

INDEX.

ACCOMPLICES. See Criminal Law , 2.	PAGE
ACTS OF CONGRESS. See Table at front of volume; Statutes .	
ADEQUATE REMEDY AT LAW. See Equity , 10, 12, 14-16.	
ADMIRALTY:	
1. Abandonment of voyage to avoid seizure as prize justified where war rightly anticipated and voyage abandoned before actual declaration. <i>The Konprinzessin Cecilie</i>	12
2. In such case no cause of action arises from failure to deliver freight, although, <i>semble</i> , risk did not fall within exception of "arrest and restraint of princes, rulers or people" in bills of lading. <i>Id.</i>	
3. Where contract not made in expectation that war may intervene before delivery, peril of capture affords implied exception to carrier's undertaking, contract being silent on subject. <i>Id.</i>	
4. Carrier's liability cannot depend upon nice calculation that delivery might have been made and capture avoided if voyage had gone on. <i>Id.</i>	
5. Question whether Ohio Workmen's Compensation Act, as applied to interstate steamship company, conflicts with federal maritime jurisdiction, not considered because not presented to lower courts. <i>Valley S. S. Co. v. Wattawa</i>	202
6. Where injury occurs in interstate maritime transportation, fact that vessel is owned and operated by interstate railroad no basis for application of Federal Employers' Liability Act. <i>Southern Pacific Co. v. Jensen</i>	205
7. The word "boats" in that act refers to vessels which are but part of railroad's extension or equipment as understood and applied in common practice. <i>Id.</i>	

ADMIRALTY—*Continued.*

PAGE

8. Under Art. III, § 2, and Art. I, § 8, of Constitution, Congress has paramount power to fix and determine maritime law which shall prevail throughout country. *Id.*

9. In absence of controlling statutes, general maritime law as accepted by federal courts constitutes part of national law applicable to matters within admiralty and maritime jurisdiction. *Id.*

10. Power of States to affect general maritime law, existing to some extent under Constitution and Judiciary Act of 1789, may not contravene essential purposes of act of Congress, work material prejudice to characteristic features of general maritime law or interfere with its proper harmony and uniformity in international and interstate relations. *Id.*

11. Rights and liabilities arising from injury to stevedore while unloading ship at wharf in navigable waters, within maritime jurisdiction. *Id.*

See also *Clyde S. S. Co. v. Walker*. . . . 255

12. New York Workmen's Compensation Act, as applied to such case, conflicts with Constitution; remedies provided by it unknown to common law and hence not among common-law remedies saved to suitors from the exclusive admiralty jurisdiction by Judiciary Act of 1789, § 9. *Id.*

13. The act also inconsistent with policy of Congress to encourage investments in ships, manifested by Acts of 1851 and 1884, which declare limitation upon liability of owners. *Id.*

14. Appearance in answer to citation issued upon libel *in personam* does not empower court to introduce new claims of new claimants without service on defendant. *Ex parte Indiana Transp. Co.* 456

15. Exception to amended libel upon ground that it is contrary to law in joining new libellants with separate causes of action and because defendant cannot be called on to answer as to additional libellants, not general appearance as to them, and sufficiently sets up want of service. *Id.*

16. Pleading to merits after objection to jurisdiction overruled, no waiver. *Id.*

ADMISSIONS. See **Equity, 22; Taxation, 7.**

By applicant for patent conceding priority, etc., of another's invention. *Ewing v. Fowler Car Co.* 1

AGENCY:

PAGE

Ratification. See **Public Lands**, 11.

ALIENATION, RESTRAINT ON. See **Indians**, 5, 7.

ALLOTMENTS. See **Indians**.

AMENDMENT:

1. Amendment of General Order in Bankruptcy No. XXXII 641
2. Right to challenge jurisdiction over person of defendant not waived when court, *sua sponte*, directs plaintiff to amend complaint to disclose citizenship more fully before hearing on jurisdictional question. *Meisukas v. Greenough Coal Co.* . . . 54
3. Where offer was made at trial to amend answer by setting up claim of federal right and was rejected by state courts, under state practice, as coming too late, this court will not review where there was no purpose to evade claim of federal right. *Nevada-California-Oregon Ry. v. Burrus* 103
4. Appearance in answer to libel *in personam* does not empower court, without service on defendant, to permit new claims of new claimants, each claim alleging separate cause of action, to be introduced by amendment. *Ex parte Indiana Transp. Co.* 456
5. If declaration alleges that injuries to decedent caused him to "suffer intense pain," amendment at trial adding that he endured "conscious pain and suffering" does not introduce new cause of action. *Washington Ry. & Elec. Co. v. Scala.* 630

ANTI-TRUST ACT:

1. Established principles governing right of stockholder to sue on behalf of corporation when it refuses, and confining him to equity forum, apply when alleged injury to corporation arises under Sherman Act. *United Copper Co. v. Amalgamated Copper Co.* 261
2. Private party cannot maintain suit for injunction under § 4 of Sherman Act. *Paine Lumber Co. v. Neal* 459
3. Enjoining labor unions. See **Equity**, 21.

APPEAL AND ERROR. See **Jurisdiction; Procedure**, 1, 2.

APPEARANCE. See **Jurisdiction, I.**

PAGE

ARIZONA:

1. Extension of power of Corporation Commission to regulation of water systems belonging to individuals, as provided in the Public Service Corporation Act of Arizona, is permitted by state constitution, Art. XV. *Van Dyke v. Geary* . . . 39

2. Art. IV, pt. 2, § 13, of Arizona Constitution, requiring that acts of legislature shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in title, is sufficiently complied with by Public Service Corporation Act, although act applies to individuals as well as corporations, while its title refers to corporations and makes no mention of individuals. *Id.*

ASSESSMENT. See **Taxation.**

ASSIGNMENT. See **Contracts, 4.**

ASSUMPTION OF RISK. See **Employers' Liability Act; Instructions to Jury; Workmen's Compensation Laws.**

BANKRUPTCY:

Amendment of General Order in Bankruptcy No. XXXII, as to mode of opposing discharge or composition. 641

BANKS. See **National Banks.**

BILL OF LADING. See **Interstate Commerce Acts, II.**

BONDS. See **Mortgage.**

Securing construction contracts with United States. See **Sureties.**

Injunction bonds. See **Equity, 3-5.**

Merger of guaranties of corporate bonds in judgment recovered by trustee for bondholders; and proceedings for enforcing judgment as lien against guarantor's property, foreclosed and sold under another mortgage. See *Hamer v. New York Rys. Co.* 266

BOUNDARIES. See **Public Lands, 3-6.**

BRIDGES:

Power of State to impose duty upon owners of irrigation canals to construct bridges over them. *Farmers Irrig. Dist. v. O'Shea* 325

CAPITAL STOCK:

PAGE

Estimating value of railroad corporation's capital stock for purposes of taxation. See **Taxation.**
 Under the franchise tax provisions of Kentucky (Ky. Stats., §§ 4077-9) relating to railroad and other corporations exercising special or exclusive franchises, what is termed the "capital stock of the corporation" includes its entire property, tangible and intangible. *Greene v. Louis. & Interurban R. R.* 499
 See also *Louis. & Nash. R. R. v. Greene* 522
Illinois Cent. R. R. v. Greene 555

CARMACK AMENDMENT. See **Interstate Commerce Acts, II.**

CARRIERS. See **Employers' Liability Act; Franchise; Hours of Service Act; Railroads; Safety Appliance Act; Street Railroads; Workmen's Compensation Laws.**

Measure of damages in contracts for transportation. See **Damages, 1-3.**

Contracts of shipment; construction and effect; duty to read before signing; relation to filed rates, etc. See **Interstate Commerce Acts, II.**

Status of caretakers of livestock traveling on drovers' passes, and construction and effect of contracts with carrier. See **Interstate Commerce Acts, II.**

Federal regulation. See **Interstate Commerce Acts.**

State regulation of water rates. See **Water Rates.**

State Regulation of Rates and Service:

1. The "blow post" law of Georgia, which requires railroads to check speed of trains before public road crossings, held unconstitutional as applied to the case. *Seaboard Air Line v. Blackwell* 310
2. Arkansas freight and passenger rates held confiscatory. *Rowland v. St. Louis & S. F. R. R.* 106
3. While case involving validity of rates was pending in trial court, railroad, for purpose of allocating its expenses to intrastate and interstate freight and passenger traffic, caused minute and specific reports to be made by its employees of all facts that would throw light upon the problem. Held not objectionable as hearsay; and that the 2 months of

CARRIERS—*Continued.*

PAGE

investigation afforded basis for argument as to constant conditions. *Id.*

4. Possible inaccuracy of apportioning general road maintenance expenses between freight and passenger service by engine-ton miles *held* not to affect result. *Id.*

5. Whether adoption of low rates fixed by State would be followed by increased intrastate traffic and revenue, *held* too remote and conjectural to disturb conclusion. *Id.*

6. A state "long and short haul" provision, applicable only to intrastate traffic and which allows shipper an absolute right to recover overcharges, sustained. *Missouri Pac. Ry. v. McGrew Coal Co.* 191

7. Order of Mississippi Railroad Commission requiring restoration of certain passenger trains to service *held* violative of due process. *Miss. R. R. Comm. v. Mobile & Ohio R. R.* 388

8. Reasonableness of requiring operation of specified trains cannot depend upon relation of money return to out-of-pocket cost, i. e., immediate outlay for wages and fuel, involved in their operation. *Id.*

9. In determining whether rates fixed by State are confiscatory because not yielding proper return, basis of calculation is fair value of property used in service of public. *Darnell v. Edwards.* 564

10. Strong presumption in favor of rates fixed by an experienced administrative body after full hearing. *Id.*

11. Rates should not be held too low because they proved unremunerative during a brief period, when conditions for traffic were abnormally poor and little effort made to improve them. *Id.*

12. In determining adequacy, circumstances that road has been built in unfavorable locality, and nature and value of service actually rendered to public, should be considered. *Id.*

13. *Seem*, that, in testing validity of rates affecting a limited class of traffic in which railroad is for the time engaged, extra cost of construction, not justified by that traffic but

CARRIERS—*Continued.*

PAGE

incurred with view to extending road ultimately into more lucrative territory, should not be accounted as part of fair value by which rates must be gauged. *Id.*

14. In absence of fair test of rates challenged as confiscatory, and in presence of some doubt of their adequacy, dismissal of bill should not be absolute, but without prejudice to another suit, in case they should prove confiscatory when fully and fairly tested. *Id.*

See **Water Rates**, 5.

15. Where enforcement of state rates is enjoined and shippers and travelers prohibited from suing carrier for failure to keep them in effect, District Court, after reversal by this court with directions to dismiss bill, cannot inquire into and assess damages sustained by shippers and travelers by reason of temporary and permanent injunctions, for purpose of fixing liability on temporary injunction bonds, at least as to persons who did not appear. *St. Louis, I. Mt. & So. Ry. v. Mc Knight*..... 368

16. Ancillary suit cannot be maintained to enjoin such persons from suing in state court (after dismissal of original bill) to recover excess rates collected by carrier during the restraint. *Id.*

CAUSE OF ACTION. See **Amendment**, 5.

CIRCUIT COURTS OF APPEALS.

Setting up new defense in. See **Res Judicata**.

CITY ORDINANCES. See **Franchise**.

CLOUD UPON TITLE. See **Equity**, 9, 14, 17-19.

COAL AND COAL CARS. See **Interstate Commerce Acts**, I, 1.

COLOR OF TITLE. See **Public Lands**, (4).

COMMERCE. See **Admiralty**; **Anti-Trust Act**; **Constitutional Law**, III; **Interstate Commerce**; **Interstate Commerce Acts**.

COMMON CARRIERS. See **Admiralty; Carriers; Inter- state Commerce Acts.** PAGE

COMMON LAW:

The remedy of the New York Workmen's Compensation Act is unknown to common law and hence not among common-law remedies saved to suitors from exclusive admiralty jurisdiction by Judiciary Act of 1789, § 9. *Southern Pacific Co. v. Jensen*. 205

COMMUNITY GRANTS. See **Public Lands (4).**

COMPUTATION OF TIME. See **Time.**

CONDEMNATION. See **Eminent Domain.**

CONFLICT OF LAWS. Liability for interest. See **Sureties, 3-5.**

CONFORMITY ACT:

Does not require resort to demurrer in place of motion to quash for attacking service in District Court, even though state procedure does. *Meisukas v. Greenough Coal Co*. 54

CONGRESS. See **Constitutional Law; Statutes.**

For acts of Congress cited. See Table at front of volume. Reports of committees, as aid in construction. See **Statutes, I, 3.**

CONSPIRACY OF LABOR UNIONS. See **Anti-Trust Act; Equity, 21.**

CONSTITUTIONAL LAW:

- I. Judicial Power—State and Federal, p. 675.
- II. Admiralty and Maritime Jurisdiction, p. 675.
- III. Commerce Clause, p. 676.
- IV. Contract Clause, p. 677.
- V. Full Faith and Credit Clause, p. 677.
- VI. National Banks. Federal Reserve Board, p. 678.
- VII. Fifth Amendment; Self-Incrimination; Presence at View; Due Process, p. 678.
- VIII. Sixth Amendment. See VII, *supra*.
- IX. Eleventh Amendment; Suing State Officers, p. 679.

CONSTITUTIONAL LAW—Continued.

PAGE

X. Fourteenth Amendment:

- (1) General, p. 679.
- (2) Notice and Opportunity for Hearing, p. 680.
- (3) Regulation of Rates and Public Service, p. 680.
- (4) Abolishing Private Business, p. 682.
- (5) Reserved Power over Corporations, p. 682.
- (6) Taxation, p. 682.
- (7) Equal Protection of the Laws, p. 682.

XI. Who may Question Constitutionality of Statutes, p. 682.

XII. Adopting State Construction and Findings, p. 683.

For constructions of the Arizona Constitution, as to regulation of public utilities, and embracing in an act only one subject, expressed in its title. See **Arizona**.

For constructions of constitutional and statutory provisions of Kentucky governing assessment and taxation of railroad "capital stock" and "franchises." See **Taxation**.

I. Judicial Power—State and Federal. See Jurisdiction.

1. A state court, having obtained jurisdiction over defendant, has jurisdiction over an action for personal injuries suffered by him while performing work under a contract with the United States. *Ohio River Contract Co. v. Gordon* 68

2. An action for personal injuries, being a transitory one, may be maintained in a state court notwithstanding the injuries occurred on a reservation under exclusive federal jurisdiction. *Id.*

3. That the courts of the United States have power to prevent systematic discrimination in taxation by state authorities and may enforce the rights of the complainant in that regard under the state constitution and laws, although the state courts deem themselves without power to afford judicial relief in such cases, see
Greene v. Louis. & Interurban R. R. 499
Louis. & Nash. R. R. v. Greene 522
Illinois Cent. R. R. v. Greene 555

II. Admiralty and Maritime Jurisdiction.

1. Power of States to affect general maritime law, while existing to some extent under Constitution and Judiciary Act of 1789, § 9, Jud. Code, §§ 24, 256, may not contravene essential purposes of an act of Congress, work material

CONSTITUTIONAL LAW—*Continued.*

PAGE

prejudice to characteristic features of general maritime law or interfere with harmony and uniformity of that law in its international and interstate relations. *Southern Pacific Co. v. Jensen* 205

2. Right of stevedore or longshoreman, or beneficiary, to recover for personal injuries or death, suffered while unloading ship at wharf in navigable waters, comes within maritime jurisdiction, and New York Workmen's Compensation Law may not constitutionally govern the case. *Id.*
Clyde S. S. Co. v. Walker 255

3. Objection that Ohio Workmen's Compensation Law, as applied to interstate steamship company, invades the federal maritime jurisdiction, raised but held not sufficiently presented in *Valley S. S. Co. v. Wattawa* 202

III. Commerce Clause.

1. In absence of special showing to contrary, state regulation affecting interstate railroad, but only in relation to intrastate traffic, which forbids charging more for shorter haul than for longer one for same class of freight over any portion of road within State, and which allows shipper absolute right to recover charges collected in violation, is consistent with commerce clause. *Missouri Pac. Ry. v. McGrew Coal Co.* 191

2. In absence of congressional legislation, power of a State to regulate relative rights and duties of employers and employees, although engaged in interstate commerce, is settled beyond contention. *Valley S. S. Co. v. Wattawa* 202

3. The Ohio Workmen's Compensation Law, regulating these relations, upheld as applied to steamship company engaged in interstate commerce. *Id.*

See **Admiralty and Maritime Jurisdiction**, II, *supra*.

