

# INDEX.

---

## ABANDONMENT:

PAGE

Trade-mark rights may be lost by abandonment. *Han-  
over Star Milling Co. v. Metcalf*..... 403

**ACCESSION.** See **Conversion.**

## ACCOUNTS AND ACCOUNTING:

One knowingly purchasing manufactured article from tres-  
passer who converted crude article must account for value as  
manufactured and can take no credit for labor of wrongdoer  
in manufacturing it. *Union Naval Stores Co. v. United States* 284  
Liability of infringer of trade-mark to account for gains.  
*Hamilton Shoe Co. v. Wolf Brothers*..... 251

## ACTIONS:

A proceeding in mandamus is an independent adversary  
suit. *Detroit & M. Ry. v. Michigan Railroad Comm*..... 564  
Prohibition is distinct suit and judgment finally disposing of it  
is final within meaning of § 237, Jud. Code. *Mt. Vernon  
Cotton Co. v. Alabama Power Co*..... 30  
Actions of tort are transitory. *Kansas City Ry. v. McAdow*.. 51  
Accrual of right of action for damages for anticipatory breach  
of executory contract. See *Central Trust Co. v. Chicago Audi-  
torium*..... 581  
Action under Materialmen's Acts of 1894, 1905, is at law and  
not in equity. *Illinois Surety Co. v. Peeler*..... 214  
Suit by single stockholder of corporation against other corpora-  
tions to require latter to pay former triple damages under § 7  
of Anti-trust Act, not maintainable in equity. *Fleitmann v.  
Welsbach Co*..... 27  
Liability of triple damages under § 7 of Anti-trust Act only  
enforceable through verdict of jury in court of common law.  
*Id.*  
Suit not maintainable to enjoin assessment or collection of tax  
because of alleged unconstitutionality of statute imposing it.  
*Dodge v. Osborn*..... 118

**ACTIONS—Continued.**

PAGE

Provisions of §§ 3220, 3226, 3227, Rev. Stat., are applicable to proceeding for recovery of taxes illegally collected under Income Tax Act. *Id.*

Section 3224, Rev. Stat., is clearly within contemplation of par. L of Income Tax Law. *Id.*

Under proper averments stockholder's suit to restrain corporation from voluntarily paying tax charged to be unconstitutional, is not violative of § 3224, Rev. Stat. *Brushaber v. Union Pacific R. R. Co.*..... 1

If surety does not contest, but pays into court full amount of liability, proceeding is simply one for distribution of fund in court. *Illinois Surety Co. v. Peeler*..... 214

When action on contractor's bond brought within proper time, amendment, after time, which does not set up new or different cause of action, but merely corrects defective statement, allowable. *Id.*

Suit by sub-contractor against surety of government contractor, under acts of 1894, 1905, not prematurely brought when commenced six months after date of administrative determination of amount due, but less than six months after payment. *Id.*

A corporation is entitled to be sued in district of its residence, and District Court for another jurisdiction is without jurisdiction of action involving inherently Federal question. *Male v. Atchison, T. & S. F. Ry.*..... 97

It is essential that suit in name of United States to cancel homestead patent be brought with approval of Attorney General, and it is sufficient if United States is represented in this court by assistant attorney general and there is production of letter of Attorney General authorizing the suit. *Causey v. United States*..... 399

A suit against a state commission held to be in effect a suit against State not maintainable in Federal court. *Carolina Glass Co. v. South Carolina*..... 305

As to who entitled to maintain action under Federal Employers' Liability Act, see *Pecos & N. T. Ry. v. Rosenbloom*, 439; *Seaboard Air Line v. Kenney*..... 489

**ACTS OF CONGRESS. See Congress; Construction.****ADVERTISING:**

In conducting retail business, use of profit sharing coupons and trading stamps is not advertising pure and simple; there is a distinction. *Rast v. Van Deman & Lewis*..... 342

**ALABAMA:**

PAGE

Statute providing for condemnation of property for water power purposes held to be an exercise of power of eminent domain and not unconstitutional as taking property without due process of law. *Mt. Vernon Cotton Co. v. Alabama Power Co.* . . . 30

**AMENDMENT.** See **Materialmen's Act.**

**AMICUS CURIAE:**

United States heard in suit by stockholder against corporation to restrain voluntary payment of tax imposed by Tariff Act of 1913, on ground of its unconstitutionality. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1

**AMOUNT IN CONTROVERSY.** See **Jurisdiction.**

**ANTI-TRUST ACT:**

Liability of triple damages under § 7 only enforceable through verdict of jury in court of common law. *Fleitmann v. Welsbach Co.* . . . . . 27

Suit by single stockholder of corporation against other corporations to require latter to pay former triple damages under § 7 not maintainable in equity. *Id.*

In suit in equity by stockholder of corporation against other corporations to recover under § 7, court cannot enter decree requiring plaintiff's corporation to sue other corporations or permitting him to sue in its name and behalf. *Id.*

While under act of Oct. 15, 1914, private parties can obtain injunction against threatened loss, that act in terms goes no farther. *Id.*

**APPEAL AND ERROR:**

Where appeal prayed within statutory time, date of allowance not controlling. *Cardona v. Quinones* . . . . . 83

Appeals from Circuit Court of Appeals on allowance or rejection of claims in bankruptcy, are, in absence of certificate, limited to cases involving Federal questions of kind described in § 237, Jud. Code. *Central Trust Co. v. Chicago Auditorium* . . . . . 581

Where no allegations of diverse citizenship and jurisdiction of Federal court invoked solely on constitutional grounds, writ of error issues direct from this court to District Court. *Carolina Glass Co. v. South Carolina* . . . . . 305

As to what constitute constitutional questions which can be made basis for direct appeal from District Court under § 241, Jud. Code, see *Lamar v. United States* . . . . . 60

**APPEAL AND ERROR**—*Continued.*

PAGE

- So far as controversies in case in Federal court depend alone upon right to sue because of residence of parties, they are personal and may be waived, and are not intrinsically and necessarily Federal; but if they involve Federal privileges not waived they are Federal questions directly appealable under § 238, Jud. Code. *Male v. Atchison, T. & S. F. Ry.* . . . . 97
- Whether subsequent decision between same parties on same cause of action makes questions in earlier decision moot, involves defense of thing adjudged going to merits, and cannot be considered on direct appeal under § 238, Jud. Code. *Male v. Atchison, T. & S. F. Ry.* . . . . . 97
- Where large part of testimony in case taken, printed, indexed and bound before operation of Equity Rule 75, and references of court below directed to such bound volumes, held, to constitute exception to such Rule and that testimony as so made up formed part of record on appeal; and sixty days' extension granted for filing thereof. *United States v. United States Steel Corporation* . . . . . 442

See **Certiorari; Jurisdiction.****APPEARANCE:**

- Effect as waiver of objection in bankruptcy proceedings. See *Fairbanks Steam Shovel Co. v. Wills* . . . . . 642

**ARKANSAS:**

- Statute requiring full switching crews on railroads over one hundred miles in length is not unconstitutional as depriving such railroads of property without due process of law, or as denying equal protection of the law, or as interfering with or burdening interstate commerce. *St. Louis, I. M. & S. Ry. v. Arkansas* . . . . . 518

**ARMY AND NAVY:**

- President without power to grant Army officer leave without pay or so condition order granting leave. *United States v. Andrews* . . . . . 90
- Under § 1265, R. S., officer of Army entitled to half pay while on leave properly granted. *Id.*
- Power of President to dismiss civil officers not applicable to officers of Army and Navy whose dismissal regulated by § 1229, R. S. *Id.*
- Under § 1229, R. S., officers may be dismissed in time of peace only in pursuance of sentence of court-martial or commutation thereof. *Id.*

**ARMY AND NAVY—Continued.**

PAGE

Officer of Army accepting grant of leave without pay not estopped from demanding half pay allowed by statute, even in absence of protest at condition. *Id.*

Acceptance of leave with condition of no pay not equivalent to absence without leave for which pay not allowable under statute. *Id.*

Public policy prohibits attempt by unauthorized agreement with officer of United States, under guise of condition or otherwise, to deprive him of statutory right to pay. *Id.*

**ASSESSMENT OF BENEFITS.** See **Taxes and Taxation.**

**ASSIGNMENTS OF ERROR:**

Extravagant and unnecessary multiplication of exceptions and assignments of error condemned. *Badders v. United States*..... 391

**ASYLUM.** See **Extradition.**

**ATOKA AGREEMENT.** See **Indian Lands.**

**BANKRUPTCY:**

Policy of Act is to respect state exemptions. *Eaton v. Boston Trust Co.*..... 427

Adjudication is not open to collateral attack. *Fairbanks Steam Shovel Co. v. Wills*..... 642

Under § 47a-2, as amended, trustees have rights and remedies of lien creditors as against unrecorded transfers; and title relates back to date of filing petition. *Id.*

If chattel mortgage not valid against trustee because not properly recorded, mortgagee's title not perfected by taking possession after petition and before adjudication. *Id.*

Question of capacity of trustee to sue waived if not raised in trial court. *Id.*

Objection that bankrupt did not have its principal place of business in district where bankruptcy proceeding instituted can be waived by appearing and answering to merits in proceeding to obtain possession of assets. *Id.*

Where Illinois corporation had its principal office in Cook County and such office was never legally established in any other county, a mortgage recorded in a different county did not comply with recording act of State and, as against trustee in bankruptcy, was invalid. *Id.*

Appeals from Circuit Court of Appeals on allowance or rejection of claims in bankruptcy, are, in absence of certificate,

**BANKRUPTCY**—*Continued.*

PAGE

- limited to cases involving Federal questions of kind described in § 237, Jud. Code. *Central Trust Co. v. Chicago Auditorium* 581
- Reference to requirement for record in § 60 is not to requirement for protection of bona fide purchasers without notice, but of creditors and persons interested in bankrupt's estate; and where there is no such requirement and transfer was made more than four months before filing of petition there can be no recovery under § 60. *Carey v. Donohue*..... 430
- Provision in state statute that conveyances of real estate shall, prior to filing for record, be deemed fraudulent only so far as relates to subsequent bona fide purchasers without notice, is not requirement that instrument be recorded within meaning of § 60. *Id.*
- Amendment of 1903 to § 60 did not make that section so conform to § 3b that same rule was established for computing time within which petition might be filed after transfer giving preference and time within which, under § 60, trustee might commence action to recover. *Id.*
- Trusts for life with income free from interference or control of creditors are, in Massachusetts, valid and effective against creditors and, under certain conditions, against assignees and trustees in bankruptcy. *Eaton v. Boston Trust Co.*..... 427
- Trust fund created under laws of Massachusetts held not to pass to trustee of beneficiary under § 70a (5). *Id.*
- Involuntary bankruptcy of promisor held to constitute anticipatory breach of executory contract; and that claim of promisee is one founded upon contract and provable under § 63a-4 and that damages may be liquidated under § 63b. *Central Trust Co. v. Chicago Auditorium*..... 581
- Claim for damages for breach of executory contract held provable for such, covering entire life of contract, notwithstanding party proving had right to cancel contract on stated notice, that provision not being reciprocal. *Id.*
- Under § 5, when partnership insolvent and each individual partner also insolvent, and only fund for distribution is produced by individual estate of one member, individual creditors of that member are entitled to priority in distribution of fund. *Farmers' & Mechanics' Nat. Bank v. Ridge Avenue Bank*..... 498

**BANKS AND BANKING:**

Due process under Fourteenth Amendment does not prevent State from placing upon bank commissioner duty of

<b>BANKS AND BANKING</b> — <i>Continued.</i>	PAGE
closing bank found upon examination to be insolvent without first instituting proceedings and obtaining award. <i>Title Guaranty Co. v. Allen</i> .....	136
See <b>National Banks.</b>	
<b>BENEFITS.</b> See <b>Taxes and Taxation.</b>	
<b>BILLS OF LADING.</b> See <b>Common Carriers; Interstate Commerce.</b>	
<b>BONDS:</b>	
Action under Materialmen's Acts of 1894, 1905, is at law and not in equity. <i>Illinois Surety Co. v. Peeler</i> .....	214
When action on contractor's bond brought within proper time, amendment after time, which does not set up new or different cause of action, but merely corrects defective statement, allowable. <i>Id.</i>	
If surety does not contest, but pays into court full amount of liability, proceeding is simply one for distribution of fund in court. <i>Id.</i>	
Materialmen's Act of 1894 with amendment of 1905 construed as to when sub-contractor's right of action against surety accrues. <i>Id.</i>	
<b>BOUNDARIES:</b>	
Decree embodying report of commissioners. <i>North Carolina v. Tennessee</i> .....	652
<b>BURDEN OF PROOF.</b> See <b>Evidence.</b>	
<b>BUSINESS:</b>	
There are many restrictions upon business that do not amount to deprivation of liberty and property without due process of law. <i>Rast v. Van Deman &amp; Lewis</i> .....	342
In conducting retail business, use of profit sharing coupons and trading stamps is not advertising pure and simple; there is a distinction. <i>Id.</i>	
If business subject to regulation by State and imposition of privilege taxes, contracts made in its conduct are also subject to such regulation. <i>Id.</i>	
<b>CALIFORNIA:</b>	
Although statute of 1863 gave private parties right to acquire tide lands, abrogation of right by later statutes and constitution not unconstitutional under contract clause as to those who had not paid any part of purchase price prior thereto. <i>Banning Co. v. California</i> .....	142

**CARRIERS.** See **Common Carriers; Employers' Liability PAGE Act; Interstate Commerce; Interstate Commerce Commission; Railroads.**

**CASCADE RANGE FOREST RESERVE.** See **Forest Reserves.**

**CASES OVERRULED, ETC.:**

For cases approved, distinguished, explained, followed and overruled, see Table of Cases in front of volume.

**CERTIORARI:**

Jurisdiction to review judgments and decrees of Circuit Court of Appeals on certiorari under § 240, Jud. Code, to be exercised sparingly and only in cases of peculiar gravity and general importance and to secure uniformity of decision. *Hamilton Shoe Co. v. Wolf Brothers*..... 251

On certiorari this court is called upon to notice any error that may have occurred in interlocutory proceedings, and is not bound to consider that interlocutory decree settled law of case because it refused to review it on certiorari. *Id.*

That decree sought to be reviewed is not final is sufficient ground for refusing petition. *Id.*

Refusal of application not equivalent to affirmance. *Id.*

Where two Circuit Courts granted temporary injunctions and were reversed by Circuit Courts of Appeals on grounds going to merits, the two decisions differing on fundamental questions affecting same trade-mark, certiorari allowed before final decrees. *Hanover Star Milling Co. v. Metcalf*..... 403

Where jurisdiction of District Court in trade-mark case rests on diversity of citizenship, decision of Circuit Court of Appeals is final and can only be reviewed on certiorari. *Id.*

Where question on cross-appeal is of general importance in relation to questions involved on direct appeal, court may allow certiorari in lieu of the cross-appeal. *Central Trust Co. v. Chicago Auditorium*..... 581

**CIRCUIT COURT OF APPEALS.** See **Jurisdiction.**

**CLAIMS AGAINST UNITED STATES:**

In absence of implied contract on part of Government to pay for use of invention, Court of Claims could not take cognizance of claim for infringement prior to passage of act of 1910. *Farnham v. United States*..... 537

Dismissal of petition asserting claim against Government for use of invention because not based on implied contract, with-

**CLAIMS AGAINST UNITED STATES—Continued.** PAGE

out prejudice to right to present claim for infringement under act of 1910. *Id.*

When Government guarantees only certain depth of water at unloading dock and there is lack of finding that there was generally an available greater depth, a claim for demurrage cannot be based on failure to unload vessel of such greater draft at said dock. *Ackerlind v. United States*..... 531

**CLASSIFICATION:**

Classification of associations conducting business exchange, and other associations that do not, has a reasonable basis.

*Rogers v. Hennepin County*..... 184

See **Constitutional Law, VIII.**

**CODES:**

For sections of Criminal and Judicial Codes construed, etc., see **Congress.**

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

**COMITY.** See **Extradition.**

**COMMERCE.** See **Constitutional Law, V; Interstate Commerce.**

**COMMISSIONS.** See **Interstate Commerce Commission; Railroads; South Carolina.**

**COMMON CARRIERS:**

Measure of liability of carrier of interstate shipment under bill of lading issued pursuant to Commerce Act is to be governed under the Act by uniform rule. *Southern Ry. v. Prescott*..... 632

Under stipulation in bill of lading of interstate shipment, that carrier liable as warehouseman only for goods after arrival at destination and not removed within specified time, carrier liable only for negligence; and if loss admittedly by fire, burden is on plaintiff to prove negligence, notwithstanding rule under state law. *Id.*

Contract of bill of lading of interstate shipment remains in force until actual delivery to consignee. Mere giving of receipt by consignee and payment of freight, goods remaining with carrier, held not to amount to actual delivery. *Id.*

This court cannot limit prohibition of anti-pass provision of Hepburn Act to more formal uses than allowing persons to

**COMMON CARRIERS**—*Continued.*

PAGE

- ride on interstate train by permission of employer of carrier.  
*Illinois Central R. R. v. Messina* . . . . . 395
- Where question whether person injured while riding free on engine of interstate train by consent of engineer could have recovered under state law had his presence been illegal under Federal statute, jury should have been charged that Federal act applied. *Id.*
- Where no undue discrimination against shipper or locality of its plant is found, and community declared prejudiced has not complained and is not party to proceeding, and rate complained of is intrinsically reasonable, mere fact that other carriers have adopted lower schedule from shipper's district to points other than one designated, affords no foundation for Commission's finding that rate unreasonable and erroneous as matter of law, and its order should be enjoined. *Philadelphia & Reading Ry. v. United States* . . . . . 334
- See **Employers' Liability Act; Interstate Commerce; Interstate Commerce Commission.**

**COMMON LAW:**

- Common law of trade-marks is but part of law of unfair competition. *Hanover Star Milling Co. v. Metcalf* . . . . . 403

**CONFISCATION.** See **Eminent Domain.****CONFLICT OF LAWS:**

- Net weight lard statute of North Dakota is not repugnant to Food and Drugs Act of 1906. *Armour & Co. v. North Dakota* . . 510
- Act of 1793 (§ 5278, R. S.) was enacted for purpose of controlling interstate rendition, and so far as its provisions operated, was exclusive of state power. *Innes v. Tobin* . . . . . 127

**CONFUSION OF GOODS:**

- One knowingly taking property of another cannot by changing its form or commingling it with property of his own acquire title by accession. *Union Naval Stores Co. v. United States* . . . 284

**CONGRESS:**

- Acts construed and applied:*
- Anti-trust Act. *Fleitmann v. Welsbach Co* . . . . . 27
- Army and Navy. *United States v. Andrews* . . . . . 90
- Bankruptcy Act. *Carey v. Donohue* . . . . . 430
- Central Trust Co. v. Chicago Auditorium* . . . 581
- Eaton v. Boston Trust Co* . . . . . 427
- Fairbanks Steam Shovel Co. v. Wills* . . . . . 642
- Farmers' & M. Bank v. Ridge Avenue Bank* 498

## CONGRESS.—Continued.

	PAGE
Contracts. <i>Ackerlind v. United States</i> .....	531
<i>Fidelity &amp; Deposit Co. v. Pennsylvania</i> .....	319
<i>Illinois Surety Co. v. Peeler</i> .....	214
Criminal Code, § 32. <i>Lamar v. United States</i> .....	60
§ 215. <i>Badders v. United States</i> .....	391
Employers' Liability Act. <i>Chicago, R. I. &amp; P. Ry. v. Bond</i> .....	449
<i>Great Northern Ry. v. Knapp</i> ....	464
<i>Great Northern Ry. v. Wiles</i> ....	444
<i>Illinois Central R. R. v. Skaggs</i> ..	66
<i>Kansas City Ry. v. McAdow</i> ....	51
<i>Pecos &amp; N. T. Ry. v. Rosenbloom</i> .....	439
<i>Seaboard Air Line v. Kenney</i> ....	489
Extradition. <i>Innes v. Tobin</i> .....	127
Forest Reserves. <i>United States v. Morrison</i> .....	192
Income Tax Law. <i>Brushaber v. Union Pacific R. R.</i> .....	1
<i>Dodge v. Brady</i> .....	122
<i>Dodge v. Osborn</i> .....	118
<i>Stanton v. Baltic Mining Co.</i> .....	103
<i>Tyee Realty Co. v. Anderson</i> .....	115
Indians. <i>Indian Oil Co. v. Oklahoma</i> .....	522
<i>Johnson v. Riddle</i> .....	467
Interstate Commerce Acts. <i>Illinois Central R. R. v. Messina</i> .....	395
<i>Loomis v. Lehigh Valley R. R.</i> ...	43
<i>New York &amp; N. R. R. v. Peninsula Exchange</i> .....	34
<i>Southern Ry. v. Prescott</i> .....	632
<i>United States v. Union Mfg. Co.</i> .....	605
Interstate Rendition. <i>Innes v. Tobin</i> .....	127
Judicial Code, § 24 (1). <i>Pinel v. Pinel</i> .....	594
§ 226. <i>Rast v. Van Deman &amp; Lewis</i> .....	342
§ 237. <i>Central Trust Co. v. Chicago Auditorium</i> .....	581
<i>Detroit &amp; M. Ry. v. Michigan R. R. Comm.</i> ....	564
<i>Jones National Bank v. Yates</i> .....	541
<i>Mt. Vernon Cotton Co. v. Alabama Power Co.</i> ....	30
<i>Rogers v. Hennepin County</i> .....	184
§ 238. <i>Male v. Atchison, T. &amp; S. F. Ry.</i> .....	97
<i>Stanton v. Baltic Mining Co.</i> .....	103
§ 240. <i>Hamilton Shoe Co. v. Wolf Brothers</i> .....	352
§ 241. <i>Lamar v. United States</i> .....	60
Materialmen's Acts. <i>Illinois Surety Co. v. Peeler</i> .....	214
National Bank Act. <i>Jones National Bank v. Yates</i> .....	541
Patents. <i>Farnham v. United States</i> .....	537
Philippine Tariff Act. <i>Ackerlind v. United States</i> .....	531

