent for carrying on interstate commerce. <i>St. Louis S. W. Ry. v. Arkansas</i>	350
Municipal ordinance relating to matters properly within police power constitutional as these matters only incidentally affecting interstate commerce and unconstitutional as to those which are a direct burden on and regulation of interstate commerce. <i>South Covington Ry. v. Covington</i>	537
<i>What is interstate commerce:</i> Defined as to suburban road between points in different States. <i>Id.</i>	
— Transportation between two points in same State not interstate commerce to the extent of being excluded from taxing power of State because a part of the journey is through another State—so as to barges towed between New York and other New York State points although tows made up at a point in the harbor in New Jersey for convenience. <i>Cornell Steamboat Co. v. Sohmer</i>	549
<i>State's action affecting interstate commerce:</i> Reasonableness always subject to inquiry and is subordinate in that respect to will of Congress. <i>Hendrick v. Maryland</i>	610
— State has power to impose reasonable license fees for motor vehicles using its highways including those moving in	

INTERSTATE COMMERCE—*Continued.*

PAGE

interstate commerce; if reasonable, such license fees are not a burden on interstate commerce. *Id.*

See **Anti-trust Act; Constitutional Law; Interstate Commerce Commission; Police Power; Public Policy.**

INTERSTATE COMMERCE COMMISSION:

The purpose of establishing the Commission was to create a body which from its peculiar character would be most fitted to primarily decide from facts, disputed or undisputed, in a given case whether preference or discrimination existed or not. *United States v. Louis. & Nash. R. R.* 314

The application of the principle of public policy embodied in the long and short haul clause as amended by the act of June 18, 1910, is to be determined by the substance of things, not names—otherwise statute would be wholly inefficacious. *Id.*

Where evidence is undisputed and shows discrimination between localities, a finding by the Commission that such discrimination is rendered is one of fact, not subject to review by the Commerce Court. *Id.*

After amendment of 1910 the authority of the carriers to determine primarily for themselves the propriety of charging a higher rate for the shorter distance was taken from them and vested in the Commission. *Id.*

Quære, whether method of Interstate Commerce Commission of considering and basing opinion on matters gathered in general in investigations regarding the subject-matter in controversy, but not produced in the particular proceeding against particular carriers in which orders are made requiring them to desist from certain practices amounts to denial of hearing and results in due process of law. *Id.*

Posting rates: Filing with the Commission without objection book of rules as to demurrage of the Car Service Association to which it belongs with statement as to what its rates will be is compliance with the rate filing provisions of the act. *Berwind-White Co. v. Chicago & Erie R. R.* 371

INTERSTATE RENDITION:

A party to a crime who afterwards leaves the State is a fugitive from justice and for purposes of interstate rendition his motive for departure is immaterial. *Drew v. Thaw* 432

Federal Constitution peremptorily requiring surrender of fugitive upon proper demand, no discretion is allowed nor

INTERSTATE RENDITION—Continued.

PAGE

any inquiry into motive; the summary process of *habeas corpus* in the surrendering State should not interfere; questions as to sufficiency of indictment even as to person admittedly insane are for the trial court. *Id.*

INTOXICATING LIQUORS:

Contention that § 4180, Snyder's Comp. Laws, Oklahoma, repugnant to commerce clause of Federal Constitution, *held* too frivolous to base writ of error on for review of judgment in this court. *Overton v. Oklahoma* 31

INVOLUNTARY SERVITUDE:

As to what constitutes peonage. See *United States v. Reynolds* 133

IRRIGATION PROJECT:

Right of railroad company to acquire rights of way through. *Minidoka R. R. v. United States* 211

ITALY:

Right of citizen to maintain action for death of citizen under treaty. *McGovern v. Phila. & Reading R. R.* 389

JUDGMENTS AND DECREES:

In absence of statute, general rule is that courts may not set aside or alter final judgments after expiration of term when entered except on proceedings commenced during that term. *United States v. Mayer* 55

Consent of United States attorney will not confer jurisdiction on District Court to vacate judgment in a criminal cause after expiration of term when entered or debar United States from subsequently varying question of jurisdiction. *Id.*

Decree of court having jurisdiction of estate settling account of trustees there and turning estate over to trustees in another State where testator resided cannot be attacked collaterally. *Magruder v. Drury* 106

Decree passing verified account presented to and passed on by court not based on consent and cannot be attacked collaterally in courts of another State. *Id.*

As between holders of judgment within four months of bankruptcy and the holder of a mortgage on personal property in Illinois, *held* that as the mortgage lien had expired the judgment lien attached unless fraudulently obtained and could be preserved and the trustee subrogated under § 67b

JUDGMENTS AND DECREES—Continued.

PAGE

- of the bankruptcy act. *Fallows v. Continental Savings Bank* 300
- Where the constitution and statutes of the former sovereignty, as in Hawaii, permitted the highest court to fill a vacancy by calling in a member of the bar and it was the practice for years to fill more than one vacancy, validity of a judgment of that court should not be questioned long after change of sovereignty. *John Ii Estate v. Brown* 342
- A duly filed written decision of the highest court of the former sovereignty must be regarded as an adjudication if at that time it was the recognized practice that the papers actually filed constituted the record. *Id.*
- Bill of review should not be granted if stability of judgment disturbed. *Hopkins v. Hebard*. 287
- Interlocutory judgment or decree included in certain cases in term decree. *Lovell-McConnell Co. v. Auto Supply Co.* . . . 383

See Clerk, Fees.

- Decree may bind members of state board who have appeared as to matters adjudicated between the private parties although the board is itself exempt from suit under the Eleventh Amendment. *Farish v. State Banking Board* 498
- Review of judgments by this court. **See Appeal and Error; Bill of Review; Hawaii; Jurisdiction; Pleadings; Res Judicata; Sovereignty; Stare Decisis.**

JUDICIAL CODE:

- Circuit Court of Appeals Act is now embodied in the Judicial Code. *Shapiro v. United States* 412
- Section 24 regarding suits in Federal court by assignees of choses in action does not include assignees of interest of *cestui que trust* in an estate. *Brown v. Fletcher* 589
- Section 294, statutory rule of construction of Judicial Code, is § 294 of the Code and under it slight changes in wording are not intended to bring about any change, but merely continuance of existing statute law. *Id.*
- For all sections of the Judicial Code cited in opinions in this volume, see Table of Statutes, cited at the front of this volume.

See Jurisdiction.**JUDICIAL DISCRETION. See Bill of Review; Jurisdiction; Practice.**

JUDICIAL POWER. See **Courts; Michigan; Rates.**

PAGE

JUDICIAL REVIEW:

The fact that a state fund is to be used to satisfy claims of beneficiaries does not take its administration from the officers of the State and subject them to judicial review.

Lankford v. Platte Iron Works 461

Statute imposing heavy penalties without affording any opportunity for judicial review may be unconstitutional in that respect. *Wadley Southern Ry. v. Georgia* 651

See **Georgia.**

JURISDICTION:

I. Generally.

1. *Of Courts Generally:* Courts of demanding State have jurisdiction to determine sufficiency of indictment of an admittedly insane person charged with crime according to the law of the State; it is not to be determined on *habeas corpus* in interstate rendition proceedings in Federal court in the surrendering State. *Drew v. Thaw* 423

— While parties cannot give jurisdiction and may sometimes except to erroneous ruling in their own favor where the court has jurisdiction over parties and subject-matter, a party invoking ruling to change a bill of injunction to one to quiet title cannot ask reversal on ground of lack of power in the court to grant such a motion. So held in a case in Porto Rico. *Mercelis v. Wilson* 579

Voluntary appearance may confer jurisdiction with certain conditions. *Arizona & New Mex. Ry. v. Clark* 669

— In a case involving fixing of a line it is proper when that is done to quiet title of each party as against the other, and if the findings support it, a decree may be entered in accord with the character of proceedings and which will prevent multiplicity of suits. *Mercelis v. Wilson* 579

— Courts of State and United States have concurrent jurisdiction over cases under Employers' Liability Act. *Arizona & New Mex. Ry. v. Clark* 669

2. *Of Federal Courts Generally:* Whether Federal court can grant new trial after end of term is question of power and not of procedure and state statutes do not apply. *United States v. Mayer* 55

— In absence of statute, general rule is court has no jurisdiction to set aside or alter final judgment after expiration

JURISDICTION—*Continued.*

PAGE

of term when entered except on proceedings commenced during that term. *Id.*

— Neither state courts nor legislatures by giving tax particular name can take from the Federal court its duty to consider its real nature and effect. *Choctaw, Okla. & Gulf R. R. v. Harrison* 292

— Where jurisdiction of Federal court invoked because of questions under Federal Constitution, it extends to all questions presented irrespective of the disposition of the Federal questions or whether it is necessary to decide them at all. *Louis. & Nash. R. R. v. Finn* 601

— Only those having rights directly affected can properly invoke the jurisdiction of the courts to declare a statute unconstitutional. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151
Hendrick v. Maryland 610

See **Moot Case.**

II. Jurisdiction of this court.

1. *Over judgments of Circuit Court of Appeals:* This court has jurisdiction and must determine for itself whether the contract claimed to have been impaired existed and in determining whether, and what if any, effect was given to later legislation it is not limited to mere consideration of the language of the state court. *Louisiana Ry. & Nav. Co. v. New Orleans* 164

— This court cannot take case in fragments; if reviewable here by reason of a constitutional question, the whole case must come up. *Shapiro v. United States* 412

— This court is not required under § 239, Judicial Code, to pass on questions of fact or mixed question of law and fact or accept transfer of whole case, but definite question of law may be submitted even if decisive of whole controversy. *United States v. Mayer* 55

This court cannot review the Circuit Court of Appeals on writ of error to the District Court acting upon the mandate of the former, even though new constitutional questions were raised in the latter after the case had been remanded. *Shapiro v. United States* 412

See **Appeal and Error.**

2. *Over judgments of District Court:* Where District Court understood controversy involved its jurisdiction and dismissed the case because publication under the Material-

JURISDICTION—Continued.

