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- 2. Congress may regulate the hours of labor of railway employees engaged in interstate commerce. *Id.*
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3. Similarly, the liberty of the employees of such carriers is subject to limitation by Congress under the commerce power as may be necessary for the protection of interstate commerce. *Id.*

4. An act "to establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce, and for other purposes," is constitutional and is not open to the objection that its provisions are unworkable. *Id.*

5. Where Congress, in exercising its power to distribute tribal lands by allotment, directs the Secretary of the Interior to issue a patent to certain land to a member of an Indian tribe, it has power to recall the direction before the patent is issued and the full title passed. *United States v. Rowell.* 464

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4. A foreign fire insurance company to gain the right to do business in a State, filed a power of attorney consenting that service on a state officer should be personal service on the company so long as it had liabilities outstanding in the State; the state court, construing the statute, held that the consent covered service in an action on a policy issued in and insuring property in another State. *Held*, that the construction had a rational basis in the statute and therefore could not be deemed to deprive the company of due process, even if it took it by surprise. *Penna. Fire Ins. Co. v. Gold Issue Mining Co.* 93

5. When a power actually is conferred by a document, the maker takes the risk of the interpretation that may be put upon it by the courts. *Id.*

6. In the absence of consent, a corporation of one State may not be summoned in another in an action *in personam* unless doing business in the State where served in such manner and to such extent as to warrant the inference that it is present there and unless process be served on some authorized agent. *Phila. & Reading Ry. v. Mc Kibbin* 264

7. The power of States to seize tangible and intangible property and apply it to satisfy obligations of absent owners is not obstructed by the Federal Constitution. *Pennington v. Fourth Natl. Bank.* 269

8. The only essentials to its exercise are the presence of the *res*, its seizure at commencement of proceeding, and opportunity to be heard. *Id.*

9. These existing, a decree of alimony will be valid under the same circumstances and to the same extent as a judgment on a debt, i. e., valid as a charge on the property seized. So *held* where the property was a divorced husband's bank account. *Id.*

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(b) Statutory Presumptions and Shifting Burden of Proof.

10. A State may provide that failure to safeguard dangerous machinery shall be negligence and place the burden of proof upon the defendant to show compliance with the act. *Bowersock v. Smith*. 29

11. A State may provide that in an action by an employee against an employer who has rejected an elective workmen's compensation act the injuries to the employee shall be presumed to have resulted from the employer's negligence and that the burden of rebutting the presumption shall rest on him. *Hawkins v. Bleakly*. 210

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(d) Administrative Proceedings and Curtailment of Judicial Remedies.

13. A workmen's compensation act, prescribing the measure of compensation and the circumstances under which it is to be made, establishing a method of applying the measure to the facts of each case by due hearings before an administrative tribunal, whose action upon all fundamental and jurisdictional questions is subject to judicial review, is consistent with due process of law. *Hawkins v. Bleakly*. 210

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ance, was not appointed until after it was made, but opportunity was given for reargument. *Held* not violative of due process. *Lott v. Pittman*. 588

16. The right of appeal is not essential to due process, and, where allowed, the State may prescribe conditions. *Id.*

(3) *Jury.*

1. Denial of trial by jury in civil cases is not inconsistent with due process of law. *New York Cent. R. R. v. White* . . 188
Hawkins v. Bleakly. 210

(4) *Police Regulations Affecting Property and Liberty. Subjects and Methods.*

(a) **Regulating Rights and Liabilities of Employer and Employee.**

1. For the protection of employees in hazardous occupations, States may make failure to safeguard dangerous machinery actionable negligence in case of injury or death, doing away with contributory negligence, assumption of risk and fellow servant doctrine, and casting burden on defendant to show compliance with the act. *Bowersock v. Smith* . . 29

2. Such an act does not violate the Amendment even if held applicable in behalf of an employee who contracted with the owner to provide safeguards required by the statute, the absence of which later resulted in his injury and death. *Id.*

3. A workmen's compensation system abolishing all common-law rules of liability and damages, requiring employers to compensate for disability or death of employees in accordance with a prescribed scale based on loss of earning power, to insure payment by contributions to state insurance fund or by deposit of securities, etc., and providing that liability and amount shall be determined through administrative proceedings, *Held* valid as to both employers and employees, the amounts of compensation prescribed being fair, though less than might be obtained in negligence cases at common law. *New York Cent. R. R. v. White* 188
Hawkins v. Bleakly. 210

See also *Mountain Timber Co. v. Washington* 219
Raymond v. Chicago, Mil. & St. P. Ry. 43

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4. As an incident to the establishment of an elective workmen's compensation system, common-law defenses may be withdrawn from employers who do not accept it and the burden of rebutting a presumption of negligence may be cast on the employer. *Hawkins v. Bleakly* 210
5. A compensation act requiring employers to contribute to a state fund for the compensation of injured employees and the dependents of employees killed, without regard to fault, does not deprive employers of their property or liberty to acquire property in violation of the Amendment if the compensation fixed be not excessive and if the burden of contribution was fairly distributed among the employers in the industries affected. *Mountain Timber Co. v. Washington* 219
6. *Semble*, That such an act might be void if it provided compensation unreasonably onerous on an employer or too insignificant to afford a reasonable substitute for the opportunity of employees to obtain damages for negligence under the common law which the act abolishes. *Id.*
7. A state compensation law classifying most employments as hazardous and grouping them according to supposed hazard and requiring all in a group to contribute to a state fund in payments gauged by their respective pay-rolls for the compensation of injuries occurring in any of the factories in that group, and doing away completely with common-law rules respecting liability, and providing for compensation in all cases of injury without regard to fault, to be administered through a state commission, *Held valid. Id.*
8. *Quere*: Whether a provision in a workmen's compensation act forbidding employer and employee, in agreeing on wages, from taking into consideration fact of employer's enforced contribution to compensation fund would not be unwarranted deprivation of liberty? *Id.*
9. The Constitution does not require a separate exercise of the state powers of regulation and taxation. *Id.*
10. For the protection of health, a State may provide that no person shall work in any mill, etc., more than 10 hours per day except watchmen and employees engaged in making necessary repairs or in case of emergency where life or property is in danger, and adding a proviso that employees may

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work overtime not exceeding three hours per day if paid for such overtime at the rate of one and one-half times the regular wage. *Bunting v. Oregon* 426

11. In sustaining a state law passed in the exercise of an admitted power of government, the court need not be sure of the precise reasons for the means adopted nor may it pass upon their adequacy or wisdom. *Id.*

12. Upon the question whether a 10-hour law is useful or necessary for the preservation of health, the court may accept the judgment of a state legislature and supreme court when the record shows no facts to support the contrary contention. *Id.*

(b) Affecting Railroad's Franchise and Liability for Torts.

13. A street railway company claiming a franchise right to operate over county bridges cannot complain of state action requiring it to pay one-third of the cost of reconstructing the bridges as a condition upon its right to use them, if it has in effect surrendered its claim of franchise in exchange for a revocable grant or license. *Rome Ry. & Lt. Co. v. Floyd County* 257

14. A state law rendering a local railroad company leasing its road to a company of another State jointly liable with the lessee for actionable torts of the latter committed in operating the road does not deprive of due process. *Chicago & Alton R. R. v. McWhirt* 422

(c) Taking Property for Public Use.

15. A State may authorize an electric railway corporation to condemn privately owned water power for the generation of electricity to run the road and for sale of the surplus electricity, if any. *Hendersonville &c. Co. v. Blue Ridge Ry.* 563

(5) State Taxation.

1. The Constitution does not require a separate exercise of the state powers of regulation and taxation. *Mountain Timber Co. v. Washington*. 219

(6) Equal Protection of the Laws.

1. A Kansas statute requiring owners of dangerous machinery to provide safeguards for the protection of their em-

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- ployees, etc., construed as applicable to corporate as well as individual owners, and therefore affording no basis for the claim of inequality. *Bowersock v. Smith* 29
2. The New York Workmen's Compensation Law does not discriminate against those affected by it in excluding therefrom farm laborers and domestic servants. *New York Cent. R. R. v. White* 188
3. The Iowa Workmen's Compensation Law does not deprive the employer of equal protection in allowing him the common-law defenses of assumption of risk, contributory negligence and negligence of fellow servants only when he has accepted the act and the employee has not, while withdrawing them if employer and employee both, or employer alone, have rejected it. *Hawkins v. Bleakly* 210
4. In the absence of any particular showing of erroneous classification, the evident purpose of a workmen's compensation act to classify the various occupations according to the respective hazard of each held sufficient answer to any contention that it improperly distributes the burdens among the several industries. *Mountain Timber Co. v. Washington* 219
5. The Oregon law limiting the hours of employees in mills, factories, etc., to 10 hours, with provisions for allowing extra time at increased pay, Held not to discriminate against employers. *Bunting v. Oregon*. 426
6. A state law, rendering any railroad company of the State leasing its road to a company of another State liable jointly with the lessee for actionable torts of the latter committed in operation of the road, does not deprive of equal protection of the law. *Chicago & Alton R. R. v. McWhirt* 422
- XV. Who May Question Constitutionality of Statutes. Presumptions in their Favor.**
1. Where an act would not be valid against employers if not valid against employees, an employer may question its constitutionality in both aspects. *New York Cent. R. R. v. White* 188
Mountain Timber Co. v. Washington. 219
2. One who is engaged in the business of logging timber, operating a logging railroad, and operating a sawmill with

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power-driven machinery, is not in a position to question the classification of other businesses as hazardous. <i>Mountain Timber Co. v. Washington</i>	219
3. Whether a provision for penalties in a federal act is unconstitutional will not be determined in a suit not concerning penalties. <i>Wilson v. New</i>	332
4. The making of a deposit of cash and securities in obedience to the New York Workmen's Compensation Act, accompanied by an express reservation of all contentions respecting the invalidity of the act, does not estop depositor from questioning its constitutionality. <i>New York Cent. R. R. v. White</i>	188
5. In passing on the New York Workmen's Compensation Act, the court assumes that the provision made for self-insurance by employers, when the state commission assents, will be open to all employers on reasonable terms within the power of the State to impose. <i>Id.</i>	
6. In allowing employers to provide insurance for future liabilities by insuring themselves, depositing securities, etc., under the control of the state commission, the New York Workmen's Compensation Law is not to be deemed violative of the rights of employees to adequate security, in the absence of any ground to presume that the methods of security provided would be insufficient to safeguard their interests. <i>Id.</i>	
7. Declarations in the Washington Workmen's Compensation Law held acceptable evidence of an intelligent effort to limit the burden of contributions required of the employers in the several classes of industries to the requirements of their class. <i>Mountain Timber Co. v. Washington</i>	219
8. The compensation provided under the Washington Workmen's Compensation Law may be regarded as reasonable in the absence of any showing to the contrary. <i>Id.</i>	
9. While mere legislative declaration cannot give character to a law or turn illegal into legal operation, there is a presumption that the purpose of an act is the purpose expressly declared by the legislature and confirmed by the state court. <i>Bunting v. Oregon</i>	426

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10. If the terms of an act may be accommodated to its declared purpose, the court will not hold that a legislature, while intending one thing, through improvidence of language, effected another. *Id.*

11. Upon the question whether a 10-hour law is necessary or useful for the preservation of the health of employees, the court may accept the judgment of the state legislature and state supreme court when the record contains no facts tending to overthrow it. *Id.*

XVI. Adopting State Construction and Findings. See *supra*, XV, 9, 11.

1. Where no conflict with the Federal Constitution or laws is involved, a construction of a state statute by the highest state court is taken as conclusive. *Memphis Street Ry. v. Moore*. 299

2. The state court having found that the taking of an entire water power was necessary to generate electricity for the running of a railroad, this court, in the absence of definite proof that surplus current would result, cannot say that the sale of surplus current allowed in the condemnor's charter is the real object of the enterprise or anything more than a possible incident of the railway use necessary to prevent waste. *Hendersonville &c. Co. v. Blue Ridge Ry.* 563

CONSTRUCTION. See **Contracts; Statutes.**

Construction of city ordinances. See **Franchise and License.**

Construction of judgment. See **Judgments.**

When a power actually is conferred by a document, the party executing it takes the risk of interpretation that may be put upon it by the courts. *Penna. Fire Ins. Co. v. Gold Issue Mining Co.* 93

CONTEMPT:

Power of House of Representatives to punish for. *Marshall v. Gordon* 521

CONTRACTS. See **Constitutional Law; Carriers; Franchise and License; Indians; Statutes, I, 3, 4.**

Stipulations in bills of lading restricting carrier's liability. See **Carriers, 9-16.**

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Enforcement of foreign contracts. See **Comity.**

Liability of United States *ex contractu*, arising from flooding riparian land and raising level of tributary streams. See **Eminent Domain.**

1. A contract between citizens of New York and Texas, executed in New York, for purchase and sale of cotton for future delivery on New York Cotton Exchange, pursuant to its rules, *held* valid under the New York law and the common law. *Bond v. Hume* 15

2. Where it is alleged and admitted that actual delivery was *bona fide* intended, the contract is not repugnant to the Texas "Bucket Shop" Law or the public policy of Texas as manifested by other statutes or decisions of its courts. *Id.*

3. A city granted a 25-year water works franchise to one company, contracting also to rent hydrants from it from time to time "for the unexpired term of said franchise." A second company, succeeding the first, received a re-grant of the franchise to run, however, during its corporate life, which it had a charter right to prolong by periodical extensions; and the city also recognized the second company as succeeding to the hydrant contract "as fully as if such contract had originally been made" with the second company without intervention of the first. *Held*, that while the second company's franchise endured during its corporate life as it might be extended, the hydrant contract was a separate obligation which expired with the original 25-year period. *Owensboro v. Owensboro Water Works Co* 166

