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- Wisconsin statute imposing penalties on sleeping car companies if, lower berth being occupied, upper let down before actually engaged, not justified as health measure under police power, nor as amendment or alteration of charter of corporation under reserved power of State. *Chicago, M. & St. P. R. R. v. Wisconsin* 491
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- Foreign:* Whether corporation doing business within a district so as to have submitted itself to jurisdiction depends in each case upon the facts proved. *Washington-Virginia Ry. v. Real Estate Trust Co.* 185
- Where corporation operates railroads, has its general office and keeps one of its bank accounts outside of State, but has an office in Federal District of State, where its president and

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treasurer reside, and in which it keeps bank accounts, held, that service of process within such District, upon its president, sufficient to give District Court jurisdiction. *Id.*

Generally: Corporation grantee of portion of grantor's property not privy to grantee of another portion, and judgment against latter in suit in which corporation not a party, although some of its officers as individuals had notice thereof and took some part in defense, is not *res judicata* if acts of officers not authorized by corporation. *Kapiolani Estate v. Atcherley*. 119

See **Municipal Corporations.**

COURTS:

Without authority to entertain action for damages alleged to have been inflicted by rule or method of car distribution for interstate shipments until Interstate Commerce Commission has passed upon its reasonableness. *Pennsylvania R. R. v. Clark Coal Co.* 456

Where it appears that Commerce Act violated and requisite ruling as to unreasonableness of practice assailed made by Commission, § 9 applies and is exclusive, and shipper must elect between proceeding for reparation award before Commission or suit in Federal court; he cannot resort to state court. *Id.*

Establishment of literacy test for exercising suffrage is exercise by State of lawful power which is not subject to supervision by Federal courts. *Guinn v. United States* . . . 347

Conformity Act not applicable to power of court to inquire into conduct of jurors. Courts of each jurisdiction must be in position to adopt and enforce own self-preserving rules. *McDonald v. Pless* 264

Court may change its action after an interlocutory decree and party to action may avail himself of such change, unless decision has finality of *res judicata*. *Kapiolani Estate v. Atcherley* 119

See **Jurisdiction; Practice and Procedure.**

COVENANTS. See **Construction.**

CREEK INDIANS. See **Indians.**

CRIMINAL CODE:

Provisions construed:

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- In absence of inconsistent expression, Congress attributed with tacit purpose to maintain long established and important distinction between offenses essentially different.
- United States v. Rabinowich* 78
- Quære*, whether crime of concealing assets, as defined in § 29b (1) of Bankruptcy Act, can be perpetrated by other than bankrupt. *Id.*
- Error of trial court in misconstruing general order in Philippine Islands giving one accused of crime a specified time within which to plead, held not to vitiate proceedings and enlarge accused. *McMicking v. Schields* 99
- See **Conspiracy**.

CURTIS ACT. See **Indians**.

DAMAGES:

- Election officers refusing to allow persons to exercise suffrage because of unconstitutional state law, liable in civil action under § 1979, Rev. Stat. *Myers v. Anderson* 368
- As to recovery under Employers' Liability Act and duty of jury to apportion same, see *Central Vermont Ry. v. White* . . 507
- Kansas City Southern Ry. v. Leslie* 599

DAWES COMMISSION. See **Indians**.

DEBTOR AND CREDITOR. See **Bankruptcy**.

DECLARATION OF TRUST. See **Trusts and Trustees**.

DEEDS. See **Public Lands**.

DEFENSES:

- Substantive right or defense under Employers' Liability Act cannot be lessened or destroyed by state rule of practice. *Norfolk & Southern Ry. v. Ferebee* 269
- Carrier having goods of defendant in custody not bound to make defense to action of replevin and therefore is bound to give consignor notice. *Wells Fargo & Co. v. Ford* 503

DESCENT AND DISTRIBUTION:

- Under laws of Creek Indians, husband, whether citizen or not, took half interest in wife's property if she died without children. *Woodward v. DeGraffenried* 284
- Under Original Creek Agreement interest of allottees under Curtis Act who had died before ratification of agreement

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descended according to Creek laws and not according to those of Arkansas. *Id.*

Equitable title to allotment made under Curtis Act to Creek female citizen who dies before ratification of Original Creek Agreement vested in her heirs under § 28 of the agreement; and, if not within excepted classes, was confirmed by § 6 to her heirs to be determined by Creek laws of descent. *Id.*

Decisions of state court regarding descent of property, the earliest made within three years and after action commenced, not regarded as rule of property binding on this court. *Id.*

DISCHARGE IN BANKRUPTCY. See **Bankruptcy.**

DISTRICT COURTS. See **Jurisdiction, IV.**

DISTRICT OF COLUMBIA:

Jurisdiction under § 250 (6), Jud. Code, confined to construction of laws of general application throughout United States and does not include local laws. *United Surety Co. v. American Fruit Co.* 140

Quære, whether under § 250 (3) Jud. Code, jurisdiction does not exist where constitutionality of statute of United States, whether general or local, is involved. *United Surety Co. v. American Fruit Co.* 140

Sections 1538-1540 of Code, relative to *quo warranto*, are general and not local laws, and in case involving their construction this court has jurisdiction under § 250, Jud. Code. *Newman v. Frizzell.* 537

Sections 454, 455, of Code, not unconstitutional as depriving of property without due process of law. *United Surety Co. v. American Fruit Co.* 140

Under Code *quo warranto* extends to all persons in District exercising any office, civil or military. *Newman v. Frizzell.* 537

Under Code, third person may not institute *quo warranto* proceedings without consent of law officers of Government and Supreme Court of District. *Id.*

The Code makes a distinction between "third person" and "interested person." *Id.*

The general interest of a citizen and taxpayer is not sufficient to authorize the institution of *quo warranto* proceedings. *Id.*
 Citizen and taxpayer as such may not maintain *quo warranto* proceedings against incumbent of office on consent of court but without that of law officers of Government. *Id.*

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Interested person within meaning of provisions of Code is one who has an interest in the office peculiar to himself, whether the office be elective or appointive. *Id.*

DIVERSITY OF CITIZENSHIP. See **Jurisdiction; Removal of Causes.**

DRAINAGE. See **Railroads.**

DUE PROCESS OF LAW:

Cases involving questions of:

<i>Chicago, M. & St. P. R. R. v. Wisconsin.</i>	491
<i>Equitable Life Society v. Pennsylvania.</i>	143
<i>Great Northern Ry. v. Minnesota.</i>	340
<i>Mallinckrodt Works v. St. Louis.</i>	41
<i>Milwaukee Electric Ry. v. Wisconsin R. R. Comm.</i>	174
<i>Price v. Illinois.</i>	446
<i>Southwestern Tel. Co. v. Danaher.</i>	482
<i>United Surety Co. v. American Fruit Co.</i>	140

EJECTMENT:

In action brought by United States where result depended upon validity of probate and registration of the deeds under which the Government claimed, held, that such deeds were valid and properly probated and registered, and passed title.

<i>United States v. Hiawasse Lumber Co.</i>	553
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ELECTION OF REMEDIES. See **Interstate Commerce.**

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EMINENT DOMAIN. See **Constitutional Law; Property Rights.**

EMPLOYERS' LIABILITY ACT:

Scope: Congress intended that Act should be construed in light of prior decisions of Federal courts. *Central Vermont Ry. v. White* 507

Act abolishes fellow-servant rule and an employé does not assume risks arising from unknown defects in engines, machinery or appliances. *Id.*

That coal may be used in interstate commerce after being mined and transported does not make injury sustained by miner actionable under act. *Delaware, L. & W. R. R. v. Yurkonis* 439

Brakeman on intrastate car in train consisting of both intra-

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- state and interstate cars, engaged in cutting out former so that train may proceed on its interstate business, is, while so doing, engaged in interstate commerce and may maintain action under Act. *New York Cent. & H. R. R. Co. v. Carr* 260
- Contributory negligence as defense*: In action under Act, burden of proof as to whether employé guilty of contributory negligence is matter of substance depending on that statute, and not matter of mere state procedure. *Central Vermont Ry. v. White* 507
- Damages recoverable*: Recovery extends to pecuniary loss to widow and children of decedent and for conscious pain and suffering of decedent in period between injury and death. *Kansas City Southern Ry. v. Leslie*. 599
- Recovery of pecuniary damages by personal representative is in trust for beneficiaries designated by act and must be based upon their actual pecuniary loss. *Id.*
- Congress intended not to require that jury apportion damages in case of death by negligence. *Central Vermont Ry. v. White* 507
- Pleading and practice*: Granting partial new trial in actions under Act not commended. *Norfolk & Southern Ry. v. Ferebee*. 269
- Substantive right or defense under Act cannot be lessened or destroyed by state rule of practice, and ordinarily damages and contributory negligence are so blended that only in rare instances can question of amount of damages be submitted to jury without also submitting conduct of plaintiff. *Id.*
- Where, however, defendant did not ask for modification of special verdict, returned under state practice, finding defendant negligent and that plaintiff not guilty of contributory negligence, nor offer to introduce newly discovered evidence, nor offer any such evidence on partial new trial limited to amount of damages, question of damages could be considered without also considering plaintiff's contributory negligence. *Id.*
- Held not error for court to refuse to direct verdict for defendant on ground that proof failed to show negligence in allowing faster freight train to run into slower one in front of it, engineer of former having received notice that track was clear and that it might proceed, the evidence being sufficient to support verdict. *Central Vermont Ry. v. White* 507
- In action under Act, ruling of state court as to effect of

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amendments and replications are matters of state pleading and practice and are binding on this court. *Id.*

Where verdict increased by inclusion as beneficiaries of parties not entitled, defendant may raise question in manner appropriate under practice of trial court. *Id.*

Under Act as amended and § 28, Jud. Code, case brought in state court of competent jurisdiction under former, cannot be removed to Federal court upon sole ground of diversity of citizenship. *Kansas City Southern Ry. v. Leslie* 599

Jury need not, if it is in accord with local practice, specify different amounts awarded for the suffering before death and the death itself. *Id.*

EQUAL PROTECTION OF THE LAWS:

Cases involving questions of:

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EQUITY:

Court of equity reluctant to lend aid to enforce forfeiture.