4. Congress having fully covered subject of liability and obligation of interstate railroads to compensate employees for personal injuries in interstate commerce, State has no power to regulate the subject, as attempted by workmen's compensation acts. *New York Cent. R. R. v. Winfield* . . . 147
Erie R. R. v. Winfield 170
New York Cent. R. R. v. Tonsellito . . . 360

See **Employers' Liability Act**, (1).

CONSTITUTIONAL LAW—Continued.

PAGE

5. State law requiring railroads to check the speed of trains at public highways, under such circumstances as will work an unreasonable interference with interstate traffic, is direct and unconstitutional interference with such commerce and void. *Seaboard Air Line v. Blackwell* 310
6. It is essential character of commerce which determines whether it is interstate or intrastate, and not the accident of through or local bills of lading. *Western Oil Refg. Co. v. Lipscomb* 346
7. Where commodities are in fact destined from one State to another, a rebilling or reshipment en route does not of itself break the continuity of the movement or require that any part be classified differently from remainder. *Id.*
8. A nonresident cannot be subjected to a state occupation or privilege tax when his only business in the State consists in the obtaining of orders for goods shipped from without and delivering them to his customers within the State before goods acquire local status. *Id.*
- IV. Contract Clause.**
1. To sustain a claim that state regulations of railway rates violate this clause, necessary that special protecting contract be shown by record. *Missouri Pac. Ry. v. McGrew Coal Co.* 191
2. Municipality cannot, by contract with street railway company, foreclose exercise of police power of State to regulate rates and transfer privileges, unless clearly authorized to do so by supreme legislative power. *Puget Sound Traction Co. v. Reynolds* 574
3. Where city street railway franchise ordinances granted right at any and all times to make reasonable rules and regulations for management and operation of lines, proviso that such rules and regulations shall not conflict with laws of State means laws as they may be enacted from time to time. *Id.*
- V. Full Faith and Credit Clause.**
1. A decision of a state court upholding a judgment of another State raises no question in this court under this clause. *Chicago Life Ins. Co. v. Cherry* 25

CONSTITUTIONAL LAW—Continued.

PAGE

VI. National Banks; Federal Reserve Board.

1. Implied power of Congress to confer particular function upon a national bank is to be tested, not by nature of function viewed by itself, but by its relations to all functions and attributes of bank considered as an entity; necessity or appropriateness of function should be considered with reference to situation to which it relates; and, as to what is necessary or appropriate, a court should not substitute its discretion for the discretion of Congress. *First Natl. Bank v. Union Trust Co.* 416

2. Circumstance that a function is of class subject to state regulation does not prevent Congress from authorizing national bank to exercise it; nor would it lie with the state power to forbid this. *Id.*

3. A business not inherently such that Congress may empower national banks to engage in it may nevertheless become appropriate to their functions if, by state law, state banking corporations, trust companies, or other rivals of national banks are permitted to carry it on. *Id.*

4. Section 11 (k) of the Act of Dec. 23, 1913, establishing the Federal Reserve Board, in authorizing board to permit national banks, when not in contravention of state or local law, to act as trustees, executors, administrators, or registrars of stocks and bonds under rules and regulations to be prescribed by board, is not objectionable as conferring legislative power, or otherwise obnoxious to Constitution. *Id.*

VII. Fifth Amendment; Self-Incrimination; Presence at View; Due Process.

1. Fifth Amendment does not relieve witness from answering merely on his own declaration or judgment that an answer might incriminate him; whether he must answer is determinable by the trial court in the exercise of sound discretion; and unless there is reasonable ground, as distinct from remote or speculative possibility, to apprehend that direct answer may prove dangerous to witness, answer should be compelled. *Mason v. United States* 362

2. In absence of manifest error, ruling of trial judge upon witness' objection that an answer may incriminate him, will not be reversed by this court. *Id.*

CONSTITUTIONAL LAW—Continued.

PAGE

3. View of scene of murder, by trial judge, does not deprive the accused of constitutional right, carried to him by the Philippine Code, to "meet the witnesses face to face," where view is conducted in presence and with consent of his counsel, and no testimony is taken, and no improper remarks are addressed to judge. *Valdez v. United States* 432
4. Right of accused to be present during inspection may be waived by his counsel; but, even when right not waived, his absence will not warrant reversal if no prejudice resulted. *Id.*
5. Appearance in answer to citation issued upon a libel *in personam* does not empower the court to introduce new claims of new claimants without service on the defendant. *Ex parte Indiana Transp. Co.* 456
6. In view of power reserved to add to, alter, amend or repeal the act granting land to the Atlantic and Pacific Railroad Company (July 27, 1866), and of grantee's failure to comply with conditions as to construction, Congress could lay upon grantee cost of surveying lands granted and require payment thereof as a condition to issuance of patents, as was in fact done, in respect of said company, by the general provision in Act of July 31, 1876. *Santa Fe Pac. R. R. v. Lane* 492

VIII. Sixth Amendment.

Confronting witnesses; view in absence of accused. See VII, *supra*.

IX. Eleventh Amendment; Suing State Officers.

1. A suit to restrain state officials from enforcing a state statute in violation of constitutional rights is not a suit against the State, and this whether the unconstitutionality inheres in the statute or is present only in the manner of executing it. *Greene v. Louis. & Interurban R. R.* 499
Louis. & Nash. R. R. v. Greene 522
Illinois Cent. R. R. v. Greene 555

X. Fourteenth Amendment.

- (1) *General.*
1. Where relief which might be granted under Amendment is same as that allowable under state constitution and

CONSTITUTIONAL LAW—Continued.

PAGE

laws, question whether Amendment is violated need not be passed upon. *Greene v. Louis. & Interurban R. R.* 499
Louis. & Nash. R. R. v. Greene. 522

(2) *Notice and Opportunity for Hearing.*

2. The claim that a money judgment by a state court violates due process for want of jurisdiction over defendant's person is not sustainable if jurisdiction was questioned by him by plea in abatement and by proceedings in state courts of review, and sustained after fair hearings before judgment became finally effective. *Chicago Life Ins. Co. v. Cherry* . . . 25

3. A judgment rendered in such circumstances, being sued upon in courts of another State, was sustained upon ground that matter of personal jurisdiction could not be reopened. *Held* that no violation of due process was involved, since original judgment satisfied due process and reason assigned for upholding it, if erroneous, amounted only to a mistake concerning law of the State in which judgment was rendered. *Id.*

4. Violation of due process for state supreme court to reverse case and render judgment absolute against party who succeeded in trial court, upon proposition of fact which was ruled to be immaterial at the trial and concerning which he had therefore no occasion and no proper opportunity to introduce his evidence. *Saunders v. Shaw* 317

(3) *Regulation of Rates and Public Service.*

5. One who uses his property in supplying large community with water thereby clothes such property with public interest and subjects business to public regulation. *Van Dyke v. Geary* 39

6. Fact that service is limited to part of a town does not prevent water system from being public utility. *Id.*

7. State regulation forbidding railroad to charge more for longer intrastate haul than shorter one for same class of freight over any portion of line within State, and which allows shipper absolute right to recover overcharges collected in violation, is consistent with Amendment. *Missouri Pac. Ry. v. McGrew Coal Co.* 191

8. State law requiring street car company to carry city detectives free when in the discharge of duty, *held* not an arbi-

CONSTITUTIONAL LAW— <i>Continued.</i>	PAGE
trary or unreasonable exercise of police power. <i>Sutton v. New Jersey</i>	258
9. Attempt by state commission to exercise power of regulation in such arbitrary and unreasonable manner as to prevent railroad from obtaining fair return upon its property invested in the public service is void under Amendment. <i>Miss. R. R. Comm. v. Mobile & Ohio R. R.</i>	388
10. Reasonableness of requiring carrier to operate specified trains cannot be made to depend upon relation of money return to "out-of-pocket" cost, i. e., immediate outlay for wages and fuel, involved in their operation. <i>Id.</i>	
11. Where state commission directs railroad to restore various trains, by separate orders, but proceeding is based on one citation and treated as entirety, action of the commission will be tested as a whole, and if unreasonable, generally, its reasonableness as to some part of the required service may not be determined. <i>Id.</i>	
12. In determining whether rates are confiscatory, calculation is based on fair value of property used in public service; therefore, when railroad which was originally constructed and owned by two is operated by one of them under arrangement whereby his interest will end and become vested in the other at expiration of a term of years, original investment of operating owner should not be charged in annual instalments against annual operating revenue, in determining whether rates fixed are remunerative. <i>Darnell v. Edwards</i>	564
13. Strong presumption in favor of rates fixed by an experienced administrative body after a full hearing. <i>Id.</i>	
14. For tests of value of property used for public and adequacy of rates imposed. See Carriers , 7-14.	
15. Where several street railway lines, built under distinct franchises, are owned and operated as one system, public regulation concerning car service and fares will not be held confiscatory because of its financial results to the line immediately affected, if system as a whole remains profitable; and clearly under such circumstances through service between the several lines may be required for single fare. <i>Puget Sound Traction Co. v. Reynolds</i>	574

CONSTITUTIONAL LAW—Continued.

PAGE

(4) *Abolishing Private Business.*

16. A law forbidding employment agents from receiving fees from the workers for whom they find places in effect destroys their occupation as agents for workers, and cannot be sustained upon ground that fees may be charged against employers. *Adams v. Tanner*. 590

17. The Washington Employment Agency Law, as construed by supreme court of State, is contrary to Amendment. *Id.*

(5) *Reserved Power over Corporations.*

18. A state law requiring a street car company to carry city detectives free while in the discharge of duty is a valid exercise of a reserved power to amend the company's charter. *Sutton v. New Jersey*. 258

19. In granting an irrigation district privilege of obtaining lands for canals, etc., by condemnation, State may impose absolute duty to bridge canals for benefit of adjacent land-owners, whether canal in question was acquired by condemnation or not. *Farmers Irrig. Dist. v. O'Shea*. 325

(6) *Taxation.*

20. State may not tax tangible assets of foreign corporation which are not within her borders. *Louis. & Nash. R. R. v. Greene* 522

21. Although fact that property is part of a system and has its uses only in connection with other parts may be considered by State in taxing that portion of the system which is within her borders, yet idea of organic unity must not be made means of unlawfully taxing property without State belonging to persons domiciled elsewhere. *Illinois Cent. R. R. v. Greene* 555

(7) *Equal Protection of the Laws.*

22. State law laying duty upon all owners of irrigation canals to construct bridges over them for benefit of abutting lands does not violate this clause in not embracing canals devoted to other uses. *Farmers Irrig. Dist. v. O'Shea*. . . . 325

XI. Who may question Constitutionality of Statutes.

1. When constitutional question, asserted as basis for juris-

CONSTITUTIONAL LAW—*Continued.*

PAGE

- diction of this court on direct appeal from District Court, is pleaded as resulting from execution of fraudulent scheme, the question ought not to be considered (*semble*), if charge of fraud fails. *Wall v. Parrot Silver Co* 407
2. By claiming the benefits of state laws the right to question their constitutionality may be waived. *Id.*

XII. Adopting State Construction and Findings. See also **Jurisdiction**, VII, VIII.

1. In absence of authoritative decision of supreme court of State to contrary, a contemporaneous construction of state constitution by an act of the legislature which is reasonable in itself and designed to accomplish obvious purpose of the constitutional provision in question should be followed by this court. *Van Dyke v. Geary* 39
2. The court is not called upon to consider state statutes passed for enforcement of provision in state constitution, when the latter as construed and applied in the case by state supreme court is self-executing and covers judgment in question. *Missouri Pac. Ry. v. McGrew Coal Co.* 191
3. Strong presumption in favor of rates fixed by experienced administrative body after full hearing. *Darnell v. Edwards* 564

CONSTRUCTION. See **Statutes; Franchise; Contracts; Time.**

- Of contracts for transportation. See **Interstate Commerce Acts**, II.
- Following state constructions and rulings. See **Jurisdiction**, VII, VIII.

CONTRACTS. See **Constitutional Law**, IV; **Franchise.**

- Liability for interest. See **Sureties**, 3-5.
- For transportation. See **Admiralty; Interstate Commerce Acts**, II.
- Of guaranty. See **Bonds.**
- Agreements of labor unions. See **Anti-Trust Act; Equity**, 21.
- Claims for labor and material under bonds accompanying federal construction contract. See **Sureties.**
1. The fact that townsite lots were purchased from owner of water system, which supplies water to its residents though

CONTRACTS—*Continued.*

PAGE

not to the public generally, with oral understanding that water could be secured for use on the lots, has no tendency to support claim that the system furnishes water only to particular individuals in pursuance of private contracts and is hence devoted exclusively to private use. *Van Dyke v. Geary*. 39

2. Agreement between applicant for preliminary homestead entry and his mother that he would make the entry, pay rent while it was being completed, and deed the land to her upon issuance of patent, is void under § 24 of Act of May 2, 1890. *Doepel v. Jones*. 305

3. Where, to secure right of way with immediate permission to proceed with construction work, railroad company's agent agreed in writing, subject to ratification by company, that it would later execute stipulation touching its rights and conduct in a forest reservation, *held*, that company's action in proceeding with the work with knowledge of manner in which permission had been obtained, and its acceptance of benefits, amounted to an implied ratification of agent's agreement. *Chicago, Mil. & St. P. Ry. v. United States*. . . 351

4. S, while conducting his business under supervision of creditors' committee, contracted with United States to do certain work, and gave bond with surety to secure claims for labor and materials. After part performance, he and the creditors formed corporation, which, without consent of the United States or surety, took over his business and thereafter continued to perform contract. *Held*, that in view of R. S., § 3737, the transfer could not effect assignment of contract, but amounted at most to subletting. *Illinois Surety Co. v. John Davis Co.* 376

See **Sureties.**

CONTRIBUTORY NEGLIGENCE. See **Employers' Liability Act; Instructions to Jury.**

CONVEYANCES. See **Contracts; Indians; Public Lands.**

CORPORATIONS:

Reserved power of State over. See **Constitutional Law, X, (5).**

Foreign, suits against. See **Jurisdiction, I, (2).**

CORPORATIONS—*Continued.*

PAGE

National banks, exercising private functions, under Reserve Bank Act. See **National Banks**. Quo Warranto to. *Id.* Regulation of rates and service. See **Carriers; Interstate Commerce Acts; Water Rates**.

Same as to street railways. See **Franchise**.

Interstate carrier's liability for personal injuries. See **Employers' Liability Act**.

Insurance companies, reserves of in Pennsylvania, with relation to federal excise tax. See **Corporation Tax Act**.

Taxing capital stock and franchise in Kentucky. See **Taxation**.

Railroad land grants and rights of way over national forests. See **Public Lands**, (1), (2).

Stockholder's suit, on behalf of corporation, based on Sherman Act. See **Stockholders**, 1.

Guaranty of corporate bonds and merger in judgment obtained by trustee. See **Judgments**, 7, 8.

Arizona Public Service Corporation Act, authorizing Corporation Commission to regulate rates of water systems owned by individuals. See **Arizona**.

CORPORATION TAX ACT:

A fire and marine insurance company in Pennsylvania not required to maintain reserve against unpaid losses by law of that State, and, therefore, amounts added by it to such a reserve may not be deducted in determining the company's taxable net income under Federal Corporation Excise Tax Act of 1909. *McCoach v. Insurance Co. of North America*.. 585

COURT OF PRIVATE LAND CLAIMS. See **Public Lands**, (4).

COURTS. See **Constitutional Law; Equity; Jurisdiction;** cross references under **Procedure**.

CRIMINAL LAW:

1. Compelling witness in criminal case to answer, where objected that an answer might incriminate him. See *Mason v. United States*..... 362

2. Testimony of accomplice who turns State's evidence in murder case not to be disregarded because of his base char-

CRIMINAL LAW—Continued.

PAGE

acter or his retractions and reiteration of charge, but must be accorded such weight as is due it when judged by circumstances, his character, etc. *Valdez v. United States* 432

3. View of scene of murder by trial judge in absence of accused consistent with constitutional right to "meet the witnesses face to face," where his counsel consent and are present, no testimony is taken, and no improper remarks addressed to judge. *Id.*

4. Right of accused to be present during inspection may be waived by his counsel; but, even if not waived, his absence will not warrant reversal if no prejudice resulted. *Id.*

DAMAGES. See Interstate Commerce Acts, II.