## CONGRESS—Continued.

	PAGE
Public Lands. <i>Barlow v. Northern Pacific Ry.</i> .....	484
<i>Union Naval Stores Co. v. United States</i> .....	284
<i>United States v. Morrison</i> .....	192
Pure Food and Drugs Act. <i>Armour &amp; Co. v. North Dakota</i> ..	510
Sherman Act. <i>Fleitmann v. Welsbach Co.</i> .....	27
Tariff Act of 1913. <i>Brushaber v. Union Pacific R. R. Co.</i> ....	1
<i>Dodge v. Brady</i> .....	122
<i>Dodge v. Osborn</i> .....	118
<i>Stanton v. Baltic Mining Co.</i> .....	103
<i>Tyee Realty Co. v. Anderson</i> .....	115
Taxation. <i>Brushaber v. Union Pacific R. R. Co.</i> .....	1
<i>Dodge v. Osborn</i> .....	118
Tobacco Tax. <i>Rast v. Van Deman &amp; Lewis</i> .....	342
War Revenue Act. <i>Uterhart v. United States</i> .....	598
<i>Powers of: Fifth Amendment is not a limitation upon taxing power. Brushaber v. Union Pacific R. R. Co.</i> .....	1
When there are differences between subjects taxed, Congress does not transcend limit of power by taxing them differently. <i>Id.</i>	
Income Tax Act is not unconstitutional as beyond general taxing power. <i>Tyree Realty Co. v. Anderson</i> .....	115
Art. IV of Constitution confers authority to deal with rendition of fugitives from justice between States. <i>Innes v. Tobin</i> .....	127
Formal approval of survey by Commissioner of Land Office does not so relate back to date of grant or field survey as to destroy power to dispose of lands while unsurveyed. <i>United States v. Morrison</i> .....	192
Nothing in act of 1859, § 2275, R. S., or act of 1891, imposed any limitations on Congress to dispose of §§ 16 and 36 before title passed to Oregon. <i>Id.</i>	
Prior to vesting of title in State, Congress had power to dispose of §§ 16 and 36 granted to Oregon by § 4 of Enabling Act, on compensating State for resulting deficiency. <i>Id.</i>	
Congress may prevent renewal of obstructions below mean high water which may affect navigation; and owner is not entitled to compensation therefor. <i>Willink v. United States</i> ....	572
Rights in land below mean high water line of navigable and tidal river are subordinate to public right of navigation and power of Congress to employ all appropriate means to keep river navigable. <i>Id.</i>	
Congress may enact that each putting of letter in post office is separate offense. <i>Badders v. United States</i> .....	391

**CONGRESS.**—*Continued.*

PAGE

Congress has power to regulate overt act of putting letter into post office, and may prohibit, under penalty, such an act when done in furtherance of a scheme, whether it can forbid scheme or not. *Id.*

*Intent of:* An act of Congress which leaves subject with which Congress has power to deal unprovided for does not necessarily take matters within unprovided area out of any possible state action. *Innes v. Tobin*..... 127

Absence from Employers' Liability Act of definition of next of kin indicates purpose to leave determination of that question to state law. *Seaboard Air Line v. Kenney*..... 489

Sixteenth Amendment obviously intended to simplify situation and make clear limitations on taxing power and not to create radical and destructive changes in constitutional system. *Brushaber v. Union Pacific R. R. Co.*..... 1

Disposition of public lands by President under authority of Congress is disposition by Congress. *United States v. Morrison*..... 192

**CONGRESSMEN:**

False personation as crime under § 32, Crim. Code. See *Lamar v. United States*..... 60

**CONSIGNOR AND CONSIGNEE.** See **Criminal Law;**  
**Interstate Commerce.****CONSTITUTIONAL LAW:****I. Generally.**

Nothing in Constitution prevents taxation of membership in exchange restricted in use. *Rogers v. Hennepin County*... 184

Tax within taxing power of State not condemned as unconstitutional unless natural operation and effect render it prohibited exaction. *Kansas City Ry. v. Kansas*..... 227

Pennsylvania law of 1895, imposing taxes on premiums collected by certain classes of insurance companies, is not, as applied to premiums on bonds of Federal government officials by surety companies under act of 1894, unconstitutional as interference with powers of government. *Fidelity & Deposit Co. v. Pennsylvania*..... 319

**II. Congress, Powers and Duties of.** See **Congress.****III. States.** See **States.****IV. Contract Clause.**

While offer by State, without particular person designated, and its acceptance, may constitute contract protected by Con-

**CONSTITUTIONAL LAW—Continued.**

PAGE

- stitution, the offer and acceptance must have characteristics of bargain and be conventional counterparts. *Banning Co. v. California*..... 142
- Withdrawal from sale of lands by State before any right consummated not an impairment of contract. *Id.*
- Although California statute of 1863 gave private parties right to acquire tide lands, abrogation of right by later statutes and constitution not unconstitutional under contract clause as to one who had not paid any part of purchase price prior thereto. *Id.*
- Creditor of State cannot assert rights against withdrawal by state officers of funds of State under their control in regard to which State had not consented to be sued; and held, that such withdrawal did not amount to impairment of contract obligations. *Carolina Glass Co. v. South Carolina*..... 305
- Florida statute of 1913, imposing special license taxes on merchants using profit sharing coupons and trading stamps, is not unconstitutional as impairing obligation of contracts, as it must be construed as having prospective operation. *Rast v. Van Deman & Lewis*..... 342
- If business subject to regulation by State and imposition of privilege taxes, contracts made in its conduct are also subject to such regulation. *Id.*
- Statute of Washington of 1907, imposing license taxes on privilege of using profit sharing coupons and trading stamps, not unconstitutional as impairing obligation of contracts. *Tanner v. Little*..... 369
- Pitney v. Washington*..... 387
- Ordinance requiring railway company to do certain paving held not an impairment of obligation of charter contract. *Southern Wisconsin Ry. v. Madison*..... 457
- Imposition of inheritance tax on property passing by deed in trust, by State of donor's residence, held not unconstitutional as impairing obligation of contract because State where property situated had imposed inheritance tax thereon. *Bullen v. Wisconsin*..... 625
- V. Commerce Clause.**
- Regulations of retail sales within State held not to amount to attempt to control interstate commerce. *Rast v. Van Deman & Lewis*..... 342
- Regulation of use of profit sharing coupons and trading stamps in connection with retail sales to individual purchasers and consumers and not designed to be used by manufacturer

**CONSTITUTIONAL LAW—Continued.**

PAGE

from another State to State of distribution, does not interfere with or burden interstate commerce. *Id.*

Statute of Washington of 1907, imposing license taxes on privilege of using profit sharing coupons and trading stamps, not unconstitutional as interfering with or burdening interstate commerce. *Tanner v. Little*..... 369  
*Pitney v. Washington*..... 387

Tax imposed by c. 135, Kansas Laws, 1913, on privilege of being corporation, is not, as to domestic corporation engaged in both interstate and intrastate commerce, invalid as violation of commerce clause. *Kansas City Ry. v. Kansas*..... 227

Arkansas statute requiring full switching crews on railroads over one hundred miles in length is not unconstitutional as interfering with or burdening interstate commerce. *St. Louis, I. M. & S. Ry. v. Arkansas*..... 518

Net weight lard statute of North Dakota is not, as to packages sent into State from other States and afterwards sold to consumers at retail, an interference with or burden on interstate commerce. *Armour & Co. v. North Dakota*..... 510

**VI. Fifth Amendment.**

Amendment is not a limitation upon taxing power conferred upon Congress. *Brushaber v. Union Pacific R. R. Co.*..... 1

Requiring appeal to Commissioner of Internal Revenue after payment of taxes and giving right to sue only after his refusal to refund does not violate due process of law. *Dodge v. Osborn*..... 118

Income Tax Act is not unconstitutional under due process provision. *Brushaber v. Union Pacific R. R. Co.*..... 1  
*Dodge v. Brady*..... 122

**VII. Thirteenth Amendment.**

Involuntary servitude covers those forms of compulsory labor akin to African slavery and does not interdict enforcement of duties owed by individuals to State. *Butler v. Perry*..... 328

Object of Amendment liberty under protection of effective government and not destructive of latter by depriving it of essential powers theretofore properly exercised. *Id.*

Requirement by State that able-bodied men do reasonable amount of work on public roads near residence does not amount to involuntary servitude under Constitution. *Id.*

**VIII. Fourteenth Amendment.**

1. *Generally*: Amendment was intended to recognize and protect fundamental objects long recognized under common-law system. *Butler v. Perry*..... 328

**CONSTITUTIONAL LAW—Continued.**

PAGE

- Statute of Florida requiring able-bodied men to do certain work on public roads within county of residence, not unconstitutional as contrary to due process. *Id.*
- Legislature may create taxing districts to meet expense of local improvements without encountering Amendment, unless action palpably arbitrary or plain abuse. *Gast Realty Co. v. Schneider Granite Co.* . . . . . 55
2. *Due Process of Law*: Due process does not prevent State from placing upon bank commissioner duty of closing bank found upon examination to be insolvent without first instituting proceedings and obtaining award. *Tille Guaranty Co. v. Allen.* . . . . . 136
- State in fixing situs for taxation of memberships in exchange at place where exchange located does not deprive non-resident members of their property without due process. *Rogers v. Hennepin County.* . . . . . 184
- Tax imposed by c. 135, Kansas Laws, 1913, on privilege of being corporation, is not, as to domestic corporation engaged in both interstate and intrastate commerce invalid as a violation of due process clause. *Kansas City Ry. v. Kansas.* . . . . . 227
- Where taxing district established by delegated authority it is essential to due process of law that landowners have opportunity to be heard on question of benefits. *Embree v. Kansas City Road District.* . . . . . 242
- Where statute delegating authority for establishment of taxing district provides for hearing on question of benefits, decision of designated tribunal sufficient, and, unless made fraudulently or in bad faith, due process not denied. *Id.*
- Adequate hearing may be had before a delegated tribunal authorized to establish taxing districts for roads and to declare what lands shall be included therein as benefited and due process accorded owners, although particular roads to be improved not designated. *Id.*
- A legislative act establishing zones of benefits with graduated ratings for assessments in districts lawfully created, does not deny due process of law where it does not provide for a hearing on this particular feature, unless legislative apportionment so arbitrary and devoid of reasonable basis as to amount to abuse of power. *Id.*
- Although no hearing afforded owners of land within taxing district on appraisal of their lands for purpose of apportioning tax, due process not denied if such hearing accorded when tax sought to be enforced. *Id.*

## CONSTITUTIONAL LAW—Continued.

PAGE

Missouri laws providing for establishment of road improvement districts not unconstitutional under due process provision. *Id.*

A trunk line has no constitutional right to build up business by acts forbidden by Congress in interest of public welfare; and an order of the Interstate Commerce Commission prescribing maximum rates, otherwise legal, does not deprive line of its property without due process by denying it right to compete for business in that manner. *O'Keefe v. United States*..... 294

A state commission appointed to close up business in which State engaged, held to have had jurisdiction to consider, find and off-set claims of State against one claiming for supplies furnished, and by doing so did not deprive claimant of its property without due process of law. *Carolina Glass Co. v. South Carolina*..... 305

Requirement by State that able-bodied men do reasonable amount of work on public roads near residence does not deprive persons of liberty and property without due process of law. *Butler v. Perry*..... 328

There are many restrictions upon liberty of contract and business that do not amount to deprivation of liberty and property without due process of law. *Rast v. Van Deman & Lewis*. 342

Even though statutory tax prohibitory, right to carry on business by using trading stamps and profit sharing coupons is not so protected by Constitution as to render tax a violation of due process of law. *Id.*

Florida statute of 1913, imposing license taxes on merchants using profit sharing coupons and trading stamps does not deprive of due process of law because of severity of its penalties intimidating against testing legality. *Id.*

Statute of Washington of 1907, imposing license taxes on privilege of using profit sharing coupons and trading stamps, not unconstitutional as denying due process of law. *Tanner v. Little*..... 369

*Pitney v. Washington*..... 387

Ordinance requiring railway company to do certain paving held not a violation of due process of law. *Southern Wisconsin Ry. v. Madison*..... 457

Net weight lard statute of North Dakota is not unconstitutional as depriving sellers of property without due process of law. *Armour & Co. v. North Dakota*..... 510

Arkansas statute requiring full switching crews on railroads

**CONSTITUTIONAL LAW**—*Continued.*

	PAGE
over one hundred miles in length is not unconstitutional as depriving such railroads of property without due process of law. <i>St. Louis, I. M. &amp; S. Ry. v. Arkansas</i> . . . . .	518
Granting writ of mandamus requiring railroad to comply with order of state commission, which is <i>prima facie</i> lawful, pending determination of suit to enjoin enforcement of order, <i>held</i> , in view of circumstances and requirement that bond of indemnity be given, not to deprive railroad of due process of law. <i>Detroit &amp; M. Ry. v. Michigan Railroad Comm.</i> . . . . .	564
Imposition of inheritance tax on property passing by deed in trust, by State of donor's residence held not unconstitutional as depriving beneficiaries of trust of property without due process of law because State where property situated had imposed inheritance tax thereon. <i>Bullen v. Wisconsin</i> . . . . .	625
Income Tax Act does not deny due process of law by reason of classifications therein; nor do provisions for collecting income at source by reason of duties imposed upon corporations without compensation in connection with payment of tax by others. <i>Brushaber v. Union Pacific R. R. Co.</i> . . . . .	1
<i>Dodge v. Brady</i> . . . . .	122
Want of due process of law does not arise from want of wisdom in Congress in levying taxes and give courts power to overrule action of Congress by declaring it to be unconstitutional. <i>Brushaber v. Union Pacific R. R. Co.</i> . . . . .	1
Alabama statute providing for condemnation of property for water power purposes held to be an exercise of power of eminent domain and not unconstitutional as taking property without due process of law. <i>Mt. Vernon Cotton Co. v. Alabama Power Co.</i> . . . . .	30
3. <i>Equal Protection of the Law</i> : Police statutes, otherwise valid, may, without denying equal protection of the law, contain practical groupings of objects which fairly well present a class, although there may be exceptions in which the evil aimed at is deemed to be not so flagrant. <i>St. Louis, I. M. &amp; S. Ry. v. Arkansas</i> . . . . .	518
A distinction in legislation does not deny equal protection of the laws if any state of facts can be conceived that will sustain it. <i>Rast v. Van Deman &amp; Lewis</i> . . . . .	342
Classification based on differences between business using and not using profit sharing coupons and trading stamps is not so arbitrary as to deny equal protection of the law. <i>Id.</i>	
Statute of Washington of 1907, imposing license taxes on privilege of using profit sharing coupons and trading stamps, not	

**CONSTITUTIONAL LAW—Continued.**

PAGE

unconstitutional as denying equal protection of law. <i>Tanner v. Little</i> .....	369
<i>Pitney v. Washington</i> .....	387
Taxation of memberships in exchanges wherein business transactions conducted for profit not a denial of equal protection because memberships in other associations, not conducting business exchanges and where there are manifest distinctions are not also taxed. <i>Rogers v. Hennepin County</i> .....	184
Law establishing taxing district under which there is no reasonable presumption that justice will be done, but under which parties will probably be disproportionately taxed, cannot stand as constitutional against one actually so taxed. <i>Gast Realty Co. v. Schneider Granite Co.</i> .....	55
Income Tax Act does not deny equal protection of the law by reason of classification therein. <i>Brushaber v. Union Pacific R. R. Co.</i> .....	1
<i>Dodge v. Brady</i> .....	122
<i>Tyee Realty Co. v. Anderson</i> .....	115
St. Louis street paving ordinance held to subject property owners to disproportionate taxation and therefore unconstitutional. <i>Gast Realty Co. v. Schneider Granite Co.</i> .....	55
Ordinance requiring railway company to do certain paving held not a violation of equal protection of the law. <i>Southern Wisconsin Ry. v. Madison</i> .....	457
Arkansas statute requiring full switching crews on railroads over one hundred miles in length is not unconstitutional as denying equal protection of the law. <i>St. Louis, I. M. &amp; S. Ry. v. Arkansas</i> .....	518
Net weight lard statute of North Dakota is not unconstitutional as denying equal protection of the law. <i> Armour &amp; Co. v. North Dakota</i> .....	510

**IX. Sixteenth Amendment.**

Amendment obviously intended to simplify situation and make clear limitations on taxing power of Congress and not to create radical and destructive changes in constitutional system. <i>Brushaber v. Union Pacific R. R. Co.</i> .....	1
By Amendment all income taxes are relieved from rule of apportionment. <i>Id.</i>	
Income Tax Act is not unconstitutional under Amendment. <i>Brushaber v. Union Pacific R. R. Co.</i> .....	1
<i>Stanton v. Baltic Mining Co.</i> .....	103
<i>Tyee Realty Co. v. Anderson</i> .....	115
<i>Dodge v. Brady</i> .....	122

**CONSTITUTIONAL LAW—Continued.**

PAGE

There is no authority for taking taxation of mining corporations out of rule established by Amendment; nor is there basis for contention that tax is a direct one on the property itself, beyond the purview of the Amendment, and void for want of apportionment. *Stanton v. Baltic Mining Co.* . . . . . 103

**X. Cruel and Unusual Punishment.**

Punishment on each of five counts, of five years, periods being concurrent, and fine of \$1000 on each of seven counts, held not to be cruel and unusual within prohibition of Constitution. *Badders v. United States* . . . . . 391

**XI. Taxation.**

Constitution recognized the two great classes of taxation as direct and indirect and applied rule of apportionment as to former and uniformity as to latter; but by Sixteenth Amendment all income taxes are relieved from rule of apportionment. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1

Uniformity of taxation required by Constitution is geographical. *Id.*

Fifth Amendment is not a limitation upon taxing power conferred upon Congress. *Id.*

When there are differences between subjects taxed, Congress does not transcend limit of power by taxing them differently. *Id.*

Income Tax Act is not unconstitutional as beyond general taxing power of Congress, or because of discriminations, inequalities or progressive increases on incomes, or method provided for computing income of corporations. *Tyree Realty Co. v. Anderson* . . . . . 115

**XII. Eminent Domain.**

Alabama statute providing for condemnation of property for water power purposes held to be an exercise of power of eminent domain and not unconstitutional as taking property without due process of law. *Mt. Vernon Cotton Co. v. Alabama Power Co.* . . . . . 30

**XIII. Extradition.**

Art. IV of Constitution fully embraces subject of rendition of fugitives from justice between States and confers authority upon Congress to deal with that subject. *Innes v. Tobin* . . . . . 127

**XIV. Full Faith and Credit.**

Judgment of Virginia court against garnishee, entered without notice to defendant residing in West Virginia, held to protect garnishee in suit by defendant against him brought in West Virginia. *Baltimore & Ohio R. R. v. Hostetter* . . . . . 620

**CONSTITUTIONAL LAW—Continued.**

PAGE

**XV. Retroactive Laws.**

Income Tax Act is not unconstitutional by reason of retroactive operation. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1  
*Tyee Realty Co. v. Anderson* . . . . . 115  
*Dodge v. Brady* . . . . . 122

**XVI. Suit Against State.**

A suit against a state commission held to be in effect a suit against State not maintainable in Federal court. *Carolina Glass Co. v. South Carolina* . . . . . 305

**CONSTRUCTION:**

Courts cannot supply by construction that which Congress has clearly shown its intention to omit. *Carey v. Donohue* . . . . . 430  
A subsequent legislative interpretation of statute is entitled to great weight. *New York, P. & N. R. R. v. Peninsula Exchange* . . . . . 34  
In construing act of Congress court will not presume that because provisions not coterminous with power of Congress act was so framed for purpose of leaving subject, so far as unprovided for, beyond operation of any legal authority whatever. *Innes v. Tobin* . . . . . 127  
The question in what sense the word "officer" is used in § 32, Crim. Code, is not one involving the Constitution. *Lamar v. United States* . . . . . 60  
Florida statute of 1913, imposing special license taxes on merchants using profit sharing coupons and trading stamps, is not unconstitutional as impairing obligation of contracts, as it must be construed as having prospective operation. *Rast v. Van Deman & Lewis* . . . . . 342  
Judicial construction of will by state court of competent jurisdiction determines legally and practically extent and character of interests taken by legatees. *Uterhart v. United States* . . . . . 598  
See **Materialmen's Act.**

**CONTINGENT INTERESTS. See War Revenue Act.**

**CONTRACTS:**

*Liberty of contract:* There are many restrictions upon liberty of contract that do not amount to deprivation of liberty and property without due process of law. *Rast v. Van Deman & Lewis* . . . . . 342  
If business subject to regulation by State and imposition of privilege taxes, contracts made in its conduct are also subject to such regulation. *Id.*

**CONTRACTS**—*Continued.*

PAGE

- What constitutes contract:* While offer by State, without particular person designated, and its acceptance, may constitute contract protected by Constitution, the offer and acceptance must have characteristics of bargain and be conventional counterparts. *Banning Co. v. California*. . . . . 142
- Expenditures, other than payment to State, by intended acceptor of offer to sell public lands, are but voluntary qualifications to become purchaser and are not binding on him or the State. *Id.*
- Implied contracts:* Riparian owner held not entitled to recover as upon an implied contract for taking his property by reason of damages alleged in consequence of exercise of power of Congress over navigable waters. *Willink v. United States*. . . . . 572
- Where officers of United States charged with matter have refused offer for use of invention, and have declined to use it, and, proceeding independently, make and use articles designed by themselves, claimed by patentee to embody his invention, there is no implied contract on part of Government to pay for use of invention; and Court of Claims without jurisdiction of claim prior to act of 1910. *Farnham v. United States*. . . . . 537
- Validity:* Contract between carrier and independent employer of labor, by which latter assumes risk, held not an evasion of § 5 of Employers' Liability Act. *Chicago, R. I. & P. Ry. v. Bond* 449
- Impairment of obligation:* Ordinance requiring railway company to do certain paving held not an impairment of obligation of charter contract. *Southern Wisconsin Ry. v. Madison* 457
- Performance:* Ability to perform a contract is of its very essence, and delay resulting from absence of such ability is not due to unavoidable causes. *Carnegie Steel Co. v. United States* 156
- That a contractor engaging to deliver armor plate of specified qualifications was delayed by unforeseen difficulties in the then new art of manufacturing does not excuse non-performance if such delays not within excepted reasons therefor. *Id.*
- Contract of bill of lading of interstate shipment remains in force until actual delivery to consignee. Mere giving of receipt by consignee and payment of freight, goods remaining with carrier, held not to amount to actual delivery. *Southern Ry. v. Prescott*. . . . . 632
- Sub-contractor not bound by provisions in general contract between Government and contractor so as to be obliged to submit to delays resulting from action of Government permitted by original contract. *Guerini Stone Co. v. Carlin*. . . . . 264

