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Where liabilities of shareholders to pay stock subscriptions are several, independent and unconditional, and no issue with corporation touching such liability is common to the shareholders, remedy of trustee in bankruptcy of the corporation is by action at law against each shareholder separately, and not in equity on ground of multiplicity of suits. *Id.*

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3. If a contract, made and valid in one State, is unenforceable in the courts of another on grounds of local public policy, it is unenforceable also, for the same reason, in the District Court in the latter State having jurisdiction through diversity of citizenship. *Union Trust Co. v. Grosman* 412

4. In a suit for specific performance of contract for sale of a lot, where the vendee, a colored person, relies upon an ordinance forbidding colored persons to occupy houses in blocks where the greater number of houses are occupied by white persons, vendor may attack such prohibition under Fourteenth Amendment. *Buchanan v. Warley* 60

5. Modern tendencies to depart from the strict letter in discovering intent do not alter the principle that, within the scope of his undertaking, a party contracting assumes the risks of intervening obstacles. *Day v. United States* 159

6. A contract with the United States to furnish such labor and material in place as might be necessary to complete a canal and locks, held to be for the completion of the works and

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that the cost of protecting them from floods in the meantime was within the contractor's undertaking. *Id.*

7. Government's claim of liquidated damages, interposed in a suit on a construction contract, *held* inequitable and therefore disallowed. *United States v. California Bridge Co.* . 337

8. Under a contract with the United States to erect certain structures "at the United States navy yard, Mare Island," *held* the location selected before execution of contract was subject to be changed by Government for some other location within navy yard. *Id.*

9. Where, under supplemental agreements with new contractor to whom contract relet after default of original contractor, deviations were made involving a cost of about 6% of the total contract price and requiring estimates of the attendant expenses, the cost of the work being reduced notwithstanding the changes, *held*, because of the deviations, that the difference between the cost and the original contract price was not a proper measure of the original contractor's liability. *Id.*

See **Res Judicata**, 1.

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

CONVEYANCES. See **Indians; Public Lands.**
Fraudulent. See **Bankruptcy.**

CONVICTS:

Competency as witnesses. See **Evidence**, 3, 4.

CORPORATIONS. See **Bankruptcy**, 11-14; **Equity**, 1-3; **Receivers.**

Reserved power of State over. See **Constitutional Law**, VI; **Franchise.**

Foreign. Suits against. See **Jurisdiction**, II, 19.

Unconstitutional excises. See **Taxation**, III.

Regulation of rates and public service. See **Constitutional Law**, XIV, (3); **Interstate Commerce Acts.**

National Banks. Assessment against shareholders. See **National Banks.**

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- Interstate carrier's liability for personal injuries. See **Employers' Liability Act.**
- Stock dividends. Not taxable under Income Tax Act. See **Taxation, IV, 1.**
- Stockholders. Action against state bank commissioner for excess of claims as depositor over liability as stockholder. See *Martin v. Lankford* 547

COUNTY BONDS. See **Bonds, 1.**

COURT OF CUSTOMS APPEALS. See **Mandamus, 3, 4.**

COURTS. See **Bankruptcy; Equity; Jurisdiction; Mandamus; Procedure.**

CREDITORS. See **Bankruptcy; Equity; National Banks.**
Application of payments. See **Payment.**

CRIMINAL LAW. See **Evidence; Jury and Jurors.**

1. In the absence of exceptional circumstances in criminal cases the regular judicial procedure should be followed and *habeas corpus* should not be granted in advance of a trial. *Jones v. Perkins* 390
2. The statute of limitations is a defense and must be asserted on the trial by defendant in criminal cases; it cannot be heard on *habeas corpus* to test validity of arrest in extradition. *Biddinger v. Commissioner of Police* 128
3. District Court not bound by rules of evidence as they stood in 1789. *Greer v. United States* 559
Rosen v. United States 467
4. No presumption that accused is of good character. *Greer v. United States* 559
5. A sworn charge previously made is not essential to validity of an indictment. *Ruthenberg v. United States* 480
6. Charging one person with the direct commission of the criminal act, and others with aiding, abetting, etc., it, charges but one offense against all under § 332, Crim. Code; and all persons so charged are principals, though the offense be a misdemeanor. *Id.*
7. In an indictment under the Selective Draft Law for failure

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to register and for aiding, abetting, etc., such failure, it is sufficient to allege that delinquent was a male person between the ages specified and not necessary to allege that he was a citizen of the United States, or a person, not an alien enemy, who had declared his intention to become such citizen. *Id.*

8. Under § 37, Crim. Code, a conspiracy to commit an offense, when followed by overt acts, is punishable as a substantive crime, whether the illegal end has been accomplished or not. *Goldman v. United States* 474

9. Under Rev. Stats., § 161, and Crim. Code, § 194, a privately owned box coming within the designation of letter boxes as made by the Postmaster General, is "an authorized depository of mail matter" and a theft of letters therefrom is punishable as the latter section prescribes. *Rosen v. United States* . . 467

10. Mail matter which has not reached the manual possession of the addressee, but lies in a private letter box, designated as an authorized depository under the federal law, where it has been placed by the delivering carrier, is still subject to the protective power of the Government. *Id.*

11. Convictions under Selective Draft Law.
 See *Selective Draft Law Cases* 366
Jones v. Perkins 390
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Kramer v. United States 478
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12. Prosecution for violation of Food and Drugs Act. *Weeks v. United States* 618

CRIMINALS:

Competency as witnesses. See **Evidence**, 3, 4.

CROSS BILLS. See **Equity**, 6; **Interstate Commerce Acts**, III, 6.

CUSTOMS LAW:

Where the Court of Customs Appeals had taken jurisdiction and decided the case upon its merits, mandamus will not lie to compel it to inquire into and pass upon refusal of Secretary of Treasury to direct action of Collector of Customs. *Ex parte Park & Tilford* 82

DAMAGES. See **Actions and Defenses**, 3; **Employers' Liability Act**, 2; **Landlord and Tenant**, 2. PAGE

1. Where, under supplemental agreements with new contractor to whom contract relet after default of original contractor, deviations were made involving a cost of about 6% of the total contract price and requiring estimates of the attendant expenses, the cost of the work being reduced notwithstanding the changes, *held*, because of the deviations, that the difference between the cost and the original contract price was not a proper measure of the original contractor's liability. *United States v. California Bridge Co.* 337

2. Government's claim of liquidated damages, interposed in a suit on a construction contract, *held* inequitable and therefore disallowed. *Id.*

DEBTOR AND CREDITOR. See **Bankruptcy**; **Equity**, 1-3; **National Banks**; **Payment**.

DECLARATION OF INTENTION. See **Naturalization**, 4, 5.

DECLARATIONS. See **Evidence**, 5.

DECREES. See **Judgments**.

DEED. See **Indians**.

DELEGATION OF POWER. See **Constitutional Law**.

DENMARK. See **Treaties**.

DESCENT AND DISTRIBUTION. See **Indians**, 7; **Treaties**.

DISCHARGE. See **Bankruptcy**, 10.

DISCRIMINATION. See **Interstate Commerce Acts**, II; **Taxation**, V.

DISTRICT COURTS. See **Jurisdiction**.

DISTRICT OF COLUMBIA COURTS. See **Jurisdiction**.

"DIVISION OF JOINT RATE." See *Interstate Commerce Acts*, I. PAGE

DIVORCE. See *Estoppel*, 1.

Alimony. See *Taxation*, IV, 2.

DRAFT LAW. See *Selective Draft Law*.

DUE PROCESS OF LAW. See *Constitutional Law*, XI; XIV.

EMINENT DOMAIN:

1. Power cannot be divested through contracts made by State. *Pennsylvania Hospital v. Philadelphia* 20

2. A legislative contract prohibiting taking of land of charitable corporation for street extension without latter's consent cannot be opposed to power of condemnation. *Id.*

EMPLOYER AND EMPLOYEE. See *Employers' Liability Act; Labor Unions; Master and Servant; Safety Appliance Act.*

EMPLOYERS' LIABILITY ACT:

1. A railroad employee who was run down and killed in a switching yard in which he was walking between the rails amid a shifting cloud of steam and smoke coming from a roundhouse and nearby engines, *held* guilty of contributory negligence. *Union Pacific R. R. v. Huxoll* 535

2. Contributory negligence avails carrier neither as defense nor in diminishing damages if failure to observe Safety Appliance Acts contributed, in whole or in part, to cause death of employee. *Id.*

3. Question whether defective condition of power-brake of locomotive contributed, in whole or in part, to injury to employee, *held* properly submitted to jury. *Id.*

4. Question whether any substantial evidence was introduced to justify submission of case to jury on issue of proximate causal negligence is one of law, reviewable in an action under Employers' Liability Act coming from the state court. *Id.*

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5. Except in cases specified in § 4, employee assumes extraordinary risks incident to employment, and risks due to negligence of employer and fellow employees when obvious or fully known and appreciated by him. *Boldt v. Pennsylvania R. R.*..... 441

6. Employee was killed, while helping to repair faulty coupler, due to impact of cars moving by gravity under control of brakeman. Evidence tended to support contentions that brakeman negligently permitted cars to strike with too great violence and company neglected to provide rules to safeguard deceased while about his task. *Held*, plaintiff not entitled to instruction that risk employee assumes, since passage of Employers' Liability Act, is ordinary dangers incident to employment, which does not include assumption of risk incident to negligence of carrier's officers, agents or employees. *Id.*

EMPLOYMENT CONTRACTS. See **Labor Unions.**

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

EQUITY. See **Laches; Patents for Inventions; Procedure**, III, 7; IV, 3; **Receivers; Trusts and Trustees.**

Bona fide purchaser. See **Indians**, 8.