1. When bill of lading provides that damages shall be computed on basis of value of goods at place and time of shipment, difference between that value and value when delivered at new destination, to which they have been diverted under bill of lading by consent of parties, is a proper measure of damages suffered in transit. *Gulf &c. Ry. v. Texas Packing Co.* 31

2. Shipper discharges his duty to carrier when he sells damaged goods at new destination for best price obtainable. *Id.*

3. Where printed contract specified minimum or primary valuations with corresponding rates, and contained blanks for insertion of valuations by shipper if he desired to avail himself of alternative rates, and the blanks were left unfilled at execution but rate inserted and charged was according to primary valuations, *held* that these were the valuations adopted and that carrier's liability was so limited. *American Express Co. v. U. S. Horse Shoe Co.* 58

4. Finding a verdict and judgment excessive, Circuit Court of Appeals gave party who had recovered them option to submit to reversal or obtain affirmance by remitting part of judgment. The party having acted on the latter alternative, *held*, that his cross writ of error complaining of the reduction must be dismissed. *Woodworth v. Chesbrough.* 79

5. Damages assessed against railroad, *held* justified by stipulation touching railroad's rights and conduct in a forest reservation, which it agreed to execute, and sustained by

DAMAGES—*Continued.*

	PAGE
concurring decisions of courts below. <i>Chicago, Mil. & St. P. Ry. v. United States</i>	351
6. Damages arising from restraints of permanent injunction, afterwards reversed, are not recoverable on temporary injunction bonds, particularly where decree of permanent injunction expressly released further liability on the bonds. <i>St. Louis, I. Mt. & So. Ry. v. McKnight</i>	368
7. Rule 15, District Court for Eastern District of Arkansas, relates merely to damages recoverable on bonds accompanying restraining orders or temporary injunctions. <i>Id.</i>	
8. Where claims are all liquidated and amounts are not disputed, but only liability under bond, the surety, which has not elected to pay into court, is chargeable with interest from commencement of suit upon the aggregate of the claims allowed as reduced to the penal amount of the bond. <i>Illinois Surety Co. v. John Davis Co.</i>	376

DAWES COMMISSION. See **Indians**, 1-6.

DECREES. See **Judgments**.

DEED. See **Indians**, 5-7; **Public Lands**, 14.

DELEGATION OF LEGISLATIVE POWER. See **Constitutional Law**, VI, 4.

DEMURRER. See **Jurisdiction**, I, (3).

DESCENT AND DISTRIBUTION. See **Indians**, 5; **Public Lands**, 15-16.

DETECTIVES:

State may require street car company to carry city detectives free when in discharge of duty. *Sutton v. New Jersey* 258

DISCHARGE:

Of liability of surety. See **Sureties**.
 Amendment of General Order in Bankruptcy No. XXXII, concerning opposition to discharge or composition 641

DISCRIMINATION:

PAGE

Between interstate and intrastate rates. See **Interstate Commerce Acts**, I.

In valuation of railroad's property for purposes of state taxation. See **Taxation**.

DISTRICT COURTS. See references under **Construction**.

DISTRICT OF COLUMBIA COURTS. See **Jurisdiction**, III, (6); VI.

DOCUMENTS. See references under **Construction**.

DOING BUSINESS:

As to whether foreign corporation is doing business within a State, and validity of service of process. See **Jurisdiction**, I, (2).

DRAINAGE. See **Taxation**, 1.

EASEMENTS:

Rights of way over National Forests. See **Public Lands**, 9-11.

ELECTION:

1. State compensation law putting interstate carriers and employees to election between its provisions and Federal Employers' Liability Act, invalid. *Erie R. R. v. Winfield*.. 170

2. Appellee having elected in Circuit Court of Appeals to remit part of verdict and judgment held to be excessive, his cross writ of error complaining of reduction must be dismissed. *Woodworth v. Chesbrough*..... 79

EMINENT DOMAIN:

1. Existence of petitioning corporation, right to condemn, inability to agree on compensation, and necessity for appropriation, matters of local law. *Cuyahoga Power Co. v. Northern Realty Co.*..... 300

2. In granting irrigation district privilege of obtaining lands for canals by condemnation, State may impose duty to build bridges, without compensation, for access between adjacent lands intersected by canals, including those acquired by purchase. *Farmers Irrig. Dist. v. O'Shea*. 325

3. Nebraska Rev. Stats. 1913, § 3438, imposes this duty. *Id.*

EMPLOYERS' LIABILITY ACT:

PAGE

(1) *State Regulations in Conflict With.*

1. Obligations of interstate railroad carriers to employees injured in interstate commerce are regulated both inclusively and exclusively by Federal Employers' Liability Act; no room for state regulation, even in respect of injuries occurring without fault, as to which federal act provides no remedy. *New York Cent. R. R. v. Winfield*. 147
Erie R. R. v. Winfield 170
New York Cent. R. R. v. Tonsellito. 360

2. Award under New York Workmen's Compensation Act for injuries, not attributable to negligence, sustained by a railroad employee engaged in interstate commerce, held void. *New York Cent. R. R. v. Winfield*. 147

3. State cannot interfere with federal act either by putting carriers and employees to election between its provisions and those of a state compensation law or by imputing such election through statutory presumption. *Erie R. R. v. Winfield* 170

(2) *Interstate Commerce Vel Non. Maritime Cases.*

4. In leaving the yard after his day's work in switching interstate and intrastate commerce, employee is engaged in interstate commerce. *Erie R. R. v. Winfield* 170

5. Employee not engaged in interstate commerce when placing cars of carrier, containing its supply coal, upon unloading trestle within its yards and when interstate movement occurred as long as 17 days previously and the cars, with the coal, in the meantime, have remained upon sidings and switches in yards. *Lehigh Valley R. R. v. Barlow*. 183

6. Act applies only where injury occurs in railroad operations or their adjuncts; cannot be extended to interstate maritime transportation merely because vessel is owned and operated by interstate carrier by railroad. *Southern Pacific Co. v. Jensen* 205

7. "Boats" in the act refers to vessels which are but part of railroad's extension or equipment as understood and applied in common practice. *Id.*

8. Question whether employee was engaged in interstate commerce not discussed by this court where there was ade-

EMPLOYERS' LIABILITY ACT—Continued.

PAGE

quate evidence upon it for submission to the jury, no evident, material error in charge, where both courts below sustained judgment, and no special circumstances exist. *New York Cent. R. R. v. Tonsellito* 360

9. Employee injured while helping to raise wrecked car to rescue fellow employee and, coincidentally, to clear a track for interstate commerce, is engaged in interstate commerce. *Southern Ry. v. Puckett* 571

10. Employee engaged in interstate commerce when called aside by event which led to injury not within act. *Id.*

11. Defendant, incorporated as an ordinary railway company (as distinguished from a street railway company), operating a suburban electric railway largely on private right of way between District of Columbia and Maryland, as common carrier of passengers, held within act. *Washington Ry. & Elec. Co. v. Scala* 630

(3) *Negligence; Assumption of Risk; Fellow Servants.*

State regulation where injury occurs without fault. See (1), *supra*.

Instructions on assumption of risk and contributory negligence. See *Erie R. R. v. Purucker* 320

12. Where brakeman was thrown from moving train as result of couplers opening, held that, in view of the Safety Appliance Act, negligence might be inferred from mere opening of couplers. *Minn. & St. Louis R. R. v. Gotschall* . . 66

13. Employee does not assume risk attributable to negligence of co-employees until aware of it, unless so obvious that ordinarily prudent person would appreciate it. *Erie R. R. v. Purucker* 320

14. Whether railroad was negligent, whether employee assumed risk, and whether he was a mere volunteer, not discussed by this court where there was adequate evidence for submission to jury, no evident, material error in charge, where both state courts below have sustained judgment, and no special circumstances exist. *New York Cent. R. R. v. Tonsellito* 360

15. Finding no reason for disturbing the finding of both state courts as to defendant's negligence, and no exceptional

EMPLOYERS' LIABILITY ACT—Continued.	PAGE
circumstances, this court merely announces conclusion.	
<i>Southern Ry. v. Puckett</i>	571
16. Maintaining trolley pole closer to the track than others on the line, and so close that conductor cannot safely discharge duties, ample ground for finding of negligence by jury. <i>Washington Ry. & Elec. Co. v. Scala</i>	630
(4) <i>Diverse Citizenship and Removal.</i>	
17. Case under act cannot be removed to District Court upon ground of diverse citizenship. <i>Southern Ry. v. Puckett</i> .	571
(5) <i>Parent's Right of Action.</i>	
18. Father, who by state law is entitled to son's earnings during minority, may recover damages for son's death. <i>Minn. & St. Louis R. R. v. Gotschall</i>	66
19. Act does not give father right of action for expenses and loss of services in addition to son's right of action. <i>New York Cent. R. R. v. Tonsellito</i>	360
(6) <i>Jurisdiction of this Court.</i>	
20. Claim that Act should have governed will not give jurisdiction under § 237, Jud. Code, where action originally based upon state statutes, and Act not set up in answer or otherwise called to trial court's attention, and where state supreme court under state practice declined to pass upon claim because not presented to trial court. <i>Missouri Pac. Ry. v. Taber</i>	200
21. This court may review by writ of error judgment of Court of Appeals of District of Columbia in case arising under the Act of 1908, as amended. <i>Washington Ry. & Elec. Co. v. Scala</i>	630
(7) <i>Pleading and Limitations.</i>	
22. If declaration alleges that injuries caused decedent to "suffer intense pain," amendment at trial, that he endured "conscious pain and suffering," does not introduce new cause of action barred by 2 year limitation of the Act. <i>Washington Ry. & Elec. Co. v. Scala</i>	630

EMPLOYMENT AGENCIES:

Washington law, forbidding business of securing work for

EMPLOYMENT AGENCIES — <i>Continued.</i>	PAGE
unemployed in return for fees, held invalid under Fourteenth Amendment. <i>Adams v. Tanner</i>	590

ENCLOSURES:

Act against unlawful. See **Public Lands**, (4).

EQUAL PROTECTION OF THE LAWS. See **Constitutional Law**, X, (7).

EQUITY:

Equitable estoppel. See **Sureties**, 6.

Claim of trust under land patent. See **Public Lands**, 15, 16.

Jurisdiction in patent cases. See *Ewing v. Fowler Car Co.* 1

Stockholder's remedy—Sherman Act. See *United Copper Co. v. Amalgamated Copper Co.* 261

Testing adequacy of rates fixed by State. See **Carriers; Water Rates.**

Jurisdiction of state courts respecting orders of Interstate Commerce Commission. See **Jurisdiction**, V, (4).

1. *Injunction and damages. Multifariousness.* Suit by United States to enjoin construction and operation of railroad through national forest, in default of execution and filing of stipulation promised to Secretary of Interior, and for damages for timber cut and injuries resulting from such construction and operation, is cognizable in equity, and bill praying such relief not multifarious. *Chicago, Mil. & St. P. Ry. v. United States* 351

2. *Injunction in rate cases. Rights after reversal. Multiplicity of suits.* Where carrier, by reason of injunctions against state officials and shippers and travelers as a class, collects rates in excess of those fixed by law, and final decree is reversed by this court and mandate issued to dismiss bill, right of person, who did not appear, to sue for excess paid during restraint revives, and bill to restrain such persons from suing in state court for their overpayments is not maintainable as bill to prevent multiplicity of suits, in absence of common controverted question of fact or law. *St. Louis, I. Mt. & So. Ry. v. Mc Knight* 368

3. *Id. Damages under injunction bonds. Ancillary jurisdiction.* On the lack of power of District Court to assess dam-

EQUITY—*Continued.*

PAGE

ages sustained because of temporary and permanent injunctions, for purpose of fixing liability on temporary injunction bonds, after its final decree has been reversed with directions to dismiss bill, and the want of basis in a reference to that end to support ancillary suit to enjoin persons so damaged from asserting rights in state court. *Id.*

4. *Id.* Rule 15 of District Court for Eastern District of Arkansas relates merely to damages recoverable on bonds accompanying restraining orders or temporary injunctions. *Id.*

5. *Id.* Damages arising from restraints of permanent injunction, afterwards reversed, not recoverable on temporary injunction bonds, particularly where the decree of permanent injunction expressly released further liability on the bonds. *Id.*

6. *Injunction in rate cases. Dismissal without prejudice.* In absence of a fair test of rates challenged as confiscatory, and in presence of some doubt of their adequacy, dismissal of bill should not be absolute, but without prejudice, in case they should prove confiscatory when fully and fairly tested. *Darnell v. Edwards*. 564
Cf. Van Dyke v. Geary. 39

7. *Injunction. Against Interstate Commerce Commission.* District Court may not enjoin Interstate Commerce Commission from proceeding with hearing on claim of reparation for failure to furnish coal cars. *United States v. Illinois Cent. R. R.* 82
 See **Jurisdiction**, V, (4).

8. *Injunction. Trade secrets.* During taking of proofs in suit to enjoin former employee from using or disclosing secret processes, defendant may be enjoined from disclosing them to experts or other witnesses (counsel excepted), but trial judge in his discretion may reveal them to such persons, at such times, and under such precautions as he deems necessary in progress of cause. *Du Pont Powder Co. v. Masland* 100

9. *Injunction. In tax cases; state and local. Cloud on title. Multiplicity of suits.* Federal courts have jurisdiction to enjoin unlawful state tax proceedings, which cloud plaintiff's

EQUITY—*Continued.*

PAGE

- title and threaten irreparable injury and multiplicity of suits; this applies to state as well as local taxes. *Greene v. Louis. & Interurban R. R.* 499
- Louis. & Nash. R. R. v. Greene.* 522
- Illinois Cent. R. R. v. Greene* 555
10. *Id. Inadequate legal remedy.* Section 162, Ky. Stats., does not afford adequate remedy against discriminatory assessments for both state and local taxes. *Id.*
11. *Id. Multiplicity of suits.* When bill seeks relief as to state and local taxes based on same assessment, and adequate legal remedy exists as to former class only, equity will retain and dispose of entire case, doing justice completely and avoiding multiplicity of suits. *Greene v. Louis. & Interurban R. R.* 499
12. *Id. Inadequate legal remedy.* A railroad whose intangible property is assessed by Board of Valuation and Assessment, and which is subjected to discrimination through undervaluation of other property by county assessors, is not afforded adequate remedy through §§ 4115-4120, 4123, Ky. Stats., providing for readjustment of the latter class of assessments through the County Board of Supervisors. *Id.*
13. *Id. Drainage tax. Disproof of benefit.* In suit to enjoin collection of drainage tax defendant is entitled to be heard on question of benefit. *Saunders v. Shaw.* 317
14. *Injunction against Secretary of Interior. Cloud on title; inadequate legal remedy.* Demand by Secretary of Interior based on erroneous construction of Act of June 25, 1910, that railroad company deposit entire cost of surveying certain townships, consisting in part only of lands granted it by United States, so beclouds large areas of other unsurveyed land covered by its grant and threatens such embarrassment, particularly through forfeiture proceedings for which the act provides, that equity has jurisdiction to enjoin the Secretary from enforcing the demand. *Santa Fe Pac. R. R. v. Lane* 492
15. *Id.* To test validity of such demand grantee not obliged to await and defend forfeiture proceedings under the act. *Id.*
16. *Id. Tender.* Tender by grantee of one-half amount demanded for surveying townships in question *held* adequate. *Id.*

EQUITY—Continued.

PAGE

17. *Cloud on title. Pleading.* In suit to remove a particular cloud from plaintiff's title, facts showing title and existence and invalidity of instrument or record sought to be eliminated as a cloud are essential parts of plaintiff's cause of action and must be alleged in bill. *Hopkins v. Walker* 486

18. *Id.* The rule is the same in respect of suits to remove clouds under § 6115, Montana Codes of 1907, as distinguished from suits to quiet title under § 6870. *Id.*

19. *Id. Location certificates.* Recorded certificates of location are the first muniment of the locator's paper title and, when verified, are, in Montana, made *prima facie* evidence of all facts properly recited in them; and so, when apparently valid but actually, under the mining laws, invalid, they may becloud the title injuriously. *Id.*

20. *Injunction. Sherman Act.* Private party cannot maintain suit for injunction under § 4 of Sherman Act. *Paine Lumber Co. v. Neal* 459

21. *Id. Labor unions. New York laws.* An agreement among labor unions held not to make a case for injunction under laws of New York in a private suit. *Id.*

22. *Supplemental bill. Effect of, unanswered.* Supplemental bill, filed, after hearing and decision, by permission of the court but apparently disregarded, not to be taken as confessed by defendant for want of answer, when no rule to answer was made upon him and his failure to do so is not explained by record; nor, in silence of record, is error to be imputed to trial court for not paying heed to material allegations thus presented. *Louis. & Nash. R. R. v. Greene* . . 522

23. *New parties.* Generally speaking, authority to make new parties, especially after decree, rests in sound discretion of trial court, which, except for abuse, will not be reviewed either directly, or indirectly by mandamus. *Louisiana v. Jack* 397

24. *New parties on appeal. Local law inapplicable.* To review a judgment by appeal or error, one must be a party or privy, and Art. 571, La. Code of Practice, apparently authorizing third persons who allege that they are aggrieved by judgment to appeal from it, can have no application to equity suit in federal courts. *Id.*

EQUITY—*Continued.*

PAGE

25. *Substitution in this court.* Whether or not in an action by stockholders to enforce right of corporation this court may substitute as plaintiffs persons appointed receivers while writ of error is pending, mooted; but motion held without merit on the facts. *United Copper Co. v. Amalgamated Copper Co.* 261

ESTOPPEL. See **Jurisdiction**, III, (7), (b); **Sureties**, 6.