Oregon & Cal. R. R. v. United States 393

Rules 75-77 call for presentation of only relevant evidence and exhibits; elimination of reduplication; and condensation into narrative form. *Louisville & Nashville R. R. v. United States.* 1

Questions of general equity jurisdiction and practice not open to consideration on direct appeal under § 238, Jud.

Code. *Geneva Furniture Mfg. Co. v. Karpen* 254

See **Actions; Injunction.**

ESTATES OF DECEDENTS:

Under the law in force in Oklahoma in 1900, where decedent's estate was less than \$300, it vested absolutely in the widow, and where probate court had so decided grantee of widow took good title, whether order of such court was made before or after purchase of property in question.

Perryman v. Woodward. 148

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ESTOPPEL:

That actions of railroads in connection with lands granted were known to government officials and that no action was

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taken in regard thereto does not amount to estoppel preventing Government from enforcing covenants contained in grants. *Oregon & Cal. R. R. v. United States* 393

EVIDENCE:

Principle that burden of proving contributory negligence on defendant enforced by Federal courts, even in States which hold that burden is on plaintiff to disprove. *Central Vermont Ry. v. White* 507

In attacking existing freight rate burden is on complainant to show unreasonableness in fact. *Louisville & Nashville R. R. v. United States* 1

Burden of proof is on public utility corporation to show regulating ordinance has effect to deprive it of fair return on property dedicated to public use. *Des Moines Gas Co. v. Des Moines* 153

In action under Employers' Liability Act, burden of proof as to whether employé guilty of contributory negligence is matter of substance depending on that statute, and not matter of mere state procedure. *Central Vermont Ry. v. White* 507

In action to recover property as a preference, burden of proof is upon trustee in bankruptcy. *Pyle v. Texas Transport Co.* 90

In suit on judgment after defendant's discharge in bankruptcy burden on plaintiff to show that judgment not identical claim scheduled. *Kreitlein v. Ferger* 21

Quare as to where burden under § 17 (3) of Bankruptcy Act lies. *Kreitlein v. Ferger* 21

Testimony of jurors may not be received to prove misconduct of himself or colleagues in reaching verdict. *McDonald v. Pless*. 264

In proving market value, accredited price-currents, lists and market reports, including those published in trade journals and newspapers which are considered trustworthy, are admissible. *Virginia v. West Virginia* 202

Equity rules 75-77 call for presentation of only relevant evidence and exhibits; elimination of reduplication; and condensation into narrative form. *Louisville & Nashville R. R. v. United States* 1

Omission of evidence from record commendable on appeal under act of Oct. 22, 1913. *Id.*

Under § 21, Bankruptcy Act, certified copy of discharge is

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- evidence of jurisdiction of court making it, of regularity of proceedings, and that order was made. *Kreitlein v. Ferger* 21
- While introduction of order in discharge may make out *prima facie* defense, case may be disposed of by showing from bankruptcy record that debt scheduled not same as one sued on, not provable debt, not properly scheduled, or that notice not properly given creditor. *Id.*
- In suit under § 16 of Commerce Act, report of Commission finding rate complained of unreasonable and awarding specified amount for reparation, is *prima facie* evidence of damages sustained, although evidential or primary facts not set forth. *Mills v. Lehigh Valley R. R.* 473

EX POST FACTO LAWS. See **Constitutional Law, X.**

FACTS. See **Law and Facts.**

FEDERAL GOVERNMENT. See **United States.**

FEDERAL QUESTION:

- Constitutional question without real foundation cannot be put forward as a mere pretext to open other questions not otherwise open. *United Surety Co. v. American Fruit Co.* . . . 140
- Questions of general law relative to admission of evidence, not involving construction of Federal statute, not reviewable under § 237, Jud. Code. *Central Vermont Ry. v. White* 507
- Objections to constitutionality of state statute held frivolous. *Mallinckrodt Works v. St. Louis.* 41

FEES:

- What allowable under Commerce Act. See *Mills v. Lehigh Valley R. R.* 473
- Unconstitutional discrimination in statutory allowance of attorney's fee. See *Atchison, T. & S. F. Ry. v. Vosburg.* . . . 56

FELLOW SERVANTS:

- Federal Employers' Liability Act abolishes fellow-servant rule. *Central Vermont Ry. v. White* 507

FIFTEENTH AMENDMENT. See **Constitutional Law, VIII.**

FIFTH AMENDMENT. See **Constitutional Law, VI.**

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GOING CONCERN VALUE. See **Public Utilities.**

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GRANTOR AND GRANTEE:

To make judgment against grantor available to grantee of title his covenantor must receive notice of suit and have opportunity to defend. *Kapiolani Estate v. Atcherley* 119

GUARDIAN AND WARD:

Under law of Hawaii, guardian cannot, through award of Land Commission, obtain title to property of ward which would be so immune from subsequent attack that the wrong would be without redress. *Kapiolani Estate v. Atcherley* . . 119

HABEAS CORPUS:

Habeas corpus cannot be employed as substitute for writ of error. *McMicking v. Shields* 99
 Mere error of law committed by trial court in criminal case in exercise of jurisdiction not reviewable by *habeas corpus*.
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Guardian cannot, through award of Land Commission, obtain title to property of ward which would be so immune from subsequent attack that the wrong would be without redress. *Kapiolani Estate v. Atcherley*. 119

HEIRS. See **Descent and Distribution; Estates of Decedents.**

HUSBAND AND WIFE:

Under laws of Creek Indians, husband, whether citizen or not, took half interest in wife's property if she died without children. *Woodward v. DeGraffenried*. 284
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Provisions of law of 1907, prohibiting sale of food preservatives containing boric acid, not unconstitutional under Fourteenth Amendment, or as to sales within State of ar-

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- articles involved in action in packages in which sold, under commerce clause. *Price v. Illinois*. 446
- Revised Stat. 1913, c. 114, § 84, requiring railroad to furnish cars within reasonable time after demand, not void as burden on interstate commerce. *Illinois Cent. R. R. v. Mulberry Coal Co.*. 275

INDIANS:

Restriction upon alienation in Original Creek Agreement not applicable to allotments made on behalf of deceased members of tribe. *Woodward v. De Graffenried*. 284

Under laws of Creek Indians, husband, whether citizen or not, took half interest in wife's property if she died without children. *Id.*

Equitable title to allotment made under Curtis Act to Creek female citizen who dies before ratification of Original Creek Agreement vested in her heirs under § 28 of the agreement; and, if not within excepted classes, was confirmed by § 6 to her heirs to be determined by Creek laws of descent. *Id.*

Under Original Creek Agreement interest of allottees under Curtis Act who had died before ratification of agreement descended according to Creek laws and not according to those of Arkansas. *Id.*

Under Original Creek Agreement, allotments made prior thereto under Curtis Act, if not inconsistent therewith, were to be treated as if made after ratification thereof, including designation of beneficiaries in case of death. *Id.*

Under § 11 of Curtis Act, allottees took no assignable or inheritable interest or anything more than an exclusive right to possess and enjoy the surface of the land for life. *Id.*

The only lawful authority possessed by Dawes Commission to allot Creek lands prior to adoption of Original Creek Agreement was derived from Curtis Act. *Id.*

INITIALS. See **Names.**

INJUNCTION:

That irreparable injury might result from orders of Interstate Commerce Commission, unless interlocutory injunction might be granted restraining their enforcement, influenced Congress to provide for direct appeal here from order granting or denying such injunction. *Louisville & Nashville R. R. v. United States*. 1

As general rule appellate court will not interfere with deci-

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sion of chancellor refusing interlocutory injunction unless abuse of discretion clearly appears; but where order sought to be enjoined operates to reduce revenue chancellor's discretion should be influenced by fact that decree may be equivalent of final one. *Id.*
 Enjoining railroad from violation of conditions contained in land grant. See *Oregon & Cal. R. R. v. United States* . . . 393

INSTRUCTIONS TO JURY:

Right to instruction that one entitled to damages for property taken. See *Brand v. Union Elevated R. R.* 586

INSURANCE COMPANIES:

State may tax life insurance companies upon business done within State and measure tax upon premiums on policies of residents thereof. *Equitable Life Society v. Pennsylvania* . . 143
 In estimating amount of premiums paid by residents of State as basis for taxation of insurance companies by State, those paid to foreign companies outside of State may be included without depriving such companies of their property without due process of law. *Id.*
 Pennsylvania act of 1895, levying tax on gross premiums of life insurance companies received for business done within State, does not amount to taking property beyond its jurisdiction as to premiums paid directly to a corporation outside of State. *Id.*

INTEREST:

It is not in derogation of its sovereignty that State be charged with interest if agreement so provides. *Virginia v. West Virginia* 202
 In a contract between sovereign States questions of whether debtor party liable for interest on ascertainment of amount due, rate of interest and period from which to be computed, determined by fair intendment of contract itself. *Id.*
 Contract on part of State to assume equitable proportion of interest-bearing debt means taking over of liability for both interest and principal. *Id.*
 Allowance in accounting between States. See *Id.*

INTERSTATE COMMERCE:

1. *What constitutes:* Essential character determines whether interstate or intrastate, and not mere billing at place where title passes. *Pennsylvania R. R. v. Clark Coal Co.* 456
 Whether railroad employé is engaged in interstate com-

