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1. *Government Works; Dredging.* Right to recover cost of excavating material not covered by contract. Provisions making decision of officer in charge as to quantity and quality of work final, requiring contractors to observe his instructions, and denying claims for work not agreed to in writing, held inapplicable. *United States v. Smith.* 11

2. *Id. Delay.* Contractors held entitled to recover for loss due to delays of engineer in locating places of work. *Id.*

3. *Id. Appropriations; Rivers and Harbors.* Acts appropriating for completing improvements, permitting use of fund in prosecution of work if insufficient to complete it,

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do not authorize Secretary of War to contract for more than amounts appropriated. *Sutton v. United States*. 575

4. *Id.* Appropriation for preservation of existing works and prosecution of work previously authorized, not applicable to pay for work theretofore done under and in excess of prior appropriation; when so misapplied amount paid is deductible from balance owing under another contract. *Id.*

5. *Id. Implied Contract.* Where erroneous estimates of government inspectors result in doing of work in excess of appropriation, and Government used the excavation, no contract to pay for excess can be implied. *Id.*

6. *Id. Cost of Inspection,* may not be deducted from appropriation at expense of contractor, where excess work done through mistake of Government. *Id.*

7. *Mail Transportation; Adjustment of Compensation.* Where railroad discontinued important train service causing diversion, readjustment by Department of compensation under Act 1912, passed after date of contract, did not violate contract although it diminished compensation, in part retroactively. *Missouri, Kans. & Tex. Ry. v. United States*. 610

8. *Id. Weighing.* Act 1912 allows readjustment after weighing of diverted mails only; proviso that they must equal 10% of average daily weight on any of routes affected, construed. *Id.*

9. *Choctaw Nation; Services; Agency; Payment.* Obligations of Choctaw Nation to delegates appointed to press money claims against United States, held to be to delegates individually and not as a body, and that two existing delegates, in collecting and disbursing money appropriated for services, were agents of the Nation, so that its payment to them did not discharge obligation of Nation to heirs of former delegate who rendered part of service. *Garland's Heirs v. Choctaw Nation*. 439

10. *Id. Quantum Meruit.* While, under act authorizing suit, right of such heirs to recover for services of ancestor must be determined not upon his contract but upon principle of *quantum meruit*, petition alleging valuable services should not be rejected upon ground that it asserted and relied upon contract. *Id.*

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2. *Elections; Federal Corrupt Practices Act; Conspiracy*. In criminal prosecution, act held invalid as applied to primary

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3. *Homicide; Self-defense; Retreat.* Right of man to stand ground when attacked with deadly weapon depends upon reasonable belief of immediate danger, and not upon detached test whether man of reasonable prudence might not think it possible to fly with safety or to disable his assailant rather than kill him. *Brown v. United States*. 335

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5. *Id. Evidence; Self-defense; Jury.* Where defendant shot deceased several times and again when deceased had fallen, evidence of self-defense was for jury; and, if they disbelieve defendant's testimony that last shot was accident, they might still acquit him if, though intentional, it followed close upon others in heat of conflict. *Id.*

6. *Indian Agents; Trade; Personal Gain.* Rev. Stats., § 2078, prohibiting interest in trade, except on behalf of United States, and providing penalty and removal from office, includes transactions involving property in respect of which United States has no interest or control. *United States v. Hutto*. 524, 530

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2. *Id. Criminal Offense.* Section defines offense against United States, within § 37 Crim. Code. *Id.*

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4. *Id. Vested Rights.* Right to obtain allotment not a vested right as respects this power of Congress. *Id.*

5. *Id. Sale by Secretary of Interior.* Act of 1912 authorizing sale of unallotted lands of reservation in parcels, superseded earlier provisions for allotting them. *Id.*

6. *Id. Secretary's Discretion.* Refusal to allow further allotments because of Act of 1912, is an exercise of discretion to reserve land for disposition under it. *Id.*