Where connecting carrier, sued for personal injuries by person traveling on drover's pass, set up release of liability for negligence contained in contract of carriage issued by, and in accordance with tariffs of, initial carrier, under Carmack Amendment, it was estopped from claiming that under its own tariff issuance of such passes was unlawful. *Norfolk Southern R. R. v. Chatman* 276

EVIDENCE. See **Judicial Notice**; **Presumptions**, and references under **Construction**.

Computing time. See **Time**.

Of interstate commerce and negligence. See **Employers' Liability Act**, (2).

Testimony of accomplice; view of place of crime. See **Criminal Law**.

Enjoining disclosures to experts. See **Trade Secrets**.

1. Objection to evidence as hearsay must be taken when evidence is introduced. *Rowland v. St. Louis & S. F. R. R.* 106

2. While case involving validity of rates fixed by State was in trial court, railroad, for the purpose of allocating expenses to intrastate and interstate traffic, caused reports to be made by employees of all relevant facts in accordance with prescribed formulae. *Held* that returns of employees, having been made in the course of their business, were not hearsay, and that the 2 months of investigation afforded basis for argument as to constant conditions. *Id.*

3. Proof comprising a body of official admissions and direct and circumstantial evidence from unimpeached public and private sources, and which fully sustains finding that great mass of property in Kentucky, embracing all tangible property except railroad property and distilled spirits—during a period of years—was systematically and notoriously as-

EVIDENCE — <i>Continued.</i>	PAGE
sessed at not exceeding 60 per cent. of its fair cash value, <i>held</i> not overcome by general presumptions arising from duty of assessors to assess at fair cash value, or by numerous stereotyped affidavits of former assessors asseverating their obedience thereunto. <i>Louis. & Nash. R. R. v. Greene</i>	522
<i>Illinois Cent. R. R. v. Greene</i>	555
 EXECUTIVE OFFICERS. See Mandamus; Public Lands, 20, 21.	
 EXPERT WITNESSES. See Trade Secrets.	
 EXPRESS COMPANIES. See Interstate Commerce Acts, I, 2-6.	
 FEDERAL EMPLOYERS' LIABILITY ACT. See Em- ployers' Liability Act.	
 FEDERAL RESERVE BOARD. See Constitutional Law, VI; National Banks.	
 FEES. See Public Lands, 20, 21.	
 FELLOW SERVANT DOCTRINE. See Employers' Liabil- ity Act, (3).	
 FOREST RESERVES. See Public Lands, (2).	
 FRANCHISE. See Constitutional Law, X, (5); Corpora- tions; Taxation.	
1. State law requiring street car companies to carry city detectives free while in discharge of duty is valid exercise of a reserved power to amend company's charter. <i>Sutton v.</i> <i>New Jersey</i>	258
2. Ordinances granting street railway franchises, with the right to make regulations not conflicting with laws of State, mean the laws as they shall from time to time exist. <i>Puget</i> <i>Sound Traction Co. v. Reynolds</i>	574
3. Municipality cannot, by contract with street railway, foreclose exercise of police power by State respecting rates	

FRANCHISE—*Continued.*

PAGE

and transfer privileges, unless clearly authorized by supreme legislative power. *Id.*

4. Under Washington Constitution, contract provisions in franchises conferred by municipalities may be set aside by legislature; and Public Utilities Act supersedes conflicting ordinances or charter provisions of city. *Id.*

5. Where several street railway lines, built under distinct franchises, are owned and operated as one system, a public regulation concerning car service and fares will not be adjudged confiscatory because of its financial results to the line immediately affected, if system as a whole remains profitable; and through service for a single fare may be required. *Id.*

FRAUD. See **Trade Secrets.**

1. Under R. S., § 5239, national bank directors are liable for damages sustained by individual in consequence of violations of National Bank Act. *Chesbrough v. Woodworth* 72

2. Allegations of fraud held not sustained. *Wall v. Parrot Silver Co.* 407

3. Generally speaking, when fraud is alleged and denied, the party making the charge will be confined to that issue. *Id.*

4. When constitutional question, asserted as basis for jurisdiction of this court on direct appeal from the District Court, is pleaded as resulting from execution of a fraudulent scheme, the question ought not to be considered (*semble*), if charge of fraud fails. *Id.*

GOOD FAITH:

In possession of public land. See **Public Lands**, (4).

GUARANTY. See **Bonds.****HEARSAY.** See **Evidence.****HOMESTEADS.** See **Public Lands**, (3).**HOURS OF SERVICE ACT:**

1. Act remedial and requires carrier to do all reasonably

HOURS OF SERVICE ACT—*Continued.*

PAGE

within its power to confine service within limits stated.
Atchison, T. & S. F. Ry. v. United States 336

2. Proviso in § 3 relieves carrier only in cases where excessive service necessary for causes mentioned in proviso. *Id.*

3. If train crew unavoidably is unable to take train to terminal of their normal run without serving beyond time limit, excessive service must be avoided by substituting fresh crew whenever carrier, in exercise of all reasonable diligence, can do so. *Id.*

INDIANS:

1. Acting under enrollment provisions of Curtis Act and Creek Agreement of 1901, the Dawes Commission was a quasi-judicial tribunal, and enrollments made by it and approved by Secretary of Interior are presumptively correct; in absence of fraud, mistake or arbitrary action they are conclusive. *United States v. Wildcat*. 111

2. Whether a person alleged to be a member of the Creek Nation was living on April 1, 1899, is question going to his right to be enrolled under § 28 of Agreement of 1901, which Dawes Commission was competent to decide; it is not a jurisdictional question, and an incorrect determination of it does not necessarily render enrollment void. *Id.*

3. Commission was authorized to presume that a person enrolled as member of tribe on tribal rolls of 1895 was living on April 1, 1899, in absence of proof of his death before that date or of circumstances indicating that he died before Commission acted. *Id.*

4. Attempt of the Secretary of Interior to set aside enrollment of deceased Creek Indian by striking name from rolls without notice to heirs, *ultra vires* and void. *Id.*

5. When Creek citizen dies after April 1, 1899, and allotment is afterwards made, and deeds issued, in his name, title is vested in his heirs by § 28 of Agreement of 1901. *Id.*

6. Under § 3 of that Agreement, permissible for Dawes Commission to enroll tribal citizens and make them allotments when they failed to make selections for themselves. *Id.*

INDIANS—Continued.

PAGE

7. Order of Secretary of Interior, approving Indian agent's recommendation that restrictions on alienation be removed from Indian's allotment, was made on March 26, "to be effective thirty days from date." *Held* that approval became effective on thirtieth day after its date, i. e., on April 25th, and enabled allottee to make valid conveyance on that day. *Lanham v. McKeel* 582

INFANTS. See **Employers' Liability Act**, (5).

INFRINGEMENT. See **Patents for Inventions**.

INJUNCTION. See **Equity**.

INSTRUCTIONS TO JURY:

1. Request to charge must give jury accurate understanding of law with reference to phase of case to which applicable. *Erie R. R. v. Purucker* 320
2. For requests to charge on assumption of risk held defective and more appropriate for contributory negligence. *Id.*

INSURANCE COMPANIES:

Reserves in Pennsylvania and subjection to federal excise tax. See **Corporation Tax Act**.

INTEREST. See **Sureties**, 3-5.

INTERFERENCE. See **Patents for Inventions**.

INTERSTATE COMMERCE. See **Employers' Liability Act; Interstate Commerce Acts; Hours of Service Act; Safety Appliance Act; Workmen's Compensation Laws.**

As to what constitutes interstate transportation. See **Constitutional Law**, III.

As to paramount authority of Congress over subjects of interstate commerce. *Id.*

INTERSTATE COMMERCE ACTS:

State regulation; relations to interstate commerce. See **Carriers**, 1-6.

I. **Powers of and Proceedings before Commission.** See also 14-16, *Infra*.

INTERSTATE COMMERCE ACTS—Continued.

PAGE

1. Order of Commission assigning cause for hearing upon an issue of reparation for failure to furnish coal cars, not an order in sense of § 1, Commerce Court Act; and District Court cannot enjoin Commission from proceeding with such hearing. *United States v. Illinois Cent. R. R.* 82

2. Order of Commission directing carriers to desist from discriminating against interstate commerce by charging lower rates for local competitive intrastate traffic, may properly leave to carriers discretion to determine whether discrimination shall be removed by lowering the interstate rates, or by raising intrastate rates, or by doing both. *American Express Co. v. Caldwell.* 617

3. Where rates which carrier seeks to alter, in avoiding discrimination condemned by Commission, are intrastate rates which have been fixed by state authority, Commission's order will justify carrier only in so far as order defines the territory or places to which it applies. *Id.*

4. In cases where federal authority is exerted to affect intrastate rates, desirable that orders of Commission should be so definite as to rates and territory to be affected as to preclude misapprehension. *Id.*

5. State law providing that no advance of intrastate rates may be made except after 30 days' notice filed with a board of railroad commissioners, and published, inapplicable to changes in intrastate rates which carrier seeks to make in obedience to order of Interstate Commerce Commission, to abate discrimination against interstate traffic. *Id.*

6. Commission having found interstate rates unduly discriminatory as compared with competitive intrastate rates and ordered abatement, its further finding that interstate rates are not unreasonable impliedly authorizes carrier to maintain them and raise such intrastate rates accordingly. *Id.*

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

1. *Carmack Amendment and bill of lading.* By request of shipper and by action of carriers in dealing with freight accordingly, a shipment governed by Carmack Amendment may be diverted from original destination and original bills

INTERSTATE COMMERCE ACTS—Continued.	PAGE
of lading continued in force as applicable to new destination.	
<i>Gulf &c. Ry. v. Texas Packing Co.</i>	31
See Damages , 1-2.	
2. <i>Id.</i> Under Amendment, initial carrier not entitled to recover over against connecting carrier which did not contribute to damage. <i>Id.</i>	
3. <i>Id.</i> Original bill of lading governs entire transportation, and new conditions cannot be introduced by connecting carrier through a second bill. <i>Missouri, Kans. & Tex. Ry. v. Ward</i>	383
4. <i>Id.</i> Acceptance of second bill of lading governing part of transportation and containing new terms as to notice of damage does not bind shipper. <i>Id.</i>	
5. <i>Livestock contracts. Limited liability. Rates.</i> Where printed contract for interstate transportation specified minimum or primary valuations for livestock with corresponding tariff rates, and left blanks for insertion of shipper's valuation if he desired to avail himself of alternative rates, and blanks were left unfilled at execution but rate charged and inserted in contract was according to primary valuations, held that these were valuations adopted and carrier's liability was so limited. <i>American Express Co. v. U. S. Horse Shoe Co.</i>	58
6. <i>Id. Failure to post rates. Shipper's failure to read contract.</i> Failure to post rates duly made out and filed with Commission does not affect their validity or duty of shipper to take notice of them; nor may he avoid contract by neglecting to read it. <i>Id.</i>	
7. <i>Id. Construction of schedules.</i> A clause in merchandise rate schedules that rates there must not be applied to livestock shipments, construed as intended to leave provisions of livestock schedule concerning rates and valuations for independent interpretation uninfluenced by provisions in the merchandise schedules. <i>Id.</i>	
8. <i>Id. Written notice of damage.</i> Stipulation in limited liability contract for carriage of livestock, pursuant to provisions duly published and filed with Interstate Commerce Commission, conditioning connecting carrier's liability upon written notice to its agent within 5 days from	

INTERSTATE COMMERCE ACTS — <i>Continued.</i>	PAGE
removal of stock from cars, held reasonable and valid.	
<i>Erie R. R. v. Stone</i>	332
9. <i>Id.</i> <i>Limiting liability in consideration of reduced rates.</i> Right to limit carrier's liability for damage, in consideration of optional reduced rates in accordance with schedules and form of contract duly published and filed with Commission, well settled. <i>Id.</i>	
10. <i>Id.</i> Such provisions for notice of claim and limited liability bind the parties until changed by Commission. <i>Id.</i> Cf. <i>Missouri, Kans. & Tex. Ry. v. Ward</i>	383
11. <i>Liability for personal injury to caretaker of livestock.</i> As applied to caretakers of livestock, § 1 of Hepburn Act of 1906 uses term "free pass" as meaning not gratuitous pass but one issued for consideration constituting caretaker passenger for hire; under doctrine of <i>Railroad Co. v. Lock-</i> <i>wood</i> stipulation that carrier shall not be liable for personal injuries sustained by such caretakers through its negligence is void. <i>Norfolk Southern R. R. v. Chatman</i>	276
12. <i>Id.</i> <i>Estoppel.</i> Where connecting carrier, sued for per- sonal injuries in such case, based its defense on a release of liability for negligence contained in contract of carriage issued by, and in accordance with tariffs of, initial carrier, under the Carmack Amendment, it was estopped from claim- ing that under its own tariff issuance of such passes was unlawful. <i>Id.</i>	
13. <i>Id.</i> <i>Construction of tariff.</i> Provision in tariff that free or reduced transportation shall not be issued to caretakers and that they shall pay full fare returning, implies such transportation will be allowed to destination. <i>Id.</i>	
14. <i>Id.</i> <i>Separation of rates for caretaker and livestock.</i> When connecting interstate carriers, in accordance with tariffs of initial carrier duly filed and published, contract to carry livestock and caretaker for specified rate in money, the carriage <i>quoad</i> caretaker is a carriage for money, part of the total rate; and fact that the part attributable to care- taker is not separately stated in a passenger tariff does not render contract to carry him invalid under the Act to Regu- late Commerce. <i>Id.</i>	
15. <i>Id.</i> Separation of rate, in such case, is administrative	

INTERSTATE COMMERCE ACTS — <i>Continued.</i>	PAGE
matter affecting form of tariffs committed to Commission by § 6, as amended, concerning which courts will not interfere in advance of application to Commission. <i>Id.</i>	
16. <i>Presumption as to filing of rates.</i> In trial of action upon contract for interstate transportation, plaintiff is entitled to presumption that carrier filed with Interstate Commerce Commission such rates as were requisite to sustain the contract, the pleadings being silent on the subject. <i>Nevada-California-Oregon Ry. v. Burrus.</i>	103
17. <i>State long and short haul provision consistent with Interstate Commerce Acts.</i> A state provision, as to intrastate traffic, which forbids greater charge for short than for long hauls and allows shipper right to recover overcharges, is consistent with Fourteenth Amendment, the Commerce Clause, and the Interstate Commerce Acts. <i>Missouri Pac. Ry. v. McGrew Coal Co.</i>	191

INTERSTATE COMMERCE COMMISSION. See **Interstate Commerce Acts.**

IRRIGATION CANALS. See **Waters.**

JUDGMENTS. See **Jurisdiction.**

Effect of decree of Court of Private Land Claims on color of title and good faith of claim based on Mexican Grant. See **Public Lands**, (4).

