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Guaranty; cancelation. See **Equity**, 11.

Foreign insurance companies. See **Taxation**, II, 28.

Rate contracts. See **Carriers**, 3; **Gas Companies**.

1. *Sale; Performance; Law Governing.* Contract by Canadian owner made in New York with W, authorizing W to offer vessel for specified price and agreeing to pay commission which, after purchaser was procured, was rescinded because British Government's consent could not be obtained, *held* made without reference to nationality of ship or to foreign law; was governed by, and valid under, law of New York; and owner's disability was no defense to action for commission, even if, under British law, contract of sale was void. *Gaston, Williams & Wigmore v. Warner*..... 201

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2. *United States; Taking of Private Property; Tort; Implied Contract.* Unintentional injury to bridge pier in improving navigation, *held* at most in nature of a tort, and not a taking for which damages might be recovered on theory of contract. *Keokuk Bridge Co. v. United States.* . . . 125
3. *Id.* Where taking alleged as conclusion of fact from fact that United States, after having in past discharged battery over petitioner's land, reinstalled guns with intention of so firing them, established fire control upon land and again discharged guns across it, the taking of a servitude, and an implied contract to pay, might be inferred; demurrer to petition should not have been sustained. *Portsmouth Co. v. United States.* 327
4. *Id.* Where acts amount to taking, without assertion of adverse right, contract to pay implied whether thought of or not. *Id.*
5. *Id. Inventions; Contract or Option.* Proposal that, in consideration of Navy Department's building testing apparatus, claimant would give option of using method, if found advantageous, by paying so much for each pound of material dried, which was accepted and after test found unsatisfactory, *held* not a contract that Department would use method, but an option or conditional obligation subject to termination when test proved unsatisfactory. *Foley v. United States* 667
6. *Id. Acquiescence.* Silence and inactivity for 5 years after receiving notice that relations between parties were terminated. *Id.*
7. *Id. Modifying Obligation.* Provisions authorizing Government to change obligations of other party do not permit officials to remould contract at will, but are confined to what was fairly within contemplation of parties when contract made. *Freund v. United States.* 60
8. *Id. Mail Carriage; Increased Service.* Stipulation authorizing Postmaster General to establish service to and from like offices and stations to those named in contract, to be paid for at contract rate per mile of travel, does not authorize substitution of heavier and more expensive service. *Id.*
9. *Id. Acquiescence.* Contractors performing new service under protest, *held* not to have acquiesced in change. *Id.*

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10. *Id. Quantum Meruit.* Contractor who, under duress, performs service not called for by contract, may recover reasonable value of such service and fair profit. *Id.*
11. *Id. Expenditures; Official Approval Conclusive.* Under contract providing for reimbursement for actual net expenditures approved by contracting officer, where contractor paid premium on bond to secure performance and payment was approved and repaid by contracting officer, action of latter held conclusive. *United States v. Mason & Hanger Co.*..... 323
 See also *United States v. Northeastern Constr. Co.*..... 326
12. *Id. War Supplies; Termination; Contemplated Profits.* Contractor who incurred expense under contract, but whose opportunity to perform and earn profit was cut short by cessation of hostilities and termination of contract in accordance with its terms, cannot recover damages. *Duesenberg Motors Co. v. United States.*..... 115
13. *Id. Delay; Misrepresentation.* Delay of Government in furnishing specifications for air-plane motors of foreign model, due to honest but mistaken belief, shared by contractor, that model was perfected and adequate specifications in existence, held not an actionable breach of representation. *Id.*
14. *Id. Time,* held of the essence for Government, but not for contractor. *Id.*

CONVERSION. See **Game; Mines and Mining, 2-4; Public Lands, VI, 4.**

CONVEYANCE. See **Mines and Mining, 5; Public Lands, VI; Taxation, I, 6, 7; Waters, 8-14.**

