

INDEX.

ABANDONMENT. See **Admiralty**, 16. PAGE
First publication not necessarily abandonment of rights in news, as between rival news-gathering agencies. *International News Service v. Associated Press*.....215, 240

ABATEMENT.
Of fish net constructed in deep waters, adjacent to islands set aside for dependent Indians, supplying fisheries. *Alaska Pacific Fisheries v. United States*..... 78

ACCOUNTING.
1. Right of principal to recover money collected by agent in violation of § 239, Crim. Code, is matter of state law. *Danciger v. Cooley*..... 319
2. Provisions of bills of lading construed as relieving carrier of duty to carry and obligation to return prepaid freight, where voyage frustrated or indefinitely delayed by government embargo, even though, in two cases, ship did not "break ground." *Allanwilde Transp. Corp. v. Vacuum Oil Co.*..... 377
International Paper Co. v. The Gracie D. Chambers... 387
Standard Varnish Works v. The Bris...... 392

ACTIONS AND DEFENSES. See particular titles.

ACTS OF CONGRESS. See Table at front of Volume; **Statutes**.

ADEQUATE REMEDY AT LAW. See **Equity**, 10, 11.

ADMINISTRATION.
Insolvent corporations. See **Receivers**.

On motion to file original bill in this court to enjoin administration in another State of personal property located there at owner's death, relief must be denied; because, even though

ADMINISTRATION—Continued.

PAGE

property was placed there to avoid taxation in complainant State, which is alleged to be owner's domicile, State of actual situs had right to administer. *Iowa v. Slimmer*. 115

ADMIRALTY.

Suspension of prosecution during war. See **Procedure**, X, 3.

1. *Suit against Alien Enemy on Foreign Contract.* In libel *in personam* between alien belligerents, for coal furnished before war in foreign country, brought while United States was a neutral, where District Court declined to proceed because of prohibitions by belligerent countries on payment of debts of each other's subjects, and this country entered war after case came to this court, *held*, that libellant as co-belligerent could maintain suit against respondent, an alien enemy, and that latter was entitled to defend. *Watts, Watts & Co. v. Unione Austriaca*. 9

2. *Scope of Review.* Upon review of admiralty case, this court may make such disposition of it as justice may require at time of decision, and therein must consider changes in fact and in law which have supervened since decree below entered. *Id.*

3. *Insurance Contract; Rights of Carrier.* Where bills of lading give carrier benefit of insurance by shipper, and policies exempt insurer where bills contain such provision or where carrier is liable, an agreement whereby insurer loans shipper amount of loss caused by carrier's negligence, to be repaid in so far as shipper recovers from carrier, otherwise to operate as absolute payment, and whereby, as security, shipper pledges right of action and agrees to sue carrier at expense and under direction of insurer, *held* lawful and enforceable. *Luckenbach v. McCahan Sugar Co.*. 139

4. *Id.; Loan in Lieu of Payment.* Such a loan is not payment of the insurance, and does not enure to carrier. *Id.*

5. *Id.; Carrier's Liability to Insurer.* A libel in shipper's name, for benefit of insurer, pursuant to such agreement, may be maintained against carrier and ship. *Id.*

6. *Seaworthiness; Personal Contract; Limited Liability.* Liability for unseaworthiness, resting on personal contract of

ADMIRALTY—*Continued.*

PAGE

shipowner, is not limited by Rev. Stats., § 4283, or Act of 1884. *Id.*

7. *Id.*; *Time Charter; Continuing Warranty.* Charter characterizing vessel as tight, staunch, and strong, on delivery, and binding owners to maintain her in efficient state during service, imports warranty of seaworthiness, not merely at delivery but at commencement of every voyage. *Id.*

8. *Id.*; *Rights and Liabilities of Charterers.* A time charter, like charter for single voyage, is not a demise of ship, and leaves charterer without control over maintenance and repair, though liable without limitation to shippers for losses due to unseaworthiness discoverable by due diligence on part of owners. *Id.*

9. *Charter-Party; Agency for Joint Owners.* Where charter-party signed by one owner, but the rest, being impleaded with him, admitted that he acted for all, and liability of all, if liability existed, was not controverted, a decree for damages should run against all. *Id.*

10. *Wages of Seamen; Foreign Contract.* Seaman's Act, 1915, § 11, prohibiting payment of wages in advance, inapplicable to advancements to alien seamen shipping abroad on foreign vessel, pursuant to contracts valid under foreign law; such advancements may be allowed for in paying such seamen in port of United States. *Sandberg v. McDonald* 185

11. *Id.* The provision for abrogation of inconsistent treaty provisions is not opposed to this construction, but refers to parts of act abolishing arrest for desertion and conferring jurisdiction over wage controversies arising in our jurisdiction. *Id.*

12. *Id.* Nor does § 11 prohibit such advancements when made by American vessel to secure seamen in foreign port. *Neilson v. Rhine Shipping Co.* 205

13. *State Statute of Frauds.* By contract made orally in California, respondent was engaged for one year to serve as master of petitioner's vessel, mainly upon the sea. He libeled vessel in District Court in California for breach. *Held*, that contract was maritime, and that California statute of frauds requiring writing for agreements not to be per-

ADMIRALTY—*Continued.*

	PAGE
formed within a year was inapplicable in defense. <i>Union Fish Co. v. Erickson</i>	308
14. <i>Prepaid Freight; Frustrated Voyage.</i> Provisions of bills of lading construed as relieving carrier of duty to carry and of obligation to return prepaid freight, where voyage frustrated or indefinitely delayed by government embargo, even though, in two cases, ship did not "break ground." <i>Allan-wilde Transp. Corp. v. Vacuum Oil Co.</i>	377
<i>International Paper Co. v. The Gracie D. Chambers.</i>	387
<i>Standard Varnish Works v. The Bris</i>	392
15. <i>Workmen's Compensation Laws.</i> Under Jud. Code, § 237, as amended, writ of error does not lie to judgment of state court holding state Workmen's Compensation Law inapplicable to case of personal injuries governed by maritime law and holding Act of Oct. 6, 1917, which changes rule in that regard, inapplicable retrospectively. <i>Coon v. Kennedy.</i>	457
16. <i>Salvage; Abandonment.</i> Finding that vessel was abandoned, concurred in by two lower courts, in salvage case, accepted by this court when supported by evidence. <i>Olewerke Teutonia v. Erlanger</i>	521
17. <i>Id.</i> Unless there has been some violation of principle or clear mistake, appeals to this court on amounts allowed for salvage are not encouraged. <i>Id.</i>	
18. <i>Id.</i> Right of speculative salvor is to share in benefit resulting from his work; not entitled to reimbursement for actual expenses, but necessary work and degree of care should be considered in fixing allowance. <i>Id.</i>	
19. <i>Id.</i> Interest <i>held</i> allowable. <i>Id.</i>	

ADMISSIONS. See **Pleading**, 2, 4.

ADULTERATION. See **Food**.

ADVANCEMENTS. See **Admiralty**, 10-12.

ADVERSE POSSESSION. See **Public Lands**, I, 2; II, 4-9.

AGENCY. See **Criminal Law**, 2, 4; **Insurance**, 1, 2; **Jurisdiction**, II; IV, 14.

- AGRICULTURE, SECRETARY OF.** PAGE
 Regulations concerning "meat food products." See **Meat Inspection Act**, 2.
- ALASKA.**
 Power of Congress to create reservations and exclusive rights of fishery for dependent Indians. *Alaska Pacific Fisheries v. United States* 78
- ALIENATION, RESTRAINT ON.** See **Indians**, 3-5.
- ALIEN ENEMIES.** See **Parties**, 5.
- ALIENS.**
 Advancements to alien seamen. See **Admiralty**, 10-12.
- ALLOTMENTS.** See **Indians**, 1-5.
- AMENDMENT.** See **Election of Remedies.**
 For variance. See **Pleading**, 5.
1. Provision of Constitution requiring two-thirds vote to submit amendments considered. *Missouri Pac. Ry. v. Kansas* 276
 2. Of Rule 22, § 3. 528
 3. Of Rule 37, § 3. 529
- ANCILLARY RECEIVERS.** See **Receivers.**
- ANNETTE ISLANDS.** See **Indians**, 6, 7.
- ANTI-TRUST ACTS.**
1. *Triple Damages; Monopoly; Election.* In action for triple damages under § 7, Sherman Act, based on § 2 dealing with attempted and effected monopolies, technical error in requiring plaintiff to elect whether it would rely on § 1 or § 2 held harmless. *Buckeye Powder Co. v. Du Pont Powder Co.* 55
 2. *Id.*; *Instructions* pointing out that § 2 extends to attempts to monopolize, held advantageous rather than harmful to plaintiff. *Id.*
 3. *Liabilities of Co-defendants.* Where only ground for holding defendant is responsibility (through stock ownership)

ANTI-TRUST ACTS—*Continued.*

PAGE

for acts of co-defendant, directing verdict for former is harmless if latter exonerated on merits by jury, after instructions fairly presenting case against it. *Id.*

4. *Id.*; *Government Decree; when Admissible.* Before Clayton Act, a judgment in government proceeding finding company guilty of attempt to monopolize was inadmissible in private action for triple damages under § 7, Sherman Act. *Id.*

5. *Id.*; *Limitations; Clayton Act.* Provisions of Clayton Act, § 5, for admitting such judgments "hereafter rendered" in government cases, in other litigation, and for suspending statute of limitations as to private rights pending government prosecutions, do not affect retrospectively, on review, judgment rendered in action for triple damages before Clayton Act was passed. *Id.*

6. *Id.*; *Power in Trade.* Corporation suing for triple damages cannot complain of mere power in trade attained by defendant and known to organizers of plaintiff before latter was created, without proof of oppressive use of it afterwards. *Id.*

7. *Id.*; *Plaintiff's Motive.* Instruction that, on question whether plaintiff's failure in trade was due to its incapacity or to defendant's oppression, jury might consider whether motive in organizing plaintiff was to sell out to defendant or to compete, *held correct.* *Id.*

8. *Id.*; *Evidence.* Statements by third parties of reasons for refusing or ceasing to do business with plaintiff inadmissible when wanted not as evidence of motives but as evidence of facts recited as furnishing the motives. *Id.*

9. *Id.*; *Damages.* In action for triple damages, where jury found for defendant, rulings as to damages *held immaterial.* *Id.*

APPEAL AND ERROR. See **Jurisdiction; Procedure.**

ARGUMENTS OF COUNSEL.

Amendment of Rule 22, § 3. 528

ASSESSMENTS. See **Taxation; Waters, 1, 3.**

ASSETS. See **Bankruptcy; Receivers.**

ASSIGNMENTS. See **Attorney's Fees; Claims, 1; Insurance, 3, 4.**

Assignment of settler's claim, under confirmatory Railway Grant Act of 1887. *United States v. New Orleans Pac. Ry.* 507, 516

ASSIGNMENTS OF ERROR. See **Procedure, VI, 1, 2.**

ATTORNEY'S FEES.

Where assignment of claim against United States, or of right to fund appropriated by Congress to satisfy judgment therefor, was held not invalidated by Rev. Stats., § 3477, question whether heirs, if entitled to fund, would be liable for attorney's fee contracted for by transferee not decided. *Lay v. Lay.* 24, 25

BANKRUPTCY. See **Receivers.**

1. Cash surrender value of life insurance policy payable to executors, administrators or assigns of insured, or to specified persons with right in insured to change beneficiary, is assets subject to distribution under Bankruptcy Act. *Cohn v. Malone.* 450

2. Georgia Code, § 2498, providing that insured may assign by directing payment to personal representative, widow, children, or assignee, and that no other person can defeat such direction when assented to by insurer, does not withdraw cash surrender value from estate in bankruptcy when assignment made subject to right to change beneficiaries or surrender policy at any time. *Id.*

BANKS AND BANKING. See **Receivers; National Banks.**

BELLIGERENCY. See **War, 1.**

BENEFICIARY, CHANGE OF. See **Insurance, 3, 4.**

BENEFITS. See **Taxation, II, 8-12.**

Drainage and irrigation improvements. See **Waters, 1-3.**

BENZOATE OF SODA. See **Food, 5.**

BILL OF EXCEPTIONS. See **Exceptions.**

BILL OF LADING. See **Carriers, 3, 6; Interstate Commerce Acts, 2, 3.**

BILL OF PARTICULARS.

PAGE

Bill of particulars supplementing indictment is no part of record on demurrer. *United States v. Comyns* 349

BONA FIDE PURCHASER. See **Public Lands**, II, 5, 6.

BONDS.

Validity of state charge for issuing railroad bonds under mortgage. See **Constitutional Law**, V, 4.

Drainage districts. See **Waters**, 1.

BOUNDARIES.

1. Territorial limits of Kentucky extend across Ohio River to low-water mark on Indiana side, and no limitation on power of Kentucky to protect fish within those limits resulted from establishment of concurrent jurisdiction by Virginia Compact. *Nicoulin v. O'Brien* 113

2. As to jurisdiction of District Court to try conflicting claims of title based on Mexican grants and laws of Texas, respectively, to land between present and former beds of Rio Grande, over which United States has *de facto* sovereignty, and effect of treaties, etc., with Mexico touching determination of international boundary, and of act of our Government in waiving objection to litigation, based on comity. *Cordova v. Grant* 413

BRIEFS.

In Circuit Court of Appeals; reference to upon certificate under Jud. Code, § 239. See **Procedure**, II, 2.

BROKERS. See **Insurance**, 1, 2.

CANCELLATION. See **Equity**, 3.

CAPITAL AND INCOME. See **Taxation**, I.

CARMACK AMENDMENT. See **Interstate Commerce Acts**, 1-3.

CARRIERS. See **Admiralty; Interstate Commerce Acts; Railroads.** Liability to owner of cargo for unseaworthiness of vessel. See **Admiralty**, 6-8.
Regulation of fares and service on street car lines. See **Franchises**, 5-8.

CARRIERS—Continued.

PAGE

1. *Liability to Passengers; Carmack Amendment.* Power of States to establish and apply their own laws and policies touching validity of contracts exempting carriers from liability to passengers for injuries due to negligence was not affected by amendment, which deals only with shipments of property. *Chicago, R. I. & Pac. Ry. v. Maucher* 359
2. *Who is Passenger.* In action for injury to circus employee while traveling on circus train being hauled by locomotive of railroad company pursuant to contract declaring company not a common carrier and not liable for negligence, *held*, that employee was not a passenger of company, and that cause of action was based on general right not to be injured by negligence of another. *Id.*
3. *Rights in Cargo Insurance.* Where bills of lading give carrier benefit of insurance by shipper, and policies exempt insurer where bills contain such provision or where carrier is liable, an agreement whereby insurer loans shipper amount of loss caused by carrier's negligence. to be repaid in so far as shipper recovers from carrier, otherwise to operate as absolute payment, and whereby, as security, shipper pledges right of action and agrees to sue carrier at expense and under direction of insurer, *held*, lawful and enforceable. *Luckenbach v. McCahan Sugar Co* 139
4. *Id. Loan in Lieu of Payment.* Such a loan is not payment of the insurance, and does not enure to carrier. *Id.*
5. *Id. Carrier's Liability to Insurer.* A libel in shipper's name, for benefit of insurer, pursuant to such agreement, may be maintained against carrier and ship. *Id.*
6. *Prepaid Freight; Frustrated Voyage.* Provisions of bills of lading construed as relieving carrier of duty to carry and of obligation to return prepaid freight, where voyage frustrated or indefinitely delayed by government embargo, even though, in two cases, ship did not "break ground." *Allan-wilde Transp. Corp. v. Vacuum Oil Co.* 377
International Paper Co. v. The Gracie D. Chambers. . . . 387
Standard Varnish Works v. The Bris. 392
7. *Notice of Loss; Carmack Amendment.* Stipulation in live stock contract releasing carrier from liability unless written claim made on agent within 10 days after unloading *held*

CARRIERS—Continued.

PAGE

valid; observance not excused by fact that amount of loss could not be ascertained within period specified; nor waived by fact that carrier with knowledge of situation negotiated for compromise before and after period had expired. *South-ern Pac. Co. v. Stewart*. 446

8. *Intoxicating Liquor; Collecting Price*. Crim. Code, § 239, respecting interstate transportation, construed as prohibiting practice of collecting price at destination as condition to delivery. *Danciger v. Cooley*. 319

9. *Id.* Such collections when made by agent of seller constitute offense no less than when made by common carrier or its agent. *Id.*

10. *Id.*; *Transportation*—not complete until shipment arrives at destination and is delivered. *Id.*

11. *Id.*; *Personal Use*. Transportation upon the person, and for personal use, of interstate passenger, is "interstate commerce." *United States v. Hill*. 420

12. *State Rates; Hearing*. Where suit against state commission gives opportunity to test whether rates are confiscatory, law making judgment conclusive against carrier in subsequent actions for reparation is consistent with Fourteenth Amendment. *Detroit & Mackinac Ry. v. Fletcher Paper Co.* 30

13. *Id.*; *Local Questions*. Questions of law, involving fixing of railroad rates on intrastate traffic and reparation to shippers, held local. *Id.*

CEMETERY ASSOCIATIONS. See **Taxation**, II, 8-11.

CERTIFICATE FROM CIRCUIT COURT OF APPEALS.

See **Jurisdiction**, IV, (3).

CERTIORARI. See **Jurisdiction**, IV, 10.

1. Case reviewable by certiorari under Act 1916, in which Virginia Court of Appeals did not finally deny writ of error until Nov. 13, 1916, cannot be brought here by writ of error, although judgment of Circuit Court preceded act which excepts judgments rendered before it became operative. *Andrews v. Virginian Ry.*. 272

2. Certificate from Circuit Court of Appeals consisting of recitals of facts interblended with questions of law, or of re-

CERTIORARI — <i>Continued.</i>	PAGE
citals which fail in themselves to distinguish between ultimate and merely evidential facts, affords no basis under Jud. Code, § 239, either for answering questions or exercising power to call up whole record. <i>Cleveland-Cliffs Co. v. Arctic Iron Co.</i>	178
See also <i>Dillon v. Strathearn S. S. Co.</i>	182
3. Amendment of Rule 37, § 3.	529
 CHARTER PARTY. See Admiralty , 7-9.	
 CIRCUIT COURT OF APPEALS. See Jurisdiction , IV, (3).	
 CITIZENSHIP. See Constitutional Law , XII; XIV, 7, 8.	
Seminole citizens. See <i>Campbell v. Wadsworth</i>	169
 CITY ORDINANCES. See Franchises , 5-8; Ordinances .	
 CIVIL WAR.	
Claims against Government. See Claims , 1.	
 CLAIMS. See Jurisdiction , IV, 6; V, 2; VII; Officers .	
1. As between parties, assignment of claim against Government for property taken during Civil War, or of right to fund appropriated by Congress to satisfy judgment therefor, is not made void by Rev. Stats., § 3477. <i>Lay v. Lay</i>	24
2. A suit against Creek Nation for destruction of property by Creek mob cannot be maintained. <i>Turner v. United States</i>	354
3. Act of May 29, 1908, authorizing suit in Court of Claims against Creek Nation for adjudication of this claim, did not validate claim itself or permit that United States be joined as defendant. <i>Id.</i>	
 CLOUD ON TITLE. See Equity , 11.	
 COLLECTOR OF CUSTOMS. See Customs Officers .	
 COMBINATIONS IN RESTRAINT OF TRADE. See Anti-Trust Acts .	

COMITY.

PAGE

Waiver of objection to litigation, involving land involved in boundary question with foreign country. See **Boundaries**, 2.

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

COMMISSION MERCHANTS.

Regulation of brokers of farm produce. See **Constitutional Law**, XIV, 8.

