DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
JOSEPH A. HOLMES, DIRECTOR

ABSTRACTS OF CURRENT DECISIONS

ON

MINES AND MINING

DECEMBER, 1913, TO SEPTEMBER, 1914

BY

J. W. THOMPSON

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PREFACE.

This bulletin is the third of its kind to be published by the Bureau of Mines, the two preceding being Bulletin 61 and Bulletin 79.

The wide demand for the information contained in these bulletins has led the bureau to decide to issue similar bulletins with sufficient frequency to keep reasonably current the records of decisions of Federal and State courts of last resort on questions relating to the mineral industry.

The bureau will gladly welcome and consider any suggestions looking to improvement in the matter contained in these bulletins or the manner in which it is presented. The purpose of the bulletins will continue to be to improve directly or indirectly mining conditions and to promote the health and safety of miners by the prompt publication of decisions, and to this end it is desired that the bulletins reach all persons who are interested.

J. A. HOLMES.

GENERAL SUBJECTS TREATED.

Minerals and mineral lands.
Mining terms.
Mining corporations.
Mining claims.
Statutes relating to mining operations.
Mines and mining operations.
Mining leases.
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By J. W. Thompson.

MINERALS AND MINERAL LANDS.

MINERALS.

ORES—PROCESS OF ORE CONCENTRATION—PATENTABILITY.

The patent issued to Sulman, Pickard, and Ballot, November 6, 1905, and assigned to Minerals Separation and Minerals Separation American Syndicate, for new and useful improvements in ore concentration, its object being to separate metalliferous matter from gangue by means of oils and fatty acids that have a preferential affinity for such metalliferous matter, the principal feature of which is "agitating the mixture to cause the oil-coated mineral to form a froth," was clearly anticipated by other patents, and each step in the process described in the Sulman, Pickard, and Ballot patent is fully described in more than one of the prior patents, with the single exception of the reduced quantity of oil used; but the discovery that the small fraction of oil is sufficient to produce flotation of the metalliferous matter can not be made by itself or in combination, the subject of a patent.

Hyde *v.* Minerals Separation, 214 Fed., 100, p. 109, May, 1914.

ACTION FOR CONVERSION OF MINERALS.

In an action by the grantor of a certain mine and mining property against his grantee to recover damages for the conversion of a quantity of ore that the grantor before the conveyance had mined and extracted from the mine and placed on the dump near the mine, the plaintiff is not entitled to recover where it appears that at the time the ore was placed on the dump the mine was owned and operated by a mining company and that at the time the ore was taken out of the mine the company had no intention of doing anything with it but simply deposited it on the dump as waste and to give an opportunity to develop the mine and get better ore to send to the smelter, and that

at the time the ore was placed on the dump it was considered to be of no value, as in such case the ore so deposited remained a part of the realty and passed with the deed.

Pittsmont *v.* Omega Copper Co. (Arizona), 141 Pacific, 847, p. 848, July, 1914.

SALE AND CONVEYANCE.

SALE OF TAILINGS—LIABILITY FOR CONVERSION.

A grantee under a contract to purchase an interest in mining property and by which he was given immediate possession of such mining property, with full power and license to prospect upon, work, develop, extract, and remove ore therefrom, and to continue the possession for 90 days, is liable, on failure to complete the purchase of the property, where after the expiration of the 90-day period he entered upon the mining property under a separate and subsequent contract and removed therefrom and appropriated to his own use a large amount of valuable ore in the form of tailings placed by him upon the dump pile during his possession under the former contract, as such tailings, on his failure to complete his contract of purchase continued to be the property of the grantor, and the subsequent contract authorized him to extract and remove ore from the mine only.

Savage *v.* Nixon, 209 Fed., 122, October, 1913.

CLASSIFICATION OF MINERAL LANDS FOR PARK PURPOSES.

The act of March 2, 1899 (30 Stat., 993), creating Mount Ranier National Park, limited the right of selection to nonmineral public lands so classified as nonmineral at the time of actual government survey, but a selection valued for certain like purposes may be made of lands not classified as nonmineral, as the right of selection extends to unsurveyed lands, which in the nature of things can not be so classified, and such a selection is not invalid by the fact that the mineral surveyor did not classify it as nonmineral, and under the practice prevailing in the Land Department the absence of a classification as mineral is equivalent to and is to be understood as a classification of nonmineral.

West *v.* Edward Rutledge Timber Co., 210 Fed., 189, p. 195, July, 1913.

CONTRACT OF PURCHASE—CONSIDERATION.

A contract for the purchase of certain mining property providing for the payment of $100,000, $10,000 to be paid upon the signing of the agreement and the remaining $90,000 to be paid upon the delivery of the deed, together with an agreement to pay the vendor amounts in the aggregate to the sum of $1,000,000, 25 per cent of the net profits resulting from the operation of the mining properties,

is not an absolute agreement to pay $1,000,000 for the property, nor is that the estimated value of the property, but is an agreement for a share in the profits of mining operations, and the payments are wholly contingent upon the success of such operations and must be measured by the amount of profit, the payment of which depends on the success of the enterprise, but in no event to exceed the amount of the remaining $900,000.

Consolidated Arizona Smelting Co. *v.* Hinchman, 212 Fed., 813, p. 815. March, 1914.

COVENANTS NOT RUNNING WITH LAND.

An agreement reciting that in consideration of the execution and delivery of a deed to certain mining property and the sum of $1 the purchaser agreed to pay or cause to be paid to the original grantor of such property 25 per cent of the net proceeds resulting from the operation of the properties until there shall have been paid the aggregate sum of $1,000,000, the payments to be made quarterly or as soon thereafter as the net profits for the preceding quarter can be ascertained; and it was further agreed that the net profits should be the net proceeds from the operation of the mining properties after deducting the cost of mining, development work, transportation, treatment, and smelting, and all property charges incidental thereto, do not constitute a covenant that runs with the land, but is personal merely, and does not create an equitable charge on the property, and a purchaser with notice of the agreement is not bound to operate the properties and pay the vendor the stated percentage of the net profits.

Consolidated Arizona Smelting Co. *v.* Hinchman, 212 Fed., 813, p. 817, March, 1914.

MINERAL INTERESTS AS REALTY.

Mineral interests are a part of the realty and the estate in them is subject to the ordinary rules of law governing the title to real property.

Hoilman *v.* Johnson (North Carolina), 80 Southeastern, 249, p. 250, December, 1913.

PRESUMPTION AS TO OWNERSHIP.

The presumption that the person having possession of the surface has the possession of the subsoil containing the minerals does not exist when the surface mineral rights are severed.

Hoilman *v.* Johnson (North Carolina) 80 Southeastern, 249, p. 250, December, 1913.

MINERAL INTERESTS—NOTICE OF CLAIM.

Mineral interests in land means all the minerals beneath the surface; and when a person claiming the ownership of the minerals sinks a shaft or opens a mine or gives notice of his claim to all such interests

included in his deed and not to one particular mineral only, he is not required to mine for every known mineral in order to give notice that he claims the entire mineral interests.

Hoilman *v.* Johnson (North Carolina), 80 Southeastern, 249, p. 251, December, 1913.

CONVEYANCE OF MINERALS AND GRANT OF MINING RIGHT—DISTINCTION.

There is a clear distinction between an absolute conveyance of minerals in place and the grant of a mining right to another upon certain described land to convert the mineral into personalty and dispose of it. In the former case there is a severance of the title to the realty; in the latter, there is not, although the mining right entitles the grantee to extract every particle of the mineral, but the grant is not of the mineral in place, but only of the mineral rights and privileges.

Chandler *v.* French (West Virginia), 81 Southeastern, 825, p. 827, May, 1914.

CONSPIRACY TO PURCHASE—PROOF OF FRAUD.

A sale of mineral land can not be invalidated and set aside on the ground of alleged fraud in making the purchase where the person to whom the conveyance was made was not in any way connected with and had nothing whatever to do with the alleged conspiracy and fraud practiced on the grantor.

Hurst *v.* Duff (Kentucky), 160 Southwestern, 953, December, 1913.

MINERALS—ORE AS REAL ESTATE.

Where in the operation of a mine ore taken from the mine was placed upon the surface of the ground adjacent to and in the workings in and upon the mine, a sale and conveyance of the mine and mining property passes title to the ore so placed upon the surface of the ground, and the mere mental reservation of such ores, in the absence of a reservation in the deed, would not be sufficient to defeat the conveyance of the ore.

Pittsmont *v.* Omega Copper Co. (Arizona), 141 Pacific, 847, p. 848, July, 1914.

SURFACE AND MINERALS—OWNERSHIP AND SEVERANCE.

RESERVATION OF MINERALS.

A deed conveying certain described land but excepting and reserving to the grantor all mineral upon or in such land, including coal and iron, and reserving the use of such surface ground as may be necessary for exploring and mining and carrying away the mineral, does not convey the entire estate to the land described, but carves

out an interest which the grantor retains, and this constitutes an interest in real estate and is properly classified as property.

Northern Pac. R. Co. *v.* Mjelde (Montana), 137 Pacific, 386, p. 387, December, 1913.

SEPARATE OWNERSHIP AND ESTATES.

There may be several estates in the same land owned by different persons, one owning the surface, another the timber, and a third the minerals underground, each being a separate estate and each may be subject to taxation.

Northern Pac. R. Co. *v.* Mjelde (Montana), 137 Pacific, 386, p. 391, December, 1913.

SEVERANCE BY DEED.

The surface of the earth and the minerals under the surface may be severed by a deed or by reservations in a deed, and when so severed they constitute two distinct estates.

Hoilman *v.* Johnson (North Carolina), 80 Southeastern, 249, p. 250, December, 1913.

SEVERANCE—EFFECT OF ADVERSE POSSESSION.

The owner of the surface can acquire no title to minerals beneath the surface by exclusive and continuous possession of the surface alone, nor does the owner of the minerals lose his right or his possession by any length of nonuser, but he must be disseized to lose his right, and there can be no disseizin by any act which does not actually take the minerals out of his possession.

Hoilman *v.* Johnson (North Carolina), 80 Southeastern, 249, p. 250, December, 1913.

SALE OF MINERAL IN PLACE—RIGHT OF SUPPORT FOR SURFACE.

Where the estate in minerals in place is severed from the estate in the surface, the owner of the latter has the right to subjacent support for the surface; but the right to such support may be waived or conveyed by the owner of the surface to the owner of the minerals.

Walsh *v.* Kansas Fuel Co. (Kansas), 137 Pacific, 941, p. 942, January, 1914.

TAXATION OF MINERALS.

Mining rights and interests in minerals are the subject of horizontal severance from the surface and taxable as real estate.

Riggs *v.* Board of Commissioners, Sullivan County (Indiana), 103 Northeastern, 1075, p. 1077, January, 1914.

SEPARATION OF MINERAL AND SURFACE ESTATE.

The owner of land containing minerals may segregate the mineral estate from the rest of the land and convey either interest without the other; and a deed conveying a tract of land but reserving all ores, mines, minerals, mineral oils, and mineral paints, which may be in

or upon the land, with the privilege of searching, boring, digging, and mining therefor and with the right to build and remove structures needed for mining operations, is a valid reservation and effectually severs the surface and mineral estates.

Washburn *v.* Gregory Co. (Minnesota), 147 Northwestern, 706, p. 707, May, 1914.

SEPARATION OF SURFACE AND MINERALS—QUIETING TITLE—POSSESSION.

The grantee of minerals in and under certain land may sue a subsequent grantee of the surface from the common grantor to quiet his title to the minerals without being in actual possession.

Kentenia Corporation *v.* Boreing Land & Min. Co. (Kentucky), 166 Southwestern 780, May, 1914.

COAL AND COAL LANDS.

ADVERSE POSSESSION INSUFFICIENT.

An adverse possession of coal land consisting in the use of a portion of the surface by depositing thereon culm and fine unmarketable coal, and by mining coal beneath the surface, does not constitute actual possession essential to the validity of an adverse possession that confers title, where the rightful owner had no actual knowledge that coal was being mined and there was nothing on the surface that indicated the actual mining of coal.

Stark *v.* Pennsylvania Coal Co. (Pennsylvania), 88 Atlantic, 770, p. 771, June, 1913.

CONVEYANCE OF COAL IN PLACE—RIGHTS AND DUTIES OF GRANTEE.

A lease by the owner of land by which he granted to the lessee the coal underlying the land described and granting the use of the surface for the working and management of the mine, the lease to continue until the coal was worked out unless forfeited by failure to comply with the conditions therein stated, and providing that the lessee was to work and mine the coal in a good, careful, and workmanlike manner and not leave any coal that could be mined with safety, the lessee agreeing to pay a royalty of 10 cents per ton except on coal necessarily used in operating the mine, does not waive the lessor's right to subjacent support of the surface, and the lessee is liable for damages to the surface caused by reason of his not leaving or furnishing subjacent support to the surface.

Walsh *v.* Kansas Fuel Co. (Kansas), 137 Pacific, 941, p. 942, January, 1914.

KNOWLEDGE OF USE—FAILURE OF TITLE—ABATEMENT OF PRICE.

Where the owner of coal land sold a part of the surface to a coal company operating on adjoining lands with the knowledge that it was the purpose of the coal company to enlarge its plant and extend

its operations, the grantor may be compelled to make an abatement in the purchase price sufficient to purchase an outstanding lease or conveyance formerly made by him to another coal company and which was inconsistent with the use of the land intended by the latter grantee.

Marrowbone Coal & Coke Co. *v.* Coleman (Kentucky), 161 Southwestern, 238, December, 1913.

SALE OF COAL IN PLACE—RIGHT OF SURFACE SUPPORT.

Where the owner of land retains the surface estate and conveys the estate in minerals thereunder, he may convey or waive the right of subjacent support for the surface; but such conveyance or waiver should not be implied unless the language of the deed is appropriate therefor and clearly indicates such to be the intention of the parties to the conveyance.

Walsh *v.* Kansas Fuel Co. (Kansas), 137 Pacific, 941, p. 942, January, 1914.

SEVERANCE OF OWNERSHIP—RELATIVE RIGHTS OF OWNERS OF SURFACE AND OF MINERALS.

Where an easement for a right of way is granted to a railroad company across the lands of another, the owner of the fee remains the owner of all mineral in the land and may make all lawful use of the land so long as he does not interfere with the free use of the right of way; and the railroad company as the owner of the easement has the right to occupy the surface of the land, and the land owner has the right to mine for coal thereunder, and it is the duty of each to use his property so as not to unlawfully interfere with the other's rights, and if tunnels, air passages, and entries are constructed by the landowner beneath the right of way for the purpose of mining for coal, the railroad company is liable in damages for causing a destruction of such tunnel, air passage, or entry.

Cincinnati, etc., R. Co. *v.* Simpson (Indiana), 104 Northeastern, 301, p. 306, February, 1914.

MINING BY PERSON IN ADVERSE POSSESSION—LIABILITY.

A person in adverse possession of coal lands and mining coal therefrom is not liable in an action of trover for the conversion of the coal at the suit of a person claiming the legal title to the land; but the mere act of the person in possession in mining the coal does not give such an actual adverse possession as will defeat an action by the owner of the legal title claiming constructive possession by reason thereof.

Pearce *v.* Aldrich Min. Co. (Alabama), 64 Southern, 321, p. 323, February, 1914.

METHOD OF ACQUIRING TITLE.

Mineral lands including coal lands are not subject to acquisition under the homestead laws.

Diamond Coal Co. *v.* United States, 233 U. S., 236, p. 238, April, 1914.

SALE AND TITLE—PROOF OF PRICE—GOOD FAITH.

In an action of ejectment to recover all the coal and other minerals in and under a certain parcel of land, where the plaintiff claimed as a purchaser for a valuable consideration without notice of a prior conveyance, it is proper for the defendant to prove that the plaintiff knew that as a rule titles were defective in the particular locality, and it is proper to show that he paid the sum of $125 for 1,000 acres of land admittedly worth more than $2,000, as such evidence tends strongly to show that the plaintiff realized at the time he made the purchase that he was taking a speculative risk as to the validity of the title, and for the plaintiff to prevail as a purchaser for value without notice it was incumbent upon him to show that he paid a fair value for the property and purchased it without notice.

Clinchfield Coal Corporation *v.* Steinman, 213 Fed., 557, p. 561, March, 1914.

CONTRACT FOR SALE OF COAL.

A conveyance and lease by which the grantor demises and leases unto the grantee "all coal and mineral rights and privileges whatsoever, contained on, in, and beneath the surface" of certain described land, the grantee to have and hold the same for the term and period of 99 years, the said grantee to pay or cause to be paid during the said term, for and in consideration of the demise and lease, "a rent of 3 cents per ton of 2,240 pounds for each and every ton of coal and other minerals mined and shipped therefrom" does not vest in the grantee an estate in the coal and other minerals in place, nor does it in terms purport to convey title to the mineral, where the grantee is not required to commence mining at any certain time, and where he never did in fact begin mining operations; but the title to the minerals remained in the lessor subject to the right of the lessee or grantee to sever it from the other part of the realty, but the grantee was vested with no present title to the coal in place.

Chandler *v.* French (West Virginia), 81 Southeastern, 825, p. 826, May, 1914.

AUTHORITY TO MINE NEAR DIVISION LINE.

A deed granting all the coal in and under the land described, and providing that "with the coal hereby conveyed there is also granted and conveyed unto the said party of the second part all the usual mining privileges for the removal of the same and every part thereof

from, under, and in said parcel of land, such as are vested in the said parties of the first part," does not authorize the grantee to mine the coal within 5 feet of the dividing line between the grantor and grantee as against the statute of West Virginia (sec. 3920, Code 1913), which prohibits the owner or tenant of any land containing coal from removing the coal within 5 feet of the division line under penalty.

Darby *v.* Davis Coal & Coke Co. (West Virginia), 81 Southeastern, 1124, May, 1914.

