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5. Order of state commission requiring discontinuance of terminal charges exacted by company having legal title to terminal tracks, but which in fact was but a mere agency or instrumentality of other railroad companies, neither of which made any charge for substantially same service over terminals each owned separately, and requiring that such terminal tracks be operated as part of terminal properties of such other companies in interstate traffic, *held* not to deprive either former or latter of property without compensation or due process of law. *Chicago, M. & St. P. Ry.* v. *Minneapolis Civic Assn* 490

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CONTEMPT:

1. A summary conviction for criminal contempt is not within jurisdiction of this court by writ of error, but reviewable by certiorari. *Toledo Newspaper Co.* v. *United States* 402

2. Judicial Code, § 268, is merely declaratory of inherent power of federal courts to punish for contempt, and, in providing that the power "shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice," does no more than express a limitation imposed by the Constitution. The power is essentially one of self-preservation. *Id.*

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3. Test of power to punish for contempt is in character of acts in question: when their direct tendency is to prevent or obstruct free and unprejudiced exercise of judicial power they are subject to be restrained through summary contempt proceedings. *Id.*

4. Newspaper publications concerning pending proceeding and tending to create impression that a particular decision would evoke public suspicion of the judge's integrity or fairness and bring him into public odium and would be met by public resistance, and tending in the circumstances to provoke such resistance in fact, *held*, contemptuous and not within the "freedom of the press." *Id.*

5. It is not material that such publications were not circulated in the court room or seen by the judge or that they did not influence his mind. *Id.*

6. In determining whether there was any evidence to justify attributing such tendency to the publications, this court considers evidentiary facts found by District Court only so far as to determine whether they have any reasonable tendency to sustain the general conclusion of fact based upon them by that court and the Circuit Court of Appeals. *Id.*

7. In a summary proceeding for criminal contempt, *semble*, that a single penalty based upon a conviction under all of several distinct charges in information cannot be upheld unless all of the charges are sustained by facts; but where Circuit Court of Appeals, holding conviction justified under one count and facts relative thereto, affirmed District Court without considering other counts upon which the punishment was also based, this court examined findings as to all counts, and, holding them sufficient, affirmed judgment. *Id.*

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3. *Id.* Relief in case of contract which, owing to mutual mistake, fails to express intention of parties, may be obtained by defendant under Philippine Code Civ. Proc., § 285, upon appropriate pleadings, without resort to independent suit for reformation of contract. *Id.*

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2. Exception of corporations organized for carrying on manufacturing business, in state law providing for stockholders' liability goes not to jurisdiction but only to merits in proceedings to sequester assets of local corporation and assess stockholders to pay its debts; and an order of assessment made in proper court of general jurisdiction, which in other respects has acquired jurisdiction over corporation and shareholders, necessarily involves determination that corporation is not of excepted class, and in that respect is conclusive against collateral attack by shareholder, whether or not he personally was party to proceeding. *Marin* v. *Augedahl* 142

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2. In arriving at amount of damages to property not taken, allowance should be made for peculiar and individual benefits conferred upon it; and extension of rule to include increase of market value resulting directly from the public improvement, though all property in neighborhood is similarly benefited, cannot be said to deprive of fundamental right guaranteed by Fourteenth Amendment. *Id.*

EMPLOYERS' LIABILITY ACT:

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2. No cause of action accrues for benefit of dependent mother where deceased leaves widow who, although living apart from him, was neither remarried nor divorced, and where marital rights and liabilities had not ceased under local law. *Id.*

3. In proceedings under Act rights and obligations depend upon it and applicable principles of common law as interpreted and applied by federal courts; and negligence is essential to recovery. *Id.*

4. In actions against railroad for injuries to employees resulting from its negligence rule of federal courts is that negligence is to be established affirmatively by plaintiff; state law presuming negligence from accident inapplicable. *Id.*

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1. *Adequate remedy at law.* Existence, under Colorado statutes, of adequate legal remedy for recovery of taxes illegally paid, held so uncertain and debatable that jurisdiction in suit for injunction could not properly be declined. *Union Pacific R. R.* v. *Weld County* 282

2. *Id.* Jurisdiction exists to enjoin collection of illegally discriminatory taxes, where existence of adequate and complete remedy at law is doubtful. *Id.*

3. *Id. Multiplicity of Suits.* Where legal remedy by paying taxes and suing to recover back necessitates separate actions against several school districts and towns, it will not displace equitable remedy by injunction in one suit. *Id.*

4. *Injunction to Restrain Executive Action.* Suit against Secretary of Interior and Commissioner of Land Office, brought by State to enjoin issuance of patents to public lands, held not maintainable, where action of such officers in issuing patents not arbitrary. *Minnesota* v. *Lane* 243

5. *Transfer to Law Side; Fraud; Statute of Limitations.* Where suit to cancel contract for exchange of lands and for incidental damages, on ground of fraud, was transferred by order of court to law side under Equity Rule 22 as action for damages for deceit, amendment held not to constitute beginning of new case which would be barred by statute of limitations. *Friederichsen* v. *Renard* 207

6. *Equitable Counterclaim; Effect in Law Action.* Where, in action at law on contract, answer set up was in effect bill in equity seeking reformation and incidentally to enjoin action at law, proceeding held converted into equitable one. *Philippine Sugar &c. Co.* v. *Philippine Islands* 385

7. *Fraud; Limitations.* A statute barring equitable relief for fraud and mistake should be strictly construed. *United States* v. *St. Paul, M. & M. Ry.* 310

8. *Transfer to Equity. Trial by Jury.* Unjustified transfer of count in law action to equity side violates right. *Ex parte Simons* 231

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As to compelling one to bear witness against himself. See **Constitutional Law,** VII.