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8. *Id.* *Heirship; Determination by Secretary of Interior.* In either case, Congress may authorize Secretary to determine heirs of deceased allottee and make decision conclusive. *Id.*
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10. *Id.* *Executive Practice.* So held in view of practice whereby heirs holding restricted fees determined in numerous cases, communication thereof through official reports to Congress, and provisos declaring appropriations inapplicable to certain tribes whose allotments are of restricted fee class. *Id.*
11. *Alienation; Homestead; Rights of Heirs.* Allotment of half-blood Creek, who died intestate leaving surviving issue born since Mar. 4, 1906, remains inalienable under Act of 1908 during lifetime of such issue, until April 26, 1931, if Secretary of Interior has not removed restriction; deed by heirs under such circumstances is void. *Privett v. United States*. 201
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16. *Leases; Approval; Secretary of Interior.* Authority, under § 2 of Act 1908, to approve oil and gas lease by full-blood Creek allottee, not taken away, under § 9, by death of allottee. *Anchor Oil Co. v. Gray.* 519

17. *Id. Rights of Heirs.* As respects rights of heirs and those claiming under them with notice of outstanding lease, approval relates back and takes effect as of execution of lease by parties named therein. *Id.*

18. *Id. Filing; Notice.* Under Act 1907, lodging of lease with Indian Agent at Muskogee, for transmission to Secretary, is constructive notice to persons who, after death of lessor, took another lease from lessor's heirs. *Id.*

19. *Id. Oklahoma Enabling Act,* and admission of State, did not suspend provision of Act 1907 making such filing constructive notice. *Id.*

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- 6. *Id.* Through individual rate held "regular tariff rate," within contract for transportation of soldiers. *Id.*

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- 2. *Id.* *Lawful Rates; Preference; Notice.* Sender bound as matter of law by tariff limiting liability, without regard to knowledge; departure from lawful rate creates preference. *Id.*
- 3. *Id.* *Quære:* Whether rule that carriers of goods, to limit liability for negligence, must offer alternative rate attended by full liability, applies to telegraph companies? *Id.*
- 4. *Id.* Where lower rate offered with limited liability for unrepeated messages, and higher rate for repeated messages with higher but still limited liability, senders of unrepeated message at lower rate cannot escape limitation upon ground that liability under higher was also limited. *Id.*

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- 2. *Id.* This provision not repealed by legislation abolishing Commerce Court. *Id.*
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5. *Id.* Former decree not only concluded parties as to part of boundary bordering upon Greer County, but settled construction of treaty as to entire course of river where it marks boundary between territory then of United States and Texas. *Id.*

6. *Id. Navigability; United States*. State decision holding river non-navigable in natural condition does not bind United States if it was not a party to suit. *Economy Light Co. v. United States*. 113

7. *Id. Date of Birth*. In suit to set aside deeds made by Indian heirs in contravention of restriction on alienation, United States not concluded by finding of date of birth of surviving issue and judgment upholding conveyances, in prior suit in state court between heirs and one claiming under conveyances, to which United States was not a party. *Privett v. United States*. 201

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V. Mandate.

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VI. Scope of Review and Disposition of Case.

1. *Moot Cases; Costs.* Sale of real estate to stranger after judgment for possession and after writ of error from this court, renders case moot; costs of writ of error laid upon defendant in error and judgment reversed with directions to dismiss. *Heitmuller v. Stokes.* 359

2. *Affirmance; Waiver of New Trial after Reversal; Assignment of Errors.* Where Circuit Court of Appeals reverses District Court and defeated party brings case here by waiving new trial and consenting to final judgment in Court of Appeals, this court must affirm if error necessitating reversal was assigned in that court even though ground of decision was different and untenable. *Frey & Son v. Cudahy Packing Co.* 208