**CONTRACTS**—*Continued.*

PAGE

Where State makes general offer to sell and provides for determination of conflicting claims of right to purchase, it is not bound by offer or precluded from withdrawing it until rightful claimant determined and payment of at least an installment of purchase price. *Banning Co. v. California*..... 142

*Breach*: Involuntary bankruptcy of promisor held to constitute anticipatory breach of executory contract; and that claim of promisee is one founded upon contract and provable under § 63a-4 of Act and that damages may be liquidated under § 63b. *Central Trust Co. v. Chicago Auditorium*..... 581

General rule is that where party bound by executory contract repudiates his obligation or disables himself from performance, promisee has option to treat contract as ended and may maintain action at once for damages occasioned by the anticipatory breach. *Id.*

In estimating profits that might be realized if a building contract had been proceeded with in ordinary manner to completion, no more definite and certain method can be adopted than to deduct from contract price the probable cost of furnishing the materials and doing the work. *Guerini Stone Co. v. Carlin*..... 264

*Reformation*: In a proper case reformation of a contract may be required against the United States, notwithstanding § 3744, Rev. Stat. *Ackerlind v. United States*..... 531

Contract reformed by striking out clause in printed form which it had been agreed should be, but by mistake had not been, stricken out. *Id.*

Failure of contractor to read contract before executing it, he having previously seen its terms, will not debar him from seeking its reformation. *Id.*

*Rescission*: Rule applicable to private contracts that vendor seeking to rescind must be ready to return consideration, not applicable to Government in suits to cancel patents for land. *Causey v. United States*..... 399

Secret arrangements with government officials by which they share in profits of contracts which they have voice in awarding vitiate contract justifying rescission, even though made without actual knowledge of contractor. *Crocker v. United States*..... 74

Recovery cannot be had upon government contract tainted with fraud and rescinded by proper officer of Government on that ground. *Id.*

Rescission of government contract to supply articles at speci-

**CONTRACTS**—*Continued.*

PAGE

fied prices is no obstacle to recovery upon quantum valebat if requisite proof of value of articles delivered. *Id.*

Where finding by Court of Claims of fraud in fixing contract price of articles, that price cannot for the quantum valebat be regarded as admission by Government of value of articles delivered prior to discovery of fraud and rescission of contract. *Id.*

Although principal contract between the Government and contractor gave the Government right to suspend, as contractor had not safeguarded himself by incorporating that provision into sub-contract, he was not relieved from damages caused sub-contractor by such suspension. *Guerini Stone Co. v. Carlin* . . . . . 264

*Limitations:* Final settlement of account within meaning of Act of 1894 as amended in 1905, is not when final payment made, but is final administrative determination by proper authority of amount due, and suit by sub-contractor against surety commenced six months after date of such determination, but less than six months after payment, not prematurely brought in absence of suit by Government. *Illinois Surety Co. v. Peeler* . . . . . 214

*Construction:* A provision in a sub-contract requiring the contractor to make monthly payments not exceeding 85% of cost of work erected cannot be construed to require precisely that percentage; nor can a provision that the sub-contractor furnish requisitions of the amount to be paid make the sub-contractor sole judge of the amount it is entitled to receive. *Guerini Stone Co. v. Carlin* . . . . . 264

General contract between Government and contractor held inadmissible as against sub-contractor except for specific purpose mentioned in sub-contract. *Id.*

In case of sub-contracts, as of other written instruments, reference to extraneous writing for a particular purpose makes it part of agreement for that purpose only. *Id.*

See **Constitutional Law, IV.**

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

**CONVERSION:**

One knowingly taking property of another cannot by changing its form or commingling it with property of his own acquire title by accession. *Union Naval Stores Co. v. United States* . . . . . 284

One knowingly purchasing manufactured article from tres-

**CONVERSION—Continued.**

PAGE

passer who converted crude article must account for value as manufactured and can take no credit for labor of wrongdoer in manufacturing it. *Id.*

**CORPORATIONS:**

*Residence:* Corporation organized under laws of Illinois deemed resident of State within meaning of Chattel Mortgage Act, and county of residence is county where principal office located. *Fairbanks Steam Shovel Co. v. Wills* . . . . . 642

Residence within State of incorporation can be changed only by complying with law of State. *Fairbanks Steam Shovel Co. v. Wills* . . . . . 642

Where Illinois corporation had its principal office in Cook County and such office was never legally established in any other county, a mortgage recorded in a different county did not comply with recording act of State and, as against trustee in bankruptcy, was invalid. *Id.*

A corporation is entitled to be sued in district of its residence, and District Court for another jurisdiction is without jurisdiction of action involving inherently Federal question. *Male v. Atchison, T. & S. F. Ry.* . . . . . 97

*Stockholders' rights:* As to right of stockholder to enjoin corporation from voluntarily paying unconstitutional tax. See *Brushaber v. Union Pacific R. R. Co.* . . . . . 1

In suit in equity by stockholder against other corporations to recover under § 7 of Anti-trust Act, court cannot enter decree requiring plaintiff's corporation to sue other corporations or permitting him to sue in its name and behalf. *Fleitmann v. Welsbach Co.* . . . . . 27

*Taxation:* State may tax domestic corporation for privilege of being such, and such tax not necessarily invalid because measured on capital stock part of which may represent capital not taxable by State. *Kansas City Ry. v. Kansas* . . . . . 227

State not debarred from taxing granted privilege of being corporation because corporation may be engaged in interstate commerce. *Id.*

Tax imposed by c. 135, Kansas Laws, 1913, on privilege of being corporation, is not, as to domestic corporation engaged in both interstate and intrastate commerce invalid either as violation of commerce clause, or of due process clause, of Constitution. *Id.*

Memberships in incorporated exchange, as property of respective members, are distinct from assets of corporation, and

**CORPORATIONS—Continued.**

PAGE

- taxing members on membership and corporation on assets not double taxation. *Rogers v. Hennepin County* . . . . . 184
- Where objections to constitutionality of provisions of c. 135, Kansas Laws, 1913, taxing foreign corporations doing business in State for such privilege measured on proportion of stock used in State, rest in this case exclusively on asserted invalidity of similar provisions of same statute relative to domestic corporations, which have been found untenable, case controlled by former decision. *Lusk v. Kansas* . . . . . 236
- Leases that cannot be taxed as entity cannot be taxed vicariously by taxing stock of corporation owning them where only value of stock is value of the leases. *Indian Oil Co. v. Oklahoma* . . . . . 522
- Reorganization:* In reorganization schemes substantial justice must be done and well settled rules of equity not transgressed.
- Kansas City Southern Ry. v. Guardian Trust Co.* . . . . . 166
- Party attacking reorganization scheme as not adequately protecting unsecured creditors of corporation while providing for stockholders, held not barred by laches. *Id.*
- Purchaser of railroad under foreclosure of mortgage and reorganization scheme which provides for stockholders of company, but not for unsecured creditors, held chargeable with unsecured debts. *Id.*
- One owning both stock and floating debt of company whose property is under foreclosure, who assents to scheme of reorganization which does not show on its face that it unduly provides for stockholders and does not adequately provide for unsecured creditors, is not precluded from subsequently claiming that property chargeable after sale with his unsecured debt. *Id.*

**COURT-MARTIAL:**

- Sentence essential to dismissal of officers of Army and Navy. *United States v. Andrews* . . . . . 90

**COURT OF CLAIMS:**

- Findings in action at law determine all matters of fact, and this court cannot refer to opinion for purpose of explaining or modifying them. *Crocker v. United States* . . . . . 74
- In absence of implied contract on part of Government to pay for use of invention, court could not take cognizance of claim for infringement prior to passage of act of 1910. *Farnham v. United States* . . . . . 537
- Although court may not have made findings in terms of cer-

**COURT OF CLAIMS**—*Continued.*

PAGE

tain facts assumed in its decision to be true, if they are not controverted and appear in record it is not necessary to send case back for further finding. *Ackerlind v. United States*.... 531

**COURTS:**

Courts cannot supply by construction that which Congress has clearly shown its intention to omit. *Carey v. Donohue*... 430

Courts cannot arbitrate differences of opinion as to whether state of facts sustains distinction in legislation. *Rast v. Van Deman & Lewis*..... 342

Courts may not, as original question, exert authority over subjects primarily within jurisdiction of Interstate Commerce Commission. *Loomis v. Lehigh Valley R. R.*..... 43

Want of due process of law does not arise from want of wisdom in Congress in levying taxes and give courts power to overrule action of Congress by declaring it to be unconstitutional. *Brushaber v. Union Pacific R. R. Co.*..... 1

Arguments as to expediency of levying tax within power of Congress are beyond judicial cognizance. *Id.*

Findings of fact in contests as to ownership under provisions of Atoka Agreement and subsequent legislative regulations, relative to purchase of town lots, made by commission or Indian Inspector, affirmed on final appeal by Secretary of Interior, are binding upon the courts in absence of gross mistake or fraud. *Johnson v. Riddle*..... 467

Power of legislature to regulate conduct and contracts upon its conception of the public welfare is only subject to review by courts when the legislation is unreasonable or arbitrary. *Rast v. Van Deman & Lewis*..... 342

Legislative regulation of use of profit sharing coupons and trading stamps is not to be impeached and overruled by courts on account of difference of opinion in regard to conclusion reached as to evils of use. *Id.*

See **Jurisdiction; Practice and Procedure.**

**CRIMINAL CODE:**

For sections construed, etc., see **Congress.**

**CRIMINAL LAW:**

Intent may make criminal act otherwise innocent, if it is a step in a plot. *Badders v. United States*..... 391

Objection that indictment does not charge crime against United States goes only to merits of case. *Lamar v. United States*..... 60

**CRIMINAL LAW—Continued.**

PAGE

District Court has jurisdiction of all crimes cognizable under authority of United States and acts equally within its jurisdiction whether its decision is right or wrong. *Id.*

Congress may enact that each putting of letter in post office is separate offense. *Badders v. United States*. . . . . 391

Congress has power to regulate overt act of putting letter into post office, and may prohibit under penalty, such an act when done in furtherance of a scheme, whether it can forbid scheme or not. *Id.*

Offense of false billing and representations specified in § 10 (3) of Commerce Act, as amended in 1910, applies to consignees as well as consignors of interstate shipments; and District Court of district of destination of shipment has jurisdiction of indictment of consignee for false representations made by him in liquidation of amount payable for freight at destination. *United States v. Union Mfg. Co.*. . . . . 605

Offense of false representations specified in par. 3, § 10, Commerce Act of 1910, may be committed where interstate transportation has already been completed and amount due therefor remains to be adjusted, the same as though the representations had preceded delivery to carrier for shipment. *Id.*

False personation by telephone of officer of United States takes effect where hearer is, and District Court of that district has jurisdiction of offense under § 32, Crim. Code. *Lamar v. United States*. . . . . 60

Under § 32, Crim. Code, indictment is not for defrauding but for false personation with intent to defraud; and nature of fraud is immaterial. *Id.*

The question in what sense the word "officer" is used in § 32, Crim. Code, is not one involving the Constitution. *Id.*

See **Extradition.**

**DAMAGES:**

Mere mental pain and anxiety are too vague for legal redress where no injury is done to person, property, health or reputation; and so held that damages not recoverable for delay in delivery of burial equipment. *Southern Express Co. v. Byers*. . . 612

In action by Government to recover from trespasser for crude turpentine taken from public land, fact that precise quantity not shown does not entitle defendant to preemptory instruction or one to limit recovery to nominal damages, where probable amount ascertainable by jury. *Union Naval Stores Co. v. United States*. . . . . 284

**DAMAGES—Continued.**

	PAGE
Liability of triple damages under § 7 of Anti-Trust Act only enforceable through verdict of jury in court of common law.	
<i>Fleitmann v. Welsbach Co.</i> .....	27

**DEBTOR AND CREDITOR:**

Trusts for life with income free from interference or control of creditors are, in Massachusetts, valid and effective against creditors and, under certain conditions, against assignees and trustees in bankruptcy. *Eaton v. Boston Trust Co.*..... 427  
 See **Bankruptcy; South Carolina.**

**DELIVERY:**

Mere giving of receipt by consignee of shipment and payment of freight, goods remaining with carrier, held not to amount to actual delivery. *Southern Ry. v. Prescott.*..... 632

**DEMURRAGE.** See **Maritime Law.**

**DISPENSARIES.** See **South Carolina.**

**DISTRICT COURTS.** See **Jurisdiction.**

**DOUBLE TAXATION.** See **Taxes and Taxation.**

**DUE PROCESS OF LAW.** See **Constitutional Law, VI, VIII.**

**EMINENT DOMAIN:**

That Government contracts for cutting away land within harbor line location does not amount to taking of such land if there was no attempt to perform contract. *Willink v. United States.*..... 572

Mere location of harbor lines does not amount to taking of property within lines or its appropriation to public use; nor does taking result from request of officer of United States to riparian owner to vacate, if such request not acceded to or enforced. *Id.*

Riparian owner held not entitled to recover as upon an implied contract for taking his property by reason of damages alleged in consequence of exercise of power of Congress over navigable waters. *Id.*

**EMPLOYERS' LIABILITY ACT:**

*Scope:* In so far as it deals with subjects Federal Act is paramount and exclusive, and recovery under it can be had only in mode prescribed and by and for persons enumerated. *Seaboard Air Line v. Kenney.*..... 489  
 Law governing situation in action in state court under Act

**EMPLOYERS' LIABILITY ACT—Continued.**

PAGE

- is equally the law of the State, whether derived from Congress or state legislature, and must be noticed by court. *Kansas City Ry. v. McAdow* . . . . . 51
- Who within:* If employee of interstate carrier is employed in interstate commerce when killed, right of recovery against carrier depends upon Federal act, and widow of deceased cannot maintain action for benefit of herself, as next of kin for minor children, and for use and benefit of parents of deceased.
- Pecos & N. T. Ry. v. Rosenbloom* . . . . . 439
- An independent contractor with an interstate carrier cannot recover, nor can his representative, under Act, even though injured or killed while engaged in services in interstate commerce. *Chicago, R. I. & P. Ry. v. Bond* . . . . . 449
- One controlling the manner of work done by himself and his employees, although subject to certain direction or information from carrier, is a contractor with and not a servant of the carrier within the meaning of the Act. *Id.*
- Absence of definition of next of kin indicates purpose of Congress to leave determination of that question to state law. *Seaboard Air Line v. Kenney* . . . . . 489
- "Next of kin" not used in common-law significance and as excluding all persons not included in term thereunder. *Id.*
- Ruling of state court that next of kin of intestate, who was illegitimate, were his half brothers and sisters legitimately born of the same mother, excludes by implication possibility of asserted father being person entitled to recover under Act. *Id.*
- Contracts prohibited:* Contract between carrier and independent employer of labor, by which latter assumes risk, held not an evasion of § 5 of Act. *Chicago, R. I. & P. Ry. v. Bond* . . . . 449
- Contributory negligence as defense:* Where there is nothing to extenuate negligence of employee, or confuse his judgment, and he knows not only imminent danger of situation, but how it can be averted by complying with rules of employer, there is no justification for a comparison of negligences or apportioning of their effect under provision of Act. *Great Northern Ry. v. Wiles* . . . . . 444
- Where two employees are necessarily working together, each has reasonable latitude in relying upon statements of other made in course of and as part of operation, and if statements made negligently result in injury of one properly relying thereon he is not barred from recovery under Act. *Illinois Central R. R. v. Skaggs* . . . . . 66
- Practice:* Where, in case brought under Act, question simply

**EMPLOYERS' LIABILITY ACT—Continued.**

PAGE

whether there were matters for determination of jury, and no question as to interpretation or application of Act, this court will not disturb decision of court below unless error palpable. *Great Northern Ry. v. Knapp* . . . . . 464

In cases arising under Act, not of exceptional character, court confines itself to mere announcement of its conclusion. *Id.*

Where statute of State is so similar to Federal Act that liability of employer not affected by question of which governs case, it is not necessary to determine that question. *Kansas City Ry. v. McAdow* . . . . . 51

Verbal mistake in charge to jury as to interpretation of Act, defendant not being prejudiced thereby, held not reversible error. *Illinois Central R. R. v. Skaggs* . . . . . 66

**EQUAL PROTECTION OF THE LAW.** See **Constitutional Law, VIII.**

**EQUITY:**

That many suits would have to be brought to recover taxes paid under unconstitutional statute and that meantime taxes imposed become lien and constitute cloud on title, held inadequate to sustain jurisdiction of equity to restrain collection of taxes. *Dodge v. Osborn* . . . . . 118

Contested liability of surety on contractor's bond under Materialmen's Acts of 1894, 1905, not determinable in equity. *Illinois Surety Co. v. Peeler* . . . . . 214

Where bill filed to restrain enforcement of state statute imposing license taxes on merchants using profit sharing coupons and trading stamps shows that conditions of complainant's business and property engaged therein are such that enforcement would produce irreparable injury, it furnishes ground for equitable relief. *Rast v. Van Deman & Lewis* . . . . . 342

Suit by single stockholder of corporation against other corporations to require latter to pay former triple damages under § 7 of Anti-trust Act, not maintainable in equity. *Fleitmann v. Welsbach Co.* . . . . . 27

In suit by stockholder of corporation against other corporations to recover under § 7 of Anti-trust Act, court cannot enter decree requiring plaintiff's corporation to sue other corporations or permitting him to sue in its name and behalf. *Id.*

**ESTATES OF DECEDENTS:**

Right to succeed to property of decedent depends upon and is regulated by state law. *Uterhart v. United States* . . . . . 598

**ESTATES OF DECEDENTS—Continued.**

PAGE

Judicial construction of will by state court of competent jurisdiction determines legally and practically extent and character of interests taken by legatees. *Id.*

On the construction of will by state court, *held*, that interests of residuary legatees were contingent prior to July 1, 1902, within meaning of Refunding Act of 1902, except as to such amounts as were actually paid to legatees prior to that date. *Id.*

**ESTOPPEL:**

- Tenant is not estopped to show that landlord's title has expired or been terminated by operation of law. *Johnson v. Riddle* . . . . . 467
- Officer of Army accepting grant of leave without pay not estopped from demanding half pay allowed by statute, even in absence of protest at condition. *United States v. Andrews* . . . . . 90
- One owning both stock and floating debt of company whose property is under foreclosure, who assents to scheme of reorganization which does not show on its face that it unduly provides for stockholders and does not adequately provide for unsecured creditors, is not precluded from subsequently claiming that property chargeable after sale with his unsecured debt. *Kansas City Southern Ry. v. Guardian Trust Co.* . . . . . 166
- Earlier adopter of trade-mark estopped, under circumstances of this case, from asserting infringement. *Hanover Star Milling Co. v. Melcalf* . . . . . 403
- Failure of contractor to read contract before executing it, he having previously seen its terms, will not debar him from seeking its reformation. *Ackerlind v. United States* . . . . . 531

**EVIDENCE:**

- General contract between Government and contractor held inadmissible as against sub-contractor except for specific purpose mentioned in sub-contract. *Guerini Stone Co. v. Carlin* . . . . . 264
- Burden of proof to establish value upon a quantum valebat for articles delivered under contract rescinded for fraud, is on claimant. *Crocker v. United States* . . . . . 74
- Burden of proof not on complainant to show what portion of profits of infringer of trade-mark was derived from infringement. *Hamilton Shoe Co. v. Wolf Brothers* . . . . . 251
- Where loss of interstate shipment while in warehouse is admittedly by fire, burden is on plaintiff to prove negligence on part of carrier. *Southern Ry. v. Prescott* . . . . . 632

**EXCEPTIONS:**

PAGE

Extravagant and unnecessary multiplication of exceptions and assignments of error condemned. *Badders v. United States* . . 391

**EXCHANGES:**

Membership held property, notwithstanding restrictions upon use, and subject to taxation. *Rogers v. Hennepin County* . . . 184

Memberships represent rights and privileges to be exercised at exchange where located; and State may fix situs for purpose of taxation, and in so doing, does not deprive non-resident members of property without due process of law. *Id.*

Memberships in incorporated exchange, as property of respective members, are distinct from assets of corporation, and taxing members on membership and corporation on assets not double taxation. *Id.*

Taxation of memberships in exchanges wherein business transactions conducted for profit not a denial of equal protection because memberships in other associations, not conducting business exchanges and where there are manifest distinctions are not also taxed. *Id.*

Whether memberships are taxable under state statutes is a matter of local law. *Id.*

Nothing in Constitution prevents taxation of membership restricted in use. *Id.*

**EXEMPTIONS:**

State has broad discretion as to tax exemptions. *Rogers v. Hennepin County* . . . . . 184

Policy of Bankruptcy Act is to respect state exemptions. *Eaton v. Boston Trust Co.* . . . . . 427

**EXTRADITION:**

Art. IV of Constitution fully embraces subject of rendition of fugitives from justice between States and confers authority upon Congress to deal with that subject. *Innes v. Tobin* . . . 127

Prior to Constitution fugitives from justice were surrendered between States through comity. *Id.*

Act of 1793 (§ 5278, R. S.) was enacted for purpose of controlling interstate rendition, and so far as its provisions operated, was exclusive of state power. *Id.*

Exclusive character of § 5278, R. S., does not relate to rendition between States of criminals involuntarily brought within surrendering State. *Id.*

Doctrine of asylum is not applicable to interstate rendition. *Id.*  
Where there is nothing in record in habeas corpus proceeding

**EXTRADITION**—*Continued.*

PAGE

to show that person demanded had not been in demanding State, there is no basis for assuming that rendition order conflicted with § 5278, R. S., in that respect because record did show that such person had come into surrendering State from State other than the one demanding. *Id.*

Section 5278, R. S., prohibits the surrender in one State for removal as a fugitive from justice to another State of one who clearly was not and could not have been such a fugitive from demanding State. *Id.*