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1. Where evidence strongly conflicting, especial weight attaches to findings of trial court. *United States* v. *United Shoe Mach. Co.* 32

2. In actions under Federal Employers' Liability Act, rule is that negligence must be established affirmatively by plaintiff; state law presuming negligence from injury, inapplicable. *New Orleans & N.E. R. R.* v. *Harris* 367

3. Good faith of tax assessors and validity of acts presumed; burden of proof is on party assailing them. *Sunday Lake Iron Co.* v. *Wakefield* 350

4. Upon question whether opium was in transit through California to Mexico, or was in possession of defendants in violation of state law, evidence that purpose of customs officer in weighing it at boundary with assistance of one of defendants was to make out papers necessary for exportation and that defendants had authority from Treasury Department to export was competent in prosecution for unlawful possession; and exclusion denied federal right. *McGinis* v. *California* 91

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state law, defendants held entitled to prove that drug was in transit to foreign country and to explain their relations to shipment at international boundary where they are charged with having taken unlawful possession; and error in excluding such evidence held not to have been shown harmless by proof that more of drug of unproven origin was added at boundary, where whole prosecution based upon original shipment and such proof involved only one of defendants and cross-examination upon it was not allowed. *McGinis* v. *California* 95

6. Evidence must be clear and satisfactory to justify reformation of contract on ground of mutual mistake. *Philippine Sugar &c. Co.* v. *Philippine Islands* 385

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2. Amendment of bill for annulment of contract for fraud, transferred by order of District Court, under Equity Rule 22, to law side as action for damages for deceit, whereby no substantial change was made in allegations of fraud, *held* not to change cause of action nor constitute beginning of new case. *Friederichsen* v. *Renard* 207

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2. *Id.* In determining quantum of Indian blood possessed by members of Five Civilized Tribes, and therein capacity to alienate allotted lands, approved rolls of citizenship are conclusive. *Id.*

3. *Allotments. Descent. Law Governing.* In respect of descent of allotments Oklahoma Enabling Act substituted law of State for law of Arkansas adopted provisionally in Supplemental Creek Agreement and prior acts. *Jefferson* v. *Fink* 288

4. *Id.* In designating Arkansas law as rule of descent, Supplemental Agreement was not intended and did not operate to confer any vested right of inheritance in respect of allotments made and deeded while such designation remained in force. *Id.*

5. *Id.* Allotment made under Supplemental Creek Agreement, before admission of Oklahoma, to Creek Freedman who died after admission, descends according to law of State. *Id.*

6. *Id.* Policy and legislation of Congress respecting descent of allotments, particularly in Five Civilized Tribes, reviewed. *Id.*

7. *Marriage.* Evidence of custom among Chickasaw Indians to disregard tribal ceremonies and that two Indians held themselves out as man and wife and were reputed married, held to warrant finding of marriage within meaning of Act of 1890. *Carney* v. *Chapman* 102

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1. In absence of special provision of law or rule of association to contrary, naming of person as beneficiary in benefit certificate of fraternal benefit association confers expectancy merely, which may be defeated by act of insured member in taking out substitute certificate changing beneficiary. *Royal Arcanum* v. *Behrend* 394

2. That first-named beneficiary had paid assessments before change raises no legal claim upon the insurance. *Id.*

3. Benefit certificate expressed promise to pay beneficiary therein named, upon insured member's death, provided "certificate shall not have been surrendered by said member and another certificate issued at his request," and bore printed form providing for "surrender and return" of certificate by member in changing beneficiary. *Held,* that requirement of surrender did not necessarily imply return of original paper. *Id.*

4. Requirement that such certificate shall be surrendered before new one issued is for protection of association and, if waived by it or complied with to its satisfaction during member's lifetime, it cannot be availed of by former beneficiary. *Id.*

5. Tax on life insurance business is not tax on interstate commerce. *Northwestern Life Ins. Co.* v. *Wisconsin* 132

6. State may impose license or privilege tax upon domestic old-line, level-premium life insurance companies, while exempting fraternal societies having lodge organizations and insuring only lives of members. *Id.*

7. State may tax domestic life insurance companies by taking percentage of gross receipts, although it exacts a fixed and comparatively slight fee from similar foreign corporations for privilege of doing local business of same kind. *Id.*

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5. State in laying general income tax upon gains and profits of a domestic corporation may include in computation net income derived from transportation in interstate commerce. *United States Glue Co.* v. *Oak Creek* 321