1. *Insolvency Proceedings. Provable Claims.* When court, without statute, takes possession of all assets of corporation to satisfy its debts, rights and equities of creditors are determined by their contracts with debtor; it is error to give to filing of the bill the effect of the filing of a petition in bankruptcy or to exclude lawful claims made within time fixed for proving claims and maturing within a reasonable time before distribution can be made. *Filene's Sons Co. v. Weed* 597

2. *Suit to Collect Stock Subscriptions. Order of Bankruptcy Court.* Order of bankruptcy court, calling for payment of shareholders' subscriptions to a bankrupt corporation which, before and independently of the order, were ascertained and payable, adds nothing to shareholders' liabilities or trustee's rights, and cannot justify a single suit by trustee against many of the shareholders to collect their subscriptions which, in the absence of the order, would not have

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been cognizable in equity; and neither can order of bankruptcy court directing trustee to institute a suit in equity to make such collections confer such equitable jurisdiction. *Kelley v. Gill* 116

3. *Id. Multiplicity of Actions.* Where liabilities to pay stock subscriptions are several, independent and unconditional, and no issue with corporation touching such liabilities is common to shareholders, remedy of the corporation, or its trustee in bankruptcy, is by action at law against each shareholder separately, and not in equity on ground of multiplicity of actions. *Id.*

4. *Ancillary Bill to Enjoin and Absorb Law Actions. Jurisdiction.* A bill filed in District Court by defendant in a number of actions at law pending therein, praying that the whole matter be tried in equity and the legal proceedings enjoined, held dependent and ancillary and that the jurisdiction to entertain it was referable to that invoked in the actions at law. *Eichel v. U. S. Fidelity & Guaranty Co.* 102

5. *Injunction. Street Railway Franchises. City Ordinance.* City restrained in District Court pending determination of franchise rights in state court. *Cincinnati v. Cincinnati & H. Trac. Co.* 446

6. *Cross Bills; against United States.* United States no more impleadable by cross than original bill without its consent. *Illinois Cent. R. R. v. Public Utilities Comm.* 493

7. *Enforcing and Annuling Orders of Interstate Commerce Commission.* As to what is such a suit; the venue and necessity of joining United States and Commission. See *Id.*

8. *Injunction. Absent Parties. Jurisdiction.* The District Court has no power to decree injunction against parties not served with process and who appeared only to object to jurisdiction over them. *Hitchman Coal & Coke Co. v. Mitchell.* 229

9. *Id. Officials of Labor Union.* In a suit to restrain alleged concerted wrongful conduct upon the part of officials of a labor union, a temporary injunction should not be granted against those not served and not submitting themselves to jurisdiction. *Eagle Glass & Mfg. Co. v. Rowe.* 275

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10. *Id.* An injunction will lie to prevent officers and agents of a labor union from inducing employees of a plant run on a non-union basis to break their contract of employment by remaining in the employ of such non-union employer after joining the union, for the purpose of coercing such employer, through a strike or the threat of one, into recognition of the union. *Hitchman Coal & Coke Co. v. Mitchell* 229
Eagle Glass & Mfg. Co. v. Rowe 275
11. *Id. Decree on Interlocutory Appeal.* Where application for temporary injunction submitted upon affidavits taken *ex parte* without opportunity for cross-examination and without consent that court proceed to final determination of merits, dismissal of bill, on interlocutory appeal, should not be directed, unless on its face there is no ground for equitable relief. *Eagle Glass & Mfg. Co. v. Rowe* 275

EQUIVALENTS. See **Patents for Invention, 3.****ESTOPPEL:**

1. Principles of estoppel by judgment reviewed and *held* to apply peculiarly to decrees for divorce and alimony. *Bates v. Bodie* 520
2. Consent decree granting divorce as prayed and adjudging that wife recover a certain sum "in full of alimony and all other demands set forth in cross-bill" on which decree based, which bill recited husband's property rights in certain lands in another State, *held* within jurisdiction of court granting it, and that action of court of State in which land situated, in suit by wife for alimony out of such lands, in not accepting such decree as an estoppel, was a denial of full faith and credit. *Id.*
3. In suit to set aside certificate of naturalization illegally granted United States is not estopped by the order of naturalization, although it entered its appearance in the naturalization proceedings and there unsuccessfully raised the same objection. *United States v. Ness* 319
4. Acts of administrative officers of government *held* not to estop United States from asserting title to public land erroneously surveyed. *Lee Wilson & Co. v. United States* 24
5. Adjudication in former case *held* not to estop defendant

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on issue of primary responsibility of another in action whereby former, after paying judgment, sought indemnity from latter, the former adjudication not determining or involving such issue and party from whom indemnity sought having been dismissed from former case as co-defendant before defendant's evidence therein was heard. *Fuller Co. v. Otis Elevator Co.* 489

EVIDENCE. See **Judicial Notice; Presumptions.**

1. District Court in criminal trial not bound by rules of evidence as they stood in 1789. *Greer v. United States.* 559
Rosen v. United States. 467

2. Power to review does not include the right to invade province of jury by determining questions of credibility and weight of evidence. *Goldman v. United States.* 474
Kramer v. United States. 478

3. The common-law rule of disqualification of witnesses convicted of crime is no longer followed, but such conviction is considered in determining the credibility and weight of their testimony. *Rosen v. United States.* 467

4. In a criminal trial in District Court in New York, a witness, who had been convicted of crime under the law of that State, held competent to testify for the United States against his co-defendants, irrespective of whether he would have been disqualified under the rules of competency as they were in New York at date of Judiciary Act of 1789. *Id.*

5. In order that declarations and conduct of third parties may be admissible against persons sued with respect to acts done to carry out an alleged conspiracy, a combination between them and defendants must be shown, by independent evidence, but the criminal or otherwise unlawful character of the combination may be shown by the declarations themselves. *Hitchman Coal & Coke Co. v. Mitchell.* 229

6. Where validity of an order of Interstate Commerce Commission depended upon the evidence before it, trial court, in a suit to set aside order, properly excluded other evidence. *Louis. & Nash. R. R. v. United States.* 463

7. Question whether any substantial evidence was introduced to justify submission of case to jury on issue of proxi-

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mate causal negligence is one of law, reviewable in an action under Federal Employers' Liability Act coming from state court. *Union Pacific R. R. v. Huxoll*. 535

8. Upon charge of misbranding under Food and Drugs Act, by offering for sale under distinctive name of another article, trial court properly received evidence that shipment was made to fill order obtained by defendant's agent by so misrepresenting article, and properly declined to confine jury's attention to label borne by article when shipped. *Weeks v. United States*. 618

EXCISE TAXES. See **Taxation**, III.

EXECUTIVE OFFICERS. See **Constitutional Law**, II; **Customs Law**; **Immigration**; **Indians**; **Mails**; **Mandamus**; **National Banks**; **Public Lands**.
Suits against. See **Jurisdiction**, III, (5).

EXPORTS.

State tax on. See **Constitutional Law**, V, 5.

EXTRADITION:

1. A person indicted in due form for offense against laws of State, who was present therein when offense is alleged to have been committed, and subsequently leaves, becomes a fugitive from justice; and upon fulfillment of the requirements of § 5278, Rev. Stats., governor of State where accused found must cause his arrest and delivery for extradition to authorized agent of demanding State. *Biddinger v. Commissioner of Police*. 128

2. Art. IV, § 2, of the Constitution intends, not to express the law as usually prevailing among independent nations, but to provide a summary executive proceeding whereby States may promptly aid one another in bringing accused persons to trial; and should be liberally construed to effectuate this purpose. *Id.*

3. Art. IV, § 2, subd. 2, of Constitution, places no limitation upon power of States to arrest in advance of extradition proceedings; with § 5278, Rev. Stats., it deals merely with conditions under which one State may demand rendition from another and under which alleged fugitive may resist com-

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pliance by State upon which demand is made. <i>Burton v. New York Cent. R. R.</i>	315

4. Matters of defense—in this case the bar of the statute of limitations—cannot be heard on *habeas corpus* to test the validity of arrest in extradition, but must be heard and determined at trial in demanding State. *Biddinger v. Commissioner of Police* 128

FAVORED NATION CLAUSE. See **Treaties.**

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

FELLOW SERVANT DOCTRINE. See **Employers' Liability Act, 5, 6.**

FIFTH AMENDMENT. See **Constitutional Law.**

FINAL JUDGMENTS. See **Judgments; Jurisdiction, II.**

FINDINGS OF FACT. See **Interstate Commerce Acts, II, 1; Procedure; Public Lands, III, 3, 4.**

FIRST AMENDMENT. See **Constitutional Law.**

FOOD AND DRUGS ACT:

1. Act specifies and defines at least two kinds of misbranding—where article bears false or misleading label and where offered for sale under distinctive name of another article. *Weeks v. United States* 618

2. It is not the misbranding that is made unlawful, but shipment or delivery for shipment from one State to another of misbranded article. *Id.*

3. Upon charge of misbranding, by offering for sale under distinctive name of another article, trial court properly received evidence that shipment was made to fill order obtained by defendant's agent by so misrepresenting article, and properly declined to confine jury's attention to label borne by article when shipped. *Id.*

4. Whether intent of principal and sanction of agent's misrepresentations are immaterial, not determined in a case where

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 the jury found (presumptively with evidence) that principal authorized agent, under an instruction that such authority was essential. *Id.*
- FOREIGN COMMERCE:**
 Tax on exports. See *Crew Levick Co. v. Pennsylvania* 292
- FOREIGN CORPORATIONS:**
 Power of State to tax. See **Taxation**, III.
- FOURTEENTH AMENDMENT.** See **Constitutional Law**.
- FRANCHISE.** See **Constitutional Law**, VI; **Procedure**, III, 1; **Taxation**, III.
 1. In absence of state constitutional or statutory provision, and prior adjudication by state court to contrary, and of circumstances showing intention to give or accept mere revocable right, franchise granted by proper state authority without limit as to duration, is contract, not subject to annulment at will of grantor. *Northern Ohio Traction Co. v. Ohio* 574
 See *Cincinnati v. Traction Co.* 446
 2. Under constitution and statutes of Ohio in 1892, county commissioners had power to grant franchises over public roads valid for 25 years, if not perpetually. *Id.*
- FRATERNAL SOCIETIES.** See **Insurance**, 2.
- FRAUD.** See **Indians**; 3, 9; **Naturalization**.
- FRAUDULENT CONVEYANCES.** See **Bankruptcy**, 5-8.
- FREIGHT CHARGES.** See **Interstate Commerce Acts**, III, 1.
- FUGITIVE FROM JUSTICE.** See **Extradition**.
- FULL FAITH AND CREDIT.** See **Constitutional Law**.
- GAS COMPANIES:**
 Required to extend service. See *New York & Queens Gas Co. v. McCall* 345

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GRAND JURY. See **Constitutional Law**, XII, 2.

GUARANTY. See **Married Women**.

HABEAS CORPUS:

1. In the absence of exceptional circumstances in criminal cases the regular judicial procedure should be followed and *habeas corpus* should not be granted in advance of a trial. *Jones v. Perkins* 390

2. Matters of defense—in this case the bar of the statute of limitations—cannot be heard on *habeas corpus* to test validity of arrest in extradition, but must be heard and determined at trial in demanding State. *Biddinger v. Commissioner of Police* 128

HOMESTEADS. See **Indians; Public Lands**.

HUSBAND AND WIFE. See **Estoppel**, 1; **Married Women**.
Alimony. See **Taxation**, IV, 2.

IMMIGRATION. See **Aliens; Naturalization**.

Section 43, Immigration Act of 1907, preserves judicial proceedings prescribed by Chinese Exclusion Acts for cases to which those acts apply, and summary administrative method provided by § 21 cannot be used in a case of violation of Exclusion Acts. *United States v. Woo Jan* 552

IMPAIRMENT OF CONTRACT OBLIGATION. See **Constitutional Law**.

INCOME TAX. See **Taxation**, IV.