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- merce must be decided in light of particular facts of each case. *New York Cent. & H. R. R. Co. v. Carr* 260
- Brakeman on intrastate car in train consisting of both intrastate and interstate cars, engaged in cutting out former so that train may proceed on its interstate business, is, while so doing, engaged in interstate commerce and may maintain action under Employers' Liability Act. *Id.*
- Transportation of liquor from State to State is interstate commerce and beyond interference by State. *Rossi v. Pennsylvania*. 62
- Where, for purpose of filling contracts with purchasers in other States, coal is delivered f. o. b. at mine, for transportation to such purchasers, movement and facilities required are those of interstate commerce. *Pennsylvania R. R. v. Clark Coal Co.* 456
- On failure of record to show that any of shipments involved in case, in which state court gave judgment against carrier for damages for discrimination under state law, were interstate shipments, court having found them intrastate, judgment affirmed. *Pennsylvania R. R. v. Mitchell Coal Co.* 251
2. *Scope of Commerce Act*: Commerce Act governs shippers no less than carrier. *Pennsylvania R. R. v. Clark Coal Co.* . . . 456
- Rules as to car distribution are within provision of § 3 of Commerce Act. *Id.*
- While act of 1906 gave new rights to shippers it preserved existing rights and did not supersede jurisdiction of state courts in any case where decision did not involve determination of matters calling for exercise of administrative power and discretion of Commission or relate to subjects within exclusive jurisdiction of Federal courts. *Illinois Cent. R. R. v. Mulberry Coal Co.* 275
3. *Power of Congress over*: Order requiring carrier to extend to connecting carriers, as to competitive business, same switching facilities as it extends to some of other connecting carriers, in regard to same class of business, not violative of due process under Fifth Amendment, nor violative of § 15 of Commerce Act. *Louisville & Nashville R. R. v. United States* 1
4. *Power of States over*: State may not, in case arising prior to Webb-Kenyon Law, punish one who sells and delivers liquor in original packages within State pursuant to orders solicited within State but delivered from without. *Rossi v. Pennsylvania*. 62
- Wilson Act does not subject liquor transported in interstate

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- commerce to state regulation until after arrival at destination and delivery to consignee or purchaser, even though transmitted in pursuance of order previously obtained within State where there is no statute prohibiting solicitation and taking of such orders without a license. *Id.*
- Effect of Webb-Kenyon Act to change general rule that State may not regulate commerce wholly interstate. *Adams Express Co. v. Kentucky* 190
5. *Burdens on and interference with:* State statute merely requiring railroad to furnish cars within reasonable time after demand not such direct burden as to be void in absence of legislation on subject by Congress. *Illinois Cent. R. R. v. Mulberry Coal Co.* 275
6. *Preferences and discriminations:* Common measure of value, applicable to some extent to freight charges, is comparison with amounts charged for same article by different persons. *Louisville & Nashville R. R. v. United States.* . . . 1
- In attacking existing freight rate burden is on complainant to show unreasonableness in fact. *Id.*
7. *Reparation:* Where it appears that Commerce Act violated and requisite ruling as to unreasonableness of practice assailed made by Commission, § 9 applies and is exclusive, and shipper must elect between proceeding for reparation award before Commission or suit in Federal court; he cannot resort to state court. *Pennsylvania R. R. v. Clark Coal Co.* 456
- After proceeding before and reparation by Interstate Commerce Commission, suit may be brought under § 16 of Commerce Act in either state or Federal court. *Id.*
- Where shipper secures from Interstate Commerce Commission award for discrimination in car distribution, his claim for damages can be prosecuted only under Commerce Act, even though action in state court brought before Commission has made the award. *Id.*
- Commerce Act does not allow any attorney's fee for reparation proceeding before Commission, but only for action in court based on reparation award. *Mills v. Lehigh Valley R. R.* 473
- In suit under § 16 of Commerce Act, report of Commission finding rate complained of unreasonable and awarding specified amount for reparation, is *prima facie* evidence of damages sustained, although evidential or primary facts not set forth. *Id.*
8. *Tariffs:* Mere distance not necessarily determining factor

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in fixing freight rates; competition largely entering therein.

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Finding of one of many rates to be higher than all others may raise presumption that single rate high; and if some of lower rates prescribed by Interstate Commerce Commission there is a *prima facie* standard for testing reasonableness of rate under investigation. *Id.*

Where Interstate Commerce Commission has fixed amount of rate in light of findings made on consideration of much and varied evidence, and such rate not claimed confiscatory, held that findings support order fixing rates. *Id.*

9. *Commodities Clause*: Commodities Clause of Hepburn Act made it unlawful for carriers to transport in interstate commerce any coal in which carrier had interest, direct or indirect. *United States v. Delaware, L. & W. R. R.* 516

Carrier engaged in mining coal may institute organization of coal company to buy or produce the coal so as to comply with terms of Commodities Clause, and give its stockholders opportunity to subscribe to the stock, but must dissociate itself from management of coal company as soon as same starts business. *Id.*

Mere stock ownership by railroad or its stockholders in producing company not test of illegality under Commodities Clause, but unity of management and *bona fides* of contract between carrier and producer. *Id.*

Commodities Clause and Anti-trust Act not concerned with interest of the parties, but with that of public; and if contract between carrier and producer is, as matter of law, in restraint of trade, or if producer is practically agent of carrier, transportation by carrier of article produced is unlawful. *Id.*

Under Commodities Clause carrier engaged in mining coal must absolutely dissociate itself from the coal before transportation begins; and if it sells at mouth of mine buyer must be absolutely free to dispose of it and have absolute control, nor should it sell to corporation managed by same officers as itself. *Id.*

Contract between carrier mining coal and buying company taking all of product, to be not illegal must leave buyer free to extend its business elsewhere as it pleases and to otherwise act in competition with carrier. *Id.*

Contract which enables railroad company to practically con-

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trol output, sales and price of coal and to dictate to whom to be sold, is illegal. *Id.*

10. *Original Package Doctrine*: Where character of shipment not shown, packages cannot be classed with the "original packages" within rule of protection against police laws of State. *Price v. Illinois*. 446

INTERSTATE COMMERCE COMMISSION:

Where Commission makes award to shipper complaining of unreasonable and discriminatory rates, as reparation, it expresses such decision as matter of ultimate fact, and form of expression is not confined to particular formula. *Mills v. Lehigh Valley R. R.* 473

Where complaint involves attack on method of car distribution for interstate shipments, action for damages not maintainable until reasonableness of method passed upon by Commission. *Pennsylvania R. R. v. Clark Coal Co.* 456

Under such conditions Commission has authority to examine into and report upon amount of damages sustained by shipper by reason of discrimination. *Id.*

Whether method of car distribution for mines furnishing coal f. o. b. at mine for shipment to other States is unjustly discriminatory, is question for Commission to pass upon. *Id.*

That irreparable injury might result from orders of Commission, unless interlocutory injunction might be granted restraining their enforcement, influenced Congress to provide for direct appeal here from order granting or denying such injunction. *Louisville & Nashville R. R. v. United States*. 1

INTOXICATING LIQUORS:

Except as affected by the Wilson and Webb-Kenyon acts, interstate transportation of liquor is left untouched and remains within sole jurisdiction of Congress. *Adams Express Co. v. Kentucky* 190

Webb-Kenyon Law does not prohibit all interstate shipment or transportation of liquor into dry territory, but its prohibitions are operative whenever, and only when, the liquor is to be dealt with in violation of law of State into which shipped. *Id.*

State may not, in case arising prior to Webb-Kenyon Law, punish one who sells and delivers liquor in original packages

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- within State pursuant to orders solicited within State but delivered from without. *Rossi v. Pennsylvania*. 62
- Transportation of liquor from State to State is interstate commerce and beyond interference by State. *Id.*
- Wilson Act does not subject liquor transported in interstate commerce to state regulation until after arrival at destination and delivery to consignee or purchaser, even though transmitted in pursuance of order previously obtained within State where there is no statute prohibiting solicitation and taking of such orders without a license. *Id.*

JOINER OF CAUSES. See **Actions.**

JUDGMENTS AND DECREES:

- Refusal of court, in action by owner of goods against carrier, to admit judgment obtained against carrier under which goods taken, on common law ground that notice of suit was not given to owner, does not amount to denial of full faith and credit. *Wells Fargo & Co. v. Ford*. 503
- When judgment provable debt in bankruptcy. See *Kreitlein v. Ferger*. 21

See **Res Judicata.**

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Provisions construed:

- Section 24. *Geneva Furniture Mfg. Co. v. Karpen*. 254
Herrmann v. Edwards. 107
- Section 28. *Kansas City Southern Ry. v. Leslie*. 599
- Section 48. *Geneva Furniture Mfg. Co. v. Karpen*. 254
- Section 51. *Geneva Furniture Mfg. Co. v. Karpen*. 254
- Section 237. *Central Vermont Ry. v. White*. 507
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- Section 238. *Geneva Furniture Mfg. Co. v. Karpen*. 254
- Section 241. *United States v. Cooke*. 613
- Section 250. *Newman v. Frizzell*. 537
United Surety Co. v. American Fruit Co.. 140
- Section 256. *Geneva Furniture Mfg. Co. v. Karpen*. 254

JUDICIAL DISCRETION:

As general rule appellate court will not interfere with decision of chancellor refusing interlocutory injunction unless abuse of discretion clearly appears; but where order sought to be enjoined operates to reduce revenue chancellor's discretion should be influenced by fact that decree may be

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equivalent of final one. <i>Louisville & Nashville R. R. v. United States.</i>	1

JUDICIARY. See **Courts; Jurisdiction.**

JURISDICTION:

I. Generally.

Jurisdiction is power to consider and decide as law may require; it is not to be declined because it is not foreseen with certainty that party invoking it may succeed. *Geneva Furniture Mfg. Co. v. Karpen* 254

II. Jurisdiction of this court.

1. *Over judgments of Circuit Court of Appeals:* To review judgment of Circuit Court of Appeals jurisdiction of District Court must have been rested not alone on diversity of citizenship, but also on substantial controversy under Constitution or laws of United States. *Delaware, L. & W. R. R. v. Yurkonis* 439

2. *Over judgments of Court of Appeals of District of Columbia:* Jurisdiction under § 250 (6), Jud. Code, confined to construction of laws of general application throughout United States and does not include local laws. *United Surety Co. v. American Fruit Co.* 140

Quære, whether under § 250 (3) jurisdiction does not exist where constitutionality of statute of United States, whether general or local, is involved. *Id.*
Sections 1538–1540 of District Code, relative to *quo warranto*, are general and not local laws, and in case involving their construction this court has jurisdiction under § 250, Jud. Code. *Newman v. Frizzell.* 537

3. *Over judgments of state courts:* Questions of general law relative to admission of evidence, not involving construction of Federal statute, not reviewable under § 237, Jud. Code. *Central Vermont Ry. v. White* 507

If it appears from opinion of trial court that constitutional question treated as sufficiently raised and specifically dealt with adversely to plaintiff in error, jurisdiction under § 237, Jud. Code, exists. *Mallinckrodt Works v. St. Louis.* 41

When question is whether particular law of Arkansas was or was not put into effect in Indian Territory by act of Congress, jurisdiction exists under § 237, Jud. Code, to review judgment of state court of Oklahoma. *Perryman v. Woodward* 148

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III. Of Circuit Court of Appeals.