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1. Reasonableness of practice of carrier in shipping by one of two routes, the charges on which under interstate tariff were more than those allowed by state law, *held* an administrative question within jurisdiction of Interstate Commerce Commission, whose decision state courts without jurisdiction to anticipate. *Northern Pacific Ry.* v. *Solum* .. 477

2. Order of District Court restraining attorney general of State from prosecuting in state court suit against carrier for damages and penalties for complying with rate order of Interstate Commerce Commission held proper exercise of power. *Looney* v. *Eastern Texas R. R.* 214

3. A suit by carrier against consignee of interstate shipment of live stock to collect charge for disinfecting cars,

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alleged to be due under tariffs approved and published as required by act, wherein consignee, admitting interstate character of shipment and propriety of charges under act, defends on ground that carrier by its acts is estopped from holding him responsible, is one "arising under any law regulating commerce," within meaning of Jud. Code, § 24. *Louisville & Nashville R. R.* v. *Rice* 201

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1. While *res judicata* is ordinarily matter of state law, a decision of state court which denies asserted federal rights through application of former judgment will not conclude this court, if such application clearly inconsistent with right to due process of law. *Postal Telegraph Cable Co.* v. *Newport* 464

2. It is violative of due process of law for State to give conclusive effect to prior judgment against one neither a party, nor in privity with a party, therein. *Id.*

3. Sole ground upon which judgment against prior owner is conclusive against successor in interest is that estoppel runs with the property; that grantor can convey no better right or title than he had himself, and that grantee takes *cum onere.* Hence judgment holding telegraph company bound by license agreement with city touching use of streets, but rendered in suit begun after company had conveyed to another, does not estop its remote successor in interest from claiming against city that agreement was never accepted. *Id.*

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I. Jurisdiction of Federal Courts, in Contempt Cases.

1. Judicial Code, § 268, is merely declaratory of the inherent power of the federal courts to punish for contempt, and, in providing that the power "shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice," does no more than express a limitation imposed by the Constitution. The power is essentially one of self-preservation. *Toledo Newspaper Co.* v. *United States* 402

2. Test of the power to punish for contempt is in character of acts in question; when their direct tendency is to prevent or obstruct the free and unprejudiced exercise of the judicial power they are subject to be restrained through summary contempt proceedings. *Id.*

II. Jurisdiction of this Court.

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(1) *Over Circuit Court of Appeals.*

1. Certiorari may issue under Jud. Code, § 262, to review interlocutory judgment which is not subject to certiorari under § 240. *Union Pacific R. R.* v. *Weld County* 282

2. Appeal does not lie from order which merely affirms, on interlocutory appeal, order of District Court refusing preliminary injunction, even where decision below rested on

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ground of adequate legal remedy which might have been made basis for final dismissal of bill. *Id.*

3. Judgment not reviewable by writ of error under Jud. Code, § 241, where amount in dispute less than $1,000. *San Pedro &c. R. R.* v. *United States* 307

4. A summary conviction for criminal contempt is not within jurisdiction of this court by writ of error but is reviewable by certiorari. *Toledo Newspaper Co.* v. *United States* 402

5. In case ultimately within reviewing power court may require by mandamus filing of record in Circuit Court of Appeals. *Ex parte Abdu* 27

6. Appeal held to bring up for review two cases decided by court below at same time; and that both were controlled by decree rendered. *Shepard* v. *Barkley* 1

(2) *Over District Courts.* See III, 1, *Infra.*

7. Order allowing District Attorney custody of exhibits to be used in criminal proceedings against witness in private suit in which they were used and impounded, and overruling witness' objection thereto based on constitutional grounds, is a final order; and right of objecting party to appeal therefrom is unaffected by his lack of interest in such private suit. *Perlman* v. *United States* 7

8. Prohibition will not issue to control District Court upon questions which it is competent to decide or questions dependent on facts not presented to this court. *Ex parte Southwestern Surety Ins. Co.* 19

(3) *Over Court of Appeals of District of Columbia.*

9. Supreme Court of District, having by certiorari removed case from police court upon allegations of want of jurisdiction and insufficiency of information, entered judgment that writ be quashed, petition dismissed, and record "remanded" to police court, "whence it came;" which judgment was affirmed by Court of Appeals; *held*, that judgment was in case arising under criminal laws, was not final, and that writ of error would not lie under Jud. Code, § 250. *Hartranft* v. *Mullowny* 295

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by writ of error upon ground that jurisdiction of trial court in issue or upon ground that construction of law of United States in issue. *Id.*

(4) *Over Supreme Court of Philippine Islands.*

11. Where, in action at law on contract, answer set up was in effect bill in equity seeking reformation and incidentally to enjoin action at law, proceeding held converted into equitable one, reviewable only by appeal. *Philippine Sugar &c. Co.* v. *Philippine Islands* 385

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14. Refusal of state court to respect sister state judgment upon ground that court rendering it exceeded jurisdiction under its own constitution and laws, presents federal question. *Marin* v. *Augedahl* 142

15. No federal question raised by claim that attorney's lien statute cannot apply in favor of plaintiff's first attorney against defendant, after latter has satisfied judgment secured by plaintiff's second attorney in federal court. *Union Pacific R. R.* v. *Laughlin* 204