4. *Held*, also, that the conduct of the parties in ceasing to collect and pay rent under the hydrant contract when the 25-year period expired was a practical construction of it. *Id.*

5. The liberty of employer and employee to agree upon compensation for injury or death incurred in hazardous employments is subject to restriction by the police power. *New York Cent. R. R. v. White* 188

6. Washington Workmen's Compensation Law not construed, in absence of constraining state construction, as prohibiting employer and employee, in agreeing upon terms of employment, from taking into consideration fact that em-

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ployer is contributor to state insurance fund. *Mountain Timber Co. v. Washington*..... 219

7. *Quære*: Whether if so construed it would be an unconstitutional interference with liberty of contract? *Id.*

8. Where a street railway company claimed a perpetual, unconditional franchise right to operate over county bridges, which was disputed by the county, and they entered into agreements granting right to operate under certain conditions, the county being controlled by a statute limiting its power to the granting of temporary, revocable privileges, the agreements *held* to effect a substitution of temporary for claimed perpetual grant. *Rome Ry. & Lt. Co. v. Floyd County* 257

9. A provision in a special charter to a railroad company permitting it to lease its road to another company "upon such terms as may be mutually agreed upon" not construed as vesting parties with authority to contract as to their respective liabilities to third persons who may be injured in the operation of the road. *Chicago & Alton R. R. v. McWhirt* 422

10. A direction by Congress that a patent be issued an individual for land assigned him as an Indian allotment is to be regarded not as a proposal by the government which upon acceptance makes a contract, but as a law amendable and repealable at the will of Congress, provided vested rights are not impaired. *United States v. Rowell*..... 464

11. A stipulation in a bill of lading that claims for damage to goods shall be reported to the carrier within a certain time after notice to consignee of arrival, merely requires notice of intention to claim damages, without specifying the amount. *St. Louis, I. Mt. & So. Ry. v. Starbird*..... 592

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

CONVEYANCES. See **Indians.**

CORPORATIONS. See **Franchise and License; National Banks; Stocks.**

Construction of city ordinances to determine duration of corporate franchise. *Owensboro v. Owensboro Water Works Co.*..... 166

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Liability of lessor and lessee railroads for torts of lessee. See	
<i>McAllister v. Ches. & Ohio Ry.</i>	302
<i>Chicago & Alton R. R. v. McWhirt</i>	422
1. In absence of consent, a corporation of one State may not be summoned in another, in an action <i>in personam</i> , unless it is doing business in the State where served. <i>Phila. & Reading Ry. v. Mc Kibbin.</i>	264
2. The process must be served on its duly authorized agent. <i>Id.</i>	
3. A railroad corporation is not doing business in a State because it ships cars into the State over the lines of connecting carriers, or because the connecting carrier, within the State, sells coupon tickets and advertises the other carrier's name. <i>Id.</i>	
4. The fact that corporations subsidiary to another are doing business in a State does not warrant finding that the other is present there, doing business. <i>Id.</i>	
5. <i>Quere:</i> Whether corporation doing business in a State may be served there on a cause of action arising in another State and unrelated to the business in the first? <i>Id.</i>	
6. An arrangement by counsel to facilitate attempted service on officer while in State on private business, does not estop the corporation from contesting jurisdiction on ground that it was not doing business in the State. <i>Id.</i>	
7. Under Rev. Stats., of Texas, Art. 1206, a suit against a corporation is not abated by its dissolution pending appeal. <i>Pease v. Rathbun-Jones Co.</i>	273
8. A Kansas statute requiring owners of dangerous machinery to provide safeguards for the protection of their employees, etc., construed as applicable to corporate as well as individual owners, and therefore affording no basis for the claim of inequality. <i>Bowersock v. Smith</i>	29

COSTS. See **Procedure**, XIV.

COTTON FUTURES. See **Contracts**, 1, 2.

CRIMINAL APPEALS ACT:

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When trial court besides holding indictment defective for not following language of the statute bases its decision also upon the ground that the statute does not apply to the facts alleged, the decision as to the latter ground is reviewable under the Criminal Appeals Act. *United States v. Davis* . . . 570

CRIMINAL CODE. See **Criminal Law.****CRIMINAL LAW:**

1. Section 4 of Washington Workmen's Compensation Law, making it a misdemeanor for employer to deduct from wages premium paid into state insurance fund, not construed, in absence of constraining state construction, as prohibiting employer and employee, in agreeing upon terms of employment, from considering fact that employer is a contributor to such fund. *Mountain Timber Co. v. Washington* 219
2. One who causes the mailing, through an innocent agent, in furtherance of a scheme to defraud, is punishable under § 215, Crim. Code. *United States v. Kenofsky* 440
3. So, where the agent of a life insurance company delivered to its local superintendent false proofs of death, knowing they would be mailed in due course to the home office. *Id.*
4. The scheme was not executed on delivery of the documents to the superintendent. *Id.*
5. A deputy clerk of the District Court who converts to his own use fees deposited by litigants to secure payment of costs in bankruptcy and other cases is punishable under § 97, Crim. Code. *United States v. Davis* 570
6. A conspiracy to influence a congressional election by bribery of voters is not a conspiracy to defraud the United States within the meaning of § 37, Crim. Code, formerly § 5440, Rev. Stats. *United States v. Gradwell* 476
7. A conspiracy to deprive candidates for nomination to the United States Senate of their rights to a fair primary election under the West Virginia Primary Election Law, 1915, is not a conspiracy to deprive them of rights or privileges secured by the Constitution or laws of the United States, and prosecution under Crim. Code, § 19, will not lie. *Id.*

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8. A charge of perjury may be based upon a valid regulation of the Land Department requiring an affidavit, if the oath be taken "before a competent tribunal, officer or person." *United States v. Morehead*..... 607
9. A regulation of the Land Department providing that soldiers' declaratory statements, when filed by an agent, may be executed before any officer having a seal and authorized to administer oaths generally, is appropriate and valid, and an oath to such a statement taken before a state notary or clerk of court pursuant to such regulation violates the federal perjury statute, if the statement is material and false. *Id.*

DAMAGES. See **Admiralty**, 7-9; **Sureties**, 3.

1. When carrier and shipper agree that measure of damages shall be the value of goods at place and time of shipment, the freight paid upon delivery may be added to the depreciation of such value caused by carrier's default. *Pennsylvania R. R. v. Olivit Bros.*..... 574
2. When goods are brought to destination in a damaged condition and sold at less than their value at shipment, the carrier is liable to refund freight paid if the damage resulted from its negligence. *Id.*
3. When more than a reasonable rate for transportation is exacted as result of an unlawful combination, the excess over what was reasonable affords basis for damages recoverable under § 7 of the Sherman Act. *Thomsen v. Cayser*..... 66
4. When claims for damages for loss of custom are definitely stated, a charge that burden of proof is on plaintiff, and that jury must not allow speculative damages or guess at amounts but should calculate them from the evidence, sufficiently guards against danger of supposititious profits being considered as an element of the verdict. *Id.*
5. *Semble*, that a general verdict for an amount which equals a particular claim of damages and interest may be assumed to have been responsive to that claim alone, although there were others which were submitted to the jury. *Id.*
6. In a suit by the United States to enjoin unlawful occupancy and use of its reserved lands, compensation measured by the reasonable value of the occupancy and use, consider-

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- ing its extent and duration, should be included in the decree. *Utah Power Co. v. United States* 389
7. The compensation should not be measured by the charges prescribed for like uses by governmental regulations when the regulations have not been accepted or assented to by the defendants. *Id.*
8. Action against United States under Tucker Act for damages due to partial taking of private property in improvement of navigable streams. *United States v. Cress* 316
- DECREES.** See **Judgments.**
- DEED.** See **Indians.**
- DEMURRAGE.** See **Interstate Commerce Acts, 3.**
- DESCENT AND DISTRIBUTION.** See **Indians, 3.**
- DISBARMENT:**
1. This court alone has power to disbar attorneys from practicing before it. *Selling v. Radford* 46
 2. Character and scope of investigation depend upon acts of misconduct charged, place of their commission, and nature of proof relied upon. *Id.*
 3. Loss of membership of the bar of a state court of last resort, after admission here, cannot, without more, affect the standing of the member. *Id.*
 4. Loss of fair private and professional character by wrongful personal and professional conduct is adequate reason for disbarment. *Id.*
 5. This court is not concluded by a state decision upon the question of professional character. *Id.*
 6. Upon a motion to disbar from this court one who has been disbarred from the highest court of a State on ground of ill professional character, this court will follow the state court unless upon intrinsic consideration of the record of that court lack of due process or obvious injustice is revealed. *Id.*
- DISTRICT COURTS.** See **Jurisdiction.**
- DIVORCE.** See **Alimony.**

DOCUMENTS. See **Construction; Computation of Time.** PAGE

DUE PROCESS OF LAW. See **Constitutional Law, XII, (2); XIV.**

EASEMENTS. See **Waters and Water Rights.**

For rights of way over Public Lands and Reservations. See **Public Lands.**

1. An easement to overflow private lands is acquired by the United States after payment of compensation for damage thereto resulting from raising level of navigable stream. *United States v. Cress* 316
2. The right to have water of a non-navigable stream flow away from riparian land without artificial obstruction is not a mere easement or appurtenance, but exists by the law of nature as an inseparable part of the land itself. *Id.*

ELECTIONS. See **Criminal Law, 6, 7.**

1. *Quære:* Whether the power of Congress to regulate elections of Senators and Representatives is applicable to a general nominating primary as distinguished from a final election? *United States v. Gradwell* 476
2. The rights which candidates for nomination for the office of United States Senator have in a primary election under West Virginia Acts, 1915, cannot be said to be derived from the Constitution and laws of the United States. *Id.*
3. The Federal Corrupt Practices Act, and amendments, recognizing primary elections and limiting the expenditures of candidates for Senator in connection with them, are not in effect an adoption of all state primary laws as acts of Congress. *Id.*
4. The temporary measure enacted by Congress for the conduct of the nomination and election of Senators until other provision should be made by state legislation (c. 103, 38 Stat. 384) was superseded as to West Virginia by the primary law of that State of Feb. 20, 1914, effective 90 days after its passage. *Id.*

EMBEZZLEMENT:

By deputy clerk. See **Criminal Law, 5.**

EMINENT DOMAIN. See **Constitutional Law, XII, (1); XIV, (4), (c). Waters and Water Rights.**

1. In a proceeding to condemn land for private railway, a

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judgment of the state supreme court going only to the right to condemn and remanding to the trial court for hearing as to damages is interlocutory and not reviewable in this court under § 237, Jud. Code. *Grays Harbor Logging Co. v. Coats-Fordney Co.* 251

2. Where state law and charter authorized electric railroad to condemn water power for generating electricity to operate its road, and to sell any surplus current, and state court found that taking was in good faith, was necessary, and that the purpose was public, in the absence of proof that a surplus would result this court will not say that sale of the surplus power was the real object. *Hendersonville &c. Co. v. Blue Ridge Ry.* 563

3. Even if sale of the surplus current were likely to occur, the taking would be justified. *Id.*

EMPLOYERS' LIABILITY ACT:(1) *Interstate Commerce vel non.*

1. A company transporting logs within a State over its own railroad to tidewater, where part are sold and part towed to its mills in same State and finished products sold partly within State and partly without, is not engaged in interstate commerce; and employee injured while unloading logs at tidewater is not engaged in interstate commerce within the act. *McCluskey v. Marysville & Northern Ry.* . . . 36

2. An employee of a company similarly engaged, injured while loading logs upon one of company's cars, is not engaged in interstate commerce within the act. *Bay v. Merrill & Ring Logging Co.* 40

3. An employee injured in a tunnel under construction by carrier to shorten its main line between interstate points (the tunnel never having been used in interstate commerce), is not engaged in interstate commerce within the act. *Raymond v. Chicago, Mil. & St. P. Ry.* 43

4. An employee guarding tools, etc., intended for use in construction of station and track which, when finished, will be used in interstate commerce, is not engaged in such commerce within the act. *New York Cent. R. R. v. White* 188

(2) *Diverse Citizenship and Remand.*

5. An action governed by federal act is not removable from

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state to federal court on ground of diversity of citizenship.
St. Joseph & G. I. Ry. v. Moore 311

(3) *Negligence.*

6. Where there is substantial evidence of negligence to support verdict, this court will not disturb finding of state court.
Id.

7. Where evidence showed injury due to raising coupler without aid of a jack—the proper appliance—and that on former occasions employee had requested a jack and had been promised one prior to accident, *held* there was no clear error justifying this court in disregarding concurrent decisions of state courts and setting aside plaintiff's verdict.
Seaboard Air Line Ry. v. Lorick 572

8. Under Georgia Employers' Liability Act defenses of assumed risk and contributory negligence are eliminated when violation of Federal Safety Appliance Act contributes to cause the injury. *Louis. & Nash. R. R. v. Layton* 617

EQUAL PROTECTION OF THE LAWS. See **Constitutional Law**, XIV, (6).**EQUITY.** See **Cancellation.**

1. Property not subject to attachment at law may be reached in equity. *Pennington v. Fourth Natl. Bank* 269

2. Injunction entered at commencement of suit for divorce and alimony operates as seizure, in nature of a garnishment, of husband's account in bank. *Id.*

3. Federal courts, sitting in equity, may render summary judgment against sureties on appeal bonds—possibly without notice. *Pease v. Rathbun-Jones Co.* 273

4. Such practice is not objectionable on ground that legal remedy, by action on the bond, is adequate. *Id.*

ESTOPPEL. See **Vendor and Vendee.**

1. Where defendant as receiver of national bank contracted on its behalf for purchase of realty, using part of bank's money in payment, and under apparent authority from court assigned contract for cash paid the bank, the assignee acting

ESTOPPEL—Continued.