In absence of averments in complaint showing cause of action under Constitution or laws of United States, judgment final. *Delaware, L. & W. R. R. v. Yurkonis*. 439

IV. Of District Court.

Rule that in absence of diversity of citizenship jurisdiction depends upon whether Federal cause of action stated in bill, applies to suits against national banks and their directors. *Herrmann v. Edwards*. 107

In absence of diverse citizenship, there is no jurisdiction of suit by stockholder against directors of national bank to compel reimbursement to bank for wrongfully investing its funds. *Id.*

No presumption of intent of Congress to make radical change in rule prevailing for many years relative to jurisdiction of suits against national banks. *Id.*

Intent of Congress to confer jurisdiction on Federal courts of all suits by and against national banks not presumed. *Id.*

Where corporation operates railroads, has its general office and keeps one of its bank accounts outside of State, but has an office in Federal District of State, where its president and treasurer reside, and in which it keeps bank accounts, held, that service of process within such District, upon its president, sufficient to give District Court jurisdiction. *Washington-Virginia Ry. v. Real Estate Trust Co.*. 185

Where plaintiff really makes substantial claim under act of Congress jurisdiction exists, whether claim ultimately be held good or bad. *Geneva Furniture Mfg. Co. v. Karpen*. 254

Where bill includes several causes of action, some arising under patent laws and others on breach of contractual relations, and one of defendants a corporation not suable in district without its consent, save in cases arising under the patent laws, rule as to joinder yields to jurisdictional statute, and on objection to jurisdiction bill dismissed as to corporation in respect of causes not arising under patent laws. *Id.*

Whether all the causes may be maintained in a single bill as against other defendants is question of general equity jurisdiction and practice not open to consideration on direct appeal under § 238, Jud. Code. *Id.*

V. Of Interstate Commerce Commission. See **Interstate Commerce Commission.**

JURISDICTION—Continued.

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VI. Of State Courts.

State courts have jurisdiction of case for damages against carrier for failure to deliver cars in accordance with its own rules for distribution, where rule itself not attacked, but discrimination basis of suit. *Illinois Cent. R. R. v. Mulberry Coal Co.* 275

Amendment of 1906 to Interstate Commerce Act did not supersede jurisdiction of state courts in any case where decision did not involve determination of matters calling for exercise of administrative power and discretion of Commission or relate to subjects within exclusive jurisdiction of Federal courts. *Id.*

JURY AND JURORS:

Jurors should not reach verdict by lot or by averaging amounts suggested by each; but verdict may not be set aside on testimony of juror. *McDonald v. Pless* 264

Testimony of jurors may not be received to prove misconduct of himself or colleagues in reaching verdict. *Id.*

Under Employers' Liability Act jury not required to apportion damages in case of death of employé. *Central Vermont Ry. v. White* 507

Kansas City Southern Ry. v. Leslie 599

LACHES:

Delay in assertion of right not conclusive against its existence. *Oregon & Cal. R. R. v. United States.* 393

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LAW AND FACTS:

Facts established must be adequate as a matter of law to support finding of requisite public necessity in justifying order of state commission to require railroad to expend money—mere declaration of commission not conclusive. *Great Northern Ry. v. Minnesota.* 340

LAW GOVERNING:

While matters of procedure depend upon law of place where suit brought, matters of substance regarding action based on Federal statute depend on statute. *Central Vermont Ry. v. White* 507

Whether provision in suffrage statute may be valid under Federal Constitution, if it is so connected with other provi-

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- sions that are invalid, as to make entire statute unconstitutional, is question of state law. *Guinn v. United States* 347
- Effect of riparian rights, attached to land conveyed by patent of United States, depends upon local law. *Producers Oil Co. v. Hanzen*. 325
- In 1900, under § 31, Oklahoma Government Act of 1890, § 3, c. 1, Mansfield's Digest of Arkansas, was in force in Oklahoma. *Perryman v. Woodward*. 148
- Under Original Creek Agreement interest of allottees under Curtis Act who had died before ratification of agreement descended according to Creek laws and not according to those of Arkansas. *Woodward v. De Graffenried* 284
- Where shipper secures from Interstate Commerce Commission award for discrimination in car distribution, his claim for damages can be prosecuted only under Commerce Act, even though action in state court brought before Commission has made the award. *Pennsylvania R. R. v. Clark Coal Co.* 456

LEGISLATION:

- In enacting police statute legislature not limited to general directions, but may prohibit sale of such specific articles as it deems injurious. *Price v. Illinois* 446
- No person has vested right in any general rule of law or policy of legislation giving him immunity from change, and such immunity is not to be implied as unexpressed term of express contract. *Chicago & Alton R. R. v. Tranbarger* 67
- See **Construction; States.**

LIMITATIONS:

- One year period of limitation prescribed in § 29a of Bankruptcy Act not applicable to conspiracy having for its object commission of offense denounced by that act. *United States v. Rabinowich*. 78
- Time limit in state statute requiring railroads to provide outlets for water across rights of way should be construed as limited to railroads erected after passage of act, and that, as to those already constructed, reasonable time should be allowed. *Chicago & Alton R. R. v. Tranbarger*. 67
- See **Laches.**

LIQUOR. See **Intoxicating Liquors.****LITERACY TEST.** See **Suffrage.**

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 See **Employers' Liability Act; Safety Appliance Act.**

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MINNESOTA:

Order of Railroad Commission requiring railroad to install weighing scales at a station, similar to those installed at some of its stations, in order to abate discrimination, held arbitrary and unreasonable. *Great Northern Ry. v. Minnesota* 340

MISSOURI:

Section 10322, Mo. Rev. Stat. 1909, requiring officers of corporations to file affidavit as to non-participation of corporation in pool, trust, etc., under penalty of forfeiture of charter or right to do business in State, not unconstitutional as depriving corporation of its property without due process of law or as denying equal protection of the law. *Mallinckrodt Works v. St. Louis*. 41
 Amendment of statute requiring railroads to maintain ditches along right of way so as to require outlets for water and imposing liability and penalties for non-compliance within three months after completion, held, in action for damages, not an *ex post facto* law where embankment causing damage had been erected more than three months prior to amendment. *Chicago & Alton R. R. v. Tranbarger*. 67

MUNICIPAL CORPORATIONS:

In absence of impairment of contract obligation, exercise by municipality of lawful power to fix rates does not deprive public utility of property without due process of law where it does not appear that rates are confiscatory. *Milwaukee Electric Ry. v. Wisconsin R. R. Comm.*. 174

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In listing creditors in schedule under Bankruptcy Law, use of initials instead of full Christian name not fatal. *Kreitlein v. Ferger* 21

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Principle that burden of proving contributory negligence on defendant enforced by Federal courts, even in States which hold that burden is on plaintiff to disprove. *Central Vermont Ry. v. White* 507

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

NEW TRIAL:

Granting partial new trial in actions under Employers' Liability Act not commended. *Norfolk & Southern Ry. v. Ferebee* 269

NOTICE:

Carrier, having custody of goods, bound to give consignor notice of suit in which right of possession involved. *Wells Fargo & Co. v. Ford* 503

Effect of want of notice in bankruptcy proceeding. See *Kreitlein v. Ferger* 21

OFFENSES:

Presumption of intent of Congress to maintain distinction between. See *United States v. Rabinowich* 78

What within meaning of § 29a of Bankruptcy Act. See *Id. Quere* as to who may commit crime defined in § 29b (1) of Bankruptcy Act. *Id.*

OFFICE:

In early days usurpation of office a crime and prosecuted as such; later *quo warranto* used to determine title as between two claimants. *Newman v. Frizzell* 537

Congress has not authorized, but has placed obstacles in the way of, private citizen on own motion to attack an incumbent's title to office. *Id.*

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- Suffrage and literacy tests in amendment of 1910 to constitution of Oklahoma so connected that unconstitutionality of former renders whole amendment invalid. *Guinn v. United States*. 347
- Amendment to constitution of 1910 is invalid as a whole. *Id.*
- Grandfather Clause of Oklahoma constitution violative of Fifteenth Amendment. *Id.*
- In 1900, under § 31, Oklahoma Government Act of 1890, § 3, c. 1, Mansfield's Digest of Arkansas, was in force in Oklahoma. *Perryman v. Woodward*. 148
- Under the law in force in Oklahoma in 1900, where decedent's estate was less than \$300 it vested absolutely in the widow, and where probate court had so decided grantee of widow took good title, whether order of such court was made before or after purchase of property in question. *Id.*

ORIGINAL PACKAGES:

- Where character of shipment not shown, packages cannot be classed with the "original packages" within rule of protection against police laws of State. *Price v. Illinois*. 446