16. Decision which denies asserted federal rights through application of former judgment will not conclude this court, if application is inconsistent with due process of law. *Postal Telegraph Cable Co.* v. *Newport* 464

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1. In suit by carriers to restrain attorney general of State from instituting suits against them for damages and penalties for complying with rate order of Interstate Commerce Commission, District Court issued preliminary injunction pending further proceedings by Commission and until final

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hearing by court. *Held,* that a further order restraining defendant from prosecuting suit of character complained of which he subsequently began in state court was in exercise of power of District Court to protect existing jurisdiction and was not appealable under Jud. Code, § 266. *Looney* v. *Eastern Texas R. R.* 214

2. A suit arises "under law regulating commerce" within meaning of Jud. Code, § 24, where carrier sues consignee of interstate shipment of live stock to collect charge for disinfecting cars, alleged to be due under approved and published tariffs, and where consignee, admitting interstate character of shipment and propriety of charge, defends on ground that carrier is estopped from holding him responsible. *Louisville & Nashville R. R.* v. *Rice* 201

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1. Statutes of limitation upon suits to set aside fraudulent transactions do not begin to run until discovery of the fraud; and this applies to provision of Act of 1891 limiting suits to vacate land patents. *Exploration Co.* v. *United States* 435

2. Where money relief prayed in amended petition in case transferred to law side of court, under Equity Rule 22, could properly have been sought as alternative relief in original bill in equity, and transfer was made upon order of court in exercise of discretion, plaintiff not to be held to have made an election of inconsistent remedies letting in defense of limitations against amended demand. *Friederichsen* v. *Renard* 207

3. District Court has jurisdiction to decide whether claims of materialmen were filed within year, and upon effect of filing later, under Act of Congress governing actions against public contractors and their bondsmen. *Ex parte Southwestern Surety Ins. Co.* 19

4. Proviso of Act of Mar. 2, 1896, barring certain suits to vacate land patents, held a curative measure referring only to lands patented before enactment; and no protection for patent afterwards procured by fraud. *United States* v. *St. Paul, M. & M. Ry* 310

5. Principle of strict construction of statutes of limitation as applied to Government, applies with peculiar force in construction of provision which operates to bar absolutely recovery of value of land as well as land itself, in favor of the immediate recipient of fraudulent patent no less than a bona fide purchaser. *Id.*

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2. Where refusal to file was in accordance with orders of court, irregularity in directing writ to clerk may be treated as formal and authority to make the orders determined with clerk alone as technical respondent. *Id.*

3. Writ will lie to rectify error of District Court in transferring to equity docket one of two counts in action for damages upon ground that under law of State it could not be entertained at law, by which action plaintiff was deprived of right of trial by jury. *Ex parte Simons* 231

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1. End lines of lode claim are those laid across vein to show how much of it in length is appropriated and claimed by miner. All other lines are side lines. *Jim Butler Mining Co.* v. *West End Co.* 450

2. To sustain extralateral right, end lines must be parallel and straight, but this is not required of side lines. *Id.*

3. Mining claim was laid out as a parallelogram 1500 by 600 feet, but with two diagonally opposite angles truncated so that what would have been end lines in absence of truncation were thereby shortened substantially, but less than one-half. *Held,* that shortened lines, which were straight and parallel, were end lines, and that truncating lines were part of side lines. *Id.*

4. Extralateral right is creation of federal mining laws and they alone must be looked to in defining it. *Id.*

5. Where single vein, whose apex within boundaries of claim, in its descent separates into two limbs—one being the discovery vein—which dip downward through the vertical planes of the side lines, the extralateral right, its other elements being present, applies to each. *Id.*

6. Findings showed fissure with two dipping limbs whose course downward was substantial, regular and practically free from undulation. For 750 out of a total length of 1150 feet within claim each was practically a separate vein with a distinct summit or terminal edge. For remaining 400 feet the two were united and from place of union mineralized rock continued upward for from 20 or 30 to 100 feet. There was no contention that a top or apex had been found elsewhere. *Held,* that it could not be said as matter of law that there was no top or apex within claim. *Id.*

7. Lease under which mining company operating, terminable at option in any year and granting privilege of entering, and of exploring for, mining and removing ores, in return for royalty of so much per ton removed, *held* not to be construed as a conveyance of the ore in place, although latter could be measured with substantial accuracy. *United States* v. *Biwabik Mining Co.* 116

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which represents its value as ore in place when law took effect should not be deducted as depreciation of capital assets. *Id.*

9. In computing excise under Federal Corporation Tax Act of 1909, mining company is not entitled to deduct from gross income any amount whatever on account of depletion or exhaustion of ore bodies, caused by its operations for year for which tax assessed; nor can it deduct cost value of ore in ground before it was mined. *Goldfield Consol. Mines Co.* v. *Scott* 126

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1. Essential to recovery under Employers' Liability Act. *New Orleans & N. E. R. R.* v. *Harris* 367

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2. Making the clerk sole respondent in a mandamus proceeding to compel filing of record by Circuit Court of Appeals, *held* harmless irregularity. *Ex parte Abdu* 27