**FACTS:**

- Findings concurred in by master and lower courts will not be disturbed unless clearly erroneous. *Casey v. United States* . . . 399
- Findings in contests as to ownership under provisions of Atoka Agreement and subsequent legislative regulations, relative to purchase of town lots, made by commission or Indian Inspector, affirmed on final appeal by Secretary of Interior, are binding upon the courts in absence of gross mistake or fraud. *Johnson v. Riddle* . . . . . 467
- Where facts appear only in statement of lower court and in opinion, this court disposes of legal propositions in light of facts as so shown and elucidated. *Cardona v. Quinones* . . . . . 83
- A finding of public necessity for physical track connection must be supported by sufficient evidence; mere declaration of commission not sufficient. *Seaboard Air Line v. Georgia R. R. Comm.* . . . . . 324
- Findings of Court of Claims in action at law determine all matters of fact, and this court cannot refer to opinion for purpose of explaining or modifying them. *Crocker v. United States* . . . . . 74
- Although Court of Claims may not have made findings in terms of certain facts assumed in its decision to be true, if they are not controverted and appear in record it is not necessary to send case back for further finding. *Ackertind v. United States* . . . . . 531
- Where Court of Claims made no finding of value of goods furnished under contract rescinded for fraud, and stated in explanation that there was complete absence of evidence, case not remanded for such finding. *Crocker v. United States* . . . . . 74
- Under local practice in Nebraska, where trial by jury is waived in action at law, findings made by trial court have force and effect of verdict of jury and hearing in supreme court is not trial de novo. *Jones National Bank v. Yates* . . . . . 541

**FALSE PERSONATION:**

PAGE

False personation by telephone of officer of United States takes effect where hearer is, and District Court of that district has jurisdiction of offense under § 32, Crim. Code. *Lamar v. United States*..... 60  
 Under § 32, Crim. Code, indictment is not for defrauding but for false personation with intent to defraud; and nature of fraud is immaterial. *Id.*

**FALSE REPRESENTATIONS.** See **Interstate Commerce.**

**FEDERAL GOVERNMENT.** See **Congress; United States.**

**FEDERAL INSTRUMENTALITIES:**

State may not tax for privilege of performing functions of *Fidelity & Deposit Co. v. Pennsylvania*..... 319  
 Mere contracts between United States and private corporation do not make it an essential governmental agency and confer freedom from state control. *Id.*  
 Act of 1894, allowing certain corporations to be accepted as surety does not create them Federal instrumentalities free from state laws and taxation. *Id.*  
 Pennsylvania law of 1895, imposing taxes on premiums collected by certain classes of insurance companies, is not, as applied to premiums on bonds of Federal Government officials by surety companies under act of 1894, unconstitutional as interference with powers of Government. *Id.*  
 Oil leases of land in Oklahoma made by Osage Indians under authority of acts of 1891 and 1905 are under protection of Government; lessee is Federal instrumentality; and State cannot tax its interest in the leases either directly or as the leases are represented by the capital stock of the corporation owning them. *Indian Oil Co. v. Oklahoma* . . . . . 522  
 Provision in Philippine Tariff Act of 1905, exempting from tonnage dues vessels belonging to or employed in service of United States, does not apply to vessels not under control of United States. The ground of the exemption being to prevent interference with governmental agencies, it does not apply to independent carrier under contract with Government. *Ackerlind v. United States*..... 531

**FEDERAL QUESTION:**

Asserted right to judgment on bonds of corporation of Federal creation involves inherently Federal question. *Male v. Atchison, T. & S. F. Ry.*... 97

**FEDERAL QUESTION**—*Continued.*

PAGE

So far as controversies in case in Federal court depend alone upon right to sue because of residence of parties, they are personal and may be waived, and are not intrinsically and necessarily Federal; but if they involve Federal privileges not waived they are Federal questions directly appealable under § 238, Jud. Code. *Id.*

Whether contract based on bill of lading of interstate shipment issued pursuant to Commerce Act has been discharged, is a Federal question. *Southern Ry. v. Prescott* . . . . . 632

Measure of liability of carrier of interstate shipment under bill of lading issued pursuant to Commerce Act is a Federal question; and none the less so because resolved by application of general principles of common law. *Id.*

Federal question first asserted in petition for rehearing in highest state court, which was denied without passing upon question, not open here. *St. Louis & S. F. R. R. v. Shepherd* 240

Although petition does not refer in terms to Federal statute, if it appears that case made is essentially one governed thereby, action inherently involves Federal question. *Jones National Bank v. Yates* . . . . . 541

Whether damages for anticipatory breach of contract which one of party can cancel on notice after stated period can be recovered for life of contract or only up to end of such period after breach, involves no Federal question. *Central Trust Co. v. Chicago Auditorium* . . . . . 581

In action for damages for unreasonable delay in transporting shipment of cattle in interstate commerce, assignments of error based on failure to give due effect to Federal statute held so devoid of merit as to be frivolous. *St. Louis & S. F. R. R. v. Shepherd* . . . . . 240

If declaration on which case tried brings it under Employers' Liability Act, fact that particular allegation showing plaintiff was engaged in interstate commerce appeared as an amendment, does not raise Federal question. *Kansas City Ry. v. McAdow* . . . . . 51

**FELLOW SERVANTS.** See **Employers' Liability Act.**

**FLORIDA:**

Statute requiring able-bodied men to do certain work on public roads within county of residence, not unconstitutional as contrary to Thirteenth Amendment or to due process provision of Fourteenth Amendment. *Buller v. Perry* . . . . . 328

Statute of 1913, imposing special license taxes on merchants

**FLORIDA—Continued.**

PAGE

using profit sharing coupons and trading stamps, is not unconstitutional as impairing obligation of contracts, as it must be construed as having prospective operation. *Rast v. Van Deman & Lewis*. . . . . 342

**FOOD AND DRUGS ACT:**

As to constitutional validity of net weight lard statute of North Dakota, see *Armour & Co. v. North Dakota*. . . . . 510

**FOREST RESERVES:**

Statutory provisions for forest reservations refer to any lands which are subject to disposition of Congress, whether surveyed or not. *United States v. Morrison*. . . . . 192  
 Authority to establish Cascade Range Forest Reservation given to President by acts of 1891 and 1897, included power to make temporary withdrawals; and properly made order of Secretary of Interior regarded as act of President. *Id.*  
 Exception in proclamation of 1907, enlarging Cascade Range Forest Reserve, did not include sections referred to in § 4 of Oregon Enabling Act, but not included in completed survey. *Id.*

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

**FRAUD:**

Wrongdoer, whose patent to land cancelled by reason of his own fraud must restore land and abide judgment of Congress as to refund of consideration paid. *Causey v. United States*. . . . . 399  
 Indictment under § 32, Crim. Code, is not for defrauding but for false personation with intent to defraud. *Lamar v. United States*. . . . . 60  
 Secret arrangements with government officials by which they share in profits of contracts which they have voice in awarding vitiate contract justifying rescission, even though made without actual knowledge of contractor. *Crocker v. United States*. . . . . 74  
 Recovery cannot be had upon government contract tainted with fraud and rescinded by proper officer of Government on that ground. *Id.*

**FUGITIVES FROM JUSTICE.** See **Extradition.**

**FULL FAITH AND CREDIT.** See **Constitutional Law, XIV.**

- GARNISHMENT.** See **Constitutional Law, XIV.** PAGE
- GEORGIA:**  
 Finding of Railroad Commission that public necessity existed for physical connection of tracks, and order therefor, held justified. *Seaboard Air Line v. Georgia R. R. Comm* . . . 324
- GEORGIA V. TENNESSEE COPPER COMPANY:**  
 Former decrees in *Georgia v. Tennessee Copper Company* modified as to escapement of fumes, as to records to be kept and as to expense of inspection and division of costs. *Georgia v. Tennessee Copper Co.* . . . . . 650
- GOVERNMENTAL AGENCIES.** See **Federal Instrumentalities.**
- GOVERNMENT CONTRACTS.** See **Contracts.**
- HARBOR LINES.** See **Navigable Waters.**
- HEARING.** See **Constitutional Law, VIII.**
- HOMESTEADS.** See **Public Lands.**
- ILLINOIS:**  
 Where corporation had its principal office in Cook County and such office was never legally established in any other county, a mortgage recorded in a different county did not comply with recording act of State and, as against trustee in bankruptcy, was invalid. *Fairbanks Steam Shovel Co. v. Wills.* . . . . . 642  
 Corporation organized under laws of Illinois deemed resident of State within meaning of Chattel Mortgage Act, and county of residence is county where principal office located. *Id.*
- INCOME TAX:**  
 By Sixteenth Amendment all income taxes are relieved from rule of apportionment. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1  
 Act is not unconstitutional as beyond general taxing power of Congress, or because of discriminations, inequalities or progressive increases on incomes, or method provided for computing income of corporations. *Tyee Realty Co. v. Anderson.* . . . . . 115  
 Act is not unconstitutional under Sixteenth Amendment; nor by reason of retroactive operation; nor under due process provision of Fifth Amendment; nor as denial of due process or equal protection of the law by reason of the classi-

**INCOME TAX—Continued.**

PAGE

fications therein; and the provisions for collecting income at source do not deny due process of law by reason of duties imposed upon corporations without compensation in connection with the payment of the tax by others. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1

*Stanton v. Baltic Mining Co.* . . . . . 103

*Tyee Realty Co. v. Anderson.* . . . . . 115

*Dodge v. Brady.* . . . . . 122

There is no authority for taking taxation of mining corporations out of rule established by Sixteenth Amendment; nor is there basis for contention that tax is a direct one on the property itself, beyond the purview of the Amendment, and void for want of apportionment. *Stanton v. Baltic Mining Co.* . . . . . 103

Section 3224, Rev. Stat., is clearly within contemplation of par. L. *Dodge v. Osborn.* . . . . . 118

Provisions of §§ 3220, 3226, 3227, Rev. Stat., are applicable to proceeding for recovery of taxes illegally collected. *Id.*

**INDIAN LANDS:**

Oil leases of land in Oklahoma made by Osage Indians under authority of acts of 1891, 1905, are under protection of Government; lessee is Federal instrumentality, and State cannot tax its interest in the leases. *Indian Oil Co. v. Oklahoma.* . . . . . 522

Under provisions relating to townsites in Atoka Agreement, preferential right to purchase improved lots was conferred upon owner of permanent improvements without regard to lawfulness of previous possession of land by such owner. *Johnson v. Riddle.* . . . . . 467

Under such provisions and subsequent legislative regulations, authority to appraise lots, to ascertain ownership and value of improvements, and dispose of lots, was conferred upon townsite commission and afterwards upon United States Indian Inspector under supervision of Secretary of the Interior. *Id.*

That tenant holding town lot in Chickasaw district of Choctaw Nation, under lease from non-citizen having no rights in the land, had retained possession after refusal to pay rent, thereby preventing landlord from erecting improvements, held not to estop tenant, who had erected permanent improvements thereon, from acquiring the lot in own right under provisions of Atoka Agreement. *Id.*

**INDIAN LANDS**—*Continued.*

PAGE

Atoka Agreement, when ratified, superseded any and all customs sanctioning leasing of town lots to non-citizens of tribes; and its provisions could not be carried into effect without terminating existing rights of occupancy, saving as they coincided with ownership of permanent improvements. *Id.*

In case of contests, findings of fact by commission or inspector, affirmed on final appeal by Secretary of Interior, are binding on courts in absence of gross mistake or fraud; and judicial inquiry limited to determining whether there was clear error of law resulting in awarding right of purchase and ultimate issue of patent to wrong party. *Id.*

**INDICTMENT AND INFORMATION.** See **Criminal Law.**

**INHERITANCE TAX.** See **Successions.**

**INJUNCTION:**

Order of Interstate Commerce Commission, not supported by ascertained facts, enjoined. *Philadelphia & Reading Ry. v. United States* . . . . . 334

While under act of Oct. 15, 1914, private parties can obtain injunction against threatened loss, that act in terms goes no farther. *Fleitmann v. Welsbach Co.* . . . . . 27

User of design similar to that which earlier user had unsuccessfully sought to register as trade-mark may be enjoined from further use. *Straus v. Notaseme Co.* . . . . . 179

Section 3224, Rev. Stat. is clearly within contemplation of par. L of Income Tax Law. *Dodge v. Osborn.* . . . . . 118

Under proper averments stockholder's suit to restrain corporation from voluntarily paying tax charged to be unconstitutional, is not violative of § 3224, Rev. Stat. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1

Suit not maintainable to enjoin assessment or collection of tax because of alleged unconstitutionality of statute imposing it. *Dodge v. Osborn.* . . . . . 118

That many suits would have to be brought to recover taxes paid under unconstitutional statute and that meantime taxes imposed become lien and constitute cloud on title, held inadequate to sustain jurisdiction of equity to restrain collection of taxes. *Id.*

**INSTRUCTIONS TO JURY:**

Requested instruction that might mislead jury properly refused. *Guerini Stone Co. v. Carlin.* . . . . . 264

**INSTRUCTIONS TO JURY—Continued.**

PAGE

Verbal mistake in charge to jury as to interpretation of Employers' Liability Act, defendant not being prejudiced thereby, held not reversible error. *Illinois Central R. R. v. Skaggs*. . . . . 66

Rule that party may not sit silent until after verdict and then insist that it be set aside for failure of court to particularly specify in its charge some matter to which its attention had not been suitably called, is not altered by Minnesota statute under which errors may be specified on motion for new trial without taking exceptions. *Id.*

**INSTRUMENTALITIES OF GOVERNMENT.** See **Federal Instrumentalities.**

**INTERLOCUTORY DECREES.** See **Judgments and Decrees.**

**INTERSTATE COMMERCE:**

1. *Power of Congress over:* Rights and liabilities in connection with shipments depend upon acts of Congress, the bill of lading, and common-law principles enforced in Federal courts. *Southern Express Co. v. Byers*. . . . . 612

Measure of liability of carrier of interstate shipment under bill of lading issued pursuant to Commerce Act is to be governed under the act by uniform rule. *Southern Ry. v. Prescott*. . . . . 632

Measure of liability of carrier of interstate shipment under bill of lading issued pursuant to Commerce Act is a Federal question; and none the less so because resolved by application of general principles of common law. *Id.*

Where question whether person injured while riding free on engine of interstate train by consent of engineer could have recovered under state law had his presence been illegal under Federal statute, jury should have been charged that Federal act applied. *Illinois Central R. R. v. Messina*. . . . . 395

2. *Power of States over:* State not debarred from taxing granted privilege of being corporation because corporation may be engaged in interstate commerce. *Kansas City Ry. v. Kansas*. . . . . 227

Whether state tax prohibited by commerce clause depends upon operation and effect as enforced and not upon characterization. *Id.*

State cannot lay tax on interstate commerce in any form, either upon business constituting such commerce, or privi-

**INTERSTATE COMMERCE—Continued.**

PAGE

lege of engaging in it, or receipts as such derived therefrom.

*Id.*

3. *Scope and purpose of act:* Electric railway from one point in State to another point therein, with traffic agreement with street railway company operating in another State held to be within the act. *Kansas City Ry. v. McAdow* . . . . . 51

Uniformity the purpose of Act to Regulate. *Loomis v. Lehigh Valley R. R.* . . . . . 43

4. *Burdens on and interference with:* Regulations of retail sales within State held not to amount to attempt to control interstate commerce. *Rast v. Van Deman & Lewis.* . . . . 342

Regulation of use of profit sharing coupons and trading stamps in connection with retail sales to individual purchasers and consumers and not designed to be used by manufacturer from another State to State of distribution, does not interfere with or burden interstate commerce. *Id.*

Tax imposed by c. 135, Kansas Laws, 1913, on privilege of being corporation, is not as to domestic corporation engaged in both interstate and intrastate commerce, invalid as violation of commerce clause of Constitution. *Kansas City Ry. v. Kansas* . . . . . 227

5. *Tariffs:* Rule that both carrier and shipper bound by and cannot alter terms of service as fixed by filed regulations, applies not only to rates but to other stipulations relating to services and facilities, including liability as warehouseman. *Southern Ry. v. Prescott.* . . . . . 632

To determine validity and effect of restrictions on liability in bills of lading, applicable schedules of carrier on file with Commission are material. *Southern Express Co. v. Byers.* . . 612

6. *Passes:* This court cannot limit prohibition of anti-pass provision of Hepburn Act to more formal uses than allowing persons to ride on interstate train by permission of employer of carrier. *Illinois Central R. R. v. Messina.* . . . . . 395

7. *Contracts:* Contract of bill of lading of interstate shipment remains in force until actual delivery to consignee. Mere giving of receipt by consignee and payment of freight, goods remaining with carrier, held not to amount to actual delivery. *Southern Ry. v. Prescott* . . . . . 632

8. *Shipper's service:* Problems in regard to allowances to shippers for doors and bulkheads appear to be complicated and administrative. *Loomis v. Lehigh Valley R. R.* . . . . . 43

9. *False representations:* Offense of false billing and representations specified in § 10 (3) of Commerce Act, as amended

**INTERSTATE COMMERCE—Continued.**

PAGE

in 1910, applies to consignees as well as consignors of interstate shipments; and District Court of district of destination of shipment has jurisdiction of indictment of consignee for false representations made by him in liquidation of amount payable for freight at destination. *United States v. Union Mfg. Co.* . . . . . 605

Offense of false representations specified in par. 3, § 10, Commerce Act of 1910, may be committed where interstate transportation has already been completed and amount due therefor remains to be adjusted, the same as though the representations had preceded delivery to carrier for shipment. *Id.*

10. *Reparation*: Under Carmack Amendment there can be recovery from initial carrier for loss, damage or injury for failure to transport with reasonable despatch on line of connecting carrier. *New York, P. & N. R. R. v. Peninsula Exchange.* . . . . . 34

In action under Carmack Amendment to recover for delay in transportation, a charge that liability was amount of decline in value, due to delay, at place of destination, without stating limitation in filed tariff that damages should not exceed value at time and place of shipment, held not to deny carrier any Federal right, the amount awarded being less than value stated in tariff. *Id.*

A condition of filed tariff that carrier not bound to transport on particular train or vessel to arrive at particular market or otherwise than with reasonable despatch, does not relieve carrier from liability under Carmack Amendment for not delivering with reasonable despatch, although delay occurs on line of connecting carrier. *Id.*

11. *Transportation*: Transportation, as regulated by Commerce Act, includes services of connecting carrier as warehouseman of goods after arrival at destination and before actual delivery. *Southern Ry. v. Prescott* . . . . . 632

Retention by carrier of part of interstate shipment after arrival at destination, notice to and payment of freight by consignee, held terminal service and part of transportation. *Id.*

**INTERSTATE COMMERCE COMMISSION:**

Commission has jurisdiction to make order requiring trunk line railways to reopen through routes and publish joint rates to interstate destinations with connecting tap lines,

**INTERSTATE COMMERCE COMMISSION—Continued.**

PAGE

and to prohibit former from making to any tap lines allowance or division out of joint rates in excess of maximum prescribed. *O'Keefe v. United States* . . . . . 294

Such order not based on erroneous principles of law, nor did it exclude competitive conditions from consideration, but established maximum divisions for purpose of preventing preferences as methods of competition. *Id.*

Order prescribing maximum rates, otherwise legal, does not deprive trunk line of its property without due process of law by denying it right to compete for business in a manner forbidden by Congress in the interest of public welfare. *Id.* From complexity of tap line problems and importance of general rule for allowances to tap lines based on simple elements, court will not hold that adoption of mileage basis for such allowances is arbitrary. *Id.*

Presumption that Commission expert in matters of rate regulation and able to draw inferences from facts not necessarily obvious to others. *Id.*

Where no undue discrimination against shipper or locality of its plant is found, and community declared prejudiced has not complained and is not party to proceeding, and rate complained of is intrinsically reasonable, mere fact that other carriers have adopted lower schedule from shipper's district to points other than one designated, affords no foundation for Commission's finding that rate unreasonable and erroneous as matter of law, and its order should be enjoined. *Philadelphia & Reading Ry. v. United States* . . . . . 334

Character of equipment which carrier must provide and allowances to shippers for instrumentalities supplied and services rendered, are matters for inquiry by Commission before submission to courts. *Loomis v. Lehigh Valley R. R.* . . . . . 43

Courts may not, as original question, exert authority over subjects primarily within jurisdiction of Commission. *Id.* Quære, whether trunk line can object to order of Commission on ground that allowance to connecting lines is too small and deprives it of opportunity to pay larger amount and obtain the business. *O'Keefe v. United States* . . . . . 294

**INTERSTATE RENDITION.** See **Extradition.**

**INVOLUNTARY SERVITUDE.** See **Constitutional Law, VII.**

## JUDGMENTS AND DECREES:

PAGE

- Adjudication of bankruptcy is not open to collateral attack. *Fairbanks Steam Shovel Co. v. Wills* . . . . . 642
- Under full faith and credit clause of Constitution judgment of Virginia court against garnishee, entered without notice to defendant residing in West Virginia, held to protect garnishee in suit by defendant against him brought in West Virginia. *Baltimore & Ohio R. R. v. Hostetter* . . . . . 620
- On certiorari this court is called upon to notice any error that may have occurred in interlocutory proceedings, and is not bound to consider that interlocutory decree settled law of case because it refused to review it on certiorari. *Hamilton Shoe Co. v. Wolf Brothers* . . . . . 251
- A state commission appointed to close up business in which State engaged, having found that claimant was indebted to State in excess of its claim and entered an overjudgment therefor, held that, although such overjudgment was rendered without authority that fact did not affect power of commission to withdraw funds from county depositaries as they were state funds and subject to its control. *Carolina Glass Co. v. South Carolina* . . . . . 305
- A judgment or decree which determines the particular cause is final in sense of § 237, Jud. Code. *Detroit & M. Ry. v. Michigan Railroad Com.* . . . . . 564
- A judgment awarding or refusing mandamus is final within meaning of § 237, Jud. Code. *Id.*
- Judgment finally disposing of petition for writ of prohibition is a final judgment: fact that denial of writ does not decide merits of principal suit is immaterial. *Mt. Vernon Cotton Co. v. Alabama Power Co.* . . . . . 30
- In suit in equity by stockholder of corporation against other corporations to recover under § 7 of Anti-trust Act, court cannot enter decree requiring plaintiff's corporation to sue other corporations or permitting him to sue in its name and behalf. *Fleitmann v. Welsbach Co.* . . . . . 27
- Although decree below based on profits gained in unfair competition, as proofs and findings were applicable to claim of compensation for infringing trade-mark to which claimant found entitled, decree affirmed. *Hamilton Shoe Co. v. Wolf Brothers* . . . . . 251
- Former decrees in *Georgia v. Tennessee Copper Company* modified as to escapement of fumes, as to records to be kept and as to expense of inspection and division of costs. *Georgia v. Tennessee Copper Co.* . . . . . 650