RESERVATION—ABATEMENT OF PURCHASE PRICE.

Where a conveyance with warranty of certain coal lands reserved all the coal except what was reserved in a prior deed conveying the coal, and where it appeared that in the conveyance referred to there was in fact no reservation of coal, the grantee can not demand an abatement of the purchase price on the ground of a breach of the covenant of warranty, as in such case it can not be known from the deed what area, estate, or right as to coal was warranted, and the right to abatement for loss by defect of title must be governed by the deed as it is, not by what it ought to have been.

Cummings *v.* Hamrick (West Virginia), 82 Southeastern, 44, p. 45, May, 1914.

CONTRACT FOR SALE OF COAL—PRICE.

A contract for the sale of coal and the output of the mine provided among other things that prices named in the contract are based on the present Michigan mining rates of $1.01 per ton, and shall be increased or reduced on all sizes of coal as the mining rate may advance or decline during the life of the contract, and this is an established basis for establishing the price of the coal sold or delivered under the contract, and where the rate of mining was subsequently increased by an agreement between the operators and the miners' union and was fixed at $1.06 per ton this likewise furnished a definite basis for establishing the price of the coal delivered under the contract and was not affected by other items connected with the cost of mining.

Caledonia Coal Co. *v.* Consolidated Coal Co. (Michigan), 148 Northwestern, 187, July, 1914.

RESERVATION OF COAL—CONSTRUCTION.

A bond for a deed for certain described land for a specific consideration binding the obligor to execute a warranty deed to the surface of such land, reserving the minerals and mineral rights of every sort and nature and the right of ingress and egress and a way to work and exploit the land at all future times, which right shall cease at the death of the obligor, is merged into a deed subsequently exe-

cuted by the obligor and the intention of the parties is to be ascertained from the construction of the deed and not from the title bond, and specific performance of the title bond can not be awarded after the execution of the deed; and the right that ceased at the death of the grantor was the right to keep the surface for the purpose of mining or operating the coal at the stated damages per acre, but as the reservation of the mineral as expressed in the deed was for all future time the actual title of the mineral was reserved.

Creekmore *v.* Bryant (Kentucky), 164 Southwestern, 337, p. 338, March, 1914.

OIL AND OIL LANDS—SALE AND CONVEYANCE.

DEED IN ESCROW.

An agreement whereby the owner of certain oil lands delivered a deed to such land to a bank, and an oil company delivered its deed to certain lands to the same bank on condition that if a certain judgment was affirmed within 30 days the vendor in the first deed was to pay to the bank on the oil company's account a stated sum and the bank would thereupon deliver, respectively, the deeds mentioned, but on the failure of the first vendor to pay the amount stipulated all the deeds were to be delivered to the oil company, constitutes a delivery to the bank in escrow.

Doran *v.* Bunker Hill Oil Min. Co. (California), 139 Pacific, 93, p. 94, January, 1914.

DEEDS IN ESCROW—UNAUTHORIZED DELIVERY—TRUST.

In an action against an oil company to have a trust declared in real estate a complaint is sufficient for that purpose which alleges that the plaintiff and the defendant oil company each deposited deeds in a certain bank under an agreement by which the plaintiff was to pay to the bank on the oil company's account a certain stated sum within thirty days after written notice of affirmance of a certain judgment in a pending suit, and averring that the oil company upon false representations obtained the deeds from the depositary before the expiration of the stipulated time and took possession of the real estate described in the deed.

Doran *v.* Bunker Hill Oil Min. Co., 139 Pacific, 93, p. 95, January, 1914.

SPECIFIC PERFORMANCE OF CONTRACT.

The specific performance of a contract to sell and convey oil lands will not be denied the vendor merely because the evidence shows that the land can be sold on the market for the contract price.

Waratah Oil Co. *v.* Reward Oil Co. (California), 139 Pacific, 91, p. 92, March, 1914.

SPECIFIC PERFORMANCE OF CONTRACT—VALUE OF LAND.

In an action for the specific performance of a contract to sell and convey oil lands the market value of the land is the proper test where the value of the land contracted to be sold becomes important.

Waratah Oil Co. *v.* Reward Oil Co. (California), 139 Pacific, 91, p. 92, March, 1914.

CONTRACT OF SALE BY CORPORATION—INVALIDITY AND RATIFICATION.

A contract for the sale and conveyance of oil lands owned by a corporation, executed by the president and secretary, may be invalid for the reason that the corporation has no power to delegate to such officers the exercise of fundamental and basic principles outside of the ordinary course of business of the corporation, yet such a contract is ratified by the corporation acting under the contract as though its validity was unquestioned, and especially so where the board of directors of the corporation passed a resolution expressly ratifying the sale and caused a tender of a deed of the property to be made to the purchaser.

Waratah Oil Co. *v.* Reward Oil Co. (California), 139 Pacific, 91, p. 93, March, 1914.

CONTRACT FOR SALE OF OIL AND GAS—VALIDITY AND EFFECT.

A contract by which the purchaser bound himself to pay to the seller the sum of $10,000 for all of the oil, gas, coal, sulphur, and other minerals in and under a certain described tract of land that may be found by drilling and mining operations conducted on such land, with the right of ingress and egress at all times for the purpose of drilling, mining, and operating for such minerals, is a valid and binding contract for all the minerals in or under the land described and sufficiently identifies and describes the minerals, and the purchaser is liable for the full contract price and is bound to pay the stipulated price according to the terms of the contract whether he drills or mines for the minerals or not.

Whited *v.* Johnson (Texas Civil Appeals), 167 Southwestern, 812, p. 813, June, 1914.

MINING TERMS.

HITCHES.

Hitches are places cut in the coal or sides of a mine in which to rest the ends of timbers used in propping the roof.

Bracken *v.* Lam Coal Co. (Kentucky), 165 Southwestern, 686, April, 1914.

ROOM NECK.

A room neck is a term applied to a short passageway from the entry in the mine to the room which would afterward be opened beyond the room neck and in which the miner would work.

Gambino *v.* Manufacturers' Coal & Coke Co. (Missouri Appeal), 164 Southwestern, 264, p. 265, February, 1914.

BRUSHING.

Brushing denotes the digging out of the bottom or the mining off of the top of an entry or room for the purpose of admitting cars where the seam of coal mined out is too narrow or shallow for the admission of cars.

Williams *v.* Craig Dawson Coal Co. (Iowa), 146 Northwestern, 735, p. 736, April, 1914.

OUTCROP.

The word "outcrop" signifies the edges of strata which appear at the surface of the ground, or as a portion of a vein or strata emerging at the surface or appearing immediately under the soil and surface debris; and the word has been used in connection with a vein and in general comprehends the particular place and character of manifestation of mineral strata or vein, but does not necessarily imply the presentation of the mineral to the naked eye on the surface of the earth but it means that it comes so near to the surface of the earth that it is found easily by digging, or is the point at which the vein is nearest to the surface of the earth.

Sloss-Sheffield Steel & Iron Co. *v.* Payne (Alabama), 64 Southern, 617, February, 1914.

BAD PLACE.

A "bad place" within the meaning of a contract between the United Mine Workers and an Employers' Association is a place in the roof which can not be made reasonably safe by the ordinary propping usually done by the miner himself.

Duncan Coal Co. *v.* Thompson (Kentucky), 162 Southwestern, 1139, p. 1140, February, 1914.

MINING CORPORATIONS.

BANKRUPTCY—CLAIMS PROVABLE—BONDS PAYABLE OUT OF SURPLUS.

Bonds issued by a mining corporation containing a stipulation to the effect that the face value with interest is payable out of certain named funds to be created out of the surplus earnings of the company, and stipulating further to the effect that the lien provided for to secure the bonds was limited to such surplus earnings, do not create a debt provable in bankruptcy where it appears there never were any surplus earnings of the company and the funds out of which such bonds were payable were never in fact created or existed.

Synott *v.* Tombstone Consol. Mines Co., 208 Fed., 251, p. 254, October, 1913.

FEDERAL JURISDICTION—RESIDENCE OF PLAINTIFF.

A miner, a resident of the eastern district of Tennessee, may sue a nonresident corporation in the district of his residence for an injury sustained by him in the defendant's mine, where the amount in

controversy brings the case within the jurisdiction of the Federal court.

Reich *v.* Tennessee Copper Co., 209 Fed., 880, p. 881, October, 1913.

BANKRUPTCY—PRIORITY OF CLAIMS.

Collaterals in good faith pledged by a coal company to a bank to secure a loan with which to liquidate the coal company's pay roll are valid in the hands of such bank after bankruptcy proceedings on the part of the coal company, as against the lien of an attachment levied after the assignment or bankruptcy.

Alabama Coal & Coke Co., In re, 210 Fed., 940, p. 945, December, 1913.

FRAUD OF OFFICERS—SETTING ASIDE CONVEYANCES.

A charge of fraud and mismanagement on the part of the officers of a mining corporation in an action by its stockholders to recover corporate property is sufficiently sustained by evidence showing that the corporation was possessed of property of the aggregate value of $2,000,000 and owed but a trifling amount of indebtedness aside from certain bonds; that the officers in control permitted one judgment of $14,000 and another of more than $1,000 to be recovered against the corporation when it had cash in hand, $20,000 and valuable salable personal property readily convertible into cash; that at a time when 12,000 shares of the capital stock were in the treasury worth on the market and salable for at least $60,000, the managing directors procured the issuance of executions on the two judgments, and a levy and sale to be made of property of the corporation worth at least $1,000,000 for the nominal sum of $1,200 and other property worth practically $1,000,000 to be sold for less than $5,000, all of which was purchased by a member of a reorganization committee, who subsequently received a deed from the sheriff as trustee for such committee, and where after the sales on execution had been made and the corporation divested of all its property the managing directors brought a suit for dissolution and obtained a decree on the ground that the corporation had disposed of all its corporate property; and where pursuant to the alleged scheme and conspiracy to obtain the property, the suing stockholder had been ousted from the office of director and president of the corporation.

Fleming *v.* Black Warrior Copper Co., Amalgamated (Arizona), 136 Pacific, 273, p. 274, November, 1913.

CONTRACTS WITH PROMOTERS—VALIDITY AND ENFORCEMENT.

A corporation formed by four persons as promoters, who became the sole stockholders and its officers and directors after incorporation, may ratify or adopt contracts made by such promoters prior to the incorporation and by such ratification will become liable thereon; and

it may by such ratification or adoption make such contracts its own and use thereon its own name and may complete the specific performance of the contract made by such promoters with a third person by which the latter agrees to sell and convey certain described land to the corporation when organized.

Henry Gold Min. Co. *v.* Henry (Idaho), 137 Pacific, 523, p. 526, December, 1913.

FRAUDULENT SALE OF STOCK—RIGHT OF PURCHASER TO RELY ON REPRESENTATIONS.

The owner of all the stock of a mining corporation is liable for false and fraudulent representations in the sale of such stock where he represented to the purchaser that the stock was treasury stock and that the proposed sale was for the purpose of obtaining money for patenting the mining claims, that the company had contracted for building a smelter and it would have a valuable power site and had already entered into a contract with a smelting company for smelting its ores, and that it had in fact been offered $200,000 for the mining property, where the mining corporation had no treasury stock and had not in fact any legal stock whatever for the reason there had been no subscription to its capital stock and no conveyance to it of any mining property in lieu of stock subscriptions, and that it was not in fact possessed of any valuable property, and where it appeared that the money received from the purchaser was not applied in securing patents or otherwise improving the mining claim but was applied in the payment of former debts of the corporation; and the purchaser was not bound to make an independent investigation where the subject matter of the contract was not at hand and where the facts were within knowledge of the seller and could not be ascertained by the purchaser without trouble and expense, and the purchaser had the right under the circumstances to rely upon the representations made by the seller.

Borde *v.* Kingsley (Washington), 136 Pacific, 1172, p. 1173, December, 1913.

OFFICERS NOT PERSONALLY LIABLE.

The president of a mining corporation who employed a competent electrician to take charge of the construction work and install an electrical plant in connection with the operation of the mining company's business is not personally liable for the death of an employee of the company caused by an electrical shock.

Hill *v.* Pacific Gas & Electric Co. (California), 136 Pacific, 492, p. 496, November, 1913.

STOCK SUBSCRIPTIONS—CONDITIONS TO DOING BUSINESS.

The general statute of Washington relating to the organization of corporations provides that corporations for manufacturing, mining, and other purposes shall not commence business until the entire

capital stock has been subscribed; but the statute relating to mining corporations provides that where the amount of the capital stock of the corporation consists of the aggregate valuation of the whole number of feet, shares, or interests in a mining claim, no actual subscriptions to the capital stock are necessary, and the transfer of the title to a mining claim is made a legal equivalent for the stock subscriptions, and to make the organization of a mining corporation legal the stock must be subscribed, or the mining company must be possessed in its own right of a mining claim for the working and development of which the corporation was organized, and in the absence of either of these requirements there can be no valid incorporation and no stock legally issued.

Borde *v.* Kingsley (Washington), 136 Pacific, 1172, p. 1173, December, 1913.

VALIDITY OF ORGANIZATION—COLLATERAL ATTACK.

A stockholder and a member of the board of directors of a mining corporation who has contracted with the corporation, purchased stock from and executed deeds to it, can not in a collateral suit avail himself of any defects in the organization, as this can be done only by the power creating the corporation in a direct proceeding constituted for that purpose.

Henry Gold Min. Co. *v.* Henry (Idaho), 137 Pacific, 523, p. 525, December, 1913.

CONTRACT WITH PROMOTERS—SALE OF STOCK—CONSIDERATION.

The holders of a bond upon a group of mining claims organized a corporation and became its managing officers, and during such time made a written proposition to the corporation to assign the bond in consideration of the issue of its capital stock, the corporation to assume and carry out all the terms of the bond and the bond to be taken in full payment of the subscription price of the stock; the corporation by an entry duly made in its record accepted the proposal and directed the issue of the stock upon an assignment of the bond, and the transaction was subsequently completed by the assignment of the bond and the issue of the stock, and the transaction, in the absence of the rights of creditors, was legal and binding on the parties and the consideration for the stock was legal and binding upon the corporation.

Gold Ridge Min. & Dev. Co. *v.* Rice (Washington), 137 Pacific, 1001, p. 1002, January, 1914.

PURCHASE OF MINING PROPERTY—EXTENT OF LIABILITY.

A mining corporation organized for the purpose of purchasing the property of an existing mining corporation, and which did in fact take over all the property of the existing corporation and exchange its stock for the stock held by stockholders in the old company, is

liable for the existing debts of the old company; but it is not liable to the holder of a note executed by such old company that was in fact the personal obligation of the president of the old company and had by a fraudulent scheme of the president and the other managing officers of the old corporation become apparently a debt of such old corporation.

Otis *v.* Ohio Mines Co. (Arizona), 138 Pacific, 777, p. 778, February 1914.

CONVERSION OF STOCK—LIABILITY.

A mining corporation that refuses to register and transfer on its books a bona fide sale and transfer of its stock from a stockholder to a purchaser is liable in an action for conversion, and in an action for such conversion it is not necessary that the proof should be in strict conformity with the averment as to the date of the alleged conversion, and an allegation as to the time of conversion in such case is immaterial.

Robinson Min. Co. *v.* Riepe (Nevada), 138 Pacific, 910, p. 911, February, 1914.

LIABILITY FOR CONVERSION—MEASURE OF DAMAGES.

In an action by a stockholder against a mining corporation for conversion of stock in refusing to register a transfer of stock on its books the damages necessarily flowing from the wrongful act of conversion are the value of the property at the time of the alleged conversion with legal interest from that date to judgment.

Robinson Min. Co. *v.* Riepe (Nevada), 138 Pacific, 910, p. 912, February, 1914.

REFUSAL TO TRANSFER STOCK—DEMAND BEFORE SUIT UNNECESSARY.

In an action by a stockholder against a mining corporation for a conversion of stock in refusing to transfer the stock on its books, no demand is necessary before bringing suit, for the reason that the wrongful taking and conversion is an assertion of ownership, and the conversion takes place when the refusal is made to transfer the stock, and this of itself constitutes an assertion of ownership on the part of the corporation.

Robinson Min. Co. *v.* Riepe (Nevada), 138 Pacific, 910, p. 912, February, 1914.

FRAUD OF OFFICERS—NO DEMAND FOR SUIT.

Where officers of a mining corporation have had complete control of its affairs and have squandered its property and occupy hostile relations to the other stockholders and have in the management of the corporation entered upon a preconcerted plan to obtain for themselves the corporate property, and pursuant to such precon-

certed action have obtained title to the property, the remaining stockholders are not required, before bringing suit, to demand that such officers bring suit in the name of the corporation to recover the property so squandered.

Fleming *v.* Black Warrior Copper Co., Amalgamated (Arizona), 136 Pacific, 273, p. 274, November, 1913.
Kleinschmidt *v.* American Mining Co. (Montana), 139 Pacific, 785, p. 788, March, 1914.

SPECIAL MEETINGS—NOTICE OF OBJECT.

The notice of a special meeting of the board of directors of a mining corporation need not specify the object of the meeting.

Waratah Oil Co. *v.* Reward Oil Co. (California), 139 Pacific, 91, p. 92, March, 1914.

POWER OF DIRECTORS—PAYMENT OF SALARIES.

The board of directors of a mining corporation has no inherent power to vote a salary to any director, as this power must emanate from the stockholders or from a by-law legally enacted or be authorized by statute, and in no event can the directors legally vote themselves compensation for past services; and when a director voluntarily or by the direction of the board assumes to perform the duties of secretary or treasurer without prearrangement by resolution or by-law or by contract, he is not entitled to recover for the value of his past services, and an appropriation and payment made by the board of directors for such services are equivalent to giving away the assets of the corporation.

Kleinschmidt *v.* American Min. Co. (Montana), 139 Pacific, 785, p. 789, March, 1914.