INDIANS:

1. Under treaties with Menominee Indians, acts of Congress and an act of the Wisconsin legislature, certain lands held disposed of within meaning of school section grant in Wisconsin Enabling Act; that they remained in reservation and subject to continuing occupancy and rights of Indians; and that State had no title to them and could not restrain cutting of timber on them by or in interest of Indians. *Wisconsin v. Lane* 427

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2. Treaty of 1854 with Lake Superior Chippewas and reservation for the Indians thereunder, *held* to withdraw certain lands and dispose of them within meaning of school section grant in Wisconsin Enabling Act, and that title did not pass to State. *United States v. Stearns Lumber Co.* 436
3. Allotment certificate issued under Choctaw-Chickasaw agreement of 1902 passes equitable title only; until legal title conveyed by patent, duly recorded, as provided by § 5, Act of 1906, allotment may be set aside by Secretary of the Interior for fraudulent procurement. *Duncan Townsite Co. v. Lane.* 308
4. The assignment of land provided for by Art. IV of treaty of 1865 with Omaha Indians, was merely an apportionment of tribal right of occupancy to members in severalty, leaving fee in United States and leaving United States and tribe free to take such measures for ultimate and permanent disposal of lands, including fee, as might become appropriate in view of changing conditions, welfare of the Indians and public interests. *United States v. Chase.* 89
5. Possessory rights based on such assignments were terminated by Act of 1882, 22 Stat. 341. An assignee who failed to exercise his preferred right of selection waived it, and his assigned tract became allottable to any other qualified selector. *Id.*
6. The provision of § 4, Act of 1882, that "any right in severalty acquired by any Indian under existing treaties shall not be affected by this act" was not intended to qualify the plan of allotment defined in § 5, but only to prevent the sale under the earlier and separable portion of the act of tracts subject to Indian rights in severalty acquired under treaties. *Id.*
7. Patent for allotment under Act of 1882, in the name of an Indian who was dead at the time, inures to benefit of his heir under § 2448, Rev. Stats.; the fact that patentee had died before requisite proceedings had been taken upon his selection would not render patent void but at most voidable in an appropriate proceeding. Such a patent cannot be attacked by mere occupant of the allotment in an action brought by United States and patentee's heir to recover damages for wrongful use and occupation of the premises. *Id.*

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- 8. Doctrine of *bona fide* purchaser will not aid holder of an equity to overcome the holder of both the legal title and an equity. *Duncan Townsite Co. v. Lane* 308
- 9. Mandamus will not lie to compel Secretary of Interior to execute and record a patent for land where relator, purchaser in good faith and without notice of a fraudulent Indian allotment, seeks to get legal title as against the United States. *Id.*
- 10. Under Acts of 1906, § 19, and 1908, § 4, land allotted to a Creek Freedwoman as a homestead under Act of 1902, lost its tax exemption when restrictions on alienation were removed by Secretary of Interior upon petition of allottee under townsite provision of Act of 1903. *Sweet v. Schock* 192

INDICTMENT AND INFORMATION. See **Criminal Law**, 5-7.

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INHERITANCE TAXES. See **Taxation**, V.

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INSOLVENCY. See **Bankruptcy; Receivers**.

INSTRUCTIONS TO JURY. See **Employers' Liability Act**, 3, 4, 6; **Food and Drugs Act**, 3, 4.

INSURANCE.

- 1. A policy of insurance having a cash surrender value held an asset of bankrupt's estate to the extent of such value. *Cohen v. Samuels* 50
- 2. A fraternal insurance corporation held to have the right to increase assessment upon insurance certificate. *Knights of Pythias v. Smyth* 594

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

As to what constitutes interstate commerce. See **Constitutional Law**, V.

INTERSTATE COMMERCE ACTS:

For suits against the Commission, and to enforce or avoid its orders. See **Jurisdiction**, III, (4).

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I. Terms Defined.

1. Meanings and relations of the terms "through route," "through rate," "joint rate," "sum of the locals," "division of joint rate," "rate-breaking point" and "combination rate" explained and defined. *St. Louis S. W. Ry. v. United States* 136

II. Powers and Proceedings of Commission. See also III, 5, 6, *infra*.

1. *Effect of findings.* Findings of fact, based on ample evidence, are conclusive. *Louis. & Nash. R. R. v. United States* 463

2. *Id.* Where the validity of an order of Commission depended upon the evidence before it, the trial court, in a suit to set aside the order, properly excluded other evidence. *Id.*

3. *Long and Short Haul Clause.* An order passed after a full hearing on an application for relief from the long and short haul provision of the Act to Regulate Commerce, held not objectionable as to form or as broader than the hearing, or because other phases of the application were not acted upon, or as otherwise beyond the Commission's power. *Id.*

4. *Discrimination against Locality.* The power to prevent discrimination against a particular locality applies to carriers whose lines do not reach it but which bill through traffic to it over connecting lines. *St. Louis S. W. Ry. v. United States* . . 136

5. *Joint Rates and Through Routes.* An order to substitute reasonable joint through rate for an existing through rate, and to maintain existing through route, or, at carrier's election, substitute a modification of it found preferable, is within the power of the Commission. *Id.*

6. *Id.* An order held consistent with provision of § 15 of Commerce Act forbidding Commission to embrace in a through route "less than the entire length" of a railroad "unless to do so would make such through route unreasonably long." *Id.*

7. *Id. Removing Discrimination.* An order requiring carriers to reduce existing through rates by establishing joint rates, or, in alternative, new through routes with joint rates, rests on § 15 of Commerce Act; it is not to be regarded as primarily an order to remove discrimination in violation of § 3, even

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though discrimination in rates as between two localities may have furnished the occasion for the complaint and afforded reason for the rate fixed. *Id.*

8. *Investigating Power.* An investigation directed by Senate resolution, relative to expenditures by certain railroad companies, held not to be regarded as directed to political activities, or to efforts to suppress competition, but as seeking to ascertain amounts of expenditures, their allocation, and the manner in which charged upon books. *Smith v. Interstate Com. Comm.* 33, 47
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9. *Id.* Power of investigation not necessarily confined to cases in which evils and abuses are definitely charged and remedies proposed in words; nor, *semble*, is right of inquiry in a particular proceeding necessarily to be measured by scope of the proceeding as defined by the order instituting it. *Id.*

10. *Removing discriminating intrastate rates.* When Commission finds that disparity in interstate and intrastate rates is resulting in unjust discrimination against interstate commerce, and determines what are reasonable rates for interstate traffic and directs removal of discrimination carrier not only entitled to put in force such rates but free to remove the forbidden discrimination by bringing intrastate rates to same level. *Illinois Cent. R. R. v. Public Utilities Comm.* . . . 493

11. *Id. Scope and certainty of order.* In such case, Commission may make order as broad as wrongful discrimination, but extent of discrimination found and of remedy applied must be gathered from the reports and order of the Commission; and, to be effective in respect of intrastate rates established and maintained under state authority, order must have definite field of operation and not leave uncertain territory or points to which it applies. Such order should not be given precedence over a state rate statute, otherwise valid, unless, and except in so far as, it conforms to a high standard of certainty. *Id.*

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

1. *Recovery of Excess Charges under Reparation Order.* That one who has paid unreasonable freight charges has shifted burden by collecting from purchasers of the goods, does not

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prevent him from recovering overpayments from carrier, under an order of reparation: he is the proximate loser, his cause of action accrues immediately, and the purchaser, lacking privity, cannot recover the illegal profits from the carrier. <i>Southern Pacific Co. v. Darnell-Taenzer Co.</i>	531
2. <i>Carmack Amendment. Bill of Lading Presumed.</i> In a case of interstate shipment governed by Amendment, issuance of a receipt or bill of lading will be presumed. <i>Southern Pacific Co. v. Stewart.</i>	359
3. <i>State Liquor Laws; Exposure of Records.</i> A state law requiring carriers to keep records of shipments of intoxicating liquor open for inspection of any officer or citizen, is, under the Webb-Kenyon Law, valid, notwithstanding prohibition as to divulging information in § 15 of Commerce Act as amended. <i>Seaboard Air Line Ry. v. North Carolina.</i>	298
4. <i>State Interference with Trains.</i> Unwarranted requirements as to departure of trains and infliction of penalties, held contrary to commerce clause. <i>Missouri, Kans. & Tex. Ry. v. Texas.</i>	484
5. <i>Suits to Restrain State Interference with Commission's Order—Venue.</i> Suits by carriers to restrain state officials from interfering with establishment and maintenance of intrastate rates which carriers have adopted in pursuance of order of Interstate Commerce Commission requiring removal of discrimination against interstate commerce, need not be brought in district of residence of party upon whose petition order was made, but come within provision of § 1, Act of June 18, 1910 (Jud. Code, § 207). <i>Illinois Central R. R. v. Public Utilities Comm.</i>	493
6. <i>Id. Cross Bill to Set Order Aside.</i> The District Court of a district other than that of petitioner's residence, in a suit by a carrier in aid of an order of the Interstate Commerce Commission, cannot, under the Act of October 22, 1913, entertain a cross bill seeking to have the order declared void and to enjoin the United States and the Commission from enforcing it and the carrier from complying with it. <i>Id.</i>	

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1. A State may prohibit and punish the possession of intoxicating liquor for personal use. *Crane v. Campbell* 304
2. Under Webb-Kenyon Law a State may prescribe conditions under which shipments of intoxicating liquors from other States may be allowed. *Seaboard Air Line Ry. v. North Carolina* 298
3. A state law requiring carriers to keep records of shipments of intoxicating liquor open for inspection of any officer or citizen, is, under the Webb-Kenyon Law, valid, notwithstanding prohibition as to divulging information in § 15 of Commerce Act as amended. *Id.*

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2. Judgment of highest state court in action under Employers' Liability Act, final in sense of determining ultimate right and general principles by which it was to be measured, but which did not fix amount of recovery and directed new trial to accomplish that result, *held* not final for purposes of certiorari under Act of 1916. *Id.*
3. Finality of judgments of Court of Appeals of District of Columbia for purposes of certiorari from this court. See *Fuller Co. v. Otis Elevator Co.* 489
4. When a decree dismissing a bill is meant to be without prejudice, the better practice is to express it so. *McGowan v. Columbia River Packers' Assn.* 352

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II. Jurisdiction of this Court.

- (1) In General, p. 721.
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I. **Jurisdiction over the Person.** See II, 14, 19; III, (7), *infra*.