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- One seeking to set aside state statute as unconstitutional must show that he is in class affected. *Mallinckrodt Works v. St. Louis*. 41
- Where duty imposed for protection of persons in particular situations or relations, a breach of which results in injury to one in an altogether different situation or relation, is not, as to him, actionable. *St. Louis & S. F. R. R. v. Conarty*. . . 243

PARTITION. See **Res Judicata.**

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

PENAL CODE. See **Criminal Code.**

PENALTIES AND FORFEITURES:

- Court of equity reluctant to lend aid to enforce forfeiture. *Oregon & Cal. R. R. v. United States*. 393
- See **Corporations.**

PENNSYLVANIA:

- Pennsylvania act of 1895, levying tax on gross premiums of life insurance companies received for business done within State, does not amount to taking property beyond its jurisdiction as to premiums paid directly to a corporation outside of State. *Equitable Life Society v. Pennsylvania*. 143

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- Error of trial court in misconstruing general order giving one accused of crime a specified time within which to plead, held not to vitiate proceedings and enlarge accused. *McMicking v. Schields*. 99

PLEADING:

- In action under Employers' Liability Act, ruling of state court as to effect of amendments and replications are matters of state pleading and practice and are binding on this court. *Central Vermont Ry. v. White*. 507
- Where carrier failed to give reasonable notice to owner of suit in which goods seized, it cannot, in suit by owner against it, plead the judgment against it under which goods taken. *Wells Fargo & Co. v. Ford*. 503

POLICE POWER:

- Embraces regulations designed to promote public convenience or general welfare, as well as those in interest of public health, morals or safety. *Chicago & Alton R. R. v. Tranbarger* 67
- Extends to imposing restrictions having reasonable relation to preservation of health; and nature and extent of such restrictions are matters for legislative judgment in defining policy of State. *Price v. Illinois*. 446
- Requiring railroads to provide means for water passing under embankments is legitimate exercise of power. *Chicago & Alton R. R. v. Tranbarger* 67
- Legislation regarding prompt furnishing of cars, loading of same by shipper and prescribing damages and penalties for failure on part of either, is within power of State. *Atchison, T. & S. F. Ry. v. Vosburg*. 56
- Power inalienable even by express grant and all contract and property rights are held subject to its fair exercise. *Chicago & Alton R. R. v. Tranbarger* 67
- In enacting police statute legislature not limited to general directions, but may prohibit sale of such specific articles as it deems injurious. *Price v. Illinois* 446
- State statute that does not purport to be a health measure cannot be sustained as such. *Chicago, M. & St. P. R. R. v. Wisconsin*. 491
- Police statute not unconstitutional under due process clause because innocuousness of prohibited article is debatable. *Price v. Illinois*. 446

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Police regulation subject to equal protection clause of Constitution. *Atchison, T. & S. F. Ry. v. Vosburg* 56

Wisconsin statute imposing penalties on sleeping car companies if, lower berth being occupied, upper let down before actually engaged, not justified as health measure. *Chicago, M. & St. P. R. R. v. Wisconsin* 491

POLICE REGULATIONS:

Enforcement of uncompensated obedience to legitimate regulation not repugnant to Fourteenth Amendment. *Chicago & Alton R. R. v. Tranbarger* 67

This court need not determine what is reasonable time for compliance with regulation, when question raised by one refusing compliance on ground that legislature had no power to enact statute. *Id.*

PRACTICE AND PROCEDURE:

Scope of decision: Questions of general law relative to admission of evidence, not involving construction of Federal statute, not reviewable under § 237, Jud. Code. *Central Vermont Ry. v. White* 507

On writ of error to state court in action under Federal Employers' Liability Act, only assignments relating to matters of practice, pleading and evidence involving construction of that statute, considered. *Id.*

Determination of whether application of state statute as construed by state courts is so arbitrary as to amount to deprivation of property without due process of law, is open in this court. *Southwestern Tel. Co. v. Danaher* 482

Where this court cannot review judgment of Circuit Court of Appeals because jurisdiction of Federal court rests on diverse citizenship alone, it cannot pass on question of whether plaintiff had not, prior to commencement of action, become citizen of defendant's State. *Delaware, L. & W. R. R. v. Yurkonis* 439

Whether provision in suffrage statute may be valid under Federal Constitution, if it is so connected with other provisions that are invalid as to make the whole statute unconstitutional may, in absence of decision by state court, be determined by this court in case coming from Federal courts. *Guinn v. United States* 347

Question of constitutionality of state statute, not raised in

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either of state courts, not considered here. <i>Illinois Cent. R. R. v. Mulberry Coal Co.</i>	275
Constitutional question without real foundation cannot be put forward as a mere pretext to open other questions not otherwise open. <i>United Surety Co. v. American Fruit Co.</i>	140
Court will not pass upon definition of disputed terms in state statute where that point of no consequence to plaintiff in error. <i>Mallinckrodt Works v. St. Louis</i>	41
This court need not determine what is reasonable time for compliance with police regulation, when question raised by one refusing compliance on ground that legislature had no power to enact statute. <i>Chicago & Alton R. R. v. Tranbarger</i>	67
<i>Disposition of case:</i> In suit to enjoin putting of rate making ordinance into effect, held, that bill should have been dismissed without prejudice to right of complainant to reinstate case after reasonable test. <i>Des Moines Gas Co. v. Des Moines</i>	153
Where in case involving guardianship relations, the suggestion of which had no substantial foundation on the record, this court followed decision of local court; and subsequently the relationship having been cleared up and shown by the record to exist, lower court should have given full effect to that fact and not have followed the decision of this court. <i>Kapiolani Estate v. Atcherley</i>	119
<i>Following state court:</i> Court accepts state court's construction of pure food statute and whether specified articles within, and then determines validity under Federal Constitution. <i>Price v. Illinois</i>	446
Where this court cannot say that statute involved unequivocally granted to municipalities power to deprive legislature of right to exercise rate-making function in the future, and state court in other cases has held that statute does not indicate intention to surrender such right, judgment of state court holding that no irrevocable contract was created by ordinance establishing rates, affirmed, notwithstanding majority of members of highest state court did not concur in that view. <i>Milwaukee Electric Ry. v. Wisconsin R. R. Comm.</i>	174
In determining for itself whether there was a contract and the extent of a binding obligation this court gives much consideration to decisions of the state court construing statutes under which contract alleged to have been created. <i>Id.</i>	
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court as to effect of amendments and replications are matters of state pleading and practice and are binding on this court. *Central Vermont Ry. v. White* 507

In general: Filing of large number of assignments of error disapproved. *Central Vermont Ry. v. White* 507

Equity rules 75-77 call for presentation of only relevant evidence and exhibits; elimination of reduplication; and condensation into narrative form. *Louisville & Nashville R. R. v. United States* 1

Granting partial new trial in actions under Employers' Liability Act not commended. *Norfolk & Southern Ry. v. Ferebee* 269

Where verdict in action under Employers' Liability Act increased by inclusion as beneficiaries of parties not entitled, defendant may raise question in manner appropriate under practice of trial court. *Central Vermont Ry. v. White* 507

While matters of procedure depend upon law of place where suit brought, matters of substance regarding action based on Federal statute depend on statute. *Id.*

Where, on direct appeal under act of Oct. 22, 1913, appellants able to concede that there was evidence which, although conflicting, tended to support findings of Interstate Commerce Commission, omission from record of testimony and insistence that findings insufficient to support orders of Commission, is commendable. *Louisville & Nashville R. R. v. United States* 1

In advance of construction of statute by courts of enacting State, assumption that such courts will so construe as to render act constitutional. *Mallinckrodt Works v. St. Louis* 41

PREFERENCES. See **Bankruptcy; Interstate Commerce.**

PRESUMPTIONS:

Public authority presumed to have acted fairly. *Des Moines Gas Co. v. Des Moines* 153

Presumption that going concern value of public utility considered in determining valuation for rate making purposes. *Id.*

Court will not assume that goods are shipped from State to State in small retail packages. *Price v. Illinois* 446

No presumption of intent of Congress to make radical change in rule prevailing for many years relative to jurisdiction of suits against national banks. *Herrmann v. Edwards* 107

PRINCIPAL AND AGENT. See **Interstate Commerce.** PAGE

PRINCIPAL AND SURETY:

Statute providing that surety, by executing undertaking to release property attached, is bound by judgment against principal, not unconstitutional as denial of due process of law. *United Surety Co. v. American Fruit Co.* 140

PROCESS:

Whether corporation doing business within a district so as to have submitted itself to jurisdiction depends in each case upon the facts proved. *Washington-Virginia Ry. v. Real Estate Trust Co.* 185

Where corporation operates railroads, has its general office and keeps one of its bank accounts outside of State, but has an office in Federal District of State, where its president and treasurer reside, and in which it keeps bank accounts, held, that service of process within such District, upon its president, sufficient to give District Court jurisdiction. *Id.*
Liability of carrier for goods taken under legal process. See *Wells Fargo & Co. v. Ford.* 503

See **Habeas Corpus; Injunction; Jurisdiction; Quo Warranto.**

PROPERTY RIGHTS:

Held subject to fair exercise of police power. *Chicago & Alton R. R. v. Tranbarger.* 67

Owner's right to his property is protected even though he may not be actually using it. *Chicago, M. & St. P. R. R. v. Wisconsin.* 491

State statute, not a reasonable exercise of police power, but which operates to take property, not justified on ground that party whose property taken may be able to get increase in rates obtained for property not taken. The taking and fixed right to compensation must coincide. *Id.*

Order of state railroad commission requiring railroad to install and maintain scales amounts to a taking of company's property. *Great Northern Ry. v. Minnesota.* 340

Requiring railroads to provide means for water passing under embankments not taking of property without compensation but application of maxim *sic utere tuo ut alienum non lædas.* *Chicago & Alton R. R. v. Tranbarger.* 67