MISAPPROPRIATION OF FUNDS—RIGHT OF STOCKHOLDERS TO SUE—PARTIES.

Where the board of directors of a mining corporation refuses upon request to bring an action to recover money misappropriated by one of the officers, the stockholders themselves may sue on behalf of the corporation, and the right to sue does not depend upon whether the corporation was insolvent, but in such case the corporation itself is a necessary part, the action being for its benefit.

Kleinschmidt *v.* American Min. Co. (Montana), 139 Pacific, 785, pp. 788, 789, March, 1914.

AUTHORITY OF PRESIDENT TO EXECUTE NOTE.

The president of a mining corporation may be clothed with authority to execute a promissory note binding on the corporation.

Darrough *v.* Nevada Milling & Ore Purchasing Co. (Nevada), 140 Pacific, 724, p. 725, May, 1914.

DIVIDENDS—NOT PAYABLE OUT OF CAPITAL STOCK.

The rule that dividends can not be paid out of capital stock does not apply to a case where a corporation recovered a decree for large sums against a former officer for depreciating the capital stock, and the dividend proposed was to be paid out of the amount received on such decree, where in the meantime funds had been applied from the current net profits to the replacement of the impaired capital and the corporation has sufficient assets over all its liability to make good its capital and the money collected on such decree was not needed for the purpose of meeting any impairment of the money capital.

Hyams *v.* Old Dominion Copper Min. & Smelting Co. (New Jersey), 89 Atlantic, 37, p. 39, November, 1913.

DIVIDENDS—DISCRETION OF DIRECTORS.

The directors of a mining corporation acting upon their discretion in the declaration of a dividend are not to be controlled in such discretion at the suit of a stockholder on the ground that the directors were dominated by another corporation owning a majority of the stock and that the dividend was made pursuant to an agreement between the stockholders of the corporation in question and the stockholders of such dominating corporation, but to which agreement neither the directors themselves nor the corporation was a party.

Hyams *v.* Old Dominion Copper Min. & Smelting Co. (New Jersey), 89 Atlantic, 37, p. 40, November, 1913.

FRAUD OF DIRECTORS—RESCISSION OF CONTRACT.

In an action by a corporation against its directors and others for fraud in selling to the corporation in exchange for stock certain mining property, the fact that the land had been mined by the corporation and its value correspondingly diminished would not prevent the company from maintaining a bill for leave to rescind in so far as possible, and the court, if relief was granted, could impose such equitable conditions as would amply protect the rights of the defendants.

United Zinc Cos. *v.* Harwood (Massachusetts), 103 Northeastern, 1037, p. 1039, January, 1914.

FRAUDULENT ACT OF DIRECTORS—STOCKHOLDER'S RELIEF.

A court of chancery may relieve against the operation of a fraudulent action of a board of directors of a mining corporation at the instances of a single stockholder and in the absence of intervening rights of third persons; and stockholders of such a corporation who possess the major portion of its stock can not by force of their vote

appropriate the property of the corporation to their own use in disregard of the rights of the minority stockholders.

Merriman *v.* National Zinc Corporation (New Jersey), 89 Atlantic, 764, p. 765, February, 1914.

DUTY AND LIABILITY OF DIRECTORS.

The directors of a mining corporation, while not responsible for errors in judgment in the administration of its business affairs, are fiduciaries charged with the duty of caring for the property of the corporation and of managing its affairs honestly and in good faith, and if this duty is violated, resulting in impairment of assets or injury to its property or unlawful profits to themselves, they may be compelled in equity to make full restitution; and if strangers combine and confederate with them they all may be sued jointly, and each is accountable for the funds or property unlawfully diverted.

United Zinc Cos. *v.* Harwood (Massachusetts), 103 Northeastern, 1037, p. 1038, January, 1914.

POWER OF BOARD OF DIRECTORS—RIGHT OF STOCKHOLDER TO INTERFERE.

A stockholder of a mining corporation can not maintain an action on behalf of the corporation for cancellation of a contract and lease entered into by the board of directors on the ground of personal interest and bad faith, by which the board had leased to a third person the exclusive right for mining for minerals for a period of 50 years in consideration of a payment of a certain per cent of the gross receipts from sales of ore where it appeared that at the time of the execution of the contract and lease the mining corporation was embarrassed and some of the members of the board of directors were under indictment and the corporation had been forbidden the use of the mails, and where under the conditions the mining company itself was unable to carry on mining operations, as the court will not interfere in the matter of the business management of a corporation within the powers of its board of directors, where the judgment of the board is honestly exercised; and the fact that private interests of members of such board, wholly unconnected with the contract authorized by the board, may be enhanced by the action taken, is not sufficient to justify an interference on the part of a court.

Merriman *v.* National Zinc Corporation (New Jersey), 89 Atlantic, 764, p. 765, February, 1914.

POWER OF COURTS TO CONTROL DIRECTORS—RIGHT OF STOCKHOLDERS.

The individual stockholders of a mining corporation can not question, in judicial proceedings, the corporate acts of the board of directors, where such acts are within the powers of the corporation

and are in furtherance of its purpose, and are not unlawful or against good morals and are done in good faith and in the exercise of an honest judgment; but such matters must be left solely to the honest decision of the directors, and courts can not substitute their judgment and discretion in the place of the judgment of the directors.

Merriman *v.* National Zinc Corporation (New Jersey), 89 Atlantic, 764, p. 766, February, 1914.

STOCK CONTRACT WITH CREDITORS—ATTEMPTED RECISSION.

The judgment creditors of a mining corporation whose property had been sold on foreclosure entered into a contract with certain third persons that in consideration that such third persons should organize another mining corporation and would issue a certain stated amount of its stock to such judgment creditors of the old corporation the judgment creditors would not redeem the mining property from such foreclosure sale, as contemplated by them in order to protect their interests, and such contract after completion and after the parties have acted thereon can not be rescinded by one of such third persons by mere notice that such third persons will not proceed further under such contract, and the new corporation organized by such third persons may, on failure to issue the stock pursuant to such agreement, be compelled to do so or be liable in damages as for a conversion of stock.

Clapp *v.* Gilt Edge Consol. Mines Co. (South Dakota), 144 Northwestern, 721, p. 722, December, 1913.

INTERESTED STOCKHOLDERS—RIGHT TO VOTE.

There is no such recognized trust relation between stockholders of a mining corporation as will impose upon one who may be interested in the transaction, the authorization of which is being acted upon at a stockholders' meeting, the burden of establishing his good faith in the vote which he casts, as the stockholders do not hold fiduciary relations to each other in the sense that one is prevented from voting at a stockholders' meeting on a question in which he has an individual interest.

Merriman *v.* National Zinc Corporation (New Jersey), 89 Atlantic, 764, p. 767, February, 1914.

SUBSCRIPTION TO CAPITAL STOCK—DELIVERY TO PROMOTOR.

A promotor of a proposed corporation who solicits and procures stock subscriptions to a mining corporation to be organized is the agent of the body of the subscribers to hold the subscriptions until the corporation is formed and then turn them over to it without any further act of delivery on the part of the subscribers; and in such

case a delivery of a subscription to such promoter is a complete delivery and binding on the subscriber.

Clapp *v.* Gilt Edge Consol. Mines Co. (South Dakota), 144 Northwestern, 721, p. 724, December, 1913.

LIABILITY FOR STATUTORY PENALTY—MINING NEAR DIVISION LINE.

A corporation operating a coal mine may be liable for the statutory penalty for the act of its servants in mining within 5 feet of a division line in violation of a statute, and it is sufficient in such an action to render a mining corporation liable, for the plaintiff to prove that such mining was done by its servants, as a failure on the part of the corporation to see that its servants obey the statute is its own nonobservance of the statute; nor is it a defense for the corporation to say that it notified its mine manager to observe the property line, and the act of the manager and servants at the mine in such a particular is the act of the corporation itself.

Gawthrop *v.* Fairmount Coal Co. (West Virginia), 81 Southeastern, 560, p. 561, April, 1914.
Darby *v.* Davis Coal & Coke Co. (West Virginia), 81 Southeastern, 1124, p. 1125, May, 1914.

LIABILITY AS PUBLIC-SERVICE CORPORATIONS.

A mining corporation whose charter authorizes only the mining and sale of coal and the exercise of incidental rights to such business may be liable and subject to all regulations of a public-service corporation where it engages in the work of supplying, from an electrical plant installed and maintained formerly for the operation of its mining property, electricity for the lighting of its stores, offices, and tenement houses, and also furnishes practically all other persons resident in the immediate vicinity of its stores and offices with electricity at uniform rates of compensation, the corporation by its servants and agents wiring the buildings and furnishing such persons fixtures for using the electricity, as it thus becomes a public-service corporation within the meaning of the public-service corporation act of West Virginia.

Wingrove *v.* Public Service Commission (West Virginia), 81 Southeastern, 734, p. 735, April, 1914.

EXERCISE OF EMINENT DOMAIN—REMEDY.

The owner of mineral land, a right of way over which has been appropriated by a public-service corporation, must obtain redress in condemnation proceedings and the statutory remedy in such cases is exclusive, and the landowner can not sue in ejectment nor is he entitled to an injunction which will have the effect of dispossessing the

public-service corporation from a right of way occupied by it; and the rule applies though the public-service corporation may have secured such right of way in an illegal manner.

Tennessee Coal, Iron & R. Co. *v.* Paint Rock Flume, etc., Co. (Tennessee), 160 Southwestern, 522, p. 523, November, 1913.

PROPERTY SUBJECT TO EMINENT DOMAIN—DAMAGES.

A corporation organized to mine, coke, and sell coal has authority to own and hold such real estate as is reasonably necessary or incidental to the exercise of the powers for which it was incorporated, and the exercise of such powers requires that it have authority to secure coal to mine, coke, and sell, and this may require the purchase of the surface of the land in order to secure the coal beneath, and having purchased land for such purpose and during the ownership thereof it may use the surface for agricultural or other purposes, and as such owner of the surface the coal corporation may be entitled to damages for any permanent injury to the surface in the exercise of the right of eminent domain by any other corporation or person.

La Salle County Carbon Coal Co. *v.* Sanitary District (Illinois), 103 Northeastern, 175, p. 176, December, 1913.

KNOWLEDGE OF OFFICER NOT NOTICE TO CORPORATION.

A mining corporation organized for operating coal mines under a lease given to three partners providing for the payment of a stipulated royalty is not bound by an independent agreement made by such partners with the lessor to the effect that in case the mine was operated by third persons or by a corporation organized for that purpose an increased royalty should be paid, from the fact that one of such partners was elected president of the corporation, as in such case the partner, though president of the corporation, was acting for and on behalf of himself and partners and not for the corporation.

Rockport Coal Co. *v.* Carter (Kentucky), 163 Southwestern, 734, p. 735 (February, 1914.

PERSONAL LIABILITY OF OFFICERS.

The managing officer of a corporation who knowingly permits the tailings of the mining corporation to be thrown upon the lands of another, and who had been warned by the landowner and notified not to permit the accumulations of tailing on his land, is a joint tort feasor with the corporation and personally liable in an action for damages.

Robinson *v.* Moark Nemo Consol. Min. Co. (Missouri Appeals), 163 Southwestern, 855, p. 888, February, 1914.

LIABILITY OF DIRECTORS FOR DEBT OF CORPORATION—IMPLIED ASSENT.

The directors of a mining corporation that was insolvent and had no credit are personally liable to a bank for a loan made, where it was stated by the officer of the bank that the bank would let the corporation have the money if the directors would be personally responsible, and where the directors said nothing but permitted the money to be loaned which they knew could not be borrowed on the credit of the company, and which was in fact applied to the payment of the debts of the mining company.

Uvalde National Bank *v.* Brooks (Texas Civil Appeals), 162 Southwestern, 957, p. 958, January, 1914.

POWER OF OFFICER.

The president, secretary, or general manager of a mining corporation has no power, by reason of his office alone, to sell or lease the property of the corporation.

Franklin *v.* Havalena Min. Co. (Arizona), 141 Pacific, 727, p. 730, June, 1914.

FAILURE TO COMPLY WITH LOCAL LAWS—TITLE TO REAL ESTATE.

The statute of Idaho requires a foreign corporation to file in the office of the clerk of the district court of the proper county its designation of an agent, and expressly provides that no foreign corporation can take or hold title to real estate prior to making such filing, and the statute in this respect is mandatory, and a conveyance made to a foreign mining corporation that has failed to comply with this requirement is null and void.

Dickens-West Min. Co. *v.* Crescent Min. & Milling Co. (Idaho), 141 Pacific, 566, p. 568, June, 1914.

INSOLVENCY AND REORGANIZATION—FRAUDULENT AGREEMENT WITH CREDITORS.

A contract by an insolvent corporation with the holder of its bonds to the effect that such holder could, upon default, purchase all the mining property of the corporation at a price much less than its actual value and that in consideration thereof a new company was to be organized and a stated amount of the capital stock of the new company should be issued to certain creditors of the old corporation in payment of their claim, is fraudulent and void as against the nonconsenting creditors of the old corporation and ineffective to bar their resort to the property in satisfaction of their adverse demands.

Pittsmont Copper Co. *v.* O'Rourke (Montana), 141 Pacific, 849, p. 852, June, 1914.

MINING CLAIMS.

MINERAL CHARACTER OF LAND.

LANDS VALUABLE FOR MINERALS—MEANING.

Lands known to be valuable for mineral can not be acquired for any purpose other than for mining and under the mining statute, and the term "lands known to be valuable for mineral" means that there must be knowledge of the presence of mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end; but there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them, and it is not to such lands that the term "mineral" in the sense of the statute is applicable, and the term "known to be valuable" has reference to the time of purchase, and if land so purchased is not so known to be valuable at the time doubt can not be cast upon the title by any subsequent discovery of minerals however valuable.

Diamond Coal Co. *v.* United States, 233 U. S., 236, p. 240, April, 1914.

CLASSIFICATION OF MINERAL LANDS.

Where mineral surveyors are instructed to note in their returns all lands found to be of a mineral character as "mineral" and to make no notation as to lands found to be nonmineral, it can not be said that a return designating some lands as mineral and containing no notation as to others fails to classify the latter, as nonmineral, as the silence of the return in such case is as significant as the express notation in the other.

West *v.* Edward Rutledge Timber Co., 210 Fed., 189, p. 195, July, 1913.

CLASSIFICATION—MEANING OF VEIN AND LODE.

In order to determine whether lands containing a given mineral deposit are of the class subject to location and patent under the law applicable to lode claims, resort is to be had to the language of the statute rather than to definitions of the terms "vein," "lode," and "ledge" as given by geologists from a scientific viewpoint; but the statute is to be construed in the light of the prevailing and commonly known use of these terms as defined by miners as the result of their practical experience in mining, and the definitions given by the courts are not those of geologists, but are to be considered and used in the signification which they convey to the practical miner and not in the sense generally used by the scientific men.

East Tintic Min. Co., In re, 43 Land Dec., 79, p. 81, January, 1914.

GENERAL FEATURES.

MINING CLAIM—WHAT CONSTITUTES.

The rule that the term "mining claim" as used in the statute of Nevada means only an unpatented claim held under the mining laws can not be applied to mining claims held in Montana, as in the latter State a mining claim includes one held under patent as well as one held merely by location before patent.

Northern Pac. R. Co. *v.* Mjelde (Montana), 137 Pacific, 386, p. 391, December, 1913.

MINE—WHAT CONSTITUTES.

A mine is variously defined: An opening or excavation in the earth for the purpose of extracting minerals; a pit or excavation in the earth from which metallic ores or other mineral substances are taken by digging; an opening in the earth made for the purpose of taking out minerals, and in case of coal mines, commonly a worked vein; an excavation properly underground for digging out some usual product, as ore, metal, or coal, including any deposit of any material suitable for excavation and working, as a placer mine; the underground passage and workings by which the minerals are gotten together with these minerals themselves; the term "mine" when applied to coal is generally equivalent to a worked vein, for by working the vein it becomes a mine; the mode of obtaining the material and not the nature of the material itself is to be considered in order to come to a decision whether it constitutes a mine.

Northern Pac. R. Co. *v.* Mjelde (Montana), 137 Pacific, 386, p. 389, December, 1913.

EXTENT OF CLAIM.

The locator of a lode mining claim can not claim a greater length in either direction along the vein or lode than is specified in his location notice.

Swanson *v.* Koneninger (Idaho), 137 Pacific, 891, p. 892, December, 1913.

AMENDED CERTIFICATE—RELATION.

An amended certificate of a mining location intended to cure obvious defects only in the original certificate will relate back to the original, even as against intervening locations.

Gobert *v.* Butterfield (California), 136 Pacific, 516, p. 517, October, 1913.

AMENDED LOCATION.

The locator of a mining claim may amend his location if it can be done without prejudice to the rights of others.

Gobert *v.* Butterfield (California), 136 Pacific, 516, p. 517, October, 1913.

EXCESSIVE LOCATION—EFFECT.

A location in excess of the statutory limit, made in good faith and with injury to others, is voidable only as to the excess.

Gobert *v.* Butterfield (California), 136 Pacific, 516, p. 517, October, 1913.

DEPOSIT OF PURCHASE PRICE—USE BY DEPARTMENT.

The purchase price of a mining claim on application for patent must be on deposit and so remain until accepted by the Interior Department; but the department has no right to accept the purchase price of public lands and appropriate the same to the sale of any specified tract, until the purchaser has met all the conditions prescribed by law and the legal regulations made pursuant thereto which entitle him to the full legal rights to become the purchaser.

Shank *v.* Holmes (Arizona), 137 Pacific, 871, p. 875, January, 1914.

RIGHT OF LOCATOR TO WATER FROM SPRINGS.

The locator of a mining location is not entitled to the water flowing from a spring in a natural channel merely because the spring is within the exterior boundaries of his mining claim, in the absence of a proper appropriation of the water flowing from such spring.