1. Jurisdiction of state court in action on judgment of sister State to examine jurisdictional basis of judgment where rendered. *Chicago Life Ins. Co. v. Cherry* 25
2. A money judgment by a state court does not violate due process for want of jurisdiction over defendant's person where jurisdiction was questioned in trial and appellate courts and sustained after fair hearings before judgment became finally effective. *Id.*
3. Where such judgment was sued on in another State and sustained on ground that question of personal jurisdiction could not be reopened, *held* that original judgment satisfied due process and reason assigned for upholding it, if erroneous, amounted only to mistake concerning law of State in which judgment was rendered. *Id.*

JUDGMENTS—*Continued.*

PAGE

4. A state decision upholding a judgment of another State raises no question in this court under the full faith and credit clause. *Id.*
5. Where judgment and verdict found excessive by Circuit Court of Appeals and it gave party recovering it option of submitting to reversal or obtaining affirmance by remitting part of judgment, the party, having acted on the latter alternative, his cross writ of error complaining of reduction must be dismissed. *Woodworth v. Chesbrough.* 79
6. Decree against plaintiff in patent infringement suit affirmed by Court of Appeals held *res judicata* as to another suit pending before Court of Appeals for another circuit, where subject-matter and relief prayed were the same in both suits and privity of the parties defendant established. *Hart Steel Co. v. Railroad Supply Co.* 294
7. A deficiency judgment obtained by trustee for bondholders against guarantor of bonds held to merge individual bondholders' rights of action; trustee necessary plaintiff in suit to enforce judgment as lien upon property of debtor sold under a mortgage. *Hamer v. New York Rys. Co.* 266
8. Where a decree of foreclosure and sale makes no reservation respecting liens or similar rights of action touching the property sold, subsequent suit to enforce a lien which was not adjudicated in the foreclosure proceeding because then not mature is independent of the foreclosure proceeding and does not afford jurisdiction to District Court as an ancillary suit. *Id.*
- See **Parties**, 6.
9. Where decree commanded railroad company unconditionally to execute a stipulation, which it agreed to make in order to secure right of way through forest reservation, held that question whether it should not have provided in alternative for ousting company if it did not execute stipulation within a time certain, not being raised by appellant company, could not be raised by the government (appellee) in absence of cross appeal. *Chicago, Mil. & St. P. Ry. v. United States.* 351

JUDICIAL NOTICE:

An order of Interstate Commerce Commission, being indefinite as to its territorial scope, court referred to accom-

JUDICIAL NOTICE—*Continued.*

PAGE

panying report and thence to maps of railroads therein identified. *American Express Co. v. Caldwell* 617

JURISDICTION:

I. Jurisdiction over the Person:

- (1) New Parties not Served, p. 707.
- (2) Foreign Corporations, p. 707.
- (3) Attacking Jurisdiction, p. 708.
- (4) Waiving Objections, p. 708.

II. Jurisdiction of Federal Courts Generally:

- (1) Admiralty and Maritime Jurisdiction. See **Admiralty**.
- (2) To Enforce State Constitution and Laws against Discriminatory Taxation, without Deciding Federal Question upon which Jurisdiction is Founded, p. 708.

III. Jurisdiction of this Court:

- (1) Directing Writ of Error, p. 709.
- (2) Parties and Substitution, p. 709.
- (3) Frivolous Contentions, p. 709.
- (4) Judgments Reviewable and Scope of Review, p. 709.
- (5) Over District Courts, p. 710.
- (6) Over Court of Appeals of the District of Columbia, p. 710.
- (7) Over State Courts:
 - (a) Claim and Decision of Federal Question, p. 710.
 - (b) Order of Remand Conclusive, p. 711.

IV. Jurisdiction of District Courts:

- (1) Federal Question, p. 711.
- (2) Removal and Remand, p. 712.
- (3) Parties and Diverse Citizenship, p. 712.
- (4) Ancillary Suits, p. 712.
- (5) After Mandate Dismissing Bill, p. 712.
- (6) Enjoining Interstate Commerce Commission, p. 713.

JURISDICTION—Continued.

PAGE

V. Jurisdiction of State Courts:

- (1) Duty to Hear, p. 713.
- (2) Personal Injuries in Federal Work on Federal Reservation, p. 713.
- (3) Quo Warranto to National Bank, p. 713.
- (4) As to Orders of Interstate Commerce Commission, p. 713.

VI. Jurisdiction of Courts of District of Columbia, p. 714.

VII. Local Law. Following State Constructions, p. 714.

VIII. Conclusions of Fact, Judicial and Administrative, p. 715.

Inquiry into basis of sister state judgment. See **Judgments**, 1.

Mandamus against Commissioner of Patents. See **Mandamus**, 1-2.

Id. against Secretary of the Interior. See **Mandamus**, 3.

Enjoining Secretary of the Interior. See **Equity**, 14-16.

Of Dawes Commission. See **Indians**, 3-6.

Of Secretary of the Interior. See *id.*

Equitable jurisdiction. See **Equity**.

I. Jurisdiction over the Person.

(1) *New Parties not Served.*

1. Appearance in answer to citation issued upon libel *in personam* does not empower court to introduce new claims of new claimants without service on defendant. *Ex parte Indiana Transp. Co.* 456

(2) *Foreign Corporations.*

2. Provision by corporation for payment of bonds and coupons in a foreign State is not such doing business as renders it liable there to suit on bonds. *Toledo Rys. & Lt. Co. v. Hill* 49

3. Mortgaging corporation's property to trustee in foreign State, to secure bonds, not a translation of its property to that State rendering corporation liable there to suit on bonds. *Id.*

4. Carrying and depositing materials excavated from federal reservation constitutes doing business in State at the locality outside the reservation where carriage and deposit occur, and corporation is subject to suit in such State if

JURISDICTION—Continued.	PAGE
service is had there on its agent for the purpose. <i>Ohio River Contract Co. v. Gordon</i>	68
(3) <i>Attacking Jurisdiction.</i>	
5. Motion to quash service is proper in federal court (though state procedure requires demurrer) to raise questions whether corporation is doing business and service made on its representative. <i>Meisukas v. Greenough Coal Co.</i>	54
(4) <i>Waiving Objections.</i>	
6. After motion to quash service overruled, answer to merits accompanied by reassertion of objection to jurisdiction not waiver. <i>Toledo Rys. & Lt. Co. v. Hill.</i>	49
7. Postponement of hearing and reservation of right of defendant to plead to merits and order of court <i>sua sponte</i> directing plaintiff to amend complaint do not constitute waiver. <i>Meisukas v. Greenough Coal Co.</i>	54
8. Pleading to merits after objection to jurisdiction overruled does not waive objection. <i>Ex parte Indiana Transp. Co.</i>	456
9. Principles of waiver and appearance may not apply strictly in case where defendant is already in court and objection relates to introducing new complainants. <i>Id.</i>	

II. Jurisdiction of Federal Courts Generally.

(1) *Admiralty and Maritime Jurisdiction.* See **Admiralty.**

(2) *To Enforce State Constitution and Laws Against Discriminatory Taxation, without Deciding Federal Question upon which Jurisdiction is Founded.*

1. Federal courts have jurisdiction to enjoin collection, etc., of state taxes resulting from general, systematic discriminations in assessments, where tax laws are constitutional but method of execution is not; and, jurisdiction being invoked on ground that discrimination violates Fourteenth Amendment, case may be decided and remedied upon application of state constitution and laws alone, without deciding federal question, if full relief be thus afforded; and this jurisdiction exists notwithstanding state courts hold themselves powerless to afford judicial remedy. <i>Greene v. Louis. & Interurban R. R.</i>	499
<i>Louis. & Nash. R. R. v. Greene</i>	522
<i>Illinois Cent. R. R. v. Greene</i>	555

JURISDICTION—*Continued.*

PAGE

III. Jurisdiction of this Court.

(1) *Directing Writ of Error.*

1. Where supreme court of State refuses to review judgment of intermediate appellate court for want of jurisdiction, the writ from this court properly goes to such intermediate court. *Cuyahoga Power Co. v. Northern Realty Co.* 300

(2) *Parties and Substitution.*

2. Making new parties, especially after decree, rests in sound discretion of trial court. No review by appeal, error or mandamus except in case of abuse. *Louisiana v. Jack* . . 397

3. General rule that no person may review judgment by appeal or error who is not party or privy to the record. *Id.*

4. Art. 571, La. Code of Practice, purporting to authorize any persons to appeal who allege that they have been aggrieved by judgment, can have no application to equity suit in federal courts. *Id.*

5. In action by stockholders to enforce alleged right of corporation mooted whether court has jurisdiction to substitute certain receivers of the corporation, but held that in the circumstances application was without merit. *United Copper Co. v. Amalgamated Copper Co.* 261

(3) *Frivolous Contentions.*

6. Jurisdiction not supported by contention that States may not regulate rights and duties of employers and employees in interstate commerce, in absence of congressional legislation. *Valley S. S. Co. v. Wattawa.* 202

(4) *Judgments Reviewable and Scope of Review.* See II, (2), *supra*; III, (5), (6), *infra*.

7. *Semble*, that rule limiting inquiry to questions presented to court below is not confined to questions of procedure and not inflexible. *West v. Rutledge Timber Co.* 90

8. Where railroad commission by separate orders required restoration of several trains but orders were based on one citation and intended and treated by court below as one order, this court also treated it as a unity. *Miss. R. R. Comm. v. Mobile & Ohio R. R.* 388

JURISDICTION—*Continued.*

PAGE

9. The court does not consider a question affecting both parties and suggested by the appellee in absence of any cross appeal, and of objection made by appellant. *Chica o, Mil. & St. P. Ry. v. United States* 351

10. Party who obtains favorable judgment in consideration of his remission of part of his recovery has no standing to maintain cross writ of error complaining of reduction when judgment is brought by his opponent to this court. *Woodworth v. Chesbrough.* 79

(5) *Over District Courts.*

11. In case governed by Jud. Code, § 266, where District Court's jurisdiction is invoked on constitutional questions, this court may review whole case on appeal from order denying preliminary injunction. *Van Dyke v. Geary* 39

12. Mandamus does not lie to control District Court upon jurisdictional question—as to its duty to remand case removed from court of another State—when other modes of reviewing its decision (writ of error or certiorari) are provided by statute; and inconvenience and expense to party do not alter rule. *Ex parte Park Sq. Automobile Station* 412

(6) *Over Court of Appeals of the District of Columbia.*

13. The court has jurisdiction by writ of error to review judgment of Court of Appeals of the District of Columbia in case arising under Federal Employers' Liability Act of 1908, as amended. *Washington Ry. & Elec. Co. v. Scala* 630

(7) *Over State Courts.*

(a) *Claim and Decision of Federal Question.* See VII, *infra.*

14. Claim of federal right must be made in accordance with state procedure. *Nevada-California-Oregon Ry. v. Burrus* 103

15. Must be called to state court's attention according to state method. *Missouri Pac. Ry. v. Taber.* 200
Valley S. S. Co. v. Wattawa. 202

16. Where state court's judgment may rest upon either federal or non-federal ground, federal basis must appear by that court's opinion or otherwise to afford jurisdiction to this court. *Cuyahoga Power Co. v. Northern Realty Co.* 300

JURISDICTION—Continued.

PAGE

- 17. Where state supreme court dismisses judgment of intermediate court for want of jurisdiction upon ground that no question under state or federal constitutions arises, *semble*, this court may assume judgment had non-federal basis only if record or state court's opinion does not show. *Id.*
- 18. Claim that judgment of state supreme court violates Fourteenth Amendment not too late, though first made by assignment of errors presented to its Chief Justice when writ of error from this court was granted, if aggrieved party under no duty to anticipate state court's action before judgment rendered and was afforded no opportunity afterwards to present claim for its consideration. *Saunders v. Shaw* . . . 317
 - (b) *Order of R mand Conclusivē.*
- 19. Order of District Court remanding case to state court held conclusive, Jud. Code, § 28. *Yankaus v. Feltenstein* . . . 127
- 20. Conduct of plaintiffs in respect of proceedings in state courts and District Court held not to have estopped them from contesting jurisdiction of latter after attempted removal, or to have waived their right to conclusive effect of order of remand. *Id.*

IV. Jurisdiction of District Courts.

- As to personal jurisdiction. See I, *supra*.
- In admiralty and maritime cases. See **Admiralty**.
- To enforce state laws against discriminatory taxes. See II, (2), *supra*.
- (1) *Federal Question*. See VII, *infra*.
- 1. Action under R. S., § 5239, against national bank director for damages sustained by individual in consequence of violations of National Bank Act, necessarily involves federal question. *Chesbrough v. Woodworth* 72
- 2. Case arises under laws of United States where appropriate statement of plaintiff's cause of action, unaided by anticipation or avoidance of defenses, discloses that it really and substantially involves controversy respecting the validity, construction or effect of a law of Congress. *Hopkins v. Walker* 486
- 3. In suit to remove cloud from plaintiff's title, facts showing that title and existence and invalidity of instrument or

JURISDICTION—*Continued.*

PAGE

record sought to be eliminated as a cloud are essential parts of cause of action and must be alleged in bill. *Id.*

4. Rule is same in respect of suits to remove clouds under § 6115, Montana Codes, 1907, as distinguished from suits to quiet title under § 6870. *Id.*

See **Public Lands**, 18–19.

(2) *Removal and Remand.* See III, (5), 12, *supra*.

5. Conclusive effect of order of remand. *Yankaus v. Feltenstein* 127

6. Case arising under Federal Employers' Liability Act cannot be removed to District Court upon ground of diversity of citizenship. *Southern Ry. v. Puckett* 571

(3) *Parties and Diverse Citizenship.* See IV, (2), 6, *supra*.

7. Where judgment is held by trustee for benefit of all bondholders secured by his mortgage, he is necessary party to suit by majority of them to enforce judgment; and if he be made defendant without adequate cause, he must be realigned as plaintiff. *Hamer v. New York Rys. Co.* 266

(4) *Ancillary Suits.*

8. Where District Court's decree of foreclosure and sale makes no provision concerning money judgment outstanding against defendant, which District Court did not consider because defendant's liability under it was not absolute when claims were presented in the foreclosure proceedings, subsequent suit in that court to enforce the judgment as lien on the property foreclosed is not ancillary to the foreclosure proceedings. *Hamer v. New York Rys. Co.* 266

9. Reference made without authority by District Court after dismissal of bill pursuant to mandate of this court, for purpose of determining claims under an injunction bond, held not to afford basis for ancillary suit by railroad defendant to enjoin persons from asserting in state courts their right to regain excess rates collected by such company under protection of the injunction. *St. Louis, I. Mt. & So. Ry. v. McKnight* 368

(5) *After Mandate Dismissing Bill.*

10. As to absence of jurisdiction in District Court to determine claims under an injunction bond after reversal of

JURISDICTION—Continued.

PAGE

its decree by this court and issuance of this court's mandate to dismiss bill. *Id.*

(6) *Enjoining Interstate Commerce Commission.*

11. Order of Commission assigning cause for hearing upon issue of reparation not an order in sense of § 1 of Commerce Court Act, and District Court has no jurisdiction to enjoin hearing. *United States v. Illinois Cent. R. R.* 82

V. Jurisdiction of State Courts.

Over foreign corporations. See I, *supra*.

(1) *Duty to Hear.*

1. Violation of due process for state supreme court to reverse case and render judgment absolute against party who succeeded in trial court, upon a proposition of fact ruled to be immaterial at trial and concerning which he had therefore no opportunity to introduce evidence. *Saunders v. Shaw.* 317

(2) *Personal Injuries in Federal Work on Federal Reservation.*

2. State court has jurisdiction of subject-matter of an action for personal injuries incurred in work under a federal contract performed on federal reservation, such action being transitory. *Ohio River Contract Co. v. Gordon.* 68

(3) *Quo Warranto to National Bank.*

3. Under § 11 (k), Act of Dec. 23, 1913, establishing Federal Reserve Board, supreme court of State may entertain proceedings in nature of *quo warranto*, at instance of its attorney general, to test whether conduct of bank in acting as trustee, etc., is "in contravention of state or local law." *First Natl. Bank v. Union Trust Co.* 416

(4) *As to Orders of Interstate Commerce Commission.*

4. Suit by State to enjoin carriers from advancing intrastate rates without first complying with state regulations is not a suit, beyond the jurisdiction of state court, "to enforce, set aside, annul, or suspend in whole or in part" an order of Interstate Commerce Commission, where order covers the proposed advances in part only, is not mentioned in bill and is not relied on in answer as justifying them all. *American Express Co. v. Caldwell.* 617

JURISDICTION—Continued.