1. District Court has no power to decree an injunction against parties who were not served with process and who appeared only to object to the jurisdiction over them. *Hitchman Coal & Coke Co. v. Mitchell* 229
2. In a suit to restrain alleged concerted wrongful conduct upon the part of officials of a labor union, a temporary in-

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junction should not be granted against those not served and not submitting themselves to jurisdiction. *Eagle Glass & Mfg. Co. v. Rowe* 275

3. Where a bill to abate a nuisance on the Columbia River was filed in the Western District of Washington on the assumption that the *locus in quo* was within that State and District, a motion to dismiss without prejudice, because of an intervening decision of this court which fixed the *locus* in Oregon, should have been granted, the possibility of granting relief against the defendants *in personam* not justifying the retention of the case against plaintiff's will. *McGowan v. Columbia River Packers' Assn.* 352

II. Jurisdiction of this Court.(1) *In General.*

1. Without departing from settled rule that writ of error dismissed if its total want of merit shown conclusively by decisions extant at time of decision below, judgment affirmed. *Pennsylvania Hospital v. Philadelphia.* 20

2. Power to review does not include the right to invade province of jury by determining questions of credibility and weight of evidence. *Goldman v. United States.* 474
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3. In reviewing judgment erroneously treating franchise as revocable at will of county commissioners and upholding purported revocation by them, court not called upon to determine whether franchise term has since expired or whether legislature may have reserved power to revoke or repeal franchise. *Northern Ohio Trac. Co. v. Ohio.* 574

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4. Writ will not issue to compel subordinate court to make a particular decision; and jurisdiction in this regard is no greater in a case in which lower court's decision is by law made final than those in which decisions are reviewable in the ordinary ways. *Ex parte Park & Tilford.* 82

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(4) <i>Over Circuit Court of Appeals.</i>	
7. Though an action be removable as one arising under a federal law, if defendant remove it solely on ground of diverse citizenship a judgment of the Circuit Court of Appeals is not reviewable by writ of error. <i>Southern Pacific Co. v. Stewart</i>	359
8. An ancillary, dependent bill to enjoin legal proceedings in District Court and adjudicate subject-matter is jurisdictionally referable to such actions, and decree therein is reviewable by appeal from Circuit Court of Appeals if original jurisdiction of action depended on federal question. <i>Eichel v. U. S. Fidelity & Guaranty Co.</i>	102
9. Suit against fraternal insurance corporation held to involve construction of federal charter, and that court had jurisdiction to entertain appeal. <i>Knights of Pythias v. Smyth</i>	594
(5) <i>Over District Courts.</i>	
10. In reviewing directly judgment of District Court in criminal case, when constitutional questions upon which jurisdiction depends are not frivolous but are resolved against plaintiff in error, other questions raised are to be considered and passed upon. <i>Goldman v. United States</i> . . .	474
11. A suit by one adjudged a lunatic, seeking to regain certain documents and to set aside the inquisition, held to involve no construction or application of the Constitution to support direct appeal from District Court. <i>Ketcham v. Burr</i>	510
12. An action to recover back money paid under protest as tax on income under Law of 1913, held to present not merely question whether statute has been wrongly understood and applied, but also question as to scope of Sixteenth Amendment, and that court had jurisdiction to review both ques-	

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tions by direct writ of error to District Court. <i>Towne v. Eisner</i> ..	418

13. Upon appeal from decree of District Court granting an injunction against enforcement of a city ordinance, on ground that it impaired the obligations of grants under which a street railway has been built and that its enforcement would work a deprivation of property without due process or compensation and cause irreparable injury, the cause is subject to review upon both law and facts, relief depending upon the case as it develops in this court. *Cincinnati v. Cincinnati & H. Trac. Co.* 446

14. A proceeding to set aside default judgment for want of service of process, *held* to amount to an independent action and that the question of jurisdiction, as it related to the power of the court in the original action, could not be made the basis of a direct writ of error, under § 238, Judicial Code, to determine correctness of order overruling application to set aside. *Stevirmac Oil & Gas Co. v. Dittman* 210

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

15. Power of Court of Appeals to certify questions to this court is confined to cases where judgments or decrees are made final by § 250, Jud. Code, which does not embrace cases involving interpretation and effect of acts of Congress which are general in character, or the general duties or powers of officers under the law of the United States, as distinguished from merely local authority. *Arant v. Lane* 166

16. When issued to the Court of Appeals, the writ of certiorari is not limited to cases in which final judgment has been entered, but only to those in which judgment when entered is final. *Fuller Co. v. Otis Elevator Co.* 489

(7) *Over Court of Customs Appeals.* See **Mandamus**, 3, 4.

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(9) *Over State Courts.*

18. Judgment of highest state court, in action under Employers' Liability Act, final in sense of determining ultimate right and general principles by which it was to be measured, but which did not fix amount of recovery and directed new trial to accomplish that result, *held* not final for purposes of certiorari under Act of 1916. *Bruce v. Tobin*..... 18

19. A judgment rendered against corporation of one State in courts of another, on cause of action arising in the former, over objection that its consent to be sued in the latter could be implied only in respect of causes arising out of its business there and that the attempt to compel it to respond to the action was an invasion of its rights under Constitution, *held* not reviewable by writ of error, but by certiorari under that clause of § 237, Jud. Code, as amended, which deals with cases in which any title, right, privilege, or immunity is claimed under the Constitution. *Phila. & Reading C. & I. Co. v. Gilbert*..... 162

20. Where, by the judgment of a court of domicile, an insurance company was permitted to levy certain assessments, subject to limitation of amount, and in a later action in court of another State such an assessment was held void on the ground that it exceeded the power of the company and the limit fixed by the former judgment, and that it was not made as required by the company's charter, *held*, that the second ground of decision could not be treated as an independent local basis of decision and thereby defeat the right of review and reversal of the decision on the first ground as one denying full faith and credit to the judgment with respect to the amount of assessment. *Hartford Life Ins. Co v. Barber*.... 146

21. Question whether any substantial evidence was introduced to justify submission of case to jury on issue of proximate causal negligence is one of law, reviewable in action under Federal Employers' Liability Act coming from state court. *Union Pacific R. R. v. Huxoll*..... 535

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As to personal jurisdiction. See I, *supra*.

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(1) *Removal Proceedings.* See II, 7, *supra*.

1. Where complaint states cause of action against common carrier for loss or damage in transit to goods shipped in interstate commerce, case is removable from state to District Court if jurisdictional amount is involved. *Southern Pac. Co. v. Stewart* 359

(2) *Enforcing Local Policy.*

2. If a contract, made and valid in one State, is unenforceable in the courts of another on grounds of local public policy, it is unenforceable also, for the same reason, in District Court in latter State having jurisdiction through diversity of citizenship. *Union Trust Co. v. Grosman* 412

(3) *Under Contract Clause.*

3. Corporations claiming right to operate street railway according to terms of various grants, etc., under which it had been built, sought to restrain enforcement of a city ordinance on ground that it impaired and attempted to impair the obligations of the several grants, etc., and that its enforcement would deprive them of their property without due process or compensation and cause irreparable injury. *Held*, that jurisdiction of District Court was properly invoked and that it had power to adjudicate the issues presented, but that the decree for an injunction as prayed should be modified so as to limit affirmative relief to an injunction restraining city from taking any steps, other than necessary court proceedings, to enforce the ordinance prior to final adjudication of controversies involved and from setting up claim that plaintiff's continued operation of cars, pending such final adjudication, does or will amount to an acceptance of the ordinance or in any way prejudice their rights. *Cincinnati v. Cincinnati & H. Trac. Co.* . . . 446

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

4. District Court, in a suit by a carrier in aid of an order of Commission, cannot, under Act of Oct. 22, 1913, entertain a cross bill seeking to have the order declared void and to enjoin United States and Commission from enforcing it and carrier from complying with it, in district where party who petitioned for the order does not reside. *Illinois Central R. R. v. Public Utilities Comm.* 493

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5. Suits by carriers to restrain state officials from interfering with establishment and maintenance of intrastate rates which carriers have adopted in pursuance of order of Commission requiring removal of discrimination against interstate commerce, need not be brought in district of residence of party upon whose petition order was made, but come within provision of § 1, Act of June 18, 1910 (Jud. Code, § 207). *Id.*

6. In suit by carrier to restrain state officials from interfering with establishment and maintenance of intrastate rates adopted in pursuance of order of Commission requiring removal of discrimination against interstate commerce, neither the United States nor the Commission is a necessary party. *Id.*

7. A cross bill seeking to have an order of the Commission declared void and to enjoin United States and Commission from enforcing it and carrier from complying with it, cannot be entertained as against Commission and carrier only: United States is a necessary party. *Id.*

(5) *Suits Against State Officials or States.*

8. Action against Bank Commissioner of Oklahoma held to be against him personally and that, in absence of diverse citizenship, District Court without jurisdiction; allegations of abridgment of privileges and immunities and deprivation of property without due process being merely in emphasis of Commissioner's wrongdoing and not a statement of an independent ground of recovery. *Martin v. Lankford* 547

9. Action against Bank Commissioner of Oklahoma personally and his surety to recover damages for loss of plaintiff's bank deposit, alleged to be due to his negligent or wilful disregard of his duties under state law, held not an action against State, but one within jurisdiction of District Court, there being diversity of citizenship. *Johnson v. Lankford* 541
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10. Allegations that Commissioner so arbitrarily and capriciously exercised his powers as to deprive plaintiff of the equal protection of the laws and of his property without due process, etc., held not to change complexion of action. *Johnson v. Lankford* 541

11. Suit to enjoin state officials from enforcing unconstitutional tax not a suit against State. *Looney v. Crane Co.* 178

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(6) *Suits against United States.*

12. The immunity of the United States recognizes no distinction between cross and original bills, or ancillary and original suits. *Illinois Central R. R. v. Public Utilities Comm.* 493

(7) *On Columbia River.* See I, 3, *supra.*

13. An alleged nuisance consisting of nets connected with buoys and heavily anchored to bottom of Columbia River between the line of extreme low tide and the channel, in Oregon, is not subject to abatement by District Court sitting in Western District of Washington; assuming that concurrent jurisdiction "on the Columbia" is enjoyed by State of Washington, it does not reach bed of stream in Oregon. *McGowan v. Columbia River Packers' Assn.* 352

IV. **Jurisdiction of State Courts.** See II, (9) *supra*; VI, *infra.*

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V. **Jurisdiction of Court of Appeals of the District of Columbia.** See II, (6), *supra.*

VI. **Local Law. Following State Courts.** See II, 20, 21; III, (2), *supra.*

1. Conclusive effect of construction of state statutes by highest court of State. *Pennsylvania R. R. v. Towers* 6
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2. Where judgment sustaining *in toto* a street improvement tax laid upon abutting property partly according to frontage and partly according to area was reversed on sole ground that assessment based on area had produced results in conflict with Fourteenth Amendment and case sent back for further proceedings, questions as to whether the part of the tax based on frontage was severable, and whether, and by what agency, a new and just area assessment should be made, held questions of state law for determination by state court. *Schneider Granite Co. v. Gast Realty Co.* 288