3. *Findings of District Court,* in law action tried without jury conclusive upon matters of fact; in absence of exceptions to rulings of law during trial, review here is limited to sufficiency of complaint. *Vicksburg &c. Ry. v. Anderson-Tully Co.* 408

4. *Determining Federal Question.* Where state court omits to find facts relevant to question of federal law, this court will examine evidence on subject. *Merchants' Natl. Bank v. Richmond.* 635

5. *Id. Accepting State Construction.* State decision on grounds having no relation to federal question and without purpose to evade federal issue, accepted, whether right or wrong. *Nickel v. Cole.* 222

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Cancellation; Preferred Right of Contestant; Withdrawal.
Under Act of 1880, allowing successful contestant 30 days from notice of cancellation to enter lands, *held*, adopting construction of Land Department, that where withdrawal prevented entry for more than 30 days after notice, contestant had 30 days after tract restored to public entry to exercise preferred right. *McLaren v. Fleischer* 477
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II. Railroad Grants.

1. *Northern Pacific Grant, 1864*, embodied proposal that, if company would construct and operate road, it should receive land comprehended by grant. *United States v. Northern Pac. Ry.* 51
2. *Id. Contract Right.* Acceptance of proposal and construction of road created contract, entitling company to performance by Government. *Id.*
3. *Id. Indemnity Provision*, was as much part of grant as that relating to land in place; right to land within indemnity limits in lieu of land lost within place limits protected by due process clause. *Id.*
4. *Id. Withdrawal.* Assuming land applicable as indemnity remaining within indemnity limits was not enough to make up for unsatisfied losses in place limits, Government cannot deprive company's successor of right to such land by setting it aside for forest purposes. *Id.*
5. *Id. Selection; When Right to Specific Tract Attaches.* Rule that no right within indemnity limits attaches to specific tract until selected, applies as between company and settlers under homestead and preemption laws, and also between company and United States when lands available for indemnity exceed losses; it has no application as between

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company and United States if lands for indemnity are insufficient. *Id.*

6. *Id.* *Deficiency; Determination by Land Department.* Whether indemnity lands sufficient to satisfy losses in place limits is primarily for Land Department to decide. *Id.*

7. *Id.* *By Courts; Proof of Deficiency.* Where Department, without deciding question, reserved part of indemnity lands for forest purposes, and afterwards inadvertently issued patent to railroad upon its selection, question could be determined in suit brought later by Government to set aside patent, but only upon clear showing of facts, since decision might conclude both parties as to other lands as well as those immediately involved. *Id.*

8. *Id.* *Adjustment Act.* Report of Commissioner of General Land Office on adjustment of grant showing a deficiency does not establish existence thereof, unless approved by Secretary of Interior. *Id.*

9. *Id.* *Measure of Grant.* Stipulation that all lands received by company under grant and all that it was possible for it to receive thereafter, whether as place or indemnity lands, did not equal sum-total of all odd-numbered sections within primary or place limits, held not to establish deficiency, since measure of grant might be less than aggregate of odd-numbered sections within place limits, due to partial overlapping with another grant, or to deductions under § 6 of granting act if route followed general line of another road with prior grant. *Id.*

10. *Id.* *Judicial Notice* not taken of presence or absence of such conditions. *Id.*

11. *Id.* *Time of Deficiency; Finding of Secretary.* Existence of deficiency when Government withdrew lands not established by finding that deficiency existed six years later. *Id.*

QUANTUM MERUIT. See **Contracts**, 10.

QUAPAW INDIANS. See **Indians**, 14, 15.