COMMON CARRIERS. See **Admiralty**; **Carriers Interstate Commerce Acts**.

COMPENSATION. See **Officers**.

COMPETITION. See **Anti-Trust Acts**; **Unfair Competition**.

COMPROMISE. See **Waiver**, 4.

CONCURRENT JURISDICTION.

On Ohio River. See **Boundaries**, 1.

CONDEMNATION. See **Eminent Domain**.

Enjoining condemnation proceedings under state law on ground of unconstitutionality. See **Equity**, 10, 11.

CONFLICT OF LAWS. See **Administration**; **Admiralty**, 10-13; 15.

CONGRESS.

For acts cited. See Table at front of volume.

For powers. See **Constitutional Law**.

Committee reports and proceedings. See **Statutes**, 4-6.

CONSTITUTIONAL LAW.

I. Legislative Power; Delegation; Passing over Veto, p. 619.

II. Judicial Power; Limitations; Admiralty, p. 620.

III. Agreements between States, p. 620.

IV. Suit against State, p. 620.

V. Commerce Clause, p. 620.

VI. Contract Clause, p. 622.

CONSTITUTIONAL LAW—Continued.

PAGE

- VII. Copyright, p. 623.
- VIII. Indians, p. 623.
- IX. National Banks, p. 623.
- X. Public Lands, p. 623.
- XI. Trade-marks, p. 624.
- XII. Privileges and Immunities under Art. IV, p. 624.
- XIII. Fifth Amendment, p. 624.
- XIV. Fourteenth Amendment:
 - (1) Notice and Hearing, p. 624.
 - (2) Liberty and Property; Police Power, p. 625.
 - (3) Equal Protection of the Laws, p. 627.
 - (4) Privileges and Immunities, p. 627.
- XV. Who May Question Constitutionality of Statutes; Waiver, p. 627.

See **Jurisdiction; Procedure.**

For vote necessary to propose constitutional amendments, see I, 2, *infra*.

For construction of Georgia constitution, forbidding grants of gratuities, as applied to grant of railroad right of way. See **Georgia**.

For construction of Ohio constitution, authorizing suits against State. See **Ohio**, 1.

For construction of Ohio constitution, and validity of Conservancy Act, authorizing drainage districts and improvements, taxation, etc. See **Ohio**, 2.

I. Legislative Power; Delegation; Passing over Veto.

- 1. Primarily, the creation of offices and assignment of their compensation is a legislative function; and the fact and extent of any delegation of it must clearly appear. *Cochnower v. United States* 405
- 2. Requirement of vote of two-thirds of each house to pass bill over veto means two-thirds of quorum of each house (i. e., of a majority of its members), not two-thirds of all members of the body. *Missouri Pac. Ry. v. Kansas* 276
- 3. This conclusion results from the context, proceedings in the Convention and the practice of Congress, especially under similar provision for submission of constitutional amendments. It is further confirmed by practice of States before and since adoption of Constitution. *Id.*

CONSTITUTIONAL LAW—Continued. PAGE

4. *Quære*: Whether act of Congress can be held invalid by courts because shown by journal to have lacked requisite vote. *Id.*, p. 279.

II. Judicial Power; Limitations; Admiralty.

1. Jurisdiction of federal courts to enjoin execution of state law on ground of unconstitutionality should be exercised only in clear cases and where intervention is essential to protect against injuries otherwise irremediable. *Cavanaugh v. Looney* 453
2. A power in this court to review judgment of inferior court while subject to review by superior state tribunal would be fundamentally objectionable. *Andrews v. Virginian Ry.* 272, 275
3. A state statute of frauds requiring writing is inapplicable to maritime contract employing master for distant service. *Union Fish Co. v. Erickson.* 308

III. Agreements between States.

Territorial limits of Kentucky extend across Ohio River to low-water mark on Indiana side, and no limitation on power of Kentucky to protect fish within those limits resulted from establishment of concurrent jurisdiction by Virginia Compact. *Nicoulin v. O'Brien.* 113

IV. Suit against State.

A State cannot be sued without its consent. *Palmer v. Ohio* 32

V. Commerce Clause.

1. *Intoxicating Liquor; Power of Congress; Reed Amendment.* Under power to regulate commerce, Congress may forbid interstate transportation without regard to policy or law of any State. *United States v. Hill* 420
2. *Id.*; *Webb-Kenyon Liquor Act.* Sustained as valid exercise of power of Congress. *Missouri Pac. Ry. v. Kansas* . . 276
3. *Id.*; *Prohibiting Collection of Price.* Control over transportation of intoxicating liquors and collection of purchase price. *Danciger v. Cooley.* 319
4. *State License Fee; Railway Bonds.* Fee for privilege to railroad, with small mileage and small proportion of prop-

CONSTITUTIONAL LAW—*Continued.*

PAGE

erty and no intrastate business in State, of issuing bonds under mortgage of whole line to meet expenditures incurred but in small part in State, calculated by percentage of entire issue, *held* interference with interstate commerce. *Union Pac. R. R. v. Public Serv. Comm.* 67

5. *Tax on Carrier.* State board, under law providing for *ad valorem* tax on property, valued personal property within State of foreign express company on basis of mileage employed there in local and interstate commerce, and assessor in listing part in his county inaccurately characterized property as consisting of right to carry on express business. *Held*, that tax was not on privilege of engaging in interstate commerce, but on property in the county. *Wells, Fargo & Co. v. Nevada* 165

6. *Inspection Fees; Gasoline and Oil.* In absence of congressional regulation, State may provide for inspection, while yet in interstate transit, and impose charge upon owner to cover cost of inspection. *Pure Oil Co. v. Minnesota* 158

7. *Id.* Such charges, fixed by legislature, are accepted as reasonable unless shown to exceed cost of inspection; where receipts through number of years exceeded cost of inspection, but this was explained by increasing consumption, and legislature during period had reduced fee, its good faith in enacting law cannot be questioned. *Id.*

8. *Id.* Whether oil, imported into State in tank cars, continued to be subject of interstate commerce while awaiting state inspection before it was unloaded and held for sale and distribution—not decided. *Id.*

9. *Food Regulations.* As respects domestic retail sales of secondary packages out of original packages, state laws forbidding sale of food articles containing benzoate of soda are not inconsistent with commerce clause or Food & Drugs Act, although the preservative, as used, is allowed by federal act and the containers are labeled in conformity therewith. *Weigle v. Curtice Bros. Co.* 285

10. *Id.* An act of Congress cannot alter general principle determining when interstate commerce is over and the articles brought in have passed under general jurisdiction of State. *Id.*, p. 298.

CONSTITUTIONAL LAW—Continued.

PAGE

11. *Id.* Wholesome condensed skimmed milk combined with cocoanut oil imported from another State in cases containing cans in which it was retailed, each can being labeled "a compound of evaporated skimmed milk," held within prohibition of Ohio Gen. Code, § 12725, forbidding manufacture and sale of condensed milk unless made from pure, whole milk and container labeled with true name; as applied to cans containing product, the prohibition of local sale was not invalid as burden on interstate commerce—the cases in which cans were shipped, and not the cans, were the original packages. *Hebe Co. v. Shaw* 297

12. *Id.* The Federal Food & Drugs Act does not prevent such regulation. *Id.*

13. *State Weighing Regulations.* Law forbidding any other than duly authorized state weigher to issue weight certificates for grain weighed at any warehouse where state weighers were stationed, or to charge for such weighing or certificates, held not a burden on interstate commerce, as applied to grain received from or shipped to points without the State. *Merchants Exchange v. Missouri* 365

14. *Negligence and Passengers.* Power of States to establish and apply their own laws and policies touching validity of contracts exempting carriers from liability to passengers for injuries due to negligence was not affected by Carmack amendment. *Chicago, R. I. & Pac. Ry. v. Maucher*. 359

15. *Trade-marks.* Property in, and right to their exclusive use, rest upon state law; power of Congress over subject is only such as arises from authority to regulate commerce. *United Drug Co. v. Rectanus Co.* 90

VI. Contract Clause.

1. *Tax Exemptions.* Contracts in special charters creating perpetual tax exemptions are not revocable by later provisions of state constitution. *Central of Georgia Ry. v. Wright* 525

2. *Right in Tax Fund; Remedy.* Not infringed by refusal to enforce contract right in tax by mandamus against the wrong official, under the state law. *Farson, Son & Co. v. Bird* . . . 268

3. *Street Railways.* Ordinance respecting service by street car company will not be adjudged to have created contract

CONSTITUTIONAL LAW—Continued.

	PAGE
obligation beyond legislative control if power of municipality, under state law, and its intention, to create such an obligation do not clearly appear. <i>Englewood v. Denver & South Platte Ry.</i>	294
4. <i>Id.</i> Ordinance compelling street car company to carry passengers on continuous trips over franchise lines to and over non-franchise lines, and vice versa, for fare no greater than its franchises entitle it to charge upon former alone, impairs obligation of franchise contracts. <i>Detroit United Ry. v. Detroit</i>	429
5. <i>Rate Regulation; Prior Contract.</i> New rates fixed by State for electric power supersede, if reasonable, lower rates of consumer's time contract. <i>Union Dry Goods Co. v. Georgia Pub. Serv. Corp.</i>	372
6. <i>Abating Nuisance.</i> State may forbid storage of gasoline within 300 ft. of any dwelling; where storage in tanks was necessary to company's business, fact that tanks were moved to present position at city's request does not import contract not to require further removal for public welfare; nor would such contract be effective. <i>Pierce Oil Corp. v. City of Hope</i> 498	

VII. Copyright.

See *International News Service v. Associated Press* 215, 234

VIII. Indians.

For safeguarding and advancing dependent Indian people, resident on islands belonging to United States in Alaska, Congress has power to reserve for their use upland of islands and adjacent submerged land and deep waters supplying fisheries essential to Indians' welfare. *Alaska Pacific Fisheries v. United States* 78

IX. National Banks. See also **National Banks.**

Extent to which States may tax property or shares of national banks is determined exclusively by § 5219, Rev. Stats. *Bank of California v. Richardson* 476
Same v. Roberts 497

X. Public Lands.

Section 4, Homestead Act 1862, providing that lands shall not become liable to satisfaction of debts contracted prior

CONSTITUTIONAL LAW—Continued.		PAGE
to issuance of patent, applies as well to debts contracted after final entry and before patent as to debts contracted before final proof, and in both respects is within power of Congress. <i>Ruddy v. Rossi</i>		104
XI. Trade-marks. See V, 15, <i>supra</i> .		
XII. Privileges and Immunities under Art. IV.		
State law providing that only such persons shall be licensed as insurance brokers as are residents of State and have been licensed there for two years, does not discriminate against citizen of another State desiring to act as broker. <i>La Tour-etie v. McMaster</i>		465
XIII. Fifth Amendment.		
Relates to federal action only; a contention that state decision in suit against State for damages, holding that State had not consented to be sued, deprives of property without compensation, is untenable. <i>Palmer v. Ohio</i>		32
XIV. Fourteenth Amendment.		
(1) <i>Notice and Hearing.</i>		
1. <i>Drainage Districts; Assessments; Eminent Domain.</i> The Conservancy Act of Ohio, authorizing creation of drainage districts and improvements, affords full opportunity for testing private grievances judicially. <i>Orr v. Allen</i>		35
2. <i>Sewer District Assessment.</i> Notice and hearing before creation of special improvement district not essential if full hearing afforded in subsequent judicial proceedings to enforce tax. <i>Mt. St. Mary's Cemetery v. Mullins</i>		501
3. <i>Property Tax Valuation.</i> Tax is not wanting in due process, even if valuation originally made <i>ex parte</i> , if enforced only through judicial proceeding affording notice and hearing. <i>Wells, Fargo & Co. v. Nevada</i>		165
4. <i>Railroad Rates.</i> Where carrier in suit against state commission has opportunity to test whether rates are confiscatory, provision of state law making judgment conclusive against carrier in subsequent actions for reparation is consistent with Amendment. <i>Detroit & Mackinac Ry. v. Fletcher Paper Co.</i>		30

CONSTITUTIONAL LAW—Continued.

PAGE

5. *Service on Nonresident.* State may not provide that non-resident individuals, in suits arising from transactions within State through local agent, shall be bound by process served upon him after agency is at an end. *Flexner v. Farson.* 289

6. *Id.* The power as against foreign corporations springs from power to exclude from local business, the continued agency to receive service being attributed to implied consent; but consent may not be implied in case of nonresident natural persons, since power of exclusion does not exist as to them. *Id.*

(2) *Liberty and Property; Police Power.*

7. *Insurance Broker's License.* Law that only such persons shall be licensed as insurance brokers as are residents of State and have been licensed there for two years (construed as requiring local residence, as distinguished from citizenship), within police power and does not deprive citizen of another State desiring to act as broker of liberty or property. *La Tourette v. McMaster.* 465

8. *Farm Produce Broker's License.* Law forbidding sale of farm produce on commission without license, to be procured upon showing as to character, etc., a bond to make honest accounting, and payment of fee of \$10, does not violate privileges and immunities, equal protection or due process clauses. *Payne v. Kansas.* 112

9. *Weight Certificates.* Law forbidding any other than duly authorized state weigher to issue any weight certificate for grain weighed at any warehouse where state weighers were stationed, or to charge for such weighing or certificates, held consistent with due process and equal protection clauses, as applied to local corporation, having powers of board of trade, which weighed grain and issued weight certificates, for a charge, at request of its members. *Merchants Exchange v. Missouri.* 365

10. *Gasoline Storage.* Ordinance forbidding storage within 300 ft. of any dwelling is within police power. So held, where storage in tanks was necessary to business of selling products and plant could not be moved without expense and loss of profits. *Pierce Oil Corp. v. City of Hope.* 498

CONSTITUTIONAL LAW—Continued.

PAGE

11. *Food Products.* Wholesome condensed skimmed milk combined with cocoanut oil, labeled "a compound of evaporated skimmed milk," held within prohibition of Ohio Gen. Code, § 12725, forbidding manufacture and sale of condensed milk unless made from pure, whole milk and unless container labeled with true name; as so construed, statute does not violate Amendment. *Hebe Co. v. Shaw* 297
12. *Local Improvement Assessment.* Where land of cemetery association assessed as a whole, although part had been disposed of to lot holders for burial purposes, it appearing that fee remained in association, held, that latter was not deprived of property without due process. *Mt. St. Mary's Cemetery v. Mullins* 501
13. *Id.* A local assessment must not be arbitrary or unreasonable. *Id.*
14. *Repeal of Tax Exemption.* Attempt to evade exemptions in special railroad charters (held in former decision to preclude taxing lessee upon fee of leased property) by a tax on leasehold interest is invalid. *Central of Georgia Ry. v. Wright* 525
15. *Right to Sue State.* Whether Ohio constitution gives directly consent to suit by individuals against State or requires legislation to put provision into effect, held a question of local law, in no sense involving rights under due process clause of individuals suing State for damage to property. *Palmer v. Ohio* 32
16. *Rates; Electric Power; Supersede Prior Contract.* Reasonable rates fixed for electricity supplied to city may supersede lower rates in private contract. *Union Dry Goods Co. v. Georgia Pub. Serv. Corp.* 372
17. *Street Railway Rates; Implied Franchise.* Where city, instead of compelling removal of tracks operated by street car company without franchise, passed ordinance looking to continued operation and prescribing fares and transfer privileges, held equivalent to grant of right to operate during life of ordinance, entitling company to fair return on investment. *Detroit United Ry. v. Michigan*. 429
18. *Id.* Ordinance fixing fares and transfer privileges over street car system, composed of franchise and non-franchise lines, violates due process if it results in deficit to company. *Id.*

CONSTITUTIONAL LAW—Continued. PAGE

- (3) *Equal Protection of the Laws.* See XIV, 8, 9, 11, *supra*.
19. *Drainage Districts.* Conservancy Act of Ohio upheld. *Orr v. Allen* 35
20. *Local Assessment.* Inclusion of land of cemetery association for purpose of sewer improvement in district with larger area devoted to other uses, while other cemeteries were districted separately, does not establish denial of equal protection, where similarity of situation not shown. *Mt. St. Mary's Cemetery v. Mullins* 501
- (4) **Privileges and Immunities.** See XIV, 6-8, *supra*.

XV. Who May Question Constitutionality of Statutes; Waiver.

1. *Quære:* How far grantee of Indian may avail himself of Indian's right to assert unconstitutionality of act of Congress. *Fink v. County Commissioners* 399
2. Where, in violation of constitutional right, state license fee is paid under protest to avoid penalties and financial loss, the right is not waived. *Union Pac. R. R. v. Public Service Comm.* 67

CONSTRUCTION. See **Admiralty; Constitutional Law; Contracts; Criminal Law; Food; Franchises; Indians; Insurance; Interstate Commerce Acts; Jurisdiction; Officers; Ordinances; Public Lands; Seaman's Act; Statutes; Taxation; Treaties.**

Construction of statute on which indictment is based. See **Jurisdiction, IV, 5.**

CONTRACTS. See **Deeds; Franchises; Insurance.**

Charter-party; warranty of seaworthiness. See **Admiralty, 6-9.**

Transportation. See **Carriers; Interstate Commerce Acts.**

Exempting carrier from liability for negligence. See **Carriers, 1, 2.**

Agreements between States. See **Constitutional Law, III.**

Impairment of obligation. See **Constitutional Law, VI.**

CONTRACTS—Continued.

PAGE

Live stock; written notice of damage. See **Interstate Commerce Acts**, 3.

Exchange of services; railroad and telegraph companies. See **Interstate Commerce Acts**, 4.

1. *Construction Contracts; Integral and Collateral Agreements.*

Where Government, in dry-dock contract, required removal and reconstruction nearby of intersecting sewer, on its own specifications, *held*, that latter obligation was not collateral but part of entire contract. *United States v. Spearin* 132

2. *Id.; Implied Warranty of Government.* In such case there is an implied warranty that if sewer reconstructed as specified it will be adequate to protect site from back flooding. *Id.*

3. *Id.* Such warranty not overcome by general clauses requiring contractor to examine site, check up plans, and assume responsibility for work until completion and acceptance. *Id.*

4. *Id.; Evidence.* Neither Rev. Stats., § 3744, providing that contracts with Navy Department be reduced to writing, nor parol evidence rule, precluded reliance on such warranty, implied by law. *Id.*

5. *Id.; Rescission.* Contractor, upon breach of warranty, not obliged to reconstruct sewer and proceed at peril, but upon Government's repudiation of responsibility was justified in refusing to resume work. *Id.*

6. *Id.; Damages for Breach.* Having annulled, Government was liable for all damages resulting from breach, including contractor's expenditures on work (less receipts from Government) and profits he would have earned if allowed to perform. *Id.*

7. Building contract construed. *Guerini Stone Co. v. Carlin Constr. Co.* 334

8. *Id.; Rescission.* Right of subcontractor to rescind on breach of contractor's agreement to furnish foundation of building. *Id.*

9. *Id.; Time Extension.* When provisions for time extension do not supersede right to rescind for undue delay. *Id.*

CONTRACTS—Continued.