3. Whether a state court may take judicial notice that a

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- stream is navigable is a question of local law. *Wear v. Kansas*. 154
4. Constitutionality of state tax determined by court's own judgment of actual operation and effect of tax, irrespective of its form and of how characterized by state courts. *Crew Levick Co. v. Pennsylvania*. 292
- JURY AND JURORS.** See **Constitutional Law**, XII; XIV, (2).
- Instructions. See **Employers' Liability Act**, 3, 4, 6; **Food and Drugs Act**, 3, 4.
1. The Sixth Amendment and federal statutes permit the drawing of a jury from a part of the district in criminal cases. *Ruthenberg v. United States*. 480
2. No infraction of constitutional or statutory right is predicable of the fact that the indictment and conviction of a Socialist are returned by grand and petit juries composed exclusively of members of other political parties, and property owners. *Id.*
3. Upon a criminal trial of defendants who are Socialists it is not error for court to refuse them permission to ask jurors whether they distinguish between Socialists and Anarchists. *Id.*
- JURY TRIAL.** See **Constitutional Law**, XII; XIV, (2); **Jury and Jurors.**
- KANSAS:**
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- KENTUCKY:**
- Attempt to impose on a circuit court or judge thereof duty of levying and collecting taxes is void under Constitution of Kentucky. *Hendrickson v. Apperson*. 105
- LABELS.** See **Food and Drugs Act.**
- LABORERS:**
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1. The right of action for persuading an employee to leave his employment rests upon fundamental principles of general application. *Hitchman Coal & Coke Co. v. Mitchell* 229
Eagle Glass & Mfg. Co. v. Rowe 275
2. It is the right of workingmen to form unions and to enlarge their membership by inviting other workingmen to join, provided the objects of the union be proper and legitimate. The latter right must be exercised with reasonable regard for the conflicting rights of others and not by inducing or seeking to induce employees of an establishment to violate their contract of employment. *Hitchman Coal & Coke Co. v. Mitchell* 229
3. The same liberty which enables men to form unions, and through the unions to enter into agreements with employers willing to agree, entitles other men to remain independent of the unions and other employers to agree with them to employ no man who owes any allegiance or obligation to the union. The parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. *Id.*
4. An injunction will lie to prevent officers and agents of a labor union from inducing employees of a plant run on a non-union basis to break their contract of employment by remaining in the employ of such non-union employer after joining the union, for the purpose of coercing such employer, through a strike or the threat of one, into recognition of the union. *Id.*
5. In a suit to restrain alleged concerted wrongful conduct upon the part of officials of a labor union, a temporary injunction should not be granted against those not served and not submitting themselves to jurisdiction. *Eagle Glass & Mfg. Co. v. Rowe* 275

LACHES:

A suit, brought in 1913, by testamentary trustees, seeking to hold the Texas & Pacific Ry. Co., as by an express trust, for the satisfaction of certain bonds issued under a deed of trust in 1872 by another company, to whose interests and obligation defendant was alleged to have succeeded, the bonds at time of suit being more than 10 years overdue and

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the interest in default 37 years or longer, <i>held</i> barred by laches. <i>Waller v. Texas & Pac. Ry.</i>	398

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LANDLORD AND TENANT:

1. Rent issues from the land, is not due until the rent day, and is due in respect of the enjoyment of the premises let. *Filene's Sons Co. v. Weed.* 597

2. Where lessee corporation not only undertook to pay as rental all sums payable by its lessor under overleases of the same premises, but also, as the inducing consideration for the lease, covenanted to pay at all events a certain amount per annum, in monthly instalments throughout the term and, if the lease should be terminated sooner, to pay a sum measured at the same rate for the unexpired term, less a discount, *held*, that the covenant created a present indebtedness, independent of rent, for the whole amount so stipulated to be paid; that upon appointment of receivers in a purely equitable proceeding to carry on the lessee's business and pay its debts, and upon their declining the lease leaving rent in default, the lessor, by reëntury pursuant to the lease with the court's consent, might perfect its claim to the amount payable under the covenant for the unexpired term and that the claim thus perfected was provable within the time fixed for proof of claims against the receivers; that lessor might in like manner perfect and prove its claim under the covenant to pay as damages difference between rental value at date of entry and rent reserved, for residue of term. *Id.*

3. In Massachusetts, in absence of statute or express contract, lessor who has terminated lease and evicted tenant has no further claim against lessee or his receivers appointed to continue business and pay debts. *Gardiner v. Butler & Co.* 603

4. In non-statutory receivership proceeding brought to preserve good will and pay debts of company occupying premises as lessee, lessor reëntering during receivership held to have proper claim for rent up to reëntury and for damages based

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on lessee's covenant to pay difference between rental value at time of reentry and the rent and other payments reserved for residue of term. *Id.*

5. Covenant for payment of so much per annum in monthly payments throughout term, and, if lease terminated sooner, for anticipating payments for unexpired portion, less a discount on payments so anticipated, *held* to intend a simple discount on monthly payments as they fell due. *Filene's Sons Co. v. Weed* 597

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LIMITATIONS. See **Laches.**

1. Statute of limitations is a defense and must be asserted on trial by defendant in criminal cases; it cannot be heard on *habeas corpus* to test validity of arrest in extradition. *Biddinger v. Commissioner of Police* 128

2. Limitations in Act of Mar. 3, 1891, inapplicable to suit by United States to quiet its title to land erroneously excluded from survey. *Lee Wilson & Co. v. United States* 24

3. Second proviso in § 8, Naturalization Act of 1906, has no bearing on relation of 7 year limitation prescribed by § 4, subd. 2, to declarations filed before passage of act. *United States v. Morena* 392

4. Requirement of subd. 2, § 4, that petition shall be filed not more than 7 years after alien has made his declaration of intention, applies to declarations made before act was passed. The period runs on such declarations from date of act. *Id.*

- LIQUOR LAWS.** See *Intoxicating Liquors.* PAGE
- LOCAL LAW.** See *Jurisdiction, VI.*
- LONG AND SHORT HAULS.** See *Interstate Commerce Acts, II, 3.*
- MAILS.** See *Criminal Law, 10.*
1. Executive powers of Postmaster General under § 161, Rev. Stats., include power to designate certain receptacles as letter boxes. *Rosen v. United States* 467
 2. Theft of letters from mail boxes placed by tenants for receipt of mail in halls of buildings in which they have place of business punishable under Crim. Code, § 194. *Id.*
- MANDAMUS:**
1. Discretionary remedy, largely controlled by equitable principles; will not be granted to promote wrong—to direct an act which will work public or private mischief, or which, while within letter, disregards spirit of law. *Duncan Townsite Co. v. Lane* 308
 2. Will not lie to compel Secretary of Interior to execute and record patent for land where relator, purchaser in good faith and without notice of fraudulent Indian allotment, seeks to get in legal title as against the United States. *Id.*
 3. Will not issue to compel subordinate court to make a particular decision; jurisdiction in this regard no greater in case in which lower court's decision is by law made final than where decision is reviewable in the ordinary ways. *Ex parte Park & Tilford* 82
 4. Where the Court of Customs Appeals had taken jurisdiction and decided case upon its merits, mandamus will not lie to compel it to inquire into and pass upon the refusal of Secretary of Treasury to direct action of Collector of Customs. *Id.*
 5. In a mandamus to test right of a State to levy charges on sand dredged from a stream by riparian owner under claim of title *ad filum aquæ*, latter has not a constitutional right to have question of navigability determined by jury. *Wear v. Kansas* 154

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1. Wife's continuing guaranty of payment of husband's note, enforceable in State where executed, *held* not enforceable, under the rule of comity, in courts of State of domicile against wife's separate property there if contrary to public policy of State. *Union Trust Co. v. Grosman* 412
2. By law of Texas, married woman's guaranty of husband's note not enforceable against her separate property. *Id.*

MASSACHUSETTS:

In absence of statute or express contract, lessor who has terminated lease and evicted tenant has no further claim against lessee or his receivers appointed to continue business and pay debts. *Gardiner v. Butler & Co.* 603

MASTER AND SERVANT. See **Employers' Liability Act; Labor Unions; Safety Appliance Act.**

1. An employer is entitled to the good will of his employees; to the benefit of the reasonable probability that by properly treating them he will be able to retain them in his employ and fill vacancies occurring from time to time by the employment of other men on the same terms; and it is unlawful for a third party, having notice of this relation, to interfere with it without just cause or excuse. *Hitchman Coal & Coke Co. v. Mitchell* 229
Eagle Glass & Mfg. Co. v. Rowe 275
2. The right of action for persuading an employee to leave his employment rests upon fundamental principles of general application. *Id.*
3. A bill setting up contract with plaintiff's employees whereby latter were not to join labor unions and remain in employ and charging defendants with formation and pursuit of scheme to unionize plaintiff's shop by interfering with its employees, *held* one stating an equitable cause of action, which appellate court should not dismiss on an interlocutory appeal. *Eagle Glass & Mfg. Co. v. Rowe* 275

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4. Party held liable for servant's negligence may have indemnity from another primarily responsible as master.
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- MILITARY SERVICE.** See **Constitutional Law, III.**
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- MORTGAGES:**
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- NATIONAL BANKS.** See **Payment.**
1. Comptroller of Currency has discretionary power to withdraw assessment on shareholders before it is paid, or when partly paid. *Korbly v. Springfield Inst. for Savings* 330
2. Where sums paid by savings banks to receiver of national bank in which they held shares were intended to be applied against their liabilities under National Bank Act, to enforce which an assessment was then outstanding, second assessment, exceeding difference between their statutory liabilities and amounts so paid, is void. *Id.*
- NATURALIZATION:**
1. Filing of certificate of arrival an essential prerequisite.
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2. Certificate of naturalization, issued without certificate of arrival having been filed, may be set aside at suit of United States, as one illegally procured. *Id.*

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- 3. In suit to set aside certificate of naturalization illegally granted, United States not estopped by order of naturalization although it entered appearance in naturalization proceedings and there unsuccessfully raised same objection. *Id.*
- 4. Second proviso in § 8, Act of 1906, has no bearing on relation of 7 year limitation prescribed by § 4, subd. 2, to declarations filed before passage of act. *United States v. Morena* 392
- 5. Requirement of subd. 2, of § 4, Act of 1906, that petition shall be filed not more than 7 years after alien has made his declaration of intention, applies to declarations made before act was passed. The period runs on such declarations from date of act. *Id.*

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1. In a suit by a carrier to restrain state officials from interfering with establishment and maintenance of intrastate rates adopted in pursuance of order of Interstate Commerce Commission requiring removal of discrimination against interstate commerce, neither United States nor Commission is necessary party. *Illinois Cent. R. R. v. Public Utilities Comm.* 493

2. A cross bill seeking to have order of Interstate Commerce Commission declared void and to enjoin United States and Commission from enforcing it and carrier from complying with it, cannot be entertained as against Commission and carrier only: United States is a necessary party. *Id.*

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1. One who entered the field when a patent was unquestioned and after the patentee by his efforts had created an extensive market, *held* to have acquired in equity no intervening rights against the patent as subsequently reissued. *Abercrombie & Fitch Co. v. Baldwin* 198

2. Baldwin patent for improvements in acetylene gas generating lamps *held* valid and infringed as to claim 4. *Id.*

3. The invention covered by such patent *held* meritorious and entitled to invoke the doctrine of equivalents. *Id.*

4. The reissue of such patent and amendment therein *held* not to enlarge original patent. *Id.*

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2. Presumption upon matter of fact, when not merely disguise for another principle, means that common experience shows fact to be so generally true that court may notice its truth. *Id.*
3. In a case of interstate shipment governed by Carmack Amendment, issuance of a receipt or bill of lading will be presumed. *Southern Pacific Co. v. Stewart* 359

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I. Error, Appeal or Certiorari.