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- secretly for defendant as an individual, *held*, in an action to recover property for the bank, that he was estopped to claim the purchase was beyond the powers of the bank. *Baker v. Schofield*. 114
2. The fact that a company in former litigation, not involving the duration of its special franchise, described it as for 25 years, works no estoppel, by conduct or judgment, against subsequently claiming that the term was extensible beyond that period. *Owensboro v. Owensboro Water Works Co.* 166
3. One who complies with a statute claimed to be unconstitutional, reserving all contentions respecting its validity, is not estopped from questioning its constitutionality. *New York Cent. R. R. v. White* 188
4. A corporation is not estopped from contesting jurisdiction on ground that it is not doing business in a State by an arrangement of counsel, designed to facilitate attempted service on officer while passing through State on private affairs. *Phila. & Reading Ry. v. McKibbin* 264
5. The United States is not estopped by acts of its officers or agents in agreeing to do or cause to be done what the law does not permit. *Utah Power Co. v. United States* 389
6. So *held* in regard to an alleged agreement for the use of federal lands by a power company. *Id.*
7. For a case in which the right to question a state water right adjudication was lost by laches and estoppel. See *Enterprise Irrig. Dist. v. Canal Co.* 157

EVIDENCE. See Burden of Proof.

- Evidence of interstate commerce and negligence. See **Employers' Liability Act**.
- Evidence of "doing business" within State. See **Corporations**, 3.
- Evidence of negligence in delivery of goods. See **Carriers**, 9.

EXCEPTION:

- Ruling of trial court not excepted to does not furnish proper basis for certiorari. *Tyrrell v. District of Columbia* 1

EXECUTION:

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Where decree directs foreclosure sale and execution for deficiency, the amount of deficiency becoming fixed by the sale its insertion in the execution is but a clerical act. *Pease v. Rathbun-Jones Co.*..... 273

EXECUTORS AND ADMINISTRATORS:

1. Substitution of administrator as party where writ of error from this court erroneously sued out in intestate's name. *McCluskey v. Marysville & Northern Ry.* 36
2. Under Tennessee act, nonresident personal representatives of decedents leaving assets in State are regarded as citizens of the State for purposes of suit. *Memphis Street Ry. v. Moore.* 299
3. The act does not however, prevent resort to federal courts. *Id.*
4. As construed by state supreme court, purpose is to permit them to sue *in forma pauperis.* *Id.*

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

FELLOW SERVANT DOCTRINE. See **Negligence**, 1-2, 4.

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

FINDINGS OF FACT. See **Constitutional Law**, XVI; **Procedure**, XII.

FORECLOSURE:

1. A decree for recovery of a sum certain, with provisions establishing a lien and for foreclosure, was affirmed with directions for execution and further proceedings according to law. *Held* that a decree directing foreclosure sale and execution for any deficiency was consistent with affirmance. *Pease v. Rathbun-Jones Co.*..... 273
2. The amount of deficiency becoming fixed by the sale, its insertion in the execution was but a clerical act. *Id.*
3. *Quære:* Whether Rule 29 of this court binds sureties on a supersedeas bond to pay deficiency decrees in foreclosure cases, or only damages due to delay caused by appeal? *Id.*

FORWARDERS. See *Interstate Commerce Acts*, 5-7. PAGE

FOURTEENTH AMENDMENT. See *Constitutional Law*, XIV.

FRANCHISE AND LICENSE:

1. Where a city ordinance granted a franchise for 25 years to construct and operate water works, and subsequently granted a similar, substitute franchise to the successor of the first company "for and during the existence" of the second company whose life was 25 years primarily, with the reserved right to prolong the term by 25 year extensions, the life of the second company was not limited to 25 years but endured while its life endured by extensions beyond that period. *Owensboro v. Owensboro Water Works Co.* 166
2. The fact that the first franchise was expressly limited to 25 years while the second was "for the existence" of the corporation confirms this construction. *Id.*
3. The first ordinance containing a contract whereby the city agreed to rent hydrants for the unexpired term of the franchise if the company should extend its pipes, and the second ordinance recognizing the second company as successor of the first with respect to this contract, *held* that second company became successor of first with respect to that contract only for the unexpired term thereof. *Id.*
4. Later ordinances requesting extensions of pipes, and renting hydrants, and compliance with them by the second company, *held* not to import recognition by parties that franchise of latter company was for a definite term, not to be extended under its charter, but were referable to the hydrant contract only. *Id.*
5. The fact that grantee, in former litigation in which question of duration of its franchise was not material, the primary period having then some years to run, described franchise as for 25 years, works no estoppel by conduct or judgment. *Id.*
6. In computing time "from and after" a day named, that day will not be excluded where purpose of those whose words are being construed will be defeated. *Id.*
7. Where a claim by a street railway company to a perpet-

FRANCHISE AND LICENSE—*Continued.*

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ual, unconditional franchise to operate over county bridges was disputed by the county, and it subsequently entered into and acted upon agreements with the county purporting to grant right to operate subject to conditions, the county being controlled by a statute limiting its authority to the granting of temporary, revocable privileges, *Held* that such agreements effected a substitution of a temporary grant subject to revocation. *Rome Ry. & Lt. Co. v. Floyd County* 257

8. Having thus surrendered its franchise for a temporary, revocable grant, the company cannot enjoin county from proceeding under act of legislature (Ga. Laws, 1914, p. 271) to rebuild the bridges and charging one-third of the cost as a condition precedent to company's use of the new structures. *Id.*

FRAUD:

Use of mails to defraud. See **Criminal Law**, 2-4.

1. Where defendant as receiver of national bank contracted on its behalf for purchase of realty, using part of bank's money in payment, and under apparent authority from court assigned contract for cash paid the bank, the assignee acting secretly for defendant as individual, *held*, in an action by his successor to recover the property for the bank, that the transaction was a gross breach of defendant's duty as receiver. *Baker v. Schofield* 114

See **Laches**, 1.

2. Where fraud in the joinder of resident and nonresident defendants to prevent removal is alleged, specific facts supporting the charge must be shown. *McAllister v. Ches. & Ohio Ry.* 302
Chicago & Alton R. R. v. McWhirt 422

3. A deed procured by fraud from an Indian of lands allotted and patented to him with the right of alienation cannot be annulled in a suit by the United States for his benefit. *United States v. Waller* 452

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

GARNISHMENT. See **Attachment**.

GEORGIA:

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The Georgia Employers' Liability Act, Ga. Code, 1911, § 2783, eliminates defenses of assumed risk and contributory negligence when a violation of the Federal Safety Appliance Acts contributes to cause the injury. *Louis. & Nash. R. R. v. Layton* 617

HABEAS CORPUS. See **Jurisdiction**, II, 11, 12, 14.

Discharge of person unlawfully arrested by House of Representatives on charge of contempt. *Marshall v. Gordon* . . . 521

HAGUE CONFERENCE. See **International Law**, 1.**HAWAII:**

District Court for. See **Jurisdiction**, II, (7).

HOURS OF LABOR:

Regulation of. See **Constitutional Law**, III; XII, (2); XIV, (4), (a). Oregon Law of 1913 an hours of service, not a wage, law. *Bunting v. Oregon* 426

IMPEACHMENT:

Power of House of Representatives to punish for contempt. *Marshall v. Gordon* 521

INDIANS:

1. An order of the United States Court for Indian Territory, authorizing an Indian lease if the Secretary of the Interior approves, is conditional upon such approval being given, and, if it is not given or if the power to give it does not exist, no authority to lease can be derived from the order. *Wells-ville Oil Co. v. Miller* 6
2. Under Choctaw-Chickasaw supplemental agreement of 1902, surplus lands, selected by member of Chickasaw Tribe, become alienable only with expiration of respective periods after patent fixed in § 16. *Gannon v. Johnston* . . . 108
3. Such restrictions accompany land when it passes by inheritance to tribal member, and conveyance by him while periods are running is void. *Id.*
4. The Act of April 26, 1906, in providing that conveyances of allotments made after selection should not be declared invalid solely because made prior to patent, does not validate

INDIANS—Continued.

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deeds made before removal of restrictions on alienation; it expressly declares them null and void. *Id.*

5. Under the Clapp Amendment, lands in the White Earth Reservation allotted and patented in trust to an adult mixed-blood Indian belong to him with all the rights and incidents of full ownership, including the right of alienation. *United States v. Waller*. 452

6. The United States cannot maintain for his benefit a suit to annul his deed of the lands upon the ground that it was procured by fraud. *Id.*

7. In the exercise of its guardianship over tribal Indians, Congress may adjust its action to meet new and changing conditions, provided no fundamental right be violated. *United States v. Rowell* 464

8. Having directed that a patent be issued to an individual for land assigned him as an Indian allotment, Congress had power to recall the direction upon finding that the tract had been lawfully devoted to a special use—school purposes,—from which it could not be withdrawn without due regard to the tribe, or that in situation and value it exceeded a fair distributive share—this without prejudice to the allottee's obtaining another allotment. *Id.*

9. Such direction is not a proposal by the government which, upon acceptance, makes a contract, but a law repealable at the will of Congress, provided that rights created by the execution of such provision be not impaired. *Id.*

10. No intention being manifested to pass title by the act itself, the grant was not a grant *in præsentì*. *Id.*

11. Such a provision calls for no acceptance other than such as would be implied from taking the patent when issued. *Id.*

INJUNCTION:

1. Injunction at commencement of suit for divorce and alimony operates as seizure, in the nature of a garnishment, of the defendant's account in bank. *Pennington v. Fourth Natl. Bank* 269

2. A suit to restrain a state officer from levying a tax under a law claimed to be unconstitutional is a suit against him as an individual and, in absence of statute, abates upon expiration of term of office. *Pullman Co. v. Knott* 447

INSTRUCTIONS TO JURY:

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1. When claims for loss of custom are definitely stated, a charge that burden of proof is on plaintiff, and that jury must not allow speculative damages but should calculate them from the evidence, sufficiently guards against supposititious profits being considered as an element of the verdict. *Thomson v. Cayser*..... 66
2. Failure to instruct upon burden of proving rates unreasonable held harmless error, in view of painstaking trial and careful instructions upon estimation of damages. *Id.*
3. Where carrier proves a strike as cause of delay for which it was not responsible under the bill of lading if due care was exercised thereafter to meet the situation, a refusal to charge that burden is on plaintiff to prove such care was not exercised is harmless error when followed by instructions that carrier is not responsible for delay resulting from the strike nor liable if not negligent in forwarding and delivering the goods, and that negligence must be proved by plaintiff. *Pennsylvania R. R. v. Olivit Bros.*..... 574

INSURANCE:

1. Insurance by employers, under Workmen's Compensation Laws, to secure compensation for injury or death of employees. *New York Cent. R. R. v. White*..... 188
Hawkins v. Bleakly..... 210
Mountain Timber Co. v. Washington..... 219
2. Returning false claims of death in using mails in furtherance of scheme to defraud. *United States v. Kenofskey*... 440

INTERNATIONAL LAW. See Admiralty.

1. Under the principles of international law as long recognized by this country, and as emphasized in its attitude in the Hague Conference of 1907, it is a violation of our neutrality for one of two belligerents, with both of which we are at peace, to make use of our ports for the indefinite storing of prizes captured from its adversary. *The Appam*..... 124
2. Failure of our government to issue a proclamation on the subject will not warrant such use; certainly not where possibility of removal depends upon recruiting crews in violation of our established rules of neutrality. *Id.*

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3. The Treaty with Prussia, 1799, makes no provision for indefinite stay of vessels, and includes prizes only when in charge of vessels of war. *Id.*

INTERSTATE COMMERCE. See **Constitutional Law, III;**
Employers' Liability Act; Interstate Commerce Acts;
Safety Appliance Act; Waters and Water Rights.

INTERSTATE COMMERCE ACTS. See **Carriers.**

I. Powers of Commission.

1. District Court has no jurisdiction over order of Commission declining to exercise its authority to extend period fixed in Panama Canal Act for divorcement of railroad and water carriers. *Lehigh Valley R. R. v. United States*. 412

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

1. *Public vs. Private Track.* Where a packing company was licensed to use for warehouse purposes lands adjacent to railroad siding, including a switch track connecting with main line, the railroad reserving the right to repair and maintain the tracks and to switch cars thereover, the switch track, when used by cars moving interstate goods of the licensee between the warehouse and main line, is not a private track. *Swift & Co. v. Hocking Valley Ry.*. 281

2. *Private Cars.* Private cars let to carrier by shipper in consideration of mileage charged on outgoing and return journeys, the carrier to freight them on return if shipper does not—freight charges being the same as for goods hauled in cars of carrier—are in the service of carrier while standing loaded with goods consigned to shipper on switch track of carrier at shipper's warehouse. *Id.*

3. *Demurrage.* In such case, the "transportation" has not ended, and demurrage, for detention of cars by their owner, may be exacted by the carrier. *Id.*

4. *Eight-Hour Law.* The Act of Sept. 3, 5, 1916, establishing an 8-hour day for employees of interstate carriers, as between the carriers and employees affected, fixes permanently an 8-hour standard for work and wages and, for the period defined by the act, a scale of minimum wages. *Wilson v. New*. 332

INTERSTATE COMMERCE ACTS—Continued.