PAGE

men's Act was insufficient and so certified, the issue of jurisdiction is involved and the case, therefore, can come here under § 238, Jud. Code. *A. Bryant Co. v. N. Y. Steam Fitting Co.* 327

— Even if District Court errs in holding failure to perform prerequisite condition to commencing action raises question of jurisdiction and dismisses for that ground instead of on merits, this court has jurisdiction to review and correct under § 238, Jud. Code. *Id.*

— When appellant, plaintiff below, had a verdict which District Court set aside on motion in which that court discussed and ruled adversely on questions arising under treaty and on second trial ruled adversely under the Federal statute, this court will presume that the trial court also considered the treaty question on the second trial and has jurisdiction under § 238, Jud. Code. *McGovern v. Phila. & Reading R. R.* 389

— Where record in a case here under § 238, Jud. Code, brings up testimony on which the District Court dismissed for lack of diverse citizenship this court must consider the testimony and determine whether the decision was right. *Gilbert v. David.* 561

3. *Over judgments of United States Court for Porto Rico:* On appeals from Supreme Court of Porto Rico, power of this court is confined to determining whether error of law was committed in admitting or rejecting evidence and whether findings of fact adequate to sustain conclusion based on them. *Monagas v. Albertucci.* 81

— Under § 35, Foraker Act, jurisdiction of this court of appeals from District Court of the United States for Porto Rico confined to determining whether the facts found support the judgment, and whether there was material and prejudicial error in admission or rejection of evidence manufactured by exceptions properly certified. *Porto Rico v. Emmanuel.* 251

— In absence of bill of exceptions questions of admissibility of evidence are excluded. *Id.*

4. *Over judgments of state courts:* This court cannot review a judgment of the state court on writ of error which is frivolous. *Overton v. Oklahoma.* 31

When constitutional question is obvious from beginning and not open in the highest court of the State unless taken on

JURISDICTION—Continued.

PAGE

trial, it cannot be considered here unless so taken. *Wilmington v. Chicago*. 45

This court, on writ of error based on total lack of power in the municipality to make assessment, cannot inquire into the facts found by the state court as to value, benefits, etc. *Id.*

The Federal right claimed to have been denied must be set up and adjudicated against claimant by state court and the contention passed on cannot be enlarged by assignments of error bringing the case to this court. *Cleveland & Pittsburg R. R. v. Cleveland*. 50

— Nor can certificate of the state court bring additional questions into the record, if the record does not otherwise show them to exist. *Id.*

— Defendant unsuccessfully relying as defense to contract to convey that Federal statute makes conveyance invalid can come to this court under § 237. *Sage v. Hampe*. 99

— Even if contract unenforceable at common law if this court condemns it under Federal statute by construction of the latter it has jurisdiction under § 237. *Id.*

— If state court held municipality had power to pass ordinance this court on review under § 237, Jud. Code, can only declare it unconstitutional under the due process clause of the Fourteenth Amendment in case of a clear and unmistakable abuse of power. *Missouri Pacific Ry. v. Omaha*. 121

— Although this court may not have jurisdiction under § 237, Jud. Code, in case state court gave no effect to subsequent legislation claimed to have impaired contract, if state court did give effect thereto this court has jurisdiction to determine for itself whether contract existed and whether subsequent legislation did impair it even if state court held there was no contract originally existing. *Louisiana Ry. & Nav. Co. v. New Orleans*. 164

— If plaintiff in error raised question of constitutionality of later legislation repealing that on which its franchise rested and state court gave effect thereto, this court has jurisdiction on review under § 237, Jud. Code, to determine whether the contract was impaired within the meaning of the Federal Constitution. *N. Y. Electric Lines v. Empire City Subway*. 179

— If state court has not denied full faith and credit to the

JURISDICTION—Continued.

PAGE

statute of another State, this court has not jurisdiction on review under § 237, Jud. Code, to determine whether the interpretation given to such statute is or is not correct. *Western Indemnity Co. v. Rupp*..... 261

— In exercising jurisdiction under § 237, Jud. Code, this court should wait until state court has construed the statute attacked rather than assume that the latter will so construe it as to make it unconstitutional. *St. Louis S. W. Ry. v. Arkansas*..... 350

III. Of Circuit Court of Appeals: Jurisdiction of Circuit Court of Appeals is exclusively appellate but that court may issue writs properly auxiliary to appellate power. *United States v. Mayer*..... 55

May revise writ of prohibition against District Court entering order for new trial on newly discovered evidence in case where writ of error has issued from Circuit Court of Appeals. *Id.*

IV. Of District Courts: Consent of United States attorney will not give jurisdiction to District Court to entertain motion for leave to vacate judgment in criminal cause after end of term when entered and again have case heard on merits, nor debar United States from raising question of jurisdiction. *Id.*

— Section 37, Jud. Code, does not prescribe any particular method for raising question of jurisdiction; and such method can be left to sound discretion of trial judge. If state practice admits it may be raised by general denial in answer. *Gilbert v. David*..... 561

— Whether District Judge has jurisdiction to commit a witness under statutory definition of crime is for trial court to determine, not the court to which witness has applied in *habeas corpus* proceedings to prevent removal. *Henry v. Henkel*..... 219

— Provisions of the Materialmen's Acts of 1894 and 1905 in regard to giving notice to other creditors before commencing suit are ambiguous and compliance therewith is not of the essence in order to give the District Court jurisdiction of a case otherwise properly commenced. *A. Bryant Co. v. N. Y. Steam Fitting Co.*..... 327

— Where issue of plaintiff's citizenship has been raised by answer, trial court may submit question to the jury or in its discretion may dispose of the case on the testimony. *Gilbert v. David*..... 561

JURISDICTION—*Continued.*

PAGE

— Delay in determining question of citizenship even if it results in state statute of limitations having run, does not confer jurisdiction on the District Court, if diverse citizenship does not exist. *Id.*

— Section 24, Jud. Code, does not prevent assignee of interest of *cestui que trust* in an estate from maintaining action in District Court if diverse citizenship exists. He is not assignee of a chose in action. *Brown v. Fletcher* 589

— Suit by stockholder to enforce right or remedy belonging to the corporation. See **Equity Rules**.

— Effect of change of domicile of plaintiff before commencement of suit. *Gilbert v. David* 561

V. Of Commerce Court: When court cannot review findings of Interstate Commerce Commission that discrimination exists between localities. *United States v. Louis. & Nash. R. R.* 314

See **Appeal and Error; Michigan; Practice.**

JURY:

Having properly instructed the jury in regard to contributory negligence, it was not error for the trial court to refuse to instruct that a railway company was not liable for damages by fire caused by its own negligence, because it had not consented to the storage of the goods burned on its platform, it appearing there had been a long continued custom for such storage. *Texas & Pacific Ry. v. Rosborough* 429

Determination of question of diverse citizenship is proper for jury if trial judge so decides. *Gilbert v. David* 561

Where facts are adequate to constitute strong appeal to sympathy of jury charge should be free from anything that jury can construe as persuasive to go outside the evidence.

Norfolk & Western Ry. v. Holbrook 625

It is the duty of the court in its relation to the jury to protect the parties from unjust verdicts arising from impulse, passion or prejudice or any other violation of lawful rights. *Id.*

See **Employers' Liability Act; Pleadings.**

KENTUCKY:

Under the McChord Act the Kentucky Railroad Commission has jurisdiction to make an order reestablishing former rates if the evidence shows that they maintained for many years after the avowed reason for establishing them had ceased to exist and the carrier claims that the basis of the

KENTUCKY—*Continued.*

PAGE

- advance was not because of inadequacy but because of discrimination. *Louis. & Nash. R. R. v. Finn* 601
- The rule of practice in Kentucky that appearance of defendant in appellate court under certain conditions operates as general appearances, not denial of due process of law. *Western Indemnity Co. v. Rupp* 261

LABOR UNIONS:

- Members of labor unions and associations bound to know constitutions of their societies and if they pay dues and continue to delegate authority to their officers to unlawfully interfere with interstate commerce the other parties are jointly liable with such officers for the damages sustained by reason of such acts. *Lawlor v. Loewe* 522
- See **Anti-trust Act.**

LACHES:

- A defendant who raised the issue of plaintiff's residence and that diverse citizenship does not exist to give District Court jurisdiction is not chargeable with laches because he does not force that issue to trial. *Gilbert v. David* 561

LAND DEPARTMENT. See **Public Lands.**

LAW AND FACT, QUESTIONS OF. See **Full Faith and Credit; Interstate Commerce Commission.**

LEGISLATION:

- Every act of Congress presumptively valid and should be so treated by a committing magistrate unless palpably void. *Henry v. Henkel* 219
- Action of State in regard to matters under its control must be treated as correct unless the contrary is made to appear. *Hendrick v. Maryland* 610
- If a statute will bear two constructions, one of which is within and the other beyond constitutional limitations the courts should adopt the former, as legislatures are presumed to act within their authority. *St. Louis S. W. Ry. v. Arkansas* 350
- A police ordinance containing several provisions regulating interstate traffic may be constitutional as to some of the provisions and unconstitutional as to the others and in that event should be sustained as to those provisions which are constitutional if separable. *South Covington Ry. v. Covington* 537