**JUDGMENTS AND DECREES—Continued.**

PAGE

Decree embodying report of commissioners. <i>North Carolina v. Tennessee</i> . . . . .	652
--	-----

**JUDICIAL CODE:**For sections construed, etc., see **Congress.****JUDICIARY.** See **Courts; Jurisdiction.****JURISDICTION:****I. Generally.**

Jurisdiction is a matter of power and covers wrong as well as right decisions. <i>Lamar v. United States</i> . . . . .	60
Liability of triple damages under § 7 of Anti-Trust Act only enforceable through verdict of jury in court of common law. <i>Fleitmann v. Welsbach Co.</i> . . . . .	27

**II. Jurisdiction of this court.**

1. <i>Generally:</i> Correct valuation of property a matter for taxing officials; and, where no charge of denial of opportunity to be heard, this court does not review their judgment. <i>Rogers v. Hennepin County.</i> . . . . .	184
2. <i>Over judgments of Circuit Court of Appeals:</i> Jurisdiction to review on certiorari under § 240, Jud. Code, to be exercised sparingly and only in cases of peculiar gravity and general importance and to secure uniformity of decision. <i>Hamilton Shoe Co. v. Wolf Brothers</i> . . . . .	251
Appeals from allowance or rejection of claims in bankruptcy, are, in absence of certificate, limited to cases involving Federal questions of kind described in § 237, Jud. Code. <i>Central Trust Co. v. Chicago Auditorium</i> . . . . .	581
3. <i>Over judgments of District Court:</i> Under § 238, Jud. Code, jurisdiction exists of direct appeal from judgment refusing to enjoin corporation from paying income tax in suit by stockholder on ground of unconstitutionality of Income Tax Law. <i>Stanton v. Baltic Mining Co.</i> . . . . .	103
Whether § 32, Crim. Code, covers falsely personating a Congressman, and whether a Congressman is a state or Federal officer, are not constitutional questions which can be made basis of direct appeal under § 241, Jud. Code. <i>Lamar v. United States.</i> . . . . .	60
Where no allegations of diverse citizenship and jurisdiction of Federal court invoked solely on constitutional grounds, writ of error issues direct from this court to District Court. <i>Carolina Glass Co. v. South Carolina</i> . . . . .	305
4. <i>Over judgments of state courts:</i> A judgment or decree which	

**JURISDICTION**—*Continued.*

PAGE

determines the particular cause is final in sense of § 237, Jud. Code. *Detroit & M. Ry. v. Michigan Railroad Comm.* . . . . . 564

A judgment awarding or refusing mandamus is final within meaning of § 237, Jud. Code. *Id.*

Where petition does not refer in terms to Federal statute which determines defendant's liability, and case made is essentially one governed by the statute, the assertion by defendant in his answer that his liability, if any, must be determined under that statute, held simply a contention as to essential elements of plaintiff's claim; and where state court has denied liability under the statute this court has jurisdiction to review. *Jones National Bank v. Yates.* . . . . . 541

Where decision against plaintiff in error not upon independent state grounds but upon Federal question, review here under § 237, Jud. Code. *Rogers v. Hennepin County* 184

Where statement in per curiam opinion that case controlled by judgment in similar case in which same Federal questions decided, held that although other questions involved in this case, judgment did not rest upon independent state grounds. *Id.*

See **Appeal and Error.**

**III. Of Circuit Court of Appeals.**

Where no allegations of diverse citizenship and jurisdiction of Federal court invoked solely on constitutional grounds, court without jurisdiction to review. *Carolina Glass Co. v. South Carolina.* . . . . . 305

Where jurisdiction of District Court in trade-mark case rests on diversity of citizenship, decision is final and can only be reviewed on certiorari. *Hanover Star Milling Co. v. Metcalf* 403

**IV. Of District Courts.**

A suit against a state commission held to be in effect a suit against State not maintainable in Federal court. *Carolina Glass Co. v. South Carolina* . . . . . 305

A corporation is entitled to be sued in district of its residence, and District Court for another jurisdiction is without jurisdiction of action involving inherently Federal question. *Male v. Atchison, T. & S. F. Ry.* . . . . . 97

Jurisdiction exists of suit by stockholder to restrain corporation from voluntarily paying tax charged to be unconstitutional. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1  
*Stanton v. Baltic Mining Co.* . . . . . 103

Court has jurisdiction of all crimes cognizable under authority of United States and acts equally within its jurisdiction

**JURISDICTION**—*Continued.*

	PAGE
whether its decision is right or wrong. <i>Lamar v. United States.</i> . . . . .	60
False personation by telephone of officer of United States takes effect where hearer is, and court of that district has jurisdiction of offense under § 32, Crim. Code. <i>Id.</i>	
Where bill states that municipality intends to take plaintiff's property rights without compensation, and has taken steps that will destroy such rights, and that in doing so it purports to be acting under an ordinance violative of Constitution, held that such action is to be regarded that of State and court had jurisdiction. <i>Cuyahoga River Power Co. v. Akron.</i> . . . . .	462
When two or more having separate and distinct demands unite in suit, demand of each must be of requisite amount; but where several unite to enforce single title or right in which they have common and undivided interest, court has jurisdiction if they collectively equal amount. <i>Pinel v. Pinel.</i> . . . . .	594
In suit by two children of testator, one claiming an one-eighth and the other a two-eighths undivided share of estate, maximum value of which less than \$12,000, held that the interests were separate and distinct and could not be aggregated in determining jurisdictional amount. <i>Id.</i>	
Under § 24 (1), Jud. Code, where jurisdiction based on diverse citizenship, matter in controversy must appear by distinct averments in bill, or otherwise from proof, to exceed \$3,000. <i>Id.</i>	
Court of district where consignee of interstate shipment made false representations in liquidation of amount payable for freight at destination, has jurisdiction of indictment charging consignee with offense under § 10 (3) of Act to Regulate Commerce as amended in 1910. <i>United States v. Union Mfg. Co.</i> . . . . .	605
<b>V. Of Interstate Commerce Commission.</b> See <b>Interstate Commerce Commission.</b>	
<b>VI. Of Court of Claims.</b> See <b>Court of Claims.</b>	

**KANSAS:**

Where statute of State, as in Kansas, is so similar to Federal Employers' Liability Act that liability of employer not affected by question of which governs case, it is not necessary to determine that question. <i>Kansas City Ry. v. McAdow</i>	51
Where objections to constitutionality of provisions of c. 135,	

**KANSAS—Continued.**

PAGE

- Laws, 1913, taxing foreign corporations doing business in State for such privilege measured on proportion of stock used in State, rest in this case exclusively on asserted invalidity of similar provisions of same statute relative to domestic corporations, which have been found untenable, case controlled by former decision. *Lusk v. Kansas*. . . . . 236
- Such tax is not, as to domestic corporation engaged in both interstate and intrastate commerce, invalid either as violation of commerce clause, or of due process clause, of Constitution. *Kansas City Ry. v. Kansas* . . . . . 227
- Held*, as matter of fact in this case, that there was no such commencement of building as would give mechanics' liens priority over mortgages within meaning of Kansas statute. *Varner v. New Hampshire Savings Bank*. . . . . 617

**LABOR:**

- Involuntary servitude within meaning of Constitution does not interdict enforcement of duties owed by individuals to State. *Buller v. Perry* . . . . . 328
- State has inherent power to require every able-bodied man within jurisdiction to labor for reasonable period on public roads near residence without direct compensation. *Id.*
- Such requirement does not amount to involuntary servitude under Constitution; nor does it deprive persons of liberty and property without due process of law. *Id.*

**LACHES:**

- Trade-mark rights may be lost by laches. *Hanover Star Milling Co. v. Metcalf* . . . . . 403
- Party attacking reorganization scheme as not adequately protecting unsecured creditors of corporation while providing for stockholders, *held* not barred by laches. *Kansas City Southern Ry. v. Guardian Trust Co* . . . . . 166

**LAND GRANTS.** See **Indian Lands; Public Lands.**

**LANDLORD AND TENANT:**

- Tenant is not estopped to show that landlord's title has expired or been terminated by operation of law. *Johnson v. Riddle*. . . . . 467
- That tenant holding town lot in Chickasaw district of Choctaw Nation, under lease from non-citizen having no rights in the land, had retained possession after refusal to pay rent, thereby preventing landlord from erecting im-

**LANDLORD AND TENANT—Continued.**

PAGE

provements, *held* not to estop tenant, who had erected permanent improvements thereon, from acquiring the lot in own right under provisions of Atoka Agreement. *Id.*

**LAW GOVERNING:**

Right to succeed to property of decedent depends upon and is regulated by state law. *Uterhart v. United States*. . . . . 598

Where neither of parties, citizens of different States, has registered trade-mark in dispute, and no local rule is shown, cases involving use of such trade-mark determined according to applicable common law principles. *Hanover Star Milling Co. v. Metcalf* . . . . . 403

Where statute of State is so similar to Federal Employers' Liability Act that liability of employer not affected by question of which governs case, it is not necessary to determine that question. *Kansas City Ry. v. McAdow*. . . . . 51

Law governing situation in action in state court under Employers' Liability Act is equally the law of the State, whether derived from Congress or state legislature, and must be noticed by court. *Id.*

**LEASE:**

Tax upon lease made is one on power to make lease. *Indian Oil Co. v. Oklahoma* . . . . . 522

Leases that cannot be taxed as entity cannot be taxed vicariously by taxing stock of corporation owning them where only value of stock is value of the leases. *Id.*

Oil leases of land in Oklahoma made by Osage Indians under authority of acts of 1891 and 1905 are under protection of Government; lessee is Federal instrumentality; and State cannot tax its interest in the leases either directly or as the leases are represented by the capital stock of the corporation owning them. *Id.*

**LEGISLATIVE FUNCTIONS:**

It is within power of legislature to consider use of profit sharing coupons and trading stamps as having evils similar to a lottery. *Rast v. Van Deman & Lewis* . . . . . 342

It is for legislature to discern and correct evils, not only of definite injury, but such as are obstacles to greater public welfare if within legislative authority. *Id.*

Power of legislature to regulate conduct and contracts upon its conception of the public welfare is only subject to review

**LEGISLATIVE FUNCTIONS—Continued.**

PAGE

by courts when the legislation is unreasonable or arbitrary. *Id.*

Legislative regulation of use of profit sharing coupons and trading stamps is not to be impeached and overruled by courts on account of difference of opinion in regard to conclusion reached as to evils of use. *Id.*

Discernment and correction of evils resulting from use of profit sharing coupons and trading stamps is within legislative authority. *Id.*

See **Congress.**

**LIENS:**

*Held*, as matter of fact in this case, that there was no such commencement of building as would give mechanics' liens priority over mortgages within meaning of Kansas statute.

*Varner v. New Hampshire Savings Bank* . . . . . 617

**LIMITATION OF LIABILITY.** See **Interstate Commerce.**

**LIMITATIONS:**

Accrual of right of action by sub-contractor under Materialmen's Acts of 1894 and 1905. See *Illinois Surety Co. v. Peeler* . . . . . 214

*Peeler* . . . . . 214

**LOCAL LAW:**

Whether memberships in exchanges are taxable under state statutes is a matter of local law. *Rogers v. Hennepin County* . . . . . 184

In absence of clear error, this court upholds action of lower court as to matters concerning purely local law. *Cardona v. Quinones* . . . . . 83

See **Law Governing and captions of various States, Territories and Insular Possessions.**

**MAILS:**

Congress has power to regulate overt act of putting letter into post office, and may prohibit, under penalty, such an act when done in furtherance of a scheme, whether it can forbid scheme or not. *Badders v. United States* . . . . . 391

Congress may enact that each putting of letter in post office is separate offense. *Id.*

**MANDAMUS:**

A proceeding in mandamus is an independent adversary suit. *Detroit & M. Ry. v. Michigan Railroad Comm.* . . . . . 564

**MANDAMUS—Continued.**

PAGE

A judgment awarding or refusing mandamus is final within meaning of § 237, Jud. Code. *Id.*

Granting writ requiring railroad to comply with order of state commission, which is prima facie lawful, pending determination of suit to enjoin enforcement of order, *held*, in view of circumstances and requirement that bond of indemnity be given, not to deprive railroad of due process of law. *Id.*

**MARITIME LAW:**

When Government guarantees only certain depth of water at unloading dock and there is lack of finding that there was generally an available greater depth, a claim for demurrage cannot be based on failure to unload vessel of such greater draft at said dock. *Ackerlind v. United States*. . . . . 531

Provision in Philippine Tariff Act of 1905, exempting from tonnage dues vessels belonging to or employed in service of United States, does not apply to vessels not under control of United States. The ground of the exemption being to prevent interference with governmental agencies, it does not apply to independent carrier under contract with Government. *Id.*

**MASSACHUSETTS:**

Trust for life with income free from interference or control of creditors are valid and effective against creditors and, under certain conditions, against assignees and trustees in bankruptcy. *Eaton v. Boston Trust Co.* . . . . . 427

**MASTER AND SERVANT. See Employers' Liability Act.****MATERIALMEN'S ACT:**

Action under Acts of 1894, 1905, is at law and not in equity. *Illinois Surety Co. v. Peeler*. . . . . 214

Where subcontractor not one of original plaintiffs in action on bond, nor intervenor, judgment not to be rendered in its favor more than year after final settlement of contractor's claim; nor does fact that one claiming, but not proving such claim, to be its assignee, was made party plaintiff, amount to sufficient and timely filing of claim of such subcontractor. *Id.*

If surety does not contest, but pays into court full amount of liability, proceeding is simply one for distribution of fund in court. *Id.*

When action on contractor's bond brought within proper

**MATERIALMEN'S ACT**—*Continued.*

PAGE

time, amendment after time, which does not set up new or different cause of action, but merely corrects defective statement, allowable. *Id.*

Final settlement of account within meaning of Act of 1894, as amended in 1905, is not when final payment made, but is final administrative determination by proper authority of amount due, and suit by subcontractor against surety commenced six months after date of such determination, but less than six months after payment, not prematurely brought in absence of suit by Government. *Id.*

**MEASURE OF DAMAGES.** See **Damages.**

**MEMBERSHIP IN EXCHANGE.** See **Exchanges.**

**MEMBERS OF CONGRESS:**

False personation as crime under § 32, Crim. Code. See *Lamar v. United States.* . . . . . 60

**MENTAL ANGUISH:**

No right of recovery for. *Southern Express Co. v. Byers* . . . . 612

**MINES AND MINING:**

Independently of operations of Sixteenth Amendment, a tax on product of mine is not a tax upon property as such because of its ownership, but is a true excise. *Stanton v. Baltic Mining Co.* . . . . . 103

There is no authority for taking taxation of mining corporations out of rule established by Sixteenth Amendment; nor is there basis for contention that tax is a direct one on the property itself, beyond the purview of the Amendment, and void for want of apportionment. *Id.*

**MINNESOTA:**

Rule that party not entitled to sit silent until after verdict and then insist that it be set aside for failure of court to particularly specify in its charge some matter to which its attention had not been suitably called, is not altered by statute under which errors may be specified on motion for new trial without taking exceptions. *Illinois Central R. R. v. Skaggs* 66

**MISSOURI.**

Laws providing for establishment of road improvement districts not unconstitutional under due process provision of Fourteenth Amendment. *Embree v. Kansas City Road District* . . . . . 242

**MORTGAGES AND DEEDS OF TRUST:**

PAGE

- Purchaser of railroad under foreclosure of mortgage and reorganization scheme which provides for stockholders of company, but not for unsecured creditors, held chargeable with unsecured debts. *Kansas City Southern Ry. v. Guardian Trust Co.* . . . . . 166
- That purchaser had mortgage on product, both crude and manufactured, of trespasser, which contained an after-acquired property clause and covered a large amount of other property, does not affect right of United States to recover that part of manufactured product found to be result of crude article taken from government land. *Union Naval Stores Co. v. United States.* . . . . . 284
- Where Illinois corporation had its principal office in Cook County and such office was never legally established in any other county, a mortgage recorded in a different county did not comply with recording act of State and, as against trustee in bankruptcy, was invalid. *Fairbanks Steam Shovel Co. v. Wills.* . . . . . 642
- If chattel mortgage not valid against trustee in bankruptcy because not properly recorded, mortgagee's title not perfected by taking possession after petition and before adjudication. *Id.*
- Status as third person entitled as such to benefits of recording provisions of Mortgage Law of Porto Rico. See *Cardona v. Quinones* . . . . . 83

**NATIONAL BANKS:**

- Directors who knowingly make statements required by National Bank Act that are false, or who, knowingly permit, assent to and allow the same to be made and published, are liable at suit of creditors. *Jones National Bank v. Yates.* . . . . . 541

**NAVIGABLE WATERS:**

- Riparian owner held not entitled to recover as upon an implied contract for taking his property by reason of damages alleged in consequence of exercise of power of Congress over navigable waters. *Willink v. United States.* . . . . . 572
- Mere location of harbor lines does not amount to taking of property within lines or its appropriation to public use; nor does taking result from request of officer of United States to riparian owner to vacate, if such request not acceded to or enforced. *Id.*
- That Government contracts for cutting away land within

**NAVIGABLE WATERS**—*Continued.*

PAGE

harbor line location does not amount to taking of such land if there was no attempt to perform contract. *Id.*

Rights in land below mean high water line of navigable and tidal river are subordinate to public right of navigation and power of Congress to employ all appropriate means to keep river navigable. *Id.*

Congress may prevent renewal of obstructions below mean high water which may affect navigation; and owner is not entitled to compensation therefor. *Id.*

**NEBRASKA:**

Under local practice, where trial by jury is waived in action at law, findings made by trial court have force and effect of verdict of jury and hearing in supreme court is not trial *de novo*. *Jones National Bank v. Yates*. . . . . 541

**NEGLIGENCE:**

Where loss of interstate shipment while in warehouse is admittedly by fire, burden is on plaintiff to prove negligence on part of carrier. *Southern Ry. v. Prescott* . . . . . 632  
See **Employers' Liability Act.**

**NEXT OF KIN.** See **Employers' Liability Act.**

**NORTH CAROLINA V. TENNESSEE:**

Decree embodying report of commissioners. *North Carolina v. Tennessee*. . . . . 652

**NORTH DAKOTA:**

Net weight lard statute is not unconstitutional as denying equal protection of the law or as depriving sellers of property without due process of law; nor, as to packages sent into State from other States and afterwards sold to consumers at retail, as interference with or burden on interstate commerce. *Armour & Co. v. North Dakota* . . . . . 510  
Such statute is not repugnant to Food and Drugs Act of 1906. *Id.*

**NUISANCE:**

Former decrees in *Georgia v. Tennessee Copper Company* modified as to escapement of fumes, as to records to be kept and as to expense of inspection and division of costs. *Georgia v. Tennessee Copper Co.* . . . . . 650

**OFFENSES.** See **Criminal Law.**

- OFFICER OF UNITED STATES:** PAGE  
 As to crime of false personation. See *Lamar v. United States*. . . . . 60
- OIL LEASES.** See **Lease.**
- OKLAHOMA:**  
 Oil leases of land made by Osage Indians under authority of acts of 1891, 1905, are under protection of Government; lessee is Federal instrumentality, and State cannot tax its interest in the leases. *Indian Oil Co. v. Oklahoma* . . . . . 522
- OPPORTUNITY TO BE HEARD.** See **Constitutional Law, VIII.**
- OREGON:**  
 Oregon did not, under § 4, Act of 1859, take title to sections 16, 36, prior to survey, until which time and until title vested in State, Congress had power to dispose of them on compensating State for resulting deficiency. *United States v. Morrison*. . . . . 192  
 Nothing in act of 1859, § 2275, Rev. Stat., or act of 1891, operated to pass title to Oregon of sections 16 and 36 at any intermediate stage of survey, or imposed any limitations on Congress to dispose thereof before title passed to State. *Id.* Exception in proclamation of 1907, enlarging Cascade Range Forest Reserve, did not include sections referred to in § 4 of Enabling Act, but not included in completed survey. *Id.*
- PARTIES:**  
 As to who entitled to maintain action under Federal Employers' Liability Act, see *Pecos & N. T. Ry. v. Rosenbloom*. . . . . 439  
*Seaboard Air Line v. Kenney* . . . . . 489  
 See **Removal of Causes.**
- PARTNERSHIP:**  
 Under § 5 of Bankruptcy Act of 1898, when partnership insolvent and each individual partner also insolvent, and only fund for distribution is produced by individual estate of one member, individual creditors of that member are entitled to priority in distribution of fund. *Farmers' & Mechanics' Nat. Bank v. Ridge Avenue Bank* . . . . . 498
- PASSES:**  
 Where question whether person injured while riding free on engine of interstate train by consent of engineer could have

**PASSES—Continued**

PAGE

recovered under state law had his presence been illegal under Federal statute, jury should have been charged that Federal act applied. *Illinois Central R. R. v. Messina* . . . . . 395  
 This court cannot limit prohibition of anti-pass provision of Hepburn Act to more formal uses than allowing persons to ride on interstate train by permission of employer of carrier.  
*Id.*

**PATENT FOR INVENTION:**

Where officers of United States charged with matter have refused offer for use of invention, and have declined to use it, and, proceeding independently, make and use articles designed by themselves, claimed by patentee to embody his invention, there is no implied contract on part of Government to pay for use of invention; and Court of Claims without jurisdiction of claim prior to act of 1910. *Farnham v. United States*. . . . . 537

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

**PAY AND ALLOWANCES.** See **Army and Navy.**

**PENAL CODE:**

For sections construed, etc., see **Congress.**

**PENALTIES AND FORFEITURES:**

Liability of triple damages under § 7 of Anti-Trust Act only enforceable through verdict of jury in court of common law. *Fleitmann v. Welsbach Co.* . . . . . 27  
 Florida statute of 1913, imposing license taxes on merchants using profit sharing coupons and trading stamps does not deprive of due process of law because of severity of its penalties intimidating against testing legality. *Rast v. Van Deman & Lewis.* . . . . . 342  
 Punishment on each of five counts, of five years, periods being concurrent, and fine of \$1,000 on each of seven counts, held not to be cruel and unusual within prohibition of Constitution. *Badders v. United States* . . . . . 391

**PENNSYLVANIA:**

Law of 1895, imposing taxes on premiums collected by certain classes of insurance companies, is not, as applied to premiums on bonds of Federal government officials by surety companies under act of 1894, unconstitutional as interference with powers of government. *Fidelity & Deposit Co. v. Pennsylvania.* . . . . . 319