Campbell *v.* Goldfield Consol. Water Co. (Nevada), 136 Pacific, 976, p. 978, December, 1913.

KNOWLEDGE OF VEINS OR LODES WITHIN PLACER CLAIM.

Before it can be held that veins or lodes are excluded from a placer patent it is not sufficient to show that the land does in fact contain valuable minerals, but it must be shown that at the time of the application for patent more has been discovered than the indications of minerals which would ordinarily sustain a lode location, and that it was at that time known to the placer applicant, or to the community generally, or disclosed by workings and obvious to anyone making a reasonable and fair inspection of the premises for the purpose of obtaining title, that there was rock in place bearing mineral of such extent and value as would justify expenditures for the purpose of extracting them.

Mason *v.* Washington-Butte Min. Co., 214 Fed., 32, p. 37, May, 1914.

DISCOVERY ESSENTIAL TO LOCATION.

DISCOVERY AND LOCATION ON PUBLIC DOMAIN.

The discovery on which the location of a mining claim is made must exist upon some part of the public mineral domain not already occupied and held under a prior and subsisting mining location.

Emerson *v.* Akin (Colorado Appeals), 140 Pacific, 481, April, 1914.

DISCOVERY POINT—LOCATION.

The discovery point of a lode location to make it valid must be upon free territory.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 74, January, 1914.

DISCOVERY—QUESTION OF FACT.

The question of discovery sufficient to support a lode location is one of fact, and a finding by a trial court that no discovery had been made on the claim and that the required assessment work had not been performed will not be disturbed on appeal where the evidence was conflicting, and the rule is not affected by the fact that both parties to the action were claiming the ground in dispute as being mineral.

Ebner Gold Min. Co. *v.* Alaska-Juneau Min. Co., 210 Fed., 599, p. 603, January, 1914. See Multnomah Min. Mill, etc., Co. *v.* United States, 211 Fed., 100, January, 1914.

DISCOVERY—BURDEN OF PROOF.

An appropriate discovery of mineral is necessary to the lawful location of a placer claim, and it is not sufficient if the locator in panning obtains colors of gold and in some instances fairly good prospects of gold, but the discovery should be such as to justify a man of ordinary prudence, not necessarily a skilled miner, in the expenditure of his time and money in the development of the property; but the burden of proof is upon the Government in an action to set aside the patent alleged to have been procured by fraudulent representations as to a discovery, and the presumption that the patent was correctly issued can be overcome only by clear and convincing proof of the fraud alleged.

Multnomah Min. Mill., etc., Co. *v.* United States, 211 Fed., 100, p. 102, January, 1914.

NOTICE WITHOUT DISCOVERY—EFFECT.

The basis of location of a mining claim is discovery and the mere posting of a notice without a discovery is of no force or effect so far as rendering invalid another location covering a portion of the same ground based upon a valid discovery.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 76, January, 1914.

PRESUMPTION FROM PATENT.

Where the validity of a mining claim depends upon the priority of discovery and a patent has been issued by the Land Department it must be presumed that the department determined all facts necessary to the issuance of a valid patent, including the question of priority of discovery.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 77, January, 1914.

DISCOVERY—SUFFICIENCY.

Discovery as applied to a mining claim means the acquirement of knowledge that a vein or lode exists within the limits of the claim; and while it is not necessary that pay ore be found in order to make a valid discovery, it is necessary that the indications be of such a character that miners in the particular district would follow them in the expectation of finding ore, such as would justify them in working a claim for that purpose.

Mason *v.* Washington-Butte Min. Co., 214 Fed., 32, p. 35, May, 1914,

PROOF SUFFICIENT TO SUSTAIN.

A mineral discovery sufficient to warrant the location of a mining claim is proved where it is shown that mineral is found in such quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

East Tintic Min. Co., In re, 43 Land Dec., 79, January, 1914.

VALUABLE VEIN OR LODE—ELEMENTS OF VALUE.

In determining the question of the value of a vein or lode sufficient to constitute discovery the size of the vein as disclosed, the quality of mineral it carries, its proximity to working mines and location in an established mineral district, the geological conditions, the fact that similar veins in the particular locality have been successfully explored—these and other like facts would naturally be considered by a prudent man in determining whether the vein or lode discovered warrants a further expenditure.

East Tintic Min. Co., In re, 43 Land Dec., 79, p. 82, January, 1914.

ELEMENTS OF DISCOVERY.

The following elements are necessary to constitute a valid discovery on a lode mining claim: (1) A vein or lode of quartz or other rock in place; (2) the quartz or other rock in place must carry gold or other valuable mineral deposit; (3) elements 1 and 2 when taken together must be such as to warrant a prudent man in the expenditure of his time and money in an effort to develop a valuable mine.

East Tintic Min. Co., In re, 43 Land Dec., 79, p. 82, January, 1914.

MARKING BOUNDARIES.

MARKING BOUNDARIES ON THE GROUND—PURPOSE.

The object of the law in requiring the location of the mining claim to be marked upon the ground is to fix the claim to prevent floating or swinging, so that persons who in good faith are looking for unoccu-

pied ground in the vicinity of the location may be enabled to ascertain exactly what ground has been appropriated in order to make their locations upon the residue.

Swanson *v.* Koneninger (Idaho), 137 Pacific, 891, p. 893, December, 1913.

MARKING BOUNDARIES—EFFECT AND OBLITERATION.

When a mining claim is once sufficiently marked on the ground and all necessary location acts are performed, the locator is vested with a right which can not be divested by a subsequent obliteration of the marks or removal of the stakes, without his fault, and the fact that the original stakes can not in later years be found raises no presumption against the validity of the original marking.

Gobert *v.* Butterfield (California), 136 Pacific, 516, p. 517, October, 1913.

TIME OF MARKING BOUNDARIES.

The boundaries of a mining claim may be marked at any time prior to the acquisition of an intervening right, regardless as to whether the time within which the marking was made is reasonable or otherwise.

Gobert *v.* Butterfield (California), 136 Pacific, 516, p. 517, October, 1913.

SWINGING CLAIMS.

SHIFTING LINES.

It is contrary to the policy and spirit of the mining laws to permit a mining claim of excessive size to be staked and then afford the opportunity for the stakes to be shifted at the locator's pleasure and the claim swung so as to include ground proved to be rich in mineral through the development of other ore bodies.

Swanson *v.* Koneninger (Idaho), 137 Pacific, 891, p. 893, December, 1913.

Before patent a lode locator may shift his lines or float his location on the public domain if he does not interfere with the rights of others.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 79, January, 1914.

LOCATION NOTICE AND CERTIFICATE.

CONTENTS AND SUFFICIENCY—RECORD.

A record of a certificate of location which recites the citizenship of the locators, the fact of discovery, and the fact that the location has been marked upon the ground so that the boundaries can be readily traced is not evidence of any of these facts in any of the States or Territories for the reason that no such facts are required to be stated in any of the statutory notices.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 76, January, 1914.

LOCATION NOTICE—SUFFICIENCY.

A location notice or declaratory statement as it is sometimes called is not required to contain a description of the mining claim by metes and bounds, but the statute does require that, taking the discovery as the initial point, the boundaries be so definite and certain as that they can be readily traced, and the notice or declaratory statement must contain directions, which, taken with the marking, will enable a person of reasonable intelligence to find the claim and run its lines; but while neither mathematical precision as to measurements nor technical accuracy of expression is expected, yet the degree of accuracy that is required is indicated by the fact that the locator, after his discovery, has 30 days in which to definitely ascertain the course of the vein or lode and mark its boundaries, and 30 days more in which to file his notice or declaratory statement describing the claim so that it can be identified.

Swanson *v.* Koneninger (Idaho), 137 Pacific, 891, p. 893, December, 1913.

SUFFICIENCY.

It can not be said as a matter of law that a notice of the location of a mining claim is insufficient where the notice was written on a piece of white paper and placed on a stick leaning up against the side of a cut on the surface rock, and another rock put on top of the paper so that it would not blow away, the paper being large enough to show under the rock, but the writing itself was not exposed.

Emerson *v.* Akin (Colorado Appeals), 140 Pacific, 481, p. 482, April, 1914.

LOCATION NOTICE—INSUFFICIENCY.

That degree of accuracy required in a location notice or declaratory statement is not met if the description given is so erroneous as to be delusive and misleading, as when the declaratory statement and the markings upon the ground do not even approximately agree as to the general shape of the claim or as to any point, direction, or distance.

Swanson *v.* Koneninger (Idaho), 137 Pacific, 891, p. 893, December, 1913.

CONFLICT BETWEEN NOTICE AND BOUNDARIES.

In case of a conflict between the location notice of a lode claim and the boundaries of the claim as marked by the stakes, the rule that the stakes control applies only so far as there is no substantial variance between such stakes and the notice of location; but where the course and distance are not with certainty defined by monuments or stakes the clause in the location notice must govern. Where there is doubt as to the monuments, there can be no reason for the rule that the monuments should prevail.

Swanson *v.* Koneninger (Idaho), 137 Pacific, 891, p. 892, December, 1913.

CERTIFICATE OF LOCATION—PRESUMPTIVE EVIDENCE.

Where mining claims have been transferred and have stood unchallenged for years and have been developed by successive owners, a certificate of location in due form is presumptive evidence of discovery and of a valid location; but in the absence of grounds of such presumptive evidence a location notice is, when recorded, prima facie only of what the State requires it to contain, and which is therein sufficiently set forth.

Thomas *v.* South Butte Min. Co., 211 Fed., 105, p. 107, February, 1914.

LOCATION CERTIFICATE—CONTENTS.

Section 2324 of the Revised Statutes of the United States requires that a certificate of the location of a mining claim shall contain the names of the locators, the date of location, and such a description of the claim by reference to some natural object or permanent monuments as will identify it, but such a certificate is not proof of discovery or the existence of a vein or lode that would justify exploitation, and especially so where there is no proof that the claim was ever developed.

Thomas *v.* South Butte Min. Co., 211 Fed., 105, p. 108, February, 1914.

MINERAL SURVEYOR—QUALIFICATIONS AND DUTIES.

DEPUTY MINERAL SURVEYOR DISQUALIFIED.

A deputy mineral surveyor is an officer or employee of the general land office within the scope of section 452 of the Revised Statutes of the United States and is disqualified and prohibited from directly or indirectly purchasing or becoming interested in the purchase of public lands.

United States *v.* Havenor, 209 Fed., 988, p. 989, November, 1913.

DUTY TO NOTE CONFLICT AREA.

It is the duty of a deputy mineral surveyor to set forth in his field notes the exclusions of any conflict area in surveying a mining claim and to designate the claim or claims in favor of which such exclusion is made, and it is not to be presumed, in the absence of a showing to the contrary, that the application for patent or the public notice was in conflict with the exclusion made in the field notes of the deputy mineral surveyor.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 75, January, 1914.

PLAT AND FIELD NOTES—APPROVAL.

The plat and field notes of a deputy mineral surveyor must have the approval of the United States surveyor general before transmission to the General Land Office; and when the field notes of a deputy mineral surveyor are approved by the surveyor general, and such plat and field notes show an exclusion made by the officials of the Government upon whom the duty is imposed of making the same, and when patent issues and reference is made to such field notes, the exclusions therein mentioned become the exclusions of the Government itself, and it is immaterial at whose instance they were made, even if made at the suggestion of the applicant himself.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 76, January, 1914.

DESCRIPTION OF CLAIM.

REFERENCE TO PLAT AND FIELD NOTES—EFFECT.

A reference in a patent for a mining claim to the official plat and survey makes such plat and field notes of such survey a part of the description granted, the same as if incorporated at length in the patent.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 76, January, 1914.

REGULATIONS OF GENERAL LAND OFFICE.

The rules and regulations of the General Land Office in relation to mining claims have the force and effect of law and may require the description of a mining claim to show definitely the portions intended to be included and may require that the survey of contiguous locations shall distinguish the several locations and exhibit the boundaries of each and state the area of each location and also the area in conflict with any intersecting survey or claim.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 75, January, 1914.

SURVEY SUFFICIENT FOR DIFFERENT APPLICATIONS.

The mere canceling of the entry upon an application for patent for mining claim, and in which the official survey was made a part, in no manner affects the plat and field notes of the survey or prohibits their use or a copy thereof in a subsequent application for a patent for the same claim.

Shank *v.* Holmes (Arizona), 137 Pacific, 871, p. 874, January, 1914.

ASSESSMENT WORK.

ASSESSMENT WORK—CONSIDERATION.

Money advanced by a bank at the request of the managing officers of a mining corporation for the payment of assessment work is a sufficient consideration for the execution by the mining corporation of a note secured by a mortgage on an unpatented claim.

Miller *v.* Del Rio Min. & Mill. Co. (Idaho), 136 Pacific, 448, p. 450, November, 1913.

RESUMPTION OF WORK—EFFECT.

The locator of a mining claim in Alaska who has failed to perform the annual assessment work as required by the act of March 2, 1907 (34 Stat., 1243), can not protect his claim and save his rights by a resumption of the work prior to the intervention of other parties.

Ebner Gold Min. Co. *v.* Alaska-Juneau Min. Co., 210 Fed., 599, p. 604, January, 1914.

PROOF OF PERFORMANCE.

Under section 3211 of the Revised Codes of Montana the affidavit of the performance of the annual assessment work upon lode mining claims is prima facie evidence of the performance of such assessment work, but when such prima facie evidence is met and overcome by positive evidence that the labor was not performed it then devolves upon the locator or owner to show by evidence of a positive and affirmative nature other than the affidavit that the work had actually been performed; but the mere proof that the locator or owner had actually paid $100 for the performance of such assessment work is not sufficient evidence that the work was actually done where the proof showed that the work was not done, as in such case the question is not whether the money was paid for the work, or whether the locator honestly believed the work was done, but whether the work was actually performed on the mining claim, and the statute requiring the work is mandatory.

Dickens-West Min. Co. *v.* Crescent Min. & Milling Co. (Idaho), 141 Pacific, 566, p. 568, June, 1914.

CONSTRUCTION OF ROAD.

Labor performed by the owner of a mining claim in constructing a wagon road thereto for the purpose of better developing and operating his mine and for the purpose of aiding in the conduct of mining operations on the particular claim to which it is sought to be accredited, the value whereof is duly certified by the surveyor general, may be accredited as assessment work or as development work required as a prerequisite to the issuance of a patent.

Tacoma & Roche Harbor Lime Co., In re, 43 Land Dec., 128, p. 132, February, 1914

MINERS REGULATING ASSESSMENT WORK.

Section 2324 of the Revised Statutes of the United States permits miners of each mining district to make regulations not in conflict with the United States statutes governing assessment work on mining claims.

Tacoma & Roche Harbor Lime Co., In re, 43 Land Dec., 128, p. 131, February, 1914.

CERTIFICATE OF SURVEYOR GENERAL—BASIS OF INFORMATION.

The surveyor general may derive his information upon which to base his certificate as to the value of labor expended or improvements made upon a mining claim from the deputy mineral surveyor who made the actual survey and examination upon the premises, and such deputy should specify with particularity and full detail the character and extent of such improvements, and in any case further or other evidence may be required.

Sheldon, In re, 43 Land Dec., 152, p. 155, February, 1914.

IMPROVEMENTS.

TIME OF MAKING—PROPER CREDITS.

No part of the value of permanent or immovable improvements upon a mining claim made long prior to the location thereof by the claimant under a previous location embracing the same ground, solely to improve and develop the entire claim, can be accredited to the later claim toward meeting the statutory requirement as to patent expenditures.

Sheldon, In re, 43 Land Dec., 152, p. 156, February, 1914.

CERTIFICATE OF SURVEYOR GENERAL—CONCLUSIVENESS.

A certificate of the surveyor general to the effect that $500 worth of labor has been expended or improvements made upon or for the benefit of the several locations by the owners or their grantors, the improvements consisting of two discovery shafts, two discovery cuts, five cuts, nine shafts, and a drift valued at $2,855, as required by section 2325 of the Revised Statutes of the United States, is not conclusive upon the Land Department as to the improvements made, but the department may wholly disregard such certificate and require further showing as to the improvements made by the applicant.

Sheldon, In re, 43 Land Dec., 152, pp. 154–156, February, 1914.

CERTIFICATE OF SURVEYOR GENERAL.

Section 2325 of the Revised Statutes of the United States requires a certificate by the surveyor general, in support of an application for a patent to a mining claim, to the effect that $500 worth of labor

has been expended or improvements made upon the mining claim sought to be patented.

Tacoma & Roche Harbor Lime Co., In re, 43 Land Dec., 128, p. 131, February, 1914.

LOCAL LAWS—REGULATIONS IN MINING DISTRICTS.

The statute of Washington (sec. 7371, Remington and Ballinger's Annotated Codes, 1910) gives a mining district the power to make road building to mining claims applicable as assessment work or improvements upon the claims, and directs specifically how such regulations may be enacted, and when and how such road building shall be done, and provides also that a receipt given for such work shall be prima facie evidence of the improvement; and a locator of a mining claim claiming the benefits of the provisions of this statute must show that his mining claim lies within the organized district and that such mining district has complied with the requirements of the State statute.

Tacoma & Roche Harbor Lime Co., In re, 43 Land Dec., 128, p. 131, February, 1914.

EXPENDITURES FOR DRILL HOLES.

Expenditures made upon drill holes placed upon a lode mining claim in good faith with a view to prospect the claim, or in order to secure data upon which further development work may be performed, are available toward meeting the statutory provision requiring an expenditure of $500 as a basis of patent, as to all of the claims of a group situated in close proximity to the common improvement.

East Tintic Min. Co., In re, 43 Land Dec., 79, p. 83, January, 1914.

ABANDONMENT.

WHAT CONSTITUTES—INTENTION AND ACT.