Nothing in the Federal Constitution gives any one right to have the jury instructed that he is entitled to damages for property taken, where the instruction is not based on some

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evidence or entitles him to damages without proof. *Brand v. Union Elevated R. R.* 586

After elevated railroad had been built in a street, the jury, in suit brought by abutting owner, viewed the premises, and the only testimony showed that the property was worth more after, than before, erection of structure; *held*, that owner was not entitled to an instruction that jury must exclude from their estimate of market value subsequent to the construction any enhancement from the facilities furnished to the property by the structure itself, in absence of any direct evidence as to whether any such enhancement exists. *Id.*

By simply viewing property after the erection of an elevated structure in front of it, a jury cannot, in the absence of any evidence other than that the property is worth more than before the structure was built, ascertain what the market value was either before or just after the erection of the structure. *Id.*

Wisconsin statute imposing penalties on sleeping car companies if, lower berth being occupied, upper let down before actually engaged, is unconstitutional under due process of law clause of Fourteenth Amendment as arbitrary taking of property without compensation. *Chicago, M. & St. P. R. R. v. Wisconsin* 491

See **Constitutional Law.**

PROVABLE DEBTS. See **Bankruptcy.**

PUBLIC HEALTH:

Police power of State extends to imposing restrictions having reasonable relation to preservation of health; and nature and extent of such restrictions are matters for legislative judgment in defining policy of State. *Price v. Illinois* 446

PUBLIC LANDS:

As general rule, meanders not treated as boundaries, and when United States conveys tract of land by patent referring to an official survey showing same bordering on navigable river, purchaser takes title up to water line. *Producers Oil Co. v. Hanzen*. 325

Where facts and circumstances affirmatively disclose intention to limit grant to actual traverse lines, these treated as definite boundaries; and patent to fractional section does

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not necessarily confer riparian rights because of presence of meanders. *Id.*

Where survey of improved lands was made at express request of occupant to whom subsequently patented, and grant specified the number of acres, and other circumstances also indicated that only the lands conveyed were those within the traverse lines, the patent conferred no riparian rights but simply conveyed the specified number of acres. *Id.*

In controversy between individuals as to extent of land conveyed by patent and to which United States not a party, nothing in opinion or judgment should be taken to prejudice any of the rights of the United States in the lands affected. *Id.*

That actions of railroads in connection with lands granted were known to government officials and that no action was taken in regard thereto does not amount to estoppel preventing Government from enforcing covenants contained in grants. *Oregon & Cal. R. R. v. United States.* 393

Words "actual settlers" indicate no particular individuals; and uncertainty of expression in acts involved prevents any individual from being a *cestui que trust* to enforce condition of statute. *Id.*

There can be given to land grant statutes no greater sanction than Congress intended, nor can there be given to parties rights which statutes did not confer upon them. *Id.*

Effect of § 32, act of 1910, relative to deeds to tribal lands issued after death of party entitled, was to make patented lands part of estate of nominal party as though deed had issued during his life; and where title previously given by decree of probate court having jurisdiction it simply established validity of title. *Perryman v. Woodward* 148

Provisos in Land Grant Act of 1866, as amended in 1868 and 1869, and in act of 1870, relative to sale of land granted, are not conditions subsequent, violation of which results in forfeiture of grants, but are enforceable covenants. *Oregon & Cal. R. R. v. United States.* 393

Under such acts there was a complete grant to the railroad with power to sell limited only as prescribed; and those setting up alleged rights in the land by reason of settlement thereon cannot sustain their claim thereto. There can be no absolute right to purchase and settle on lands where there is no compulsion to sell. *Id.*

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Acts of Congress granting lands are laws and operative until repealed. *Id.*

That conditions imposed in grants not applicable to character of lands furnishes no excuse for antagonistic action, even though justifying non-action pending further legislation. *Id.*

Enjoining railroad from violation of conditions contained in land grant. *Id.*

PUBLIC OFFICERS:

Public authority presumed to have acted fairly. *Des Moines Gas Co. v. Des Moines* 153

Congress has not authorized, but has placed obstacles in the way of, private citizen on own motion to attack an incumbent's title to office. *Newman v. Frizzell* 537

Effect of knowledge to estop Government. See *Oregon & Cal. R. R. v. United States* 393

PUBLIC SERVICE CORPORATIONS. See **Public Utilities.****PUBLIC UTILITIES:**

Fixing of rates to be charged by public service corporations is legislative function of State. *Milwaukee Electric Ry. v. Wisconsin R. R. Comm.* 174

In absence of impairment of contract obligation, exercise by municipality of lawful power to fix rates does not deprive public utility of property without due process of law where it does not appear that rates are confiscatory. *Id.*

Rates of public service corporations are fixed in expectation that they will be paid, and reasonable regulations tending toward prompt payment are necessary. *Southwestern Tel. Co. v. Danaher* 482

Regulations requiring payment of rates of public service corporations in advance are not unreasonable, and a telephone company is not subject to penalties for refusing to render service to a subscriber who is delinquent on past rates and refuses to pay in advance in accordance with established rule uniformly enforced, nor because it charges full price to subscriber who does not pay in advance while allowing stated discount to those who do. To enforce against such company penalty for refusing to furnish service under such conditions amounts to deprivation of property without due process. *Id.*

Good will, in its general sense, not considered in fixing valua-

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tion for purpose of rate making of public utility. *Des Moines Gas Co. v. Des Moines* 153

Going concern value an element in determining valuation on which owner of property dedicated to public use entitled to fair return; and in its determination each case controlled by its own circumstances. *Id.*

Presumption that going concern value of public utility considered in determining valuation for rate making purposes. *Id.*

Burden of proof is on public utility corporation to show regulating ordinance has effect to deprive it of fair return on property dedicated to public use. *Id.*

Ordinarily time alone can satisfactorily demonstrate whether rate fixed by ordinance is or is not confiscatory. *Id.*

Refusal to enjoin rate making ordinance not regarded as confiscatory on conclusion that it allowed a less return on valuation than that thought proper by Master, where ordinance attacked before opportunity for test. *Id.*

PURE FOOD AND DRUGS:

State legislature may prohibit sale of food preservatives containing boric acid without offending equal protection provision of Constitution. *Price v. Illinois* 446

Prohibition against sale of food preservatives containing boric acid not deprivation of property without due process of law. *Id.*

Police statute not unconstitutional under due process clause because innocuousness of prohibited article is debatable. *Id.*

Provisions of law of Illinois of 1907, prohibiting sale of food preservatives containing boric acid, not unconstitutional under Fourteenth Amendment, or as to sales within State of articles involved in action in packages in which sold, under commerce clause. *Id.*

QUALIFICATION OF VOTERS. See Suffrage.**QUO WARRANTO:**

In early days usurpation of office a crime and prosecuted as such; later *quo warranto* used to determine title as between two claimants. *Newman v. Frizzell* 537

Under District of Columbia Code *quo warranto* extends to all persons in District exercising any office, civil or military. *Id.*

Under District of Columbia Code, third person may not

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institute *quo warranto* proceedings without consent of law officers of Government and Supreme Court of District. *Id.*
 The Code makes a distinction between "third person" and "interested person." *Id.*

The general interest of a citizen and taxpayer is not sufficient to authorize the institution of *quo warranto* proceedings. *Id.*
 Citizen and taxpayer as such may not maintain *quo warranto* proceedings against incumbent of office on consent of court but without that of law officers of Government. *Id.*
 Interested person within meaning of provisions of Code is one who has an interest in the office peculiar to himself, whether the office be elective or appointive. *Id.*

See **Jurisdiction, II, 2.**

RAILROADS:

Business of railroad is transportation, and to supply public with conveniences not connected therewith is no part of its ordinary duty. *Great Northern Ry. v. Minnesota* 340

State commission may only require railroad to supply such demands of public as are within the duty of a railroad. *Id.*

Where facilities offered by a railroad are at certain of its stations outside its actual duty, state commission may not absolutely require it to supply such facilities at every station, but must give company opportunity to discontinue discrimination. *Id.*

Possessions of railroad are subject to its public duty, but beyond this and within charter limits company may control its own affairs. *Id.*

That actions of railroad in connection with land granted were known to government officials and that no action was taken in regard thereto, does not amount to estoppel preventing Government from enforcing covenants contained in grants. *Oregon & Cal. R. R. v. United States* 393

Requiring railroads to provide means for water passing under embankments is legitimate exercise of police power. *Chicago & Alton R. R. v. Tranbarger* 67

Time limit in state statute requiring railroads to provide outlets for water across rights of way should be construed as limited to railroads erected after passage of act, and that, as to those already constructed, reasonable time should be allowed. *Id.*

Amendment of statute requiring railroads to maintain ditches along right of way so as to require outlets for water and im-

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posing liability and penalties for non-compliance within three months after completion, held, in action for damages, not an *ex post facto* law where embankment causing damage had been erected more than three months prior to amendment. *Id.*

Order of state railroad commission requiring railroad to install and maintain scales amounts to a taking of company's property. *Great Northern Ry. v. Minnesota* 340

Facts established must be adequate as a matter of law to support finding of requisite public necessity in justifying order of state commission to require railroad to expend money—mere declaration of commission not conclusive. *Id.*
 Provisos in Land Grant Act of 1866, as amended in 1868 and 1869, and in act of 1870, relative to sale of land granted, are not conditions subsequent, violation of which results in forfeiture of grants, but are enforceable covenants. *Oregon & Cal. R. R. v. United States* 393

Under such acts there was a complete grant to the railroad with power to sell limited only as prescribed; and those setting up alleged rights in the land by reason of settlement thereon cannot sustain their claim thereto. There can be no absolute right to purchase and settle on lands where there is no compulsion to sell. *Id.*

Enjoining railroad from violation of conditions contained in land grant. *Id.*

See **Common Carriers.**

RATE REGULATION:

Fixing of rates to be charged by public service corporations is legislative function of State. *Milwaukee Electric Ry. v. Wisconsin R. R. Comm.* 174