CORPORATIONS. See **Gas Companies.**

- Charities; income tax. See **Taxation, I, 4.**
- Foreign. See **Insurance; Jurisdiction, II, 4-7; Taxation, II, 28.**
- Emergency Fleet Corporation; conspiracy to defraud. See **Criminal Law, 2.**
1. *Consolidation; Injunction; Indispensable Parties.* In suit by shareholder to enjoin execution of consolidation agreement alleged to be unlawful, which was subject to ratification by shareholders, one of corporations which held shares

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of other is indispensable party to so much of bill as sought to enjoin it from voting them and to enjoin other from permitting it to do so, but not as to so much as sought to enjoin other from consummating consolidation. *General Inv. Co. v. Lake Shore Ry.*..... 261

2. *Id. Shareholder's Bill.* When holder of minute interest seeks to enjoin consolidation with other railroads as contrary to state law, but allegations show control complained of existed through stock ownership, and exhibit no objection by State or other shareholders, bill must show in what respects law is to be violated and that injury will result to private rights. *Id.*

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Attorneys' fees. See **Carriers**, 5, 6.

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Conspiracy. See **Anti-Trust Acts**, 4-8.

Double jeopardy. See **Constitutional Law**, VIII, 1; **Intoxicating Liquors**, 6.

Penalty or tax; injunction. See **Equity**, 13.

Penal statutes; construction. See **Statutes**, 4, 5.

1. *Offenses Against Government*; *Locus*; *High Seas*; *Foreign Country*; *Jurisdiction.* Criminal statute dealing with acts injurious to United States and capable of perpetration without regard to locality, applies to citizens upon high seas or in foreign country. *United States v. Bowman.*..... 94

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2. *Id.* *Conspiracy to Defraud; Emergency Fleet Corporation.* *Crim. Code*, § 35, applies to citizens who, on high seas or in foreign country, conspired to defraud Fleet Corporation by obtaining allowance of false claim. *Id.*
3. *Id.* *Venue; Jud. Code*, § 41. Citizens while in foreign country are subject to penal laws of United States passed to protect itself and its property; for infractions abroad, are triable in district where first brought. *Id.*
4. *Retroactive Penal Law.* Act of Congress cannot make past conduct criminal by purporting to construe former act as having been in force at time when this Court held it was repealed. *United States v. Stasoff*..... 477
5. *Id.* *Indictment; Effect of Repeal.* Conviction upon indictment under R. S. §§ 3258, 3281, 3282, repealed, cannot be sustained under Prohibition Act by spelling out acts violative of that statute from the indictment. *Id.*
 See also **Intoxicating Liquors**, 1-3.
6. *Indictment; Exceptions.* Indictment based on general statutory provision defining offense need not negative matter of an exception made by proviso or other distinct clause, whether in same section or elsewhere. *McKelvey v. United States*..... 353
7. *Public Lands; Obstructing Free Passage.* Act of Feb. 25, 1885, § 3, applies to transient acts of force and intimidation as well as to continuing obstacles such as a fence or armed patrol. *Id.*
8. *Id.* *Agents.* Punishment for offenses defined by act not confined by § 4 to persons acting as owner or agent. *Id.*
9. *Id.* *Power of Congress* to punish intentional obstruction to free passage over public lands within State, accomplished by acts of violence, without interfering with State power to punish acts of violence as such. *Id.*
10. *Narcotics; Revenue Act 1919.* Criminal liability as purchaser, not confined to class who must register and pay special tax; so construed, act is within revenue power. *United States v. Wong Sing*..... 18

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- CUSTOM.** See Constitutional Law, XI, 1; Game, 6; Party Walls, 2.
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1. *Limitations; New Action; Amendment.* Where facts alleged constitute wrong either under state law or federal act, according to nature of employment, an amendment alleging interstate employment does not introduce new action, and is allowable after 2 year limitation of federal act has run. *New York Cent. R. R. v. Kinney.*..... 340

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3. *Id. Interstate Commerce; Evidence.* Where case tried upon warranted assumption that parties were engaged in interstate commerce, defendant cannot be deprived on review of rights under federal act, upon ground that such employment not adequately proved. *Id.*

EQUAL PROTECTION OF THE LAWS. See **Constitutional Law**, XI (4).