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5. *Forwarders as Shippers.* Forwarders who attend to transporting goods from abroad to destination in this country, charging importers amounts agreed upon in advance for the transportation and services and consigning the goods to themselves, are the shippers so far as concerns their relations with the interstate carrier over whose lines the consignments go. *Lehigh Valley R. R. v. United States*. 444
6. *Rebate to Forwarder.* Any allowance by carrier to such forwarder in reduction of tariff rate, whether by deducting percentage of freight or by cross-payment of salary by carrier to forwarder, is prohibited by § 6 as amended. *Id.*
7. *Id. Services Connected with Transportation.* Maintaining offices, advertising railroad and soliciting traffic by forwarder are not services connected with the transportation for which allowance may be made by carrier under § 15 as amended. *Id.*
8. *Freight Recovery not Rebate.* Allowing the shipper to recover freight paid when goods are damaged or lost is not objectionable as a rebate, preference or discrimination, where there is no attempt to evade the act. *Pennsylvania R. R. v. Olivit Bros.* 574
9. *Carmack Amendment and Bill of Lading.* Under the Carmack Amendment, the lawful holder of a bill of lading may sue the carrier for loss or damage to goods without proving ownership of goods. *Id.*
10. *Id.* Section 8 of the act, in giving a remedy to the person injured, is not in conflict with this interpretation. . . . *Id.*
11. *Id.* In an action against initial carrier for damage caused by its negligence and the negligence of connecting carriers to goods shipped in interstate commerce on through bill of lading, the rights and liabilities of the parties are governed by the Carmack Amendment. *St. Louis, I. Mt. & So. Ry. v. Starbird.* 592
12. *Id. Stipulation for Notice.* A stipulation conditioning carrier's liability for damage to goods upon written notice being given by consignee is valid if the terms are reasonable. *Id.*
13. *Id.* Reasonableness depends on nature of goods and circumstances of each case; 36 hours in case of perishable fruit is not unreasonable. *Id.*

INTERSTATE COMMERCE ACTS—Continued. PAGE

14. *Id.* A requirement that notice be in writing is not unreasonable where by force of the Carmack Amendment the initial carrier is liable for defaults of connecting carriers and the delivering carrier is the initial carrier's agent for receiving notice. *Id.*

15. *Id.* A stipulation in a bill of lading covering shipment of fruit governed by the Carmack Amendment, before the Act of Mar. 4, 1915, exempting initial and connecting carriers from liability where claims for damages are not made in writing to delivering line within 36 hours, held merely to require notice of intention to claim damages, without ascertaining and specifying the amount; noncompliance excuses initial carrier from liability. *Id.*

16. *Id.* Verbal notice to a dock master of the delivering carrier does not satisfy the stipulation. *Id.*

IOWA:

1. Iowa was not a part of the Northwest Territory, nor subject to the Ordinance of 1787. *Hawkins v. Bleakly* 210
2. Act of 1838, establishing Iowa Territory, construed. *Id.*

JOINDER:

Fraudulent joinder of defendants to prevent removal. See **Procedure, II.**

- Joint liability of lessor and lessee railroad companies for torts of lessee. *McAllister v. Ches. & Ohio Ry.* 302
Chicago & Alton R. R. v. McWhirt 422

JUDGMENTS. See **Sureties.**

1. In a suit to determine title to land, a decree by consent that title at the commencement of suit was, and has remained in one party, and that the title be quieted in him, and providing that the decree shall operate as a release to him from the opposing parties, is not to be construed as a conveyance divesting their title but as an adjudication that they had none. *Donohue v. Vosper* 59
2. Such a decree therefore does not disturb the relation of warrantor and warrantee existing between two parties who consented to it and against whom it operated, and when one of them afterwards acquires title from the successful party,

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the covenant attaches by estoppel in favor of the warrantee. *Id.*

3. The question being whether a decree operated to terminate the relation of warrantor and warrantee between two parties, their conduct in dealing with the property afterwards is *held* to be a practical construction that it did not. *Id.*

4. A personal money judgment based on service by publication, after defendant had left the State to acquire a new domicile, is void, although the action began before actual change of domicile and while his family continued to reside in State. *McDonald v. Mabee* 90

5. *Quere*: Whether such judgment would have been valid had summons been left at abode of defendant while his family remained in the State and before new domicile was acquired? *Id.*

6. Such a judgment is invalid for want of service as well in the State of rendition as elsewhere. *Id.*

7. A judgment void if sued on by plaintiff is void also when interposed by defendant as bar to the original cause of action. *Id.*

8. A judgment of the state supreme court in a condemnation case, going only to the right to condemn and remanding for hearing as to damages, is interlocutory. *Grays Harbor Logging Co. v. Coats-Fordney Co.* 251

9. Although a federal question be settled by state supreme court as the law of the case by interlocutory judgment, this court may consider question when final judgment comes before it. *Id.*

10. Objections to form of decree, if not taken on first appeal, are waived on second. *Pease v. Rathbun-Jones Co.* 273

11. Where a decree for a sum certain, with provisions establishing a lien and for foreclosure, was affirmed with directions that execution and further proceedings be had according to law, a decree directing foreclosure sale and execution for any deficiency is consistent with affirmance. *Id.*

12. Federal courts sitting in equity may render summary

JUDGMENTS—*Continued.*

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judgment against sureties on appeal bonds, and possibly without notice. *Id.*

13. Where this court ordered injunction to hold intact public lands and timber theretofore granted for railroad purposes until Congress should make new provisions for disposing of them consistently with the interests of the railroad company, and an act was passed after decree of the District Court, this court, upon a review of the decree based on an alleged departure from its mandate, will determine the validity of the act as a matter involved in the decree's execution. *Oregon & Cal. R. R. v. United States*. 549

14. An order of the United States Court for Indian Territory authorizing an Indian lease if the Secretary of the Interior approves is conditional upon such approval being given, and, if it is not given or if the power to give it does not exist, no authority to lease can be derived from the order. *Wellsville Oil Co. v. Miller*. 6

15. The fact that a company in former litigation, not involving the duration of its special franchise, described it as for 25 years, works no estoppel, by conduct or judgment, against subsequently claiming that the term was extensible beyond that period. *Owensboro v. Owensboro Water Works Co.*. 166

JURISDICTION:I. Jurisdiction over Person or *Res*.

- (1) Service by Publication and Judgment *In Personam*, p. 710.
- (2) Foreign Corporations, p. 710.
- (3) Attaching Bank Account by Injunction, p. 711.

II. Jurisdiction of this Court.

- (1) Disbarment, p. 711.
- (2) Fictitious Cases and Stipulations, p. 711.
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- (4) In Original Cases, p. 712.
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- (8) Over State Courts.
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III. Jurisdiction of District Court.

- (1) Admiralty, p. 716.
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- (5) Foreign Corporations, p. 717.
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- (7) Naturalization Act, p. 717.
- (8) Removal and Remand, p. 717.

Limitations upon judicial power to interfere with proceedings by a house of Congress to punish for contempt. *Marshall v. Gordon*. 521

Upon the possible duty of courts, particularly of the United States, to enforce contracts valid where made in spite of contrary policy evinced by the laws of place of suit. *Bond v. Hume*. 15

I. Jurisdiction over Person or Res.**(1) Service by Publication and Judgment in Personam.**

1. A state court has no jurisdiction to render personal judgment based on published service against a former citizen who has definitely departed to make his domicile elsewhere; and a judgment so rendered is absolutely void in the State of rendition as well as in other places. *McDonald v. Mabee*. 90

(2) Foreign Corporations.

2. A fire insurance company of another State, to do business in Missouri, filed a power of attorney consenting that service of process on a Missouri official should be personal service on the company so long as it should have any liabilities outstanding in the State. The Missouri court, construing the local law, held that the consent covered service in an action on a policy issued in, and insuring buildings in, Colorado.

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This is held consistent with due process of law. <i>Penna Fire Ins. Co. v. Gold Issue Mining Co.</i>	93
3. In the absence of consent, a corporation of one State is not suable in another <i>in personam</i> unless it is doing business in the latter State and unless process is served on some authorized agent. <i>Phila. & Reading Ry. v. McKibbin</i>	264
4. A railroad company is not doing business in a manner and extent sufficient to found jurisdiction merely because it exchanges traffic with a connecting interstate carrier or because the latter sells coupon tickets good over its road and advertises its name at the latter's station and in a telephone directory, or because its subsidiary corporations do business in the State of suit. <i>Id.</i>	
5. <i>Quære</i> : Whether a corporation doing business in the State may be served there on a cause of action arising in another State and unrelated to such business? <i>Id.</i>	
(3) <i>Attaching Bank Account by Injunction.</i>	
6. State courts have jurisdiction to seize tangible and intangible property of absent owners to satisfy their obligations. So held where the property seized was a divorced husband's bank account and the obligation was a decree for alimony. <i>Pennington v. Fourth Natl. Bank</i>	269
7. The only essentials to the exercise of this jurisdiction are the presence of the <i>res</i> , its seizure at commencement of proceedings and the opportunity of the owner to be heard—in this case by injunction. <i>Id.</i>	

II. Jurisdiction of this Court.

(1) <i>Disbarment.</i>	
1. This court alone has power to disbar attorneys from practicing before it. <i>Selling v. Radford</i>	46
2. In a proceeding to disbar an attorney, this court has no power to reexamine or reverse an order of a state court disbaring him from the state bar for professional misconduct; but this court is not concluded by a decision of the state court upon the question of professional character. <i>Id.</i>	
(2) <i>Fictitious Cases and Stipulations.</i>	
3. This court cannot decide fictitious cases or be controlled	

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by an agreement of counsel on a subsidiary question of law.
Swift & Co. v. Hocking Valley Ry. 281

4. A stipulation of counsel, made only for the purpose of reviewing a judgment rendered on demurrer to the petition, and declaring a proposition which, tested by the petition, is erroneous in fact and in law, will be treated by this court as a nullity. *Id.*

(3) *Abatement and Revivor.* See that Title.

(4) *In Original Cases.*

5. A suit brought by a State against the Secretary of the Interior and Commissioner of the General Land Office which amounts in substance to a suit against the United States must be dismissed. *New Mexico v. Lane* 52

6. The court has no original jurisdiction of a suit by a State against citizens of other States and a necessary party who is a citizen of the State complaining. *Id.*

(5) *Over Circuit Courts of Appeals.*

7. The right of this court to review a final judgment of the Circuit Court of Appeals dismissing an action is not impaired by the circumstances that judgment of dismissal has been entered on that court's mandate in the trial court or by the fact that the latter has thereupon adjourned. *Thomson v. Cayser* 66

8. When parties in the Circuit Court of Appeals, desiring to shorten litigation by bringing the merits directly to this court, consent that final judgment may be entered against them in lieu of one remanding the cause for a re-trial, the consent is not a waiver of errors relied on, and a final judgment entered as requested is reviewable here. *Id.*

9. A judgment of the Circuit Court of Appeals in a controversy arising in a bankruptcy proceeding, viz., in a suit by a trustee to set aside unlawful preferences, is made final by the Act of Jan. 28, 1915, and reviewable in this court only by certiorari. *Staats v. Security Trust & Savgs. Bank* 121

10. When several questions are certified under Jud. Code, § 239, and answers to part will dispose of the case, answers to the rest may be omitted. *United States v. Ginsberg* 472

JURISDICTION—*Continued.*

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11. A judgment of the Circuit Court of Appeals affirming a judgment of the District Court refusing *habeas corpus* is not appealable under § 241, Jud. Code, on the ground that constitutional and treaty questions are involved, since no pecuniary value is in controversy. *Horn v. Mitchell* 247

12. The provision made by Rev. Stats., § 764, as amended by the Act of Mar. 3, 1885, for review of appellate judgments of the Circuit Courts in *habeas corpus* cases, was necessarily repealed by the Judiciary Act of 1891 and § 289, Jud. Code, abolishing the Circuit Courts, and has no reference to appeals from Circuit Courts of Appeals. *Id.*

13. Error in suing out writ of error in name of plaintiff after he had died while case was in Court of Appeals *held* waived by stipulation of counsel in that court that administrator might be substituted. *McCluskey v. Marysville & Northern Ry.* 36

(6) *Over District Courts.*

14. Judgment of District Court refusing *habeas corpus* is appealable directly to this court under § 238, Jud. Code, if the petition raises constitutional or treaty questions. *Horn v. Mitchell* 247

15. The questions whether a corporation sued in the District Court was doing business in the State, and whether process was served on its authorized agent, being vital to the jurisdiction of the District Court, either, if duly raised, is subject to be reviewed directly by this court, in fact and in law, upon a certificate under Jud. Code, § 238. *Phila. & Reading Ry. v. McKibbin.* 264

16. An order of the District Judge allowing a writ of error from this court and containing a recital that the judgment was based solely upon lack of jurisdiction supplies the place of the certificate required by § 238, Jud. Code. *McAllister v. Ches. & Ohio Ry.* 302

(7) *Under Criminal Appeals Act.* (District Court for Hawaii.)

17. When trial court, besides holding the indictment defective for not following the statute, bases its decision upon ground that statute does not apply to facts alleged, the de-

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cision as to the latter ground is reviewable under the Criminal Appeals Act. *United States v. Davis* 570

(8) *Over State Courts.*

(a) Judicial Code, § 237.