**PERSONATION OF OFFICER.** See **False Personation.** PAGE

**PHILIPPINE ISLANDS:**

Provision in Tariff Act of 1905, exempting from tonnage dues vessels belonging to or employed in service of United States, does not apply to vessels not under control of United States. The ground of the exemption being to prevent interference with governmental agencies, it does not apply to independent carrier under contract with Government. *Ackerlind v. United States*. . . . . 531

**PLEADING:**

When action on contractor's bond brought within proper time, amendment, after time, which does not set up new or different cause of action, but merely corrects defective statement, allowable. *Illinois Surety Co. v. Peeler*. . . . . 214  
 Claim of United States for spirits of turpentine and rosin taken from government lands not fatally defective because property taken was crude, nor because land described by distinctive general description by which known. *Union Naval Stores Co. v. United States*. . . . . 284

**POLICE POWER:**

Police statutes, otherwise valid, may, without denying equal protection of the law, contain practical groupings of objects which fairly well present a class, although there may be exceptions in which the evil aimed at is deemed to be not so flagrant. *St. Louis, I. M. & S. Ry. v. Arkansas*. . . . . 518  
 Statute of Washington of 1907, imposing license taxes on privilege of using profit sharing coupons and trading stamps, held proper exercise of police power. *Tanner v. Little*. . . . . 369  
*Pitney v. Washington*. . . . . 387

See **States.**

**PORTO RICO:**

Holding of lower court as to ten-year prescription under code and status of party under recording provisions of Mortgage Law, affirmed. *Cardona v. Quinones*. . . . . 83

**POST-OFFICE.** See **Mails.**

**PRACTICE AND PROCEDURE:**

*Scope of decision:* On appeal from District Court in case attacking constitutionality of state statute this court can pass on constitutionality of statute on all grounds submitted. *Rast v. Van Deman & Lewis*. . . . . 342

**PRACTICE AND PROCEDURE—Continued.**

PAGE

- Where, on hearing in state supreme court, which was not a trial *de novo*, judgment of trial court for plaintiff on findings equivalent to verdict of jury was reversed on ground that plaintiff's case was legally insufficient under Federal statute, questions in this court are whether such findings were supported by substantial evidence and justified recovery under the statute. *Jones National Bank v. Yates*. . . . . 541
- In cases arising under Employers' Liability Act, not of exceptional character, court confines itself to mere announcement of its conclusion. *Great Northern Ry. v. Knapp*. . . . . 464
- On certiorari this court is called upon to notice any error that may have occurred in interlocutory proceedings, and is not bound to consider that interlocutory decree settled law of case because it refused to review it on certiorari. *Hamil-ton Shoe Co. v. Wolf Brothers* . . . . . 251
- Federal question first asserted in petition for rehearing in highest state court, which was denied without passing upon question, not open here. *St. Louis & S. F. R. R. v. Shepherd* 240
- Disposition of case:* While there may have been ground for District Court dismissing for want of jurisdiction, as there was a basis for taking jurisdiction and decision of court was clearly right on merits, this court affirms judgment. *Dodge v. Brady* . . . . . 122
- Where, in case brought under Employers' Liability Act, question simply whether there were matters for determination of jury, and no question as to interpretation or applica-tion of Act, this court will not disturb decision of court below unless error palpable. *Great Northern Ry. v. Knapp* 464
- Dismissal of petition asserting claim against Government for use of invention because not based on implied contract, without prejudice to right to present claim for infringement under act of 1910. *Farnham v. United States*. . . . . 537
- Argument:* Where defendant corporation notified Govern-ment of pendency of suit to restrain it from voluntarily pay-ing tax imposed by Tariff Act of 1913, United States heard as *amicus curiæ* in support of constitutionality of Act. *Brushaber v. Union Pacific R. R. Co.*. . . . . 1
- Following findings of fact:* Findings of fact concurred in by master and lower courts will not be disturbed unless clearly erroneous. *Causey v. United States*. . . . . 399
- Findings of master and lower courts that original entryman of public lands had entered into unlawful agreement to pass title, followed. *Id.*

**PRACTICE AND PROCEDURE—Continued.**

PAGE

- Although Court of Claims may not have made findings in terms of certain facts assumed in its decision to be true, if they are not controverted and appear in record it is not necessary to send case back for further finding. *Ackerlind v. United States*. . . . . 531
- Where Court of Claims made no finding of value of goods furnished under contract rescinded for fraud, and stated in explanation that there was complete absence of evidence, case not remanded for such finding. *Crocker v. United States* 74
- Court cannot refer to opinion of Court of Claims for purpose of explaining or modifying that court's findings. *Id.*
- Where facts appear only in statement of lower court and in opinion, this court disposes of legal propositions in light of facts as so shown and elucidated. *Cardona v. Quinones*. . . . 83
- Following state court:* In absence of clear error, this court upholds action of lower court as to matters concerning purely local law. *Cardona v. Quinones*. . . . . 83
- On denial of prohibition by state court all points urged exclusively under state constitution are taken to have been decided adversely to plaintiff in error; and this court in such respect follows state court. *Mt. Vernon Cotton Co. v. Alabama Power Co.* . . . . . 30
- Exceptions:* Extravagant and unnecessary multiplication of exceptions and assignments of error condemned. *Badders v. United States*. . . . . 391
- Rule that party may not sit silent until after verdict and then insist that it be set aside for failure of court to particularly specify in its charge some matter to which its attention had not been suitably called, is not altered by Minnesota statute under which errors may be specified on motion for new trial without taking exceptions. *Illinois Central R. R. v. Skaggs* . . . . . 66
- Pleading:* Under § 24 (1), Jud. Code, where jurisdiction based on diverse citizenship, matter in controversy must appear by distinct averments in bill, or otherwise from proof, to exceed \$3,000. *Pinel v. Pinel*. . . . . 594
- Process:* Where question on cross-appeal is of general importance in relation to questions involved on direct appeal, court may allow certiorari in lieu of the cross-appeal. *Central Trust Co. v. Chicago Auditorium*. . . . . 581

See **Appeal and Error.****PREFERENCES.** See **Bankruptcy.**

<b>PREMIUMS.</b>	<b>PAGE</b>
See <b>Trading Stamps.</b>	
<b>PRESCRIPTION:</b>	
Validity under Porto Rican Code. See <i>Cardona v. Quinones</i>	83
<b>PRESIDENT:</b>	
Disposition of public lands by President under authority of Congress is disposition by Congress. <i>United States v. Morrison</i> . . . . .	192
Authority to establish Cascade Range Forest Reservation given by acts of 1891 and 1897, included power to make temporary withdrawals; and properly made order of Secretary of Interior regarded as act of President. <i>Id.</i>	
Power to dismiss civil officers not applicable to officers of Army and Navy whose dismissal regulated by § 1229, Rev. Stat. <i>United States v. Andrews.</i> . . . . .	90
Without power to grant Army officer leave without pay or so condition order granting leave. <i>Id.</i>	
<b>PRESUMPTIONS:</b>	
Presumption that Interstate Commerce Commission expert in matters of rate regulation and able to draw inferences from facts not necessarily obvious to others. <i>O'Keefe v. United States.</i> . . . . .	294
<b>PROCESS.</b> See <b>Appeal and Error; Injunction; Prohibition.</b>	
<b>PROFIT SHARING COUPONS.</b> See <b>Trading Stamps.</b>	
<b>PROHIBITION:</b>	
Is distinct suit and judgment finally disposing of it is final within meaning of § 237, Jud. Code: fact that denial of writ does not decide merits of principal suit is immaterial. <i>Mt. Vernon Cotton Co. v. Alabama Power Co.</i> . . . . .	30
On denial by state court all points urged exclusively under state constitution are taken to have been decided adversely to plaintiff in error; and this court in such respect follows state court. <i>Id.</i>	
<b>PROPERTY RIGHTS:</b>	
Right to use trade-mark is property. <i>Hamilton Shoe Co. v. Wolf Brothers.</i> . . . . .	251
Property in common law trade-marks and right to exclusive use grows out of use and not mere adoption. <i>Hanover Star Milling Co. v. Metcalf</i> . . . . .	403

**PROPERTY RIGHTS—Continued.**

PAGE

- Memberships in exchanges are property, notwithstanding restrictions upon use. *Rogers v. Hennepin County* . . . . . 184  
 See **Constitutional Law; Eminent Domain; Trade-Marks.**

**PUBLIC LANDS:**

- Interest of citizen:* Under act of 1875, rights of railroad entitled to benefit thereof are paramount over those of homestead entryman holding patent in consequence of rights initiated after line was in course of construction but before map of right of way filed. *Barlow v. Northern Pacific Ry.* . . . 484  
 Agreement to obtain land for another disqualifies entryman from acquiring title either by five years' residence and cultivation or by commutation and payment of minimum price. *Id.*  
 Findings of master and lower courts that original entryman of public lands had entered into unlawful agreement to pass title, followed. *Causey v. United States* . . . . . 399  
 Expenditures, other than payment to State, by intended acceptor of offer to sell public lands, are but voluntary qualifications to become purchaser and are not binding upon him or the State. *Banning Co. v. California* . . . . . 142  
 Homestead entries remain public land until patent issues, subject to right of homesteader to treat land as own only so far as necessary to carry out purposes of act; and this does not include taking of turpentine and rosin for sale and profit. *Union Naval Stores Co. v. United States* . . . . . 284  
 Boxing and clipping trees for extracting turpentine and rosin is not cultivation. *Id.*  
 Act of 1906 (§ 51, Crim. Code), prohibiting boxing of trees for turpentine, rendered criminal what had been actionable; and one who, prior to act, conducted turpentine operations under unperfected homestead entry held a willful trespasser. *Id.*  
*Interest of Government:* Where trespass willful United States entitled to product manufactured by third person who knowingly purchased crude material from trespasser. *Union Naval Stores Co. v. United States* . . . . . 284  
 Where evidence from which jury could form reasonably certain estimate of amount of crude product taken, and probable amount of manufactured product therefrom, defendant held not entitled to peremptory instruction in his favor, or one to limit recovery to nominal damages. *Id.*

**PUBLIC LANDS**—*Continued.*

PAGE

Claim of United States for spirits of turpentine and rosin taken from government lands not fatally defective because property taken was crude, nor because land described by distinctive general description by which known. *Id.*

That purchaser had mortgage on product, both crude and manufactured, of trespasser, which contained an after-acquired property clause and covered a large amount of other property, does not affect right of United States to recover that part of manufactured product found to be result of crude article taken from government land. *Id.*

Disposition of public lands by President under authority of Congress is disposition by Congress. *United States v. Morrison* . . . . .

192

Oregon did not, under § 4, Act of 1859, take title to sections 16, 36, prior to survey, until which time and until title vested in State, Congress had power to dispose of them on compensating State for resulting deficiency. *Id.*

Nothing in act of 1859, § 2275, Rev. Stat., or act of 1891, operated to pass title to Oregon of sections 16 and 36 at any intermediate stage of survey, or imposed any limitations on Congress to dispose thereof before title passed to State. *Id.*

Although California statute of 1863 gave private parties right to acquire tide lands, abrogation of right by later statutes and constitution not unconstitutional under contract clause as to those who had not paid any part of purchase price prior thereto. *Banning Co. v. California* . . . . .

142

Withdrawal from sale of lands by State before any right consummated not an impairment of contract. *Id.*

*Cancellation of patent:* Wrongdoer, whose patent to land cancelled by reason of his own fraud must restore land and abide judgment of Congress as to refund of consideration paid. *Causey v. United States* . . . . .

399

Rule applicable to private contracts that vendor seeking to rescind must be ready to return consideration, not applicable to Government in suits to cancel patents for land. *Id.*

It is essential that suit in name of United States to cancel homestead patent be brought with approval of Attorney General, and it is sufficient if United States is represented in this court by assistant attorney general and there is production of letter of Attorney General authorizing the suit. *Id.*  
*Surveys:* Surveying is an administrative act confided to designated Federal officers who have power to direct how surveys shall be made; and until all requirements fulfilled

**PUBLIC LANDS—Continued.**

PAGE

survey not a completed official act. *United States v. Morrison*.. . . . 192

A survey is incomplete until formally approved by Commissioner of Land Office; and even though approved without modification it does not so relate back to date of grant or field survey as to destroy power of Congress to dispose of lands while unsurveyed. *Id.*

*Forest reserves:* Statutory provisions for reservations refer to any lands which are subject to disposition of Congress, whether surveyed or not. *United States v. Morrison* . . . . . 192

Authority to establish Cascade Range Reservation given to President by acts of 1891 and 1897, included power to make temporary withdrawals; and properly made order of Secretary of Interior regarded as act of President. *Id.*

Exception in proclamation of 1907, enlarging Cascade Range Reserve, did not include sections referred to in § 4 of Oregon Enabling Act, but not included in completed survey. *Id.*

*Quære*, whether State may await extinguishment of reserve including lands granted, but title to which not vested, and then take granted lands. *Id.*

**PUBLIC NECESSITY.** See **Railroads.****PUBLIC OFFICERS:**

Secret arrangements with government officials by which they share in profits of contracts which they have voice in awarding vitiate contract justifying rescission, even though made without actual knowledge of contractor. *Crocker v. United States*.. . . . 74

Public policy prohibits attempt by unauthorized agreement with officer of United States, under guise of condition or otherwise, to deprive him of statutory right to pay. *United States v. Andrews* . . . . . 90

As to right of President to dismiss officers of Army or Navy. *Id.*

Powers relative to surveying public lands. See *United States v. Morrison*.. . . . 192

As to false personation of officers of United States, see *Lamar v. United States*.. . . . 60

**PUBLIC POLICY:**

Prohibits attempt by unauthorized agreement with officer of United States, under guise of condition or otherwise, to deprive him of statutory right to pay. *United States v. Andrews*.. . . . 90

**PUBLIC WELFARE:**

PAGE

There is an inseparable union between the public good and due regard for private rights. *Embree v. Kansas City Road District*. . . . . 242

**PURE FOOD AND DRUGS ACT:**

Net weight lard statute of North Dakota is not repugnant to Food and Drugs Act of 1906. *Armour & Co. v. North Dakota* . . . . . 510

**QUANTUM VALEBAT:**

Rescission of government contract to supply articles at specified prices is no obstacle to recovery upon quantum valebat if requisite proof of value of articles delivered. *Crocker v. United States*. . . . . 74

Where finding by Court of Claims of fraud in fixing contract price of articles, that price cannot for the *quantum valebat* be regarded as admission by Government of value of articles delivered prior to discovery of fraud and rescission of contract. *Id.*

Burden of proof to establish value upon a *quantum valebat* for articles delivered under contract rescinded for fraud, is on claimant. *Id.*

**RAILROADS:**

State, acting through administrative body, may require railroads to make physical track connections where public necessity exists therefor. *Seaboard Air Line v. Georgia R. R. Comm.* . . . . . 324

In determining whether such public necessity exists just regard should be given to probable resulting advantages and to necessary expense involved. *Id.*

A finding of public necessity for physical track connection must be supported by sufficient evidence; mere declaration of commission not sufficient. *Id.*

Finding of Railroad Commission of Georgia that public necessity existed for physical connection of tracks, and order therefor, held justified. *Id.*

Charter provision that railway keep space between tracks and one foot on either side in proper repair so as not to interfere with travel over same, held broad enough to cover requirement that space be paved with asphalt when rest of street so paved. *Southern Wisconsin Ry. v. Madison* . . . . 457

Purchaser of railroad under foreclosure of mortgage and reorganization scheme which provides for stockholders of

**RAILROADS**—*Continued.*

PAGE

- company, but not for unsecured creditors, held chargeable with unsecured debts. *Kansas City Southern Ry. v. Guardian Trust Co.* . . . . . 166
- A trunk line has no constitutional right to build up business by acts forbidden by Congress in interest of public welfare; and an order of the Interstate Commerce Commission prescribing maximum rates, otherwise legal, does not deprive line of its property without due process by denying it right to compete for business in that manner. *O'Keefe v. United States.* . . . . . 294
- Ordinance requiring certain paving held not an impairment of obligation of charter contract or violation of due process or equal protection of the law. *Southern Wisconsin Ry. v. Madison.* . . . . . 457
- Under act of 1875, rights of railroad entitled to benefit thereof are paramount over those of homestead entryman holding patent in consequence of rights initiated after line was in course of construction but before map of right of way filed. *Barlow v. Northern Pacific Ry.* . . . . . 484
- Arkansas statute requiring full switching crews on railroads over one hundred miles in length is not unconstitutional as depriving such railroads of property without due process of law, or as denying equal protection of the law, or as interfering with or burdening interstate commerce. *St. Louis, I. M. & S. Ry. v. Arkansas.* . . . . . 518
- Granting writ of mandamus requiring railroad to comply with order of state commission, which is prima facie lawful, pending determination of suit to enjoin enforcement of order, held, in view of circumstances and requirement that bond of indemnity be given, not to deprive railroad of due process of law. *Detroit & M. Ry. v. Michigan Railroad Comm.* . . . . . 564
- Quære*, whether trunk line can object to order of Interstate Commerce Commission on ground that allowance to connecting lines is too small and deprives it of opportunity to pay larger amount and obtain the business. *O'Keefe v. United States.* . . . . . 294

See **Common Carriers; Employers' Liability Act; Interstate Commerce; Interstate Commerce Commission.**

**RATE REGULATION:**

Where no undue discrimination against shipper or locality of its plant is found, and community declared prejudiced has not complained and is not party to proceeding, and rate com-

**RATE REGULATION**—*Continued.*

PAGE

plained of is intrinsically reasonable, mere fact that other carriers have adopted lower schedule from shipper's district to points other than one designated, affords no foundation for Commission's finding that rate unreasonable and erroneous as matter of law, and its order should be enjoined. *Philadelphia & Reading Ry. v. United States* . . . . . 334  
 See **Interstate Commerce Commission.**

**RECORDATION OF INSTRUMENTS:**

Requirement in § 60 of Bankruptcy Act construed. *Carey v. Donohue*. . . . . 430  
 See **Bankruptcy; Mortgages and Deeds of Trust.**

**REFORMATION OF INSTRUMENTS.** See **Contracts.****REFUNDING ACT.** See **War Revenue Act.****RELATION:**

Title of trustee in bankruptcy relates back to date of filing petition. *Fairbanks Steam Shovel Co. v. Wills*. . . . . 642  
 Formal approval of survey by Commissioner of Land Office does not so relate back to date of grant or field survey as to destroy power of Congress to dispose of lands while unsurveyed. *United States v. Morrison*. . . . . 192

**REMEDIES:**

Rescission of government contract to supply articles at specified prices is no obstacle to recovery upon quantum valebat if requisite proof of value of articles delivered. *Crocker v. United States* . . . . . 74  
 Wrongdoer, whose patent to land cancelled by reason of his own fraud must restore land and abide judgment of Congress as to refund of consideration paid. *Causey v. United States*. . . . . 399  
 See **Appeal and Error; Injunction; Prohibition.**

**REMOVAL OF CAUSES:**

Where State, suing on behalf of depositors of bank, is an actual party plaintiff, case cannot be removed; nor where State merely nominal party if none of distinct judgments to be rendered in favor of any individual is large enough to confer jurisdiction, although the aggregate amount is. *Title Guaranty Co. v. Allen* . . . . . 136

**RESCISSION OF CONTRACT.** See **Contracts.**

- RESIDENCE.** See **Corporations; Jurisdiction.** PAGE
- RESTRICTIONS ON LIABILITY.** See **Interstate Commerce.**
- REVISED STATUTES:**
- Section 1229. See **Army and Navy.**
- Section 1265. See **Army and Navy.**
- Sections 3220, 3226, 3227 do not violate due process of law under Fifth Amendment. *Dodge v. Osborn.* . . . . . 118
- Provisions of §§ 3220, 3226, 3227 are applicable to proceeding for recovery of taxes illegally collected under Income Tax Act. *Id.*
- Section 3224 is clearly within contemplation of par. L of Income Tax Law. *Id.*
- Section 3394 does not attempt to protect and enforce permission as to retail sales within States. *Rast v. Van Deman & Lewis.* . . . . . 342
- RIPARIAN RIGHTS:**
- Rights in land below mean high water line of navigable and tidal river are subordinate to public right of navigation and power of Congress to employ all appropriate means to keep river navigable. *Willink v. United States.* . . . . . 572
- Congress may prevent renewal of obstructions below mean high water which may affect navigation; and owner is not entitled to compensation therefor. *Id.*
- Riparian owner held not entitled to recover as upon an implied contract for taking his property by reason of damages alleged in consequence of exercise of power of Congress over navigable waters. *Id.*
- RIVERS AND HARBORS.** See **Navigable Waters.**
- ROAD IMPROVEMENTS.** See **Constitutional Law, VIII; Taxes and Taxation.**
- ROAD WORK.** See **Constitutional Law, VII.**
- ST. LOUIS:**
- Street paving ordinance held to subject property owners to disproportionate taxation and therefore unconstitutional under Fourteenth Amendment. *Gast Realty Co. v. Schneider Granite Co.* . . . . . 55
- SALES:**
- Regulations of retail sales within State held not to amount to attempt to control interstate commerce. *Rast v. Van Deman & Lewis.* . . . . . 342

**SALES—Continued.**

PAGE

Where State makes general offer to sell and provides for determination of conflicting claims of right to purchase, it is not bound by offer or precluded from withdrawing it until rightful claimant determined and payment of at least an installment of purchase price. *Banning Co. v. California* . . . 142

Expenditures, other than payment to State, by intended acceptor of offer to sell public lands, are but voluntary qualifications to become purchaser and are not binding upon him or the State. *Id.*

**SCHOOL LANDS.** See **Public Lands.**

**SECRETARY OF THE INTERIOR:**

Order withdrawing lands for forestry purposes is to be regarded as act of the President in whom is vested authority to make withdrawals. *United States v. Morrison* . . . . . 192

**SECRETARY OF WAR:**

Mere location of harbor lines does not amount to taking of property within lines or its appropriation to public use; nor does taking result from request of officer of United States to riparian owner to vacate, if such request not acceded to or enforced. *Willink v. United States* . . . . . 572

**SERVITUDE.** See **Constitutional Law, VII.**

**SET-OFF:**

A state commission appointed to close up business in which State engaged, held to have had jurisdiction to consider, find and offset claims of State against one claiming for supplies furnished, and by doing so did not deprive claimant of its property without due process of law. *Carolina Glass Co. v. South Carolina* . . . . . 305