- EQUITY.** See **Judgments**, 4, 6. Page.
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 2. *Actions at Law; Equitable Defenses; Jud. Code, § 274b; Interpleader*. Where defendant, sued in District Court for money had and received, answers it is stakeholder, offers to pay into court, and prays other claimants be made parties, and that defendant be discharged, proceeding becomes an equitable one—an interpleader. *Liberty Oil Co. v. Condon Natl. Bank* 235
 3. *Id. Transfer to Equity Side*. While not expressly required by Equity Rule 22 or by statute, there is authority (Jud. Code, §§ 274b, 274a) to transfer such case to equity side; failure to order transfer does not deprive suit of equitable character. *Id.*
 4. *Id. Review; Appeal or Error*. Jud. Code, §§ 274b and 274a, although not creating one form of civil action, permit changes from law to equity, and *vice versa*. *Id.*
 5. *Id.* Where action at law is converted into interpleader, it is to be treated, by trial and appellate courts, as proceeding in equity; issue is triable by court; judgment reviewable as in equity. *Id.*
 6. *Id. Judgment of Appellate Court; Jud. Code, § 274b*. Whether review sought by writ of error or appeal; appellate court may render such judgment upon record as law and justice require. *Id.*
 7. *Id. Trial of Equitable Issues First; Jury*. Where equitable defense is interposed to action at law, equitable issue should first be disposed of; if issue at law remains, it is triable by jury. *Id.*
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8. <i>Reversal of Judgment on Pleadings; Hearing on Issues in Lower Court.</i> Where plaintiff in equity successfully moves for judgment on pleadings, reserving right to adduce evidence on issues of mixed law and fact, decree of reversal should accord plaintiff that opportunity and not dismiss bill. <i>Wichita R. R. v. Public Util. Comm.</i>	48
9. <i>Supplemental Bill.</i> Office is to introduce matters occurring after filing of original bill, or not then known to plaintiff (Equity Rule 34); but not to shift right in which plaintiff sues or change character of suit. <i>General Inv. Co. v. Lake Shore Ry.</i>	261
10. <i>Id. Leave to File,</i> addressed to sound discretion of court. <i>Id.</i>	
11. <i>Cancelation; Guaranty; Adequate Legal Remedy.</i> In suit to cancel written guaranty for fraud, defense that plaintiff has adequate remedy at law by defending actions by defendant on guaranty, is waived by defendant where, without insisting upon it, he introduces proof, under counterclaim for amount of guaranty, putting instrument in evidence. <i>American Mills Co. v. American Surety Co.</i>	360
12. <i>Answer; Counterclaim.</i> <i>Equity Rule 30,</i> requiring answer to state any counterclaim arising out of transaction which is subject matter of suit, applies only to equitable, not legal, claims. <i>Id.</i>	
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14. <i>Id. Corporate Consolidation; Indispensable Parties.</i> In suit by shareholder to enjoin execution of consolidation agreement alleged to be unlawful, which was subject to ratification by shareholders, one of corporations which held shares of other is indispensable party to so much of bill as sought to enjoin it from voting them and to enjoin other from permitting it to do so, but not as to so much as sought to enjoin other from consummating consolidation. <i>General Inv. Co. v. Lake Shore Ry.</i>	261

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15. *Id. Bill by Shareholder.* When holder of minute interest seeks to enjoin consolidation with other railroads as contrary to state law, but allegations show control complained of existed through stock ownership, and exhibit no objection by State or other shareholders, bill must show in what respects law is about to be violated and that injury will result to his private rights. *Id.*

16. *Id. Trespass. Local Rule of Damages,* in cases of conversion, is binding on federal courts, sitting in State, in suits in equity involving title to land there situate and seeking to restrain continuing trespasses upon it, in which damages for conversion are claimed as incident to equitable relief. *Mason v. United States*..... 545