PAGE

VI. Jurisdiction of Courts of District of Columbia.

1. Enjoining Secretary of the Interior. *Santa Fe Pac. R. R. v. Lane*..... 492
2. Mandamus to Secretary of the Interior. *Lane v. Hoglund*..... 174
3. Mandamus to Commissioner of Patents. *Ewing v. Fowler Car Co*..... 1

VII. Local Law. Following State Constructions. See III, (4); III, (7), (a); IV, (1), supra.

1. Conclusive effect of construction of state statutes by supreme court of State. See *Louisiana v. Jack*..... 397
Greene v. Louis. & Interurban R. R...... 499
Louis. & Nash. R. R. v. Greene..... 522
Illinois Cent. R. R. v. Greene..... 555
Missouri Pac. Ry. v. McGrew Coal Co..... 191
 2. In absence of authoritative decision of supreme court of State to contrary, contemporaneous construction of state constitution by act of the legislature, which is reasonable in itself and designed to accomplish obvious purpose of constitutional provision in question, should be followed by this court. *Van Dyke v. Geary*..... 39
 3. Persuasive force of construction given a state enactment by state attorneys general in its administration. *Louisiana v. Jack*..... 397
 4. What documentary matter should be filed with declaration in action in state court upon sister state judgment, a local question. *Chicago Life Ins. Co. v. Cherry*..... 25
 5. In controversy in state courts over right of one corporation to condemn lands of another, existence of petitioning corporation, right to condemn, inability to agree on compensation and necessity for appropriation are matters depending on local law. *Cuyahoga Power Co. v. Northern Realty Co.*..... 300
- As to force given to construction of act of Congress by Land Department and adoption of it by Congress through later enactment. *Santa Fe Pac. R. R. v. Lane*..... 492
 See also *West v. Rutledge Timber Co.*..... 90

JURISDICTION—*Continued.*

PAGE

VIII. Conclusions of Fact, Judicial and Administrative.

1. Upon the effect of findings by Dawes Commission in enrolling Indians. See *United States v. Wildcat*. 111
 2. Binding force of conclusions of state assessing board when free from fraud and based on fair hearing. See **Taxation**.
 3. Strong presumption in favor of rates fixed by experienced administrative board after full hearing. *Darnell v. Edwards*. 564
Cf. Miss. R. R. Comm. v. Mobile & Ohio R. R.. 388
 4. Concurrent findings of state trial and appellate courts as to fact of negligence not overturned by this court in absence of clear error. *American Express Co. v. U. S. Horse Shoe Co.*. 58
Southern Ry. v. Puckett. 571
- See **Interstate Commerce Acts, I; Patents for Inventions.**

JURY. See **Instructions to Jury.**

KENTUCKY. See **Taxation.**

LABOR UNIONS:

Enjoining. See **Equity, 21.**

LAND DEPARTMENT. See **Public Lands.**

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

LIMITATIONS. See **Employers' Liability Act, (7); Public Lands, 12.**

LIVESTOCK:

Limited liability contracts for transportation of. See **Interstate Commerce Acts, II.**

MANDAMUS. See **Parties, 3.**

1. Mandamus will not lie to compel Commissioner of Patents to declare interference where applicant for patent admits his invention was made subsequent to date upon which another application for same invention was filed, and

MANDAMUS—*Continued.*

PAGE

- concedes priority and utility of the other's invention by adopting his claims in an amended application. *Ewing v. Fowler Car Co.* 1
2. Priority of invention is determinable by suit in equity between the parties, not by mandamus against Commissioner in attempt to control administrative discretion conferred upon him by R. S., § 4904. *Id.*
3. Mandamus lies where duty sought to be enforced is plain and nondiscretionary and situation exigent. *Lane v. Hoglund.* 174
4. Does not lie to control District Court upon jurisdictional question—as to its duty to remand a case removed from a court of another State—when other modes of reviewing its decision (writ of error or certiorari) are provided by statute; and inconvenience and expense to the party do not alter rule. *Ex parte Park Sq. Automobile Station.* 412

MARITIME CASES. See **Admiralty; Constitutional Law, II.**

MASTER AND SERVANT. See **Employers' Liability Act; Hours of Service Act; Safety Appliance Act; Workmen's Compensation Laws.**

Suit to enjoin former employee from using or disclosing secret processes. *Du Pont Powder Co. v. Masland* 100

MINERAL LANDS. See **Public Lands, (5).**

MORTGAGE. See **Bonds.**

Making deed of trust to trustee in foreign State and providing for payment of bonds there does not render corporation liable to suit on bonds in that State. *Toledo Rys. & Lt. Co. v. Hill* 49

MOTION TO QUASH:

Proper mode of attacking service and jurisdiction thereon depending in District Court. *Meisukas v. Greenough Coal Co.* 54

MULTIFARIOUSNESS. See **Equity, 1.**

MULTIPLICITY OF SUITS. See **Equity**, 2, 9, 11. PAGE

MUNICIPALITIES. See **Franchise**.

NATIONAL BANKS:

Power of Congress to confer private functions on, as authorized by act creating Federal Reserve Board. See **Constitutional Law**, VI.

Jurisdiction of state court in *quo warranto*. See **Jurisdiction**, V, (3).

Action under R. S., § 5239, against national bank director, for damages sustained by individual in consequence of violations of National Bank Act, involves federal question. *Chesbrough v. Woodworth*..... 72

NEGLIGENCE. See **Employers' Liability Act; Instructions to Jury; Interstate Commerce Acts; Workmen's Compensation Laws**.

NOTICE:

Stipulation requiring written notice to carrier of damage. See **Interstate Commerce Acts**, II, 4, 8-10.

Failure to post and duty to take notice of rates filed with Interstate Commerce Commission. See *Id.*, II, 6.

Setting aside enrollment and allotment of deceased Indian without notice. See **Indians**, 4.

PARENT AND CHILD:

Right of action by father for injuries to son under Federal Employers' Liability Act. See **Employers' Liability Act**, (5).

PARTIES:

1. Right of stockholder to sue on behalf of corporation, when it refuses to do so, for injury due to violations of Sherman Act; remedy in equity. May this court substitute receivers appointed after suit began? *United Copper Co. v. Amalgamated Copper Co.*..... 261

2. Where defendant in one case was a corporation manufacturing articles complained of in patent infringement suit, and in another a second corporation which was controlled by and acted as selling agent of the first, and subject-matter

PARTIES—*Continued.*

PAGE

and relief prayed were same in both suits, *held* that there was such privity between defendants that judgment rendered by Court of Appeals in suit against first corporation was *res judicata* as to the other suit, then pending before Court of Appeals for another circuit. *Hart Steel Co. v. Railroad Supply Co.* 294

3. Generally speaking, authority to make new parties, especially after decree, rests in sound discretion of trial court, which, except for abuse, will not be reviewed either directly, or indirectly by mandamus. *Louisiana v. Jack* 397

4. To review judgment by appeal or error, one must be party or privy, and Art. 571, La. Code of Practice, apparently authorizing third persons who allege that they are aggrieved by judgment to appeal from it, can have no application to equity suit in federal courts. *Id.*

5. As to lack of authority of court to introduce new claimants with new causes of action in a libel *in personam*, without service on defendant as to new libellants, and what amounts to proper objection to jurisdiction in such cases. See *Ex parte Indiana Transp. Co.* 456

6. Where majority bondholders sue to enforce judgment, obtained on bondholders' behalf by trustee under the mortgage, trustee is necessary party and must be aligned as plaintiff if not shown to be antagonistic. *Hamer v. New York Rys. Co.* 266

PASSENGERS:

1. Caretaker of livestock, traveling on a free or drover's pass, is a passenger for hire. *Norfolk Southern R. R. v. Chatman.* 276

2. Carrier of passengers only, common carrier within Employers' Liability Acts. *Washington Ry. & Elec. Co. v. Scala* 630

PATENTS FOR INVENTIONS:

Setting up *res judicata* in Circuit Court of Appeals. See **Res judicata.**

1. When applicant for patent admits that invention was made subsequent to date on which another application for same invention was filed, and by amendment of application

PATENTS FOR INVENTIONS—*Continued.*

PAGE

adopts prior applicant's claims, he concedes priority of other invention, its utility and sufficiency of claims. *Ewing v. Fowler Car Co* 1

2. In such case Commissioner of Patents cannot be required by mandamus to declare interference. *Id.*

3. Under R. S., § 4904, it is his duty to declare interference only when, in exercise of his judgment upon facts presented, he is of opinion that senior application will be interfered with by junior one. *Id.*

4. Judicial remedy for determining priority of invention is by suit in equity. *Id.*

5. Patents for improvements in railroad tie-plates examined and held invalid for want of novelty and invention. *Railroad Supply Co. v. Elyria Iron Co.* 285
See *Hart Steel Co. v. Railroad Supply Co.* 294

6. Improvements involved in these cases held to be no more than product of ordinary mechanical skill. *Id.*

7. Mere carrying forward of the original thought, a change only in form, proportions or degree, doing the same thing in the same way, by substantially the same means, with better results, is not such invention as will sustain patent. *Id.*

8. Patents claiming merely improvements in devices already well exploited in prior art must be limited strictly to forms described in claims. *Id.*

9. Patentee presumed to have had all prior patents before him when he applied for patent. *Id.*

PERSONAL INJURY. See **Employers' Liability Act; Safety Appliance Act; Workmen's Compensation Laws.**

Jurisdiction of state court where injury sustained on federal reservation while plaintiff was working under contract with United States. *Ohio River Contract Co. v. Gordon* 68

Liability of carrier for personal injury to caretaker of live-stock. *Norfolk Southern R. R. v. Chatman* 276

- PLEADING.** See **Employers' Liability Act**, (7). PAGE
- Multifariousness. See **Equity**, 1.
- Cloud on title. *Id.*, 17-19.
- Supplemental bill. Effect of, unanswered. *Id.*, 22.
- Exceptions. See **Admiralty**.
- Fraud, confining plaintiff to issue. See **Fraud**.
- As to mode of setting up claim of federal right. See **Jurisdiction**, III, (7), (a); IV, (1).
- As to mode of attacking process. *Id.*, I.
1. What documentary matter should be filed with declaration in action in state court upon sister state judgment is a local question. *Chicago Life Ins. Co. v. Cherry* 25
 2. A decree against plaintiff in patent infringement suit was affirmed by Court of Appeals while its appeal from a like decree in another suit involving the same controversy was pending unheard before Court of Appeals of another circuit. *Held* that motion for affirmance, seasonably made to latter court and supported by certified copies of record, etc., in the other case, establishing legal identity of the subject-matter and privity of parties, was a proper mode of interposing defense of *res judicata*. *Hart Steel Co. v. Railroad Supply Co.* . . . 294
- PRESUMPTIONS.** See **Evidence**, 3; **Taxation**, 8.
1. In trial of action upon contract for interstate transportation, plaintiff is entitled to presumption that carrier filed with Interstate Commerce Commission such rates as were requisite to sustain contract, pleadings being silent on the subject. *Nevada-California-Oregon Ry. v. Burrus* 103
 2. Enrollments made by Dawes Commission and approved by Secretary of Interior, presumptively correct. *United States v. Wildcat* 111
 3. In making enrollments Dawes Commission was authorized to presume that person enrolled as member on Creek tribal rolls of 1895 was living on April 1, 1899, in absence of proof of his death before that date or of circumstances indicating that he had died before Commission acted. *Id.*
 4. Patentee presumed to have had all prior patents before him when he applied for patent. *Railroad Supply Co. v. Elyria Iron Co.* 285

PRESUMPTIONS—*Continued.*

PAGE

5. Strong presumption in favor of rates fixed by an experienced administrative body after a full hearing. *Darnell v. Edwards* 564
6. A state law, otherwise invalid, cannot be made effective through a statutory presumption that its provisions are accepted by interstate railroad carrier. *Erie R. R. v. Winfield* 170
7. Recorded certificates of mining location *prima facie* evidence of title in Montana. *Hopkins v. Walker* 486

PRIORITY:

Of invention. See **Patents for Inventions.**

PRIVITY. See **Parties, 2; Res Judicata.**

PRIZE. See **Admiralty.**

PROCEDURE. See generally: **Damages; Equity; Evidence; Interstate Commerce Acts; Judgments; Judicial Notice; Jurisdiction; Mandamus; Parties; Patents for Inventions; Pleading; Taxation.**

Suit against State. See **Constitutional Law, IX.**

Attacking jurisdiction and waiving objections. See **Jurisdiction, I.**

Federal question, raising. *Id.*, III, (7), (a); IV, (1); when not decided. *Id.*, II, (2).

Removal of causes. *Id.*, IV, (2).

Writ of error, where directed. *Id.*, III, (1).

Judgments reviewable. Scope of review. *Id.*, III, (4).

Local law. Following state constructions. *Id.*, VII.

Conclusions of fact, judicial and administrative. *Id.*, VIII.

Mandate. Reversing injunction and dismissing bill, effect of. *Id.*, IV, (5).

Self-incrimination. See **Criminal Law, 1.**

Absence of accused at view of judge. *Id.*, 3-4.

Claims for materials and labor furnished federal contractor. See **Sureties.**

Interest, liability for. *Id.*, 3-5.

Clouds on title, bills to remove. See **Equity, 9, 14, 17-19.**

PROCEDURE—*Continued.*

PAGE

- Injunction bonds, damages under. *Id.*, 2-5.
 Multifariousness. *Id.*, 1.
 Multiplicity of suits. *Id.*, 2, 9, 11.
 Rate cases. Dismissing bill without prejudice. *Id.*, 6.
 Supplemental bill, unanswered, effect of. *Id.*, 22.
 Tender. *Id.*, 16.
 Trade secrets. Enjoining disclosure. *Id.*, 8.
Quo warranto, in state court against national bank. See **Jurisdiction**, V, (3).
 1. Rehearing. New contentions made too late; discretion of trial court. *Illinois Cent. R. R. v. Greene* 555
 2. *Res judicata*. Setting up new defense by motion in Circuit Court of Appeals. *Hart Steel Co. v. Railroad Supply Co.* 294

PROCESS, SERVICE OF. See **Jurisdiction**, I.

PROPERTY:

- In trade-marks and trade secrets. See *Du Pont Powder Co. v. Masland* 100

PUBLIC CONTRACTS:

- Claims for labor and material under bonds accompanying federal construction contracts. See **Sureties**.

PUBLIC LANDS. See **Damages**, 5; **Judgments**, 9.

As to powers of Tensas Basin Levee Board, Louisiana. See **Statutes**, II, 7-8.

(1) *Railroad Lands and Surveys*.

1. Act of Mar. 2, 1899, in providing for conveyance to United States by Northern Pacific R. R. Co. of lands within a national park in exchange for public lands to be selected elsewhere, *construed* as extending to that company's successor in title though no successor is named. *West v. Rutledge Timber Co.* 90

2. The company, recognized as such successor by Land Department both in making conveyance of the base lands and in enjoyment of right of lieu selection, is not to be denied that right upon the hypothesis that the Northern Pacific R. R. Co. had ceased to exist before date of act. *Id.*

3. Report by deputy surveyor that public lands were suit-

PUBLIC LANDS—*Continued.*

PAGE

able for grazing, if cleared, but more valuable for timber at the time, accepted and acted upon by Land Department as a description of lands as non-mineral, *held* classification as non-mineral at time of actual government survey for purposes of lieu selection, under Act of 1899, *supra. Id.*

4. Whether preliminary lieu selection of unsurveyed public land designates the tract "with a reasonable degree of certainty," under the Act of 1899, question of fact to be determined by circumstances of each case. Description in terms of future survey may be sufficient, if land can be located therefrom with aid of adjoining survey already made. *Id.*

5. In view of power reserved to amend, repeal, etc., act granting land to Atlantic & Pacific R. R. Co., and of grantee's failure to comply with conditions, Congress was empowered to lay upon it cost of surveying lands granted and require payment as condition to issuance of patents, as done by Act of July 31, 1876. *Santa Fe Pac. R. R. v. Lane* 492

6. Land Department's construction that Act of 1876 required grantee to pay only its proportional share for surveying townships was reasonable and impliedly approved and incorporated by Congress in Act of June 25, 1910, which changes grantee's obligation only by advancing time of payment. *Id.*

See **Equity**, 14-16.

(2) *National Forests and Railroad Rights of Way.*

7. Power of the President to establish forest reservations includes power to make temporary withdrawals. *Chicago, Mil. & St. P. Ry. v. United States* 351

8. Act of Secretary of Interior in directing a withdrawal is in law act of President. *Id.*

9. Forest lands, temporarily or permanently reserved, are "specially reserved from sale" and set apart for a public purpose, within the meaning of § 5 of the general railroad right of way act of Mar. 3, 1875, and not subject to its provisions. *Id.*

10. Under Act of Mar. 3, 1899, such right of way over temporary or permanent forest reservations may be obtained only after Secretary of Interior finds it consistent with public interest, and he, in exercise of broad discretion, may

PUBLIC LANDS—*Continued.*

PAGE

condition approval on prior filing of stipulation binding applicant, respecting use of privilege, prevention of fire, compensation for timber cut, etc. *Id.*

11. Where, for purpose of securing right of way under Act of 1899, with immediate permission to proceed with construction work, railroad company's agent agreed in writing, subject to ratification by company, that it would later execute a stipulation touching its rights and conduct in forest reservation, *held* that the company's action in proceeding with work with knowledge of manner in which permission had been obtained, and its acceptance of benefits, amounted to implied ratification of agent's agreement, binding company either to execute the required stipulation or to discontinue construction and operation of railroad within reservation. *Id.*

See **Damages, 5; Judgments, 9.**

(3) *Homestead Entries and Patents.*

12. Under § 7 of Act of Mar. 3, 1891, it is duty of Secretary of Interior to issue patent upon homestead entry when no contest or protest proceeding has been initiated and no order has been made, in his department, for purpose of challenging validity of entry, within 2 years from issuance of final receiver's receipt. *Lane v. Hoglund*. 174

See **Mandamus, 3.**

13. Adverse report by deputy supervisor, challenging homestead entry within national forest for insufficiency of residence and cultivation, but merely filed in Land Office and not acted upon until after 2 year period had expired, is not a "pending contest or protest" within § 7 of the act. *Id.*

14. Preliminary homestead entry, made under agreement between applicant and his mother that he would make entry, pay rent while entry was being completed and deed land to her upon issuance of patent, is void under § 24, Act of May 2, 1890, and confers no rights upon applicant or his heirs. *Doepel v. Jones*. 305

15. When Land Department provisionally cancels such an entry during entryman's lifetime, and, after his death, his widow has relinquished her rights therein and made new entry in her own right, the original entry affords no basis for entryman's heirs to contest her entry before Department on

PUBLIC LANDS—Continued.