18. Section 237, Jud. Code, is in effect but a reenactment of § 25 of the Judiciary Act of 1789 and § 709, Rev. Stats. *St. Louis, I. Mt. & So. Ry. v. Starbird* 592

(b) Final or Interlocutory Judgment.

19. A judgment of a state supreme court in a condemnation case, going only to the right to condemn and remanding the case to the trial court for hearing as to damages, is not a final judgment reviewable under § 237, Jud. Code. *Grays Harbor Logging Co. v. Coats-Fordney Co.* 251

20. Although a federal question involved in state court proceedings be settled by interlocutory judgment so that the decision becomes binding on the state tribunals as the law of the case before a final judgment occurs, this court is free to consider the question when final judgment comes before it. *Id.*

(c) Fictitious Case.

21. A stipulation of counsel, made only for the purpose of reviewing a judgment rendered on demurrer to the petition, and declaring a proposition which, tested by the petition, is erroneous in fact and in law, will not be accepted by this court even though effect was given it by the state courts. *Swift & Co. v. Hocking Valley Ry.* 281

(d) Federal Question.

22. This court may review a judgment of a state court involving the power of the United States Court for the Indian Territory to authorize and approve lease of Indian allotment subject to approval by the Secretary of the Interior and involving the validity and effect of such lease so judicially authorized and approved, but disapproved by the Secretary, and involving the power of the Secretary to disapprove—such matters being inherently federal in character. *Wells-ville Oil Co. v. Miller* 6

JURISDICTION—Continued.

23. When a state court in applying state laws to real property is controlled by a construction of federal land statutes affecting the title, this court has jurisdiction to review. *California v. Deseret Water Co.* 415

24. In an action against a carrier for damage to goods shipped under a bill of lading governed by the Carmack Amendment, claims of the carrier that failure to give notice as required by the bill of lading relieved it from liability, and of the shipper that such requirement was illegal but was substantially complied with, are claims of right arising under the amendment reviewable under Jud. Code, § 237. *St. Louis, I. Mt. & So. Ry. v. Starbird* 592

25. In an action against an interstate carrier for damages to goods shipped on a through bill of lading, the questions whether under the Carmack Amendment the lawful holder of the bill of lading may sue without proving ownership of the goods, and whether there was evidence of negligence which under the bill of lading would render the carrier liable, and whether a recovery of freight paid by the shipper was allowable—are questions reviewable by this court. *Pennsylvania R. R. v. Olivit Bros.* 574

(e) Local Question. Construction of State Laws.

26. A question of the construction of the rules adopted by the board of directors of a national bank and not concerning the meaning of the National Bank Act is not a federal question upon which the court may assume jurisdiction. *Union Natl. Bank v. McBoyle* 26

27. A decision by a state court against a claim of title by adverse possession, where the question is essentially local and dependent on an appreciation of evidence as to the conduct of parties, is not reviewable. *Donohue v. Vosper* 59

28. When the judgment of a state court is placed upon a non-federal as well as a federal ground and the former is independent of the latter and sufficiently broad to sustain the judgment and not so certainly unfounded as to be arbitrary or a mere device to prevent a review of the federal question, the judgment is not reviewable in this court. *Enterprise Irrig. Dist. v. Canal Co.* 157

29. Where no conflict with the Federal Constitution or laws

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is involved, a construction of a state statute by the highest court of a State is accepted by this court as conclusive. *Memphis Street Ry. v. Moore* 299

30. This court does not pass on the adequacy or wisdom of state legislation. *Bunting v. Oregon* 426

(f) Claim and Decision of Federal Right.

31. The court took jurisdiction where the answer in a state condemnation case attacked the taking as contrary to the Fourteenth Amendment and a dissenting opinion of the state supreme court bore evidence that the Federal Constitution was invoked against a construction of the state laws by which the taking was justified. *Hendersonville &c. Co. v. Blue Ridge Ry.* 563

32. When a state court's opinion shows that both parties relied on the construction and effect to be given a decree of a federal court and that the state court applied it against one of them, rejecting the construction relied on by the other, a federal question is presented for review. *Donohue v. Vosper* 59

33. A claim of federal right is sufficiently set up in the state court by an allegation in the answer that notice was not given as required by a bill of lading governed by the Carmack Amendment; and decision that the requirement of the bill of lading is not controlling necessarily denies the claim of federal right in the sense of Jud. Code, § 237. *St. Louis, I. Mt. & So. Ry. v. Starbird* 592

III. Jurisdiction of District Court.**(1) Admiralty.**

1. A violation of neutrality committed by a belligerent in wrongfully making use of an American port for storing indefinitely a merchant vessel and cargo captured on the high seas affords jurisdiction in admiralty to the District Court of the locality to seize the vessel and cargo and restore them to their private owners. *The Appam* 124

2. In such case proceedings in prize court of belligerent country could not oust jurisdiction of District Court or defeat its judgment. *Id.*

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(2) *Appeal Bonds.*

3. District Courts, sitting in equity, may render summary judgment against sureties on appeal bonds without trial by jury. *Pease v. Rathbun-Jones Co.* 273

(3) *Costs.* See **Procedure**, XIV.

4. The power to award costs against the United States in claims cases, Jud. Code, § 152, applies when the District Court is exercising concurrent jurisdiction under § 24. *United States v. Cress* 316

(4) *Diverse Citizenship.* See (8) *infra*.

5. The District Court has no jurisdiction upon the ground of diverse citizenship where the cause of action, between employee and employer, is governed by a state workmen's compensation law abolishing judicial remedies in such cases and substituting administrative remedies by a state board. *Raymond v. Chicago, Mil. & St. P. Ry.* 43
See also *Mountain Timber Co. v. Washington* 219

(5) *Foreign Corporations.*

6. In the absence of consent a corporation of one State cannot be sued *in personam* in another unless doing business there and unless process be served on authorized agent. *Phila. & Reading Ry. v. Mc Kibbin* 264

(6) *Interstate Commerce Commission.*

7. The District Court is without jurisdiction over an order of the Interstate Commerce Commission, negative in substance and form, in which the Commission declined to extend the period fixed in the Panama Canal Act for the divorcement of railroad and water carriers. *Lehigh Valley R. R. v. United States* 412

(7) *Naturalization Act.*

8. Under § 9, Naturalization Act, final hearings upon petitions must be held entirely in open court; cannot be held in judge's chambers adjoining court-room. *United States v. Ginsberg* 472

(8) *Removal and Remand.*

9. An action governed by the Federal Employers' Liability

JURISDICTION—Continued.

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- Act is not removable on ground of diverse citizenship. *St. Joseph & G. I. Ry. v. Moore* 311
10. When plaintiff's petition states a case of joint liability under the state law against resident and nonresident defendants and removal petition fails to aver facts showing joinder fraudulent, District Court must remand. *McAllister v. Ches. & Ohio Ry.* 302
- Chicago & Alton R. R. v. McWhirt* 422

JURY. See **Constitutional Law, XIII, XIV, (3); Instructions to Jury.**

1. In an action against a carrier for damages resulting from delay in forwarding goods, defended on ground that delay was due to a strike, evidence that goods were received after the strike was over and delay was caused by preferring other goods is sufficient evidence of negligence to go to the jury. *Pennsylvania R. R. v. Olivit Bros.* 574
2. When more than a reasonable rate is exacted from a shipper as a result of an unlawful combination, the question whether, and to what extent, such rate was unreasonable are questions for the jury. *Thomsen v. Cayser* 66
3. *Semble*, that a general verdict for an amount which equals a particular claim of damages and interest is responsive to that claim alone, although there were others which were submitted to the jury. *Id.*
4. Where there is substantial evidence of negligence to support the verdict in an action for personal injuries, this court will not disturb the finding of a state court. *St. Joseph & G. I. Ry. v. Moore* 311

LACHES:

1. In an action by a receiver of a national bank against his predecessor to recover for the bank property fraudulently acquired by the latter, delay of suit for 16 years after the transaction and 14 years after defendant's resignation as receiver is not laches, in view of the finding that defendant's successors had no knowledge or notice of the fraud. *Baker v. Schofield.* 114
2. Laches or neglect of duty of government officers is no defense to suit to enforce a public right or protect a public interest. *Utah Power Co. v. United States* 389

LACHES—*Continued.*

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3. Any exceptions to this rule are limited by the principle which places on different planes a private suit over title and a suit by the United States to enforce its policy respecting public lands. *Id.*

4. For a case in which the right to question a state water right adjudication was lost by laches and estoppel, see *Enterprise Irrig. Dist. v. Canal Co.* 157

LAND DEPARTMENT. See **Public Lands.**

LANDS. See **Indians; Public Lands.**

LEASE:

Validity of lease of Indian allotment approved by court subject to further approval by Secretary of the Interior. *Wellsville Oil Co. v. Miller* 6

LESSOR AND LESSEE. Joint liability for torts. See **Railroads, 2, 3.**

LICENSE. See **Franchise and License; Patents for Inventions.**

License to packing company to use railroad's land for warehouse, including switch track, held not to render switch track a private track. *Swift & Co. v. Hocking Valley Ry.* 281

LIEN. See **Foreclosure.**

LIMITATIONS. See **Adverse Possession.**

The seven year statute of limitations of Washington does not apply when the claim of title accompanying possession is not made in good faith. *Baker v. Schofield* 114

MANDATE. See **Procedure, XIII.**

MARITIME CASES. See **Admiralty.**

MASTER AND SERVANT. See **Carriers; Employers' Liability Act; Negligence; Workmen's Compensation Laws.**

MORTGAGE. See **Foreclosure.**

MUNICIPALITIES. See **Franchise and License.** PAGE

- City ordinance granting franchise to construct water works construed with respect to duration of corporate franchise.
Owensboro v. Owensboro Water Works Co. 166

NATIONAL BANKS:

1. The cashier of a national bank may be authorized by its directors to sell corporate shares acquired as the result of a loan made upon the shares as security. *Union Natl. Bank v. McBoyle.* 26
2. Whether rules adopted to govern the bank's business confer such authority upon the cashier is a question involving the interpretation of the rules and not the meaning of the National Bank Act. *Id.*
3. Where defendant, as receiver, purchased realty with bank's money, and under apparent authority from court assigned the contract for cash paid bank, the assignee acting secretly for the receiver as an individual, the transaction was a gross breach of defendant's duty as receiver and, in a suit by his successor to regain the property, defendant is estopped to claim the purchase beyond the powers of the bank. *Baker v. Schofield.* 114

NATURALIZATION ACT:

1. Section 9 of the act requires final hearings on petitions to be held in open court; hearing in chambers not sufficient. *United States v. Ginsberg.* 472
2. Under § 15, a certificate of citizenship granted on a state of facts showing petitioner not qualified is subject to annulment in independent suit by the United States. *Id.*

NAVIGABLE WATERS. See **Waters and Water Rights.****NEGLIGENCE.** See **Admiralty, 7-9; Carriers, 4, 5, 9 et seq.; Employers' Liability Act, (3); Safety Appliance Act.**

1. A State may provide that failure to safeguard dangerous machinery shall be negligence. *Bowersock v. Smith.* 29
2. In such cases it may also abolish defenses of contributory negligence, assumption of risk, and fellow servant doctrine, and place burden on defendant to show compliance with the act. *Id.*

NEGLIGENCE—*Continued.*

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3. Where carrier defends action for damage due to delay in delivering goods on ground that delay was caused by a strike, evidence that goods were received after strike and that delay was due to preferring other goods held sufficient evidence of negligence to go to the jury. *Pennsylvania R. R. v. Olivit Bros.* 574

See **Burden of Proof.**

4. A State may set aside or alter rules of negligence, assumption of risk, and fellow servant doctrine, at least if some just substitute be provided. *New York Cent. R. R. v. White* . . . 188
Hawkins v. Bleakly. 210
Mountain Timber Co. v. Washington 219

5. It may also provide that where an employer has rejected a workmen's compensation act the presumption shall be that injury was due to his negligence and that burden of proof shall be upon employer. *Hawkins v. Bleakly* 210

6. Under the law of Kentucky failure of a railroad company to take notice of places where numerous people are accustomed to cross or be upon the tracks and to moderate speed, maintain lookouts and give signals, resulting in death or injury, is actionable negligence. *McAllister v. Ches. & Ohio Ry.* 302

7. Under Kentucky laws lessor and lessee railroads are jointly liable for injuries or death inflicted on persons on tracks, not trespassers, by negligence of lessee in operating trains. *Id.*
 See *Chicago & Alton R. R. v. McWhirt* 422

8. Where there is substantial evidence of negligence to support verdict, this court will not disturb finding of state court. *St. Joseph & G. I. Ry. v. Moore* 311

NEUTRALITY. See **Admiralty; International Law.**

NONRESIDENTS. See **Constitutional Law, XIV, (2), (a); Service of Process.**

1. State has power to seize intangible as well as tangible property to satisfy obligations of absent owners. *Pennington v. Fourth Natl. Bank* 269

2. Under Tennessee law, nonresident personal representatives of decedents leaving assets in the State are regarded as citizens for purposes of suit. *Memphis Street Ry. v. Moore* 299

NONRESIDENTS—Continued.

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3. This, however, does not prevent resort to federal courts.
Id.