PAGE

10. *Id.*; *Materials; Quantum Meruit.* When complaint counts upon special building contract and defendant's breach in failing to provide proper foundation and also upon *quantum meruit* for labor and materials, evidence of materials left on premises by plaintiff and appropriated by defendant is admissible under latter count, without regard to bearing on damages recoverable under special contract. *Id.*

11. *Id.*; *Damages.* Where tools, etc., brought to building and used by plaintiff in performing contract and susceptible of further use in completing work, were left in place and appropriated by defendant, their value should be considered as part of plaintiff's expenditure under contract, in computing damages. *Id.*

12. *Id.*; *Payments on Account.* Where contract contemplates contractor's ability to perform will depend upon his receiving stipulated payments on account as work progresses, substantial failure to pay as stipulated will justify refusal to proceed. *Id.*

13. *Id.*; *Form of Requisition.* Amounts due under different branches of contract may be united. *Id.*

14. *Id.*; *Variance.* Where complaint alleged failure to make payments "in accordance with contract," while demands proved were based on modification of contract, *held* an unimportant variance. *Id.*

15. *Government Contract; Secrecy Clause.* In contract for torpedoes, manufacturer agreed not to make use of or disclose any device the design for which was furnished by United States, if designated for secrecy in writing at time when conveyed to manufacturer. *Held*, not confined to secret devices, or to inventions by United States, but included any devices communicated with certainty and designated for secrecy by United States, even where design subsequently worked out by employees of manufacturer. *Bliss Co. v. United States.* 37

16. *Taking Land; Implied Promise.* Not knowing land on Chicago River had become submerged through excavations privately made without owner's consent, Government, believing it to be within *de jure* stream, and not intending to exercise eminent domain, dredged submerged land under

CONTRACTS—Continued.

power to improve navigation. *Held*, there was no implied promise to compensate owner and that cause of action, if any, was in tort. *Tempel v. United States*. 121

17. *Maritime Contracts; Prepaid Freight*. Provisions of bills of lading construed as relieving carrier of duty to carry and of obligation to return prepaid freight, where voyage frustrated or indefinitely delayed by Government embargo, even though, in two cases, ship did not "break ground." *Allan-wilde Transp. Corp. v. Vacuum Oil Co.* 377
International Paper Co. v. The Gracie D. Chambers . . . 387
Standard Varnish Works v. The Bris. 392

18. *Id.; Seamen's Wages*. Validity, under Act of 1915, of contracts of alien seamen, with respect to advance payment of wages, valid under foreign law. *Sandberg v. McDonald* . . 185
Neilson v. Rhine Shipping Co. 205

19. *Id.; Engaging Master; Statute of Frauds*. Contract made orally in California, whereby respondent engaged for one year to serve as master, mainly upon the sea, *held* a maritime contract; California statute of frauds requiring writing for agreements not to be performed within year inapplicable in defense of action for breach. *Union Fish Co. v. Erickson* . . 308

20. *Alien Enemy; Foreign Contract*. Jurisdiction of District Court in action on foreign contract between co-belligerent and alien enemy. *Watts, Watts & Co. v. Unione Austriaca* . . 9

21. Place of performance. *Id.*

22. *Franchise Ordinance; Legislative Control*. Ordinance respecting service by street car company will not be adjudged to have created contract obligation beyond legislative control if power of municipality under state law, and its intention, to create obligation, do not clearly appear. *Englewood v. Denver & South Platte Ry.* 294

23. *Illegal Object; Accounting*. Whether in state court principal may recover from agent money collected by latter in carrying out arrangement which involved violation of Crim. Code, § 239, *held* matter of local law. *Danciger v. Cooley* . . 319

CONTROVERSIES BETWEEN STATES. See Boundaries.

CONVEYANCE. See **Deeds; Indians**, 3-5.

PAGE

COPYRIGHT.

1. News article in newspaper may be copyrighted under Act of 1909, but news, as such, is not copyrightable. *International News Service v. Associated Press* 215

2. As against public, any special interest of producer of uncopyrighted news matter is lost upon first publication. *Id.*

3. But one who gathers news, at pains and expense, for purpose of lucrative publication, has a quasi property in results, as against rival in same business; appropriation of those results at expense and to damage of one and for profit of other is unfair competition, against which equity will afford relief. *Id.*

CORPORATIONS. See **Anti-Trust Acts; Receivers.**

Reserved power over. See **Constitutional Law**, VI, 1, 3.

Rates and public service. See *id.*, XIV, 4, 16-18.

Special charters; tax exemptions. See *id.*, VI, 1.

Charge for issuing railroad bonds under mortgage. See *id.*, V, 4.

Street car service and fares. See **Franchises**, 5-8.

Railroad right of way. See *id.*, 1-4.

Exchange of services; railroad and telegraph companies. See **Interstate Commerce Acts**, 4.

Power of States to tax national banks. See **National Banks**.

Right of incorporated news-gathering agency to sue to protect its members against illegal acts of rival. See **Parties**, 7, 8.

Taxation of dividends; relation of holding company and subsidiaries. See **Taxation**, I.

Foreign, taxation of. See *Id.*, II, 1, 2.

Foreign, service of process. See *Fleener v. Farson* 289

1. In action for triple damages under § 7, Sherman Act, where only ground for holding defendant is responsibility (through stock ownership) for acts of co-defendant, directing verdict for former is harmless if latter exonerated upon merits by jury, after instructions fairly presenting case against it. *Buckeye Powder Co. v. DuPont Powder Co.* 55

2. Question whether failure to describe route for railroad right of way through national forest in charter left company

- CORPORATIONS**—*Continued.* PAGE
- without power to construct, and unqualified to receive grant, may not be raised by homesteader claiming rights in land crossed by road under federal patent. *Van Dyke v. Arizona Eastern R. R.* 49
- COURT OF CLAIMS.** See **Jurisdiction, VII.**
- COURTS.** See **Equity; Jurisdiction; Procedure.**
- CREDITORS.** See **Bankruptcy; Debts; Receivers.**
- CREEK INDIANS.** See **Creek Nation; Indians, 1, 3, 8, 9.**
- CREEK NATION.**
1. The Creek Nation as a sovereignty was not liable for injuries resulting from mob violence or failure to keep the peace. *Turner v. United States.* 354
 2. Act of May 29, 1908, authorizing suit in Court of Claims against Creek Nation for adjudication of claim, did not validate claim itself or permit that United States be joined as defendant. *Id.*
- CRIMINAL APPEALS ACT.** See **Jurisdiction, IV, 5.**
- CRIMINAL CODE.** See **Criminal Law.**
- CRIMINAL LAW.** See **Statutes, 6, 7.**
1. *Intoxicating Liquors; Crim. Code, § 239.* Practice of collecting price at destination, as condition to delivery, was evil aimed at. *Danciger v. Cooley.* 319
 2. *Id.* Such collections when made by agent of seller constitute offense no less than when made by carrier or its agent. *Id.*
 3. *Id.; Transportation.* Not completed until shipment arrives at destination and is there delivered. *Id.*
 4. *Id.; Accounting.* Whether in state court principal may recover from agent money collected by latter in carrying out arrangement which involved violation of § 239, is matter of local law. *Id.*

CRIMINAL LAW—*Continued.*

PAGE

5. *Fraudulent Scheme; Crim. Code, § 215.* Indictment alleging scheme to defraud divers persons through use of mails by representing that land could be purchased under Timber & Stone Act for less than value, and that defendants would secure it in return for fees part payable in advance, and would refund such advances in case of non-success, whereas defendants well knew they could not carry out agreement, but intended to appropriate advance payments to their own use, charges a scheme to defraud. *United States v. Comyns* 349
6. *Bill of Particulars*, supplementing indictment,—no part of record on demurrer. *Id.*

CUSTOM.

Creek Indians; assigning children of mixed marriages tribal status of mother. *Campbell v. Wadsworth* 169

CUSTOMS OFFICERS.

1. Act of 1909, authorizing Secretary of Treasury "to increase and fix" compensation of inspectors of customs, did not empower him to decrease salaries. *Cochnower v. United States* 405
2. Appointment of clerk by Collector of Customs, "to act as acting U. S. Weigher," at compensation less than fixed by Act of 1866 (\$2,500) for weighers, and assignment to, and performance of, duties of weigher, does not place him in that office and entitle him to its salary. *MacMath v. United States* 151

DAMAGES.

- Irreparable loss as ground for enjoining condemnation proceedings under state law. See **Equity**, 10, 11.
1. In action for triple damages under Sherman Act, § 7, where jury found for defendant, rulings as to damages held immaterial. *Buckeye Powder Co. v. Du Pont Powder Co.* 55
2. Where Government breaks and then wrongfully repudiates its contract, it is liable for all resulting damage, including contractor's expenditures on work (less receipts from Government) and profits he would have earned if allowed to perform. *United States v. Spearin.* 132
3. When complaint counts upon special building contract and defendant's breach in failing to provide proper founda-

DAMAGES—*Continued.*

PAGE

tion, and also upon *quantum meruit* for labor and materials, evidence of materials left on premises by plaintiff and appropriated by defendant is admissible under latter count, without regard to bearing on damages recoverable under special contract. *Guerini Stone Co. v. Carlin Constr. Co.* . . . 334

4. Where tools, etc., brought to building and used by plaintiff in performing contract and susceptible of further use in completing work, were left in place, and appropriated by defendant, their value should be considered as part of plaintiff's expenditure under contract, in computing damages. *Id.*

DAWES COMMISSION. See **Indians, 2.**

DEBTS.

Under § 4, Homestead Act 1862, lands acquired under act not liable to satisfaction of debts contracted after final entry and before patent. *Ruddy v. Rossi* 104

DECREES. See **Judgments; Procedure, X.**

DEEDS. See **Franchises, 1-4; Indians, 3-5.**

Deed of New Jersey, reciting agreement for lease of submerged land at specified rental and larger sum to be paid for conveyance free from rent, proceeded to "bargain, sell, lease and convey" to corporation, with right to exclude tide-water, etc., and to appropriate land to exclusive private use; an habendum declaring that all rights and privileges should be held by company, its successors and assigns, forever, subject to payment of specified rent, and there were covenants for payment of rent and for right of reëntry for nonpayment, and for conveyance discharged of rent upon payment of sum specified. *Held*, that under New Jersey law there was a grant of fee, subject to a rent charge, and that lands were taxable against grantee and its assigns as owners. *Leary v. Jersey City* 328

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

Under Ohio constitution. See *Orr v. Allen* 35

DEMURRER. See **Equity, 12; Jurisdiction, IV, 5.**

1. Bill of particulars supplementing indictment is no part of record on demurrer. *United States v. Comyns* 349

- DEMURRER**—*Continued.* PAGE
2. Where it cannot be aided by judicial notice, an averment that an ordinance is unnecessary and unreasonable is too general and is not admitted by demurrer. *Pierce Oil Corp. v. City of Hope*. 498
3. Allegations designed to show that petroleum and gasoline were so stored as not to endanger any buildings and that explosion was impossible, though conceding possibility of some combustion, *held* insufficient on demurrer to exclude danger of explosion of which court might take judicial notice. *Id.*
- DESCENT AND DISTRIBUTION.** See **Indians**, 1.
- DISTRICT COURTS.** See **Jurisdiction**, IV, (4); V.
- DIVIDENDS.** See **Taxation**, I.
- DOMICILE.** See **Administration**.
- DRAINAGE DISTRICTS.** See **Waters**, 1-3.
- DUE PROCESS OF LAW.** See **Constitutional Law**, XIII, XIV.
- DURESS.**
- Where State exacted unconstitutional fee for certificate of authority to issue railroad bonds under mortgage, under statutes threatening heavy penalties and purporting to invalidate bonds if certificate not obtained, *held*, that application for and acceptance of certificate, with payment under protest, were made under duress. *Union Pac. R. R. v. Public Service Comm.*. 67
- EJUSDEM GENERIS.** See **Statutes**, 7.
- ELECTION OF REMEDIES.**
- In action for triple damages, under Sherman Act, § 7, where case was based on § 2, *held*, that technical error in requiring plaintiff to elect whether it would rely on § 1 or § 2 (whereupon it elected § 2 without asking to amend) was harmless. *Buckeye Powder Co. v. Du Pont Powder Co.*. 55
- ELECTRIC POWER COMPANIES.** See **Constitutional Law**, XIV, 16.

EMBARGO. See **Admiralty**, 14.

PAGE

EMINENT DOMAIN.

Enjoining condemnation proceedings under state law on ground of unconstitutionality. See **Equity**, 10, 11.

1. Conservancy Act of Ohio, authorizing drainage districts and improvements through administrative boards empowered to exert eminent domain, and to tax, assess for benefits, and issue bonds, affords opportunity for testing private grievances judicially, and, as construed by court below, is consistent with state and federal constitutions. *Orr v. Allen*. 35
2. Government, not intending to exercise eminent domain, dredged submerged land under power to improve navigation. *Held*, there was no implied promise to compensate owner; that cause of action, if any, was in tort; and action against United States was not within jurisdiction of District Court under Tucker Act. *Tempel v. United States* 121

ENROLLMENT. See **Indians**, 1, 2.

EQUAL PROTECTION OF THE LAWS. See **Constitutional Law**, XIV, (3).

EQUITY. See **Demurrer**, 2, 3.

Authority of receiver to sue in foreign jurisdiction. See **Receivers**.

1. *Property Rights.* The right to acquire property by honest labor or the conduct of a lawful business is as much entitled to protection as the right to guard property already acquired. *International News Service v. Associated Press*. 215, 236
2. *Id.*; *Suit by United States to Protect Settlers.* To entitle United States to maintain suit to declare a trust, a pecuniary interest is not essential; it is enough if there be an obligation to those for whose benefit the suit is brought. *United States v. New Orleans Pac. Ry.* 507, 518
3. *Patents; Limitations; Affixing Trust.* In suit brought by United States on behalf of settlers to secure their rights under Act of 1887 against railway and its grantees holding legal title through patents, affecting patent issued to railway before Act Mar. 2, 1896, the 5-year limitation of that act may

EQUITY—*Continued.*

PAGE

be a bar to relief by cancellation, but bill may stand upon prayer to affix trust upon legal title in favor of settlers. *Id.*

4. *Id.; Laches.* While laches of private person is imputable to United States in suit brought for his benefit, settlers entitled to benefits of Act of 1887, who maintained peaceable and continued possession, affording notice of equitable rights which they asserted and sustained before Land Department, and who relied upon promise of Department to secure their titles and on suits by Government to that end, *held* not guilty of laches, notwithstanding long delays in litigation. *Id.*

5. *Injunction; Disclosure of Secret Government Device.* In action by United States against manufacturer of torpedoes, to enjoin disclosure (in violation of contract) of device the design for which was furnished by United States, injunction should be confined to devices in use, but without prejudice to right to enjoin disclosure of others, upon proof of intention to make use of them. *Bliss Co. v. United States* 37

6. *Id.; Trade-mark Infringement.* Where A had a trade-mark in Massachusetts, in connection with a business there and in neighboring States, and B, afterwards, in good faith, without notice of A's use or intent to injure or forestall A, adopted the same mark in Kentucky, where A's business theretofore had not extended, and built up a valuable business under it there, A, upon entering B's field with notice of the situation, has no equity to enjoin B as an infringer, but is estopped. *United Drug Co. v. Rectanus Co.* 90

7. *Id.; Administration of Estates.* Administration in State of actual situs of personal property located there at owner's death will not be enjoined, even though property placed there to avoid taxation in another State, which is alleged to be owner's domicile. *Iowa v. Slimmer* 115

8. *Id.; Newspapers; Unfair Competition.* Right of news-gathering agency to enjoin premature appropriation of its news by a rival. *International News Service v. Associated Press.* 215

9. *Id.; Unclean Hands.* Complainant not debarred from relief by fact that it had used defendant's news items, when published, as "tips" for investigation, the results of which it sold. *Id.*

EQUITY—*Continued.*

PAGE

10. *Id.*; *Unconstitutional State Law.* Jurisdiction of federal courts to enjoin execution of state law should be exercised only in clear cases and where intervention is essential to protect against injuries otherwise irremediable. *Cavanaugh v. Looney*. 453

11. *Id.*; *Condemnation Proceedings,* will not be enjoined, on ground that state law is unconstitutional and that filing of petition would cause irreparable damage by impounding land, clouding title and preventing sale pending proceeding, where apprehension of irreparable loss appears fanciful and objections against act could be raised in the condemnation proceeding. *Id.*

12. *Allegations of Bill; When Taken as True.* Where District Court, in denying preliminary injunction, of its own motion dismisses bill, its action is equivalent to sustaining demurrer, and, upon appeal, allegations of bill must be taken as true. *Detroit United Ry. v. Detroit*. 429

EQUITY RULES.

Rules 38, 43, 44. See **Parties**, 7, 8.

ESTATES OF DECEDENTS. See **Administration; Indians**, 1.

ESTOPPEL. See **Indians**, 3.

1. News-gathering agency estopped to deny rival's interest in news obtained by latter. *International News Service v. Associated Press*. 215, 240

2. Where A had a trade-mark in Massachusetts, in connection with a business there and in neighboring States, and B, afterwards, in good faith, without notice of A's use or intent to injure or forestall A, adopted the same mark in Kentucky, where A's business theretofore had not extended, and built up a valuable business under it there, A, upon entering B's field with notice of the situation, has no equity to enjoin B as an infringer, but is estopped. *United Drug Co. v. Rectanus Co.*. 90

EVIDENCE. See **Judicial Notice; Procedure**, IX.

1. *Creek Custom*,—assigning children of mixed marriages tribal status of mother. *Campbell v. Wadsworth*. 169

EVIDENCE—Continued.

PAGE

2. *Anti-Trust Act; Judgments Inadmissible.* Before the Clayton Act, judgment in government proceeding finding company guilty of attempt to monopolize was inadmissible in private action for triple damages under § 7 of Sherman Act. *Buckeye Powder Co. v. Du Pont Powder Co.* 55
3. *Id.; Clayton Act.* Provisions of Clayton Act, § 5, for admitting such judgments, "hereafter rendered" in government cases, in other litigation, and for suspending statute of limitations as to private rights pending government prosecutions, do not affect retrospectively, on review, judgment rendered in action for triple damages before Clayton Act was passed. *Id.*
4. *Id.; Motive.* On question whether plaintiff's failure in trade was due to its incapacity or to defendant's oppression, jury may consider whether motive in organizing plaintiff was to sell out to defendant or compete. *Id.*
5. *Id.; Statements by Third Parties,*—of reasons for refusing or ceasing to do business with plaintiff, inadmissible when wanted not as evidence of motives but as evidence of facts recited as furnishing motives. *Id.*
6. *Government Contract; Implied Warranty.* In action against Government for work performed and damages for annulment, neither Rev. Stats., § 3744, providing that contracts with Navy Department shall be reduced to writing, nor the parol evidence rule, preclude reliance upon a warranty implied by law. *United States v. Spearin* 132
7. *Building Contract; Quantum Meruit for Materials.* When complaint counts upon special building contract and also upon a *quantum meruit*, evidence of materials left on premises by plaintiff and appropriated by defendant is admissible under latter count, without regard to its bearing on damages recoverable under special contract. *Guerini Stone Co. v. Carlin Constr. Co.* 334
8. *Id.; Demands; Variance.* Where complaint alleges failure to make payments upon demands made "in accordance with contract," while demands proved were based on a modification of contract, held an unimportant variance not requiring amendment, particularly in view of relation of matter to former decision and mandate of this court. *Id.*

EXCEPTIONS.

PAGE

1. Error in admitting evidence cannot be imputed to trial court upon theory that count of complaint was waived at trial, based on statement by plaintiff's counsel in Court of Appeals, which was inconsistent with bill of exceptions. *Guerini Stone Co. v. Carlin Constr. Co.* 334
2. An exception to an instruction should be specific, directing mind of court to some single point of alleged error. *Id.*

EXCHANGE OF SERVICES. See **Interstate Commerce Acts**, 4.

EXCISE TAXES. See **Taxation**, I.

EXECUTION.

Exemption of homesteads. See **Public Lands**, I, 4.

EXECUTIVE DEPARTMENTS.