PAGE

ground that her marriage was void, if they do not deny the illegal agreement or seek to have the original entry reinstated on its merits. *Id.*

16. The first entry, being a nullity, could beget no equity entitling heirs to affix a trust to the land when patented to the widow. *Id.*

(4) *Mexican Grant; Good Faith; Color of Title; "Fence Act."*

17. Where lands, allotted as part of a Mexican Community grant and for many years occupied, improved and claimed in good faith under color of such allotments and mesne conveyances, were excluded from grant by decree of Court of Private Land Claims determining its boundaries, continuance of such occupancy, with knowledge of decree, was not a trespass forbidden by the Act of Feb. 25, 1885, to prevent unlawful occupancy of public lands, but came within the exception thereof as an occupancy under claim and color of title made or acquired in good faith. *Smith v. Third Natl. Exchange Bank* 184

(5) *Mining Land; Certificates of Location.*

18. Substantial controversy respecting construction and effect of mining laws presented when plaintiff sets up title under placer patent, alleging *locus in quo* not known to contain lodes when patent was applied for and was so adjudged against strangers to suit who adversed application, and in which the defendants, notwithstanding such judgments, claim same ground under other lode locations made after patent and embracing claims 600 feet wide, while plaintiff contends 25 feet would be the maximum if ground remained subject to lode location. *Hopkins v. Walker*. 486

19. Recorded certificates of location are first muniment of locator's paper title and, when verified, are, in Montana, *prima facie* evidence of all facts properly recited in them; and so, when apparently valid but actually, under mining laws, invalid, they may becloud title injuriously. *Id.*

See **Equity**, 17-19.

(6) *As to Tenure and Fees of Surveyor General of Louisiana.*

20. Office of surveyor general in Louisiana abolished by Act of Mar. 4, 1909, 35 Stat. 945. *Lewis v. United States*. . . 134

PUBLIC LANDS—*Continued.*

PAGE

21. In view of R. S., § 1765, allowing federal officers only such additional compensation as is by law authorized and explicitly appropriated, surveyor general of Louisiana was not entitled to fees for furnishing copies of plats and transcripts of records, which the Act of Mar. 3, 1831, required him to collect but did not undertake to dispose of. *Id.*

PUBLIC OFFICERS. See **Mandamus**; **Public Lands**, 8, 20, 21.

QUO WARRANTO:

Jurisdiction of state court under Federal Reserve Act. See **Jurisdiction**, V, (3).

RAILROADS. See **Carriers**; **Corporations**; **Employers' Liability Act**; **Franchise**; **Hours of Service Act**; **Interstate Commerce Acts**; **Safety Appliance Act**; **Taxation**.
Lieu selections. See **Public Lands**, 1-5.
Duty to pay cost of surveying. *Id.*, 5-6.
Rights of way. *Id.*, 9-11.
State regulation. See **Carriers**.

RATES:

Transportation rates. See **Carriers**; **Interstate Commerce Acts**.
State regulation of water rates. See **Water Rates**.
Street railroads. See **Franchise**.

RECEIVERS. See **Parties**, 1.

RELEASE:

Of carrier by person accepting drover's pass. See **Interstate Commerce Acts**, II, 11-15.

REMITTITUR. See **Judgments**, 5.

REMOVAL AND REMAND. See **Jurisdiction**, III, (7); IV, (2).

REPARATION. See **Interstate Commerce Acts**, I.

RES JUDICATA. See **Parties**, 2.

Motion for affirmance, seasonably made to Circuit Court of Appeals, supported by certified copies of record in case de-

RES JUDICATA—Continued.

PAGE

cided in another circuit, establishing legal identity of subject-matter and privity of parties, *held* a proper means of interposing defense of res judicata. *Hart Steel Co. v. Railroad Supply Co.* 294

SAFETY APPLIANCE ACT:

Where a brakeman was thrown from interstate train, and killed, as result of couplers coming open while train in motion, *held*, in view of Safety Appliance Act, negligence might be inferred from the mere opening of couplers. *Minn. & St. Louis R. R. v. Gotschall* 66

SERVICE OF PROCESS. See **Jurisdiction, I.**

STATES:

Powers. See **Constitutional Law; Interstate Commerce Acts; Taxation.**
 Courts. See **Jurisdiction.**
 Statutes. See Table of Statutes Cited, and title **Statutes.**
 Suit against. See **Constitutional Law, IX.**
 Laws and construction, following. See **Jurisdiction, VII.**
 Regulation of freight and passenger rates. See **Carriers.**
 Of water rates. See **Water Rates.**

STATUTES. See Table of Statutes Cited at front of volume.

Also **Anti-Trust Act; Conformity Act; Corporation Tax Act; Employers' Liability Act; Hours of Service Act; Indians; Interstate Commerce Acts; National Banks; Patents for Inventions; Public Lands; Safety Appliance Act; Workmen's Compensation Laws.**
 Statutory presumptions. See **Presumptions, 6.**

I. Principles of Construction.

Following state construction. See **Jurisdiction, VII.**

1. In determining effect of a later enactment upon an act creating an office, it must be assumed that Congress was familiar with action of an executive department undertaking to terminate the office which later act recognizes as discontinued. *Lewis v. United States.* 134
2. A construction of a Louisiana statute agreeing with practical, contemporaneous construction placed upon it by two state attorneys general whose duties it affected, *held* persuasive evidence of its meaning. *Louisiana v. Jack.* 397

STATUTES—Continued.

PAGE

3. Committee reports referred to as corroborating construction of Act of June 25, 1910, as to payment by railroads of cost of surveying granted lands. *Santa Fe Pac. R. R. v. Lane* 492

II. Particular Statutes.

1. *Act of Feb. 24, 1905, 33 Stat. 811.* Purpose to provide security for claims of all persons who furnish labor and materials on public works of United States. Liberally construed. *Illinois Surety Co. v. John Davis Co.* 376
2. *Act of Mar. 4, 1909, 35 Stat. 945, and R. S., § 2207.* Abolished office of surveyor general in Louisiana, repealing by necessary implication R. S., § 2207, creating that office. *Lewis v. United States.* 134
3. *Section 1765, R. S.* Surveyor General of Louisiana not entitled to fees for furnishing copies of plats and transcripts of records, which Act of Mar. 3, 1831, required him to collect but did not undertake to dispose of. *Id.*
4. *Arizona Public Service Corporation Act. R. S. 1913, Tit. 9, c. XI.* Permits Corporation Commission to regulate privately owned water systems and not in conflict with state constitution, as applied to individuals as well as corporations. *Van Dyke v. Geary.* 39
5. *Georgia Blow Post Law.* Requiring railroads to check speed of trains at public crossings. *Held* unconstitutional interference with interstate commerce. *Seaboard Air Line v. Blackwell* 310
6. *Kentucky Statutes and Constitution,* concerning taxation of corporate franchises, construed and applied. *Greene v. Louis. & Interurban R. R.* 499
Louis. & Nash. R. R. v. Greene 522
Illinois Cent. R. R. v. Greene 555
7. *Louisiana.* Decision in *State v. Tensas Delta Land Co.*, 126 La. 59, that State not entitled to intervene in suit brought by Tensas Basin Levee Board for recovery of lands sold by latter, *held* conclusive on this court, in absence of later state decision or statute. *Louisiana v. Jack* 397
8. *Id. Act of Aug. 19, 1910.* Did not divest Levee Board of authority over suits to recover land and confer it on attor-

STATUTES—Continued.

PAGE

ney general, but merely authorized latter, at request of governor, to represent board in litigation. *Id.*

9. *Id.* Art. 571, La. Code of Practice, authorizing third parties who allege they are aggrieved by judgment to appeal from it, inapplicable to equity suit in federal courts. *Id.*

10. Missouri "long and short haul" regulation. Held consistent with Federal Constitution and Interstate Commerce Acts. *Missouri Pac. Ry. v. McGrew Coal Co.* 191

11. *Nebraska R. S.*, § 3438. Imposes duty on owners of irrigation canals to build bridges to afford access between abutting lands intersected, although canals not acquired by condemnation. *Farmers Irrig. Dist. v. O'Shea* 325

12. *New Jersey Laws, 1912, p. 235.* Requiring street car company to carry city detectives free when in discharge of duty. Held valid exercise of police power and reserved power to alter charter. *Sutton v. New Jersey* 258

13. *New Jersey Workmen's Compensation Act. Laws 1911, c. 95.* Invalid as applied to case governed by Federal Employers' Liability Act. *Erie R. R. v. Winfield* 170

14. *New York Workmen's Compensation Act.* Invalid as applied to case governed by Federal Employers' Liability Act. *New York Cent. R. R. v. Winfield.* 147

15. *Id.* May not constitutionally govern case where injury and remedy are within admiralty jurisdiction. *Southern Pacific Co. v. Jensen* 205
Clyde S. S. Co. v. Walker. 255

16. *Ohio Workmen's Compensation Act.* Objection that act, as applied to interstate steamship company, invades federal maritime jurisdiction raised but not sufficiently presented, in *Valley S. S. Co. v. Wattawa* 202

17. *South Dakota, Laws 1911, c. 207, § 10; amended by Laws 1913, c. 304,* providing that no advance of intrastate rates may be made except after 30 days' notice filed with board of railroad commissioners, and published, inapplicable to changes in intrastate rates made in obedience to order of Interstate Commerce Commission, to abate discrimination against interstate traffic. *American Express Co. v. Caldwell* 617

STATUTES—Continued.

PAGE

18. *Washington Employment Agency Law*. Invalid under the Fourteenth Amendment. *Adams v. Tanner*. 590
19. *Washington Public Utilities Act*. State constitution permits contract provisions in franchises conferred by municipalities to be set aside by legislature; and act therefore supersedes conflicting ordinances or charter provisions of city. *Puget Sound Traction Co. v. Reynolds* 574

STOCKHOLDERS:

1. Principles governing right of stockholder to sue on behalf of corporation with special reference to cause of action based on Sherman Act. See *United Copper Co. v. Amalgamated Copper Co.* 261
2. Complaint in stockholders' suit that corporate property was sold for inadequate price by oppressive majority. See *Wall v. Parrot Silver Co.* 407

STREET RAILROADS. See **Constitutional Law**, X, 8, 15, 18; **Franchise**.

Subject to Federal Employers' Liability Act. See **Employers' Liability Act**, 11.

SUBSTITUTION:

In this court. See **Jurisdiction**, III, (2).

SURETIES:

Damages under injunction bonds. See **Equity**, 3-5.

1. Purpose of Act of Feb. 24, 1905, is to provide security for claims of persons who furnish labor or material on public works of United States; the act, and bonds under it, are to be construed liberally to effectuate this purpose; and release of sureties through mere technicalities not to be encouraged. *Illinois Surety Co. v. John Davis Co.* 376
2. Arrangement of contractor in nature of assignment to a corporation, but not technically such, not changing actual management of work or prejudicing surety, does not discharge latter from past or future liability. *Id.*
3. Questions of liability to pay interest under bond to secure payment for labor and materials, furnished under construction contract with United States, are determinable by law

SURETIES—*Continued.*

PAGE

of State in which contract and bond were made and to be performed. *Id.*

4. Under Illinois law liability of surety on bond is extended beyond penalty by way of interest from date when liability on bond accrued. *Id.*

5. Where claims are all liquidated and amounts not disputed, but only liability under bond, surety, which has not elected to pay into court, is chargeable with interest, from commencement of suit, upon aggregate of claims allowed as reduced to penal amount of bond. *Id.*

6. Acts of creditors upon which surety neither acted nor relied, which did not affect it and are not inconsistent with resort to security of bond, afford no basis for equitable estoppel in favor of surety. *Id.*

7. Renting of plant of cars, track and equipment used in construction work for United States is furnishing of materials within Act of Feb. 24, 1905; and rent reserved, together with loading and freight expenses incident to bringing the plant to and from place of use, are liabilities covered by contractor's bond. *Id.*

SURVEYS. See **Public Lands**, 3-6; 20-21.

TAXATION. See **Constitutional Law**, X, (6); **Corporation Tax Act**; **Evidence**, 3.

1. Where permanent injunction granted against collection of drainage tax on ground that plaintiff's lands cannot be benefited by improvements, defendant cannot, under Fourteenth Amendment, be denied opportunity to introduce evidence on question of benefit. *Saunders v. Shaw* 317

2. Nonresident cannot be subjected to state occupation or privilege tax when his only business in State is obtaining orders for goods shipped from without and delivering them to his customers within the State, goods gaining no local status. *Western Oil Refg. Co. v. Lipscomb* 346
As to what amounts to continuous interstate transportation. *Id.*

3. For constructions of constitutional and statutory provisions of Kentucky governing assessment and taxation of

TAXATION—Continued.

PAGE

railroad " capital stock " (tangible and intangible property), and " franchises " (intangible property), within the State, and mode of making deductions and allowances and securing the equality of taxation required by the state constitution.

See <i>Greene v. Louis. & Interurban R. R.</i>	499
<i>Louis. & Nash. R. R. v. Greene.</i>	522
<i>Illinois Cent. R. R. v. Greene.</i>	555

4. The courts of the United States, their jurisdiction being properly invoked, may afford relief against discriminatory state taxation, contravening state constitution, when discrimination results from divergent action of different assessing boards whose assessments are not subject to any process of equalization established by State, and where diverse results are outcome, not of express agreement, but of intentional, systematic and persistent undervaluation by one body of officials, presumably known to and ignored by the other body, so that, in effect, the two bodies act in concert. *Id.*

See **Jurisdiction**, II, (2).

5. Principal if not sole reason for adopting " fair cash value " as the standard for valuations is as convenient means of securing equal taxation, and, since, when the standard is systematically departed from in respect of certain classes of property, its observance in respect of others (tax rate being uniform) would serve to frustrate its very object, it follows that, in such cases, duty to assess at full value is not supreme but yields to duty to avoid discrimination. *Id.*

6. Findings of an assessing board, such as the Kentucky Board of Valuation and Assessment, made after notice and hearing, are *quasi*-judicial, and unless affected by fraud or by adoption of erroneous principle bind the courts. *Id.*

7. Party attacking tax assessment not to be held in default for omission to introduce evidence on matters which were not deemed material by taxing authority or in litigation until found so by judge in his decision. *Louis. & Nash. R. R. v. Greene.* 522

8. It being shown that valuation made by taxing board was result of following method substantially erroneous because not in accordance with governing statute, it is error for

TAXATION—*Continued.*

PAGE

court to presume that like valuation would have been reached by following correct method. *Id.*

9. Although fact that property is part of system and has its uses only in connection with other parts of system may be considered by State in taxing that portion of system which is within her borders, yet idea of organic unity must not be made means of unlawfully taxing property without State belonging to persons domiciled elsewhere. *Illinois Cent. R. R. v. Greene.* 555

10. It being contended that in valuing upon a mileage basis that portion of plaintiff's railroad system which was taxable in Kentucky Board did not make due allowance for excess value per mile due to costly terminals in other States, *held* that, in the absence of contrary proof, Board must be presumed to have made such allowance. *Id.*

TENDER. See **Equity**, 14-16.

TIME:

An order of Secretary of Interior made on March 26th, "to be effective thirty days from date," becomes effective on the thirtieth day after its date, i. e., on April 25th. *Lanham v. McKeel* 582

TRADE-MARKS. See **Trade Secrets.**

TRADE SECRETS:

1. Extent to which former employee, in suit to protect trade secrets, may be enjoined from disclosing them to experts or other witnesses in making his defense. *Du Pont Powder Co. v. Masland* 100
2. Nature of property in trade-marks and trade secrets. *Id.*

TRESPASS:

On public lands. See **Public Lands**, (4).

TRUSTEE:

Judgment secured by, merges guaranty of mortgage bonds. See **Judgments**, 7, 8.

TRUSTS. See **Public Lands**, 14-16; **Mortgage.**

UNITED STATES:

PAGE

Jurisdiction of state court over action where personal injury was sustained on federal reservation while plaintiff engaged on work which defendant was performing under contract with the United States. See **Jurisdiction**, V, (2).
 Claims for labor and materials under bonds accompanying federal construction contracts. See **Sureties**.