LEGISLATION—*Continued.*

PAGE

State legislation construed, in following cases:

Florida Sleeping Car Tax Statute. <i>Pullman Co. v. Knott</i> . . .	23
Omaha, Nebraska, Ordinance. <i>Missouri Pacific Ry. v. Omaha</i>	121
Chicago, Illinois, Ordinance. <i>Willoughby v. Chicago</i>	45
Alabama statutes declared unconstitutional as constituting peonage. <i>United States v. Reynolds</i>	133
Oklahoma Separate Coach Law. <i>McCabe v. Atchison, Topeka & Santa Fe Ry.</i>	151
New Orleans Belt Railroad Ordinance. <i>Louisiana Ry. & Nav. Co. v. New Orleans</i>	164
New York City Electric Lines Ordinances. <i>N. Y. Electric Lines v. Empire City Subway</i>	179
South Dakota, §§ 883-885, Rev. Codes, 1903. <i>Sioux Remedy Co. v. Cope</i>	197
Oklahoma Gross Revenue Tax on Coal Mining. <i>Choctaw, Okla. & Gulf R. R. v. Harrison</i>	292
Arkansas annual franchise tax. <i>St. Louis S. W. Ry. v. Arkansas</i>	350
Mississippi acts abolishing fellow-servant defense and making certain classes of accidents presumptive of negligence. <i>Easterling Lumber Co. v. Pierce</i>	380
Michigan Railroad Commission Law. <i>Detroit & Mackinac Ry. v. Michigan</i>	402
Arkansas, § 4621, Mansfield's Digest and § 648, <i>id.</i> <i>Adkins v. Arnold</i>	417
Oklahoma Bank Depositors' Guaranty Fund Act. <i>Lankford v. Platte Iron Works</i>	461
<i>Am. Water Co. v. Lankford</i>	496
<i>Farish v. State Banking Board</i>	498
Covington, Kentucky, Ordinance. <i>South Covington Ry. v. Covington</i>	537
New York Act taxing transportation companies. <i>Cornell Steamboat Co. v. Sohmer</i>	549
Ohio Workmen's Compensation Act. <i>Jeffrey Mfg. Co. v. Blagg</i>	571
Kentucky Railroad Act. <i>Louis. & Nash. R. R. v. Finn</i>	601
Maryland Motor Vehicle Law. <i>Hendrick v. Maryland</i>	610
Mississippi Eight Hour Law. <i>Wathen v. Jackson Oil Co.</i>	635
Georgia Railroad Act. <i>Wadley Southern Ry. v. Georgia</i>	651
Arizona, Rev. Stat., § 2535, relative to testimony of physicians. <i>Arizona & New Mex. Ry. v. Clark</i>	669

See **Constitutional Law; Fourteenth Amendment.**

LEGISLATION—*Continued.*

PAGE

For Acts of Congress, construed and applied, see **Congress, Acts of, Construed.**

LEGISLATIVE AND JUDICIAL POWERS. See **Congress; Courts; Michigan; Rates.**

LETTERS:

Relating to current business within meaning of § 184, Penal Code. *United States v. Erie R. R.* 513
When allowed in evidence. *Lawlor v. Loewe* 522

LEVY. See **Execution.**

LICENSE:

Not required for navigating waters of United States. *Cornell Steamboat Co. v. Sohmer.* 549
License to use name. See **Name.**

LIENS:

The validity and privity of mortgages depend upon the law of the State. *Fallows v. Continental Savings Bank* 300
As to law in Illinois. *Id.*
Right of trustees in bankruptcy to subrogation. See **Bankruptcy; Judgments and Decrees.**

LIMITATIONS AND PRESCRIPTION. See **Laches; Porto Rico.**

LIQUIDATED DAMAGES:

When Government cannot recover for delay. *Maryland Steel Co. v. United States.* 451

LOCAL LAW:

See **Pleadings; Practice; Stare Decisis; Captions of Various States.**

LONG AND SHORT HAUL CLAUSE. See **Common Carrier; Interstate Commerce Commission.**

LUNATIC. See **Insane Person.**

McCHORD ACT. See **Kentucky.**

MAILS:

Construction of § 184, Penal Code. *United States v. Erie R. R.* 513

MANDATE:

PAGE

Lower court must follow the mandate of the appellate court. Where mandate of Circuit Court requires District Court to reject plea of *nolo contendere* on the only counts on which the Government stood and proceed with the case it must in obedience to the mandate set aside the plea. *Shapiro v. United States*. 412

See **Jurisdiction of this Court under § 238, Jud. Code: New Trial.**

MARYLAND MOTOR VEHICLE LAW:

The motor vehicle law grants to all residents of other States who have complied with the motor vehicle law of their respective States certain free use of the Maryland highways, but excepts residents of District of Columbia. *Quære*, whether the law is unconstitutional so far as it discriminates against residents of the District; but question cannot be determined at instance of one who does not show compliance with motor vehicle law of the District. *Hendrick v. Maryland* 610

The Maryland Motor Vehicle Law is not unconstitutional so far as it prescribes reasonable conditions and license fees for use of the State's highways. *Id.*

MASTER AND SERVANT. See **Constitutional Law; Employers' Liability Act; Ohio Workmen's Compensation Law; Mississippi; Peonage.**

MATERIALMEN'S ACTS OF 1894 AND 1905:

The acts are highly remedial; their purpose, simple and beneficial, is to give a remedy to materialmen and laborers on the bond of the original contractor, a reasonable time to enforce it and to unite all claimants in a single proceeding. *A. Bryant Co. v. N. Y. Steam Fitting Co.* 327

Provisions of the act are so ambiguous and conflicting in regard to notice that court holds time of notice to other creditors is not of essence in order to give District Court jurisdiction of suit otherwise properly brought by a claimant. *Id.*

MEASURE OF DAMAGES. See **Employers' Liability Act.**

MEAT INSPECTION ACT:

Plain object of the prohibition in the act against alteration and destruction of tags and labels is to safeguard food products against alteration and substitution so as to render process of inspection effective and the statute will not be

MEAT INSPECTION ACT—*Continued.*

PAGE

construed so as to defeat purpose for which it was enacted. The prohibition is as broad as its language and applies to any and all persons, firms or corporations, or officer, agent or employé thereof. *United States v. Lewis* 282

MICHIGAN:

Railroad Commission Act: Under Railroad Commission Act, as construed in the light of the constitution of Michigan, the function of the Supreme Court of the State in reviewing orders of the Commission fixing rates is judicial, not legislative, and its final decree sustaining a rate established by the Commission as not confiscatory is *res judicata* and can be so pleaded in another action brought in the Federal court to prevent the Commission from enforcing the rate. *Detroit & Mackinac Ry. v. Michigan R. R. Commission* 402

— This court will not construe the act in absence of decision to that effect by state court as clothing the courts with legislative power by granting them power to review orders of the Commission. *Id.*

— The constitution of Michigan separates legislative and judicial powers and forbids giving the judicial department legislative power. The provisions in this respect are different from the provisions of the constitution of Michigan construed in *Prentiss v. Atlantic Coast Line*. *Id.*

— Whether Railroad Commission of Michigan did or did not exceed its jurisdiction in making orders establishing rates, the Supreme Court of the State had jurisdiction, and one seeking to review the orders is barred by the decree of that court. *Id.*

MINIDOKA IRRIGATION PROJECT:

Settlers can give rights of way over their claims to railroad companies. *Minidoka R. R. v. United States*. 211

MISSISSIPPI:

Chapter 194, Laws of 1908, abolishing fellow-servant defense as to certain claims of employers is not unconstitutional as denying equal protection of the law. *Id.*

Chapter 215, Laws 1912, making happening of certain classes of accidents *prima facie* presumptive of negligence cuts off no substantive defense and does not deny due process of law. *Easterling Lumber Co. v. Pierce* 380

Not even when applied in the trial of an action for damages sustained prior to enactment. *Id.*

MISSISSIPPI—Continued.