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1. *Penal Statutes; After-Acquired Power*, cannot *ex proprio vigore* validate statute void when enacted. *Newberry v. United States*. 232

2. *Id. Implied Repeal.* Declaration of § 35, Prohibition Act, that it shall not relieve from civil or criminal liability "incurred under existing laws," read in light of principles governing construction of penal statutes, the Eighteenth Amendment, and other provisions of the act, concerning liquor for beverage purposes. *United States v. Yuginovich*. 450

3. *Id.* So construed, Prohibition Act, as to liquors for beverage purposes, repeals Rev. Stats., § 3257, which imposes heavier punishment for fraud by distiller, as well as other penal sections designed to protect revenue from distilled spirits. *Id.*

4. *Legislative History*, considered in determining jurisdiction of District Court over claims against United States under § 10 of Lever Act. *United States v. Pfitsch*. 547

5. *Executive Practice and Reports to Congress*, on determination of heirs of Indian allottees, and legislation limiting appropriations, considered in determining power of Secretary of the Interior. *United States v. Bowling*. 484

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TAXATION. See **Constitutional Law**, IV; XII; **Criminal Law**, 8; **Customs Law**; **National Banks**.

I. Federal Taxation.

1. *Income Tax Act, 1918; Deductions.* Estate taxes imposed by Act of 1916 held deductible from gross income. *United States v. Woodward* 632

2. *Id.* "Accrual." Estate tax "accrued" when, by terms of Act of 1916, it became due, viz., one year from decedent's death; when paid by executors after tax year in which it accrued but before their return of income for that year was made, it was properly deducted. *Id.*

3. *Estate Tax.* Tax on transfer of net estates of decedents, imposed by Act of 1916, held an indirect tax not requiring apportionment, and not an interference with state regulation of descent and distribution. *New York Trust Co. v. Eisner* 345

4. *Id.* That tax may occasion inequalities in amounts received by beneficiaries does not affect validity. *Id.*

5. *Id.* *Deductions.* "Charges against the estate," deductible under § 203 in computing net value, affect estate as a whole, and do not include state inheritance taxes on shares of individual beneficiaries. *Id.*

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6. *Excess Profits; Deductions; Invested Capital.* Act of 1917, providing for deduction of percentage of "invested capital," does include in that term marking up of valuation of assets on corporate books to correspond with increase of market value or any paper transaction by which new shares are issued in exchange for old ones in same corporation, but which is not in substance a new acquisition of capital property by it. *La Belle Iron Works v. United States.* 377
7. *Id. Ore Lands.* Increase of value and issuance of new and additional stock in exchange for old may not be included in "invested capital" under § 207 (a) (3) as "paid in or earned surplus and undivided profits"; nor under *id.* (2) as "actual cash value of tangible property paid in other than cash, for the stock or shares" of corporation. *Id.*
8. *Id. Discrimination.* Reasons for basing "invested capital" upon actual costs to exclusion of higher estimated values; resulting inequalities to corporations differently situated not arbitrary discrimination. *Id.*
9. *Intoxicating Liquors.* May be taxed by Congress, notwithstanding production is prohibited, for moral end as well as to raise revenue. *United States v. Yuginovich.* 450
10. *Id. Revenue Laws; Distillers; Repeal; Prohibition Act.* Rev. Stats., § 3257, punishing distillers who defraud United States of tax, and other sections, held superseded as respects manufacture for beverage purposes by § 35, Prohibition Act, imposing double tax and lighter penalty. *Id.*
11. *Stamp Tax; Act 1914.* Liability of manufacturer of chewing gum, manufactured and prepared for sale and removed to its warehouses for future sale to wholesalers. *United States v. American Chicle Co.* 446

II. State Taxation. See I, 3, *supra.*

1. *Legislative Policy; Equality.* This court cannot revise state tax systems to produce more just distribution of burdens. *Dane v. Jackson.* 589
2. *Id.* Only flagrant and palpable inequality between burdens and benefits will render tax law invalid. *Id.*
3. *Id. Massachusetts; Income Tax; Intangible Personal Property.* Tax system which returns to plaintiff's town less

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income tax than he and other inhabitants pay, and distributes overplus to other towns which may use it for local purposes, not invalid. *Id.*