**SHIPPING.** See **Maritime Law.**

**SIXTEENTH AMENDMENT.** See **Constitutional Law, IX.**

**SOUTH CAROLINA:**

Dispensary Commission appointed to close up dispensary business held to have had jurisdiction to consider, find and set off claims of State against one claiming for supplies furnished, and by doing so did not deprive claimant of property without due process of law: that while commission was without authority to enter overjudgment against claimant for excess of State's claim after offset, doing so did not affect

**SOUTH CAROLINA—Continued.**

PAGE

- power of commission to withdraw funds from county dispensaries; that such withdrawal did not amount to impairment of contract obligation; and that the suit by claimant against the commission was in effect a suit against the State and could not be maintained in the Federal court. *Carolina Glass Co. v. South Carolina* . . . . . 305

**SPECIAL ASSESSMENTS. See Taxes and Taxation.****STARE DECISIS:**

- Where objections to constitutionality of provisions of c. 135, Kansas Laws, 1913, taxing foreign corporations doing business in State for such privilege measured on proportion of stock used in State, rest in this case exclusively on asserted invalidity of similar provisions of same statute relative to domestic corporations, which have been found untenable, case controlled by former decision. *Lusk v. Kansas*. . . . . 236

**STATES:**

- Legislative powers:* State has inherent power to require every able-bodied man within jurisdiction to labor for reasonable period on public roads near residence without direct compensation. *Butler v. Perry*. . . . . 328
- Requirement that able-bodied men do reasonable amount of work on public roads near residence does not amount to involuntary servitude under Constitution; nor does it deprive persons of liberty and property without due process of law. *Id.*
- Due process under Fourteenth Amendment does not prevent State from placing upon bank commissioner duty of closing bank found upon examination to be insolvent without first instituting proceedings and obtaining award. *Title Guaranty Co. v. Allen*. . . . . 136
- An act of Congress which leaves subject with which Congress has power to deal unprovided for does not necessarily take matters within unprovided area out of any possible state action. *Innes v. Tobin*. . . . . 127
- Regulation of common carriers:* State, acting through administrative body, may require railroads to make physical track connections where public necessity exists therefor. *Seaboard Air Line v. Georgia R. R. Comm.*. . . . . 324
- In determining whether such public necessity exists just regard should be given to probable resulting advantages and to necessary expense involved. *Id.*
- Power over interstate commerce:* State cannot lay tax on

## STATES—Continued.

PAGE

- interstate commerce in any form, either upon business constituting such commerce, or privilege of engaging in it, or receipts as such derived therefrom. *Kansas City Ry. v. Kansas* . . . . . 227
- Whether state tax prohibited by commerce clause depends upon operation and effect as enforced and not upon characterization. *Id.*
- Police power*: State may regulate use of, and impose license taxes on, privilege of using profit sharing coupons and trading stamps. *Rast v. Van Deman & Lewis* . . . . . 342  
*Tanner v. Little* . . . . . 369  
*Pitney v. Washington* . . . . . 387
- Statute of Washington of 1907, imposing license taxes on privilege of using profit sharing coupons and trading stamps, held proper exercise of police power, and not unconstitutional as interfering with or burdening interstate commerce, impairing obligation of contracts, or denying equal protection or due process of law. *Tanner v. Little* . . . . . 369  
*Pitney v. Washington* . . . . . 387
- It is within power of legislature to consider use of profit sharing coupons and trading stamps as having evils similar to a lottery. *Rast v. Van Deman & Lewis* . . . . . 342
- Regulation by State of use of profit sharing coupons and trading stamps in connection with sales of tobacco not prohibited by § 3394, Rev. Stat., as amended. *Id.*
- If business subject to regulation by State and imposition of privilege taxes, contracts made in its conduct are also subject to such regulation. *Id.*
- Taxation by*: State may not tax Federal instrumentality for privilege of performing its functions. *Fidelity & Deposit Co. v. Pennsylvania* . . . . . 319
- Mere contracts between United States and private corporation do not make it an essential governmental agency and confer freedom from state control. *Id.*
- Act of 1894, allowing certain corporations to be accepted as surety does not create them Federal instrumentalities free from state laws and taxation. *Id.*
- Oil leases of land in Oklahoma made by Osage Indians under authority of acts of 1891 and 1905 are under protection of Government; lessee is Federal instrumentality; and State cannot tax its interest in the leases either directly or as the leases are represented by the capital stock of the corporation owning them. *Indian Oil Co. v. Oklahoma* . . . . . 522

## STATES—Continued.

PAGE

- Legislature may create taxing district to meet expense of local improvements without encountering Fourteenth Amendment, unless action palpably arbitrary or plain abuse. *Gast Realty Co. v. Schneider Granite Co.* . . . . . 55
- State not debarred from taxing granted privilege of being corporation because corporation may be engaged in interstate commerce. *Kansas City Ry. v. Kansas.* . . . . . 227
- State may tax domestic corporation for privilege of being such, and such tax not necessarily invalid because measured on capital stock part of which may represent capital not taxable by State. *Id.*
- State has broad discretion as to tax exemptions. *Rogers v. Hennepin County.* . . . . . 184
- State may fix situs of memberships in an exchange for purpose of taxation, and in so doing does not deprive non-resident members of property without due process of law. *Id.*
- Public lands:* Where State makes general offer to sell and provides for determination of conflicting claims of right to purchase, it is not bound by offer or precluded from withdrawing it until rightful claimant determined and payment of at least an installment of purchase price. *Banning Co. v. California.* . . . . . 142
- Expenditures, other than payment to State, by intended acceptor of offer to sell public lands, are but voluntary qualifications to become purchaser and are not binding on him or the State. *Id.*
- Quære,* whether State may await extinguishment of forest reserve including lands granted, but title to which not vested, and then take granted lands. *United States v. Morrison* . . . . . 192
- Extradition:* Act of 1793 (§ 5278, R. S.) was enacted for purpose of controlling interstate rendition, and so far as its provisions operated, was exclusive of state power. *Innes v. Tobin.* . . . . . 127
- Commissions:* A state commission appointed to close up business in which State engaged, *held* to have had jurisdiction to consider, find and offset claims of State against one claiming for supplies furnished, and by doing so did not deprive claimant of its property without due process of law. *Carolina Glass Co. v. South Carolina* . . . . . 305
- Such commission having found that claimant was indebted to State in excess of its claim and entered an overjudgment

**STATES—Continued.**

PAGE

therefor, *held* that, although such overjudgment was rendered without authority that fact did not affect power of commission to withdraw funds from county depositaries as they were state funds and subject to its control. *Id.*

Creditor of State cannot assert rights against withdrawal by state officers of funds of State under their control in regard to which State had not consented to be sued; and *held*, that such withdrawal did not amount to impairment of contract obligations. *Id.*

*Suits by and against:* Funds of State Dispensary of South Carolina held funds of State, and a suit against members of Dispensary Commission in effect a suit against State not maintainable in Federal court. *Carolina Glass Co. v. South Carolina* . . . . . 305

Cause to which State a party not removable into Federal court. *Title Guaranty Co. v. Allen*. . . . . 136

**STATUTES.** See **Congress; Construction.**

**STOCK AND STOCKHOLDERS:**

In suit in equity by stockholder of corporation against other corporations to recover under § 7 of Anti-Trust Act, court cannot enter decree requiring plaintiff's corporation to sue other corporations or permitting him to sue in its name and behalf. *Fleitmann v. Welsbach Co* . . . . . 27

As to right of stockholder to enjoin corporation from voluntarily paying unconstitutional tax. See *Brushaber v. Union Pacific R. R. Co.* . . . . . 1

**STREET CAR COMPANIES.** See **Interstate Commerce.**

**STREETS AND HIGHWAYS.** See **Railroads.**

**SUCCESSIONS:**

Right to succeed to property of decedent depends upon and is regulated by state law. *Uterhart v. United States*. . . . . 598

On the construction of will by state court, *held*, that interests of residuary legatees were contingent prior to July 1, 1902, within meaning of Refunding Act of 1902, except as to such amounts as were actually paid to legatees prior to that date. *Id.*

Deed made by resident of one State to person of another State as trustee for certain beneficiaries of personal property, donor retaining income for life and power of appointment, which was not exercised, *held* not to amount to transfer; and

**SUCCESSIONS—Continued.**

PAGE

inheritance tax levied by State of donor's residence on whole fund as upon a transfer intended to take effect in enjoyment after donor's death, sustained. *Bullen v. Wisconsin* . . . . . 625

Imposition of inheritance tax on property passing by deed in trust, by State of donor's residence, held not unconstitutional as impairing obligation of contract or depriving beneficiaries of trust of property without due process of law because State where property situated had imposed inheritance tax thereon. *Id.*

**SUIT AGAINST STATE.** See **South Carolina.**

**SURETY COMPANIES:**

Act of 1894, allowing certain corporations to be accepted as surety does not create them Federal instrumentalities free from state laws and taxation. *Fidelity & Deposit Co. v. Pennsylvania* . . . . . 319

**SURVEYS.** See **Public Lands.**

**TAP LINE RAILWAYS.** See **Interstate Commerce Commission.**

**TARIFFS.** See **Interstate Commerce.**

**TAXES AND TAXATION:****I. Subjects of taxation.**

Nothing in Constitution prevents taxation of membership in exchange restricted in use. *Rogers v. Hennepin County*. 184

Such membership held property, notwithstanding restrictions upon use, and subject to taxation. *Id.*

Whether such memberships are taxable under state statutes is a matter of local law. *Id.*

State not debarred from taxing granted privilege of being corporation because corporation may be engaged in interstate commerce. *Kansas City Ry. v. Kansas* . . . . . 227

State may tax domestic corporation for privilege of being such, and such tax not necessarily invalid because measured on capital stock part of which may represent capital not taxable by State. *Id.*

Tax imposed by c. 135, Kansas Laws, 1913, on privilege of being corporation, is not as to domestic corporation engaged in both interstate and intrastate commerce, invalid either as violation of commerce clause, or of due process clause, of Constitution. *Id.*

**TAXES AND TAXATION—Continued.**

	PAGE
State cannot lay tax on interstate commerce in any form, either upon business constituting such commerce, or privilege of engaging in it, or receipts as such derived therefrom. <i>Id.</i>	
Whether state tax prohibited by commerce clause depends upon operation and effect as enforced and not upon characterization. <i>Id.</i>	
Tax upon lease made is one on power to make lease. <i>Indian Oil Co. v. Oklahoma</i> . . . . .	522
Leases that cannot be taxed as entity cannot be taxed vicariously by taxing stock of corporation owning them where only value of stock is value of the leases. <i>Id.</i>	
Oil leases of land in Oklahoma made by Osage Indians under authority of acts of 1891 and 1905 are under protection of Government; lessee is Federal instrumentality; and State cannot tax its interest in the leases either directly or as the leases are represented by the capital stock of the corporation owning them. <i>Id.</i>	
State may not tax Federal instrumentality for privilege of performing its functions. <i>Fidelity &amp; Deposit Co. v. Pennsylvania</i> . . . . .	319
Pennsylvania law of 1895, imposing taxes on premiums collected by certain classes of insurance companies, is not, as applied to premiums on bonds of Federal government officials by surety companies under act of 1894, unconstitutional as interference with powers of government. <i>Id.</i>	
State may impose license taxes on privilege of using profit sharing coupons and trading stamps. <i>Rast v. Van Deman &amp; Lewis</i> . . . . .	342
<i>Tanner v. Little</i> . . . . .	369
<i>Pitney v. Washington</i> . . . . .	387
<b>II. Situs for taxation.</b>	
State may fix situs of memberships in an exchange for purpose of taxation, and in so doing does not deprive non-resident members of property without due process of law. <i>Rogers v. Hennepin County</i> . . . . .	184
<b>III. Valuation for taxation.</b>	
Correct valuation of property a matter for taxing officials; and, where no charge of denial of opportunity to be heard, this court does not review their judgment. <i>Id.</i>	
<b>IV. Classification in taxation.</b>	
Taxation of memberships in exchanges wherein business transactions conducted for profit not a denial of equal pro-	

**TAXES AND TAXATION—Continued.**

PAGE

tection because memberships in other associations, not conducting business exchanges and where there are manifest distinctions, are not also taxed. *Id.*

**V. Double taxation.**

Memberships in incorporated exchange, as property of respective members, are distinct from assets of corporation, and taxing members on membership and corporation on assets not double taxation. *Id.*

**VI. Exemptions.**

State has broad discretion as to tax exemptions. *Id.*

**VII. Restraining payment and collection.**

Under proper averments stockholder's suit to restrain corporation from voluntarily paying tax charged to be unconstitutional, is not violative of § 3224, Rev. Stat. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1

Suit not maintainable to enjoin assessment or collection of tax because of alleged unconstitutionality of statute imposing it. *Dodge v. Osborn.* . . . . . 118

That many suits would have to be brought to recover taxes paid under unconstitutional statute and that meantime taxes imposed become lien and constitute cloud on title, held inadequate to sustain jurisdiction of equity to restrain collection. *Id.*

**VIII. Validity in general.**

Validity of each tax decided upon own facts, and tax within taxing power of State not condemned as unconstitutional unless natural operation and effect render it prohibited exaction. *Kansas City Ry. v. Kansas.* . . . . . 227

Even though statutory tax prohibitory, right to carry on business by using trading stamps and profit sharing coupons is not so protected by Constitution as to render tax a violation of due process of law. *Rast v. Van Deman & Lewis* . . . 342

St. Louis street paving ordinance held to subject property owners to disproportionate taxation and therefore unconstitutional. *Gast Realty Co. v. Schneider Granite Co.* . . . . . 55

Florida statute of 1913, imposing license taxes on merchants using profit sharing coupons and trading stamps does not deprive of due process of law because of severity of its penalties intimidating against testing legality. *Rast v. Van Deman & Lewis* . . . . . 342

**IX. Inheritance taxes.**

Imposition on property passing by deed in trust, by State of donor's residence, held not unconstitutional as impairing

**TAXES AND TAXATION—Continued**

PAGE

obligation of contract or depriving beneficiaries of trust of property without due process of law because State where property situated had imposed inheritance tax thereon. *Bullen v. Wisconsin* . . . . . 625

Deed made by resident of one State to person of another State as trustee for certain beneficiaries of personal property, donor retaining income for life and power of appointment, which was not exercised, held not to amount to transfer; and inheritance tax levied by State of donor's residence on whole fund as upon a transfer intended to take effect in enjoyment after donor's death, sustained. *Id.*

**X. Districts; establishment of.**

Legislature may create taxing districts to meet expense of local improvements without encountering Fourteenth Amendment, unless action palpably arbitrary or plain abuse.

*Gast Realty Co. v. Schneider Granite Co.* . . . . . 55

The law does not attempt imaginary exactness or go beyond reasonable probabilities in establishing taxing districts. *Id.*

Law establishing district under which there is no reasonable presumption that justice will be done, but under which parties will probably be disproportionately taxed, cannot stand as constitutional against one actually so taxed. *Id.*

Where district established by delegated authority it is essential to due process of law that landowners have opportunity to be heard on question of benefits. *Embree v. Kansas City Road District.* . . . . . 242

Where statute delegating authority for establishment of district provides for hearing on question of benefits, decision of designated tribunal sufficient, and, unless made fraudulently or in bad faith, due process not denied. *Id.*

Adequate hearing may be had before a delegated tribunal authorized to establish taxing districts for roads and to declare what lands shall be included therein as benefited and due process accorded owners, although particular roads to be improved not designated. *Id.*

A legislative act establishing zones of benefits with graduated ratings for assessments in districts lawfully created, does not deny due process of law where it does not provide for a hearing on this particular feature, unless legislative apportionment so arbitrary and devoid of reasonable basis as to amount to abuse of power. *Id.*

Statute requiring adequate public notice of time and place of presentation of petition for creation of tax district and

**TAXES AND TAXATION—Continued.**

PAGE

providing for presentation of remonstrances with power to designated tribunal to hear petition and remonstrances and make such changes in boundaries of proposed district as public good may require, contemplates a hearing, and authorizes tribunal to so adjust boundaries as to include only such lands as may reasonably be expected to be benefited. *Id.*

Although no hearing afforded owners of land within district on appraisal of their lands for purpose of apportioning tax, due process not denied if such hearing accorded when tax sought to be enforced. *Id.*

Missouri laws providing for establishment of road improvement districts not unconstitutional under due process provision of Fourteenth Amendment. *Id.*

**XI. Federal taxation.**

Constitution recognized the two great classes of taxation as direct and indirect and applied rule of apportionment as to former and uniformity as to latter; but by Sixteenth Amendment all income taxes are relieved from rule of apportionment. *Brushaber v. Union Pacific R. R. Co.* . . . . . 1

Sixteenth Amendment obviously intended to simplify situation and make clear limitations on taxing power of Congress and not to create radical and destructive changes in constitutional system. *Id.*

Uniformity of taxation required by Constitution is geographical. *Id.*

Fifth Amendment is not a limitation upon taxing power conferred upon Congress. *Id.*

Arguments as to expediency of levying tax within power of Congress are beyond judicial cognizance. *Id.*

When there are differences between subjects taxed, Congress does not transcend limit of power by taxing them differently. *Id.*

Want of due process of law does not arise from want of wisdom in Congress in levying taxes and give courts power to overrule action of Congress by declaring it to be unconstitutional. *Id.*

Independently of operations of Sixteenth Amendment, a tax on product of mine is not a tax upon property as such because of its ownership, but is a true excise. *Stanton v. Baltic Mining Co.* . . . . . 103

Requiring appeal to Commissioner of Internal Revenue after payment of taxes and giving right to sue only after his

**TAXES AND TAXATION—Continued.**

PAGE

refusal to refund does not violate due process of law. *Dodge v. Osborn* . . . . . 118  
 See **Income Tax; War Revenue Act.**

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

**TIME.** See **Appeal and Error.**

**TITLE:**

Tenant is not estopped to show that landlord's title has expired or been terminated by operation of law. *Johnson v. Riddle* . . . . . 467  
 One knowingly taking property of another cannot by changing its form or commingling it with property of his own acquire title by accession. *Union Naval Stores Co. v. United States* . . . . . 284  
 Title of trustee in bankruptcy relates back to date of filing petition. *Fairbanks Steam Shovel Co. v. Wills* . . . . . 642  
 See **Indian Lands.**

**TONNAGE DUES.** See **Maritime Law.**

**TORTS:**

Actions of tort are transitory. *Kansas City Ry. v. McAdow* . . . . . 51

**TRACK CONNECTIONS.** See **Railroads.**

**TRADE-MARKS:**

Right to use is property of which owner entitled to exclusive enjoyment to extent that it has been actually used, and infringer is required in equity to account for his gains. *Hamilton Shoe Co. v. Wolf Brothers* . . . . . 251  
 "The American Girl," as applied to women's shoes, not geographical or descriptive, nor indicative of qualities or characteristics of article, and is subject to appropriation as trade-mark. *Id.*  
 Use of label "American Lady" held to infringe trade-mark "American Girl." *Id.*  
 Although decree below based on profits gained in unfair competition, as proofs and findings were applicable to claim of compensation for infringing trade-mark to which claimant found entitled, decree affirmed. *Id.*  
 Where defendant not an innocent infringer and apportionment between profits attributable to infringement and those attributable to intrinsic merit of article inherently impossi-

TRADE-MARKS—*Continued.*

PAGE

ble, complainant not limited in recovery to former, nor is burden on him to show what such portion of profits was. *Id.*

Owner entitled to so much of profit as resulted to infringer from use of mark; and rather that owner have all the profit than that he be deprived of any portion thereof. *Id.*

In suit for infringement decree based on Master's finding as to amount of profits to which complainant entitled not disturbed. *Id.*

Where neither of parties, citizens of different States, has registered trade-mark in dispute, and no local rule is shown, cases involving use of such trade-mark determined according to applicable common-law principles. *Hanover Star Milling Co. v. Metcalf* . . . . . 403

Redress accorded in trade-mark cases is based upon party's right to be protected in good will of business; and English rule that only property in trade-mark is in connection with existing business prevails generally in this country. *Id.*

Common law of trade-marks is but part of law of unfair competition. *Id.*

Property in common law trade-marks and right to exclusive use grows out of use and not mere adoption. *Id.*

Question of prior appropriation legally insignificant in absence of intent on part of later adopter to take benefit of reputation or to forestall extension of the trade of the earlier adopter. *Id.*

While property in trade-mark not limited so far as its use has extended, by territorial bounds, earlier adopter may not monopolize markets that his trade has never reached and where mark signifies goods of another. *Id.*

So far as controversy over trade-mark concerns intrastate distribution, subject not within sovereign power of United States. *Id.*

Trade-mark rights may be lost by abandonment, non-user, laches or acquiescence. *Id.*

Where later adopter, in good faith and without notice of its use in other territory by earlier adopter, expends money and effort in building up trade in territory which earlier adopter has left unoccupied for a long time and into which his trade would not naturally expand, latter estopped to assert infringement in that territory. *Id.*

A third party entering territory of one entitled to use trade-mark and attempting to use same in manner which, through

**TRADE-MARKS**—*Continued.*

PAGE

similarity of package, is deceiving, is guilty of unfair competition, from which protection will be accorded. *Id.*

Where jurisdiction of District Court in trade-mark case rests on diversity of citizenship, decision of Circuit Court of Appeals is final and can only be reviewed on certiorari. *Id.*

See **Unfair Competition.**

**TRADING STAMPS:**

State may regulate use of, and impose license taxes on, privilege of using profit sharing coupons and trading stamps.