PAGE

Constitutionality of Eight Hour Law involved, but case dismissed for want of jurisdiction. *Wathen v. Jackson Oil Co.* 635

MOOT CASE:

This court does not pass on. *Louis. & Nash. R. R. v. Finn* 601
Hendrick v. Maryland. 610
 See **Constitutional Law.**

MORTGAGE:

Lien of, on personal property in Illinois expires after three years and one extension of twelve months. *Fallows v. Continental Savings Bank* 300

MOTIVE. See **Interstate Rendition.**

MOTOR VEHICLES:

State has right to prescribe reasonable conditions and license fees for use of highways. *Maryland Motor Vehicle Law. Hendrick v. Maryland.* 610
 See **Police Power.**

MULTIPLICITY OF SUITS. See **Jurisdiction.**

MUNICIPAL ORDINANCES. See **Constitutional Law; Franchises; Interstate Commerce; Ordinance; Police Power.**

MUNICIPALITIES. See **Police Power.**

NAMES, USE OF:

While transfer of person's name without any business may not be sufficient to entitle transferee to prevent others from using that name, it may be sufficient to put licensee on the footing of licensor against another party of same name. *L. E. Waterman Co. v. Modern Pen Co.* 88
 See **Competition; Practice.**

NASHVILLE GRAIN RESHIPPING CASE:

United States v. Louis. & Nash. R. R. 314

NAVIGATION:

A State may not require a license for navigation, except in exceptional cases as for compensation for improvements made by itself, but it may enforce as to its own corporations, having property within its borders, its usual system of taxation without infraction of the supreme law of the United

NAVIGATION—*Continued.*

PAGE

- States concerning navigation. *Cornell Steamboat Co. v. Sohmer*..... 549
 See **United States.**

NEBRASKA:

- Omaha, Nebraska, Ordinance requiring railroad to construct viaduct over crowded street not unconstitutional. *Missouri Pacific Ry. v. Omaha*..... 121

NEGLIGENCE:

- Constituting defense of, abolished as to certain classes of employés in Ohio Workmen's Compensation Law. *Jeffrey Mfg. Co. v. Blagg*..... 571
 Presumption of. See **Mississippi.**
 Sufficiency of instructions as to. *Texas & Pac. Ry. v. Rosborough*..... 429
 See **Employers' Liability Act.**

NEW JERSEY. See **Interstate Commerce.****NEW MEXICO:**

- Cases involving De Baca land grants within territory ceded by Gadsden Treaty. *Lane v. Watts*..... 17

NEW ORLEANS:

- Belt Railroad Ordinances. See **Constitutional Law.**

NEW TRIAL:

- Court cannot order, on newly discovered evidence after end of term. *United States v. Mayer*..... 55
 Where there has been a verdict on first trial for plaintiff which was set aside on the ground, that plaintiff had not capacity to sue and on the second trial verdict was directed for defendant on that ground, the Circuit Court of Appeals in reversing cannot direct judgment on original verdict; even if plaintiff waives a jury trial the case must be sent back for new trial. *McGovern v. Phila. & Reading R. R.*..... 389
 See **Bill of Review; Jurisdiction.**

NEW YORK:

- Ordinance of New York City of May 11, 1906, revoking license right of electric company to use streets under permission given in 1878 did not impair the obligation of the contract within the meaning of the Federal Constitution as the right was granted under the implied condition of user and had become subject to revocation by non-user. *N. Y. Electric Lines v. Empire City Subway*..... 179

NEW YORK—Continued.

PAGE

- New York Penal Laws, §§ 580, 583, making an agreement to commit any act for perversion of justice if overt act committed may include the withdrawal by connivance of a person from an insane asylum to which he has been duly committed by order of court as a lunatic. *Drew v. Thaw* 432
- Section 184, Tax Law, imposing tax on transportation companies of the State for privilege of carrying on business in corporate capacity within State based on gross earnings of wholly intrastate business not violative of commerce clause of Federal Constitution, nor a license for privilege of navigating public waters of United States which is granted by Federal law, but merely a license on business in a corporate capacity. *Cornell Steamboat Co. v. Sohmer* 549

NEW YORK HARBOR:

- Tows made up in harbor on New Jersey side for convenience and thence towed to the points in New York State not passing through any other State not interstate commerce so as to be removed from tax control of New York. *Cornell Steamboat Co. v. Sohmer*. 549

NEWSPAPERS:

- Allowed under certain conditions for certain purposes in evidence. *Lawlor v. Loewe* 522

NOLO CONTENDERE, PLEA OF. See **Mandate.****NON-USER:**

- Franchise may be lost by, and become subject to revocation. *N. Y. Electric Lines v. Empire City Subway* 179

NORTH CAROLINA:

- Slick Rock and Tellico Basin section of boundary between North Carolina and Tennessee determined. *North Carolina v. Tennessee*. 1
- Cession Act of 1789 construed and held further consent of Congress to agreement with Tennessee to settle boundary not essential under Art. I, § 10, cl. 3 of the Federal Constitution. *Id.*
- Bill of review in regard to land within the State as determined by decree in above case refused. *Hopkins v. Hebard* 287

OCCUPATION TAX. See **Oklahoma.****OFFICERS, OF ASSOCIATIONS:**

- When members may be jointly liable with, for acts. *Lawlor v. Loewe* 522

OFFICERS OF COURTS. See Clerk's Fees.

PAGE

OFFICERS, OF STATES:

- May so administer state statute fair on its face as to amount to denial of equal protection of the law by the State itself as against a class discriminated against. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151
- No such discrimination in this case. *Id.*
- Duty of sheriff to levy execution in the absence of instructions to contrary. *Fallows v. Continental Savings Bank* 300
- Members of State Banking Board not subject to judicial review in regard to administration of Depositors' Guaranty Funds. They are state officers. *Lankford v. Platte Iron Works Am. Water Co. v. Lankford* 461
- Farish v. State Banking Board* 496
- Effect of appearance for members of State Banking Board where statute does not provide for waiver of immunity of suit. *Farish v. State Banking Board* 498

OFFICERS, OF UNITED STATES:

- Against public policy to contract to improperly influence and void. *Sage v. Hampe* 99
- Quartermaster General can modify contract for building vessel so as to waive liquidated damages for delay under certain conditions. *Maryland Steel Co. v. United States* 451

OHIO WORKMEN'S COMPENSATION ACT:

- Provisions in Workmen's Compensation Act establishing plan open on equal terms to all employers of over five employés and abolishing defenses of fellow servant and contributory negligence as to all such employers not entering plan, *held* not unconstitutional as denial of equal protection of the law. A classification based on number of employés is not unreasonable. *Jeffrey Mfg. Co. v. Blagg* 571

OKLAHOMA:

- Snyder's Comp. Laws, § 480, prohibiting importation of intoxicating liquors not repugnant to commerce clause of Federal Constitution. *Overton v. Oklahoma.* 31
- Under Enabling Act, Oklahoma admitted to Union on equal footing with original States and has same authority as other States to enact legislation not in conflict with Federal Constitution. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151
- Separate Coach Law not unconstitutional as repugnant to commerce clause as state courts construed it as relating only to intrastate commerce. *Id.*

OKLAHOMA—*Continued.*

PAGE

Separate Coach Law unconstitutional as denying equal protection of the law in that it does not require equal accommodations for both African and white races in regard to all classes of cars although there may be only a limited demand for sleeping, dining and chair cars by persons of African race. *Id.*

Gross Revenue Tax on coal mining illegal as to lessees of United States under leases made pursuant to Choctaw and Chickasaw Agreement of 1897; lessees are instrumentalities of Federal Government. *Choctaw &c. Ry. v. Harrison* . . . 292

Gross Revenue Tax on coal mining being evidently for purpose of securing a percentage on all sales in addition to *ad valorem* taxes is in effect a privilege or occupation tax, regardless of what state court and legislature call it. *Id.*

Bank Guaranty Fund Cases. See **Eleventh Amendment.**

OMAHA:

Viaduct Case. *Missouri Pacific Ry. v. Omaha* 121

OPPORTUNITY TO BE HEARD. See **Constitutional Law; Due Process; Fourteenth Amendment.**

ORDINANCES:

Ordinances construed:

Of Chicago, Illinois (street assessment). *Willoughby v. Chicago* 45

Of Omaha, Nebraska (railway viaduct). *Missouri Pacific Ry. v. Omaha* 121

Of New Orleans, Louisiana (Belt R. R.). *Louisiana Ry. & Nav. Co. v. New Orleans* 164

Of New York City (electric lines). *N. Y. Electric Lines v. Empire City Subway* 179

Of Covington, Kentucky (street railway regulations). *South Covington Ry. v. Covington* 537

Validity of: Ordinance otherwise valid not necessarily unconstitutional as denying due process of law because work required might be done differently or less expensively. *Missouri Pacific Ry. v. Omaha* 121

— Or because it requires work to be done in too short a period. Such a provision may be separable and if completion is physically impossible, a court of equity can relieve. *Id.*

— Police ordinance containing several provisions independent of each other may be constitutional as to those which are

ORDINANCES—*Continued.*

PAGE

within, and unconstitutional as to those which are beyond, constitutional limitations. *South Covington Ry. v. Covington* 537
See **Constitutional Law**; **Franchises**; **Interstate Commerce**; **New York**; **Police Power**.

PARLOR CARS. See **Florida**; **Taxes**.

PARTIES:

Question of superior title of contesting claimants to lands acquired from a foreign country by treaty cannot be determined in an action between one claimant and the Government to which the other claimant is not a party. *Lane v. Watts* 17
Where state officers are parties. See **Eleventh Amendment**.
To action in Federal court. See **Citizenship**; **Domicil**.
Who may raise jurisdictional question. See **Jurisdiction**.
Who may raise constitutional question. See **Constitutional Law**; **Maryland Motor Vehicle Law**.