4. *Id. Public Use. Presumption* that money devoted to lawful public uses. *Id.*

5. *Inheritance Tax. Remainder Interests*, which vested after tax law approved but before effective date, but which were subjected to it by state court upon theory that vesting occurred after effective date, not taxed in violation of Fourteenth Amendment. *Nickel v. Cole* 222

6. *Excise Tax; Interstate Commerce; Severability. Tax* on sale of gasoline, assuming it intended to include interstate and domestic transactions, not void *in toto* in application to distributor engaged in both, since enforcement as to interstate business may be enjoined. *Bowman v. Continental Oil Co.* 642

7. *Id. Gasoline imported from another State but used in business of distributor, loses interstate character and may be subjected to excise tax. Id.*

8. *Id. As applied to local sale and use of gasoline by distributor, tax is consistent with due process and equal protection clauses. Id.*

9. *New Mexico Constitution; Uniformity. Tax upon use is not a tax on tangible property, but an excise tax, and conforms to requirement of uniformity. Id.*

10. *License Tax, on distribution, invalid where interstate and intrastate business necessarily are conducted indiscriminately at same stations. Id.*

11. *Id. Foreign Corporations. Where State taxed business of selling automobiles in State, with reduction in amount where percentage of assets were invested in bonds of State or other property there situate, held that, assuming foreign corporations were doing business in State and were subject to her jurisdiction, statute discriminated against them. Bethlehem Motors Co. v. Flynt* 421

12. *Id. Interstate Commerce. Without such assumption, held that tax discriminated against their products. Id.*

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13. *Street Railway; Interstate Bridge.* Tax assessed by valuing tangible property, adding valuation of "all other property" and assigning proportion to taxing State, cannot be regarded as a burden on franchise to conduct traffic over bridge, upon ground that "other property" valued consisted solely of that franchise, where value of railway was due to exclusive rights and lucrative arrangements with other companies. *St. Louis &c. Ry. v. Hagerman* 314

14. *Franchise Tax; Hearing.* Whether act taxing capital stock and surplus employed in State lacks due process in not providing hearing of right, before commission assessing tax, is open in suit to collect tax; cannot be relied on in District Court to restrain collection by corporation which had hearing and whose valuations were accepted by commission. *St. Louis-San Francisco Ry. v. Middlekamp* 226

15. *Id. Discrimination.* Corporation cannot complain that it was taxed disproportionately as compared with other railroads, commission not having acted fraudulently. *Id.*

16. *Id. Foreign Corporations.* Where law subjects foreign corporations with stock having no stated par value to tax, it does not discriminate against domestic corporations whose stock has stated par value. *Id.*

17. *Id. Commerce Clause,* not contravened, even if value of franchise derived partly from interstate business. *Id.*

18. *Id. Federal Control,* during tax year, did not exonerate railroad from tax. *Id.*

19. *Id. Double Taxation; Missouri Constitution,* not violated by act. *Id.*

20. *Id. Missouri Law.* "Surplus," is excess in value of assets in State (where corporation employs part of "capital stock" in business elsewhere) over capital stock employed in State. *Id.*

21. *Id.* While statute in one clause describes tax as measured by capital stock employed in State, other clauses show intention to include also surplus so employed. *Id.*

22. *National Bank Shares.* *Rev. Stats., § 5219.* Words "moneyed capital in hands of individual citizens," in

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provision that state taxation shall not be at greater rate than assessed upon moneyed capital in hands of individual citizens of State, include bonds, notes, etc. in hands of individuals, which come into competition with national banks in loan market. *Merchants' Natl. Bank v. Richmond*. 635

23. *Local Improvements; Railroad* property may not be burdened upon basis so different from that used in ascertaining contribution from individual owners as to produce inequality. *Kansas City So. Ry. v. Road Imp. Dist. No. 6*. 658

24. *Id.* Arkansas statute, authorizing local assessments, held to deny equal protection. *Id.*