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ing a mistake in his choice of proceeding. <i>Gauzon v. Compañia General &c.</i>	86
2. Writ of certiorari improvidently granted will be dismissed. So held where alleged errors consisted in refusing to submit certain questions to jury in action over title to land, rulings of District Court depending essentially on appreciation of the evidence and being concurred in by Circuit Court of Appeals. <i>Houston Oil Co. v. Goodrich.</i>	440
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On a motion to dismiss or affirm in a case presenting only questions of fact and well settled questions of general law, decree affirmed where the federal courts of two circuits had reached the same conclusions of fact independently and the appeal taken apparently for delay. <i>Eichel v. U. S. Fidelity & Guaranty Co.</i>	102
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2. This court is not disposed to disturb judgment of Supreme Court of Philippine Islands construing local laws and announcing rule applicable in the islands. <i>Gauzon v. Compañia General &c.</i>	86
3. Upon writ of error to Supreme Court of Philippine Islands in case decided upon issues of fact, conclusions of lower court, which find support in the record, not considered. <i>Id.</i>	
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his agent's misrepresentations was immaterial, not determined in view of instruction of trial court that such authority must appear beyond reasonable doubt and as record neither shows that defendant objected to this mode of submitting the question nor purports to contain all the evidence, the verdict of guilty must be taken as determining conclusively that he sanctioned the representations. *Weeks v. United States* 618

5. In reviewing directly judgment of District Court in criminal case, when constitutional questions upon which jurisdiction of this court depends are not frivolous but are resolved against plaintiff in error, other questions raised will be considered and passed upon. *Goldman v. United States* . . 474

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7. Upon appeal from decree of District Court granting injunction against enforcement of city ordinance, on ground that it impaired obligations of railway grants and enforcement will work deprivation of property without due process and cause irreparable injury, cause is subject to review upon both law and facts, relief depending upon case as it develops in this court. *Cincinnati v. Cincinnati & H. Trac. Co.* 446

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1. Without departing from settled rule that writ of error dismissed if its total want of merit shown conclusively by decisions extant at time of decision below, judgment affirmed. *Pennsylvania Hospital v. Philadelphia* 20

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3. When a decree dismissing a bill is meant to be without prejudice, the better practice is to express it so. *McGowan v. Columbia River Packers' Assn.* 352

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examination and without consent that court proceed to final determination of merits, dismissal of bill, on interlocutory appeal, should not be directed, unless on its face there is no ground for equitable relief. *Eagle Glass & Mfg. Co. v. Rowe*. . . 275

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I. Swamp Lands. Erroneous Meander. Statute of Limitations.

1. *Erroneous Survey. Powers of Department.* If, in making a survey, an area is, through fraud or mistake, meandered as a body of water, which does not exist, riparian rights do not accrue; and Land Department has power to deal with the meandered area, to cause it to be surveyed, and lawfully to dispose of it. *Lee Wilson & Co. v. United States*. 24

2. *Id. Riparian Rights. Estoppel of Government.* That administrative officers, before discovering the error, have treated such meandered tract as subjected to the riparian rights of abutting owners, under state laws, cannot estop United States from asserting title in controversy with abutting owner; and even as against such owner who acquired property before mistake discovered, United States may correct mistake and protect its title. Equities of abutting owner are not judicially cognizable, but should be addressed to legislative department of government. *Id.*

3. *Id. Swamp Land and Arkansas Compromise Acts.* Effect of erroneous meander in survey of township held to exclude the meandered area from the township; and that neither the

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selection of the township by State of Arkansas under Swamp Land Act of 1850, the confirmatory Act of 1857, nor patent issued, could be construed as embracing it; and that the State derived no title thereto through the Compromise Act of 1898. *Id.*

4. *Swamp Land Act of 1850.* Did not convey land of its own force, without survey, selection or patent. *Id.*

5. *Statute of Limitations Inapplicable.* Suit by United States to quiet its title to land erroneously excluded from survey, against abutting owner claiming riparian rights, is not a suit to vacate or annul defendant's patent, and limitations of Act of 1891 inapplicable. *Id.*

II. School Section Grants.

1. *Utah. Minerals Impliedly Excepted.* School Land Indemnity Act of 1891, in providing for lieu selections, affords plain implication that sections 16 and 36 are not to pass under grant if known to be mineral when grant takes effect. *United States v. Sweet* 563

2. *Id.* School land grant to Utah must be read in light of mining laws, indemnity law of 1891 and settled policy of Congress; and does not include mineral lands. *Id.*

3. *Id. Exception Includes Coal.* School section grant in Utah Enabling Act not intended to embrace lands known to be valuable for coal. *Id.*

4. *Wisconsin. Indian Lands Excepted.* Under treaties with Menominee Indians, acts of Congress and an act of the Wisconsin legislature, certain lands held disposed of within meaning of school section grant in Wisconsin Enabling Act; that they remained in reservation and subject to the continuing occupancy and rights of the Indians; and that State had no title and could not restrain cutting of timber by or in interest of Indians. *Wisconsin v. Lane* 427

5. *Id.* Treaty of 1854 with Lake Superior Chippewas and reservation for the Indians thereunder, held to withdraw certain lands and dispose of them within meaning of school section grant in Wisconsin Enabling Act and that title did not pass to State. *United States v. Stearns Lumber Co.* . . . 436

6. *Id. Right of Congress before Survey.* The grant of sec-

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tions 16 in § 7 of Wisconsin Enabling Act held subject to right of Congress to make other disposition of the land before sections identified by surveys finally approved, leaving State right to obtain other sections by way of indemnity. <i>Wisconsin v. Lane</i>	427

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1. *Mining Laws Exclusive.* It is settled policy of Congress to dispose of mineral lands only under laws specially including them. *United States v. Sweet* 563

2. *Id.* Taken collectively, the mining laws (including coal land laws) constitute a special code, intended not only to establish particular modes of disposition, but exceptions and reservations. *Id.*

3. *Mineral Character. Department's Finding. Notice.* Where land embraced in conflicting placer and homestead entries is found, upon hearing in Land Department, to be non-mineral and therefore is patented to the homesteader, finding does not conclude claimant under placer entry who was not notified and given opportunity to be heard; a trust might be declared in his favor if he proved the land mineral; but not when evidence confirms Department's finding. *Kirk v. Olson* 225

4. *Id. Department's Control before Patent.* A finding of mineral character made in allowing an entry under the placer mining law is subject to be reconsidered and reversed by the Land Department at any time before the patent issues, upon due notice to the parties interested. *Id.*

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3. A limitation, plain in the letter and spirit of a statute, is not overridden by the fact that the court overlooked it in former cases where it was not brought in question. *Arant v. Lane* 166

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1. Immunity from suit recognizes no distinction between cross and original bills, or ancillary and original suits. *Illinois Central R. R. v. Public Utilities Comm.* 493
2. When necessary party to suit. *Id.*
3. Limitations in Act Mar. 3, 1891, inapplicable to suit by United States to quiet its title to land erroneously excluded from survey. *Id.*

UTAH:

1. School section grant in Enabling Act not intended to embrace lands known to be valuable for coal. *United States v. Sweet* 563
2. School land grant must be read in light of mining laws, indemnity law of 1891 and settled policy of Congress; and does not include mineral lands. *Id.*

VENDOR AND VENDEE. See **Contracts, 4.****VERDICT.** See **Procedure, III, 4.****VESSELS:**

- Territorial status of. *Scharrenberg v. Dollar S. S. Co.* 122

WAIVER:

- Effect of failure of assignee to exercise his preferred right of selection under Art. IV, Treaty of 1865 with Omaha Indians. *United States v. Chase* 89

WAR:

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Power to raise armies by draft. See **Constitutional Law**, III.

WASHINGTON:

The boundary between Oregon and Washington is the ship channel north of Sand Island in the Columbia River. *McGowan v. Columbia River Packers' Assn.* 352

WATERS:

1. As to riparian rights in land mistakenly meandered as water, see **Public Lands**, I.
2. A State may exact a charge from those taking sand from the bed of a navigable stream, even though such taking be of common right. *Wear v. Kansas* 154
3. River sand appertains to the river bed when at rest; its tendency to migrate does not subject it to acquisition by mere occupancy. *Id.*
4. Whether a state court may take judicial notice that a stream is navigable is a question of local law. *Id.*
5. A specific intent to accept tidal test of navigability, and so to extend riparian ownership *ad filum aquæ* on non-tidal streams which are navigable in fact, is not predicable of a statute adopting the common law of England in general terms only; and such a statute of a State affords no basis for denying power of state court to apply test of navigability in fact, as part of the common law, in determining the ownership of a river bed as between the State and riparian owners deriving title under federal patent issued before statehood. *Id.*
6. As to jurisdiction of States over boundary waters. See **Jurisdiction**, III, (7).

WEBB-KENYON LAW. See **Intoxicating Liquors.**

WISCONSIN:

Rights in school sections. See **Indians**, 1, 2; **Public Lands**, II, 4-6.