PARTNERSHIP:

A partner cannot participate in commissions of the firm on sales of investments to estate of which he is trustee. *Ma-gruder v. Drury* 106

PATENTS:

For invention: Right conferred under laws of United States is confined to United States and its Territories, and infringement cannot be predicated of acts done wholly in a foreign country. *Dowagiac Mfg. Co. v. Minnesota Plow Co.* 641
— Exclusive right conferred by patent is property; its infringement is a tortious taking of a part thereof. *Id.*
— Normal measure of damages for infringement is value of what was taken. *Id.*
— Upon accounting in suit for infringement of patented part of machine the commingled profits should be apportioned between what was and what was not covered by the patented portion. All that which was not patented belongs to the seller. If plaintiff's patent only covered part of the patented machine and created only part of the profits he must take initiative in presenting evidence looking to the apportionment of profits. *Id.*
— Adequate basis is not laid for assessment of damages for loss of sale by showing number of infringing machines sold by defendant unless plaintiff shows that he lost that number of sales and could have delivered the machines. *Id.*

PATENTS—*Continued.*

PAGE

— Value of what was taken may be shown by proof of established royalty, or if none by what would be a reasonable royalty. *Id.*

— Testimony of experts and of persons experienced in the particular business may be produced to show a proper apportionment of damages for infringement of a part of a patented machine. *Id.*

See **Costs.**

For designs. See **Copyright.**

For land. See **Public Lands.**

PENALTIES:

Courts of equity can relieve from unwarranted penalties for failure to comply with ordinance if complete compliance is impossible within prescribed period. *Missouri Pacific Ry. v. Omaha.* 121

See **Common Carrier; Constitutional Law; Georgia.**

PEONAGE:

Congress, in passing peonage laws under Thirteenth Amendment undertook to strike down all laws in States and Territories which permitted, or attempted to maintain, voluntary or involuntary service or labor of persons or peons in liquidation of debts or obligations. *United States v. Reynolds* 133
Statutory provisions of Alabama by which persons charged with and confessing crime can be released on bond with surety who pays fine under liability if separate punishment for failure to carry out contract with surety for liquidating debt by service fall within the prohibitions of the Thirteenth Amendment and amount to peonage. *Id.*

Peonage is a condition of compulsory service based on the indebtedness of the servant to the master. Constant fear of punishment renders the work compulsory. *Id.*

The basal fact in peonage is the indebtedness of the peon. *Id.*

PENAL CODE. See **Criminal Code; Criminal Law; Mail; Words.**

PERSONAL INJURIES. See **Employers' Liability Act; Ohio.**

PHYSICIANS:

Evidence of, in action for personal injuries brought under Employers' Liability Act excluded under § 2535, subd. 6, Rev. Stat., Arizona. *Arizona & New Mex. Ry. v. Clark.* . . . 669

PLEADING:

PAGE

Same precision not required in bills of equity as in pleadings at law, but convenient degree of certainty should be adopted so as to maintain plaintiff's case. *Garrett v. Louis. & Nash.*

R. R. 308

Declaration should contain averment of every fact necessary to be proved in order to sustain plaintiff's right to recover and in order to let in proof, that parties may not be surprised, or the jury misled. *Id.*

When plaintiff after permission refused to amend, so as to allege pecuniary damage due to death of son, evidence was properly excluded as to such damage and the complaint properly dismissed. *Id.*

Where plaintiff has refused to amend and proof therefore properly excluded, judgment of dismissal should be affirmed and case not remanded for new trial on declaration being amended. *Id.*

Questions concerning effect of allegations and admissions which conflict with denials in same pleading are matters of local pleading and practice and the rule of the state court is not open to review here. *Washington v. Miller* 422

See **Evidence; Jurisdiction of District Court; Michigan.**

POLICE POWER:

In determining whether municipal ordinance unconstitutional under Fourteenth Amendment, this court will not disturb findings of two courts below regarding object and necessity of exercising police power. *Missouri Pacific Ry. v. Omaha.* 121

Municipality may exercise police power when authorized by State with same force as State itself. *Id.*

Police power properly exercised in compelling construction of viaduct over railway at company's expense. Ordinance not unconstitutional as deprivation of property without due process of law. *Id.*

While State may adopt reasonable police measure even though incidentally affecting interstate commerce it has no power to exclude from its limits foreign corporations or others engaged in such commerce or to impose such unreasonable conditions and requirements as will better their right to carry it on. *Sioux Remedy Co. v. Cope* 197

May be exercised by State or municipality authorized although incidentally affecting interstate commerce, Congress not having acted in regard thereto, if it does not attempt to

POLICE POWER—Continued.

PAGE

regulate or burden such commerce. *South Covington Ry. v. Covington* 537

So as to regulations as to passengers riding on platform of motor cars and requiring cars to be kept clean, although used in interstate commerce. *Id.*

Not so as to number of passengers to each car or number of cars to be run, or temperature which must be maintained in cars, such regulations are burdens on interstate commerce. *Id.*

Movements of motor vehicles on highways is attended with constant danger and is proper subject for reasonable regulation in the exercise of its police power by the State and in the absence of legislation by Congress. So as to Maryland Motor Vehicle Law in respect to the points passed on. *Hendrick v. Maryland* 610

See **Constitutional Law; Fourteenth Amendment; Ordinances.**

PORTO RICO:

Government of Porto Rico is of such nature as to come within general rule of exemption from suit. The right of exemption must be fairly raised and a sovereign government may by appearance or pleading consent to litigate a case on its merits. *Porto Rico v. Emmanuel* 251

Sections 1803 and 1869, Civil Code, as to which period of prescription applies to a case against Porto Rico and what starts the statute. *Id.*

See **Appeal and Error; Conditional Sale; Jurisdiction; Power of this Court.**

Cases coming from Porto Rico. *Monagas v. Albertucci* . . . 81
Porto Rico v. Emmanuel . . . 251
Mercelis v. Wilson 579

POST OFFICE. See **Mails.****PRACTICE:**

This court follows decision of state court in regard to, and adopts its construction of, state statute: Extent of rule.

United States v. Reynolds 133

St. Louis S. W. Ry. v. Arkansas 350

— In determining whether assessment can be levied for past improvement. *Willoughby v. Chicago* 45

— In determining whether proper practice in case of non-user of franchise is by *quo warranto* or to repeal it by subse-

PRACTICE—*Continued.*

PAGE

quent ordinance and test the validity in a legal proceeding.	
<i>N. Y. Electric Lines v. Empire City Subway</i>	179
<i>This court does not necessarily follow decision of state court but determines for itself:</i> Whether there was an existing contract which might be impaired by subsequent legislation.	
<i>Louisiana Ry. & Nav. Co. v. New Orleans</i>	164
<i>N. Y. Electric Lines v. Empire City Subway</i>	179
Determination of nature and effect of a scheme of taxation in state tax statute. <i>St. Louis S. W. Ry. v. Arkansas</i>	350
<i>Decision of two courts below not disturbed by this court:</i> Upholding arrangement as to use of name in connection with manufacturing pens. <i>L. E. Waterman Co. v. Modern Pen Co.</i>	88
As to allowance of trustees' commissions. <i>Magruder v. Drury</i>	106
— Findings in regard to necessity of exercising police power by municipality. <i>Missouri Pacific Ry. v. Omaha</i>	121
— As to propriety of subrogation of trustee in bankruptcy. <i>Fallows v. Continental Savings Bank</i>	300
— Certificate of state court cannot bring an additional Federal question into a record which does not otherwise show it to exist. <i>Cleveland & Pittsburgh R. R. v. Cleveland</i>	50
<i>General rules:</i> Whether Federal court can grant new trial after end of term is question of power and not of procedure; state statutes do not apply. <i>United States v. Mayer</i>	55
— Findings of fact sufficient to support conclusions of law. <i>Monagas v. Albertucci</i>	81
— State may prescribe reasonable rules of practice and procedure in regard to special appearances and make them under reasonable conditions amount to general appearance. <i>Western Indemnity Co. v. Rupp</i>	261
— Where petition for mandamus directly to court below to correct record is denied, and petition for certiorari to same court submitted at same time, is granted, the court may, where parties have so stipulated, treat the papers filed as the record and regard the case as submitted on the merits. <i>Lovell-McConnell Co. v. Auto Supply Co.</i>	383
— Mandate of the appellate court must be followed by the court to which the case is remanded. <i>Shapiro v. United States</i>	412
— Whole case must come here; this court will not take a case in fragments. <i>Id.</i>	
— While trial court may submit to the jury the question of party's residence to determine whether diverse citizenship	

PRACTICE—Continued.

PAGE

exists, it is not bound so to do; in its discretion, it may dispose of the case on the testimony. *Gilbert v. David* 561

— Where practice has not been established as to production of evidence in suit for infringement of patented part of machine where profits should be apportioned, case may be reversed and remanded with instructions as to how to proceed without costs to either party. *Dowagiac Mfg. Co. v. Minnesota Plow Co.* 641

See **Aliens; Appeal and Error; Bill of Exceptions; Constitutional Law; Construction; Costs; Hawaii; Judgments and Decrees; Jurisdiction; Jury; New Trial; Pleading; Stare Decisis.**

PREFERENCES AND DISCRIMINATION. See **Interstate Commerce Commission.**

PRESCRIPTION AND LIMITATIONS. See **Porto Rico.**

PRESUMPTIONS:

This court will not assume a depositor's guaranty fund will not be faithfully managed and applied by the state officers in charge thereof under the statute. *Lankford v. Platte Iron Works* 461

All acts of Congress presumptively valid. *Henry v. Henkel* 219

As to state legislation. *St. Louis S. W. Ry. v. Arkansas* . . . 350

Hendrick v. Maryland. 610

Also as to validity of rates established by commission. *Louis. & Nash. R. R. v. Finn* 601

Of negligence fixed by Mississippi statute in case of certain classes of accidents. *Easterling Lumber Co. v. Pierce* 380

PRIVATE LAND CLAIMS:

Statutory reservation of lands within territory acquired under treaty which are covered by claims of private parties may be subject to repeal. *Lane v. Watts* 17

PRIVILEGE TAXES. See **Oklahoma; Taxes and Taxation.**

PROCEDURE, LOCAL. See **Hawaii; Judgments and Decrees; Practice; Res Judicata.**

PROCESS, COMPULSORY PROCESS FOR. See **Evidence.**

PROFITS, FOR INFRINGING PATENT. See **Patent.**

PROHIBITION, WRIT OF. See **Appeal and Error.**

PROOF, BURDEN OF. See **Burden of Proof; Evidence.** PAGE

PROPERTY, IN PATENTS. See **Patent.**

Deprivation of. See **Constitutional Law; Fourteenth Amendment.**

PUBLIC HEALTH AND SAFETY:

Validity of state regulation affecting interstate commerce.