Abandonment as applied to mining claims held by location merely, takes place only when the locator voluntarily leaves his claim to be appropriated by the next comer without any intention to retake or reclaim it, and regardless of what may become of it in the future.

Shank *v.* Holmes (Arizona), 137 Pacific, 871, p. 875, January, 1914.

Abandonment of a mining claim is a matter of intention, and when any part of a mining claim is in good faith abandoned by the owner the title of the part thus abandoned reverts to the Government, and abandonment in such case may be proved by the acts of the original owner as well as by his words and statements; and this question applies especially where there was no fraudulent purpose in the abandonment.

Emerson *v.* Akin (Colorado Appeals), 140 Pacific, 481, p. 482, April, 1914.

FORFEITURE.

WHAT CONSTITUTES.

A forfeiture of a mining claim takes place by operation of law without regard to the intention of the locator whenever he neglects to preserve his right by complying with the conditions imposed by law, such as making the required annual expenditures upon the claim within the statutory period; and the difference between abandonment and forfeiture is that the former involves an inquiry of fact as to the intention as well as the act, while the latter is determined by the answer to the question, Has the required expenditure been made as the law commands?

Shank *v.* Holmes (Arizona), 137 Pacific, 871, p. 875, January, 1914.

RELOCATION.

RELOCATION OF ABANDONED CLAIMS.

The locator of a mining claim on the public domain may abandon such claim, or he may abandon a part thereof and subsequently make a valid relocation including the whole or a part of such abandoned claim, where the rights of third persons are not invaded and where the abandonment was not from improper motive, such as escaping annual assessment work.

Emerson *v.* Akin (Colorado Appeals), 140 Pacific, 481, p. 482, April, 1914.

POSSESSORY RIGHTS—PROTECTION.

EFFECT OF TRESPASS.

A locator of a lode mining claim can not be deprived of his possessory or inchoate rights by the tortious acts of another, nor can an intruder and trespasser initiate any rights that will defeat those of a prior discoverer.

Gobert *v.* Butterfield (California), 136 Pacific, 516, p. 517, October, 1913.

DISCOVERY AS BASIS OF RIGHT.

In an action to determine the title and right of possession to a lode mining claim, and where it is contended on the part of the defendant that there had been no sufficient discovery of mineral on which to make a mining location as required by the statute, it is proper to admit testimony tending to show that the discovery shaft of the adverse claimant did not, at the date of the record of its certificate, disclose a well-defined crevice vein or lode, but in fact disclosed no mineral of any kind whatsoever therein at a depth of 10 feet from the lowest part of the rim at the surface, and to show the effect and value of assays made; nor is it error to permit the jury trying the case to view the premises, under instructions from the court to the effect

that the evidence must be considered solely on the question as to whether there was mineral-bearing rock found in the discovery shaft.

Specie Payment Gold Min. Co. *v.* Kirk (Colorado), 139 Pacific, 21, March, 1914.

POSSESSORY ACTION OF LOCATOR TO PROTECT RIGHTS.

A person in possession of a portion of the public domain and claiming title thereto under a placer location on oil lands may maintain ejectment against a mere intruder or trespasser entering upon such possession without right or color of title, though the plaintiff's location may be invalid.

Little Sespe Consolidated Oil Co. *v.* Bacigalupi (California), 139 Pacific, 802, p. 803, March, 1914.

INTRUDER ACQUIRES NO RIGHTS.

A wrongful intrusion upon a portion of the public land held by another as a mining claim, and after discovery of oil thereon, gives no right whatever to the intruder and constitutes him a naked trespasser, and he is in no position to raise any issue whatever upon the question of title under which the oil claimant holds the possession of his claim; an entry on such a claim in order to initiate any rights must be peaceable and in good faith.

Little Sespe Consolidated Oil Co. *v.* Bacigalupi (California), 139 Pacific, 802, p. 804, March, 1914.

CONDITIONS—PERFORMANCE OF ASSESSMENT WORK.

The locator of a mining claim has the exclusive right of possession of all the surface included within the exterior limits of his claim so long as he makes the improvements or does the annual assessment work required by section 2324 of the Revised Statutes of the United States.

El Paso Brick Co. *v.* McKnight, 233 U. S., 250, p. 256, April, 1914.

ACQUIRING FEE-SIMPLE TITLE.

The defeasible possessory title held by the locator of a mining claim on compliance with the United States statutes may, by payment of the purchase price fixed by statute (sec. 2325, R. S.), be converted into a fee simple.

El Paso Brick Co. *v.* McKnight, 233 U. S., 250, p. 256, April, 1914.

EFFECT OF LOCATION—ACQUIRING ADVERSE RIGHTS.

Mineral ground covered by a valid location is, during the life of the location, segregated and not open to location by another, and until such location is terminated by abandonment or forfeiture no right or claim to the property can be acquired by an adverse entry thereon with a view to the relocation of the same ground.

Mason *v.* Washington-Butte Min. Co., 214 Fed., 32, p. 35, May, 1914.

ADVERSE CLAIMS.

FAILURE TO FILE—EFFECT.

A failure to file an adverse claim within the time fixed by law operates as a waiver of all rights that were the proper subject of such a claim, and the issuance of a patent on a regular application after due notice is equivalent to a determination by the United States in an adversary proceeding, to which the owner of such adverse right is in contemplation of law a party, that the applicant's and patentee's rights were superior and those which might have been asserted by the holder of the adverse title were valueless; and in the absence of such adverse claim all matters which might have been tried under the adverse proceedings are treated as adjudicated in favor of the applicant, and all controversies touching the same are held as fully settled and disposed of as though judgment had been regularly rendered in an action on the adverse claim.

Round Mountain Min. Co., *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

FAILURE TO FILE—SURFACE CONFLICT.

Where there is any surface conflict whatever of mining claims and there is a failure to adverse on proper application and notice, after patent issues to the applicant, the question of priority of title is conclusively determined in favor of the patentee.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

FAILURE TO FILE—RIGHT TO PROTEST.

A failure to assert an adverse claim or right will not estop an advance claimant from protesting and bringing to the notice of the department any facts that tend to show noncompliance by the applicant with the requirements of the law.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

FAILURE TO ADVERSE—EFFECT ON RIGHTS.

A person interested in a mining claim whose rights are affected by an application for a patent for the same or for a conflicting claim who fails to file an adverse claim or fails to institute adverse proceedings after filing an adverse claim, or fails to protest in the Land Office against the issuance of a patent, can not, after the issuance of a patent to the applicant, be heard to contest a question of fact upon which the patent is based.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific , 71, p. 77, January, 1914.

COMMENCEMENT OF PROCEEDINGS—EFFECT OF JUDGMENT.

Section 2326 of the United States Revised Statutes requires an adverse claimant to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession, and declares that the failure to do so shall be a waiver of any adverse claim, and also requires that after judgment the whole proceedings and the judgment shall be certified to the Land Office, and a patent shall issue thereon for the claim or such portion thereof as the applicant shall appear from the judgment to be entitled to.

Mason *v.* Washington-Butte Min. Co., 214 Fed., 32, 35, May, 1914.

JURISDICTION OF COURT—QUESTIONS DETERMINED.

Section 2326 of the United States Revised Statutes gives to a court of competent jurisdiction the power to determine the right of possession between adverse claimants, and the determination of such question necessarily involves not only the question which of the adverse claimants was prior in time in making location, and whether the location was made in compliance with the law, but also whether the land occupied and covered by the location was subject to location in the manner in which it was attempted to be acquired.

Mason *v.* Washington-Butte Min. Co., 214 Fed., 32, p. 36, May, 1914.

FORCE AND EFFECT OF JUDGMENT OF COURT.

The judgment of a court of competent jurisdiction on an adverse claim under section 2326 of the United States Revised Statutes governs the action of the officers of the Land Department in determining which of the claimants shall have a patent and enables the Land Department without further investigation to issue a patent for the land.

Mason *v.* Washington-Butte Min. Co., 214 Fed., 32, p. 36, May, 1914.

WAIVER.

There is no difference in legal effect between waiving an adverse claim on the part of an adverse claimant by a transfer to the applicant of the interests of such adverse claimant by positive action, or the transfer of such interests by operation of law; and the latter effect results where the defendant to a proceedings brought by the adverse claimant concedes the overlapping as alleged by the plaintiff, the adverse claimant, but establishes by positive proof that the alleged overlapping ground, claimed by the adverse claimant, was in law the property of the defendent, the original applicant for patent, as in such case the plaintiff's apparent cause of action ceases to exist, and there being in fact no conflict of interest, and the plain-

tiff having no cause of action, a judgment dismissing the plaintiff's action operates as a determination in favor of the defendant and is in legal effect a waiver of the adverse claim.

Cuenin *v.* Chloride Min. & Prospecting Co. (Colorado), 141 Pacific, 453, p. 464, June, 1914.

Section 2326 of the United States Revised Statutes provides that where an adverse claim is filed during the period of publication all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy is determined by a court of competent jurisdiction, or the adverse claim is waived; but the settlement of the controversy or the waiver of the adverse claim does nor necessarily depend upon a verdict of a jury, as the claim may be waived by failure to file it within the statutory period, or by a voluntary dismissal of it in the Land Office, or by a transfer to the applicant of the interests of the adverse claimant, or by dismissal of the action instituted in support of such adverse claim.

Cuenin *v.* Chloride Min. & Prospecting Co. (Colorado), 141 Pacific, 463, p. 464, June, 1914.

PLACER CLAIMS.

SUFFICIENCY OF DISCOVERY—FRAUDULENT ENTRY.

In an action by the United States to have canceled a patent issued for a placer mining claim, the finding of the court will be sustained where no sufficient discovery of mineral was found to support the claim, and where the facts tend to show that the land was entered for the fraudulent purpose of securing control of valuable water power and incidentally to use the lands covered by the placer claim for raising fruits, and where it was shown that for a period of several years no mining was actually done on the claim, and that after the issuance of the patent all exploitation of the claim as placer ground was abandoned and the articles of incorporation of the mining company were amended so as to give the mining company other powers than that of mining, clearly indicating that the original purpose of location was not a mining claim but the development of water power, the distribution of water for irrigation, and the manufacture of electricity.

Multnomah Min. Mill., etc., Co. *v.* United States, 211 Fed., 100, p. 101, January, 1914.

LOCATION OF LODE WITHIN PLACER LIMITS.

The fact that a mineral lode location was made within the limits of a placer mining claim is not of itself proof that the ground so located contained a vein or lode within the meaning of section 2333 of the Revised Statutes of the United States; nor is it proof that the

alleged vein or lode was known to exist at the time of the placer location; and a lode or vein known to exist within the limits of a placer location so as to exclude it from the placer patent must be one which contains mineral to such extent and value as to justify expenditures for the purpose of extracting it.

Thomas *v.* South Butte Min. Co., 211 Fed., 105, p. 107, February, 1914.

CONVEYANCE OF VEINS OR LODES.

A patent to a placer claim conveys all the mineral therein including veins or lodes not known to exist at the time of the application for patent, and the introduction in evidence of such a patent establishes prima facie title to all the lands described therein including all ores and minerals within the boundaries thereof.

Thomas *v.* South Butte Min. Co., 211 Fed, 105, p. 107, February, 1914.

ADJUDICATION BY COURT—EFFECT ON LODE LOCATION.

A judgment in favor of a placer applicant in adverse proceedings instituted by the locator of a lode claim establishes as between the parties that the lode location was not a valid subsisting location such as was efficient to segregate the land covered thereby from the public domain and to exclude the same from the land covered by the placer claim; but the Government is not bound by such a judgment further than it has declared that it will accept such a judgment as conclusive of the right of possession as between contending claimants, and such a judgment goes no further than to end the contest between the parties and determine the right of possession, leaving the applicant to make the proof required by law to entitle him to a patent. But the judgment does not determine that there were not, within the ground covered by the placer claim, veins or lodes known to exist at the time of the application for the patent, nor does it settle the question of the validity of subsequent locations, the rights whereof depend on whether at the time of the application for placer patent there were known veins and lodes such as to be excluded from the patent.

Mason *v.* Washington-Butte Min. Co., 214 Fed., 32, p. 36, May, 1914.

COAL LOCATIONS.

PURCHASE—PRICE AND QUANTITY.

Coal lands within railroad limits must be sold for $20 an acre, and a coal company can not purchase directly or indirectly through others more than 320 acres unless it expended $5,000 in opening and improving a mine, and in that event the maximum is 640 acres.

Diamond Coal Co. *v.* United States, 233 U. S., 236, p. 241, April, 1914.

COAL CHARACTER—CHARACTER OF ADJACENT LANDS.

There is no fixed rule that lands become valuable for coal only through the discovery of coal within their boundaries; but on the contrary they may and often do become valuable for coal through adjacent discoveries and other surroundings and external conditions and in an application to purchase lands in coal regions any evidence logically relevant to the issue is admissible, due regard being had to the time to which it must relate.

Diamond Coal Co. *v.* United States, 233 U. S., 236, p. 249, April, 1914.

RESTRICTED PATENT.

Where upon a nonmineral entry it is shown by ex parte affidavits that the land is coal in character and the entryman declines to take a restricted patent under the act of March 3, 1909 (35 Stat., 844), the character of the land should not be adjudicated upon the ex parte affidavits, but a hearing should be ordered with respect to the character of the land.

Hindman, In re, 43 Land Dec., 191, p. 192, March, 1914.

PATENTS.

JURISDICTION OF LAND DEPARTMENT.

When a patent for a mining claim is issued the functions of the Land Department terminate, as this is the culmination of the proceeding in rem and the final judgment of the tribunal specially charged with passing the Government title, and with the title passes all authority or control of the executive department over the land and over the title which it conveys.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

The Land Department is a tribunal appointed by Congress to decide certain questions relating to the public lands, and its decisions upon matters of fact cognizable by it, in the absence of fraud or imposition, is conclusive, and the rule relates to its jurisdiction over mining claims.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

APPLICATION FOR PATENT—CANCELLATION OF ENTRY—EFFECT.

The decision of the Land Office in canceling an entry on an application for a patent for a mining claim is binding upon the courts and is conclusive that the entryman failed to meet all the statutory requirements, and adjudicates the fact that the entryman obtained

no title by his entry and the cancellation deprives him of the ability to claim any right under his receipt; and the mere fact that the amount of money sufficient to purchase the mining claim remains on deposit after the entry was canceled gives the applicant no equitable rights to the ground he desired to purchase with the money, nor would the fact that the applicant procured an official survey to be made of the ground alone create any title thereto in the applicant.

Shank *v.* Holmes (Arizona), 137 Pacific, 871, p. 875, January, 1914.

APPLICATION—PUBLICATION OF NOTICE.

On an application for a patent for a mining claim the applicant must give 60 days' notice in order to afford all persons having any adverse claims an opportunity to be heard, and the notice is threefold and must be given by publication in the nearest newspaper, designated by the register, by posting on the land itself, and in the land office, and proof of posting on the claim must be proved by the affidavit of two persons before an officer residing within the land district. In the absence of an adverse claim filed within the statutory period it shall be assumed that the applicant is entitled to patent upon the payment of the proper price and that no adverse claim exists.

El Paso Brick Co. *v.* McKnight, 233 U. S., 250, p. 256, April, 1914.

APPLICATION—PAYMENT OF PRICE—EFFECT AND RIGHTS.

Where the locator of a mining claim makes application for patent, posts and publishes the notices as required, makes proper proof thereof, and pays the purchase price of the land, he is entitled to a final receipt, and where such receipt is issued the entry by the local land officer is in the nature of judgment in rem and determines the validity of the original location and that everything necessary to keep it in force, including the annual assessment work, has been done and that no adverse claim exists and that the applicant is entitled to a patent; and in such case the applicant holds under an equitable title and is to be treated as though patent had been actually delivered.

El Paso Brick Co. *v.* McKnight, 233 U. S., 250, p. 257, April, 1914.

APPLICATION—INSUFFICIENT PROOF—CANCELLATION OF ENTRY.

An entry duly made on an application for patent for a mining claim where the applicant shows due compliance with all the statutory requirements, including the performance of assessment work and the proper publication and posting of notice, the payment of the price, and issue of the final receipt, can not be canceled by the Land Department and the claim made subject to relocation solely for the

reason that the affidavit in proof of posting the notice on the claim was made before an officer residing outside of the land district, as such irregularity did not render the patent proceedings void and the Land Department acquired jurisdiction upon giving notice of publication in the newspaper, by posting in the land office, and by posting on the land itself, and the irregularity in complying with the mere directory provision as to the proof, could be cured, and on being cured the patent could issue, and the cancellation of the entry being based on an error of law, did not operate to deprive the applicant of its property in the mining claim, nor did the fact that the applicant instituted new proceedings in order to secure patent, destroy the rights with which he had become invested by full compliance with the requirements of the statute.

El Paso Brick Co. *v.* McKnight, 233 U. S., 250, p. 238, April, 1914.

CANCELLATION OF ENTRY—RECEIVER'S RECEIPT.

The cancellation of an entry or of the receiver's receipt is, like its issuance, a mere incident in the proceedings prescribed for procuring title from the Government; and while the receiver's receipt when in force is evidence of compliance with preliminary patent conditions, yet its revocation or cancellation and nothing more, of itself, does not evidence either the forfeiture or relinquishment of the location made by the applicant, and it has no necessary connection either with the segregation of the land from the public domain or its restoration thereto.

Shank *v.* Holmes (Arizona), 137 Pacific, 871, p. 875, January, 1914.

SECOND APPLICATION AFTER CANCELLATION OF ENTRY.

The locator of a mining claim who makes a second application for patent after a cancellation of the entry on his former application thereby accepts and acquiesces in the decision of the General Land Office canceling his former entry, and from the date of such cancellation the applicant's right to the possession of the ground located depends upon the location and the rights arising therefrom under the laws pertaining thereto, without reference to the former application and entry.