25. *Id.* Taxability, for street improvement, of right of way constituting part of interstate system, originally granted by Congress for development of Choctaw Coal lands. *Choctaw, O. & G. R. R. v. Mackey*. 531

26. *Id.* *Identification of Property.* Designation on map prepared by city engineer held sufficient; assessment not invalidated by removal of map and possession by bond purchasers, railroad not having been misled and having had knowledge of proceedings. *Id.*

27. *Id.* *Oklahoma Law.* Right of way held in fee, subject to right of reverter in event of non-user, is subject to assessment, under Oklahoma law, for improvement enhancing value of use. *Id.*

28. *Drainage Districts; Assessment; Benefits.* That lands receive no direct benefits is not *per se* enough to exempt them from assessment. *Miller & Lux v. Sacramento Drainage Dist.*. 129

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1. *Federal Control; Negligence.* Company not subject to common-law liability for negligent delay in delivery of message while system in control of Government, under Joint Resolution, July 16, 1918, and Presidential proclamation. *Western Union Telegraph Co. v. Poston*. 662

2. *Id.* *Operation Through Officers and Employees,* in names of respective companies, subject to orders of Postmaster

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General, did not make companies operating agents of United States, and so render them liable for negligence. *Id.*

3. *Id.* *Contract; Indemnity.* Contract between Postmaster General and company did not make company liable for negligence under government operation, but merely provided indemnity. *Id.*

4. *Id.* *Remedies.* Omission of Congress to provide remedy against Government no ground for holding company liable. *Id.*

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1. *Regulation; State and Federal.* Authority of Congress to prohibit obstructions not lost by omission to act in previous cases. *Economy Light Co. v. United States* 113

2. *Id. Northwest Territory.* Public interest in navigable streams and federal authority over those capable of serving interstate commerce, arises from Ordinance of 1787 establishing public rights of highway therein. *Id.*

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3. *Id.* Rights of highway established by Ordinance were no more subject to repeal by States than any other federal regulation of commerce. *Id.*

4. *Id.* Power of States is plenary within borders until Congress intervenes, but Congress may assume entire control, unhampered by previous acts of States. *Id.*

5. *Id.* It may preserve river for future transportation, even though it be not at present used for interstate commerce and be incapable of such use according to present methods. *Id.*

6. *Navigability; Law and Fact. Artificial Obstructions*, subject to abatement by public authority, do not render non-navigable in law stream which in natural state would be navigable in fact. *Id.*

7. *Id.* River may be navigable in law though it contain natural obstructions and be not open to navigation at all seasons. *Id.*

8. *Id. Act 1899. Desplaines River*, in Illinois, held a navigable water of United States within act forbidding obstructions. *Id.*

9. *Id. Section 9*, applicable to "any navigable river," not limited to such waters as were at date of act, or as now are, actually open to use. *Id.*

10. *Id. Dams; Approval by Secretary of War.* Where there was no application under statute, but party desiring to build submitted plans at informal hearing and assured Secretary that stream was not navigable, his refusal to act upon ground that stream was without his jurisdiction imported neither approval of project nor inquiry concerning navigability. *Id.*

11. *New York Bay; Sewage; Injunction.* Right of New York to enjoin New Jersey project for discharging sewage, without regard to location of boundary or New York's claim of exclusive jurisdiction over Bay. *New York v. New Jersey*. 296

12. *Id. Intervention; United States; Dismissal.* If conditions of stipulation between United States and sewerage commissioners, for treating sewage and allowing Govern-

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ment inspection, were realized and maintained, there could be no occasion for injunction. *Id.*

13. *Id.* *Public Nuisance.* Evidence failed to prove proposed discharge would cause increased damage to persons or property, additional to that attributable to existing discharge from New York City. *Id.*

14. *Id.* Evidence failed to show that, even if treated as prescribed in stipulation, additional sewage would seriously add to existing pollution; in view of improved methods and right of Government to stop operation if it caused pollution, injunction refused. *Id.*

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