In absence of impairment of contract obligation, exercise by municipality of lawful power to fix rates does not deprive public utility of property without due process of law where it does not appear that rates are confiscatory. *Id.*

Mere distance not necessarily determining factor in fixing freight rates; competition largely entering therein. *Louisville & Nashville R. R. v. United States* 1

Good will, in its general sense, not considered in fixing valuation for purpose of rate making of public utility. *Des Moines Gas Co. v. Des Moines* 153

Going concern value an element in determining valuation on which owner of property dedicated to public use entitled

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to fair return; and in its determination each case controlled by its own circumstances. *Id.*

Presumption that going concern value of public utility considered in determining valuation for rate making purposes. *Id.*

Refusal to enjoin rate making ordinance not regarded as confiscatory on conclusion that it allowed a less return on valuation than that thought proper by Master, where ordinance attacked before opportunity for test. *Id.*

Ordinarily time alone can satisfactorily demonstrate whether rate fixed by ordinance is or is not confiscatory. *Id.*

While State may make contracts preventing it, for given periods, from rate making, such renunciation must be clear and unequivocal. *Milwaukee Electric Ry. v. Wisconsin R. R. Comm.* 174

Where Interstate Commerce Commission has fixed amount of rate in light of findings made on consideration of much and varied evidence, and such rate not claimed confiscatory, held that findings support order fixing rates. *Louisville & Nashville R. R. v. United States.* 1

Finding of one of many rates to be higher than all others may raise presumption that single rate high; and if some of lower rates prescribed by Interstate Commerce Commission there is a *prima facie* standard for testing reasonableness of rate under investigation. *Id.*

Common measure of value, applicable to some extent to freight charges, is comparison with amounts charged for same article by different persons. *Id.*

In attacking existing freight rate burden is on complainant to show unreasonableness in fact. *Id.*

RECORD:

Omission of evidence from record commendable on appeal under act of Oct. 22, 1913. *Louisville & Nashville R. R. v. United States* 1

Requirements of Equity Rules 75-77. *Id.*

See **Appeal and Error.**

REMEDIES:

In early days usurpation of office a crime and prosecuted as such; later *quo warranto* used to determine title as between two claimants. *Newman v. Frizzell* 537

As to election, see *Pennsylvania R. R. v. Clark Coal Co.* 456

See **Habeas Corpus; Injunction; Quo Warranto.**

REMOVAL OF CAUSES:

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Under Employers' Liability Act as amended and § 28, Jud. Code, case brought in state court of competent jurisdiction under former, cannot be removed to Federal court upon sole ground of diversity of citizenship. *Kansas City Southern Ry. v. Leslie* 599

REPARATION. See **Interstate Commerce.**

REPORTS OF COMMITTEES. See **Construction.**

RES JUDICATA:

Corporation grantee of portion of grantor's property not privy to grantee of another portion, and judgment against latter in suit in which corporation not a party, although some of its officers as individuals had notice thereof and took some part in defense, is not *res judicata* if acts of officers not authorized by corporation. *Kapiolani Estate v. Atchery* 119

To make judgment against grantor available to grantee of title his covenantor must receive notice of suit and have opportunity to defend. *Id.*

Court may change its action after an interlocutory decree and party to action may avail himself of such change, unless decision has finality of *res judicata*. *Id.*

Partition suit, dismissed because plaintiff could not maintain it against defendants holding adversely without first establishing title in equity, not *res judicata* that plaintiff had no interest in the property and a bar to action of ejectment by plaintiff against same defendants. *Woodward v. De Graffenried* 284

RESTRAINT OF TRADE:

Contract which enables railroad company to practically control output, sales and price of coal and to dictate to whom to be sold, is illegal. *United States v. Delaware, L. & W. R. R.* 516

RESTRICTIONS ON ALIENATION. See **Indians.**

RESULTING TRUST. See **Trusts and Trustees.**

RIPARIAN RIGHTS:

As general rule, meanders not treated as boundaries, and when United States conveys tract of land by patent referring to an official survey showing same bordering on navi-

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gable river, purchaser takes title up to water line. *Producers Oil Co. v. Hanzen* 325

Where facts and circumstances affirmatively disclose intention to limit grant to actual traverse lines, these treated as definite boundaries; and patent to fractional section does not necessarily confer riparian rights because of presence of meanders. *Id.*

Where survey of improved lands was made at express request of occupant to whom subsequently patented, and grant specified the number of acres, and other circumstances also indicated that only the lands conveyed were those within the traverse lines, the patent conferred no riparian rights but simply conveyed the specified number of acres. *Id.*

Effect of riparian rights, attached to land conveyed by patent of United States, depends upon local law. *Id.*

RULE OF PROPERTY:

Decisions of state court regarding descent of property, the earliest made within three years and after action commenced, not regarded as rule of property binding on this court. *Woodward v. De Graffenried* 284

RULES OF COURT:

Equity rules 75-77 call for presentation of only relevant evidence and exhibits; elimination of reduplication; and condensation into narrative form. *Louisville & Nashville R. R. v. United States* 1

SAFETY APPLIANCE ACT:

Coupler provisions directed against evils attendant upon old-fashioned link and pin couplers and were not enacted to provide place of safety between colliding cars. *St. Louis & S. F. R. R. v. Conarty* 243

Employé of railroad not endeavoring or intending to couple or uncouple a car or to handle it in any way, but riding on engine that collided with it, not in position where absence of coupler and draw bar operates as breach of duty imposed by Act for his benefit. *Id.*

See **Employers' Liability Act.**

SALES:

Effect of provisos in Land Grant Acts relative to sale of lands granted. See *Oregon & Cal. R. R. v. United States*. 393

Prohibitions within police power. See *Price v. Illinois* 446

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Validity of prohibition against sale of food preservatives.
Id.

See **Constitutional Law, V; Intoxicating Liquors.**

SCHEDULES. See **Bankruptcy.****SLEEPING CAR COMPANIES:**

Wisconsin statute imposing penalties on sleeping car companies if, lower berth being occupied, upper let down before actually engaged, is unconstitutional under due process of law clause of Fourteenth Amendment as arbitrary taking of property without compensation; and cannot be justified as health measure under police power, nor as amendment or alteration of charter of corporation. *Chicago, M. & St. P. R. R. v. Wisconsin*. 491

SOVEREIGNTY:

It is not in derogation of its sovereignty that State be charged with interest if agreement to pay principal so provides. *Virginia v. West Virginia*. 202

STATES:

Legislative power: Legislature may prohibit sale of food preservatives containing boric acid without offending equal protection provision of Constitution. *Price v. Illinois*. 446

Establishment of literacy test for exercising suffrage is exercise of lawful power which is not subject to supervision by Federal courts. *Guinn v. United States*. 347

Cannot authorize individual to take salable property from another without pay. *Chicago, M. & St. P. R. R. v. Wisconsin*. 491

Regulation of common carriers: Fixing of rates to be charged by public service corporations is legislative function of State. *Milwaukee Electric Ry. v. Wisconsin R. R. Comm.* 174

Right to regulate public carriers in interest of public does not warrant unreasonable interference with right of management or taking of property without compensation. *Chicago, M. & St. P. R. R. v. Wisconsin*. 491

While State may make contracts preventing it, for given periods, from rate making, such renunciation must be clear and unequivocal. *Milwaukee Electric Ry. v. Wisconsin R. R. Comm.*. 174

Power over interstate commerce: May not interfere with interstate transportation of intoxicating liquors except as permitted by Congress. *Rossi v. Pennsylvania*. 62

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May not, in case arising prior to Webb-Kenyon Law, punish one who sells and delivers liquor in original packages within State pursuant to orders solicited within State but delivered from without. *Id.*

Effect of Webb-Kenyon Act to change general rule that State may not regulate commerce wholly interstate. *Adams Express Co. v. Kentucky* 190

Police power: Police power extends to imposing restrictions having reasonable relation to preservation of health; and nature and extent of such restrictions are matters for legislative judgment in defining policy of State. *Price v. Illinois*. 446

Taxation by: May tax life insurance companies upon business done within State and measure tax upon premiums on policies of residents thereof. *Equitable Life Society v. Pennsylvania*. 143

Application of Constitution: Fifteenth Amendment does not, in general sense, take from States power over suffrage possessed from the beginning, but does restrict power of United States or States to abridge or deny right of citizen to vote on account of race, color or previous condition of servitude. *Guinn v. United States*. 347

Myers v. Anderson 369

While Fifteenth Amendment does not confer right of suffrage on any class, it does prohibit States from depriving any person of that right, whether for Federal, state or municipal elections. *Myers v. Anderson*. 368

Provisions in state constitution recurring to conditions existing before adoption of Fifteenth Amendment and continuance of which the Amendment prohibited, and making such conditions test of right to suffrage, are void. *Guinn v. United States*. 347

Contracts of: Contract to assume equitable proportion of interest-bearing debt means taking over of liability for both interest and principal. *Virginia v. West Virginia* 202

In a contract between sovereign States questions of whether debtor party liable for interest on ascertainment of amount due, rate of interest and period from which to be computed, determined by fair intendment of contract itself. *Id.*

It is not in derogation of its sovereignty that State be charged with interest if agreement to pay principal so provides. *Id.*

See **Accounts and Accounting.**

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STOCK AND STOCKHOLDERS:

Appraisement of stock. See *Virginia v. West Virginia* 202
See **Interstate Commerce; Jurisdiction, IV.**

STREET CAR COMPANIES:

Regulation of rates to be charged by. See *Milwaukee Electric Ry. v. Wisconsin R. R. Comm.* 174

SUFFRAGE:

Fifteenth Amendment does not, in general sense, take from States power over suffrage possessed from the beginning, but does restrict power of United States or States to abridge or deny right of citizen to vote on account of race, color or previous condition of servitude. *Guinn v. United States* . . . 347
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While Fifteenth Amendment does not confer right of suffrage on any class, it does prohibit States from depriving any person of that right, whether for Federal, state or municipal elections. *Myers v. Anderson* 368