3. Order allowing amendment as to form of appeal and parties, previously made without prejudice to right of appellees to object at hearing on merits, held rightfully granted. *Shepard* v. *Barkley* 1

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1. Combination of old elements, evolving no new coöperative function and producing no new result, other than convenience and economy, held not patentable. *Grinnell Washing Mach. Co.* v. *Johnson Co.* 426

2. Patent No. 950,402, for gearing device applied to a washing machine, held void for want of invention. *Id.*

3. Patent law gives patentee right to exclude others from use of his invention, absolutely or upon terms. *United States* v. *United Shoe Mach. Co.* 32

4. Principle that when patented article is sold it passes beyond patent monopoly has no application where there is no conveyance of title but a *bona fide* lease of article. *Id.*

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5. Generally, one has right to purchase patents for protection or improvement of own inventions and business, and for prevention of patent litigation, and such purchases should not be adjudged to have stifled competition unduly upon speculative estimates of potential competitive power of new and untried inventions. *Id.*

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1. Amendment of bill for annulment of contract for fraud, transferred by order of District Court, under Equity Rule 22, to law side as action for damages for deceit, whereby no substantial change was made in allegations of fraud, *held* not to change cause of action nor constitute beginning of new case. *Friederichsen* v. *Renard* 207

2. Order allowing amendment as to form of appeal and parties, previously made without prejudice to right of appellees to object at hearing on merits, held rightfully granted. *Shepard* v. *Barkley* 1

3. When case disposed of on pleadings, every uncontradicted allegation by unsuccessful party taken as true, including denials of material facts previously averred by opponent. *Postal Telegraph Cable Co.* v. *Newport* 464

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companies to cease discriminating against a would-be subscriber to stock quotations sent by wire from New York to Boston under arrangement with New York Stock Exchange, and of whom Exchange disapproved. *Western Union Tel. Co.* v. *Foster* 105

2. Power of Congress to regulate interstate commerce not intended as authority to control States in exercise of police power over local trade and manufacture which was expressly reserved to them by Tenth Amendment. *Hammer* v. *Dagenhart* 251

PRESBYTERIAN CHURCH:

Doctrines announced in *Watson* v. *Jones*, 13 Wall. 679, held affirmatively and conclusively settled. *Shepard* v. *Barkley* .. 1

PRESUMPTIONS. See **Evidence**, 2, 3.

PRIVILEGE TAXES. See **Taxation**, III.

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PROCEDURE. See **Certiorari; Equity; Jurisdiction; Mandamus; Prohibition.**

I. **Error, Appeal or Certiorari.**

1. Where petition for certiorari postponed to hearing of appeal and latter found without jurisdiction, certiorari granted and record on appeal treated as return to writ. *Union Pacific R. R.* v. *Weld County* 282

2. Order allowing amendment as to form of appeal and the parties, previously made without prejudice to right of appellees to object at hearing on merits, held rightfully granted; and that objection so made was without merit. *Shepard* v. *Barkley* 1

II. **Scope of Review.**

1. In proceedings for criminal contempt, this court, in determining whether there was any evidence to justify attributing

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to newspaper publications a tendency to prevent or obstruct the free and unprejudiced exercise of judicial power, considers the evidentiary facts found by the District Court only so far as to determine whether they have any reasonable tendency to sustain the general conclusions of fact based upon them by that court and the Circuit Court of Appeals. *Toledo Newspaper Co.* v. *United States* 402

2. Where in proceeding for criminal contempt, Circuit Court of Appeals, upon concluding that conviction was justified under one count and facts relative thereto, affirmed District Court without considering other counts upon which punishment was also based, this court examined findings as to all the counts, and, holding them sufficient, affirmed judgment. *Id.*

3. Court will review and correct error of state supreme court in assuming state of facts without support in record as basis for denying asserted federal rights. *Postal Telegraph Cable Co.* v. *Newport* 464

4. When case disposed of on pleadings, every uncontradicted allegation by unsuccessful party taken as true, including denials of material facts previously averred by opponent. *Id.*

5. In absence of decision of highest court of State, construction of state statute by intermediate appellate tribunal followed. *Erie R. R.* v. *Hilt* 97

6. Court cannot accept construction placed upon Philippine statute by supreme court of Islands, when it is clearly erroneous. *Philippine Sugar &c. Co.* v. *Philippine Islands* ... 385

7. Upon review by certiorari court confines its discussion to matter relied on in procuring writ. *Alice State Bank* v. *Houston Pasture Co.* 240

III. **Scope and Form of Decree.**

Appeal held to bring up for review two causes decided by court below at same time; and that both controlled by decree rendered. *Shepard* v. *Barkley* 1

IV. **Parties.**

Making the clerk sole respondent in a mandamus proceeding to compel filing of record by Circuit Court of Appeals, *held* harmless irregularity. *Ex parte Abdu* 27

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V. **Scandalous Matter.**

Striking from files of scandalous and impertinent matter in brief deemed unnecessary. *Cox* v. *Wood* 3