Shank *v.* Holmes (Arizona), 137 Pacific, 871, p. 875, January, 1914.

EFFECT AND CONCLUSIVENESS.

A patent for a mining claim is the highest evidence of title and is conclusive against the Government and all persons claiming under junior patents or titles, until set aside and annulled, and it is not open to collateral attack.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

EFFECT—SECOND GRANT.

The Government having issued a patent for a mining claim can not by the authority of its own officers invalidate such patent by the issuing of a second one for the same property.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

EFFECT AND CONCLUSIVENESS.

A patent for a mining claim is conclusive evidence that all antecedent steps necessary to its issuance have been properly and legally taken and is likewise conclusive evidence of the citizenship and qualification of the patentee and that the matters which might have been the subject of an adverse claim have been conclusively adjudicated in favor of the patentee.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

EFFECT IN CASE OF SURFACE CONFLICT.

The issuance by the Government of a patent for a mining claim, on proper application and after due notice, conclusively determines, as against everyone whose surface lines conflict with the claim embraced in the application, the priority of the location described in the application over all other locations, and confers upon the patentees and their successors in interest the entire surface of the claim, as against every other one whose surface lines conflict with that of the claim described, together with the extralateral rights conferred by section 2322 of the Revised Statutes; but conflicts in respect to extralateral rights growing out of locations whose surfaces do not conflict, and which are therefore beyond the purview of the proceedings in the Land Department, are matters solely for the determination of the courts when subsequently arising.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

GROUPED CLAIMS IN SINGLE PATENT—CONFLICT AREAS.

On application for patent for a group of several mining claims the Land Department necessarily adjudicates and determines the priorities in case of surface conflict, and does not leave such question for subsequent determination by courts, as it was not the intention of Congress or the Land Department to leave such questions unsettled after patent, as evidenced by the rule requiring the field notes of the mineral surveyor to state the conflict in connection with the location from which the conflicting area is excluded; and a patent to a group of mining claims does not merely describe the exterior boundaries of the land which is embraced by the group, but describes each location

and each embraces a separate portion of the grant to the exclusion of every other claim, the same as if a separate patent issued for each particular location.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 77, January, 1914.

EFFECT ON CONFLICT GROUND—PRESUMPTION.

When a patent for a mining claim shows a conflict but fails to mention any exclusion of conflict area, although the total area described shows that an exclusion had in fact been made, it must be presumed that the exclusion was made in favor of the claim the discovery point of which lay within the conflict territory as this is necessary to its validity.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 74, January, 1914.

NONCONTIGUOUS CLAIMS.

The Land Office now issues patents for noncontiguous pieces of ground embraced in the same mining claim, though separated by a prior location, and the granting of such a patent does not necessarily determine the invalidity of such intervening location.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 77, January, 1914.

COLLATERAL ATTACK.

A patent to a mining claim may be collaterally impeached in any action and its operation as a conveyance defeated by showing that the department had no jusridiction to dispose of the land, either by proof that the law did not provide for selling such lands, or that they had been reserved from sale, or dedicated to special service or had been previously conveyed to them.

Round Mountain Min. Co. *v.* Round Mountain Sphinx Min. Co. (Nevada), 138 Pacific, 71, p. 73, January, 1914.

ACTION TO CANCEL—BURDEN OF PROOF.

The respect due to a patent for mining claim and the presumption that all the preceding steps required by law were duly observed, and the obvious necessity for stability in titles resting upon patents, require that in a suit to cancel any such patent the Government shall bear the burden of proof and shall sustain it by that class of evidence which commands respect and that amount of it which produces conviction.

Diamond Coal Co. *v.* United States, 233 U. S., 236, p. 239, April, 1914.

FRAUDULENT PROCUREMENT—CANCELLATION.

A patent to a mining claim secured by fraudulent practices, although not void or subject to collateral attack, is nevertheless voidable and may be annulled in a suit by the United States Government against the patentee or a purchaser with notice of the fraud.

Diamond Coal Co. *v.* United States, 233 U. S., 236, p. 239, April, 1914.

FRAUDULENT REPRESENTATION AS TO MINERAL CHARACTER OF LAND—CANCELLATION.

To justify the annulment of a homestead patent as wrongfully covering mineral land, it must be made to appear that at the time of the proceedings which resulted in the patent the land was known to be valuable for mineral, and this means that it must be made to appear that the known conditions at the time of such proceedings were plainly such as to engender the belief that the land contained deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end; and the inquiry must be directed to the situation at that time and if the proofs offered were not false then, they can not be condemned nor the good faith of the applicant impugned, by reason of any subsequent changes in the conditions.

Diamond Coal Co. *v.* United States, 233 U. S., 236, p. 239, April, 1914.

CANCELLATION OF PATENT—FRAUD—PROOF.

In an action to cancel a patent to coal lands on the ground of fraud it is proper to show that for many years the district in which the lands were situated had been known to contain coal and that an outcrop of coal on adjacent lands had been opened at different places disclosing a coal bed from 6 to 14 feet in thickness containing coal of superior quality and recognized commercial value, and that the dip of the coal vein was in the direction of the land in controversy, the farthest section of the land being about a mile and a half away from such outcrops of coal, and unless valuable for coal the lands were not worth more than $1.25 an acre, being arid, sagebrush land, some 7,000 feet above sea level, without irrigation, and of little value for agriculture; it is also proper to show as evidencing the good faith of the mining corporation seeking to obtain title, that the corporation had by the payment of large sums procured its officers and employees to make entries of different parts of the land, the entries subsequently being canceled and the same person immediately applied to enter the lands under soldiers' additional rights, and that the mining corporation had in its various dealings with its employees and dummies expended at least $10 per acre in its attempt to acquire lands and that

it had from its operations of lands in the immediate vicinity in the three years preceding obtained about 885,000 tons of coal.

Diamond Coal Co. *v.* United States, 233 U. S., 236, p. 241–248, April, 1914.

CANCELLATION OF ENTRY ERRONEOUSLY ALLOWED—REPAYMENT.

Section 1 of the act of March 26, 1908 (35 Stat., 48), provides that where purchase money and commissions paid under any public land law have been paid into the Treasury under any application for location or entry, such purchase money shall be repaid to the applicant in all cases where the application, entry, or proof has been rejected; and in the absence of fraud, under this act payment made may be refunded to an applicant, though repayment had been denied under the act of June 16, 1880 (21 Stat., 287), as the purpose of the later act was to return to disappointed purchasers of public lands their purchase money in all cases where they failed to acquire title and had been guilty of no fraud in connection with their applications to purchase.

Cumberland Min. & Smelting Co., In re, 43 Land Dec., 183, p. 184, March, 1914.

PATENT INCLUDES VEINS OR LODES.

A patent to a placer claim conveys all minerals within the claim including veins or lodes not known to exist at the time of the application for the patent, and such a patent establishes prima facia title to all the land therein described and all ores and minerals lying within the boundaries thereof.

Mason *v.* Washington-Butte Min. Co., 214 Fed., 32, p. 34, May, 1914.

STATUTES RELATING TO MINING OPERATIONS.

CONSTRUCTION AND VALIDITY.

PURPOSE OF STATUTE—PROTECTION OF MINERS.

Section 1016, of the Alabama Code of 1907 requiring the operator of every coal mine to maintain ample means of ventilation is designed for the purpose of protecting human life and should be so construed as to effectuate the legislative intent, and this section should not be so whittled down as to make it the imperative duty of the operator to supply only the means, but should be so construed as to require that the operator keep his mine harmless from noxious gases generated therein.

Walker *v.* Birmingham Coal & Iron Co. (Alabama), 63 Southern, 1012, p. 1013, December, 1913.

PURPOSE OF STATUTE—PROTECTION OF INFANTS.

In 1897 the legislature of Alabama passed an act entitled "An act to regulate the mining of coal in Alabama," and section 27 of the act provides that no woman shall be employed to work or labor in

or about the mines in the State, or any boy under the age of 12 years be so employed; and the Code of 1907 (sec. 1035) provides that no woman or boy under the age of 14 years shall be employed to work or labor in or about any mine in the State; and this change in the legislative expression manifests a legislative intent to subject to the inhibition of the statute every mine in the State and not to limit the prohibition to coal mines, as expressed in the title of the act of 1897, and as these statutes were intended to protect women and children of tender age from incurring the hazard and danger incident to the operation of mines by imperatively preventing their employment, it should be liberally construed so as to effectuate the humane intention of the legislature and the courts should not get in its way or whittle it down; and the word "any" used in the section of the Code must be given its usual and ordinary signification, and be held to mean all or every mine, and, thus construed, the prohibition applies to all mines of whatever kind or character in the State, and the later section raises the age of boys from 12 to 14 years, and therefore the employment by a mine operator of a boy under 14 years of age to work in a mine is a positive violation of this Code section and renders the employer liable for injury or death of such a boy.

Cole *v.* Sloss-Sheffield Steel & Iron Co. (Alabama), 65 Southern, 177, p. 178, May, 1914.

RETROACTIVE EFFECT.

Section 8536 of the revised codes of Montana did not create any right of action or destroy any defense available at the time of its enactment.

Maronen *v.* Anaconda Copper Co. (Montana), 136 Pacific, 968, p. 969, November, 1913.

APPLICATION TO ENTRIES.

Section 6871 of the revised statutes of Ohio imposes upon every miner under penalty the duty of securely propping the roof of the working places under his control, but this statute does not apply to entries as distinguished from the miners' working place, and notwithstanding the statute it is the duty of the mine owner or operator to furnish reasonably safe entries for ingress and egress and miners may presume that this duty has been performed.

Dasher *v.* Hocking Min. Co., 212 Fed., 628, p. 629, April, 1914.

APPLICATION TO CLASSES OF MINERS.

Sections 3983 and 3984 of the revised laws of 1910 of Oklahoma prescribe certain duties of mine operators toward employees, including among others the duty of daily inspection, and the requirements of these sections apply to the operators of lead and zinc as well as to

those of coal mines, as it can not be assumed that the intent of the legislature was to provide with such minute care for the protection of workers in coal mines and to leave similar workers in lead and zinc mines without any protection whatever.

Big Jack Min. Co. *v.* Parkinson (Oklahoma), 137 Pacific, 678, p. 680, December, 1913.

MINE OWNER NOT AN INSURER AGAINST MINE EXPLOSION.

Section 1016 of the Alabama Code of 1907 requires the operator of every coal mine to maintain ample means of ventilation to an extent that will dilute, carry off, and render harmless the noxious gases generated in the mine, and the section applies only to noxious gases generated in the mine and is intended to require the operator to fan it out, or to so ventilate the mine as to prevent all harmful results from such noxious gas; but the statute does not make the mine owner an insurer under any and all conditions against mine explosions or make him liable for certain unavoidable accidents, but it is confined to injuries resulting from harmful and noxious gases generated in the mine, but does not make him an insurer against gas not generated in the mine, which is released or enters therein from its natural state by moving the layers of coal which held it in the gas pockets; and in this respect the act of 1907 differs from the act of 1911 as the latter act evidently makes a distinction between noxious and explosive gases and includes both.

Walker *v.* Birmingham Coal & Iron Co. (Alabama), 63 Southern, 1012, p. 1013, December, 1913.

STATUS OF MINE CHANGED.

The statute of Pennsylvania (Laws, p. 78) applies to mines employing more than 10 men in any one period of 24 hours, and in an action by a miner for injuries caused by an alleged violation of a statutory regulation, where the evidence shows that at the time of the construction of an entry at some time previous to the accident, some 12 to 13 men in each 24 hours were employed in the mine, is sufficient to show that the mine was within the statutory class at the time of the accident, for the reason that after the mine is once brought within the act it is presumed to remain there until something affirmatively appears to the contrary.

Smith *v.* Stoner (Pennsylvania), 89 Atlantic, 795, p. 796, January, 1914.

ACTION FOR WRONGFUL DEATH.

The statute of Illinois (Laws 1899, p. 300) applies to employer and employee in mining coal and gives another remedy for damages applicable only to persons engaged in mining coal, in which the liability of the employer rests upon different grounds from that of

employers in other lines of employment, and if in such case the death of a miner is occasioned by any willful violation of the requirements of the act, the miner is exempted from the obligations to exercise care for his own safety, and the statutory action may be maintained although there was a want of such care.

McFadden *v.* St. Paul Coal Co. (Illinois), 105 Northeastern, 314, p. 315, June, 1914.

ADOPTION OF ACT BY EMPLOYER AND NOT BY EMPLOYEE.

In an action by a miner against a mine operator to recover damages for injuries alleged to have been sustained by him while working in a coal mine on the alleged ground of negligence for failure to furnish a safe working place, if the employer and the employee both accepted the provisions of the workmen's compensation act of Illinois (Laws, 1911, p. 314), the relation is one of contract, of which contract the law is a part; but if either elects not to come under the law and so notifies the proper authorities, then there is no such contract; and in such case if the mine operator has exercised the right of election and refused the benefits of the act, then the miner seeking redress for the injuries sustained is not bound by such contractual relation, and he is not limited in his recovery to the compensation provided by the act, but in such case the parties are remitted to their action at law and are governed in all respects by the rules and principles of law applicable to such actions except as to the matter of the defenses of assumed risks, fellow-servants and contributory negligence.

Crooks *v.* Tazewell Coal Co. (Illinois), 105 Northeastern, 132, p. 134, April, 1914.

CONSTITUTIONALITY OF OHIO COAL WEIGHING ACT.

The Ohio act of February 5,1914 (104 Ohio Laws, 181), entitled "An act to regulate the weighing of coal at the mines," does not restrict the right of contracting for the labor of miners by the day or week or month or year, or in any other manner, except as to quantity that the operator may deem proper; and if the miner or loader is to be paid by the ton or other weight, the right of contract is then curtailed to the extent that he shall be paid according to the total weight of the coal contained in the mine car, such contents to include however, no greater percentage of slate, sulphur, rock, dirt, or other impurities than is unavoidable, as determined by the Industrial Commission; and the act permits the employer and miner to stipulate as between themselves what percentage of coal commonly known as nut, pea, dust, and slate shall be allowed in the output of the mine, and the act can not be said to be unconstitutional, and it is not repugnant to any constitutional provision, State or Federal.

Rail & River Coal Co. *v.* Yable, 214 Fed., 273, p. 281, May, 1914.

A Federal court can not say that the act of February 5, 1914, of Ohio (104 Ohio Laws, 181), entitled "An act to regulate the weighing of coal at mines," does not provide for the health, safety, and general welfare of employees, in that it supplies an incentive for more effectually securing the removal of fine coal and coal dust to the surface and thereby minimizing or dissipating the danger arising from their continued presence in the mine; nor can the court say that the legislature acting within the scope of section 36 of the act may not say that the business of mining coal is so far affected with a public interest as to justify appropriate regulation of the manner of paying employees when they are to be paid according to the quantity produced, and when such regulatory statute will operate to allay discord and strive to conserve the coal supply.

Rail & River Coal Co. *v.* Yable, 214 Fed., 273, p. 281, May, 1914.

STATUTORY RIGHTS AND DUTIES.

STATUTORY RIGHTS GRANTED.

MINER ENTITLED TO PROTECTION OF STATUTE.

In an action for damages for the death of a miner caused by the alleged violation of a statutory provision it is necessary that the proof show that at the time of the injury resulting in the death of a miner he belonged to the class of persons for whose protection and benefit the statute was enacted; but under the statute of Illinois requiring a mine operator to station at the bottom of the shaft of his mine a competent man charged with the duty of attending to signals and enforcing the rules governing the carriage of men on cages and which required such shaft man to be at his post of duty half an hour before the hoisting of coal begins in the morning and to remain for half an hour after the hoisting ceases for the day, the deceased miner was entitled to the protection of the statute and to the presence of the shaft man if he reached the bottom of the shaft within the time the shaft man is required to be on duty, although he entered the shaft before he was required to do so, and if injured within that time he was a member of that class of persons for whose health and safety the mining act was passed and the fact that he descended the shaft before he was required to do so did not render him a trespasser or deprive him of the protection of the statute.

Brunnworth *v.* Kerens-Donnewald Coal Co. (Illinois), 103 Northeastern, 178, p. 184, December, 1913.

DUTIES IMPOSED ON OPERATOR.

DELEGATION OF DUTY—INDEPENDENT CONTRACTOR.

The owner and operator of a mine can not relieve himself of the duties imposed by the statute of Kentucky for the protection of human life by entering into a contract with a miner to mine coal at a specified price per ton.

Interstate Coal Co. *v.* Trivett (Kentucky), 160 Southwestern, 728, p. 731, November, 1913.
Interstate Coal Co. *v.* Trivett (Kentucky), 160 Southwestern, 731, p. 732, November, 1913.
Employers' Indemnity Co. *v.* Kelly Coal Co. (Kentucky), 160 Southwestern, 914, p. 1916, November, 1913.

SAFETY OF CAGES.

Section 8356 of the revised codes of Montana requires the operator of a shaft mine to keep the doors on the safety cage closed when carrying men, but the statute does not impose on the operator the duty of employing a person whose sole duty it would be to open and close the cage door, nor does it prohibit the operator from imposing such duty upon a person having other duties to perform that in no way interfere with the duty of opening and closing the cage door. While the act is penal in its character, yet it is a police regulation designed to protect the lives of miners and was not intended to lay an embargo upon the mining industry, and this section does not contemplate that it would be necessary that two or three men be employed to wait upon one man who is actively engaged in mining; but it does impose the duty and contemplates that in its discharge some one shall be employed to act for the operator in performing the manual labor of opening and closing the cage doors, and if the person designated to do this is capable, understands the method to be pursued in the employment, and is not incumbered with other duties which interfere with the discharge of opening and closing the door, then the mine operator has discharged its duty.

Maronen *v.* Anaconda Copper Co. (Montana), 136 Pacific, 968, p. 972, November, 1913.

DUTY TO FURNISH SAFE CAGE.