While Fifteenth Amendment gives no right of suffrage, as its command is self-executing, rights of suffrage may be enjoyed by reason of the striking out of discriminations against exercise of the right. *Guinn v. United States* 347
Myers v. Anderson 369

Provisions in state constitution recurring to conditions existing before adoption of Fifteenth Amendment and continuance of which the Amendment prohibited, and making such conditions test of right to suffrage, are void. *Guinn v. United States* 347

Establishment of literacy test for exercising suffrage is exercise by State of lawful power which is not subject to supervision by Federal courts. *Id.*

Suffrage and literacy tests in amendment of 1910 to constitution of Oklahoma so connected that unconstitutionality of former renders whole amendment invalid. *Id.*

Election officers refusing to allow persons to exercise suffrage because of unconstitutional state law, liable in civil action under § 1979, Rev. Stat. *Myers v. Anderson* 368

Where standards fixed for voters so interrelated that one cannot be held invalid without affecting others, entire provision fails. *Id.*

Where statute establishing qualifications for suffrage uncon-

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- stitutional, it does not deprive citizens of right to vote, as previously existing statute unaffected. *Id.*
- Section 19, Crim. Code, is constitutional and extends protection to right to vote for members of Congress and to have the vote when cast counted. *United States v. Mosley* . . . 383
- When originally enacted as § 6 of Enforcement Act it dealt with all Federal rights of all citizens and protected them all, and continues so to do. *Id.*
- It applies to acts of two or more election officers who conspire to injure and oppress qualified voters of district in exercise of right to vote for members of Congress by omitting the votes cast from count and return. *Id.*
- Grandfather Clause of Oklahoma constitution and of Maryland statute of 1908 violative of Fifteenth Amendment. *Guinn v. United States* 347
- Myers v. Anderson* 368

SURFACE WATERS:

- Statute providing for disposition of surface water, otherwise legal, not unconstitutional under Fourteenth Amendment because it applies exclusively to railroad embankments. *Chicago & Alton R. R. v. Tranbarger* 67
- Requiring railroads to provide means for water passing under embankments is legitimate exercise of police power. *Id.*

TARIFFS. See **Interstate Commerce.**

TAXES AND TAXATION:

- Taxation has to be determined by general principles. *Equitable Life Society v. Pennsylvania* 143
- State may tax life insurance companies upon business done within State and measure tax upon premiums on policies of residents thereof. *Id.*
- In estimating amount of premiums paid by residents of State as basis for taxation of insurance companies by State, those paid to foreign companies outside of State may be included without depriving such companies of their property without due process of law. *Id.*
- Pennsylvania act of 1895, levying tax on gross premiums of life insurance companies received for business done within State, does not amount to taking property beyond its jurisdiction as to premiums paid directly to a corporation outside of State. *Id.*

TELEPHONE COMPANIES:

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Regulations requiring payment of rates of public service corporations in advance are not unreasonable, and a telephone company is not subject to penalties for refusing to render service to a subscriber who is delinquent on past rates and refuses to pay in advance in accordance with established rule uniformly enforced, nor because it charges full price to subscriber who does not pay in advance while allowing stated discount to those who do. To enforce against such company penalty for refusing to furnish service under such conditions amounts to deprivation of property without due process. *Southwestern Tel. Co. v. Danaher*. 482

TITLE:

Under law of Hawaii, guardian cannot, through award of Land Commission, obtain title to property of ward which would be so immune from subsequent attack that the wrong would be without redress. *Kapiolani Estate v. Atcherley*. . . 119

Effect of § 32, act of 1910, relative to deeds to tribal lands issued after death of party entitled, was to make patented lands part of estate of nominal party as though deed had issued during his life; and where title previously given by decree of probate court having jurisdiction it simply established validity of title. *Perryman v. Woodward*. 148

In action of ejectment brought by United States, where result depended upon validity of probate and registration of the deeds under which the Government claimed, held, that such deeds were valid and properly probated and registered, and passed title. *United States v. Hiawassee Lumber Co.*. 553

See **Indians; Public Lands.**

TORTS. See **Actions; Employers' Liability Act.**

TRIAL. See **New Trial.**

TRIBAL LANDS. See **Public Lands.**

TRUSTS AND TRUSTEES:

A trust of certificates of stock to cause dividends thereon to be paid to designated party as beneficiary for a specified period and on expiration thereof to transfer stock itself to beneficiary if living unless childless in which event trustee was to hold stock and pay dividends to beneficiary during life and on his death to distribute to designated parties,

TRUSTS AND TRUSTEES—*Continued.*

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held, to have failed in case of death of beneficiary within period specified both as to the stock and dividends and that the trustee was bound to return the stock to donor and that it did not pass to the heirs or personal representative of beneficiary. *Chater v. Carter* 572

In construing a declaration of trust in form of a letter and phrased in simple language, guiding principle is to seek intention of maker, as expressed in instrument; and the court is not called upon to strain the meaning of words. *Id.*

Where death of beneficiary defeats trust and leaves trustee without directions or authority to transfer fund to any beneficiary, as trustee cannot in equity retain fund for himself, he is *functus officio* and there is a resulting trust for the donor to whom he must redeliver the fund. *Id.*

See **Public Lands.**

UNITED STATES:

In controversy between individuals as to extent of land conveyed by patent and to which United States not a party, nothing in opinion or judgment should be taken to prejudice any of the rights of the United States in the lands affected. *Producers Oil Co. v. Hanzen* 325

That actions of railroad in connection with land granted were known to government officials and that no action was taken in regard thereto, does not amount to estoppel preventing Government from enforcing covenants contained in grants. *Oregon & Cal. R. R. v. United States* 393

In action of ejectment brought by United States where result depended upon validity of probate and registration of the deeds under which the Government claimed, *held*, that such deeds were valid and properly probated and registered, and passed title. *United States v. Hiawasse Lumber Co.* 553

USURPATION OF OFFICE. See **Office.**

VALUATION:

Common measure of value, applicable to some extent to freight charges, is comparison with amounts charged for same article by different persons. *Louisville & Nashville R. R. v. United States* 1

See **Accounts and Accounting; Evidence; Property Rights.**

VENDOR AND VENDEE. See **Interstate Commerce.**

VERDICT:

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- Jurors should not reach verdict by lot or by averaging amounts suggested by each; but verdict may not be set aside on testimony of juror. *McDonald v. Pless* 264
- Where verdict in action under Employers' Liability Act increased by inclusion as beneficiaries of parties not entitled, defendant may raise question in manner appropriate under practice of trial court. *Central Vermont Ry. v. White* 507

VESTED RIGHTS:

- No person has vested right in any general rule of law or policy of legislation giving him immunity from change, and such immunity is not to be implied as unexpressed term of express contract. *Chicago & Alton R. R. v. Tranbarger* . . . 67

VIRGINIA v. WEST VIRGINIA:

This controversy being one between States, referred to this court in reliance upon the honor and constitutional obligations of the parties, it has been determined only after the amplest opportunity for hearing and with full recognition of every existing equity.

West Virginia is entitled to have the assets in the Virginia sinking fund and those specifically appropriated for payment of the debt applied in reduction of her share of the debt in the same proportion (23½%) as she is liable therefor. The proper date for the division of the assets in the sinking fund and the taking account of the indebtedness to be divided between Virginia and West Virginia is January 1, 1861, as fixed by the contract.

After considering all the exceptions to the Master's second report in this case, *held* that there should be deducted from West Virginia's share (23½%) of the principal debt of Virginia on January 1, 1861, already fixed, 220 U. S. 1, 35, at \$7,182,507.46, the same proportionate part of the value of the assets in the sinking fund on that date and retained by Virginia amounting to \$2,966,885.18, so that West Virginia's net share of the debt, is now fixed at \$4,215,622.28 exclusive of interest.

In determining what rate of interest West Virginia should pay on the proportion of the debt of Virginia assumed, the action of Virginia in regard to interest on the debt should be considered and under all the circumstances of the case *held*, in fixing the equitable proportion of West Virginia, that her part of the principal should be placed on a three

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per cent. basis as of July 1, 1891, with three per cent. per annum interest from that date, and with four per cent. per annum interest from July 1, 1861, to July 1, 1891, making a total of interest to July 1, 1915, of \$8,178,307.22 and the total of the debt \$12,393,929.50.

The decree shall provide for interest on five per cent. per annum on the total amount awarded by the decree from the date of entry. *Virginia v. West Virginia* 202

See **Accounts and Accounting; States.**

VIS MAJOR. See **Common Carriers.**

WATERS. See **Railroads; Riparian Rights; Surface Waters.**

WEBB-KENYON ACT.

Effect of Webb-Kenyon Act to change general rule that State may not regulate commerce wholly interstate.

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See **Intoxicating Liquors.**

WILSON ACT. See **Intoxicating Liquors.**

WISCONSIN:

Statute imposing penalties on sleeping car companies if, lower berth being occupied, upper let down before actually engaged, is unconstitutional under due process of law clause of Fourteenth Amendment as arbitrary taking of property without compensation; and cannot be justified as health measure under police power, nor as amendment or alteration of charter of corporation. *Chicago, M. & St. P. R. R. v. Wisconsin* 491

WORDS AND PHRASES:

"Actual settlers" in Land Grant statute indicate no particular individuals. *Oregon & Cal. R. R. v. United States* . . . 393

"Interested person" within meaning of *quo warranto* provisions of District of Columbia Code. See *Newman v. Frizzell* 537

Court will not pass upon definition of disputed terms in state statute where that point of no consequence to plaintiff in error. *Mallinckrodt Works v. St. Louis* 41

WRIT AND PROCESS. See **Habeas Corpus; Injunction; Jurisdiction; Quo Warranto.**