Construction of Seaman's Act of 1915, by State Department, adopted in consular regulations. See *Sandberg v. McDonald* 185

EXECUTIVE OFFICERS. See **Customs Officers; Indians**, 7; **Officers; Public Lands**, I, 2; II, 2, 9.
Regulations. Of Secretary of Agriculture. See **Meat Inspection Act**, 2.

EXEMPTION.

Of homesteads from satisfaction for debts. See **Public Lands**, I, 4.

EXPLOSION. See **Judicial Notice**, 5.

EXPRESS COMPANIES. See **Taxation**, II, 1, 2.

FACTS. See **Jurisdiction** IV, (3); **Procedure**, VI.
Admitted by demurrer. See **Pleading**, 2, 4.

FARM PRODUCTS.

Regulation of brokers. See **Constitutional Law**, XIV, 8.

FEDERAL QUESTIONS. See **Jurisdiction**, IV, (5); **Procedure**, IV; VIII.

FEE SIMPLE. See **Deeds; Taxation, II, 8.** PAGE

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

FINDINGS OF FACT. See **Procedure, VI.**

Recital of facts in Certificate from Circuit Court of Appeals.

See **Jurisdiction, IV, (3).**

FISHERIES. See **Waters, 4-6.**

FOOD. See **Meat Inspection Act.**

1. Wholesome condensed skimmed milk combined with cocoanut oil, which was imported from another State in cases containing cans in which it was retailed, each can being labeled "a compound of evaporated skimmed milk," held within prohibition of Ohio Gen. Code, § 12725, forbidding manufacture and sale of condensed milk unless made from pure, whole milk and unless container labeled with true name. *Hebe Co. v. Shaw* 297

2. As so construed and applied, statute does not violate Fourteenth Amendment. *Id.*

3. As applied to cans containing product, the prohibition of local sale was not invalid as burden on interstate commerce—the cases in which the cans were shipped, and not the cans, were the original packages. *Id.*

4. The Federal Food & Drugs Act does not prevent such regulation. *Id.*

5. As respects retail sales of secondary packages out of original packages in which they were imported in interstate commerce, state laws forbidding sale of food articles containing benzoate of soda are not inconsistent with commerce clause or purpose of federal act, although preservative, as used, is allowed by that act and containers are labeled in conformity therewith. *Weigle v. Curtice Bros. Co.* 285

FOOD AND DRUGS ACT.

State regulations. See **Food, 4, 5.**

FOREIGN COMMERCE. See **Admiralty; Meat Inspection Act.**

FOREIGN CORPORATIONS.

PAGE

- Service of process on. See *Flexner v. Farson*. 289
 Taxation of. See **Taxation**, II, 1, 2.

FOREIGN SEAMEN. See **Admiralty**, 10-12.

FOREIGN VESSELS. See **Admiralty**, 10-12.

FOREST RESERVATIONS. See **Public Lands**, II, 2, 3.

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

FRANCHISES.

1. *Grant of Use*,—of railroad right of way grants right of way itself. *Georgia v. Cincinnati So. Ry.* 26
2. *Id.*; *When Perpetual*. Grant to corporation, or to perpetual trustees holding for corporate uses, does not need words of succession. *Id.*
3. *Id.*; *Gratuities*. Such a grant, from which public benefit is expected, not a gratuity, within prohibition of Georgia constitution. *Id.*
4. *Irrevocable*. Georgia Act of Oct. 8, 1879, granted perpetual right of way for Cincinnati Southern Ry., not revocable license. *Id.*
5. *Reserved Legislative Power*. Ordinance respecting service by street car company, will not create contract obligation beyond legislative control if power of municipality, and its intention, to do so do not clearly appear. *Englewood v. Denver & South Platte Ry.* 294
6. *Rate Ordinance; Franchise Implied*. Where city, instead of compelling removal of tracks operated by street car company without franchise, passed ordinance looking to continued operation and prescribing fares and transfer privileges, held to grant right to operate during life of ordinance, entitling company to fair return. *Detroit United Ry. v. Michigan* 429
7. *Id.*; *Construction; Confiscation*. A company operated street car lines, for some of which it had franchises entitling it to charge a certain fare and for others no franchises. An

FRANCHISES—*Continued.*

PAGE

ordinance, regulating entire system, purported to fix fares for trips over two or more lines, whether franchise or not, declaring that it should not be construed as attempt to impair obligation of any valid contract, but should apply to all passenger traffic in city except where governed by provisions of such contract. *Held:* That latter declaration referred to trips wholly on franchise lines; and that if enforcement resulted in deficit the ordinance violated due process clause. *Id.*

8. *Id.*; *Contract Obligation.* Ordinance compelling company to carry passengers on continuous trips over franchise lines to and over non-franchise lines, and *vice versa*, for fare no greater than its franchises entitle it to charge upon former alone, impairs obligation of franchise contracts. *Id.*

9. *Tax Exemptions.* Validity of tax on leasehold interest where special charters of lessor railroads contain perpetual tax exemptions. *Central of Georgia Ry. v. Wright* 525

FRAUD. See **Statute of Frauds.**

Scheme to defraud by use of mails. See **Criminal Law**, 5.

FREIGHT. See **Admiralty**, 14.

FRUSTRATION.

Frustration of voyage. See **Admiralty**, 14.

GASOLINE. See **Ordinances**, 1, 2.

State inspection. See **Constitutional Law**, V, 6-8.

GEORGIA.

A grant of railroad right of way from which public benefit is expected is not a gratuity within provision of Georgia constitution forbidding grant of any donation or gratuity in favor of any person, corporation, or association. *Georgia v. Cincinnati So. Ry.* 26

GOOD WILL. See **Trade-marks**, 1.

GRAIN.

State regulation of weighing and weight certificates. See **Constitutional Law**, XIV, 9.

- GRAIN STANDARDS ACT.** PAGE
 Law forbidding any other than authorized state weigher to issue any weight certificate for grain weighed at any warehouse where state weighers were stationed, or to charge for such weighing or certificates, *held*, not superseded by or in conflict with Federal Grain Standards Act of 1916. *Merchants Exchange v. Missouri* 365
- GRATUITIES.** See **Franchises**, 3.
- HOMESTEADS.** See **Public Lands**, I; II, 2-9.
- IMPAIRMENT OF CONTRACT OBLIGATION.** See **Constitutional Law**, VI.
- IMPROVEMENT DISTRICTS.** See **Taxation**, II, 8-12.
- INCOME TAX.** See **Taxation**, I.
- INDIANA.**
 Territorial limits of Kentucky extend across Ohio River to low-water mark on Indiana side, and no limitation on power of Kentucky to protect fish within those limits resulted from establishment of concurrent jurisdiction by Virginia Compact. *Nicoulin v. O'Brien* 113
- INDIANS.**
1. *Allotments; Descent; Tribal Enrollment.* Under Seminole Agreement of 1899, where an enrolled Seminole father died after Dec. 31, 1899, leaving wife and daughters who were enrolled only as Creeks, and both Seminole and Creek rolls were final and with other evidence establish Creek custom assigning children of mixed marriages tribal status of mother, *held*, that father's share of Seminole lands, subsequently allotted, did not descend to mother or daughters. *Campbell v. Wadsworth*. 169
 2. *Id.* Power of Dawes Commission, and effect of enrollment. *Id.*, pp. 174 *et seq.*
 3. *Id.*; *Alienation; Taxation to Purchaser.* Upon conveyance of Creek allotment, which was exempt from taxation under Agreement of June 30, 1902, and from which restrictions on alienation were removed by Act of May 27, 1908, the tract

INDIANS—*Continued.*

PAGE

is subject to state taxation in hands of grantees, for by taking title under Act of 1908 they take subject to its conditions and policy. *Fink v. County Commissioners*. 399

4. *Id.* Act of 1908, *supra*, granting right of alienation, invades no right of Indian in making exercise of that right a surrender of exemption from taxation. *Id.*

5. *Id. Quære.* How far grantee of Indian may avail himself of Indian's right to assert unconstitutionality of act of Congress. *Id.*

6. *Reservation; Power of Congress; Fisheries.* For safeguarding and advancing dependent Indian people, resident on islands belonging to United States in Alaska, Congress has power to reserve for their use not only upland of islands but also adjacent submerged land and deep waters supplying fisheries essential to Indians' welfare. *Alaska Pacific Fisheries v. United States*. 78

7. *Id.* Act setting aside "the body of lands known as Annette Islands," in Alaska, to be held by the Metlakahtla Indians in common, under regulations of Secretary of Interior, *held*, in view of circumstances at time of enactment and its subsequent construction, to include adjacent deep waters; a fish net constructed therein, whose operation might materially reduce supply of fish accessible to Indians, *held* subject to abatement at suit of United States. *Id.*

8. *Creek Nation; Liability for Mob Violence.* While recognized by United States as distinct political community, Creek Nation leased a pasture, the lessees undertaking to fence and pay rent. The fence was destroyed by Creek mob, participated in by Creek Treasurer, and one of lessees, as assignee of rest, sued Creek Nation for cost of fence and loss of benefits of lease. *Held*, that there was no cause of action; for a sovereignty is not liable for injuries resulting from mob violence or failure to keep the peace; and neither the wrong of Treasurer nor any duty under lease created such liability. *Turner v. United States*. 354

9. *Id.; Act Authorizing Suit.* Act of May 29, 1908, authorizing suit in Court of Claims for adjudication of claim, did not validate claim itself or permit that United States be joined as defendant. *Id.*

- INDICTMENT.** See **Criminal Law**, 5, 6. PAGE
- INFANTS.** See **Public Lands**, I, 1.
- INFRINGEMENT.** See **Trade-marks**, 5.
- INHERITANCE TAXES.**
 See *Iowa v. Slimmer*. 115, 120
- INJUNCTION.** See **Equity**, 5-12.
 1. Interlocutory injunction—when merits decided. *International News Service v. Associated Press*. 215, 232
 2. Scope of decree restraining news-gathering agency from pirating news of rival. *Id.*, p. 245.
- INSOLVENCY.** See **Bankruptcy; Receivers**.
- INSPECTION.** See **Meat Inspection Act**.
 Validity of state inspection fees, under commerce clause.
 See **Constitutional Law**, V, 6-8.
- INSPECTORS OF CUSTOMS.** See **Customs Officers**.
- INSTRUCTIONS.** See **Anti-Trust Acts**, 2, 3, 7, 9; **Exceptions**, 2.
- INSURANCE.**
 1. *Brokers; Police Power.* Power of State over subject of insurance extends to regulation of those who may carry on business as brokers representing insurer and insured. *La-Tourette v. McMaster*. 465
 2. *Id.; Excluding Nonresidents.* South Carolina law providing that only such persons shall be licensed as brokers as are residents of State and have been licensed there for two years does not deprive citizen of another State desiring to act as broker in South Carolina of liberty or property or unlawfully discriminate against him. *Id.*
 3. *Cash Surrender Value*,—of life insurance policy payable to executors, administrators or assigns of the insured, or to specified persons with right in insured to change beneficiary, is assets subject to distribution under Bankruptcy Act. *Cohn v. Malone*. 450

INSURANCE—*Continued.*

PAGE

4. *Georgia Code*, § 2498,—providing that insured may assign by directing payment to personal representative, widow, children, or assignee, and that no other person can defeat such direction when assented to by insurer, does not withdraw cash surrender value from estate in bankruptcy when assignment made subject to right to change beneficiaries or surrender policy at any time. *Id.*

5. *Loan Agreement; Evading Subrogation.* Where bills of lading give carrier benefit of insurance by shipper, and policies exempt insurer where bills contain such provision or where carrier is liable, an agreement whereby insurer loans shipper amount of loss caused by carrier's negligence, to be repaid in so far as shipper recovers from carrier, otherwise to operate as absolute payment, and whereby, as security, shipper pledges right of action and agrees to sue carrier at expense and under direction of insurer, held lawful and enforceable. *Luckenbach v. McCahan Sugar Co.* 139

6. *Id.* Such a loan is not a payment of the insurance, and does not enure to carrier. *Id.*

7. *Id.* Libel, in shipper's name, for benefit of insurer, pursuant to such agreement, may be maintained against carrier and ship. *Id.*

INTEREST.

Allowance in salvage case. *Oelwerke Teutonia v. Erlanger* . . 521

INTERNATIONAL LAW. See **Boundaries**, 2; **Judicial Notice**, 3; **War**.

As to power of Congress respecting the advancement of wages to seamen under foreign contracts, in foreign ports. See *Sandberg v. McDonald* 185, 195
Neilson v. Rhine Shipping Co 205, 212

1. Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. *Sandberg v. McDonald* 185, 195

2. A co-belligerent may maintain suit in our courts against an alien enemy, and the latter is entitled to defend. *Watts, Watts & Co. v. Unione Austriaca* 9

INTERPRETATION. See **Construction.**

INTERSTATE COMMERCE. See **Constitutional Law, V;**
Interstate Commerce Acts; Intoxicating Liquors;
Meat Inspection Act.

INTERSTATE COMMERCE ACTS. See **Food; Intoxicating**
Liquors; Meat Inspection Act.

1. *Carmack Amendment; Passengers.* Power of States to establish and apply their own laws and policies touching the validity of contracts exempting carriers from liability for injuries due to negligence, not affected by Amendment, which deals only with shipments of property. *Chicago, R. I. & Pac. Ry. v. Maucher.* 359

2. *Id.; Bill of Lading.* Cause of action under interstate bill of lading, which arose, if at all, before date of Amendment, depends upon state law. *Missouri, Kans. & Tex. Ry. v. Sealy.* 363

3. *Id.; Live Stock Contract; Notice of Loss.* Stipulation in live stock contract releasing carrier from liability for loss unless written claim made on agent within 10 days after unloading, *held* valid; observance not excused by fact that amount of loss could not be ascertained within period specified; nor waived by fact that carrier with knowledge of situation negotiated for compromise before and after period had expired. *Southern Pac. Co. v. Stewart.* 446

4. *Railroad and Telegraphs; Exchange of Services.* Under amendment of 1910, § 7, contract for exchange of services rendered by telegraph company for railway company beyond line of railway, and *vice versa*, is valid; and may be arranged upon basis of reciprocal advantage, without regard to rates chargeable for similar services to public. *Postal Telegraph-Cable Co. v. Tonopah &c. R. R.* 471

INTOXICATING LIQUORS. See **Accounting, 1.**

1. *Interstate Shipment; Collection of Price.* Under Crim. Code, § 239, practice of collecting price at destination, as a condition to delivery, was the evil aimed at. *Danciger v. Cooley.* 319

2. *Id.* Such collections when made by agent of seller constitute offense no less than when made by common carrier or its agent. *Id.*

INTOXICATING LIQUORS—*Continued.*

PAGE

- 3. *Id.* Transportation not completed until shipment arrives at destination and is delivered. *Id.*
- 4. *Power of Congress.* May forbid interstate transportation without regard to policy or law of any State. *United States v. Hill* 420
- 5. *Transportation upon the Person*,—and for personal use, of interstate passenger, is "interstate commerce." *Id.*
- 6. *Reed Amendment*,—forbidding transportation into any State the laws of which prohibit manufacture or sale for beverage purposes, not limited to cases of importation for commercial purposes; and, as so construed, is within power of Congress. *Id.*
- 7. *Webb-Kenyon Liquor Act*, sustained. *Missouri Pac. Ry. v. Kansas* 276

INVENTIONS. See **Patents for Inventions.**

IRRIGATION. See **Waters**, 1-3.

JOINDER. See **Parties**, 8.

JUDGMENTS. See **Constitutional Law**, XIV, 5, 6; **Equity; Procedure**, X.

Finality of. See **Jurisdiction**, IV, 9, 12.

Admissibility, in action for triple damages under Sherman Act, of judgment in Government criminal prosecution. See **Anti-Trust Acts**, 4, 5.

- 1. Where charter-party signed by one owner, but the rest, being impleaded with him, admitted that he acted for all, and liability of all, if liability existed, was not controverted, a decree for damages should run against all. *Luckenbach v. McCahan Sugar Co.* 139
- 2. In action by United States against manufacturer of torpedoes, to enjoin disclosure (in violation of contract) of device the design for which was furnished by United States, *held*, that injunction should be confined to devices in use, but without prejudice to right to enjoin disclosure of others, upon proof of intention to make use of them. *Bliss Co. v. United States.* 37

JUDGMENTS—Continued.

PAGE

3. When grounds relied on by Circuit Court of Appeals for reversal prove untenable, this court will consider what judgment should have been rendered in view of other assignments of error. *Guerini Stone Co. v. Carlin Constr. Co.* 334

4. Where carrier, in suit against state commission, has opportunity to test whether rates are confiscatory, provision of state law making judgment conclusive against carrier in subsequent actions for reparation is consistent with Fourteenth Amendment. *Detroit & Mackinac Ry. v. Fletcher Paper Co.* 30

JUDICIAL DISCRETION.

Of District Court in declining to exercise jurisdiction in action between alien belligerents, and duty to proceed where, through entry of United States into war, action transformed into one between co-belligerent and common enemy. *Watts, Watts & Co. v. Unione Austriaca.* 9

JUDICIAL NOTICE.

1. Of reports of Secretary of War. *Tempel v. United States.* 121, 130

2. Of action of state legislature in reducing inspection fee on oil and gasoline. *Pure Oil Co. v. Minnesota.* 158, 164

3. Of fact that free intercourse between residents of this country and of an enemy country is physically impossible. *Watts, Watts & Co. v. Unione Austriaca.* 9

4. Where it cannot be aided by judicial notice, averment that ordinance is unnecessary and unreasonable is too general and not admitted by demurrer. *Pierce Oil Corp. v. City of Hope.* 498

5. Allegations that gasoline was so stored as not to endanger buildings and that explosion was impossible, though conceding possibility of some combustion, held insufficient on demurrer to exclude danger of explosion of which court might take judicial notice. *Id.*

JURISDICTION.

- I. In General, p. 651.
- II. Jurisdiction over the Person, p. 651.
- III. In Admiralty, p. 651.

JURISDICTION—Continued.

PAGE

IV. Jurisdiction of this Court:

- (1) Scope of Review; Admiralty, p. 652.
- (2) Original, p. 652.
- (3) Over Circuit Court of Appeals; Certificates, p. 652.
- (4) Over District Courts, p. 652.
- (5) Over State Courts, p. 653.

V. Jurisdiction of District Courts, p. 655.

VI. Jurisdiction of State Courts, p. 656.

VII. Jurisdiction of Court of Claims, p. 656.

See **Constitutional Law; Equity; Procedure.**Concurrent jurisdiction on Ohio River. See **Boundaries, 1.****I. In General.**

1. Jurisdiction is power and matter of fact. *Cordova v. Grant* 413, 419

2. Territorial jurisdiction of courts coextensive with *de facto* territorial jurisdiction of United States, and land titles may be determined notwithstanding locus involved in question of boundary with another nation. *Id.*

3. An inadvertent assumption of jurisdiction is not equivalent to decision that jurisdiction exists. *J. Homer Fritch, Inc., v. United States.* 458

4. Jurisdiction to enjoin state law on ground of unconstitutionality exercised only in clear cases and where intervention essential to protect against injuries otherwise irreparable. *Cavanaugh v. Looney* 453

II. Jurisdiction over the Person.

State has no power to provide that nonresident individuals, in suits growing out of transactions within State through local agent, shall be bound by process served upon him after agency is at an end. *Flexner v. Farson* 289

III. In Admiralty. See IV, 1; V, 1, *infra*.

State statute of frauds requiring writing is inapplicable to maritime contract employing master for distant service. *Union Fish Co. v. Erickson.* 308

IV. Jurisdiction of this Court.

When judgment final. See 9, 12, *infra*.