South Covington Ry. v. Covington. 537

PUBLIC LANDS:

Lands not reserved but necessarily included in either one or the other of two grants are not public lands or subject to disposal by Land Department. *Lane v. Watts* 17

Grants under § 9 of Land Grant Act of July 25, 1866, whether *in presenti* or a covenant to convey depended on fulfillment of express condition that Indian title be extinguished and land become part of public domain. *Missouri, Kansas & Texas Ry. v. United States.* 37

Indian lands included within grant of. *Id.*

While the right of way statute applies only to public lands and not to those segregated from public domain, settlers may, under Rev. Stat., § 2288, grant rights of way over lands before proof; Reclamation Act of 1902 does not affect these provisions. *Minidoka &c. R. R. v. United States.* 211

Privileges to grant rights of way over homesteaders' lands were renewed and extended by act of March 3, 1903, c. 1424, 33 Stat. 991.

See **Public Policy.**

PUBLIC POLICY:

The policy of United States to protect Indians in their allotments cannot be regarded or disregarded at will by the States. *Sage v. Hampe.* 99

To make its policy against alienation of allotments by Indians effective, the United States may make the prohibitions binding on others than Indians. *Id.*

A contract tending to bring improper influence on an officer of the United States and to induce attempts to mislead him is contrary to public policy and void. *Id.*

Policy of United States has been to encourage building of railroads in western States and in so doing has granted lands to aid in their construction and has also provided means by which companies not having grants of land can under reasonable conditions acquire rights of way over public lands.

Minidoka &c. R. R. v. United States 211

PUBLIC POLICY—*Continued.*

PAGE

The application of the principle of public policy embodied in § 4 of the Interstate Commerce Act as amended June 8, 1910, is to be determined by the substance of things not names, otherwise the statute would be inefficacious. *United States v. Louis. & Nash. R. R.* 314

PURE FOOD LAWS. See **Meat Inspection Act.**

QUARANTINE ACTS:

Act of 1905 applied only to corporations and its penal terms did not include receivers of corporations, but under the act of 1913 those terms refer to all common carriers and include receivers of railroad corporations acting as common carriers. *United States v. Nixon* 231

QUARTERMASTER GENERAL. See **Contract.**

RACE DISCRIMINATION. See **Common Carrier.**

RAILROADS:

Municipal ordinance requiring railroad company to erect viaduct over crowded street in Omaha at its own expense held not unconstitutional. *Missouri Pacific Ry. v. Omaha* . . 121

Railroads may be required to furnish separate, but equal, accommodations for persons of white and African races, e. g., Oklahoma Separate Coach Law. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151

Demurrage for railroad cars billed for reconsignment may attach at the customary point where such cars are held although not actually the point named as destination. *Berwind-White Co. v. Chicago & Erie R. R.* 371

See **Common Carrier; Constitutional Law; Discrimination; Evidence; Georgia; Jury; Michigan; Penalties; Police Power; Public Lands; Public Policy; Rates; State.**

RATES:

The establishment of rates is a legislative and not a judicial function. *Detroit & Mackinac R. R. v. Michigan R. R. Commission* 402

The function of courts in reviewing orders establishing rates is judicial and not legislative. *Id.*

Where special rates were voluntarily established and maintained for many years after the avowed reason for introducing them had ceased to exist and the carrier's reason for advancing them was not inadequacy but because they gave

RATES—*Continued.*

PAGE

- rise to discrimination, reasonable inference exists that advanced rates are too high, sufficient to support an order of the railroad commission having jurisdiction reestablishing the original rates. *Louis. & Nash. R. R. v. Finn* 601
- Reparation order held proper in proceeding to reestablish original rates on ground advanced rates excessive. *Louis. & Nash. R. R. v. Finn* 601
- Right to determine relative rate for long and short haul. *United States v. Louis. & Nash. R. R.* 314
- See **Constitutional Law; Interstate Commerce Commission; Kentucky.**

REAL ESTATE:

- Contract held to be one of conditional sale and not mortgage. *Monagas v. Albertucci* 81
- Proceedings in suit to quiet title. *Mercelis v. Wilson* 579
- Contract to convey Indian lands. *Sage v. Hampe* 99

RECEIVERS:

- Of corporation is not a corporation or included within penal terms of the Quarantine Act of March 3, 1905; but receiver of a railroad corporation is a common carrier and under the act as amended in 1913 is within those terms. *United States v. Nixon* 231

RECLAMATION ACT:

- Of June, 1902, does not affect § 2288, Rev. Stat., permitting settlers to give rights of way over their claims to railroad companies. *Minidoka &c. R. R. v. United States* 211

RECORD:

- Additional Federal questions cannot be imported into it by certificate of state court if record does not otherwise show them to exist.

See **Clerk; Practice.**

REMEDIES. See **Competition.**

REMOVAL OF CAUSES:

- Where the cause was removed from the state to the District Court, and comes here solely because plaintiff in error is incorporated under a Federal statute, this court goes no further than to inquire if there was plain error. *Texas & Pacific Ry. v. Rosborough* 429
- Of suit pending under Employers' Liability Act in inferior court of Territory of Arizona to District Court under § 33 of Enabling Act. *Arizona & New Mex. Ry. v. Clark* 669

REPEAL:

PAGE

- Statutory reservation of lands within territory acquired by treaty which are covered by claims of private parties may be subject to repeal. *Lane v. Watts* 17
- Repeals by implication not favored and occur only where conflict between earlier and later statute are so irreconcilable that effect cannot be given to both. *Washington v. Miller* . . 422
- See **Statute**.

RES JUDICATA:

- Even if a case holding that a prior decision should not be disturbed did not again make matter *res judicata*, the later case may be referred to as authority in regard to local procedure. *John Ii Estate v. Brown* 342
- In any ordinary, even though judicial, proceeding a party is bound to present his whole case to the court. He is bound by the judgment. *Detroit & Mackinac R. R. v. Michigan R. R. Commission* 402
- See **Judgments and Decrees; Michigan; Sovereignty; Stare Decisis**.

RESTRAINT OF TRADE. See **Anti-trust Act**.

RESTRICTIONS ON ALIENATION. See **Indians**.

REVIEW, BILL OF. See **Bill of Review**.

REVISED STATUTES:

For sections of, cited in opinions, see Table of Statutes cited, at front of volume.

RULES. See **Equity**.

SETTLERS. See **Public Lands**.

SEVENTH AMENDMENT. See **New Trial**.

SHERIFF:

- Duty to levy under execution. *Fallows v. Continental Savings Bank* 300

SHERMAN ACT. See **Anti-trust Act**.

SLEEPING CARS:

- Taxes on companies. See **Taxes**.
- If separate accommodations required for white and African races, they must be equal. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151

SOUTH DAKOTA:

PAGE

Sections 883-885, Rev. Codes 1903, excluding foreign corporations from courts to enforce payment for goods sold in interstate commerce except under burdensome conditions held unconstitutional under commerce clause of Federal Constitution. *Sioux Remedy Co. v. Cope* 197

SOVEREIGNTY:

The judgments and decrees of courts of former sovereignty should be respected and not lightly disturbed by courts of present sovereignty on grounds of form and procedure. *John Ii Estate v. Brown* 342
 Waiver by State of immunity from suit. See **Appearance**.
 See **Eleventh Amendment; Oklahoma; Porto Rico**.

SPECIAL ASSESSMENTS. See **Taxes and Taxation**.

STARE DECISIS:

Decisions of state courts regard similar state statutes to one under review followed notwithstanding possible distinctions. *Pullman Co. v. Knott* 23
 Overruling its own earlier decisions does not amount to deprivation of property without due process of law where vested rights are not interfered with. *Willoughby v. Chicago* 45
 Mere change in judicial decision does not amount to impairment of obligation of contract within § 10 of Art. 10 of the Federal Constitution. *Cleveland & Pittsburgh R. R. v. Cleveland*. 50
 The highest court of the State may depart from its former decisions in construing a state statute if it deems them untenable; and in that event this court accepts the latest construction and confines its attention to determining the constitutionality of the statute as so construed. *Sioux Remedy Co. v. Cope*. 197
 Where this court in a case coming here on writ of error from the state court simply accepted the ruling of that court that under the applicable state statute a non-resident alien could not maintain action for death of relative, the decision is confined to that case. *McGovern v. Phila. & Reading R. R.* 389
 The decisions of state tribunals regarding the interest which the State has in a fund administered by a state board is an important element to be considered by this court in determining that question. *Lankford v. Platte Iron Works* 461
 See **Bill of Review; Judgments and Decrees; Res Judicata**.