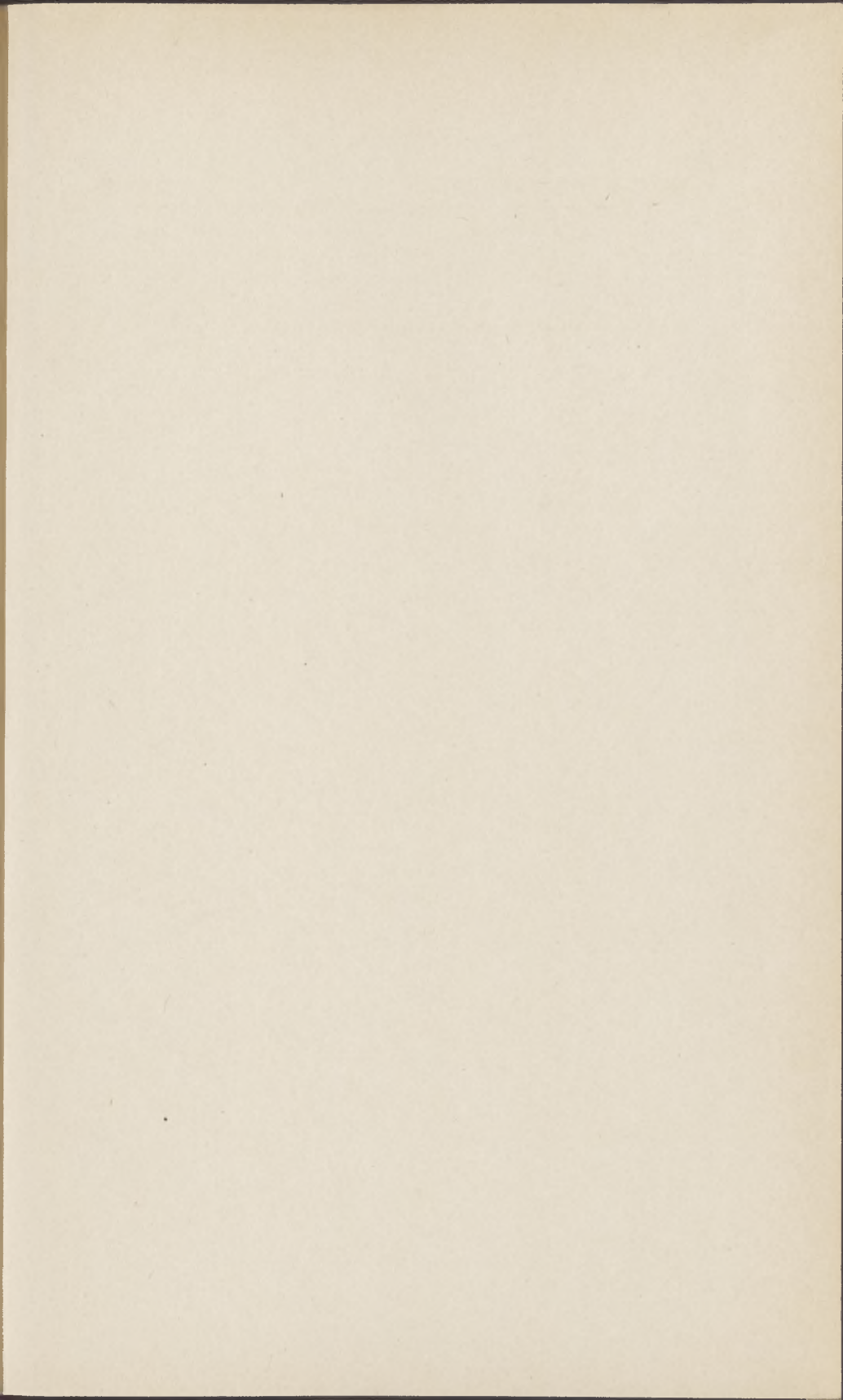
WITNESSES. See **Evidence**, 3-5.

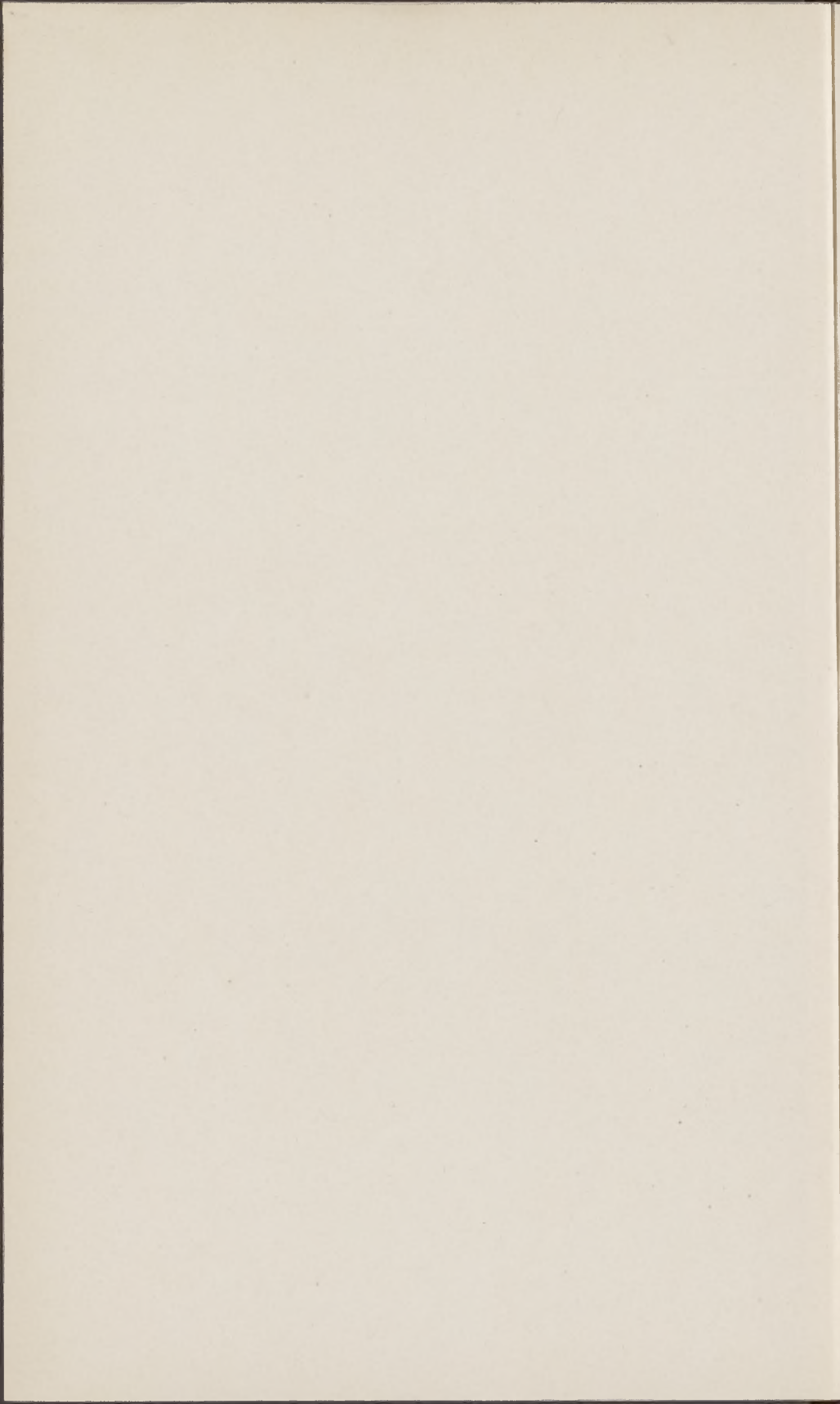
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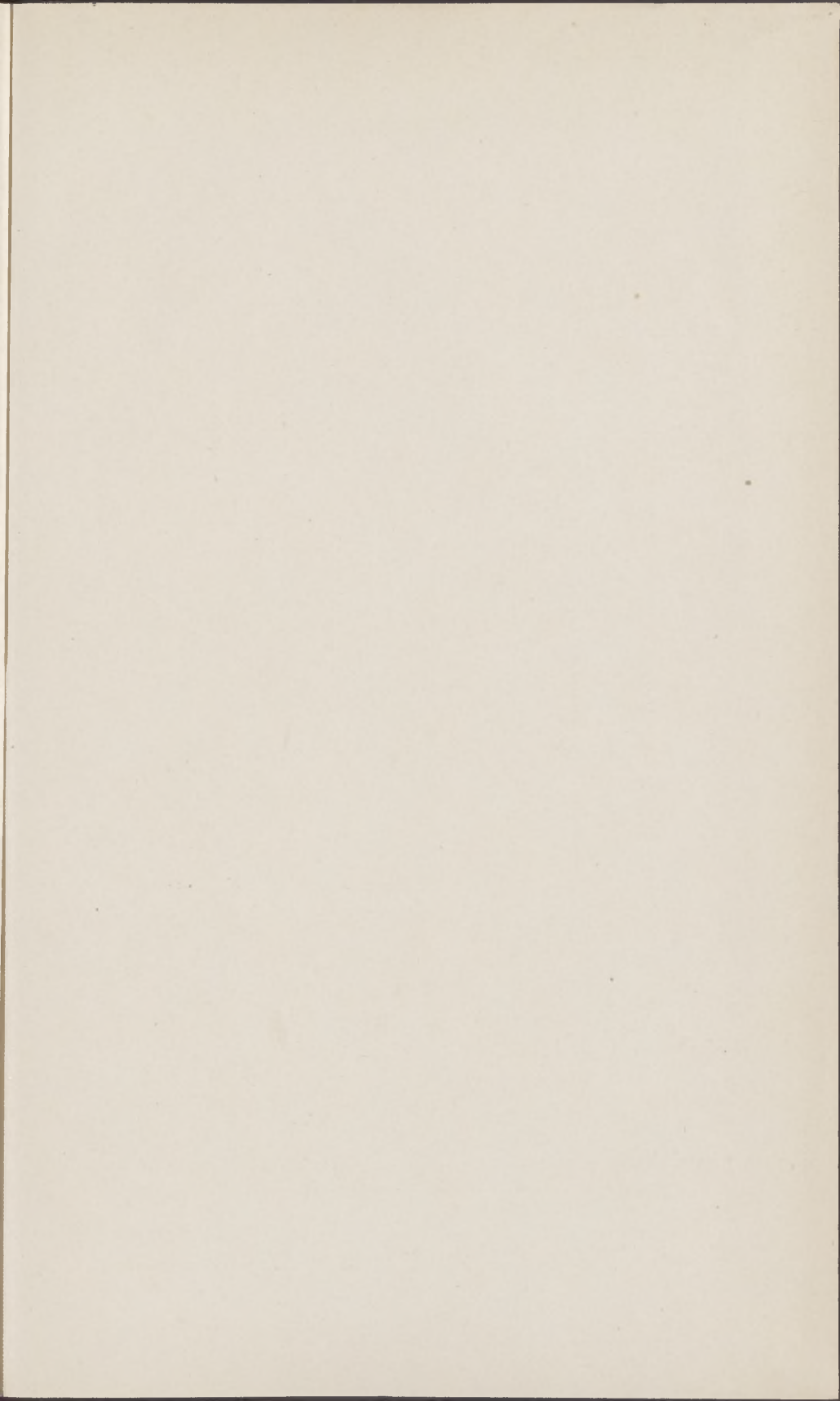
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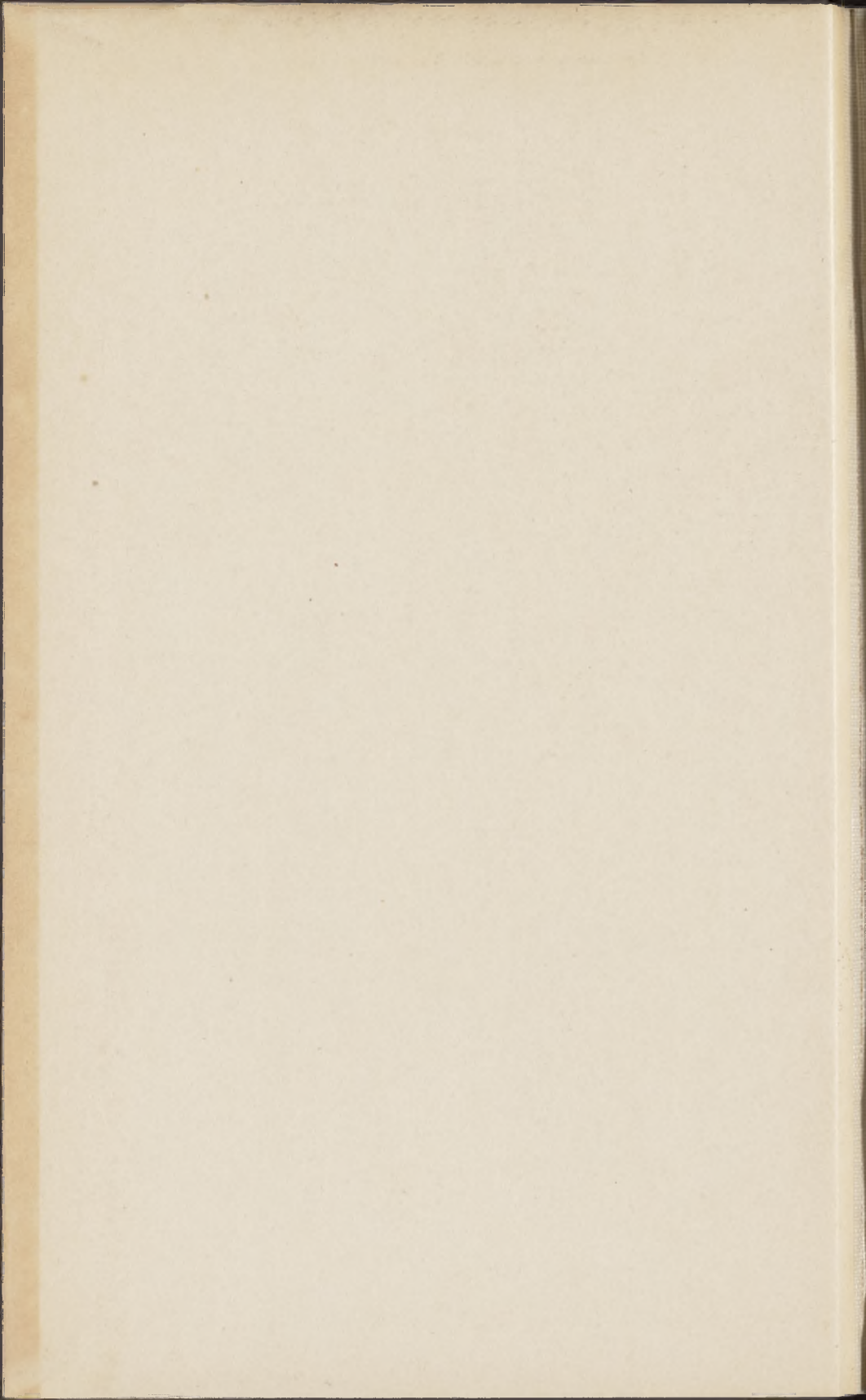
- “Through route,” “through rate,” “joint rate,” “sum of the locals,” “division of joint rate,” “rate-breaking point” and “combination rate” explained and defined.
St. Louis S. W. Ry. Co. v. United States. 136