VI. **Costs.**

Provision of Act 1917, dispensing with bonds or deposit to secure costs, in actions by seamen, does not apply to appellate proceedings. *Ex parte Abdu* 27

PROHIBITION:

Writ will not issue to control District Court upon questions which it is competent to decide or questions dependent upon facts not presented to this court. *Ex parte Southwestern Surety Ins. Co.* 19

On functions of prohibition and mandamus. See *Ex parte Simons* 231

PUBLIC LANDS. See **Mines and Mining.**

1. Limitation upon suits to vacate land patents under Act of 1891 does not begin to run until discovery of the fraud. *Exploration Co.* v. *United States* 435

2. Proviso in Act of Mar. 2, 1896, relative to suits for recovery of lands, or value thereof, certified or patented in lieu of other lands covered by grant lost or relinquished in consequence of failure of Government to withdraw same from entry or sale, *held* curative measure referring only to lands patented before enactment and not a protection for patent procured afterwards by fraud. *United States* v. *St. Paul, M. & M. Ry.* 310

3. Act of Congress granted "undisposed of" lands in certain sections to State, saving vested rights of others existing at its date. Part of tracts in question, within indemnity limits of Northern Pacific, had previously been selected by railroad and sold by it to purchasers in good faith. After date of act selections were canceled as being founded on improper bases, but Land Department, upon fully hearing State, allowed application of purchasers' assignee, made meanwhile, to purchase lands in question from United States, and secure patents therefor, under Adjustment Act. *Held*, that decision was not arbitrary, and that suit by

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State against Secretary of Interior and Commissioner of Land Office, to enjoin patents and quiet title, would not lie. *Minnesota* v. *Lane* 243

4. *State Lands.* One whose contract for purchase of state lands had been for many years in default for nonpayment of interest both before and after passage of act forfeiting such contracts of interest not paid within time stated, held not in position to object that law lacked due process in failing to allow time and opportunity for testing liability to forfeiture in court proceeding. *Aikins* v. *Kingsbury* 484

5. *Id.* Law declaring forfeiture, where default continued 5 years and where State prior to passage of law issued another certificate for same land to subsequent purchaser, unless all arrears of interest paid within 6 months of its passage, does not impair contract of purchase. *Id.*

QUIETING TITLE:

Right of State to maintain suit against Secretary of Interior and Commissioner of Land Office. See **Actions and Defenses,** 9.

RAILROADS. See **Carriers; Employers' Liability Act; Negligence.**

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RECORD:

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REFORMATION OF CONTRACTS. See **Contracts.**

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SCANDALOUS AND IMPERTINENT MATTER:

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SELF-INCRIMINATION. See **Constitutional Law,** VII.

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SIXTH AMENDMENT. See **Constitutional Law,** IX.

STATES. See **Boundaries,** 1; **Constitutional Law; Jurisdiction; Statutes; Taxation,** III.

1. Suit by State against Secretary of Interior and Comsioner of Land Office, to enjoin issuance of patents and to quiet title, held not maintainable. *Minnesota* v. *Lane* 243

2. Power to regulate interstate commerce not intended as means of enabling Congress to equalize economic conditions in States for prevention of unfair competition among them, nor was it intended as authority to control States in exercise of their police power over local trade and manufacture. *Hammer* v. *Dagenhart* 251

3. Police power over local trade and manufacture was expressly reserved to States. *Id.*

4. Police power does not sanction interference with interstate commerce arising from order of state commission requiring telegraph companies to cease discriminating against a would-be subscriber to stock quotations sent by wire from one State to another. *Western Union Tel. Co.* v. *Foster* 105

5. Child Labor Law held to invade powers reserved to States. *Hammer* v. *Dagenhart* 251

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STATUTES. See Table of Statutes Cited, at front of volume; **Admiralty; Anti-Trust Act; Contempt, 2; Employers' Liability Act; Hours of Service Act; Indians; Jurisdiction; Materialmen's Acts; Mines and Mining; Patents for Inventions; Public Lands; Selective Draft Law; Taxation.**
Construction involving federal question. See **Jurisdiction**, II, (5); III, 2.

I. **Principles of Construction.**

1. In absence of decision of highest court of State, this court inclines to follow intermediate appellate tribunal in construing state statute. *Erie R. R.* v. *Hilt* 97

2. Court cannot accept construction placed upon Philippine statute by supreme court of Islands, when it is clearly erroneous. *Philippine Sugar &c. Co.* v. *Philippine Islands* 385

3. Equity of statute barring equitable relief for fraud and mistake is on side of strict construction. *United States* v. *St. Paul, M. & M. Ry.* 310

4. General principle underlying strict construction of statutes of limitation as applied to Government, that public interests should not be prejudiced by negligence or default of public officials, applies with peculiar force in construction of provision which operates to bar absolutely recovery of value of land as well as land itself, in favor of immediate recipient of fraudulent patent no less than *bona fide* purchaser. *Id.*

5. Resort to this principle and legislative history of proviso to Act of Mar. 2, 1896, added to its apparent independence and extraordinary and unreasonable effects of applying it to future cases, overweigh general rule of prospective construction and fact of immediate association with prospective provisions. *Id.*