*Rast v. Van Deman & Lewis*..... 342

*Tanner v. Little* ..... 369

*Pitney v. Washington*..... 387

Regulation by State of use of profit sharing coupons and trading stamps in connection with sales of tobacco not prohibited by § 3394, Rev. Stat., as amended. *Rast v. Van Deman & Lewis*..... 342

Discernment and correction of evils resulting from use of profit sharing coupons and trading stamps is within legislative authority. *Id.*

Regulation of use of profit sharing coupons and trading stamps in connection with retail sales to individual purchasers and consumers and not designed to be used by manufacturer from another State to State of distribution, does not interfere with or burden interstate commerce. *Id.*

Florida statute of 1913, imposing special license taxes on merchants using such coupons and stamps, is not unconstitutional as impairing obligation of contracts, as it must be construed as having prospective operation. *Id.*

In conducting retail business, use of such coupons and stamps is not advertising pure and simple; there is a distinction. *Id.*

It is within power of legislature to consider use of such coupons and stamps as having evils similar to a lottery. *Id.*

Even though statutory tax prohibitory, right to carry on business by using such stamps and coupons is not so protected by Constitution as to render tax a violation of due process of law. *Id.*

Statute of Washington of 1907, imposing license taxes on privilege of using profit sharing coupons and trading stamps, held proper exercise of police power, and not unconstitutional as interfering with or burdening interstate commerce, im-

TRADING STAMPS— <i>Continued.</i>	PAGE
pairing obligation of contracts, or denying equal protection or due process of law. <i>Tanner v. Little</i> . . . . .	369
<i>Pitney v. Washington</i> . . . . .	387
<i>Quære</i> , whether statute relating to profit sharing coupons and trading stamps redeemable exclusively in cash and credit on purchase is objectionable. <i>Rast v. Van Deman &amp; Lewis</i>	342

**TRANSPORTATION.** See **Interstate Commerce.**

**TREATIES.** See **Indian Lands.**

**TRESPASS.** See **Public Lands.**

**TRIAL:**

Rule that party not entitled to sit silent until after verdict and then insist that it be set aside for failure of court to particularly specify in its charge some matter to which its attention had not been suitably called, is not altered by Minnesota statute under which errors may be specified on motion for new trial without taking exceptions. <i>Illinois Central R. R. v. Skaggs</i> . . . . .	66
Under local practice in Nebraska, where trial by jury is waived in action at law, findings made by trial court have force and effect of verdict of jury, and hearing in supreme court is not trial de novo. <i>Jones National Bank v. Yates</i> . . . .	541

**TRIPLE DAMAGES.** See **Anti-Trust Act.**

**TRUNK AND TAP LINES.** See **Interstate Commerce Commission.**

**TRUSTS AND TRUSTEES:**

Trusts for life with income free from interference or control of creditors are, in Massachusetts, valid and effective against creditors and, under certain conditions, against assignees and trustees in bankruptcy. <i>Eaton v. Boston Trust Co</i> . . . . .	427
Deed made by resident of one State to person of another State as trustee for certain beneficiaries of personal property, donor retaining income for life and power of appointment, which was not exercised, <i>held</i> not to amount to transfer; and inheritance tax levied by State of donor's residence on whole fund as upon a transfer intended to take effect in enjoyment after donor's death, sustained. <i>Bullen v. Wisconsin</i> . . . . .	625

See **Bankruptcy.**

**UNFAIR COMPETITION:**

PAGE

- User of unregistered design, similar to that of earlier user, may be enjoined from further use, but may not be charged with profits if original imitation unintentional and there was no deceit or substitution of goods in fact. *Straus v. Notaseme Co.* . . . . . 179
- Where supposed unfairness consisted mainly in use of device that earlier user unsuccessfully sought to have registered, relief denied. *Id.*

See **Trade-Marks.****UNITED STATES:**

- In a proper case reformation of a contract may be required against the United States, notwithstanding § 3744, Rev. Stat. *Ackerlind v. United States.* . . . . . 531
- Oil leases of land in Oklahoma made by Osage Indians under authority of acts of 1891, 1905, are under protection of Government; lessee is Federal instrumentality, and State cannot tax its interest in the leases. *Indian Oil Co. v. Oklahoma* . . . 522
- Where officers charged with matter have refused offer for use of invention, and have declined to use it, and, proceeding independently, make and use articles designed by themselves, claimed by patentee to embody his invention, there is no implied contract on part of Government to pay for use of invention; and Court of Claims without jurisdiction of claim prior to act of 1910. *Farnham v. United States.* . . . . 537
- It is essential that suit in name of United States to cancel homestead patent be brought with approval of Attorney General, and it is sufficient if United States is represented in this court by assistant attorney general and there is production of letter of Attorney General authorizing the suit. *Causey v. United States* . . . . . 399
- Rule applicable to private contracts that vendor seeking to rescind must be ready to return consideration, not applicable to Government in suit to cancel patent for land. *Id.*
- So far as controversy over trade-mark concerns intrastate distribution, subject not within sovereign power of United States. *Hanover Star Milling Co. v. Metcalf.* . . . . . 403

See **Congress; President; Public Lands.****VALUATION:**

- Correct valuation of property a matter for taxing officials; and, where no charge of denial of opportunity to be heard, this court does not review their judgment. *Rogers v. Hennepin County* . . . . . 184

- VARIANCE.** See **Pleading.** PAGE
- VENDOR AND VENDEE:**  
 Rule applicable to private contracts that vendor seeking to rescind must be ready to return consideration, not applicable to Government in suit to cancel patent for land. *Causey v. United States.* . . . . . 399
- VESSELS.** See **Maritime Law.**
- VESTED AND CONTINGENT INTERESTS.** See **War Revenue Act.**
- WAIVER:**  
 Question of capacity of trustee in bankruptcy to sue waived if not raised in trial court. *Fairbanks Steam Shovel Co. v. Wills* 642  
 Controversies in case brought in Federal court depending alone upon right to sue because of district in which parties reside, may be waived. *Male v. Atchison, T. & S. F. Ry.* . . . 97  
 Effect of appearance as waiver of objection in bankruptcy proceedings. See *Fairbanks Steam Shovel Co. v. Wills* . . . 642
- WAREHOUSEMEN:**  
 Transportation, as regulated by Commerce Act, includes services of connecting carrier as warehouseman of goods after arrival at destination and before actual delivery. *Southern Ry. v. Prescott.* . . . . . 632  
 Under stipulation in bill of lading of interstate shipment, that carrier liable as warehouseman only for goods after arrival at destination and not removed within specified time, carrier liable only for negligence; and if loss admittedly by fire, burden is on plaintiff to prove negligence, notwithstanding rule under state law. *Id.*
- WAR REVENUE TAX:**  
 On the construction of will by state court, *held*, that interests of residuary legatees were contingent prior to July 1, 1902, within meaning of Refunding Act of 1902, except as to such amounts as were actually paid to legatees prior to that date. *Uterhart v. United States.* . . . . . 598
- WASHINGTON:**  
 Statute of 1907, imposing license taxes on privilege of using profit sharing coupons and trading stamps, held proper exercise of police power, and not unconstitutional as interfering with or burdening interstate commerce, impairing

INDEX.

757

<b>WASHINGTON</b> — <i>Continued.</i>	PAGE
obligation of contracts, or denying equal protection or due process of law. <i>Tanner v. Little</i> . . . . .	369
<i>Pitney v. Washington</i> . . . . .	387

**WATERS.** See **Navigable Waters; Riparian Rights.**

**WILLS:**

Judicial construction by state court of competent jurisdiction determines legally and practically extent and character of interests taken by legatees. *Uterhart v. United States* . . . 598

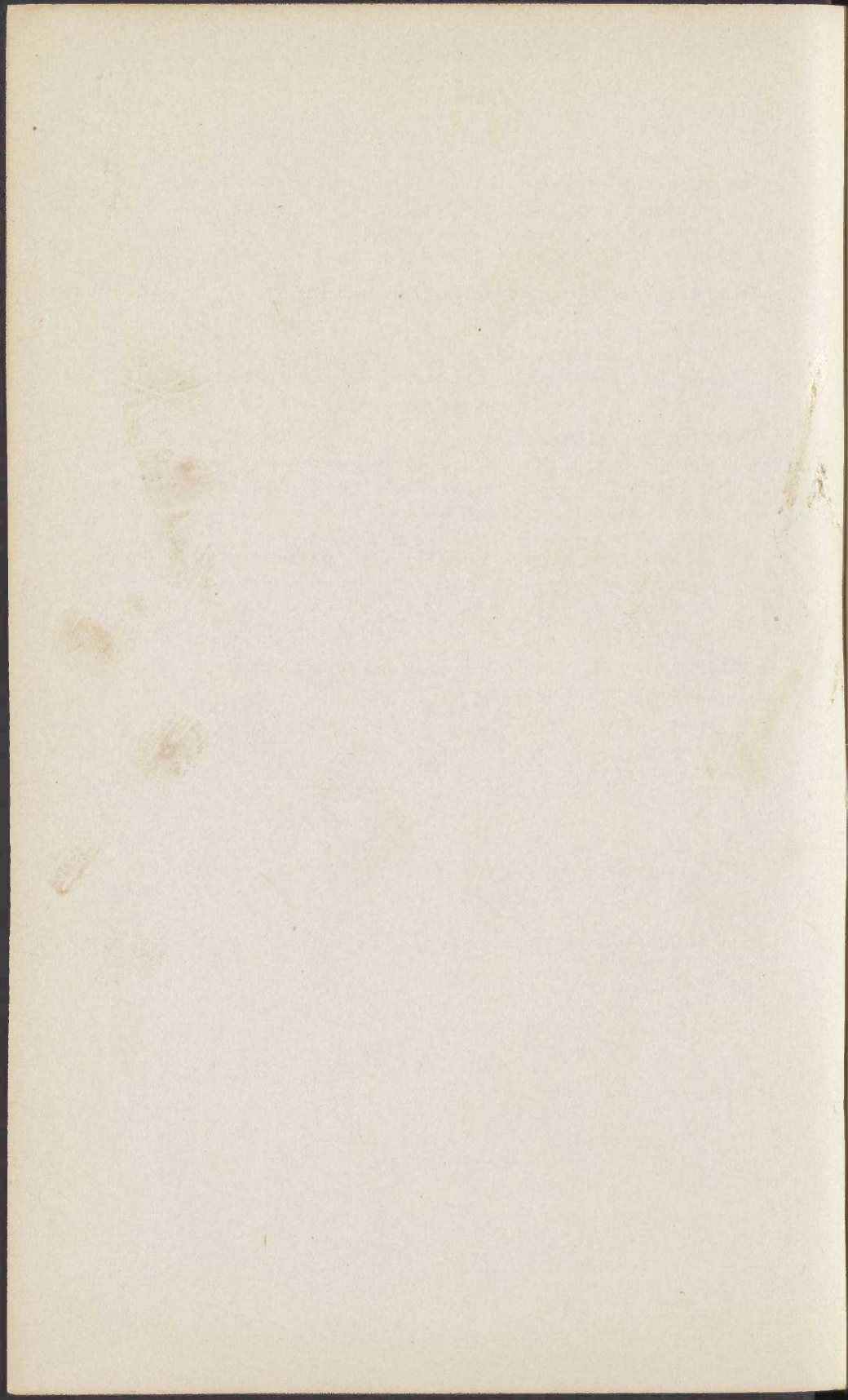
**WORDS AND PHRASES:**

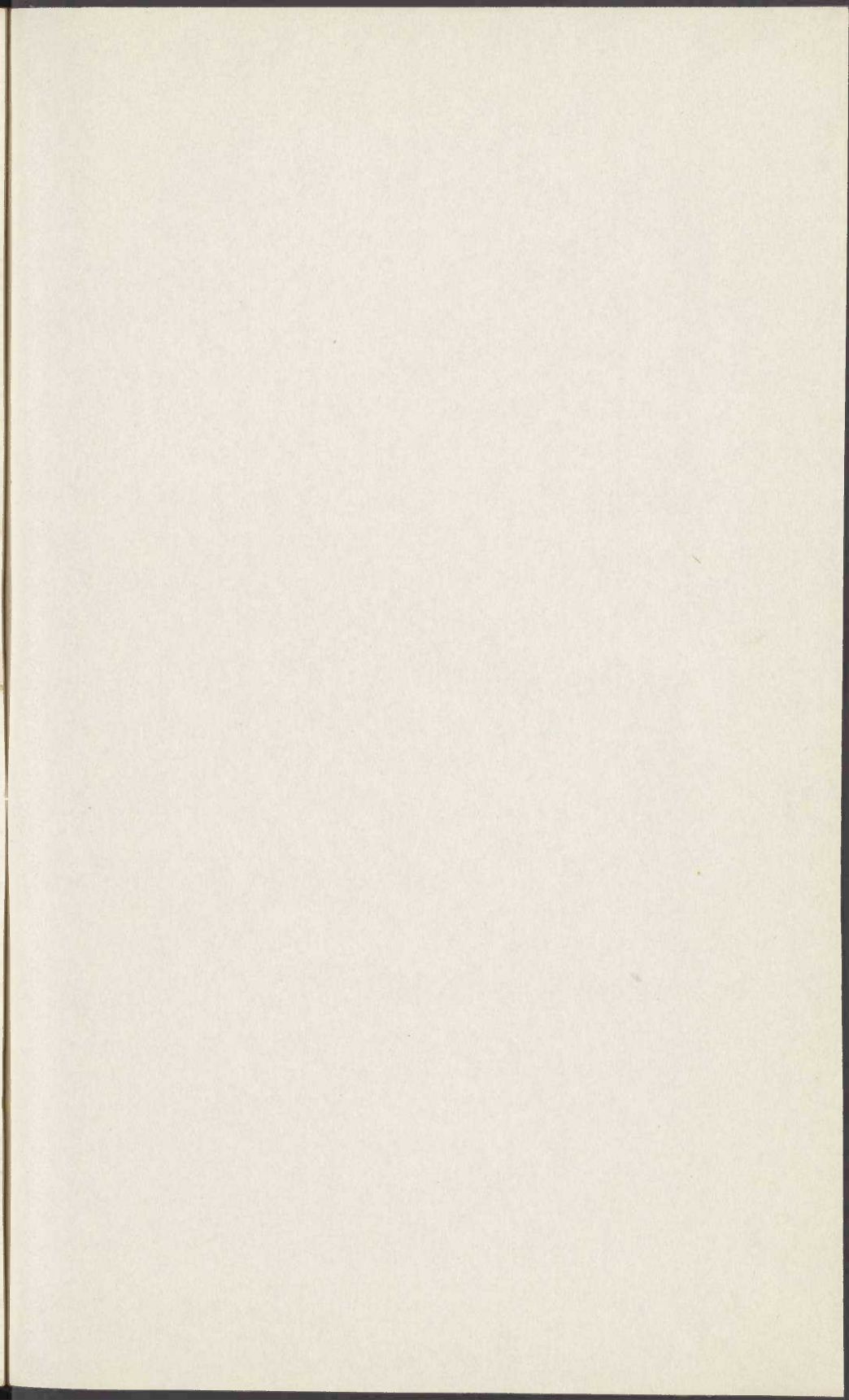
“The American Girl,” as applied to women’s shoes, not geographical or descriptive, nor indicative of qualities or characteristics of article, and is subject to appropriation as trade-mark. *Hamilton Shoe Co. v. Wolf Brothers* . . . . . 251

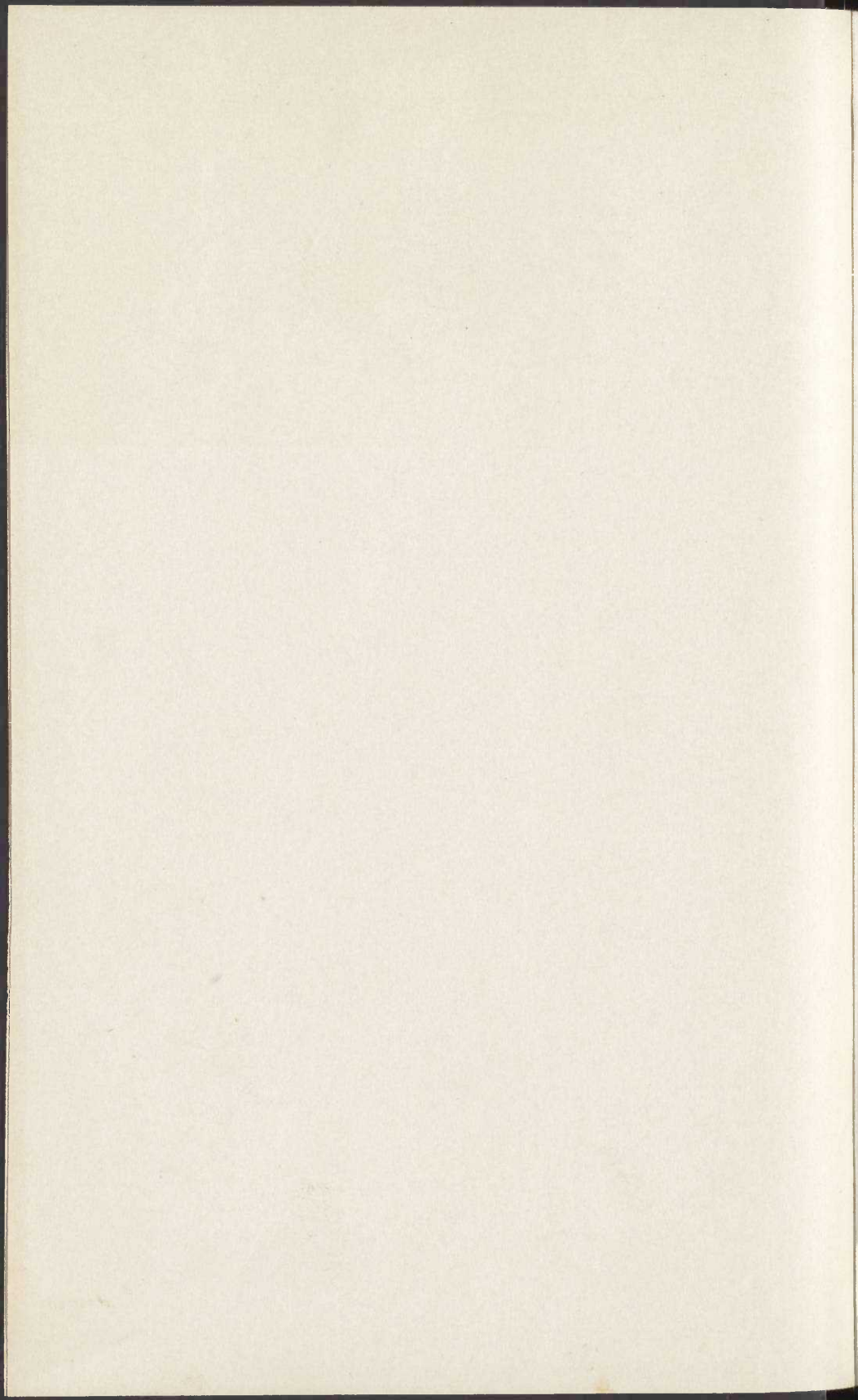
“Next of kin” in Employers’ Liability Act not used in common-law significance. *Seaboard Air Line v. Kenney* . . 489

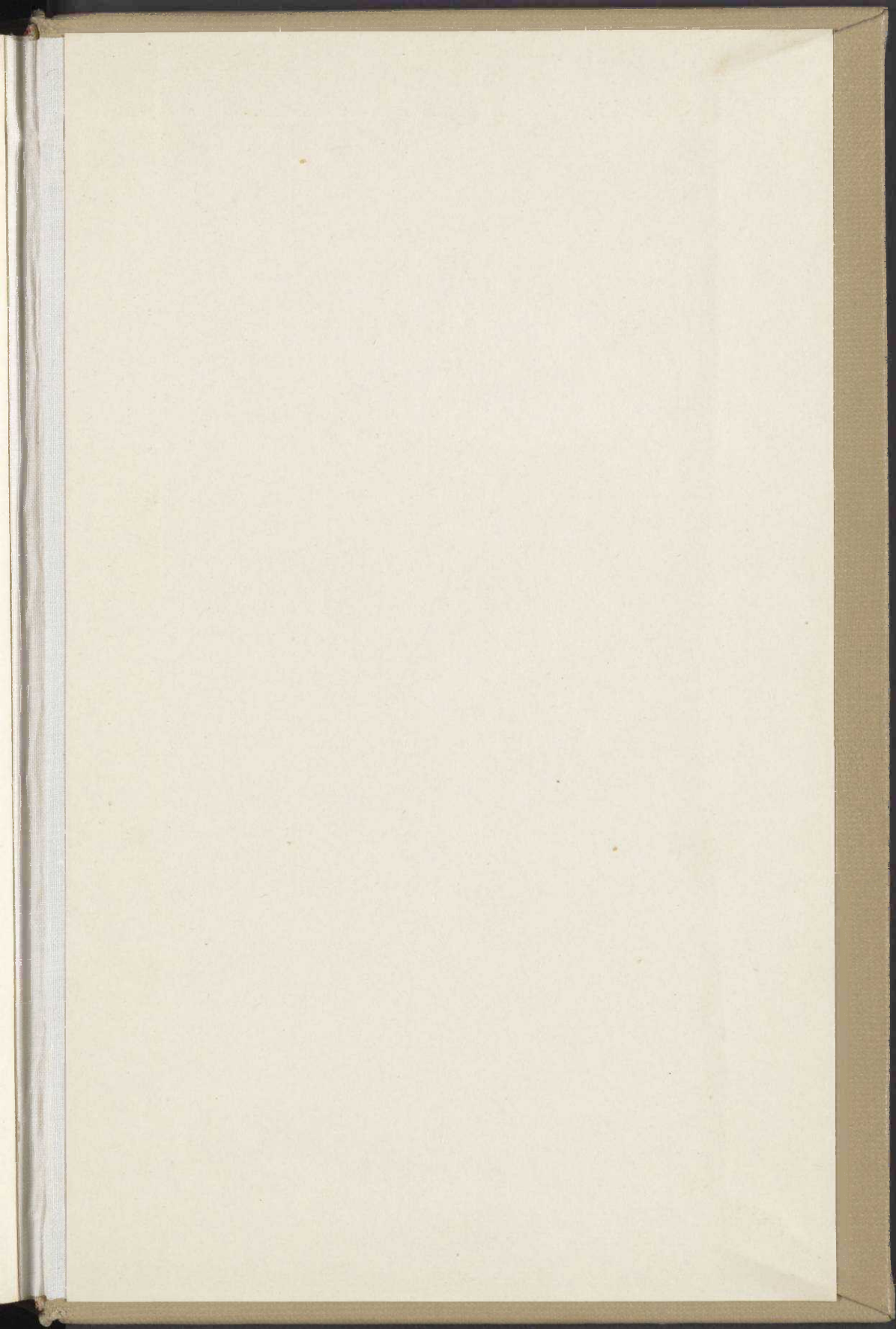
“Officer” as used in § 32, Crim. Code. See *Lamar v. United States* . . . . . 60

**WRIT AND PROCESS.** See **Appeal and Error; Certiorari; Injunction; Prohibition.**











UNIVERSITY OF TORONTO

OCT 19 1986