4. Joinder of resident and nonresident defendants to prevent removal to federal court. *McAllister v. Ches. & Ohio Ry.*... 302
Chicago & Alton R. R. v. McWhirt 422

NORTHWEST TERRITORY:

Iowa was not a part of the Northwest Territory, nor subject to the Ordinance of 1787. *Hawkins v. Bleakly* 210

NOTICE. See **Constitutional Law, XIV, (2); Carriers, 3, et seq.; Service of Process.**

1. *Quære:* Whether in rendering summary judgment against sureties on appeal bonds notice is essential. *Pease v. Rathbun-Jones Co.* 273

2. Notice waived by invoking trial court's decision on merits upon undisputed state of facts. *Id.*

ORDINANCE OF 1787:

Iowa was not a part of the Northwest Territory, nor subject to the Ordinance of 1787. *Hawkins v. Bleakly* 210

ORDINANCES. See **Franchise and License.**

PARTIES: See **Abatement and Revivor; Cause of Action, 3; Executors and Administrators; Indians, 6.**

1. In a suit by a State to enjoin Secretary of Interior from issuing patent to an individual for land which one has entered and paid for under the coal land law, the individual is a necessary party. *New Mexico v. Lane* 52

2. A suit to restrain a state officer from levying a tax under a law claimed to be unconstitutional is a suit against him as an individual, and, in absence of statute, abates upon expiration of term of office. *Pullman Co. v. Knott* 447

PATENTS FOR INVENTIONS:

1. The monopoly of use granted by the patent law can not be made a means of controlling the prices of the patented articles after they have been, in reality even though not in form, sold and paid for. *Straus v. Victor Talking Mach. Co.* 490

PATENTS FOR INVENTIONS—Continued.

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2. The patent owner can not maintain control of title and condition use of machines by means of license notices attached to them and license contracts with dealers where there has been substantially a sale and the real object is to fix price at which the machine may be sold. *Id.*

3. In such case, as to purchasers not in privity with the patent owner, the restrictions of the "license notices" are to be treated as void attempts to control prices after sale, and in buying from the dealers and reselling to the public at prices lower than the notices prescribe, such purchasers do not violate the rights secured to the patent owner by the patent law. *Id.*

4. The grant by patent of the exclusive right to use is limited to invention described in claims, and patent owner can not, by notices attached to the patented articles, reserve the right to determine the materials which may be used in their operation, nor does the patent law authorize him to dispose of such articles subject to conditions as to use or royalty to be imposed thereafter in his discretion. *Motion Picture Co. v. Universal Film Co.* 502

5. In determining how far patentee may restrict the use after sale of the patented article, weight must be given to the rule restricting the patent right to the invention described in the claims, and to the principle that the patentee receives nothing from the patent law beyond the right to restrain others from manufacturing, using or selling his invention, and to the object of that law which is to promote science and useful arts and not to create private fortunes. *Id.*

6. The extent to which the use of a patented machine may validly be restricted to specific supplies or otherwise by special contract between the patent owner and a purchaser or licensee is a question outside of the patent law and not involved in this case. *Id.*

PATENTS FOR LAND. See Indians; Public Lands.

PENALTIES:

1. Whether a provision in a statute for penalties is unconstitutional will not be determined in a suit not concerning penalties. *Wilson v. New* 332

- PENALTIES**—*Continued.* PAGE
2. A provision in a 10-hour law for overtime and extra pay held in nature a penalty to deter from excess of the 10-hour limit. *Bunting v. Oregon* 426
- PERJURY.** See **Criminal Law**, 8-9.
- PERSONAL INJURIES.** See **Employers' Liability Act; Negligence; Safety Appliance Act; Workmen's Compensation Laws.**
- PLEADING:**
1. Trial court, in sound discretion, may allow new cause of action to be set up by amendment of complaint. *Thomsen v. Cayser* 66
2. A petition for removal based on fraudulent joinder of resident and nonresident defendants must allege specific facts supporting the charge. *McAllister v. Ches. & Ohio Ry.* . . . 302
Chicago & Alton R. R. v. McWhirt. 422
3. Allegations sufficiently charging joint liability of lessor and lessee railroad companies for death to person on track caused by negligence of lessee in operating train. *McAllister v. Ches. & Ohio Ry.* 302
- POLICE POWER.** See **Constitutional Law**, XIV.
- POLITICAL QUESTIONS:**
- Whether guaranty of republican form of government has been violated is not a judicial question, but a political one addressed to Congress. *Mountain Timber Co. v. Washington* 219
- POWER COMPANIES.** See **Public Lands**, 2-15; **Constitutional Law**, XIV, (4), (c).
- PREFERENCES.** See **Bankruptcy Act; Interstate Commerce Acts**, 6-8.
- PRESUMPTION.** See **Constitutional Law**, XIV, (2), (b); XV.
- PRINCIPAL AND SURETY.** See **Sureties.**
- PRIVATE TRACKS.** See **Interstate Commerce Acts**, II, 1.

PRIZE. See **Admiralty**, 1-6.

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PROCEDURE. See **Alimony; Attachment; Constitutional Law; Damages; Disbarment; Jury; Naturalization Act; Parties; Pleading.**

- I. Suing *in Forma Pauperis*, p. 725.
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- XIII. Executing Mandate, p. 729.
- XIV. Costs, p. 730.
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I. Suing in Forma Pauperis.

- 1. The act of Tennessee providing that nonresidents qualifying as personal representatives shall be treated as citizens of the State for the purpose of suing and being sued, was not intended to exclude them from the federal courts but merely to permit them to sue *in forma pauperis*. *Memphis Street Ry. v. Moore*. 299

II. Removal of Causes.

- 1. An allegation in a petition for removal that the plaintiff's motive in joining resident and nonresident defendants is to prevent removal to the federal court is not in itself sufficient ground for removal, but specific facts supporting the charge of fraud must be alleged. *McAllister v. Ches. & Ohio Ry.* . . . 302
Chicago & Alton R. R. v. McWhirt 422
- 2. When a petition states a case of joint liability in tort under the state law against resident and nonresident defendants, the case is not removable as a separable controversy if the removal petition fails to aver facts showing the joinder fraudulent. *Id.*
- 3. An action governed by the Federal Employers' Liability

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- Act is not removable on the ground of diverse citizenship.
St. Joseph & G. I. Ry. v. Moore 311

III. Raising Federal Question. See Jurisdiction, II, (8), d-f.

1. When a carrier sued in a state court for damages to an interstate shipment alleges in its answer that notice was not given as required by the bill of lading, the attention of the court is sufficiently challenged to a claim of federal right based on the Carmack Amendment, and when the court decides that the bill of lading is not controlling, it necessarily denies the federal claim in the sense of Jud. Code, § 237. *St. Louis, I. Mt. & So. Ry. v. Starbird* 592

IV. Saving Points for Review. Waiving Errors.

1. Where no exception was taken to the rulings of the trial court concerning the point relied on later as a ground for certiorari from this court, the certiorari, if granted, will be dismissed. *Tyrrell v. District of Columbia* 1
2. Objection going to the form of the decree, if not taken on a first appeal to the Circuit Court of Appeals, may be deemed waived on a second. *Pease v. Rathbun-Jones Co.* 273
3. Objections that a summary judgment on an appeal bond was not preceded by notice and deprived the sureties of the right of trial by jury are waived by invoking the trial court's decision of the merits upon an undisputed state of facts. *Id.*
4. Error in suing out writ of error in name of plaintiff after he had died while case was in Court of Appeals held waived by stipulation of counsel in that court that administrator might be substituted. *McCluskey v. Marysville & Northern Ry.* 36
5. When parties in the Circuit Court of Appeals, desiring to shorten the litigation by bringing the merits directly to this court, consent that a final judgment may be entered against them in lieu of one remanding the cause for a re-trial, the consent is not a waiver of errors relied on, and a final judgment entered as requested is reviewable here. *Thomsen v. Cayser* 66

V. Directing Writ of Error.

1. For review in this court of a final judgment of the Circuit Court of Appeals directing that an action be dismissed, the

PROCEDURE—Continued.

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writ of error should go to that court; and its efficacy is not impaired by the circumstances that, before allowance of the writ by that court, the trial court, obeying the mandate, has entered judgment of dismissal and has adjourned for the term before any application has been made to recall its action. *Thomsen v. Cayser* 66

VI. Certiorari.

1. It is the duty of this court to dismiss a certiorari upon discovering that the question which induced the issuance of the writ does not arise on the record, because no exception was taken to the ruling of the trial court. *Tyrrell v. District of Columbia* 1

2. In controversies arising in bankruptcy proceedings (e. g., suit by trustee to set aside preference,) judgments and decrees of the Circuit Courts of Appeals may be reviewed only by certiorari. *Staats Co. v. Security Trust & Savgs. Bank* . . . 121

3. Amendment of Rule 37, § 4, concerning applications for writs of certiorari and notice thereof. 623

VII. Certified Questions.

1. An order of the District Judge allowing a writ of error from this court containing a recital that the judgment was based solely upon lack of jurisdiction supplies the place of the certificate required by § 238, Jud. Code. *McAllister v. Ches. & Ohio Ry.* 302

2. When several questions are certified under § 239, Jud. Code, and answers to part will dispose of the case, answers to the rest may be omitted. *United States v. Ginsberg* 472

3. The questions whether a corporation sued in the District Court was doing business in the State, and whether process was served on its authorized agent, being vital to the jurisdiction of the District Court, either, if duly raised, is subject to be reviewed directly by this court, in fact and in law, upon a certificate under Jud. Code, § 238. *Phila. & Reading Ry. v. Mc Kibbin.* 264

VIII. Abatement, Revivor and Substitution.

1. Under Rev. Stats. of Texas, Art. 1206, a suit against a corporation is not abated by its dissolution pending appeal. *Pease v. Rathbun-Jones Co.* 273

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2. Error in suing out writ of error in name of plaintiff after he had died while the case was in the Court of Appeals held waived by stipulation of counsel in that court that administrator might be substituted. *McCluskey v. Marysville & Northern Ry.* 36
3. A suit to restrain a state official and his successors in office from estimating, levying and assessing a tax under a state law claimed to be unconstitutional is a suit against him as an individual and, in the absence of statute, abates when his term of office expires, and cannot be revived against his successor. *Pullman Co. v. Knott* 447

IX. Scope and Limitations of Review.

1. This court can not be controlled by an agreement of counsel on a subsidiary question of law. *Swift & Co. v. Hocking Valley Ry.* 281
2. It can not decide fictitious cases. *Id.*
3. A stipulation of counsel, made only for the purpose of reviewing a judgment on demurrer, and declaring a proposition which, tested by the petition, is erroneous in fact and in law, though accepted by the state court, will be treated by this court as a nullity. *Id.*
4. The former decision of this court having directed an injunction to hold the land and timber intact until Congress should have reasonable opportunity to make new provisions for disposing of them consistently with the interest of the railroad company, and an act having been passed accordingly after entry of the decree in the District Court, this court, upon a review of the decree based on an alleged departure from its former mandate, may properly determine the validity of the act as a matter involved in the decree's execution. *Oregon & Cal. R. R. v. United States.* 549

X. Following State Construction and Rulings. See *infra*, XII.

1. Although a federal question involved in state court proceedings be settled by interlocutory judgment, so that the decision becomes binding on the state tribunals as the law of the case before a final judgment occurs, this court is none the less free to determine the question when the final judgment is brought here by writ of error. *Grays Harbor Co. v. Coats-Fordney Co.* 251

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2. Where a stipulation of counsel made for the purpose of reviewing a particular judgment contradicts the record and states a mooted or fictitious case, this court will treat it as a nullity, although the state courts give it effect. *Swift & Co. v. Hocking Valley Ry.* 281
3. Where no conflict with the Federal Constitution or laws is involved, a construction of a state statute by the highest court of the State is accepted by this court as conclusive. *Memphis Street Ry. v. Moore* 299

XI. Administrative Constructions.

1. This court will not readily disturb a construction of a land law by the Land Department which, though differing from an earlier one, has been adopted on full consideration and long consistently adhered to by the Department, and upon the faith of which large acreages have been acquired and large expenditures have been made. *California v. Deseret Water Co.* 415

XII. Findings of Fact. See **Employers' Liability Act**, and *supra*, X.

1. State courts' findings followed in absence of clear proof to contrary. *Hendersonville &c. Co. v. Blue Ridge Ry.* 563
2. The rule that concurrent findings of fact by two lower courts will not be disturbed unless clearly wrong is applied in support of findings of fraud and breach of fiduciary duty resulting in a trust. *Baker v. Schofield* 114
3. Where there is substantial evidence of negligence to support the verdict in an action for personal injuries, this court will not disturb the findings of a state court. *St. Joseph & G. I. Ry. v. Moore* 311
4. This court will not disturb a verdict rendered in a state court and appealed by that court to a state appellate court where the question concerns sufficiency of evidence of negligence and assumption of risk, and the ruling in regard to it is not clearly erroneous. *Seaboard Air Line Ry. v. Lorick* . . 572

XIII. Executing Mandate. See IX, 4, *supra*.

1. A decree of the District Court that plaintiff "do have and recover" a stated sum, with provisions establishing a

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lien and for foreclosure, was affirmed by the Circuit Court of Appeals with directions that "such execution and further proceedings be had as according to right and justice, and the laws of the United States, ought to be had." *Held*, that a decree of the District Court directing foreclosure sale, and that execution issue for any deficiency, was consistent with, and did not exceed, the affirmance. *Pease v. Rathbun-Jones Co.* 273

2. The amount of deficiency becoming fixed by the sale, the insertion of the amount in the execution was but a clerical act. *Id.*

XIV. Costs.

1. *Quære*: Whether Rule 29, of this Court—Rule 13, 5th C. C. A.—intends that the sureties on a supersedeas bond shall not be bound to pay deficiency decrees in foreclosure cases, but shall pay only the costs and damages resulting from the delay caused by the appeal? *Pease v. Rathbun-Jones Co.* 273

2. Section 152, Jud. Code, permitting costs against the United States in claims cases, although appearing in the chapter entitled "The Court of Claims," is not confined to cases in that court but applies also when the District Court is exercising concurrent jurisdiction under § 24. This conclusion results from a consideration of the Tucker Act, of Mar. 3, 1887, and §§ 294 and 295 of the Code, read in connection with the repealing section, 297. *United States v. Cress.* 316

3. Under Rule 24, costs in this court are not allowable in cases where the United States is a party. *Oregon & Cal. R. R. v. United States.* 549

4. Where the United States obtained a decree declaring railroad land grants forfeited for breaches of conditions by the railroad company, and upon appeal the decree was reversed because the conditions broken were not conditions subsequent but statutory covenants, and relief against the company by injunction was decreed accordingly, costs of the litigation in the District Court were properly awarded by that court to the United States. *Id.*

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XV. Appeal Bonds. Enforcement of.