17. *Id. Federal Equity Jurisdiction,* when not impaired by enforcing state statutory rule of damages in federal court. *Id.*

18. *Conformity Acts.* Provision that laws of States shall be rules of decision in trials at common law in federal courts, does not by implication exclude such laws as rules of decision in equity suits. *Id.*

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2. <i>Id.</i> <i>Federal Question</i> . Question of burden of proof may amount to federal question, when intimately involving substantive rights under federal statute. <i>Id.</i>	
3. <i>Id.</i> <i>Avulsion</i> . Party asserting course of river has changed by avulsion, has burden of proving it. <i>Oklahoma v. Texas</i>	606
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2. *Id. Live Mussels,* having fixed habitat in bottom of stream, are in possession of owner of land, as are mussel shells piled on bank. *Id.*

3. *Id. Live mussels* in stream are not part of realty, within Missouri statute allowing triple damages for digging and carrying away part of realty. *Id.*

4. *Id. Conversion.* Such possession will support recovery of damages for conversion by trespasser. *Id.*

5. *Id. Implied License; Custom.* License to take mussels from uninclosed places implied from custom,—more readily where statutory prohibitions are limited to enclosed land, private ponds, etc. *Id.*

6. *Id. Questions for Jury.* Existence of Custom and License, and whether it extends beyond occasional uses to systematic extraction of mussels in large quantities for commercial use, held for jury. *Id.*

7. *Id. Damages,* by land owner, for mussels taken by trespass but in belief of right due to mistaken interpretation of state game laws, limited to value at time of conversion. *Id.*

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1. *Rate Increases; Administrative Findings; Kansas Utility Law.* Increase over lower contract rates not permissible in absence of finding by Commission, after hearing and investigation, that existing rates are unreasonable. *Wichita R. R. v. Public Util. Comm.*..... 48
2. *Id. Presumption.* Such finding not supplied by inference and reference to averments of petition invoking action of Commission. *Id.*

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1. *Daves Commission. Enrollment,* of one as Creek Indian alive on Apr. 1, 1899, amounts, when approved by Secretary of Interior, to judgment in adversary proceeding, establishing existence of individual and right to membership. *United States v. Atkins*..... 220
2. *Id. Fraud and Mistake; Cancellation; Collateral Attack.* Action of Commission not subject to attack by United States alleging person enrolled never existed and that enrollment was procured by fraud and resulted from mistake of law and fact. *Id.*
3. *Osage Reservation; Boundary; Arkansas River.* Where act of Congress establishing reservation described west boundary as "the main channel," and deed to United States for Osages by Cherokees described land by townships "on the left bank," deed is to be interpreted in conformity with act; act carried title to land in river bed out to main channel. *Brewer Oil Co. v. United States*..... 77

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4. *Id.* *Evidence; Navigability.* Findings of lower courts that Arkansas River along Osage Reservation in Oklahoma is not navigable, accepted. *Id.*

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1. *Hail; When Policy in Force.* North Dakota law binding company after 24 hours from taking of application by local agent, and requiring company, if it would decline insurance upon receipt of application, to notify applicant by telegram, does not deprive of liberty of contract or deny equal protection. *National Union Fire Ins. Co. v. Wanberg*..... 71

2. *Id.* *Classification; Reasons.* Public interest arising from sudden and localized losses by hail, high premium rate, etc., justify special legislative treatment; foreign corporation may not complain that time requirements bear more heavily upon foreign than local companies. *Id.*

3. *Id.* Statute being valid, applicant's agreement that his application shall not take effect until received and accepted at company's agency, is void. *Id.*