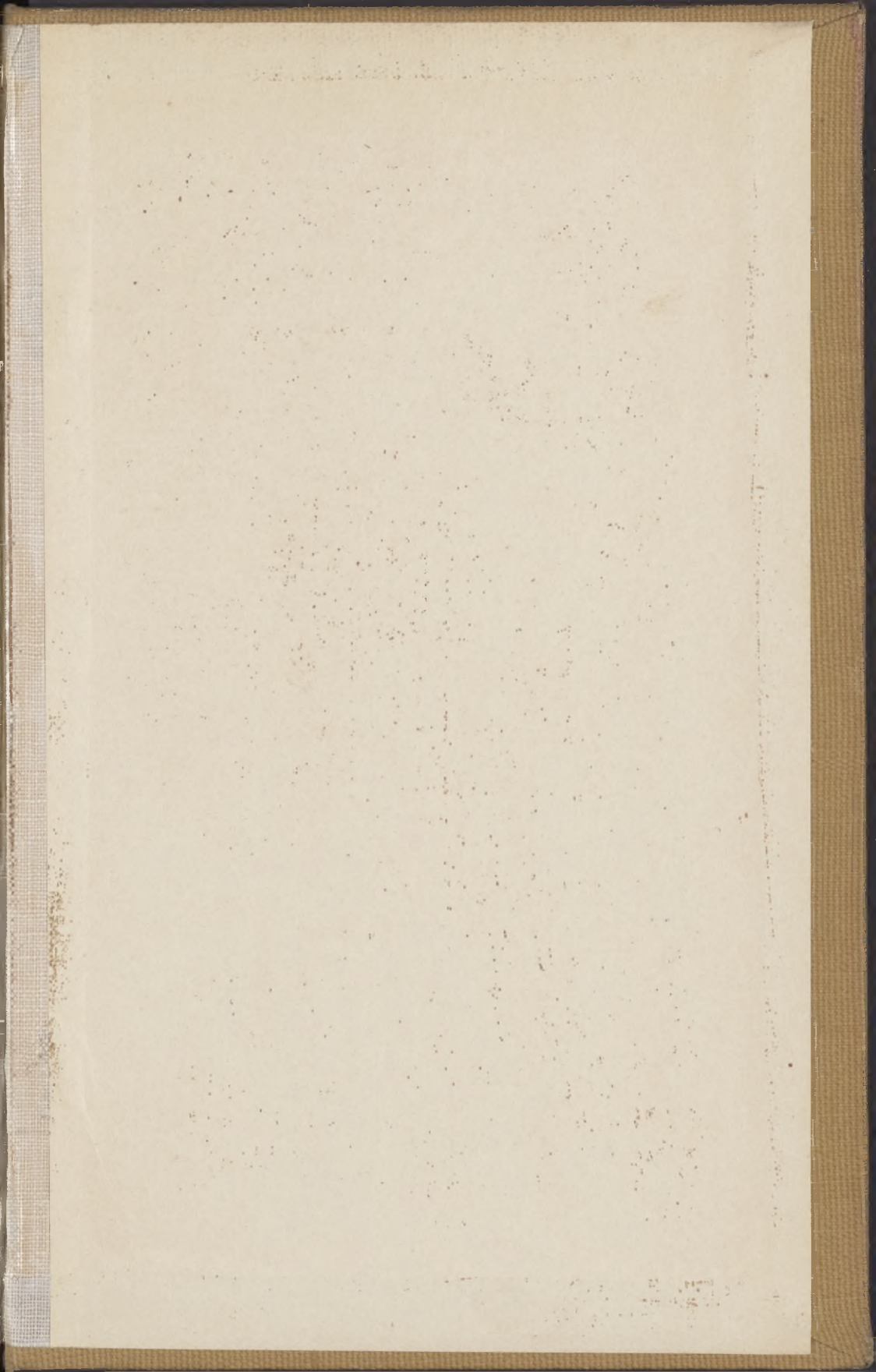
WRIT OF ERROR. See Jurisdiction; Procedure.

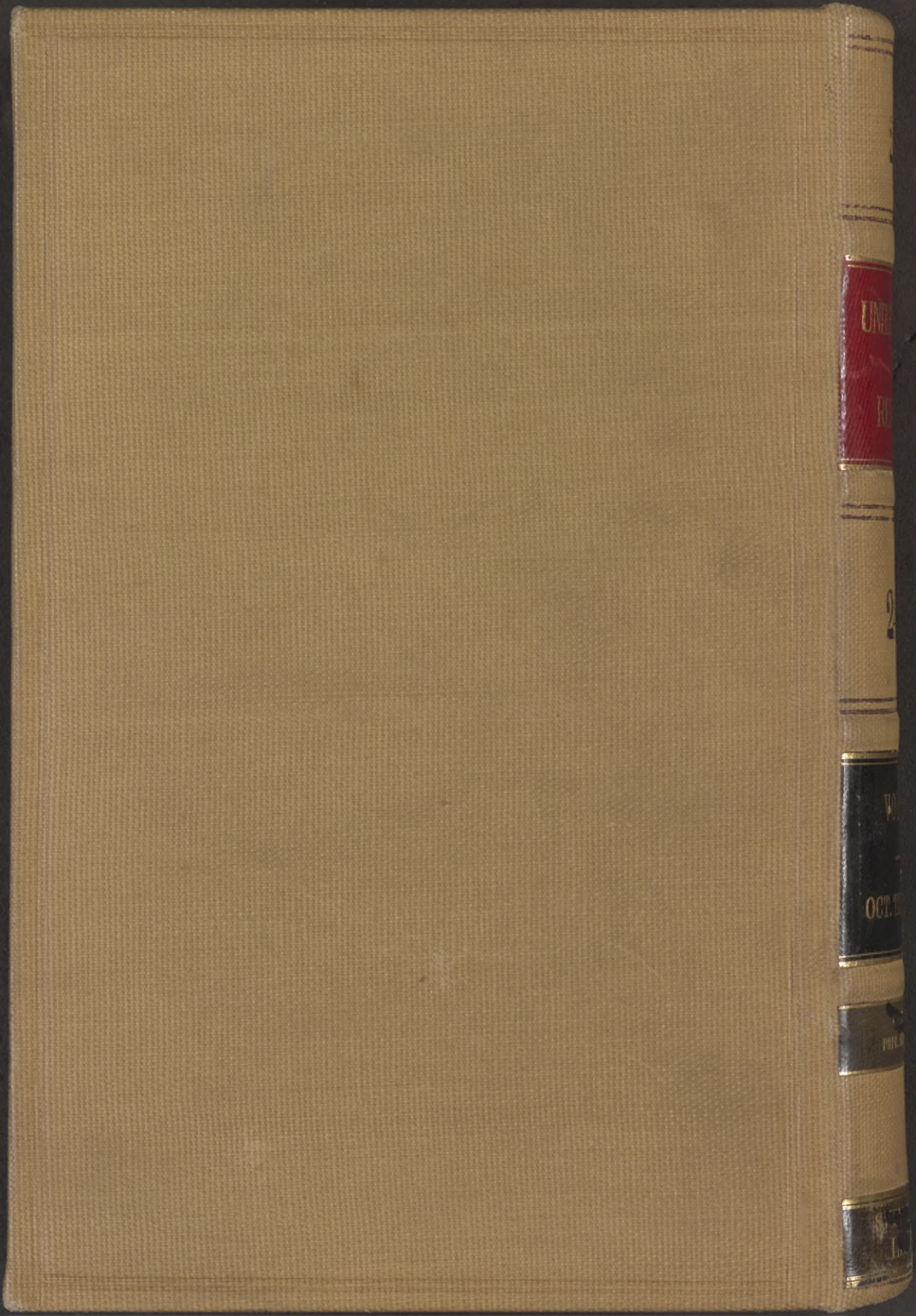












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