1. Federal courts, sitting in equity, may render summary judgment against sureties on appeal bonds. *Pease v. Rathbun-Jones Co.* 273
2. *Quere*: Must notice be given in such cases? *Id.*
3. *Quere*: Whether Rule 29 of this court—Rule 13, 5th C. C. A.—intends that the sureties on a supersedeas bond shall not be bound to pay deficiency decrees in foreclosure cases, but shall pay only the costs and damages resulting from the delay caused by the appeal? *Id.*

PROCESS. See Service of Process.

PUBLICATION:

Service by. See **Service of Process.**

PUBLIC LANDS. See Constitutional Law, X; Indians.

As to damages for unlawful occupancy and use of reserved lands of the United States—See **Damages, 6-7.**

1. In an original suit in this court to enjoin issuance of a patent to an entryman for land entered and paid for by him under the coal land law, on the ground that title was vested in the State by virtue of a school land grant, the entryman is an indispensable party. *New Mexico v. Lane* 52
2. The power to regulate the use of lands of the United States and to prescribe the conditions upon which rights in them may be acquired by others is vested exclusively in Congress. *Utah Power Co. v. United States.* 389
3. The inclusion of public lands within a State does not diminish this power or subject the lands or interests in them to disposition by the state power. *Id.*
4. The Act of May 14, 1896, relating exclusively to rights of way and the use of land for electric power purposes, superseded the provisions of Rev. Stats., §§ 2339 and 2340, in so far as they were applicable to such rights of way. *Id.*
5. Rev. Stats., §§ 2339 and 2340, did not grant rights of way for power-houses, transmission lines, or subsidiary structures. *Id.*
6. Sections 18-21 of the Act of Mar. 3, 1891, relate to rights

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for ditches, canals and reservoirs for irrigation purposes and call for filing of maps, to be effective when approved by the Secretary of the Interior; the Act of May 11, 1898, permits rights so approved to be used for power development as subsidiary to the purpose of irrigation; but neither act applies where no maps have been filed or approved, where the rights claimed include power-houses, etc., and irrigation is not the purpose of the use. *Id.*

7. Whether or not the Act of Feb. 15, 1901, superseded other earlier right of way provisions, it obviously took the place of the Act of May 14, 1896. *Id.*

8. The Act of Feb. 1, 1905, makes no provision for electric power-houses, etc., but only grants rights of way for ditches, canals and reservoirs for diverting, storing and carrying water. *Id.*

9. The purposes mentioned therein do not include the generating of electricity for commercial disposition, even though some of the current is sold in adjacent or distant towns for power, lighting and heating, or to persons engaged in mining, milling or reducing ores. *Id.*

10. The United States is not estopped by acts of its officers in entering into an agreement for the use of federal lands by a power company, not sanctioned by law. *Id.*

11. Laches on the part of government officers is no defense to a suit to enforce public rights, and any exceptions to the rule are inapplicable in a suit by the United States to enforce its policy respecting land held in trust for all the people. *Id.*

12. The discretion of Congress to control the use of federal lands through administrative regulations is not narrowly confined. *Id.*

13. Such regulations where they exceed the power or authorization of Congress are void, but not where they are merely illiberal, inequitable or unwise. *Id.*

14. Parties whose use of federal lands can be legitimated only by complying with an act of Congress can not complain of regulations adopted in its execution until they obtain a license under the act and conform, or offer to conform, to such regulations as are lawful. *Id.*

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15. The acts of Congress providing or recognizing that rights to the use of waters in streams running through public lands may be acquired in accordance with local laws do not authorize the appropriation of rights of way through lands of the United States. *Id.*
16. When a forest reservation is made to include a school section previously surveyed, the State may waive its right to the section and select other lands in lieu. *California v. Deseret Water Co.*..... 415
17. A construction of a land law by the Land Department which, though differing from an earlier one, has been adopted on full consideration and long consistently adhered to, and upon the faith of which large acreages have been acquired and large expenditures made, will not readily be disturbed by this court. *Id.*
18. The Oregon-California Railroad Grants made no distinction between timber and other lands; title to all was vested in the railroad company for transmission to actual settlers upon the terms prescribed by the acts. *Oregon & Cal. R. R v. United States.*..... 549
19. While the company could use the lands as a basis of credit, it could not by trust deed convey an interest in either land or timber exempt from the obligations of the granting acts or the power of the government to compel their performance. *Id.*
20. The acts not being instruments of conveyance, Congress, in order to overcome a situation due to breaches of obligation which made the original scheme impracticable, had power to resume title and dispose of the land under conditions assuring the company the equivalent of its interest in the grants—\$2.50 an acre. *Id.*
21. The “Chamberlain-Ferris Act” examined and found to accord with the power of Congress and the principles laid down by this court in 238 U. S. 393. *Id.*
22. This court having directed an injunction to hold the land and timber intact until Congress should make new provisions for their disposition consistently with the interest of the railroad company, and an act having been passed

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accordingly after entry of the decree in the District Court, this court, upon review of the decree based on departure from its former mandate, may determine validity of the act as a matter involved in the decree's execution. *Id.*

23. A charge of perjury may be based upon a valid regulation of the Land Department requiring an affidavit, if the oath be taken "before a competent tribunal, officer or person." *United States v. Morehead* 607

24. Regulations of the Land Department concerning public lands must be deemed valid if not unreasonable, inappropriate, or inconsistent with acts of Congress. *Id.*

25. A regulation requiring applicants for soldiers' homesteads to make oath in their declaratory statements that their claims are for their exclusive benefit, for purpose of actual settlement, and not either directly or indirectly for the benefit of another, and that agents filing such statements have no right or interest in the filing thereof, is valid. *Id.*

26. A regulation providing that such statements, when filed by agent, be executed before any officer authorized to administer oaths generally is valid; and if such oath be material and false the person making it before a state officer violates the federal perjury statutes. *Id.*

PUBLIC OFFICERS:

1. The United States is not estopped by acts of its officers or agents in agreeing to do or cause to be done what the law does not sanction. *Utah Power Co. v. United States* 389

2. So held in regard to agreement for the use of public lands by a power company. *Id.*

3. A suit to restrain a state officer from levying a tax under a law claimed to be unconstitutional is a suit against him as an individual and, in absence of statute, abates upon expiration of term of office. *Pullman Co. v. Knott* 447

4. Land Department, by regulation, may provide for verifying entry papers before state officers, and such oaths may afford foundation for charge of perjury. *United States v. Morehead* 607

RAILROADS. See **Carriers; Corporations; Employers' Liability Act; Interstate Commerce Acts; Negligence; Safety Appliance Act.**

1. Right of Congress to regulate hours of service and wages as between railroads and their employees. *Wilson v. New* . . . 332

2. Under the law of Kentucky, lessor and lessee railroad companies are jointly liable for injury or death inflicted on persons on the tracks, not trespassers, by the negligence of the lessee. *McAllister v. Ches. & Ohio Ry.* 302

3. A State may enact that any railroad of the State, leasing its road to a company of another State, shall be jointly liable for actionable torts of the latter committed in the operation of the road. *Chicago & Alton R. R. v. McWhirt* 422

REAL PROPERTY. See **Easements.**

REBATES. See **Interstate Commerce Acts, 6, 7, 10; Anti-Trust Act, 1**

RECEIVERS. See **Laches; National Banks.**

REGULATIONS:

Of Land Department. See **Public Lands, 12-14, 17, 23-26.**

REMOVAL. See **Procedure, II.**

REPUBLICAN FORM OF GOVERNMENT. See **Constitutional Law, XI.**

RETROACTIVE CONSTRUCTION. See **Constitutional Law, XIV, (2), (c).**

REVIVOR AND SUBSTITUTION. See **Abatement and Revivor.**

RIGHT OF WAY. See **Public Lands, 2-15.**

RIPARIAN RIGHTS. See **Waters and Water Rights.**

RULE 24:

Under this rule, costs in this court are not allowable in cases where the United States is a party. *Oregon & Cal. R. R. v. United States.* 549

RULE 29:

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Quere: Whether the rule intends that sureties on a super-sedeas bond shall pay deficiency decrees in foreclosure cases, or merely the costs and damages resulting from the delay caused by the appeal? *Pease v. Rathbun-Jones Co.* 273

RULE 37:

Amendment of § 4 623

SAFETY APPLIANCE ACT:

1. The act, as amended in 1903, makes absolute the duty to provide grab-irons or hand-holds on ends, as well as sides, of locomotive tenders. *St. Joseph & G. I. Ry. v. Moore* 311
2. Claimed equivalents cannot satisfy the law. *Id.*
3. Interstate carriers are liable to employees injured in discharge of duty whenever failure to comply with act is proximate cause of injury, irrespective of physical position occupied by employee or nature of work upon which engaged. *Louis. & Nash. R. R. v. Layton* 617
4. So held where failure of couplers in switching operation resulted in plaintiff's being thrown from car while preparing to release brakes. *Id.*
5. Under Georgia Employers' Liability Act, defenses of assumed risk and contributory negligence eliminated when violation of Federal Safety Appliance Act contributes to cause the injury. *Id.*

SALE. See **Foreclosure.**

SATISFACTION. See **Sureties.**

SCHOOL LANDS. See **Indians, 8; Public Lands, 1, 16.**

SERVICE OF PROCESS:

1. Money judgment based on service by publication after defendant had left State to establish new domicile is invalid, though action began before actual change and while defendant's family continued to reside in State. *McDonald v. Mabee* 90
2. *Quere:* Whether judgment would be valid if summons had been left at defendant's abode while family was in State and before new domicile was acquired? *Id.*

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3. Such judgment is invalid for want of due service as well in State or rendition as elsewhere. <i>Id.</i>	
4. A power of attorney by which a Colorado fire insurance company consented that service on a Missouri officer should be deemed service on the company so long as the latter had any liabilities outstanding in Missouri, <i>held</i> to authorize service in a suit there upon a policy issued in and insuring buildings in Colorado. <i>Penna Fire Ins. Co. v. Gold Issue Mining Co.</i>	93
5. A corporation of one State may not be summoned in another in an action <i>in personam</i> , without its consent, unless it is present doing business. <i>Phila. & Reading Ry. v. McKibbin</i>	264
See Jurisdiction, I.	
6. Process must be served on a duly authorized agent. <i>Id.</i>	
7. That corporations subsidiary to another are doing business in a State does not warrant finding that the other is present there, doing business. <i>Id.</i>	
8. <i>Quære</i> : Whether a corporation doing business in a State may be served there on a cause of action arising in another State and unrelated to the business in the first? <i>Id.</i>	
9. A corporation <i>held</i> not estopped from contesting the jurisdiction, on the ground that it is not doing business in the State, by an arrangement of counsel designed to facilitate attempted service on one of its officers while in the State on private business. <i>Id.</i>	

SERVITUDE, TO NAVIGATION. See **Waters and Water Rights.**

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STATE INSURANCE:

System of state insurance, under Workmen's Compensation Laws, for compensation of employees injured or killed. <i>New York Cent. R. R. v. White</i>	188
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State powers. See **Constitutional Law.**
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- State statutes. See Table of Statutes Cited, and title **Statutes**.
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STATUTES:

See Table of Statutes Cited. Also **Anti-Trust Act; Bankruptcy Act; Criminal Law; Employers' Liability Act; Indians; Interstate Commerce Acts; Naturalization Act; National Banks; Public Lands; Safety Appliance Act; Tucker Act; Workmen's Compensation Laws**.