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 2. *Id. Assumption of Risk.* Condition in pass issued under Hepburn Act that user assumes all risk of personal injury, is valid. *Id.*
 3. *Express Receipts.* Stipulation not rendered unlawful by presence of others which are so, but which are separable and inapplicable to shipment in question. *American Ry. Express Co. v. Lindenberg*..... 584
 4. *Id. Declared Value; Signature of Shipper.* Cummins Amendment, allowing carrier, when authorized, to establish rates dependent upon value declared in writing by shipper or agreed upon in writing as released value, does not require signature of shipper. *Id.*
 5. *Id.* Shipper, by receiving and acting upon receipt, for interstate shipment, signed only by carrier, assents to its terms, and it thereby becomes written agreement of parties. *Id.*
 6. *Id. Limitation of Liability; Estoppel.* Where terms of receipt and carrier's schedules show charge was based upon specified valuation, by which carrier's liability was to be limited, shipper is presumed to have known this, and is estopped from asserting higher value. *Id.*

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7. *Interstate Character of Shipment.* Depends upon essential character of movement; not necessarily determined by contract between shipper and carrier. *Balt. & Ohio S. W. R. R. v. Settle*..... 166
8. *Id.* Neither through billing, uninterrupted movement, continuous possession by carrier nor unbroken bulk, (though common incidents) is essential of interstate shipment; their presence or absence may be evidence of intention. *Id.*
9. *Id.* *Combination of Interstate and Local Rates.* Where shipper bills goods from one State to point in another and after delivery reships to another point in second State on local bills, intending throughout to move them to this destination and interrupting movement only to take advantage of local rate, his intention determines, as matter of law, essential nature of entire movement as one in interstate commerce. *Id.*
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2. *Id. Increased Pay.* Act 1902 authorized Secretary to increase per diem of such inspectors \$1, but did not require it, nor did appropriation acts of 1906 and 1907 make such increase mandatory. *Id.*

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3. *Id. Surveyed Lands; Exceptions; Preference Right.* Act of 1908 restricted right to enter desert land to surveyed land, but contains proviso that individual who prior to survey has taken possession of unsurveyed tract and commenced work of reclaiming it, shall have preference right to make entry within 90 days after filing of approved plat of survey. Held, that proviso includes case in which possession and work began before date of the act no less than case in which they were subsequent. *Id.*

4. *Id. Status as Surveyed or Unsurveyed Lands.* Public lands lose status and become "unsurveyed" when lines and marks of original survey have become obliterated for practical purposes and when, for that reason, a resurvey has been directed by act of Congress. *Id.*

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3. *Id. Injunction.* R. S. § 3224, does not preclude injunctive relief against such unlawful action. *Id.*
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10. *Id. Railways; Contract Rights; Lease.* Lease of municipally owned subway held not impaired by state law, providing for operation by trustees, and for payment of deficits, etc., by State, the amounts to be assessed proportionately, as an addition to state taxes, upon cities served; since lease was assignable and statute provided for repairs and payment of rent, while taxes authorized were not diminution of rent imposed on city as proprietor but were state taxes as to which city was collection agency. *Boston v. Jackson.* 309

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20. *Id.* *North Carolina Franchise Tax,* equal to 1/10% of value of each company's property within State, is not an additional property tax, and does not violate uniformity clause of state constitution, or equality or commerce clauses of Federal Constitution. *Id.*
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27. <i>Sewer Districts; Benefits; Estoppel.</i> Property owner who accepts benefits is estopped from maintaining suit in which, upon ground that manner of constituting district and apportioning cost infringed constitutional rights, he seeks to cancel tax bill issued against his property. <i>St. Louis Co. v. Prendergast Co.</i>	469
28. <i>Insurance; Premiums Paid Unauthorized Insurers.</i> State law exacting of persons insuring property in State a tax on premiums paid insurers not authorized to do business in State, is void as to contracts made outside State by foreign corporation doing local business. <i>St. Louis Compress Co. v. Arkansas</i>	346
29. <i>Estates of Decedents; Unpaid Taxes.</i> State law which, to reach property which has escaped taxation, taxes estates for period anterior to death, but allows deductions where shown that taxes were paid or property not owned by decedent within period, valid as to creditors and distributees. <i>Bankers Trust Co. v. Blodgett</i>	647
30. <i>Id. Penalties.</i> Delinquency of decedent may be penalized by inflicting upon estate a penalty measured by discretion of legislature. <i>Id.</i>	
31. <i>Id. Ex Post Facto Laws.</i> Constitutional prohibition is inapplicable to retroactive tax penalty. <i>Id.</i>	

TERRITORIES. See Constitutional Law, VI.