STATES:

PAGE

- May not disregard policy of United States in regard to protection of Indians by restricting alienation of allotments. *Sage v. Hampe* 99
- Has power to require carrier to furnish separate, but equal accommodations for white and African races. *McCabe v. Atchison, Topeka & Santa Fe Ry.* 151
- Slick Rock and Tellico Basin sections of boundary between North Carolina and Tennessee determined according to judgment of the Commission of 1821. *North Carolina v. Tennessee* 1
- Consent of Congress not necessary to agreement between States for settlement of boundary when in pursuance of former cession agreement which had been accepted by Congress. *Id.*
- This court does not necessarily follow decisions of state courts in regard to constitutionality of state statutes under the Federal Constitution. *United States v. Reynolds* 133
- The validity of a system of state laws will be adjudged by its operation and effect upon rights secured by the Federal Constitution and offenses punished by Federal statutes. *Id.*
- State may require foreign corporation and others using its courts to comply with reasonable conditions relating to costs and procedure, but may not subject them to unreasonable conditions in connection with suits brought to enforce payment of goods sold in interstate commerce. *Sioux Remedy Co. v. Cope* 197
- A State cannot subject a Federal instrumentality to a privilege or occupation tax, so held as to coal mines in Oklahoma worked under leases made by United States under Choctaw and Chickasaw agreement of 1897. *Choctaw, Okla. & Gulf R. R. v. Harrison* 292
- The validity and priority of mortgage liens depends on the law of the State, and so held in bankruptcy proceedings. *Fallows v. Continental Savings Bank.* 300
- State courts presumed to declare provisions of a state tax statute either inoperative as to interstate commerce or else unconstitutional as interfering therewith. *St. Louis S. W. Ry. v. Arkansas* 350
- A State may enact that a conspiracy to accomplish what an individual is free to do shall be a crime. *Drew v. Thaw* . . . 432
- Decisions of tribunals of the State in regard to the interest of the State in a fund administered by state officers are an

STATES—Continued.

PAGE

important element to be considered by this court in determining what such interest is. *Lankford v. Platte Iron Works*

461

This court will not assume that a state fund administered by a state board will not be faithfully managed and applied.

Lankford v. Platte Iron Works

461

Under statute of State widow and minor children entitled to allowance for year's support for unadministered portion of estate of bankrupt pursuant to § 8 of the Bankruptcy Act.

Hull v. Dicks.

584

A State may not require license for navigating public waters of United States except in exceptional cases for compensation for improvements made by itself; but it may tax its own transportation corporations for privilege of carrying on corporate business within the State where the tax is based on that which is wholly intrastate. *Cornell Steamboat Co. v. Sohmer*

549

A State has power to prescribe reasonable regulations for motor vehicles moving in interstate commerce. *Hendrick v. Maryland*

610

Rights of citizens of United States to pass through a State of the Union are not interfered with by a reasonable license fee imposed by that State on motor vehicles. *Id.*

The reasonableness of the State's action in so far as it affects interstate commerce is always subject to inquiry and is always subordinate in that respect to the will of Congress. *Id.*

Eleventh Amendment: The state courts of Oklahoma having held that the statute creating the State Banking Board intended to give the State a definite title to the Depositors' Guaranty Fund, the fact that the fund is to be used to satisfy claims of beneficiaries does not take its administration from control of state officers or subject them to judicial control.

Lankford v. Platte Iron Works

461

Am. Water Co. v. Lankford

496

Farish v. State Banking Board.

498

Suit against the State Banking Board of Oklahoma to compel payments from and assessments for the Depositors' Guaranty Fund is a suit against the State. *Id.*

What amounts to waiver of immunity from suit. *Id.*

Under Thirteenth Amendment and Federal Statutes (Rev. Stat., §§ 1990, 5526; § 269, Crim. Code), Congress has undertaken to strike down all laws of States and Territories per-

STATES—Continued.

PAGE

mitting or maintaining peonage or compulsory service in liquidation of debt. *United States v. Reynolds* 133

See **Peonage**.

Under *Fourteenth Amendment* the constitution of the State is not taken up into the Fourteenth Amendment. *Pullman Co. v. Knott*. 23

A state tax good on existing facts will not be upset under equal protection provision of Fourteenth Amendment upon hypothetical or unreal possibilities. *Id.*

State has power to impose annual franchise tax on right to exist as corporation or to exercise corporate powers within the State based exclusively on property used in intrastate business. *St. Louis S. W. Ry. v. Arkansas* 350

May require registration of motor vehicles and prescribe reasonable license fees therefor, and the latter may be graduated according to horse power without violating the due process or equal protection provisions of the Fourteenth Amendment. *Hendrick v. Maryland*. 610

Has power to impose penalties sufficiently heavy to secure obedience to statute or regulations legally made thereunder. *Wadley Southern Ry. v. Georgia* 651

As to limitations of Fourteenth Amendment on the State's power of taxation and exercise of police power, see **Constitutional Law; Construction; Fourteenth Amendment; Interstate Commerce; Police Power; Practice**.

STATUTES:

Construction of: Construing statute of another State as not having extraterritorial effect does not amount to denying it full faith and credit. *Western Indemnity Co. v. Rupp* 261

Construction of statute based on treaty. *United States v. Portale* 27

Effect of putting statutes of a State into effect in a Territory of the United States as a complete system. *Adkins v. Arnold* 417

Quære, whether act of June 21, 1860, repealed *pro tanto* provisions of § 8 of Act of July 22, 1854. *Lane v. Watts* 17

Conflict of: Statutes although conflicting must be reconciled if possible and intent of legislature ascertained and given effect. *A. Bryant Co. v. N. Y. Steam Fitting Co.* 327

Where there is no incompatibility, a special statute is not repealed by a later general statute but the former remains in force as an exception to the later. *Washington v. Miller* 422

Repeals by implication are not favored. *Id.*

STATUTES—*Continued.*

PAGE

One seeking to strike down a statute as unconstitutional must be directly and personally affected by it. <i>McCabe v. Atchison, Topeka & Santa Fe Ry.</i>	151
<i>Jeffrey Mfg. Co. v. Blagg</i>	571
<i>Louis. & Nash. R. R. v. Finn</i>	601
<i>Hendrick v. Maryland.</i>	610

For all statutes, Federal and state, construed, applied or cited, see Table of Statutes Cited in front of this volume. See also **Congress, Acts of, Construed.**

Of Limitations. See **Limitations.**

Construction of. See **Construction.**

Carrying out Public Policy. See **Public Policy.**

See **Criminal Appeals Act; Criminal Law.**

State statutes construed. See **Construction; Fourteenth Amendment.**

Statutes affecting Descent and Distribution of Indian Allotments under Cherokee Agreements construed in separable clauses. See **Constitutional Law.**

STOCKHOLDER:

Jurisdiction of Federal court of suit of stockholder against corporation to enforce a remedy of the corporation controlled by Equity Rule No. 27 (formerly No. 94). <i>Wathen v. Jackson Oil Co.</i>	635
--	-----

STREETS:

Franchises for use of. See **Franchises; New York.**

Use of by motor vehicles; see **Maryland.**

STRIKES. See **Anti-trust Act.**

SUBROGATION:

Subrogation to rights of depositors in an insolvent bank in Oklahoma does not give right to sue state officers administering the Depositors' Guaranty Fund. <i>Farish v. State Banking Board.</i>	498
Right of trustees in bankruptcy. See Bankruptcy.	

SUIT, RIGHT OF. See **Action; Subrogation.**

SURGEON. See **Physician.**

TARIFF:

Rates of demurrage in cars and method of filing tariff therefor. <i>Berwind-White Co. v. Chicago & Erie R. R.</i>	371
Suppression clause in declaration required to be made by	

TARIFF—*Continued.*

PAGE

- agent-consignee of imported goods by sub-section 10 of § 28 of Tariff Act of 1909 relates to omission of matter proper to be included in the invoice and account attached and not to independent facts. *United States v. Salen* 237
- Notwithstanding this, Congress has given collectors power to ascertain such independent facts by other provisions of law. *Id.*
- Rule of construction of tariff acts. *Id.*

TAXES AND TAXATION:

- Cases involving validity, application and construction of tax statutes:
- Florida Sleeping Car Company Tax. *Pullman Co. v. Knott*. 23
- Street Assessment in Chicago. *Willoughby v. Chicago* 45
- Oklahoma Coal Mining Tax. *Choctaw, Okla. & Gulf R. R. v. Harrison* 292
- Arkansas Annual Franchise Tax. *St. Louis S. W. Ry. v. Arkansas* 350
- New York tax on transportation companies. *Cornell Steamboat Co. v. Sohmer*. 549
- Maryland Motor Vehicle Law. *Hendrick v. Maryland* 610
- A state tax good upon existing facts will not be upset under equal protection provision of Fourteenth Amendment upon hypothetical or unreal possibilities. *Pullman Co. v. Knott* 23
- Provision in Florida statute proper state officers fix amount of gross receipts on which tax is based in default of return not unconstitutional under due process clause of Fourteenth Amendment. *Id.*
- This court on writ of error based on lack of power to make assessment cannot inquire into facts found by state court as to value, extent of benefits, etc. *Willoughby v. Chicago* 45
- Whether assessment can be levied for past improvement depends on law of the State and this court follows construction of the statute by the state court. *Id.*
- Where such could be levied against original owners, purchasers take subject to same liability and assessment is not deprivation of property without due process of law. *Id.*
- A State cannot subject a Federal instrumentality to privilege or occupation tax. *Choctaw, Okla. & Gulf R. R. v. Harrison* 292
- Neither courts or legislature by giving a tax a particular name can take from this court its duty to consider its real nature and effect. *Id.*

TAXES AND TAXATION—*Continued.*

PAGE

Where manifest purpose of tax is to reach all sales and secure a percentage thereon and is in addition to *ad valorem* taxes it is in effect a privilege or occupation tax. *Id.*

The Oklahoma tax on coal mining held to be a privilege or occupation tax and that State cannot impose it on company operating mine under lease from United States made in pursuance of Choctaw and Chickasaw agreement. Lessees are instrumentalities of the Federal Government. *Id.*

In determining nature of a state tax and constitutionality of statute imposing it, this court must regard substance rather than form. The controlling test is found in the operation and effect of the statute as applied and enforced.