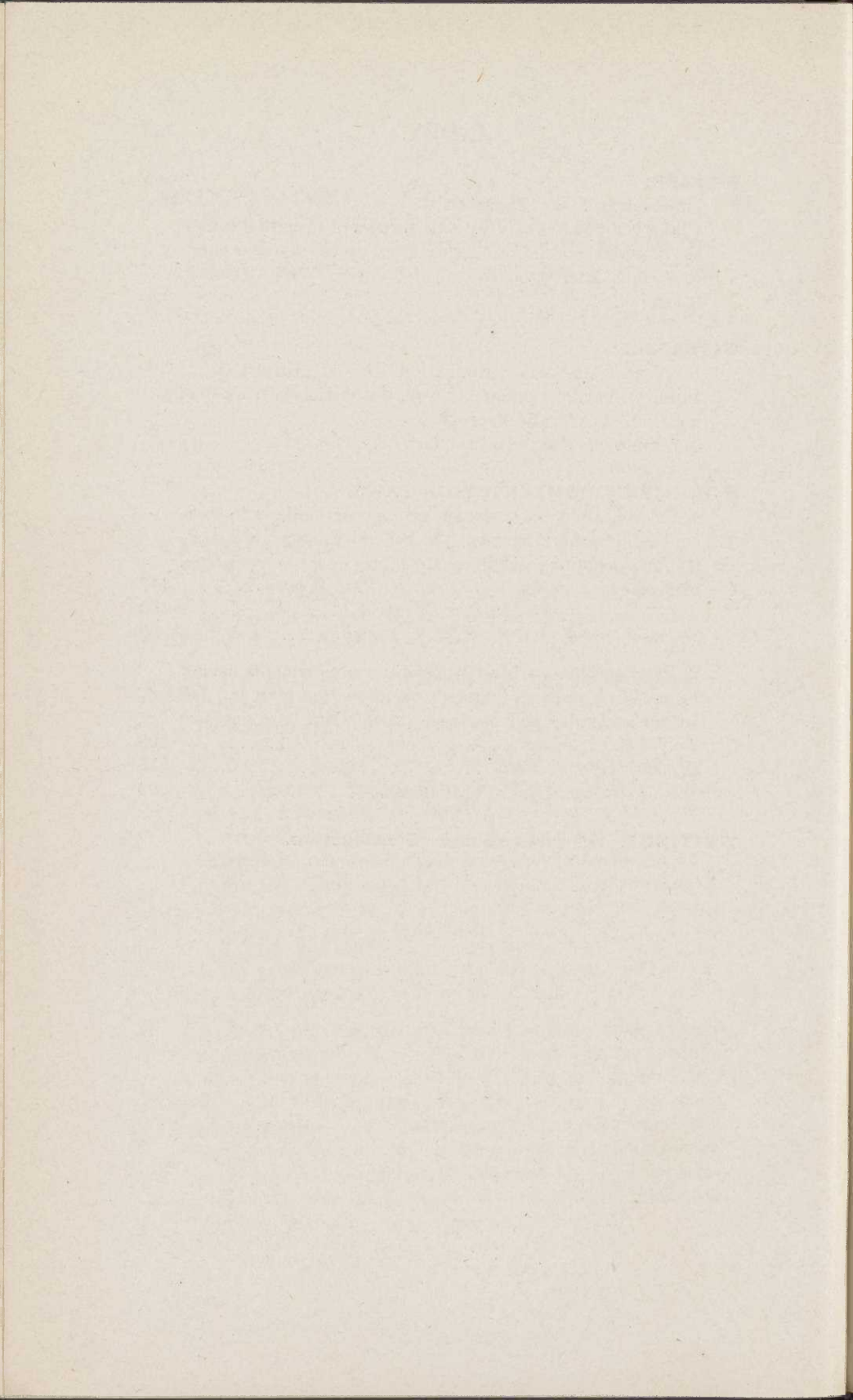
WAIVER. See **Jurisdiction**, I.

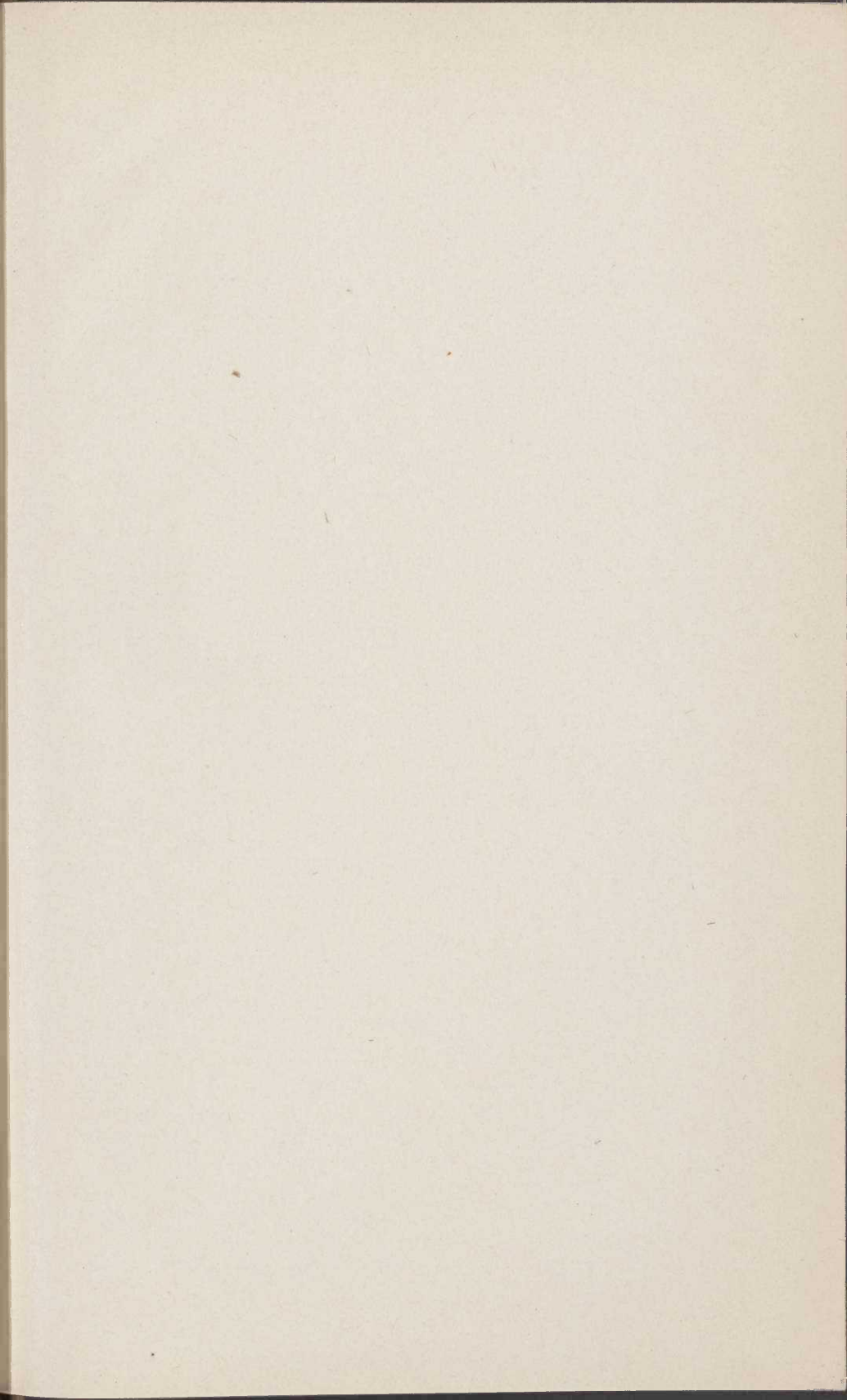
WAR:

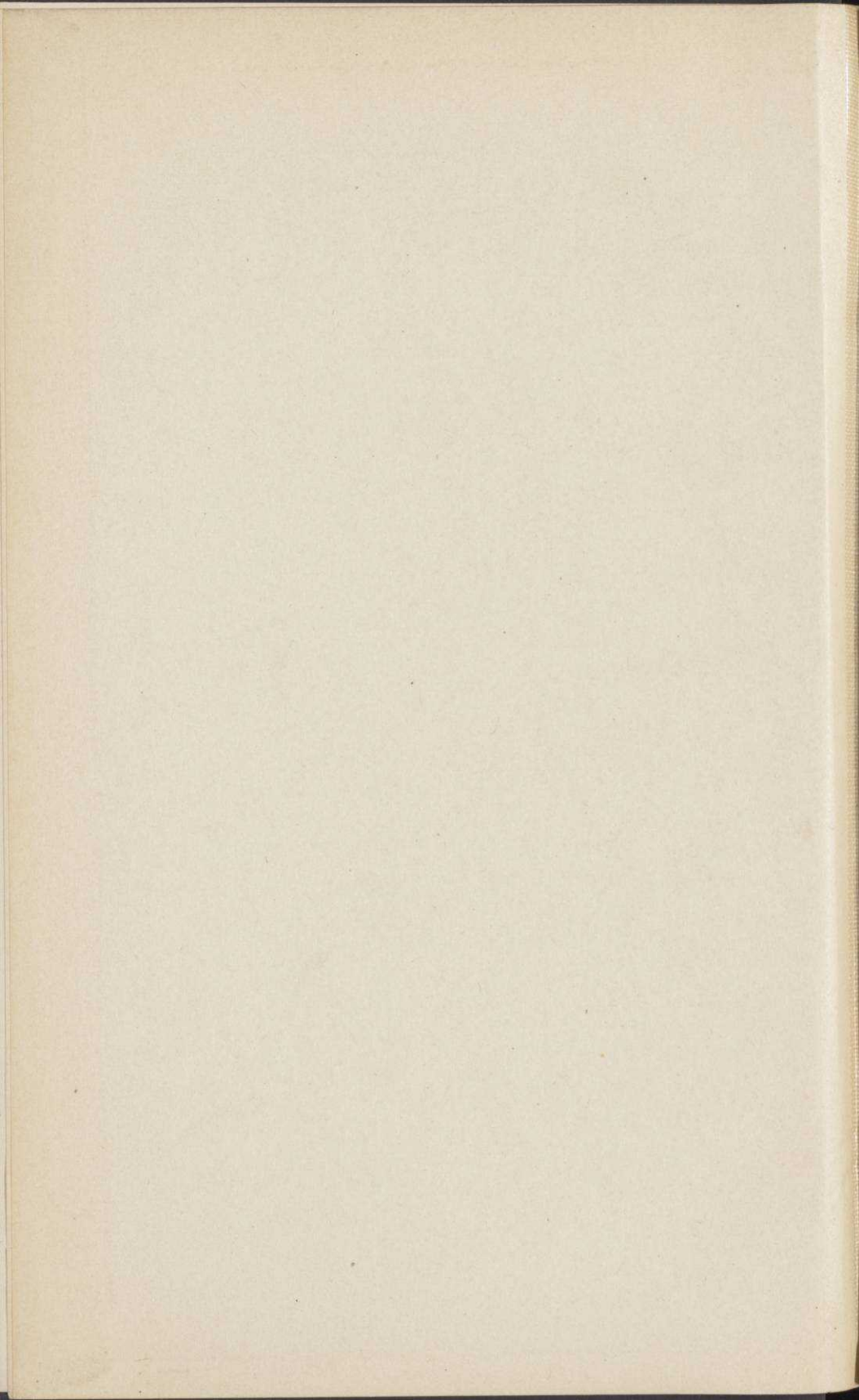
Effect on liability of carrier under contract of ocean carriage.
 See **Admiralty**.

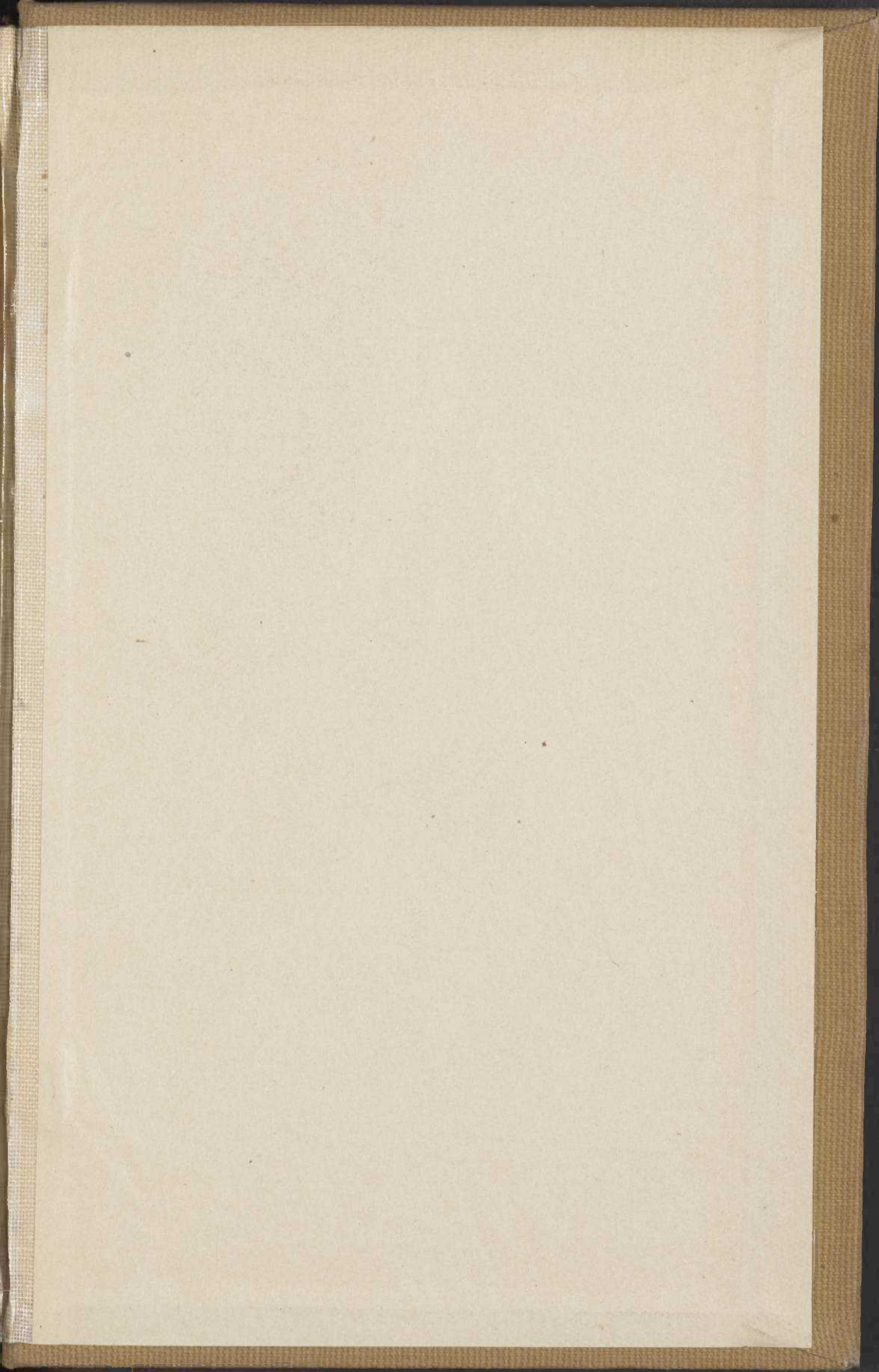
WATER RATES:

1. Regulation by the Arizona Corporation Commission of privately owned water systems, as provided in Public Service Corporation Act, not prohibited by state constitution. *Van Dyke v. Geary* 39
2. One who uses his property in supplying large community with water thereby clothes it with public interest and subjects business to public regulation. *Id.*
3. Where purpose of system is to supply water to residents of a particular townsite, though not to public generally, fact that lots of townsite were originally purchased from owner of water system with oral understanding that water could be secured from that system for use on lots has no tendency to support claim that system supplies particular individuals only in pursuance of private contracts and is hence devoted exclusively to private use. *Id.*
4. Fact that service is limited to part of town does not prevent water system from being public utility. *Id.*
5. Water rates fixed by state commission upon basis of net annual return of 10% of value of property employed, allowing annual depreciation of 3½%, held not confiscatory, valuation and estimate of operating expenses being made by commission and concurred in by District Court after careful inquiry by both, evidence presented to this court being conflicting, and District Court having protected complainant by permitting renewal of application for injunction after one year if the rates appeared too low. *Id.*









2

UNIVERSITY
REPORT

24

VOL.
OCT. 18

1874