The statute of Missouri (R. S. 1909, sec. 8456) makes it the duty of a mine operator to provide safe means of hoisting and lowering persons in a cage, so as to keep safe so far as possible persons descending into and ascending out of the shaft of a mine, and this provision may be regarded as a statutory expression of an elementary common-law rule; and a mine operator who has provided a hoisting cage for transportation of its miners is under the duty to exercise reasonable care to maintain a cage in a reasonably safe condition for use; and while

a mine operator is not an insurer of the safety of a miner and the mere fact that a miner was injured while in the discharge of his duties of employment by a defect in the cage would not of itself raise an inference of negligence, but the question is whether or not the operator exercised proper care to discover the presence of defects in the cage that would enhance the natural risks of the service; and knowledge, actual or constructive, of a defect in appliances must be brought home to the employer before a liability exists; but the evidence of the injured miner to the effect that he was dumped through the floor of the cage and injured in the fall, together with the evidence of the cager that large lumps of coal had been falling from the ascending cage for a long period is sufficient to raise an inference of negligence and that the injury was in fact caused by the failure of the mine operator to make proper inspection of the cage.

Ronchetto *v.* Northern Central Coal Co. (Missouri Appeals), 166 Southwestern, 876, p. 879, May, 1914.

NO EXCUSE FOR NONCOMPLIANCE.

The duty of equipping a safety cage with steel doors and keeping them closed when carrying miners, as provided by section 8536 of the revised codes of Montana, is an absolute one, in the sense that the employer will not be heard to say that by the exercise of ordinary care he can not comply with the requirement.

Maronen *v.* Anaconda Copper Co. (Montana), 136 Pacific, 968, p. 969, November, 1913.

DUTY TO FURNISH PROPS—APPLICATION OF STATUTORY RULE.

Section 2739*b*–7 of the Kentucky statutes requires the owner or operator of a mine to furnish to the miners a sufficient number of caps and props, the latter to be properly prepared for use by the miner in securing the roof in his room in the mine, and this rule does not apply only where it is necessary to use them to support the permanent roof of the mine but applies equally to a case of mere draw slate, though not usually practicable or customary to prop; but as the chief purpose of the statute is the protection of the miner, and it may happen that draw slate may be propped while the miner is engaged in cutting down the coal, and under such circumstances, where a miner's request for props is not complied with and the miner is injured, the question whether or not the failure to furnish the props was the proximate cause of his injury, and where it appears that it was neither customary nor practicable to prop the draw slate, the question of the proximate cause of the miner's injury become a question of fact for the jury.

Interstate Coal Co. *v.* Trivett (Kentucky), 160 Southwestern, 728, p. 730, November, 1913.

METHOD OF OPERATING MINE.

The statute of Wisconsin (Laws 1911, chap. 485) provides that no employer shall fail to use methods reasonably adequate to render the place of employment safe, and a mine operator can not escape liability for an injury to a miner caused by the fall of rock, on the ground that he adopted the usual and customary methods of doing the work, as this does not answer the requirement of the statute.

Dolphin *v.* Peacock Min. Co. (Wisconsin), 144 Northwestern, 1112, p. 1115, January, 1913.

CARE REQUIRED IN INSPECTION.

Under the liability act of Alabama (Code, sec. 3910) the measure of care and diligence for the performance of the duty of inspection for defects in the ways, works, machinery, or plant of a mine operator is the exercise and employment of the care, prudence, and diligence a reasonably prudent man would exercise and employ under similar circumstances to ascertain whether there are defects in the condition of the ways, works, machinery, or plant, bearing in mind that the operator is not accountable as an insurer of the premises, and that the character and frequency of the inspection must depend upon the subject of the duty, whether it is machinery peculiarly subject to wear and a self-created deficiency in its vital parts or some other agency of the operator's business in which normal use does not ordinarily create defects in its condition.

Espey *v.* Cahaba Coal Co. (Alabama), 64 Southern, 753, p. 755, February, 1914.

INSPECTION—FAILURE TO PERFORM—LIABILITY.

Section 7381 of the Remington and Ballinger Code of the State of Washington provides that in all mines generating fire damp the owner or operator shall cause every working place to be examined every morning with a safety lamp, by a competent person, and a record of such examination entered in a book kept for that purpose, and that such book must always be produced for examination at the request of the inspector, is less drastic, and is evidently intended to take the place of section 9 of the act of 1891, requiring all such mines "to be kept free from gas of every kind."

Pacific Coast Coal Co. *v.* Brown, 211 Fed., 869, p. 872, February, 1914.

DUTY TO PROVIDE SAFE WORKING PLACE.

The fact that all the miners in a mine were working under the direction of the mine manager in clearing out a mine for operation after having been shut down for several months, and all were under general directions to make dangerous places safe, yet this does not relieve the owner or operator from the duty of having the mine examined, the mine examiner from the duty of marking dangerous

places, or the mine operator or owner from the duty of having danger signals properly placed, as required by the statute of Illinois; and if such general instructions to make all dangerous places safe were sufficient to cause the miners to assume the hazards of the employment, then there would be no necessity for or any use of examination, as the miners could ascertain the dangerous places in their own way and make them safe at their own risk; but the conditions under which a miner may work at a dangerous place at his own risk are those where the owner has complied with the statute by having the mine examined, the dangerous places marked by the mine examiner, and the miner is sent to that particular place by the direction of the mine manager to make safe the particular dangerous conditions there existing.

Piazzi *v.* Kerens-Donnewald Coal Co. (Illinois), 104 Northeastern, 200, p. 202, February, 1914.

SAFE APPLIANCES—USE OF INDICATOR.

The statute of Idaho requires a hoist used in handling men in mines to be equipped with an indicator placed in clear view of the hoist engineer and so adjusted as to show at all times the exact location of the bucket, cage, or skip, and in an action by a miner for injuries received while riding on a skip and by reason of its coming in contact with the bulkhead it is proper to show that the hoist was not equipped with the indicator as required by the statute, and to show that the method used for signaling to the man at the hoist was defective and that because of such defect the injury occurred.

Federal Min. & Smelting Co. *v.* Hodge, 213 Fed., 605, p. 608, May, 1914.

DUTY TO VENTILATE MINE.

An operator of a coal mine is liable, for failure to properly ventilate his mine as required by the Kentucky statute, to a miner who was overcome by the presence of black damp, where it appears that the injury consisted of being overcome by the black damp, and if breathed for any length of time small quantities of the gas cause headache and nausea followed by pains and weakness in the back and limbs, while larger quantities produce death, and a recovery may be had under such circumstances, though there was no direct evidence tending to show an actual violation of the statute.

Mt. Morgan Coal Co. *v.* Shumate (Kentucky), 163 Southwestern, 1099, March, 1914.

DUTIES IMPOSED ON MINER.

KEEPING WORKING PLACE SAFE.

Section 6871 of the Revised Statutes of Ohio requires every miner under penalty to securely prop the roof of any working place under his control to a distance of 15 feet back from the face of his working,

and the statute applies primarily to a miner actually engaged in mining coal and constantly changing his working place, and it has no application to a miner originally engaged as a general repair man and electrical wire hanger, but was temporarily employed by the foreman and requested and directed to assist a timberman in taking out bottom coal in an entry and proceeded to perform the work according to the directions of the foreman, and while so engaged was injured by a fall of slate from the roof of such entry.

Dasher *v.* Hocking Min. Co., 212 Fed., 628, p. 630, April, 1914.

DUTIES OF MINER TO MAKE WORKING PLACE SAFE.

The statute of Montana (Coal Mining Code, 1911, sec. 83) imposes on the miner the duty of inspecting and keeping safe his working place, and where a miner was employed running an entry or tunnel some 12 feet wide through a blanket vein of coal varying in height according to the thickness of the vein, and at certain intervals the work was measured up and paid for by the company, the miner's working place under such circumstances, and which under the statute he is required to keep safe, is his working place while loading at the point where the coal was actually put into the cars, and while drilling and blasting his working place is at the face of the entry; but the portion of the entry so completed and measured up and paid for by the operator is not a working place within the meaning of this statute, though the miner was required to make use of that portion of the tunnel to get empty cars, powder, and other appliances; and it was the duty of the mine operator to inspect and keep safe all that part of the tunnel so completed and paid for, and for any negligence in this respect the operator is liable for an injury to a miner occurring in that part of the tunnel so completed and accepted by the operator.

McInness *v.* Republic Coal Co. (Montana), 140 Pacific, 235, p. 236, April, 1914.

MINER IN CHARGE—PROPPING ROOF.

The statute of Ohio requires every miner under a penalty to securely prop the roof of his working place, and no recovery can be had by a miner for an injury resulting from his failure to prop the roof as required; and if two miners are equally in control of the working place, the fact that one is distinguished as timberman does not relieve the other of liability.

Dasher *v.* Hocking Min. Co., 212 Fed., 628, p. 629, April, 1914.

MINER IN CONTROL OF ROOM—MEANING.

Under section 6871 of the Revised Statutes of Ohio, imposing upon a miner under penalty the duty of securely propping the roof of any working place "under his control," the question of actual control is primarily one of fact, and the statute is not held to mean that every

person employed in a mine for any purpose is in control of the room in which he is employed; but the statute is more properly limited to those persons actually engaged as miners in taking out coal and thereby removing the natural props of the roof, and does not apply to persons specially employed to perform duties having no connection with the weakening or removal of these natural supports.

Dasher *v.* Hocking Min. Co., 212 Fed., 628, p. 634, April, 1914.

OPERATOR'S FAILURE TO COMPLY WITH STATUTORY REGULATIONS.

FAILURE TO COMPLY GENERALLY.

PLEADING NEGLIGENCE AND LIABILITY.

In an action by a miner for damages for injuries caused by the alleged violation of a statute on the part of the operator, the complaint will be sufficient if it advises the defendant of the negligence charged so as to inform him of what he is expected to meet at the trial, and the injured miner is not required to plead in detail such facts as are peculiarly within the knowledge of the operator; and a complaint is sufficient if it alleges that in the vicinity where the plaintiff was directed by the mine boss to work there was loose rock and slate which it was necessary for him to go under while performing the particular work required of him, and that the defendant had full knowledge of all such defects before sending the plaintiff there to work, and the defective condition of the roof of the mine could have been easily ascertained by an inspection, together with an averment that the plaintiff did not know of the loose and dangerous condition of the rock and slate, and that the mine operator gave him no warning of its dangerous condition.

Domestic Block Coal Co. *v.* Holden (Indiana Appeals), 103 Northeastern, 73, p. 75, November, 1913.

PROXIMATE CAUSE OF INJURY—QUESTION OF FACT.

The statute of Illinois (Mines and Miners Act, 1899, sec. 28) requires operators of coal mines to keep at the top and bottom of the shaft a competent man charged with the duty of attending to the signals and to enforce the rules governing the carriage of men on cages, and also requires at the landing a light sufficient to show the landing and surrounding objects distinctly, and a light at the bottom of the shaft so that miners may clearly discern the cage and objects in the vicinity; and in case of a violation of this statute in failing to maintain a light at the bottom of the shaft and a miner was killed in

attempting to board a cage after it had started, the question of whether or not the absence of the light required by the statute was the proximate cause of the death of the miner is a question of fact to be determined by a jury under all the circumstances of the case.

Brunnworth *v.* Kerens-Donnewald Coal Co. (Illinois), 103 Northeastern, 178, p. 180, December, 1913.

FAILURE TO COMPLY—LIABILITY—DEFENSES EXCLUDED.

In an action by a miner against a mine operator for damages for injuries received while working in a mine, proof is admissable to show that the operator had rejected the provisions of the workmen's compensation act of Illinois, and hence can not set up the defenses of assumed risks, fellow-servants, or contributory negligence, except that contributory negligence may be shown for the purpose of lessening the damages; and the operator can not prove by expert witnesses that the mine was completely and properly equipped, constructed, and operated, where other employees of the operator had testified in its behalf as to the actual condition of the entry where the accident occurred, at the time of the accident.

Crooks *v.* Tazewell Coal Co. (Illinois), 105 Northeastern, 132, p. 134, April, 1914.

FAILURE TO VENTILATE MINE.

Section 1016 of the Alabama Code of 1907 requires the operator of every coal mine to provide and maintain ample means of ventilation for the circulation of air through the mine entries and to working places to an extent that will dilute, carry off, and render harmless the noxious gases generated in the mine, and requires mine operators to keep their mines ventilated to the extent of rendering them harmless from noxious gases; and the legislature meant more than mere requiring the nondelegable duty of furnishing the means for ventilation, but made it the imperative duty of the operator to so ventilate the mine as to render it harmless from noxious gases generated therein.

Walker *v.* Birmingham Coal & Iron Co. (Alabama), 63 Southern, 1012, p. 1013, December, 1913

FAILURE TO INSPECT.

A miner injured by rock falling from the roof of an entry is entitled to recover from the mine operator for failure to discharge statutory duty in making inspection and propping the roof, where the miner called the attention of the mining boss to the defective condition of the roof and asked to be permitted to make the roof safe, but permission was refused, the mine boss telling him that he would have a company man fix the roof before the following morning, and where on returning in the morning the miner found rock on the

traveling way of the entry and, supposing that the company man had taken the rock down in accordance with the promise, proceeded to clear away the rock on the floor and while so doing was injured from a fall of rock in the roof, which had not been repaired or made safe according to the promise.

Macketta *v.* Missouri, Kansas, etc., R. Co. (Kansas), 140 Pacific, 877, May, 1914.

FAILURE TO INSPECT MACHINERY.

The liability act of Alabama (Code, sec. 3910), in the particular that it predicates negligence of the failure of the mine operator to discover defects in the condition of the ways, works, machinery, or plant, contemplates inspection to the end indicated and the duty to inspect exists just as the duty to remedy defects in conditions exists but the act has not extinguished the duty of inspection, but such duty may be delegated to a competent miner in whose selection the operator has employed the requisite care.

Espey *v.* Cahaba Coal Co. (Alabama), 64 Southern, 753, p. 755, February, 1914.

INJURY FROM DEFECTIVE APPLIANCES—LIABILITY.

Under the statute of Alabama (Code, sec. 3910) if the defect counted on is found to have existed and to have caused the death of the miner as alleged, still the operator can not be held liable unless the defect complained of arose from or had not been discovered or remedied owing to the negligence of the operator, or of some person in his service and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition, as it is essential to a recovery under the first subdivision under the liability act that the proof must show negligence within the condition of the act.

Espey *v.* Cahaba Coal Co. (Alabama), 64 Southern, 753, p. 755, February, 1914.

REFUSAL TO PERMIT SURVEY.

The Revised Statutes of Indiana (secs. 8599–8600, Burns, 1908) provide that the owner or tenant of any land on which a coal mine is opened and operated,and the person or persons owning or operating such mine, shall permit any person interested in or having title to any land coterminous with the land on which such mine is located to have ingress and egress with surveyors and assistants into such mine for the purpose of measuring and surveying the mine in order to ascertain whether or not any coal has been mined and taken from his land, and any owner or occupant who shall refuse such permission shall forfeit the sum of $100, and the statute being penal must be strictly construed; and to enable a person to recover the stated penalty he must show a substantial violation of the statute and must show not only that he owns the land coterminous with the land on

which the mine is situated but that the coal mine sought to be surveyed was open and being operated, and that some request had been made by him of the owner or operator for a permit to enter the mine for the purpose of making such survey and measurements, and that such permission had been refused.

Rowell *v.* Snoddy (Indiana Appeals), 104 Northeastern, 90, February, 1914.

NEGLIGENT FAILURE TO COMPLY.

FAILURE TO SUPPLY PROPS.

The statute of Kansas requires a mine operator to supply prop timber of suitable length and size and easy of access, and a mine operator can not avoid liability for injury to a miner because of its failure to supply such prop timber by delegating the duty to some agency, such as the car drivers; and the statute neither requires nor contemplates that the miner shall request or demand of the operator that the prop timber be supplied before the obligation of the statute arises; and proof that a car driver failed to communicate the request to the mine boss will not relieve the operator from liability.

Le Roy *v.* Missouri, Kansas, etc., R. Co. (Kansas), 138 Pacific, 646, February, 1914.
Ricci *v.* Cherokee & Pittsburg Coal & Min. Co. (Kansas), 140 Pacific, 844, p. 866, May, 1914.

DUTY OF OPERATOR.

The statute of Kentucky (sec. 2739*b*-7) imposes upon the operator of a coal mine the peremptory and nondelegable duty of furnishing to the miner such props and caps as are necessary to make safe the roof of the miner's working place when request therefor is made; and a miner who is injured by a failure of the mine operator to perform this duty may recover damages for the injuries sustained unless the danger of working in the place where he was injured was so imminent and obvious that an ordinarily prudent person would not have worked therein.

Continental Coal Corporation *v.* York (Kentucky), 167 Southwestern, 131, p. 132, June, 1914.

WILLFUL FAILURE TO COMPLY.

WILLFUL OR NEGLIGENT VIOLATION.

In an action by a miner for injuries caused by the failure of the mine operator to supply the miner with suitable prop timber the miner is not required to prove willfulness on the part of the operator in failing to comply with the provisions of the statute, as the statute gives a cause of action for injury occasioned by any violation of the act, and where the operator established its own method and means for complying with the statutory obligation and makes the car driver

its agent to receive and forward requests for props and to deliver the props to the miners, and having chosen such method its responsibility for a failure resulting from any deficiency in the means by which its statutory obligation was to be complied with, it will not be permitted to avoid liability for failure to comply with the statute because the agency employed by it had proved untrustworthy; and a willful failure to comply with such a statute does not involve bad purposes or determined obstinacy in order to create liability, but if the operator intentionally suffers mining operations to proceed without taking the prescribed precautionary measures he is guilty of a willful failure within the meaning of the law.