6. Remarks of chairman of congressional committee, referring to matters of common knowledge in his explanation of amendment offered by him to bill which he has previously

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reported, may be considered as throwing light upon subject-matter of amendment, for purpose of solving ambiguity. *Id.*

7. Policy and legislation of Congress respecting descent of Indian allotments, particularly in Five Civilized Tribes, reviewed. *Jefferson* v. *Fink* 288

8. Extralateral right determined by federal mining laws. *Jim Butler Mining Co.* v. *West End Co.* 450

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1. *Child Labor Law of 1916* held unconstitutional. *Hammer* v. *Dagenhart* 251

2. *Seamen's Act of 1915*, § *20*, held not to intend to substitute common-law measure of liability for maritime rule. *Chelentis* v. *Luckenbach S. S. Co.* 372

3. *New Jersey Railroad Negligence Law* held to apply to boy less than seven years old. *Erie R. R.* v. *Hilt* 97

4. *Philippine Code of Civ. Proc.*, § *285*. Relief in case of contract failing through mutual mistake to express intention of parties may be had in pending suit. *Philippine Sugar &c. Co.* v. *Philippine Islands* 385

5. *Wisconsin Income Tax Law* (*1911*, *c. 658*) not unconstitutional under commerce clause. *United States Glue Co.* v. *Oak Creek* 321

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1. Power of State over streets crossed by lines of telegraph company does not sanction interference with interstate commerce caused by order of state commission relative to such company. *Western Union Tel. Co.* v. *Foster* 105

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2. Judgment holding telegraph company bound by license agreement with city touching use of streets, but rendered in suit begun after company had conveyed to another, does not estop its remote successor in interest from claiming against city that agreement was never accepted. *Postal Telegraph Co.* v. *Newport* 464

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Are within class described in proviso of § 2 of Hours of Service Act, whose service is thereby limited to 9 hours in 24. *Chicago & Alton R. R.* v. *United States* 197

TAXATION:

Jurisdiction to enjoin collection. See **Equity, 1–3.**

I. Income Tax of 1913.

1. *Sixteenth Amendment; Scope.* Amendment does not extend power of taxation to new or excepted subjects, but merely removes occasion for apportioning taxes on incomes among the States. *Peck & Co.* v. *Lowe* 165

2. *Id.; Dividends.* Under Sixteenth Amendment Congress may tax without apportionment dividends received in ordinary course by shareholder from corporation, even though extraordinary in amount and derived from surplus of corporate assets existing before Amendment. *Lynch* v. *Hornby* 339

3. *Income from Exports.* Net income of a corporation derived from exporting goods from States and selling them abroad is subject to be taxed under § II, Act of 1913, as part of "entire net income arising or accruing from all sources." *Peck & Co.* v. *Lowe* 165

4. *Id.; Validity of Tax.* Such tax held not contrary to Art. I, § 9, cl. 5, of Constitution. *Id.*

5. *Converted Capital not Income.* Accumulations that accrued to corporation through surplus earnings or appreciation in property value, before adoption of Sixteenth Amendment and effective date of Act of 1913, regarded as capital and not income. *Southern Pacific Co.* v. *Lowe* 330

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6. *Corporate Earnings Undivided not Taxable to Shareholder.* Act of 1913 treats corporate earnings as not accruing to shareholders until time when dividend paid. *Id.*

7. *Id.* Act of 1913 drew distinction between shareholder's undivided interest in gains and profits of corporation prior to declaration of dividend and his participation in dividends declared and paid, treating latter, in ordinary circumstances, as part of income for purpose of surtax, and not regarding former as taxable to him unless fraudulently accumulated to evade tax. *Lynch* v. *Hornby* 339

8. *Dividends from Non-Taxable Surplus; When not Taxable.* Where shares of corporation all owned, and property and funds possessed, and its operations and affairs completely dominated, by another corporation, so that two were in substance but one, and where dividends from one to other were consummated, after Act of 1913 effective, by mere paper transaction, and represented merely what second company entitled to have as shareholder before January 1, 1913, from surplus theretofore accumulated, held, such dividends not taxable as income of shareholding company. *Southern Pacific Co.* v. *Lowe* 330

9. *Id.* On liquidation of company after effective date of Act of 1913, shareholders received in excess of par of their shares, which excess represented increase in value of property accruing prior to such effective date. *Held,* that such excess was not "income, gains, or profits," or shareholder subject to tax. *Lynch* v. *Turrish* 221

10. *Id.*; *When Taxable.* Under Act of 1913, dividends declared and paid in ordinary course after March 1, 1913, whether from current earnings or from surplus accumulated before that date, held taxable to individual shareholders as income, under "surtax" provision. *Lynch* v. *Hornby* 339
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11. *Dividend of Shares.* A dividend by a corporation of shares owned by it in another corporation is not a stock dividend and is subject to tax. *Peabody* v. *Eisner* 347

II. **Corporation Tax of 1909.**

1. *Income; How Proved; Corporate Books.* Income deter-

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mined from actual facts, as to which corporate books are only evidential. *Doyle* v. *Mitchell Brothers Co.* 179