JURISDICTION—*Continued.*

PAGE

(1) *Scope of Review: Admiralty.* See **Procedure, VI.**

1. Upon review of admiralty case, court may make such disposition of it as justice may require at time of decision, and therein must consider changes in fact and in law which have supervened since decree below. *Watts, Watts & Co. v. Unione Austriaca.* 9

(2) *Original.* See **Administration.**

2. Motion to file original bill denied when complainant State clearly not entitled to relief. *Iowa v. Slimmer* 115

(3) *Over Circuit Court of Appeals; Certificates.* See 6, *infra.*

3. A certificate consisting of recitals of facts interblended with questions of law, or of recitals which fail in themselves to distinguish between ultimate and merely evidential facts, affords no basis under Jud. Code, § 239, either for answering questions or for exercising discretionary power to call up whole record. *Cleveland-Cliffs Co. v. Arctic Iron Co.* 178

4. Certificate under Jud. Code, § 239, Rule 37, must state facts pertinent to questions certified, and this cannot be dispensed with by reference to transcript and briefs in Court of Appeals, which are no part of record in this court. *Dillon v. Strathearn S. S. Co.* 182

(4) *Over District Courts.*

5. *Criminal Appeals Act.* Where indictment alleged scheme to defraud divers persons through use of mails, by representing that land could be purchased under Timber & Stone Act for less than value, and that defendants would secure it in return for fees part payable in advance, and would refund such advances in case of non-success, whereas defendants well knew they could not carry out agreement, but intended to appropriate advance payments to their own use, *held*, that decision sustaining demurrer was based upon construction of § 215, Crim. Code, and was reviewable under Criminal Appeals Act. *United States v. Comyns* 349

6. *Tucker Act.* Judgments of District Courts in suits against United States under act are reviewable directly and exclusively by this court. *J. Homer Fritch, Inc., v. United States* 458

7. *Treaties.* Mexican treaties for determination of boundary *held* not involved in controversy over land between

JURISDICTION—*Continued.*

PAGE

present and former beds of Rio Grande, where parties claimed under adverse possession law of Texas and Mexican grants, respectively. *Cordova v. Grant* 413

(5) *Over State Courts.*

8. *Error or Certiorari.* Judgment held within saving provisions of § 7, Act of 1916, amending Jud. Code, § 237, and limiting jurisdiction in error. *Campbell v. Wadsworth* . . 169, 173

9. *Id.* Case reviewable by certiorari under Act of 1916, in which Virginia Court of Appeals did not finally deny writ of error until Nov. 13, 1916, cannot be brought here by writ of error, although judgment of Circuit Court preceded act which excepts judgments rendered before it became operative. *Andrews v. Virginian Ry.* 272

10. *Id.; Treaty Construction.* Under Jud. Code, § 237, as amended, judgment of state court based on construction, but not denying validity, of a treaty, is not reviewable by writ of error, but only on certiorari. *Erie R. R. v. Hamilton* 369

11. *Id.; Statutory Construction.* Under Jud. Code, § 237, as amended, error does not lie to judgment of state court holding state workmen's compensation law inapplicable to case of personal injuries governed by maritime law and holding Act Oct. 6, 1917, which changes rule in that regard, inapplicable retrospectively. *Coon v. Kennedy* 457

12. *Finality of Judgment.* State judgment not final when still reviewable at discretion of state appellate court. *Andrews v. Virginian Ry.* 272

13. *Frivolous Question.* In action for injury to circus employee while traveling upon circus train being hauled by locomotive of railroad company pursuant to contract declaring company not a common carrier and not liable for negligence, a contention that state law touching validity of contracts exempting carriers from liability to passengers for injuries due to negligence was superseded by Carmack Amendment raises no federal question, since Amendment clearly deals only with shipments of property. *Chicago, R. I. & Pac. Ry. v. Maucher.* 359

14. *Federal Question; Not Supported by Record.* Contention that contract of agency to sell real estate was void because federal lands, under homestead entry, were included, pre-

JURISDICTION—*Continued.*

PAGE

- sents no federal question where state court found they were not included and record supports finding. *King v. Putnam Investment Co.* 23
15. *Id.*; *Raised too Late.* When not presented within time allowed by state procedure, and refused consideration by state court for that reason, writ of error will not lie under Jud. Code, § 237. *Missouri, Kans. & Tex. Ry. v. Sealy* . . . 363
16. *Federal Question.* Objection to approval of contract for sale of water rights by United States to Irrigation District and for sharing drainage expenses, because it exceeded powers of United States and District, and would entail assessments on land otherwise supplied with water, without due process or compensation, presents federal question. *Petrie v. Nampa Irrigation Dist* 154
17. *Id.*; *Independent Local Ground.* But where state court, while holding contract not in violation of constitutional rights, also decided under state law that objection was premature because no burden would be imposed until lands assessed in subsequent proceedings on basis of benefits conferred, and upon notice and hearing, the judgment, based on independent, non-federal ground, is not reviewable. *Id.*
18. *Id.* In mandamus to compel county treasurer to devote proceeds of special tax to satisfaction of county warrants, state court held treasurer had no discretion under state law but to follow levy and remedy was against board of revenue or county. *Held*, judgment not reviewable because based on proposition of state law sufficient to sustain it. *Farson, Son & Co. v. Bird.* 268
19. *Local Questions.* Questions of law, involving fixing of railroad rates on intrastate traffic and reparation to shippers, *held* local and not reviewable. *Detroit & Mackinac Ry. v. Fletcher Paper Co.* 30
20. *Id.* Right of individual to sue State depends upon consent; whether Ohio constitution gives consent directly or requires legislation to put provision into effect is a question of local law, in no sense involving rights under due process clause of individuals suing State for damage to property. *Palmer v. Ohio* 32

JURISDICTION—*Continued.*

PAGE

21. *Id.* Whether city ordinance regulating peddling and canvassing from house to house for sale of property on subscription is confined to general course of such business or applies also to isolated transactions, is a question of local law. *Watters v. Michigan*. 65
22. *Id.* Whether in state court principal may recover from agent money collected by latter in carrying out arrangement which involved violation of Crim. Code, § 239, is a matter of local law. *Danciger v. Cooley*. 319
23. *Id.* Subject to limitation that local assessment must not be arbitrary or unreasonable, questions whether it is justified by benefit conferred and whether property should be made separate improvement district are to be determined by local authorities. *Mt. St. Mary's Cemetery v. Mullins*. 501
24. *Id.* This court will not go behind state decision that municipality deriving powers from legislative grant could make no contract not subject to control by legislature. *Englewood v. Denver & South Platte Ry.* 294, 296
25. *Waiver of Federal Right; Finding Reexaminable.* This court will examine for itself whether there is basis in fact for finding by state court that constitutional right has been waived. *Union Pac. R. R. v. Public Service Comm* 67

V. Jurisdiction of District Courts. See I, 4; IV, (4), *supra*.

1. Where District Court, in libel *in personam* between alien belligerents brought while United States was a neutral, declined to proceed because of prohibitions by belligerent countries on payment of debts of each other's subjects, and this country entered war after case came to this court, *held*, that libelant as co-belligerent had right to maintain suit against respondent, an alien enemy, and that jurisdiction should not be declined as an act of discretion. *Watts, Watts & Co. v. Unione Austriaca*. 9
2. Not knowing land on Chicago River had become submerged through excavations privately made without owner's consent, Government, believing it to be within *de jure* stream, and not intending to exercise eminent domain, dredged land under power to improve navigation. *Held*, there was no implied promise to compensate owner; that cause of action, if any, was in tort; and action against United States was not

JURISDICTION—*Continued.*

PAGE

within jurisdiction of District Court under Tucker Act.
Tempel v. United States. 121

3. Plaintiff claimed, under laws of Texas, land lying between present and former beds of Rio Grande. Defendant, claiming under Mexican grants, set up that, as plaintiff's title depended on whether international boundary had shifted with river, and as United States, though exercising *de facto* jurisdiction over locus, by treaties with Mexico had agreed upon commission with exclusive jurisdiction to settle it, the courts were thereby deprived of jurisdiction. United States had rejected action of commission and had waived objection, based on comity, to the litigation. *Held*, that District Court had jurisdiction and that holding to that effect did not involve validity or construction of treaty. *Cordova v. Grant* . . 413

4. Chancery receiver has no authority to sue in courts of foreign jurisdiction; and Alabama laws, relating to administration of assets of insolvent banking corporations, *held* not to vest title in receiver so as to enable him to sue in District Court in another State without ancillary appointment. *Sterrett v. Second Natl. Bank* 73

VI. Jurisdiction of State Courts. See II, *supra*.

In probate. See **Administration**.

Right of individual to sue State depends upon consent; whether Ohio constitution gives consent directly or requires legislation to put provision into effect is a question of local law. *Palmer v. Ohio* 32

VII. Jurisdiction of Court of Claims.

1. Act of May 29, 1908, authorizing suit in Court of Claims against Creek Nation for adjudication of claim of individual for destruction of property, did not validate claim itself or permit that United States be joined as defendant. *Turner v. United States* 354

2. Jurisdiction under Tucker Act. See IV, 6; V, 2, *supra*.

JURY AND JURORS.

Instructions. See **Anti-Trust Acts**, 2, 3, 7, 9; **Exceptions**, 2.

Effect of verdict discharging one of two co-defendants. See **Anti-Trust Acts**, 3.

KENTUCKY.

PAGE

Territorial limits of Kentucky extend across Ohio River to low-water mark on Indiana side, and no limitation on power of Kentucky to protect fish within those limits resulted from establishment of concurrent jurisdiction by Virginia Compact. *Nicoulin v. O'Brien* 113

LABELS. See **Food; Meat Inspection Act.**

LACHES.

1. While laches of private person is imputable to United States in suit brought for his benefit, settlers entitled to benefits of Act of 1887, who maintained peaceable and continued possession, affording notice of their equitable rights which they asserted and sustained before Land Department, and who relied upon promises of Department to secure their titles and on suits by Government to that end, *held not guilty* of laches, notwithstanding long delays in litigation. *United States v. New Orleans Pac. Ry.* 507

2. One who is in peaceable possession under equitable claim does not subject himself to charge of laches for mere delay in resorting to equity to establish his claim against holder of legal title where latter manifests no purpose to disturb him or to question his claim. *Id.*, p. 519.

LAND DEPARTMENT. See **Public Lands.**

LAND GRANTS. See **Public Lands.**

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

LESSOR AND LESSEE. See **Deeds.**

1. Validity of tax on leasehold interest where special charters of lessor railroads contain perpetual tax exemptions. *Central of Georgia Ry. v. Wright* 525

2. Creek Nation not liable to its lessee for destruction of fence by mob. *Turner v. United States* 354

LICENSE. See **Franchises.**

License fees. See **Constitutional Law**, V, 4-8.

Insurance brokers. See *Id.*, XII; XIV, 7.

Farm produce brokers. See *Id.*, XIV, 8.

Peddlers. See **Ordinances**, 4.

As to tide lands. See *Leary v. Jersey City* 328, 333

LIENS.

PAGE

For salvage. See **Admiralty**, 18.**LIFE INSURANCE.** See **Insurance**, 3, 4.**LIMITATION OF LIABILITY.** See **Admiralty**, 6; **Carriers**, 1.**LIMITATIONS.** See **Laches**.

1. In suit brought by United States on behalf of settlers to secure their rights under Act of 1887 against railway and its grantees holding legal title, through patents, affecting patent issued to railway before Act of Mar. 2, 1896, the 5-year limitation of that act may be a bar to relief by cancellation, but bill may stand upon prayer to affix trust upon legal title in favor of settlers. *United States v. New Orleans Pac. Ry* . . . 507

2. Provisions of Clayton Act, § 5, for admitting judgments, in government proceedings finding company guilty of attempt to monopolize "hereafter rendered," in other litigation, and for suspending statute of limitations as to private rights pending government prosecutions, do not affect retroactively, on review, judgment rendered in action for triple damages before Clayton Act was passed. *Buckeye Powder Co. v. Du Pont Powder Co.* 55

LITERARY PROPERTY. See **Copyright**.**LIVE STOCK.**

Stipulation for written notice of loss in live stock contract. See **Interstate Commerce Acts**, 3.

LOAN. See **Payment**, 4.**LOCAL LAW.** See **Jurisdiction**, IV, 14-24.**MAILS.**Use of, to defraud. See **Criminal Law**, 5.**MANDAMUS.** See **Jurisdiction**, IV, 18.**MARITIME CONTRACTS.** See **Admiralty**.**MARRIAGE.** See **Indians**, 1.

MASTER AND SERVANT. See **Workmen's Compensation PAGE Laws.**

Advance payment of wages to seamen. See **Admiralty, 10-12.**

Contract of employment for one year. See **Statute of Frauds.**

MASTERS OF VESSELS.

Contract of employment. See **Admiralty, 13.**

"MEAT FOOD PRODUCT." See **Meat Inspection Act.****MEAT INSPECTION ACT.**

1. Oleo oil *held* a "meat food product" within act, when manufactured fit for human consumption and not denatured; and debarred from interstate and foreign commerce unless first inspected and passed. *Pittsburgh Melting Co. v. Totten* 1

2. So *held*, where shipper labeled product "inedible," but retained no control of the use and declined to certify, as required by regulations of Secretary of Agriculture, that it was suitable for industrial purposes only, and incapable of being used as food by man. *Id.*

METLAKAHTLA INDIANS. See **Indians, 6, 7.****MEXICO.** See **Boundaries, 2.****MINING CLAIMS.** See **Public Lands, II, 2.****MOBS.**

Action against Creek Nation for destruction of property. See **Claims, 2, 3.**

MONOPOLIES. See **Anti-Trust Acts; Copyright; Trade-marks; Unfair Competition.****MORTGAGES.**

Validity of state charge for privilege of issuing railroad bonds under mortgage. See **Constitutional Law, V, 4.**

MOTIONS

To affirm. See **Procedure, IV.**

To file original bill. See *Id.*, I.

MOTIVE. See **Evidence**, 4, 5.

PAGE

MUNICIPALITIES. See **Ordinances.**

Regulating street car fares and service. See **Franchises**, 5-8.

NATIONAL BANKS.

1. Extent to which States may tax property or shares is determined exclusively by § 5219, Rev. Stats. *Bank of California v. Richardson* 476
Same v. Roberts. 497

2. The interest represented by shares of state bank, when held by national bank, can be reached only by tax upon shares of the latter, and is not taxable to national bank itself. *Id.*

3. Shares of national bank, when held by another national bank, are taxable to latter as shareholder, and are not to be included in valuing shares of latter when taxing its shareholders. *Id.*

NAVIGABLE WATERS. See **Waters.**

NAVY DEPARTMENT.

Rev. Stats., § 3744, requiring approval in writing of contracts, does not affect implication of warranty by Government. *United States v. Spearin.* 132

NEGLIGENCE. See **Carriers**, 3.

1. Power of States to establish and apply their own laws and policies touching validity of contracts exempting carriers from liability to passengers for injuries due to negligence, was not affected by Carmack Amendment, which deals only with shipments of property. *Chicago, R. I. & Pac. Ry. v. Maucher.* 359

2. In action for injury to circus employee while traveling upon circus train being hauled by locomotive of railroad company pursuant to contract declaring company not a common carrier and not liable for negligence, *held*, that employee was not a passenger of company, and that cause of action was based on general right not to be injured by negligence of another. *Id.*

NEW JERSEY.

Conveyance and taxation of tide lands. See **Deeds.**

PAGE

NEWS. See **Newspapers.**

NEWSPAPERS. See **Unfair Competition.**

Suit by representative of a class. See **Parties, 7, 8.**

1. A news article in a newspaper may be copyrighted under Act of 1909, but news, as such, is not copyrightable. *International News Service v. Associated Press* 215

2. As against public, any special interest of producer of uncopyrighted news matter is lost upon first publication. *Id.*

3. But one who gathers news at pains and expense, for purpose of lucrative publication, has a *quasi* property in results, as against rival in same business; and appropriation of those results at the expense and to the damage of the one and for the profit of the other is unfair competition, against which equity will afford relief. *Id.*

NONRESIDENTS.

Service on agent of nonresident individual. See **Jurisdiction, II.**

Right to engage in business of insurance broker. See **Constitutional Law, XII; XIV, 7.**

NOTICE. See **Constitutional Law, XIV, (1); Judicial Notice; Public Lands, II, 6-9; Trade-marks, 5.**

Live stock contracts; written notice of damage. See **Interstate Commerce Acts, 3.**

NUISANCES. See **Constitutional Law, VI, 6.**

OCCUPANCY.

Notice from. See **Public Lands, II, 6-9.**

OFFICERS. See **Indians, 7; Meat Inspection Act, 2; Public Lands, I, 2; II, 2, 7, 9.**

Participation by treasurer of Creek Nation does not make it liable for destruction of property by mob. *Turner v. United States.* 354

OFFICERS—Continued

PAGE

1. Creation of offices and assignment of their compensation is a legislative function; and fact and extent of any delegation of it must clearly appear. *Cochnower v. United States* . . . 405
2. Act of 1909, authorizing Secretary of Treasury "to increase and fix" compensation of inspectors of customs, did not empower him to decrease their salaries. *Id.*
3. Appointment of clerk by Collector of Customs, "to act as acting U. S. weigher," at compensation less than fixed by Act of 1866 (\$2,500) for weighers, and assignment to, and performance of, duties of weigher, does not place him in that office and entitle him to its salary. *MacMath v. United States*. 151

OHIO.

1. Whether Ohio constitution gives directly consent to suit by individuals against State or requires legislation to put provision into effect is a question of local law. *Palmer v. Ohio*. 32
2. Conservancy Act, authorizing drainage districts and assessments, etc., for benefits, affords opportunity for testing private grievances judicially. *Orr v. Allen*. 35
3. Gen. Code, § 12725, regulating food standard and labeling of condensed milk, held to prohibit sale of wholesome condensed skimmed milk when combined with cocoanut oil and labeled "a compound of evaporated skimmed milk," etc. *Hebe Co. v. Shaw* 297

OHIO RIVER.Territorial limits of Kentucky. See **Boundaries**, 1.**OILS.** See **Meat Inspection Act**.State inspection. See **Constitutional Law**, V, 6-8.Regulation of gasoline storage. See **Constitutional Law**, XIV, 10.**OLEO OIL.** See **Meat Inspection Act**.**ORDINANCES.** See **Franchises**.

1. Forbidding storage of gasoline within 300 ft. of any dwelling is within police power, though storage necessary to company's business and plant could not be moved without expense and loss of profits. *Pierce Oil Corp. v. City of Hope* 498

ORDINANCES—*Continued.*

PAGE

- 2. Fact that tanks were moved to present position at city's request does not import contract not to require further removal for public welfare. *Id.*
- 3. Where it cannot be aided by judicial notice, an averment that an ordinance is unnecessary and unreasonable is too general and is not admitted by demurrer. *Id.*
- 4. Whether ordinance requiring license for peddling and canvassing for sale of property on subscription is confined to a general course of such business or applies also to isolated transactions is a local question. *Watters v. Michigan* 65

ORIGINAL JURISDICTION. See **Jurisdiction**, IV, (2).

ORIGINAL PACKAGE. See **Constitutional Law**, V, 9-11.

PARENT AND CHILD.

Tribal status of children of mixed marriages. See **Indians**, 1.

PAROL EVIDENCE. See **Evidence**, 6.

PARTIES.

Suits against United States under Tucker Act. See **Jurisdiction**, IV, 6; V, 2.

By shipper against carrier for benefit of insurer. See **Admiralty**, 3.

Who may question constitutionality of statutes. See **Constitutional Law**, XV.