TEXAS. See Boundaries.

TRADE-MARKS:

Infringement; Injunction. Plaintiff who purchased from foreign manufacturer of face powder its business, good will in this country, and registered trade-marks, re-registered trade-marks and continued business here under old name,

- TRADE-MARKS**—Continued. Page.
 buying powder from original concern abroad and selling it in boxes bearing the trade-mark, *held* entitled to preliminary injunction against defendant who bought product of foreign concern in its genuine boxes, which bore labels resembling those of plaintiff, and sold it here. *Bourjois & Co. v. Katzel* 689
- TRANSFER OF CAUSES.** See **Equity**, 2-7; **Procedure**, V.
- TRANSPORTATION ACT.** See **Carriers**, 10.
- TREASURY, SECRETARY OF.** See **Officers**.
- TREATIES.** See **Boundaries**; **Constitutional Law**, VI, 2.
- TRESPASS.** See **Game**; **Mines and Mining**, 2-4; **Negligence**; **Public Lands**, VI, 4.
- TRIAL.** See **Constitutional Law**, IX, X; **Equity**, 2-7.
- TRUSTS AND TRUSTEES.** See **Taxation**, I, 4.
- TUCKER ACT.** See **Jurisdiction**, III, 3.
- UNFAIR COMPETITION.** See **Anti-Trust Acts**; **Trade-Marks**.
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 2. *Id. Findings of Commission; When Conclusive.* Upon such review, findings of fact are conclusive, if supported by evidence. *Id.*
 3. *Id. Examination of Whole Record by Court,* to determine whether there are material facts not reported by Commission; if there be evidence relating to such facts from which different conclusions may be drawn, and justice requires decision without further delay, court has power to decide without referring matter to Commission for additional findings. *Id.*
 4. *Id. Magazine Distributing Agencies.* Engagement of exclusive agents by publisher, in orderly development of business and without unlawful motive, is not unfair method of competition within Trade Commission Act, though many of agents when so engaged were general distributors of newspapers and magazines. *Id.*

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- UNITED STATES.** See **Boundaries**; **Constitutional Law**; **Contracts**, 2-14; **Eminent Domain**, 3; **Estoppel**, 2; **Indians**; **Limitations**, 2, 3; **Mines and Mining**; **Naturalization**; **Patents for Inventions**; **Public Lands**; **Taxation**, I; **Waters**, 4-14.
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- VACCINATION.** See **Constitutional Law**, XI, 7.
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to use on distant lands waters so collected and thus diminish supply of prior appropriator. *Snake Creek Co. v. Midway Irrig. Co.*..... 596

4. *Navigable Waters; Obstructions; Federal Jurisdiction.* By Act 1890, Congress assumed jurisdiction over obstructions to navigation and committed to Secretary of War necessary administrative power. *Southern Pac. Co. v. Olympian Co.*.. 205

5. *Id. Bridges; Approval; Secretary of War.* Under § 7, railroad bridge over navigable stream cannot be constructed before approval of location and plans. *Id.*

6. *Id.* Power to approve or disapprove includes power to condition approval. *Id.*

7. *Id. Negligence.* Where railroad obtained Secretary's approval of new bridge, conditioned upon removal of old bridge and piers to specified depth, and complied with condition, the condition was an authoritative determination of what was necessary to insure free navigation; and where later the Government, by dredging, lowered bed and surface of river so that stumps of piles of old piers protruded above new bed, forming an obstruction which damaged a vessel, railroad was not liable. *Id.*

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