St. Louis S. W. Ry. v. Arkansas 350

While concluded by the decision of the highest court of the State as to the mere construction of a state tax statute, this court is not concluded by that court's characterization of the scheme of taxation in determining whether the statute infringes constitutional rights. *Id.*

The Fourteenth Amendment does not impose iron clad rule upon States with respect to internal taxation or prevent double or unequal taxation if not based on arbitrary distinctions. *Id.*

State may impose annual franchise tax based exclusively on property within State and used exclusively in intrastate business. *Id.*

But payment must not be made a condition for carrying business including interstate business. Enforcement should be left to ordinary means of collection. *Id.*

A provision providing such a forfeiture might if inseparable render the statute imposing the tax unconstitutional. *Id.*

If the question is not involved this court will not declare provision to enforce payment of a tax by forfeiture of franchise instead of by ordinary means to collect debt as inseparable in advance of a decision so construing the statute by the state court. *Id.*

Arkansas Annual Franchise Tax not unconstitutional as denying due process or equal protection of the law or under commerce clause as to the points involved in this action. *Id.*

A State does not violate commerce clause by taxing its own transportation corporations for privilege of carrying on business in corporate capacity within the State based on gross earnings on transportation originating and terminating

TAXES AND TAXATION—Continued.

PAGE

- within State and expressly excluding interstate business.
Cornell Steamboat Co. v. Sohmer 549
 Transportation between points in same State not interstate commerce so as to be beyond taxing power of State because part of the journey is outside of State. *Id.*
 So held as to § 184, Tax Law of New York as applied to earnings of corporation engaged in towing between New York Harbor and other points in New York State on tows made up on New Jersey side of the Hudson River for convenience. *Id.*
 State may impose reasonable license fee on motor vehicles including those owned by non-residents and moving in interstate commerce. *Hendrick v. Maryland* 610

TENNESSEE:

- Slick Rock and Tellico Basin sections of boundary between Tennessee and North Carolina determined according to judgment of Commission of 1821. *North Carolina v. Tennessee* 1
 Under Cession Act of 1789 further consent of Congress to agreement between North Carolina and Tennessee to settle boundary was not essential under Art. I, § 10, Cl. 3. *Id.*
 Bill of review in regard to land claimed under grants of Tennessee but actually located in North Carolina refused. *Hopkins v. Hebard* 287

TERMS OF COURT. See **Judgments and Decrees; Jurisdiction.**

TERRITORY:

- Quære*, whether act of August 4, 1854, incorporating territory acquired under Gadsden Treaty and making it subject to laws of New Mexico made provisions of § 8 of the Act of July 22, applicable thereto. *Lane v. Watts* 17
 See **Alaska; Arizona; Hawaii; Porto Rico; Practice.**

THIRTEENTH AMENDMENT. See **Alabama; Peonage; States.**

TITLE TO LAND:

- Question of superior title of contesting claimants cannot be settled in action to which one of them is not a party. *Lane v. Watts* 17
 See **Jurisdiction.**

TRADE NAME. See **Corporations.**

PAGE

TRANSPORTATION:

Taxes on transportation companies imposed by statute of New York and based on intrastate business held not unconstitutional. *Cornell Steamboat Co. v. Sohmer* 549
See **Interstate Commerce; Railroads.**

TREATIES:

A statute based on an international agreement should be literally construed so as to effectuate its object. *United States v. Portale* 27
So held as to provisions in the White Slave Traffic Act and the agreement of between the United States and Great Britain in regard to white slave traffic. *Id.*
Statute granting lands to a railroad company will not be construed as including Indian lands afterwards allotted in severalty under a treaty made immediately prior to the enactment of the statute as to do so would impute bad faith to the Government. *Missouri, Kansas & Texas Ry. v. United States*..... 37
Treaty of 1913 with Italy giving non-resident citizens of Italy right to maintain action for damages caused by death of relative and favored nation clause in treaty with Great Britain involved in action under Employers' Liability Act but case decided on different point. *McGovern v. Phila. & Reading R. R.*..... 389
See **Indians; Jurisdiction of this Court.**

TRIAL:

Habeas corpus not intended as substitute for functions of trial court. *Henry v. Henkel*..... 219
See **Jury; New Trial.**

TRUSTEES:

A trustee can make no profit out of trust and even though estate not a loser may not participate in commissions on sale of investments to estate by firm of which he is member. *Magruder v. Drury*..... 106
Entitled to commissions in District of Columbia on estate administered. *Id.*
See **Judgments and Decrees.**
Bankruptcy trustees; liens to which subrogated. See **Bankruptcy.**

UNFAIR LISTS. See **Anti-trust Act.**

PAGE

UNFAIR TRADE. See **Competition.**

UNION LABELS. See **Anti-trust Act.**

UNITED STATES:

- Bad faith in dealing with Indians will not be imputed to Government of United States. *Missouri, Kansas & Texas Ry. v. United States.* 37
- Consent of United States attorney cannot confer jurisdiction on District Court to vacate judgment in criminal cause after end of term or debar United States from subsequently raising question of jurisdiction. *United States v. Mayer* 55
- A contract tending to bring improper influence on officer of United States in regard to Indian allotments and to induce attempts to mislead him is contrary to public policy and void. *Sage v. Hampe* 99
- United States can make its prohibitions on alienation on Indian allotments binding on others than Indians so as to make its policy effective. *Id.*
- Policy of United States in protecting Indians in their allotments cannot be regarded and disregarded at will by the State. *Id.*
- Public policy of United States has been to encourage building of railroads in western States. *Minidoka &c. R. R. v. United States.* 211
- State cannot tax instrumentality of United States. Lessees of coal mines under leases from United States made pursuant to Choctaw and Chickasaw Agreement of 1897 not subject to privilege or occupation tax by Oklahoma. *Choctaw, Okla. & Gulf R. R. v. Harrison* 292
- Laws of United States as to navigation of navigable waters are superior to those of the States, but a State may tax a transportation corporation on wholly intrastate business although carried on in navigable waters. *Cornell Steamboat Co. v. Sohmer.* 549
- Right conferred by a patent of the United States is confined to the United States and its Territories. *Dowagiac Mfg. Co. v. Minnesota Plow Co.* 641
- Consent to agreement between States. See **Tennessee.**
See **Congress; Contract; Officer.**

VEHICLES. See **Motor Vehicles.**

VERDICT. See **Jury.**

VIADUCT:

PAGE

Construction of viaduct to carry railroad over crowded street at expense of company required by municipal ordinance and held not unconstitutional. *Missouri Pacific Ry. v. Omaha* 121

VIRGINIA:

Distinctions between provisions in constitutions of Virginia and of Michigan in regard to review by courts of orders made by State Railroad Commission. *Detroit & Mackinac R. R. v. Michigan R. R. Commission.* 402

WAIVER:

When the statute does not authorize waiver of exemption from suit, appearance of members of state board does not amount to such a waiver. *Farish v. State Banking Board* 498
Where state and Federal courts have concurrent jurisdiction voluntary appearance without objections may amount to waiver of defects in the removal proceedings. *Arizona & New Mex. Ry. v. Clark.* 669

WATERMAN PEN CASE:

Involving questions of right to use name of Waterman in connection with fountain pens by rival manufacturers under license of person of same name. *L. E. Waterman Co. v. Modern Pen Co.* 88

WATERS OF UNITED STATES. See Navigation; States; Taxes; United States.

WHITE SLAVE ACT:

Section 6 construed as including all persons connected with the act charged. *United States v. Portale* 27
See **Treaties.**

WIDOW:

Widow and minor children of bankrupt resident of Georgia dying after adjudicated bankrupt and before distribution of all of estate entitled to year's allowance from undistributed assets. *Hull v. Dicks* 584

WILL:

Devise by will included in restrictions on alienation of allotments under Choctaw and Chickasaw agreement ratified by act of July 1, 1902. *Taylor v. Parker* 42
Judgment of court of former sovereignty of Hawaii con-

WILL—*Continued.*

PAGE

struing a will should not be disturbed by courts of present
sovereignty on grounds mainly of form and procedure. *John*
Li Estate v. Brown. 342

WITNESSES. See **Congress; Habeas Corpus; Jurisdiction.**

WORDS AND PHRASES:

Defined: Current business as used in § 184, Penal Code.
United States v. Erie R. R.. 513

"Proof" as used in its popular sense as evidence. See **Evi-**
dence.

As used in Penal Statutes. See **Criminal Law.**

WORKMEN'S COMPENSATION LAW:

Of Ohio. See **Ohio.**

WRIT AND PROCESS. See **Jurisdiction.**

WRIT OF ERROR. See **Appeal and Error.**

WRITS OF PROHIBITION:

Circuit Court of Appeals may issue writs in support of its
appellate jurisdiction. *United States v. Mayer*. 55

Under certain conditions may issue writ of prohibition to
District Court to restrain it from granting after end of term
at which judgment was entered, new trial in criminal case
under review by writ of error from the Circuit Court of
Appeals. *Id.*