1. *State.* Right of individual to sue State depends upon consent; and whether Ohio constitution gives consent is a local question. *Palmer v. Ohio* 32

2. *United States.* Where act of Congress reserved for use of dependent Indians islands in Alaska, including adjacent deep waters supplying fisheries, a fish net constructed therein, whose operation might materially reduce supply of fish accessible to Indians, held subject to abatement at suit of United States. *Alaska Pacific Fisheries v. United States* 78

3. *Id.* Act May 29, 1908, authorizing suit in Court of Claims against Creek nation for adjudication of claim of individual for destruction of property, did not validate

PARTIES — <i>Continued.</i>	PAGE
claim itself or permit that United States be joined as defendant. <i>Turner v. United States</i>	354
4. <i>Id.</i> United States may maintain suit on behalf of homestead settlers to secure their rights under Act of 1887 against railway and its grantees holding legal title through patents. <i>United States v. New Orleans Pac. Ry.</i>	507
5. <i>Co-Belligerent.</i> May sue in our courts against alien enemy; latter is entitled to defend before judgment entered. <i>Watts, Watts & Co. v. Unione Austriaca</i>	9
6. <i>Chancery Receiver.</i> May not sue in courts of foreign jurisdiction to recover property therein situated; Alabama laws, relating to administration of assets of insolvent banking corporations, held not to vest title in receiver so as to enable him to sue in District Court in another State without ancillary appointment. <i>Sterrett v. Second Natl. Bank</i>	73
7. <i>Representative.</i> Incorporated association of newspaper publishers, engaged in gathering news and distributing it to its members, is proper party to represent them in suit to protect their interests in news so collected against illegal acts of a rival organization. Equity Rule, 38. <i>International News Service v. Associated Press.</i>	215
8. <i>Non-Joinder.</i> Right to object to non-joinder waived if not made specifically in courts below. Equity Rules, 43, 44. <i>Id.</i>	

PASSENGERS.

Right of carrier to limit liability for injuries due to negligence. See **Carriers**, 1, 2.

Who are passengers. See *Id.*

PATENTS FOR INVENTIONS.

Davison patent, relating to propulsion of torpedoes by balanced turbine method, construed. *Bliss Co. v. United States* 37
See **Contracts**, 15.

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

Exemption of homesteads. See **Public Lands**, I, 4.

PAY. See **Officers.**

PAYMENT.	See Duress.	PAGE
1.	Where building contract contemplates contractor's ability to perform will depend upon his receiving stipulated payments on account as work progresses, substantial failure to pay as stipulated will justify declining to proceed. <i>Guerini Stone Co. v. Carlin Constr. Co.</i>	334
2.	Amounts due under different branches of contract may be united. <i>Id.</i>	
3.	Where complaint alleged failure to make payments "in accordance with contract," while demands proved were based on modification, <i>held</i> , an unimportant variance. <i>Id.</i>	
4.	Where insurer loans shipper amount of loss caused by carrier's negligence, to be repaid in so far as shipper recovers from carrier, otherwise to operate as absolute payment, and, as security, shipper pledges right of action and agrees to sue carrier at expense and under direction of insurer, <i>held</i> , that loan is not payment of insurance, and does not enure to carrier. <i>Luckenbach v. McCahan Sugar Co.</i>	139
PEDDLERS.	See Ordinances, 4.	
PENALTIES.	See Duress.	
PERFORMANCE.	See Contracts, 17.	
PERSONAL INJURY.	See Negligence; Workmen's Compensation Laws.	
PERSONAL PROPERTY.	See Administration.	
PHILIPPINE ISLANDS.	Finding that vessel was abandoned, concurred in by court of first instance and Supreme Court of Philippines, in salvage case, accepted by this court when supported by evidence. <i>Oelwerke Teutonia v. Erlanger</i>	521
PLEADING.	See Election of Remedies.	
1.	<i>Bill of Particulars</i> , supplementing indictment, is no part of record on demurrer. <i>United States v. Comyns.</i>	349
2.	<i>General Averment.</i> Where not aided by judicial notice, averment that ordinance is unnecessary and unreasonable	

- PLEADING** —*Continued.* PAGE
- is too general and not admitted by demurrer. *Pierce Oil Corp. v. City of Hope*. 498
3. *Contradicting Judicial Knowledge.* Allegations that gasoline was so stored as not to endanger buildings and that explosion was impossible, though conceding possibility of some combustion, *held* insufficient on demurrer to exclude danger of explosion of which court might take judicial notice. *Id.*
4. *Bill; When Taken as True.* Where District Court, in denying preliminary injunction, of own motion dismisses bill, its action is equivalent to sustaining demurrer, and, upon appeal, allegations of bill taken as true. *Detroit United Ry. v. Detroit* 429
5. *Variance.* In action for breach of building contract, complaint alleged failure to make payments "in accordance with contract," while demands proved were based on modification. *Held*, an unimportant variance not requiring amendment, particularly in view of relation of matter to former decision and mandate of this court. *Guerini Stone Co. v. Carlin Constr. Co.* 334
- POLICE POWER.** See **Constitutional Law**, V; XIV, (2).
- PREËMPTION SETTLEMENT.** See **Public Lands**, II, 1.
- PREFERENCES.** See **Interstate Commerce Acts**, 4.
- PRESIDENT.**
Overriding veto. See **Constitutional Law**, I, 2-4.
- PRESUMPTIONS.** See **Statutes**, 1, 2, 10.
- PRINCIPAL AND AGENT.** See **Criminal Law**, 2, 4; **Insurance**, 1, 2; **Jurisdiction**, II; IV, 14.
- PRIORITY.** See **Trade-marks**.
- PRIVILEGES AND IMMUNITIES.** See **Constitutional Law**, XII; XIV, 6-8.
- PROBATE.** See **Administration**.

PROCEDURE. See **Demurrer; Election of Remedies; PAGE Equity; Evidence; Jurisdiction; Parties; Pleading; Receivers.**

Affixing trust on patentee where suit to annul patent is barred by limitations. See **Public Lands, II, 8.**

I. Motion to File Original Bill.

1. Denied when complaining State clearly not entitled to relief sought. *Iowa v. Slimmer* 115
2. Submitted *ex parte*; and when doubt exists may be postponed for full argument on briefs. *Id.*, p. 119.

II. Certificates from Circuit Court of Appeals.

1. A certificate consisting of recitals of facts interblended with questions of law, or of recitals which fail in themselves to distinguish between ultimate and merely evidential facts, affords no basis under Jud. Code, § 239, either for answering questions or for exercising discretionary power to call up whole record. *Cleveland-Cliffs Co. v. Arctic Iron Co.* 178
2. Certificate under Jud. Code, § 239, Rule 37, must state facts pertinent to questions certified, and this cannot be dispensed with by reference to transcript and briefs in Court of Appeals, which are no part of record in this court. *Dillon v. Strathearn S. S. Co.* 182

III. Petitions for Certiorari.

- Rule 37, § 3, amended. 529

IV. Motion to Affirm; Dismissal.

- Upon error to state court, this court, finding no substantial federal question, will dismiss, *sua sponte*, denying a motion to affirm. *Palmer v. Ohio.* 32

V. Arguments. See I, 2, *supra*.

- Rule 22, § 3, amended. 528

VI. Scope of Review. See **Jurisdiction.**

1. *Examining all Assignments.* When grounds relied on by Circuit Court of Appeals for reversal prove untenable, this court will consider what judgment should have been rendered in view of other assignments of error. *Guerini Stone Co. v. Carlin Constr. Co.* 334
2. *Excessive Assignments.* See *Buckeye Powder Co. v. Du Pont Powder Co.* 55, 64

PROCEDURE—Continued.

PAGE

3. *Cognizance of Changed Situation; Admiralty.* Upon review this court may make such disposition of case as justice may require at time of decision, and therein must consider changes in fact and in law which have supervened since decree below entered. *Watts, Watts & Co. v. Unione Austriaca* 9
4. *Reexamining State Court's Findings.* This court will examine for itself whether there is any basis in fact for finding that constitutional right has been waived. *Union Pac. R. R. v. Public Service Comm* 67
5. *Id.* Where it is contended that contract of agency to sell real estate was void because federal lands, under homestead entry, were included, and state court found they were not included, this court will examine finding. *King v. Putnam Investment Co.* 23
6. *Concurrent Findings.* Of fact, by two lower courts, accepted. *Van Dyke v. Arizona Eastern R. R.* 49
Luckenbach v. McCahan Sugar Co. 139, 145
Pure Oil Co. v. Minnesota. 158
7. *Interlocutory Appeal.* When merits decided. *International News Service v. Associated Press.* 215, 232
8. *Id.; Salvage Questions.* Finding that vessel was abandoned, concurred in by two lower courts, accepted by this court when supported by evidence. *Oelwerke Teutonia v. Erlanger* 521
9. *Id.* Unless there has been some violation of principle or clear mistake, appeals to this court on amounts allowed for salvage are not encouraged. *Id.*
10. *Taking Bill as True.* Where District Court, in denying preliminary injunction, of own motion dismisses bill, action is equivalent to sustaining demurrer, and, upon appeal, allegations of bill must be taken as true. *Detroit United Ry. v. Detroit.* 429
11. *Bill of Particulars,* supplementing indictment,—no part of record for purpose of demurrer. *United States v. Comyns* 349

VII. Parties. See Parties.

Right to object to nonjoinder treated as waived if not made

PROCEDURE—Continued.	PAGE
specifically in courts below. Equity Rules, 43, 44. <i>International News Service v. Associated Press</i>	215

VIII. Raising Federal Question.

When not presented within time allowed by state procedure, and refused consideration by state court for that reason, writ of error will not lie under § 237, Jud. Code. <i>Missouri, Kans. & Tex. Ry. v. Sealy</i>	363
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IX. Exceptions.

1. Error in admitting evidence cannot be imputed to trial court upon theory that count of complaint was waived at trial, based on statement of plaintiff's counsel in Court of Appeals, which was inconsistent with bill of exceptions. <i>Guerini Stone Co. v. Carlin Constr. Co.</i>	334
2. An exception to an instruction should be specific, directing mind of court to some single point of alleged error. <i>Id.</i>	

X. Scope and Form of Decree.

1. Where charter-party signed by one owner, but the rest, being impleaded with him, admitted that he acted for all, and liability of all, if liability existed, was not controverted, a decree for damages should run against all. <i>Luckenbach v. McCahan Sugar Co.</i>	139
2. In action by United States against manufacturer of torpedoes, to enjoin disclosure (in violation of contract) of device the design for which was furnished by United States, held, that injunction should be confined to devices in use, but without prejudice to right to enjoin disclosure of others, upon proof of intention to make use of them. <i>Bliss Co. v. United States.</i>	37
3. Where libel <i>in personam</i> between alien belligerents came to this court for review after United States entered war, and it was held that libelant as co-belligerent could maintain suit, that jurisdiction should not be declined as an act of discretion, and that respondent, an alien enemy, was entitled to defend, this court directed, in view of impossibility of free intercourse between this and respondent's country, that further prosecution be suspended until adequate presentation of respondent's defense should become possible. <i>Watts, Watts & Co. v. Unione Austriaca</i>	9

PROCEDURE—*Continued.*

PAGE

4. Injunction restraining news-gathering agency from pirating rival's news. *International News Service v. Associated Press*. 215, 247

PROCESS. See **Jurisdiction, II.**

PROFITS. See **Damages, 2.**

PROPERTY. See **Administration; Trade-marks.**

- In news. See *International News Service v. Associated Press*. 215, 240

PUBLICATION. See **Copyright.**

PUBLIC CONTRACTS. See **Contracts, 1-16.**

PUBLIC LANDS.

Jurisdiction of District Court to determine controversy over title to land lying between present and former beds of Rio Grande, claimed under laws of Texas and Mexican grants. See **Jurisdiction, V, 3.**

Whether contention that contract of agency to sell real estate was void, because federal lands under homestead entry were included, presents federal question. See **Jurisdiction, IV, 14.**

- Indictment involving Timber & Stone Act. *United States v. Comyns*. 349

I. Homesteads. See also **II, 2-9, infra.**

1. *Head of Family; Showing.* To initiate right under homestead act, a minor's application must show he is head of family; general assertion that he is such, by reason of having adopted a minor, but without stating time, place, or mode of adoption, or identifying child, insufficient. *Fisher v. Rule*. 314

2. *Withdrawal; Effect on Later Filing.* When Secretary of Interior, after canceling final homestead entry, has ordered suspension of all action pending a reconsideration of decision, no adverse right may be initiated either by settlement and improvement or by filing preliminary application, while suspension remains in force. *Id.*

PUBLIC LANDS—Continued.

PAGE

3. *Patentee as Trustee.* To fasten trust on patentee of public land, plaintiff must show that better right to land is in himself; not enough to show that patentee ought not to have received patent. *Id.*

4. *Exemption from Debts.* Section 4, Act of 1862, providing that no lands acquired shall become liable to satisfaction of debts contracted prior to issuance of patent, applies as well to debts contracted after final entry and before patent as to debts contracted before final proof, and in both respects is within power of Congress. *Ruddy v. Rossi* 104

II. Railroad Grants and Public Reservations.

1. *When Subject to Settlement.* Act of 1871 granted lands to Texas Pacific, conditioned that those not sold within 3 years from completion of road should be subject to settlement and preemption at maximum price, and other lands to Southern Pacific with same rights and subject to same limitations as were granted to Southern Pacific by Act of 1866. *Held*, that condition of Texas Pacific grant was inapplicable to Southern Pacific. *Fullinwider v. Southern Pac. R. R.* 409

2. *Right of Way; Acts of 1875, 1899; Forest; Mining Claim; Homestead.* A railroad, having surveyed line over public land and filed map and application for right of way, and land having in interim become part of National Forest, made application upon same map and received permission to construct; amended location so as to lay right of way, 200 ft. wide, across mining claim in Forest; obtained conveyance of 100 ft. in width from mining claimants, and constructed and operated road. Thereafter, original application was approved by Secretary of Interior, and tract crossed was thrown open to entry. *Held*, that its right to full 200 ft. was superior to right of one who held under mining claim until land was thrown open and who then settled, and ultimately obtained patent, although his homestead right was initiated before railroad amended map to show change of location and before Secretary approved application as amended. *Van Dyke v. Arizona Eastern R. R.* 49

3. *Id.; Defective Charter; Right of Homesteader.* Whether failure to describe route in charter left company without

PUBLIC LANDS—*Continued.*

PAGE

power to construct, and unqualified to receive grant, cannot be raised by homesteader. *Id.*

4. *New Orleans Pacific; Settlers' Rights.* Settlers who, before definite location of road, settled on odd-numbered sections within primary and indemnity limits of grant, and thereafter maintained their claims, residency, occupation and cultivation, *held* entitled to benefits of Act of 1887 confirming grant but excepting lands occupied by such settlers at date of definite location. *United States v. New Orleans Pac. Ry.* 507

5. *Id.; Purchasers from Railway.* Provisions of Act of 1887 in favor of settlers became applicable, when accepted by confirmee company, to all unpatented lands, to such of patented lands as it had not sold, and to indemnity as well as place lands; but not to lands withdrawn from entry and sale, and duly patented to railway and by it conveyed to *bona fide* purchasers before act was passed. *Id.*

6. *Id.; Notice from Occupancy.* Subsequent purchasers from railway charged with notice of Act of 1887, and of claims of settlers, entitled to its benefits, and occupying tracts purchased. *Id.*

7. *Id.; Suit by United States.* May be maintained on behalf of settlers to secure their rights under act against railway and its grantees holding legal title through patents. *Id.*

8. *Id.; Patent; Limitations; Trust.* In such suit, affecting patent to railway before Act Mar. 2, 1896, 5-year limitation of that act may be bar to relief by cancellation, but bill may stand upon prayer to affix trust upon legal title in favor of settlers. *Id.*

9. *Id.; Laches.* While laches of private person is imputable to United States in suit brought for his benefit, settlers entitled to benefits of Act of 1887, who maintained peaceable and continued possession, affording notice of their equitable rights which they asserted and sustained before Land Department, and who relied upon promise of Department to secure their titles and on suits by Government to that end, *held* not guilty of laches, notwithstanding long delays in litigation. *Id.*

PUBLIC LANDS—*Continued.*

PAGE

III. Indian Reservations; Rights of Fishery. See **Indians, 7.**

For safeguarding and advancing dependent Indian people, resident on islands belonging to United States in Alaska, Congress has power to reserve for their use not only upland of islands but also adjacent submerged land and deep waters supplying fisheries essential to Indians' welfare. *Alaska Pacific Fisheries v. United States.* 78

PUBLIC OFFICERS. See **Indians, 7; Meat Inspection Act, 2; Officers; Public Lands, I, 2; II, 2, 7, 9.**

PURE FOOD LAWS. See **Food.**

RAILROADS. See **Carriers; Franchises; Interstate Commerce Acts; Negligence; Public Lands, II; Taxation, II, 13.**

Validity of state charge for issuing railroad bonds under mortgage. See **Constitutional Law, V, 4.**

RATES. See **Carriers, 12, 13.**

Exchange of services; railroad and telegraph companies. See **Interstate Commerce Acts, 4.**

Electric power companies. See **Constitutional Law, VI, 5; XIV, 16.**

Street car lines. See **Franchises, 6-9.**

REAL PROPERTY. See **Deeds; Indians; Jurisdiction, IV, 14; V, 2, 3; Public Lands.**

Exemption of homesteads. See **Public Lands, I, 4.**

RECEIVERS.

1. Chancery receiver has no authority to sue in courts of a foreign jurisdiction to recover property therein situated. *Sterrett v. Second Natl. Bank.* 73

2. Alabama laws, relating to administration of assets of insolvent banking corporations, held not to vest title in receiver so as to enable him to sue in District Court in another State without ancillary appointment. *Id.*

REED AMENDMENT. See **Intoxicating Liquors, 6.**

RENT. See **Deeds.**

- REPARATION.** See **Carriers**, 12, 13. PAGE
- RESCISSION.** See **Contracts**, 5, 8, 9.
- RESIDENCE.** See **Jurisdiction**, II.
Residence as condition to grant of insurance broker's license.
See **Constitutional Law**, XII; XIV, 7.
- RESTRAINT OF GOVERNMENT.**
Effect of embargo on contract of ocean carriage. See **Admiralty**, 14.
- RESTRAINT OF TRADE.** See **Anti-Trust Acts**.
- RIGHTS OF WAY.** See **Franchises**, 1-4, 6; **Public Lands**, II.
- RIO GRANDE.**
Jurisdiction of District Court to determine controversy over title to land lying between present and former beds of Rio Grande, claimed under laws of Texas and Mexican grants.
Cordova v. Grant 413
- RIPARIAN LANDS.**
Construction of deed of New Jersey Riparian Commission.
See **Deeds**; **Rio Grande**.
- RULES.**
Amendment of Rule 22, § 3 528
Amendment of Rule 37, § 3 529
Certificate from Circuit Court of Appeals, Rule 37. See **Jurisdiction**, IV, (3).
- SALARIES.** See **Officers**.
- SALES.** See **Intoxicating Liquors**.
State regulation:
Foods; original and secondary packages. See **Constitutional Law**, V, 9-12.
Farm produce on commission. *Id.*, XIV, 8.
Peddlers. See **Ordinances**, 4.
- SALVAGE.** See **Admiralty**, 16-19.

SEAMAN'S ACT.