2. *Income Defined.* "Income" employed in natural and obvious sense, as importing something distinct from principal or capital, and conveying idea of gain or increase from corporate activities. *Id.*

3. *Id.; Measured by Business Returns after Act took Effect.* Purpose of Act not to tax property as such, or mere conversion of property, but to tax conduct of business of corporations organized for profit by measure based upon gainful returns from business operations and property from time Act took effect. *Id.*

4. *Conversion of Preëxisting Capital not Income.* While conversion of capital may result in income, in sense of Act, where proceeds include increment of value, such is not case where increment existed when Act took effect. *Id.*

5. *Id.* Before Act, lumber company bought timber land to supply its mills, and after Act manufactured part of timber into lumber which it sold. *Held,* that amount by which timber so used had increased in value between date of purchase and effective date of Act was not element of income to be considered in computing tax. *Id.*

6. *Id.; Subsequent Increment Taxable.* Railroad company bought shares of another such company before, and sold them after, Dec. 31, 1908. *Held,* that only so much of profit as accrued after such date was "income." *United States* v. *Cleveland &c. Ry.* 195

7. *Id.; Interest on Cost of Investment not Deductible.* Coal company bought shares of another coal company before, and sold them at advance after, Act became effective. *Held,* that interest should not be added to investment as part of cost; and that only so much of advance as could be deemed to have accrued since Dec. 31, 1908, was part of company's "gross income" within Act. *Hays* v. *Gauley Mt. Coal Co.* 189

8. *Preëxisting Capital; How Deducted.* In distinguishing preëxisting capital from income, it is mere question of method whether deduction be made from gross receipts in ascertain-

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ing gross income, or from gross income, by way of depreciation, in ascertaining net income. *Doyle* v. *Mitchell Brothers Co.* 179

9. *Income and Tax Year.* Act measures tax by income received during tax year without reference to when it accrued, provided it accrued after Act became effective. *Hays* v. *Gauley Mountain Coal Co.* 189

10. *Id.; Deductions; Mining Companies.* In computing excise, mining corporation is not entitled to deduct from gross income any amount whatever on account of depletion or exhaustion of ore bodies, caused by its operations for year for which tax assessed; nor can it deduct cost value of ore in ground before it was mined, ascertained in compliance with Treasury Regulations. *Goldfield Consol. Mines Co.* v. *Scott* 126

11. *Id.* In computing excise of mining company operating under lease terminable at option and which grants it privilege of entering, and of exploring for, mining and removing ores in return for royalty of so much per ton removed, but which does not convey the ore *in situ,* that part of value of ore disposed of during tax year which represents its value as ore in place when law took effect should not be deducted as depreciation of capital assets. *United States* v. *Biwabik Mining Co.* 116

12. *Id.; Lumber Company.* Principle upon which removal of minerals by mining companies held not to produce depreciation, held inapplicable in case of company engaged in business of manufacturing and selling lumber and which sells lands incidentally after timber removed. *Doyle* v. *Mitchell Brothers Co.* 179

III. **State Taxation.**

1. *Income Tax—Gains from Interstate Commerce.* State in laying general income tax upon gains and profits of a domestic corporation may include in computation net income derived from transactions in interstate commerce. So held as to Wisconsin law (1911, c. 658) as applied to income from sales outside of State of goods delivered from factory within it, and sales from company's branches in other

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States of goods previously made within State. *United States Glue Co.* v. *Oak Creek* 321

2. *Life Insurance; not Interstate Commerce.* Tax on life insurance business is not tax on interstate commerce. *Northwestern Life Ins. Co.* v. *Wisconsin* 132

3. *Id.; Permissible Discrimination.* State may impose license or privilege tax upon domestic old-line, level-premium life insurance companies, while exempting fraternal societies having lodge organizations and insuring only lives of members. *Id.*

4. *Id.* State may tax domestic life insurance companies by taking percentage of gross receipts, although it exacts a fixed and comparatively slight fee from similar foreign corporations for privilege of doing local business of same kind. *Id.*

5. *Id.; Wisconsin Tax.* "License fee" laid by Wisconsin on domestic "level premium" life insurance companies, as construed by supreme court of State, is a commutation tax in lieu of all other taxes on personal property of companies taxable in State. *Id.*

6. *Id.; Investment Business, if Interstate Commerce, not Burdened.* Assuming that foreign investment business of domestic life insurance company amounts to interstate commerce, a state tax of 3% of gross income from all sources during year, except rents from real estate and premiums collected outside of State on policies of non-residents, casts no burden upon such commerce, where gross receipts are in effect used as fair measure of value of property and franchise taxable, but not otherwise taxed, within State. *Id.*

7. *Unequal Assessment; When not Unconstitutional.* Unequal assessment not violative of equal protection clause where purpose to discriminate not clearly established and discrimination attributable to honest mistake of judgment and lack of time and evidence for making general revaluations when objection made. *Sunday Lake Iron Co.* v. *Wakefield* 350

8. *Presumption and Burden of Proof.* Good faith of tax assessors and validity of acts presumed; burden of proof is on party assailing them. *Id.*

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