I. Principles of Construction.

1. While mere legislative declaration can not give character to a law or turn illegal into legal operation, there is a presumption that the purpose of an act is the purpose expressly declared by the legislature and confirmed by the state court. *Bunting v. Oregon* 426
2. If the terms of an act may be accommodated to its declared purpose, the court will not hold that a legislature, while intending one thing, through improvidence of language, effected another. *Id.*
3. A direction by Congress that a patent be issued an individual for land assigned him as an Indian allotment is to be regarded, not as a proposal by the government which upon acceptance makes a contract, but as a law amendable and repealable at the will of Congress, subject to the qualification that rights created by the execution of such provision can not be divested or impaired. *United States v. Rowell* 464
4. Acts of Congress granting land should not be treated as mere conveyances when functioning as laws carrying out a public policy. *Oregon & Cal. R. R. v. United States*. 549

II. Particular Statutes and Ordinances.

1. *Ordinance of 1787*. Iowa not subject to. *Hawkins v. Bleakly* 210
2. *Revised Statutes, § 764*. Providing review by this court of appellate judgments of Circuit Courts in *habeas corpus* cases. Repealed by Judiciary Act of 1891 and Jud. Code, § 289. *Horn v. Mitchell* 247
3. *Act of June 12, 1838*. Establishing Iowa Territory. Con-

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strued with respect to guaranty of trial by jury and held superseded by state constitution. <i>Hawkins v. Bleakly</i>	210
4. <i>Act of Aug. 19, 1890</i> . Adopting International Regula- tions for preventing collisions at sea. Under Art. 16, duty to stop engines upon hearing fog signal of another vessel is imperative. <i>Lie v. San Francisco & Portland S. S. Co.</i>	291
5. <i>Tariff Act of 1913</i> . Provision granting 5 per cent. dis- count on goods imported in American bottoms not intended to impair reciprocal commercial treaty agreements with foreign nations; discount suspended entirely during existence of agreements. <i>Five Per Cent. Discount Cases</i>	97
6. <i>Chamberlain-Ferris Act of June 9, 1916</i> . Accords with power of Congress and principles laid down in <i>O. & C. R. R.</i> <i>Co. v. United States</i> , 238 U. S. 393. <i>Oregon & Cal. R. R. v.</i> <i>United States</i>	549
7. <i>Federal Corrupt Practices Acts</i> . Not in effect adoption of all state primary laws as acts of Congress. <i>United States v.</i> <i>Gradwell</i>	476
8. <i>Act of Sept. 3, 5, 1916</i> . Establishing 8-hour day for em- ployees of interstate carriers. As between carriers and em- ployees affected, it fixes permanently an 8-hour standard for work and wages, and, for the period defined by the act, a scale of minimum wages. <i>Wilson v. New</i>	332
9. <i>Georgia Employers' Liability Act</i> . Eliminates defenses of assumed risk and contributory negligence when violation of Federal Safety Appliance Act contributes to cause injury. <i>Louis. & Nash. R. R. v. Layton</i>	617
10. <i>Georgia Code, 1910, § 6116</i> . Affirmance of conviction by divided court, some of justices not hearing argument, but with notice and opportunity to defendant for reargument, not violation of due process. <i>Lott v. Pittman</i>	588
11. <i>Georgia Laws 1914, p. 271</i> . Authorizing reconstruction of county bridges and granting of new franchises. Street railroad which surrendered perpetual, unconditional fran- chise to use old county bridges in exchange for temporary revocable grant, cannot enjoin authorities from constructing new bridges under act and charging company one-third of cost for use of new structures. <i>Rome Ry. & Lt. Co. v.</i> <i>Floyd County</i>	257

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12. <i>Iowa Workmen's Compensation Law</i> . Constitutionality sustained. <i>Hawkins v. Bleakly</i>	210
13. <i>Kansas Laws 1903, c. 356; Gen. Stats. 1909, §§ 4676-4683</i> . Requiring safeguards about dangerous machinery, abolishing contributory negligence, assumption of risk and fellow servant doctrine, and shifting burden of proof. Does not violate due process when applied to employee who contracted to provide safeguards. <i>Bowersock v. Smith</i>	29
14. Statute applies to corporations as well as individuals. <i>Id.</i>	
15. <i>Owensboro, Ky., Ordinances</i> . Granting franchise to construct and operate water works. Whether franchise granted for definite term or duration of corporate existence. <i>Owensboro v. Owensboro Water Works Co.</i>	166
16. <i>Missouri Rev. Stats., 1909, § 7042</i> . Requiring power of attorney authorizing Insurance Superintendent to accept personal service for foreign corporations doing business, and while they have liabilities outstanding, in the State. Consent held to cover service in action on policy issued, and insuring buildings, in Colorado. <i>Penna. Fire Ins. Co. v. Gold Issue Mining Co.</i>	93
17. Such construction does not deprive of due process, though party taken by surprise. <i>Id.</i>	
18. <i>New York Workmen's Compensation Law</i> . Constitutionality sustained. <i>New York Cent. R. R. v. White</i>	188
19. <i>Oregon, Gen. Laws 1913, c. 102</i> . Limiting hours of employment in factories and providing extra pay for over-time. Upheld as valid state, health regulation. <i>Bunting v. Oregon</i> .	426
20. <i>Tennessee Acts 1903, c. 501</i> , making nonresident personal representatives of decedents leaving assets in State citizens thereof for purposes of suit, does not exclude resort to federal court. <i>Memphis Street Ry. v. Moore</i>	299
21. As construed by state supreme court, purpose of act is to permit them to sue <i>in forma pauperis</i> . <i>Id.</i>	
22. <i>Texas Rev. Stats., Art. 1206</i> . Suit against corporation not abated by dissolution pending appeal. <i>Pease v. Rathbun-Jones Co.</i>	273

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23. <i>Texas Crim. Stats., 1911, c. 3, Arts. 538, 539</i> —"Bucket Shop" Law. Contracts for purchase and sale of cotton for future delivery on cotton exchange not repugnant to, when actual delivery <i>bona fide</i> intended by parties. <i>Bond v. Hume</i>	15
24. <i>Id. Arts. 545, 546</i> , shifting burden of proof in criminal prosecutions under statute, afford no justification for holding, in action to enforce contract, that averments of petition must be taken to be untrue. <i>Id.</i>	
25. <i>Washington Workmen's Compensation Act</i> . Constitutionality sustained. <i>Mountain Timber Co. v. Washington</i>	219
26. <i>Id. Section 4</i> , making it a misdemeanor to deduct premium from wages, not construed, in absence of constraining state construction, to prohibit employers and employees, in agreeing upon terms of employment, from taking into consideration fact that employer is a contributor to state insurance fund. <i>Id.</i>	
27. <i>Id.</i> Injury to employee, held not engaged in interstate commerce, remediable only as provided by Washington Compensation Act. <i>Raymond v. Chicago, Mil. & St. P. Ry.</i>	43
28. <i>Washington, Rem. & Ball. Ann. Code, § 789</i> . Seven-year statute of limitations inapplicable when claim of title accompanying possession not made in good faith. <i>Baker v. Schofield</i>	114
29. <i>West Virginia Acts 1915, c. 26</i> . Rights of candidates for nomination for U. S. Senator in primary under West Virginia primary election law derived wholly from state law; conspiracy to debauch primary therefore not within Criminal Code, § 19. <i>United States v. Gradwell</i>	476

STOCKS:

1. National bank directors may empower cashier to sell corporate shares acquired by bank as result of loan made upon them as security. <i>Union Natl. Bank v. McBoyle</i>	26
2. Validity of contract for purchase and sale for future delivery on New York Cotton Exchange. <i>Bond v. Hume</i>	15

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Interposition of Congress to prevent. See <i>Wilson v. New</i>	332
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SUBSTITUTION OF PARTIES. See **Abatement and Revivor.** PAGE

SUPERSEDEAS. See **Sureties.**

SURETIES:

1. Federal courts sitting in equity may render summary judgment against sureties on appeal bonds. *Pease v. Rathbun-Jones Co.* 273
2. *Quære:* Is notice always essential in such cases? *Id.*
3. *Quære:* Whether Rule 29 of this court—Rule 13, 5th C. C. A.—requires sureties to pay deficiency decrees in foreclosure cases, or merely costs and damages resulting from the delay caused by the appeal? *Id.*
4. Since payment by principal obligor ends liability of the sureties, the latter cannot complain of a money decree against them, which has been paid by one of them apparently acting for the principal, in absence of a showing that he paid in satisfaction of his own liability. *Id.*

SURRENDER. See **Franchise and License, 7-8.**

TARIFF ACT:

1. The Act of 1913, § IV, par. J, sub-sec. 7, grants a discount of 5 per cent. on goods imported in American bottoms. *Five Per Cent. Discount Cases* 97
2. A proviso to the clause granting the discount that treaty rights shall not be impaired, construed as intended to respect treaty privileges with which the grant would be in conflict, not by extending discount to goods imported in foreign vessels but by suspending the grant entirely while the treaty provisions exist. *Id.*

TAXATION:

- Suit to enjoin tax. See **Abatement and Revivor.**
 The Constitution does not require a separate exercise of the state powers of regulation and taxation. *Mountain Timber Co. v. Washington* 219

TEXAS "BUCKET SHOP" LAW:

- Construed. *Bond v. Hume* 15

TIME:

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In computing time "from and after" a day named, that day should ordinarily be excluded, but not where the purpose of those whose words are construed will be defeated. *Owensboro v. Owensboro Water Works Co.* 166

"TRANSPORTATION." See **Interstate Commerce Acts**, 3.

TREATIES:

1. Reciprocal commercial treaty agreements between this country and foreign nations held not intended to be impaired by Tariff Act of 1913 granting discount on goods imported in American bottoms. *Five Per Cent. Discount Cases* 97
2. The Treaty with Prussia, 1799, Art. 19, makes no provision for indefinite stay of vessels, and includes prizes only when in charge of vessels of war. *The Appam* 124
3. The treaty provides only for temporary asylum for certain purposes and was not intended to make an American port a harbor of refuge for captured prizes of a belligerent government. *Id.*

TUCKER ACT:

Action under, for damages to private land resulting from overflow caused by improvement of navigable waters. *United States v. Cress.* 316

VENDOR AND VENDEE:

Foreclosure of vendor's lien. See **Foreclosure.**

1. In a suit to determine title to land, a decree by consent that title at the commencement of suit was, and has remained, in one party, and that the title be quieted in him, and providing that the decree shall operate as a release to him from the opposing parties, is not to be construed as a conveyance divesting their title but as an adjudication that they had none. *Donohue v. Vosper* 59
2. Such a decree therefore does not disturb the relation of warrantor and warrantee existing between two parties who consented to it and against whom it operated, and when one of them afterwards acquires title from the successful party, the covenant attaches by estoppel in favor of the warrantee. *Id.*

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3. The question being whether a decree operated to terminate the relation of warrantor and warrantee between two parties, their conduct in dealing with the property afterwards is *held* to be a practical construction that it did not. *Id.*

VERDICT. See **Instructions to Jury; Jury.**

WAGES:

Regulation of. See **Constitutional Law**, XII, (2); XIV, (4), 8.

Oregon law of 1913, an hours of service, not a wage, law.

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WAIVER. See **Franchise and License**, 7-8.

1. When parties in Circuit Court of Appeals, to shorten litigation by bringing merits directly to this court, consent to final judgment in lieu of one remanding for re-trial, such consent is not a waiver of errors relied on. *Thomsen v. Cayser* 66

2. Objection that a summary judgment against sureties on an appeal bond was not preceded by notice is waived by invoking trial court's decision on the merits upon an undisputed state of facts. *Pease v. Rathbun-Jones Co.* 273

3. Objection going to form of District Court's decree, if not taken on a first appeal to the Circuit Court of Appeals, may be deemed waived on a second. *Id.*

4. Error in suing out writ of error in name of plaintiff after he had died *held* waived by stipulation of counsel that administrator might be substituted. *McCluskey v. Marysville & Northern Ry.* 36

WAR. See **Admiralty; International Law.**

WARRANTY. See **Vendor and Vendee.**

WATERS AND WATER RIGHTS:

As to laws governing rights of way over public land for ditches, canals, etc., and relation to development of water power. See **Public Lands**, 2-9.

1. The servitude to the interests of navigation of private lands forming the banks and bed of a stream is a natural

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servitude, confined to such streams as in their natural condition are susceptible of valuable public use in navigation, and confined to the natural condition of such streams. *United States v. Cress* 316

2. When navigable streams are improved by the federal government by means of locks and dams which raise the water above its natural level, they remain navigable waters of the United States for all purposes of federal jurisdiction and regulation. *Id.*

3. The power of the federal government to improve navigable streams in the interest of commerce must be exercised, when private property is taken, in subordination to the Fifth Amendment. *Id.*

4. When such improvement subjects private lands to periodical overflows, injuring though not destroying their value, the United States is liable *ex contractu* to make compensation. *Id.*

5. Upon payment, the United States acquires an easement to overflow the land, the fee, however, remaining in the private owner. *Id.*

6. The right to have the water of a non-navigable stream flow away from riparian land without artificial obstruction is not a mere easement or appurtenance, but exists by the law of nature as an inseparable part of the land itself. *Id.*

7. The acts of Congress providing or recognizing that rights to the use of waters in streams running through public lands may be acquired in accordance with local laws do not authorize the appropriation of rights of way through lands of the United States. *Utah Power Co. v. United States*. 389

8. For a case in which the right to attack a state water adjudication was lost by laches and estoppel. See *Enterprise Irrig. Dist. v. Canal Co.* 157

WATER WORKS:

Construction of ordinances granting franchise to construct and operate water works. *Owensboro v. Owensboro Water Works Co.* 166

WORKMEN'S COMPENSATION LAWS:

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New York Law upheld. *New York Cent. R. R. v. White* . . . 188Iowa Law upheld. *Hawkins v. Bleakly* 210Washington Law upheld. *Mountain Timber Co. v. Wash-
ington* 219

Injuries to an employee while laboring in a tunnel under construction in Washington to shorten carrier's main line between interstate points (the tunnel never having been used in interstate commerce) are not remediable under the Federal Employers' Liability Act but only under the Washington Workmen's Compensation Act. *Raymond v. Chicago, Mil. & St. P. Ry.* 43

WRIT. See **Execution; Injunction.**Of error. See **Jurisdiction; Procedure.**Summons. See **Service of Process.****WRITINGS.** See **Construction; Computation of Time.**