PAGE

1. Act of 1915, § 11, prohibiting payment of wages in advance, inapplicable to advancements to alien seamen shipping abroad on foreign vessel, pursuant to contracts valid under foreign law; such advancements may be allowed for in paying such seamen in port of United States. *Sandberg v. McDonald* 185
2. Provision for abrogation of inconsistent treaty provisions is not opposed to this construction, but refers to parts of act abolishing arrest for desertion and conferring jurisdiction over wage controversies arising in our jurisdiction. *Id.*
3. Nor does § 11 prohibit such advancements when made by an American vessel to secure seamen in foreign port. *Neilson v. Rhine Shipping Co* 205
4. See also *Dillon v. Strathearn S. S. Co.* 162

SECRETARY OF AGRICULTURE. See **Meat Inspection Act**, 2.

SECRETARY OF THE INTERIOR. See **Indians**, 7; **Public Lands**, I, 2; II, 2, 9.

SECRETARY OF THE TREASURY.

1. Power to "increase and fix" compensation of inspectors of customs. *Cochnowar v. United States* 405
2. Appointment and compensation of clerks and weighers by collectors of customs. *MacMath v. United States* 151

SECRET DEVICES.

Injunction against disclosure, in violation of government contract. See **Contracts**, 15; **Equity**, 5.

SEMINOLE INDIANS. See **Indians**, 1.

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

SHIPPING. See **Admiralty**.

STATE DEPARTMENT.

Construction of Seaman's Act of 1915, adopted in consular regulations. See *Sandberg v. McDonald* 185

STATES. See **Boundaries; Constitutional Law; Fran-** PAGE
chises; Jurisdiction; Taxation, II.

Administration of estates. See **Administration.**

Regulation of rates. See **Carriers, 12, 13; Franchises.**

Construction of state constitutions. See **Georgia; Ohio.**

Power of Congress to convey title to public lands exempt from execution. See **Public Lands, I, 4.**

Power of Congress over disposition of public lands under navigable waters, in a Territory. See *Alaska Pacific Fisheries v. United States* 78

1. Right of individual to sue State depends upon consent. *Palmer v. Ohio* 32

2. A sovereignty, on general principles, is not liable for injuries resulting from mob violence or failure to keep the peace. *Turner v. United States* 354

STATUTE OF FRAUDS.

A contract made orally in California, whereby respondent was engaged for one year to serve as master of vessel, mainly upon the sea, held a maritime contract; California statute of frauds requiring writing for agreements not to be performed within a year inapplicable in defense of action for breach.

Union Fish Co. v. Erickson. 308

STATUTES. See Table of Statutes Cited, at front of volume; **Anti-Trust Acts; Bankruptcy; Claims; Constitutional Law; Copyright; Criminal Law; Food; Grain Standards Act; Indians; Insurance; Interstate Commerce Acts; Intoxicating Liquors; Jurisdiction; Meat Inspection Act; National Banks; Officers; Public Lands; Receivers; Seaman's Act; Statute of Frauds; Taxation; Waters; Workmen's Compensation Laws.**

I. Principles of Construction.

1. *Legislation Presumptively Territorial*, and confined to limits over which law-making power has jurisdiction. *Sandberg v. McDonald.* 185, 195

2. *Harmony of Parts.* Presumption that law of Congress is territorial is strengthened by provision for criminal punishment of acts in question. *Id.*, p. 196.

STATUTES—*Continued.*

PAGE

3. *Id.* Provision in Seaman's Act of 1915 for abrogation of inconsistent treaty provisions, *held* not opposed to this court's construction of § 11 as not prohibiting advancements to alien seamen shipping abroad on foreign vessel, where provision may properly be referred to other parts of act. *Id.*
4. *Resort to Genesis, History, Practice.* This construction is same as that adopted by State Department in consular instructions; and reports and proceedings attending legislation in Congress do not require different conclusion. *Id.*
5. *Id.* This court's construction of constitutional provision requiring two-thirds vote to pass bill over veto *held* confirmed by context, proceedings in the Convention, practice of Congress under similar provision for submitting amendments, and practice of States before and since adoption of Constitution. *Missouri Pac. Ry. v. Kansas* 276
6. *Id.* Conditions giving rise to enactment of § 239, Crim. Code, respecting interstate transportation of intoxicating liquor, and report of Senate Committee, examined in holding that practice of collecting price at destination, as condition of delivery, was evil aimed at. *Danciger v. Cooley* . . . 319
7. *Ejusdem Generis.* Never applied to defeat intent. *Id.*
8. *Grant of Use.* In absence of language suggesting different intention, grant of use of railroad right of way taken as granting right of way itself, where purpose to supply road-bed for trunk line, necessitating expenditure by grantee. *Georgia v. Cincinnati So. Ry.* 26
9. *Perpetual Grant.* Grant of railroad right of way to corporation, or to perpetual trustees holding for corporate uses, does not need words of succession to be perpetual. *Id.*
10. *Indians; Presumptions.* Statutes passed for benefit of dependent Indian tribes are to be liberally construed, doubtful expressions being resolved in favor of Indians. *Alaska Pacific Fisheries v. United States* 78
11. *Geographical Name.* "Body of lands known as Annette Islands," *held* a use of geographical name, including islands surrounding and intervening waters. *Id.*

STOCK DIVIDENDS. See **Taxation, I.**

STOCKHOLDERS. See **Corporations**, 1. PAGE
 Power of States to tax shares of national banks. See
National Banks.

STREET RAILWAYS. See **Franchises**, 5-8.

STREETS AND HIGHWAYS. See **Franchises**, 5-8.

SUBMERGED LANDS.

Expropriating submerged lands. See **Waters**, 7.
 Construction of deed of New Jersey Riparian Commission.
 See **Deeds.**

SUBROGATION. See **Insurance**, 5-7.

TAXATION.

Of tide lands in New Jersey. See **Deeds.**
 Validity, under commerce clause, of state license and inspection fees. See **Constitutional Law**, V, 4, 6-8.

I. Income Tax of 1913.

Dividends of earnings of subsidiaries to company holding all their stock and controlling them in conducting a single enterprise, the result of transfers being merely that main company became holder of debts in the business, previously due from one subsidiary to another, *held* not taxable as income, where earnings accumulated before taxing year and had practically become capital. *Gulf Oil Corp. v. Lewellyn* 71

II. State Taxation. See **Jurisdiction**, IV, 18.

1. *Property Used in Interstate Commerce.* Where state board, under law providing for *ad valorem* tax on property, valued personal property within State of foreign express company on basis of mileage employed there in local and interstate commerce, and assessor in listing part in his county inaccurately characterized property as right to carry on express business, *held*, that tax was not on privilege of engaging in interstate commerce, but on property in county. *Wells, Fargo & Co. v. Nevada* 165

2. *Id.* In action to enforce tax, if valuation excessive and burdensome to interstate commerce, the company, under state law, was entitled to prove facts and secure reduction. *Id.*

TAXATION—*Continued.*

PAGE

3. *Indian Property.* Upon conveyance of Creek allotment, exempt from taxation under Agreement of June 30, 1902, from which restrictions on alienation were removed by Act of May 27, 1908 (the latter act providing that land from which restrictions have been removed shall be subject to taxation), the tract is subject to state taxation in hands of grantees. *Fink v. County Commissioners*. 399
4. *Id.* Act of 1908, *supra*, invades no right of Indian in making exercise of right of alienation a surrender of exemption from taxation. *Id.*
5. *National Banks.* Extent to which States may tax property of national banks is determined exclusively by § 5219, Rev. Stats. *Bank of California v. Richardson*. 476
Same v. Roberts 497
6. *Id.* Shares of state bank, when held by national bank, can be reached only by tax upon shares of latter, and are not taxable to national bank itself. *Id.*
7. *Id.* Shares of national bank, held by another national bank, are taxable only to latter as shareholder, and are not to be included in valuing shares of latter when taxing its shareholders. *Id.*
8. *Sewer Districts.* Where land of cemetery association assessed as a whole for local improvement, although part had been disposed of for burial purposes, it appearing that fee remained in association, *held*, that latter was not deprived of property without due process. *Mt. St. Mary's Cemetery v. Mullins* 501
9. *Id.* A local assessment must not be arbitrary or unreasonable. *Id.*
10. *Id.* Inclusion of cemetery for purpose of sewer improvement and assessment in district with larger area devoted to other uses, while other cemeteries have been districted separately, does not establish denial of equal protection, where similarity of situation and conditions not shown. *Id.*
11. *Id.* Notice and opportunity to be heard before creation of special improvement district not essential to due process if hearing afforded in subsequent proceedings to enforce tax. *Id.*

TAXATION—Continued.

PAGE

12. *Drainage Districts.* Ohio Conservancy Act, authorizing drainage districts and improvements, assessment for benefits, taxation, etc., affords opportunity for testing private grievances judicially, and is consistent with state and federal constitutions. *Orr v. Allen*. 35

See **Waters**, 2, 3.

13. *Exemptions in Railroad Charters.* Attempt to evade tax exemptions, (held in former decision to preclude taxing of lessee upon fee of leased property) by tax on leasehold interest, is invalid. *Central of Georgia Ry. v. Wright* . . . 525

14. *Id.* Contracts in special charters creating perpetual tax exemptions are not revocable by later provisions of state constitution. *Id.*

15. *Valuation; Hearing.* Tax is not wanting in due process where valuation originally made *ex parte*, if enforced only through judicial proceeding affording notice and hearing. *Wells, Fargo & Co. v. Nevada* 165

16. *Inheritance.* As to inheritance taxes. See *Iowa v. Slimmer* 115, 120

TELEGRAPH COMPANIES.

Contracts with railroads for exchange of services. See **Interstate Commerce Acts**, 4.

TERRITORIES.

Power of Congress to reserve land under navigable waters, and rights of fishery, for dependent Indians. *Alaska Pacific Fisheries v. United States* 78

TIDE LANDS.

Construction of deed of New Jersey Riparian Commission. See **Deeds**.

TITLE. See **Boundaries**, 2; **Deeds**; **Indians**; **Public Lands**; **Receivers**.

Cloud on title. See **Equity**, 11.

Exemption of homesteads. See **Public Lands**, I, 4.

TORPEDOES. See **Contracts**, 15.**TRADE-MARKS.**

1. *Nature of Right.* Not a right in gross; exists only as ap-

TRADE-MARKS—*Continued.*

PAGE

purtenant to established business and for protection of good will thereof. *United Drug Co. v. Rectanus Co.* 90

2. *Territorial Extent.* Adoption of trade-mark does not project right of protection in advance of extension of trade. *Id.*

3. *State and Federal Law.* Property in trade-marks and right to exclusive use rest upon state law; power of Congress to legislate on subject is only such as arises from authority to regulate commerce. *Id.*, p. 98.

4. *Priority.* As between conflicting claimants, priority of appropriation determines. *Id.*

5. *Id.*; *Estoppel.* Where A had trade-mark in Massachusetts, in connection with business there and in neighboring States, and B, afterwards, in good faith, without notice of A's use or intent to injure or forestall A, adopted same mark in Kentucky, where A's business theretofore had not extended, and built up valuable business under it there, *held*, that A, upon entering B's field with notice of situation, had no equity to enjoin B as an infringer, but was estopped. *Id.*

TRADE SECRETS.

Disclosure, in violation of Government contract. See **Contracts**, 15.

TRANSCRIPT.

In Circuit Court of Appeals. Reference to, upon certificate under Jud. Code, § 239. See **Procedure**, II, 2.

TRANSPORTATION. See **Carriers.****TREATIES.** See **Jurisdiction**, IV, 10.

1. Provision in Seaman's Act of 1915 for abrogation of inconsistent treaty provisions, *held* not opposed to construction of § 11 as not prohibiting advancements to alien seamen shipping abroad on foreign vessel, where provision may properly be referred to other parts of act. *Sandberg v. McDonald* 185

2. As to jurisdiction of District Court to try conflicting claims of title based on Mexican grants and laws of Texas, respectively, to land between present and former bed of Rio Grande, over which United States has *de facto* sover-

- TREATIES**—*Continued.* PAGE
 eighty, and effect of treaties, etc., with Mexico, touching
 determination of international boundary, and of act of our
 Government in waiving objection to litigation, based on
 comity. *Cordova v. Grant* 413
- TRIAL.** See **Election of Remedies; Evidence; Exceptions;
 Variance; Verdict.**
 Instructions. See **Anti-Trust Acts, 2, 3, 7, 9.**
- TRUSTS AND TRUSTEES.** See **Equity, 2, 3, 5.**
 Effect of grant of use of right of way to trustees for a cor-
 poration, without words of perpetual succession. See **Fran-
 chises, 2.**
 To fasten a trust on patentee of public land, plaintiff must
 show that better right to land is in himself; not enough to
 show that patentee ought not to have received patent.
Fisher v. Rule 314
- TUCKER ACT.** See **Jurisdiction, IV, 6; V, 2.**
- ULTRA VIRES.** See **Corporations, 2.**
- UNFAIR COMPETITION.** See **Trade-marks.**
 1. An incorporated association of newspaper publishers
 gathered news and without copyright telegraphed it daily
 to its members for their exclusive publication; a rival organ-
 ization obtained this news through early publications of
 first company's members, and telegraphed it to its own
 customers, enabling them to compete in prompt publica-
 tion. *Held*, that first company and its members, as
 against second, had an equitable *quasi* property in the
 news, even after publication; that its use by second com-
 pany, not as basis for independent investigation but by
 substantial appropriation, for its own gain, amounted to
 unfair competition which should be enjoined, irrespective
 of false pretense involved in rewriting and distributing
 it without mentioning source. *International News Serv-
 ice v. Associated Press* 215
2. Complainant not debarred from relief on ground of un-
 clean hands by fact that, following practice engaged in by
 defendant and news agencies generally, it had used defend-
 ant's news items, when published, as "tips" for investi-
 gation, the results of which it sold. *Id.*

UNITED STATES. See **Boundaries, 2; Claims; Contracts, PAGE 1-16; Laches; Limitations; Officers; Public Lands.**
 Suits against, under Tucker Act. See **Jurisdiction, IV, 6; V, 2.**
 United States as party. See **Parties, 2-4.**

VARIANCE.

In action for breach of building contract, complaint alleged failure to make payments in accordance with contract, while demands proved were based on a modification. *Held* an unimportant variance not requiring amendment, particularly in view of relation of matter to former decision and mandate of this court. *Guerini Stone Co. v. Carlin Constr. Co.* 334

VERDICT.

In action for triple damages under § 7 of Sherman Act, where only ground for holding defendant is responsibility (through stock ownership) for acts of co-defendant, error in directing verdict for former is harmless if latter exonerated upon merits by jury, after instructions fairly presenting case against it. *Buckeye Powder Co. v. Du Pont Powder Co.* 55

VESSELS. See **Admiralty.**

VETO POWER. See **Constitutional Law, I, 2-4.**

VIRGINIA COMPACT. See **Constitutional Law, III.**

WAGES.

Advancements to seamen. See **Admiralty, 10-12.**

WAIVER.

1. This court must examine for itself whether there is any basis in fact for finding by state court that constitutional right has been waived. *Union Pac. R. R. v. Public Service Comm.* 67

2. Right to object to non-joinder of parties waived if not made specifically in courts below. Equity Rules, 43, 44. *International News Service v. Associated Press* 215

3. Error in admitting evidence cannot be imputed to trial court upon theory that count of complaint was waived at

WAIVER—*Continued.*

PAGE

trial, based on statement by plaintiff's counsel in Court of Appeals, which was inconsistent with bill of exceptions. *Guerini Stone Co. v. Carlin Constr Co.* 334

4. Stipulation releasing carrier from loss of or damage to live stock unless written claim made on agent within 10 days after unloading not waived by fact that carrier with knowledge of loss negotiated for compromise before and after period had expired. *Southern Pac. Co. v. Stewart* 446

WAR.

1. Effect on rights of alien belligerents as parties in our courts where, through entry of United States into war, one becomes alien enemy and the other co-belligerent. *Watts, Watts & Co. v. Unione Austriaca* 9

2. Provisions of bills of lading construed as relieving carrier of duty to carry and of obligation to return prepaid freight, where voyage frustrated or indefinitely delayed by government embargo, even though, in two cases, ship did not "break ground."
Allanwilde Transp. Corp. v. Vacuum Oil Co. 377
International Paper Co. v. The Gracie D. Chambers. 387
Standard Varnish Works v. The Bris. 392

WARRANTY.

Of seaworthiness. See **Admiralty**, 6-8.
By Government, implied in building contract. See **Contracts**, 2-5.

WATERS.

Construction of deed of New Jersey Riparian Commission. See **Deeds**.

1. *Drainage Districts.* Ohio Conservancy Act, authorizing drainage districts and improvements, assessment for benefits, taxation, etc., and to issue bonds, affords opportunity for testing private grievances judicially, and is consistent with state and federal constitutions. *Orr v. Allen* 35

2. *Irrigation Districts.* Objection to approval of contract for sale of water rights by United States to irrigation District and for sharing drainage expenses, because it exceeded powers of United States and District and would entail assessments on land otherwise supplied with water, without

WATERS—*Continued.*

	PAGE
due process or compensation, presents federal question.	
<i>Petrie v. Nampa Irrigation Dist.</i>	154
3. <i>Id.</i> But where state court, holding contract not in violation of constitutional rights, decided under state law that objection was premature because no burden imposed until lands assessed in subsequent proceedings on basis of benefits conferred, and upon notice and hearing, judgment not reviewable. <i>Id.</i>	
4. <i>Ohio River; Fish Regulation.</i> Limits of Kentucky extend across Ohio River to low-water on Indiana side; no limitation on power to protect fish within those limits resulted from establishment of concurrent jurisdiction by Virginia Compact. <i>Nicoulin v. O'Brien</i>	113
5. <i>Reservation for Indians; Fishery.</i> For advancing dependent Indian people, residents on islands belonging to United States in Alaska, Congress has power to reserve for their use not only upland of islands but also adjacent submerged land and deep waters supplying fisheries essential to Indians' welfare. <i>Alaska Pacific Fisheries v. United States.</i>	78
6. <i>Id.; Obstructions.</i> Act setting aside "the body of lands known as Annette Islands," to be held by Metlakahtla Indians in common, under regulations of Secretary of Interior, held to include adjacent deep waters; fish net constructed therein, whose operation might materially reduce supply of fish, held subject to abatement at suit of United States. <i>Id.</i>	
7. <i>Expropriating Submerged Land.</i> District Court without jurisdiction to entertain suit against United States under Tucker Act, where Government dredged submerged land under power to improve navigation; cause of action, if any, is in tort. <i>Tempel v. United States</i>	121
8. <i>Rio Grande; Boundary.</i> As to jurisdiction of District Court to try conflicting claims of title based on Mexican grants and laws of Texas, respectively, to land between present and former beds of Rio Grande, over which United States has <i>de facto</i> sovereignty, and effect of treaties, etc., with Mexico touching determination of international boundary, and of act of our Government in waiving objection to litigation, based on comity. <i>Cordova v. Grant</i>	413

WEBB-KENYON ACT. See **Intoxicating Liquors**, 7. PAGE

WEIGHERS. See **Customs Officers**, 2.

At grain elevators. State regulation. See **Constitutional Law**, V, 13; XIV, 9; **Grain Standards Act**.

WISCONSIN.

Food regulations upheld. *Weigle v. Curtice Bros. Co.* 285

WORDS AND PHRASES.

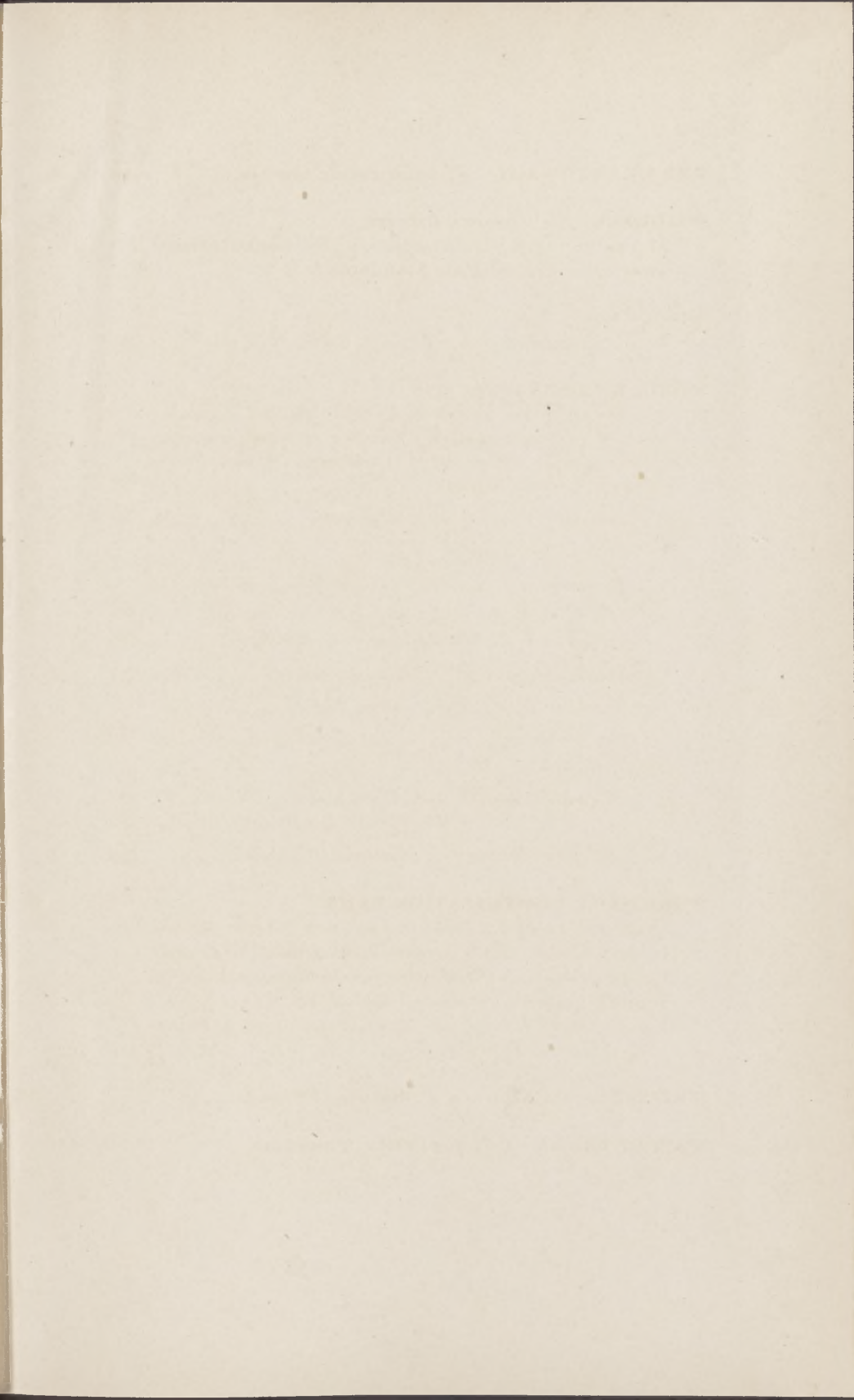
1. "Body of lands known as Annette Islands,"—instance of use of geographical name, including surrounding and intervening deep waters, with the islands. *Alaska Pacific Fisheries v. United States*. 78
2. "Device." *Bliss Co. v. United States* 37
3. "To furnish" a design. *Id.*
4. "Exchange" of services. *Postal Telegraph-Cable Co. v. Tonopah & C. R. R.* 471
5. "Increase and fix." *Cochnowar v. United States* 405
6. "Meat food product." *Pittsburgh Melting Co. v. Totten* 1
7. "News." *International News Service v. Associated Press*. 215
8. "Publication." *Id.*
9. "Original package." *Hebe Co. v. Shaw* 297
Weigle v. Curtice Bros. Co. 285
10. "Seminole citizens." *Campbell v. Wadsworth* 169

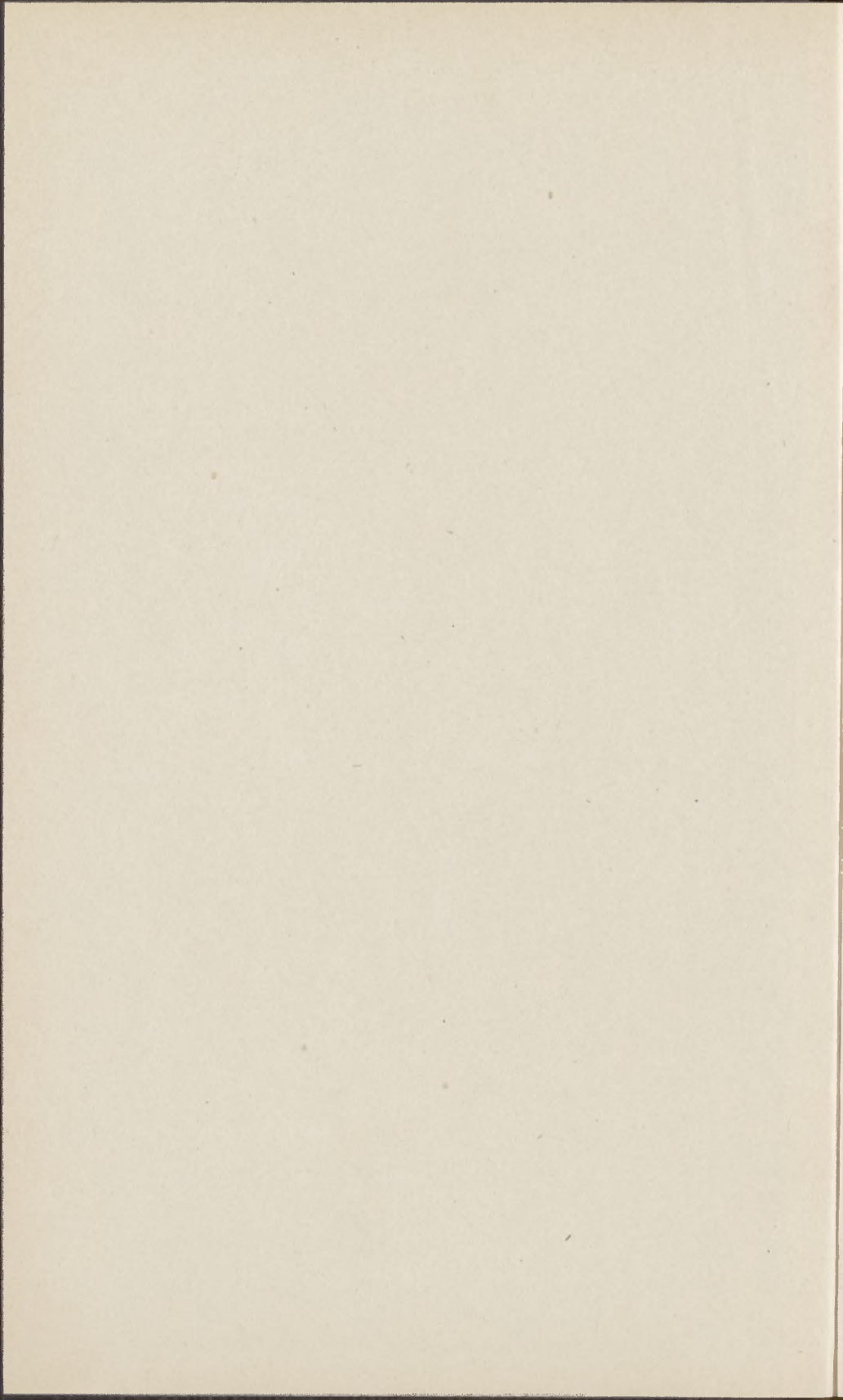
WORKMEN'S COMPENSATION LAWS.

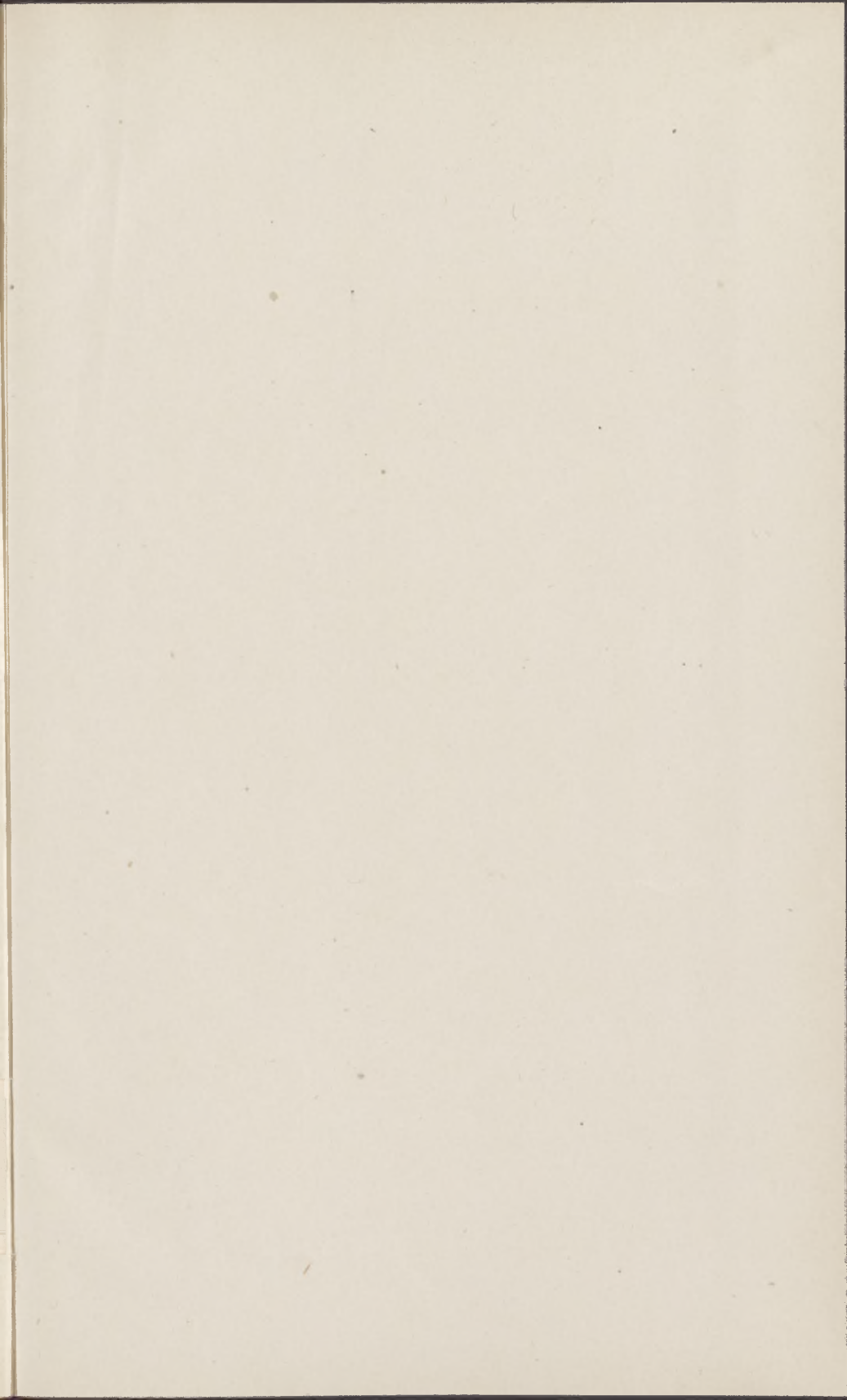
Under Jud. Code, § 237, as amended, writ of error does not lie to judgment of state court holding state Workmen's Compensation Law inapplicable to case of personal injuries governed by maritime law and holding Act of Oct. 6, 1917, which changes rule in that regard, inapplicable retrospectively. *Coon v. Kennedy*. 457

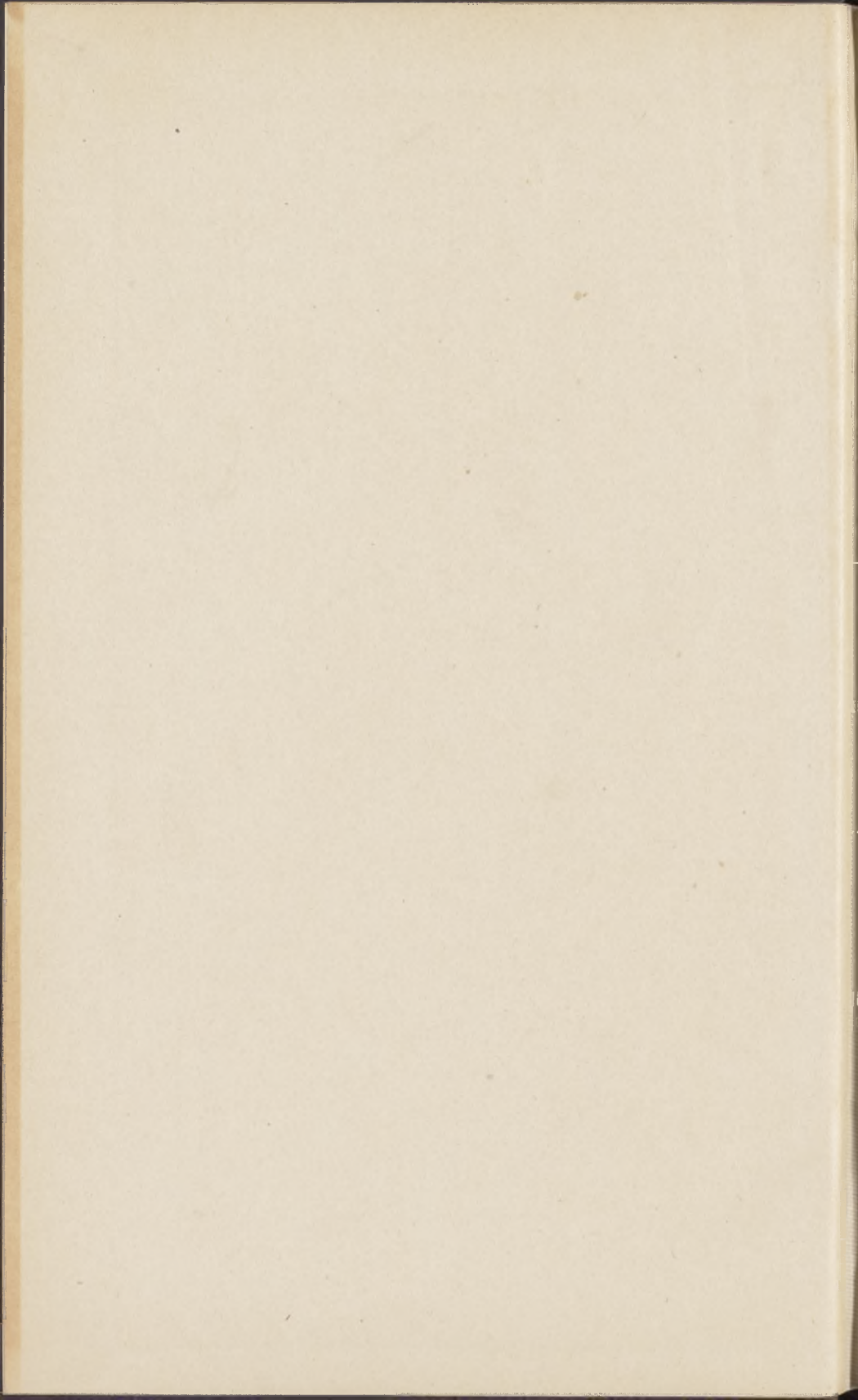
WRITINGS. See **Evidence**, 6; **Statute of Frauds**.

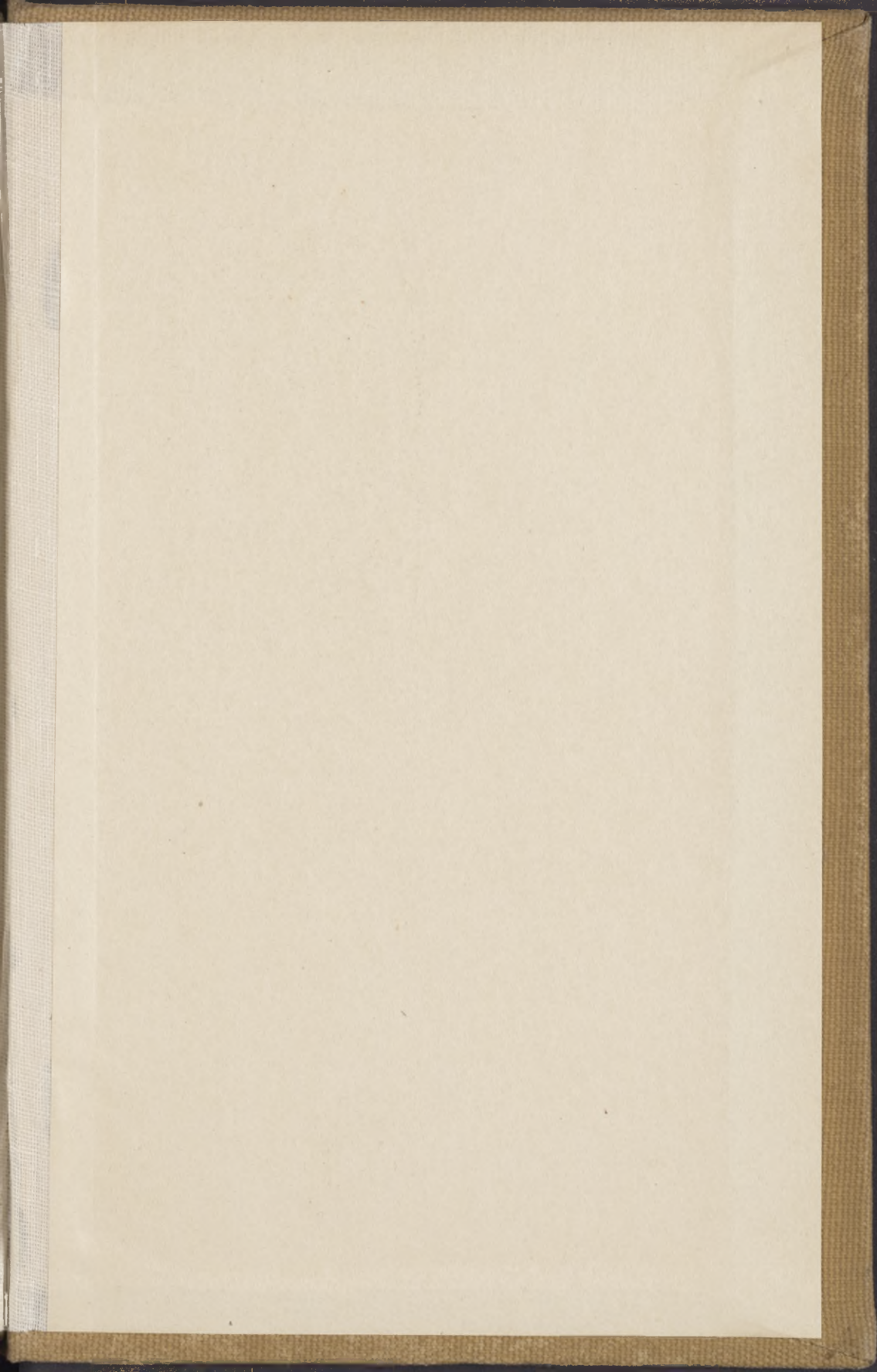
WRIT OF ERROR. See **Jurisdiction; Procedure**.











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