Le Roy *v.* Missouri, Kansas, etc., R. Co. (Kansas), 138 Pacific, 646, February, 1914.
Ricci *v.* Cherokee & Pittsburg Coal & Min. Co., (Kansas), 140 Pacific, 844, p. 866, May, 1914.

VIOLATIONS OF STATUTORY REGULATIONS.

VIOLATIONS BY OPERATOR.
VIOLATIONS BY MINER.

VIOLATIONS BY OPERATOR.

CAUSAL CONNECTION WITH INJURY.

Section 8546 of the revised code of Montana prohibits the storing of more than 3,000 pounds of explosives in a mine, and a violation of this section is negligence per se, but such negligence can not become the basis of recovery without proof of a causal connection between it and the injury complained of; but when a quantity of dynamite by exploding produces injury the causal connection is established, and if the storing of the quantity is negligence then a causal connection is made by the explosion between the negligence alleged in storing the excessive amount and the injury complained of. However, a plaintiff in such case is not required to show a specific causal connection between the injury and the existence or explosion of that portion of the dynamite exceeding 3,000 pounds, as this would defeat the purpose of the statute, considered as the foundation of civil liability; nor is the per se negligence answered by saying that a quantity of dynamite less than 3,000 pounds might have exploded under the same circumstances or that the explosion of a quantity less than 3,000 pounds under the same circumstances might have produced the injury.

Westlake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 40, October, 1913.

The storing of explosives in a mine in excess of the amount permitted by section 8546 of the revised codes of Montana is negligence per se, but to justify the recovery by a miner injured by an explosion there must be a causal relation between the storing and the injuries complained of, and if the storing and the consequent explosion did

not cut off the escape of the miner working in the mine, and if he was so located that his means of egress were not affected by the explosion, then such per se negligence is not available to him as a basis of recovery.

West Lake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 41, October, 1913.

CRIMINAL AND CIVIL LIABILITY.

Section 8536 of the statute of Montana requires a mine operator to keep the doors on the safety cage in a shaft mine closed when carrying men into or out of the mine and prescribes a criminal liability for its violation; but the fact of such criminal liability does not render a mine operator immune from civil liability for an injury resulting from a violation of the section.

Maronen *v.* Anaconda Copper Co. (Montana), 136 Pacific, 968, p. 969, November, 1913.

FAILURE TO MAINTAIN A SAFE ENTRY.

The statute of Pennsylvania (Laws, p. 78) provides that all entries shall have a clear level width not less than $2\frac{1}{2}$ feet between the side of the car and the rib to allow the driver to pass his trip safely at points where he is required to sprag his cars, and a mine operator is liable for an injury to a car driver where he fails to provide space sufficient to permit the car driver to keep clear of the cars and where such failure is the proximate cause of the injury.

Smith *v.* Stoner (Pennsylvania), 89 Atlantic, 795, p. 796, January, 1914.

FIRING SHOTS IN VIOLATION OF STATUTE—DEATH FROM DUST EXPLOSION.

A mine operator violating the provisions of section 8477 of the Revised Statutes of Missouri, 1909, in that shots used in blasting coal were fired before the miners had time to leave the mine, thereby producing a dust explosion, resulting in the death of a miner, can not escape liability either on the ground that it had been a practice to fire such shots before the miners were out, though known to be dangerous and to be in violation of law, or on the ground that the operator operated the mine under an arrangement with an independent contractor by which such independent contractor was to mine coal off the vein or solid as it lay in the earth and load the same at the point thus mined into the operator's cars, and that the operator would then transport it by means of his equipment and the regular operation of the entire mine, to the bottom of the shaft and thence to the surface, and that such independent contractor was paid by the car thus loaded by him at the point of blasting, as the right to recover does not depend upon the tracing of a direct relation from the deceased to the mine operator, but upon the duty owed him by both the contractor and the operator; and as the operating company never parted with its proprietorship and occupancy of the mine or

with the control of its operation, he could not therefore relieve himself of the statutory duty by means of any principle applicable to the law relating to independent contractors.

Gray *v.* Grand River Coal & Coke Co. (Missouri), 162 Southwestern, 277, p. 278, January, 1914.

FAILURE TO EMPLOY FOREMAN.

The statute of West Virginia requiring a mine operator to employ a mine foreman and place him in charge of the underground workings of a mine does not absolve the operator from his common-law duty to exercise reasonable care to provide reasonably safe machinery, tools, and appliances for use in the mine and make the mine a reasonably safe place for work, except in so far as the duty is devolved upon the mine foreman, nor does it absolve the operator from liability from injury resulting to a miner in the mine from his failure to make such provision, or his provision of defective or unsafe appliances, or his failure of duty as to the safety of the mine as a place of work in all instances in which such duty is not cast upon the mine foreman.

Humphreys *v.* Raleigh Coal & Coke Co. (West Virginia), 80 Southeastern, 803, p. 805, February, 1914.

EMPLOYMENT OF BOY OF PROHIBITED AGE.

In an action for the death of a boy employed in a mine the complaint is sufficient where it alleges that the intestate was a boy under 14 years of age and while in the employment of the defendant at its ore mines in the State of Alabama, and while in the discharge of his duties in the course and line of his employment as such and after he was so employed, he was struck by one of defendant's tramcars and thereby so injured that he died from the effects thereof, and that such injuries and death were proximately caused by the employment of the deceased boy in said mine in violation of the statute of Alabama which prohibits the employment of boys under 14 years of age to work in or about mines in the State.

Cole *v.* Sloss-Sheffield Steel & Iron Co. (Alabama), 65 Southern, 177, May, 1914.

PLEADING CONTRIBUTORY NEGLIGENCE.

In an action for damages for the death of a boy under 14 years of age employed in a mine in violation of the statute of Alabama, an answer by the defendant to the effect that the boy was guilty of negligence which proximately contributed to his death, which negligence consisted in the fact that at the time the intestate suffered the injuries causing his death there was in force and effect a rule prohibiting employees performing the duties that such intestate was employed to perform from riding on cars operated on the track on which the car or tram that struck the intestate was being run when

it struck him, and of which rule the intestate well knew, and that immediately before the intestate received the alleged injury causing his death he was riding on one of the cars in violation of such rule, is insufficient because it did not aver that the boy had sufficient capacity to appreciate the danger or risk to be incurred in not observing the rule.

Cole *v.* Sloss-Sheffield Steel & Iron Co. (Alabama), 65 Southern, 177, p. 179, May, 1914.

MINING COAL NEAR DIVISION LINE—SEPARATE PENALTIES RECOVERABLE.

The statute of West Virginia (sec. 3920, Code 1913) prohibiting the owner or tenant of any land containing coal from removing the coal within 5 feet of the division line without the consent of the other interested person, and giving to the injured person the right to sue and recover a penalty of $500, makes each encroachment a separate wrong and gives an injured party a right of action for as many different penalties, whether such encroachments are made at the same time or at different times.

Darby *v.* Davis Coal & Coke Co. (West Virginia), 81 Southeastern, 1124, p. 1125, May, 1914.

MINING NEAR DIVISION LINE—LIMITATION OF ACTION.

An action for the recovery of the statutory penalty of $500 which accrues in favor of the owner of land containing coal as against an adjoining owner who mines the coal within 5 feet of the division line, the cause of action being for the recovery of a penalty, is barred by the statute of limitations after one year.

Gawthrop *v.* Fairmont Coal Co. (West Virginia), 81 Southeastern, 560, April, 1914.

VIOLATIONS BY MINER.

VIOLATION OF DUTY—NO RECOVERY.

The statute of Montana requires a mine operator to keep the doors on the safety cage in a shaft mine closed while carrying miners, and if a mine operator employs a person whose sole duty it is to open and close the cage doors at particular stations and he neglects to perform such duties while he himself is being lowered or hoisted, and by reason of such failure to perform his duty and keep the door closed he is injured or killed, neither he in the one instance nor his heirs or personal representatives in the other can recover, as in such case he would be responsible for his own injury or death.

Maronen *v.* Anaconda Copper Co. (Montana), 136 Pacific, 968, p. 972, November, 1913.

KNOWLEDGE OF VIOLATION BY OTHERS—EFFECT ON RIGHTS.

In an action against a mine operator for the death of a miner caused by the breaking of the cable in hauling the miners out of the mine, the action can not be defeated by showing that the deceased

miner violated the statute of Pennsylvania which prohibits more than 10 persons from riding out of the mine on a truck or in a cage at one time, where it appeared that he was the first person on the truck and there was nothing to show that he knew how many persons were on the truck before it started and whether the number was in excess of the number permitted by the statute and where there was nothing to show that if he had known of the excessive number opportunity was given him to alight in safety; and more especially the action can not be defeated on this ground where the evidence showed that the breaking of the cable was not caused by the overloading of the car.

Dodd *v.* Summit Branch Min. Co. (Pennsylvania), 88 Atlantic, 927, p. 929, June, 1913.

MINER'S VIOLATION—PLEADING.

In an action by a miner for an injury caused while riding on the bail of a skip in violation of the statute of Idaho which forbids any miner to ride on a bail of the skip, the defense of the violation of the statute must be interposed in a trial court and can not be suggested as a defense of the action for the first time on appeal.

Federal Min. & Smelting Co. *v.* Hodge, 213 Fed., 605, p. 608, May, 1914.

CONTRIBUTORY NEGLIGENCE OF MINER.

RELIANCE ON PERFORMANCE OF DUTY.

A miner working in a mine has the right to rely upon the performance of a statutory duty on the part of the mine examiner, and where the mine examiner is required by statute to mark dangerous places in the roof the absence of a mark indicates that in the opinion of the mine examiner the place is not dangerous, and under such circumstances a miner can not be held guilty of contributory negligence in working under a clod in the roof, if not so marked, though it may have a dangerous appearnce.

Piazzi *v.* Kerens-Donnewald Coal Co. (Illinois), 104 Northeastern, 200, p. 202, February, 1914.

EXERCISE OF DUE CARE—PROOF EXCUSED.

In an action for the death of a miner against a coal mine operator under the statute of Colorado making an employer liable for injuries or death of an employee resulting from the negligence of another employee where the deceased employee was in the exercise of due care at the time of his death, the plaintiff is not required to prove affirmatively that the deceased was at the time of his death in the exercise of due care, but the burden of proving contributory negligence is upon the employer, as it was not within the purpose of the fellow-servant act to change the rule as to the burden of proving contributory negligence, but the requirement as to the injured or

deceased employee "being in the exercise of due care" was obviously inserted from motives of caution, that it might not be supposed that the declared liability of an employer was intended to be absolute and without regard to any negligence of the injured or deceased employee.

National Fuel Co. *v.* Maccia (Colorado), 139 Pacific, 22, p. 24, March, 1914.

DEFENSE OF CONTRIBUTORY NEGLIGENCE ABROGATED.

The general statutes of Kansas (sec. 4987) require a mine operator to inspect the roof of the mine where its employees are working, and in an action by an injured miner against a mine operator for failure to inspect the roof of a mine as required by the statute, the statute itself in effect abrogates the defense of contributory negligence on the part of the miner.

Baisdrenghien *v.* Missouri, etc., R. Co. (Kansas), 139 Pacific, 428, March, 1914.

The statute of Nevada (Revised Laws, sec. 5651) provides that a miner's contributory negligence shall not bar recovery, and the effect of the statute is to supersede the common-law rule of contributory negligence and to substitute the rule of relative or comparative negligence, and slight contributory negligence on the part of an injured miner will not prevent a recovery for an injury where the negligence of the operator was gross in comparison to that of the miner.

Peterson *v.* Pittsburg Silver Peak Gold Min. Co. (Nevada), 140 Pacific, 519, p. 592, April, 1914.

In an action for damages for the death of a miner caused by the alleged violation of the statute of Illinois, which requires a mine operator to keep a man stationed at the bottom of the shaft to enforce the rules governing the carriage of men on cages and to keep the shaft lighted, where it appeared that the miner lost his life while attempting to board the cage after it started, at the bottom of the shaft, and where at the time no shaft man was present and no light was maintained as required by the statute, the alleged contributory negligence of the deceased miner in attempting to board the cage can not be interposed as a defense.

Brunnworth *v.* Kerens-Donnewald Coal Co. (Illinois), 103 Northeastern, 178, p. 181, December, 1913.

QUESTION OF FACT.

In an action by a miner for injuries caused by the alleged failure of the mine operator to furnish props as required by the statute of Kansas, the contributory negligence of the miner in working in his room in the absence of such props is not available to the mine operator as a defense, and if it were so available it is a question of fact to be determined by the jury trying the case.

Le Roy *v.* Missouri, Kansas, etc., R. Co. (Kansas), 138 Pacific, 646, February, 1914.
Macketta *v.* Missouri, Kansas, etc., R. Co. (Kansas), 140 Pacific, 877, May, 1914.

DUTY TO FURNISH PROPS—CONTRIBUTORY NEGLIGENCE OF MINER.

Where a mine operator furnished the necessary props as required by the Kentucky statute (sec. 2739b), a miner injured by a fall of slate from the roof is guilty of contributory negligence where, with knowledge of the dangerous condition of the roof, he continues working in the dangerous place without setting the props, and the fact that it was more convenient to mine and handle the coal without the props will not excuse his negligence.

Branson *v.* Clover Fork Coal Co. (Kentucky), 164 Southwestern, 304, p. 305, March, 1914.

ASSUMPTION OF RISK—EFFECT.

RISKS ASSUMED BY MINER.

MAKING DANGEROUS PLACE SAFE.

By the mining act of Illinois it is the duty of timbermen in a mine to work in unsafe places and make them safe whenever and wherever directed by the mine manager, and a mine manager is only doing his statutory duty when he sends a timberman to clean up a fall and make a place safe, and in such case the operator can not be charged with a violation of a statutory duty in case of injury to the timberman causing his death; and while it is the duty of a mine operator to warn an inexperienced miner of unknown dangers, the rule does not apply where the danger was involved in the very nature of the employment and the nature of the work notified the timberman of the danger, and accordingly he was not exposed to any unusual, unnecessary, or unknown danger.

Kalinski *v.* Williamson County Coal Co. (Illinois), 104 Northeastern, 1097, p. 1099, April, 1914.

KNOWLEDGE OF DANGER.

An educated miner of 21 years' experience, who had served 8 years as a pit boss and had worked in a particular mine for 5 months, and who had admitted that he was more able to cope with mine dangers than the average man, and that he knew the dangers of the situation, and that within half an hour before he received an injury from falling rock that some of the rock falling from the roof of his room knocked some of the props out, and that such props were so short that he would not hear the rock crack at the top should the roof start to fall, and who admitted that he had the necessary tools at hand to utilize the posts in the room immediately available to him, and yet he failed to undertake to protect himself by properly setting any of the props, but preferred to wait for longer timbers to be sent to him, and who with his knowledge and the warning from the falling rock continued in his place of danger, assumes the risk and can not recover for an injury though the mine foreman and the mine operator may have been negligent in failing to furnish suitable props.

Peters *v.* Vesta Coal Co. (Pennsylvania), 90 Atlantic, 65, p. 66, January, 1914.

FAILURE TO PROP ROOF

Section 6871 of the Revised Statutes of Ohio imposes upon every miner the duty of securely propping the roof of his working place and renders him liable to criminal prosecution for failing to do so, and under the statute this duty can not be shifted to another, and the failure to properly perform the duty will defeat a recovery by the miner in case of any injury caused by such failure.

Dasher *v.* Hocking Min. Co., 212 Fed., 628, p. 629, April, 1914.

MINER'S ASSUMPTION OF RISK NOT A DEFENSE.

Under the Pennsylvania act of May 15, 1893 (Pa. Laws, 78), requiring a mine operator to provide space sufficient in an entry to permit the driver of a car to keep clear of the cars, the defense that the miner—the car driver—assumed the risks incident to the employment and the risks incident in operating his cars in a tunnel narrower than that prescribed by the statute can not be interposed, but the operator who operates his mine in violation of the statute does in law assume the risks therefrom.

Smith *v.* Stoner (Pennsylvania), 89 Atlantic, 795, p. 796, January, 1914.

In an action for injuries by an employee caused by the alleged violation of a statutory duty on the part of the employer, the injured employee is not necessarily precluded from recovery because in doing the work he voluntarily adopted a way which was known to be dangerous, when a safer way was known and open to him, as in such cases the doctrine of assumption of risk has no application.

Sare *v.* Hoadley Stone Co. (Indiana Appeals), 105 Northeastern, 582, p. 585, June, 1914.

RISKS NOT ASSUMED BY MINER.

RELIANCE ON OPERATOR'S PERFORMANCE OF DUTY.

While a miner performing the work assigned him in a mine is bound to exercise due care for his own safety, yet he may assume, in the absence of notice to the contrary, that the mine operator and overseer or foreman have performed their duty in respect to the care of the entry where he is working and that the operator has employed a competent and practical inside overseer or mining boss, as required by the statute, whose duty it is to keep a careful watch over all traveling ways and see that as the miners advance their excavations all loose coal, slate, and rock overhead are carefully secured against falling in or upon the traveling ways, and a miner so engaged may rely upon the presumption that the mining boss has performed his duty, and the statute to this extent entirely shifts the risks of the employment from the miner to the operator.

Baisdrenghien *v.* Missouri, etc., R. Co. (Kansas), 139 Pacific, 428, p. 429, March, 1914.

RISK OF OPERATOR'S NEGLIGENCE NOT ASSUMED.

The statute of Indiana (sec. 8580, Burns, 1908) specifically imposes upon the operator of a mine certain duties to secure safety to the miners, and while it must be conceded that an employee who is engaged in making a dangerous place safe assumes the risk attending that particular service and at that particular place, yet he does not assume risks at other places where his work calls him or where he is directed to go, of which he has no knowledge and where the defects or dangers could only be observed by inspection, nor does he assume the risk occasioned by the operator's negligence.

Domestic Block Coal Co. *v.* Holden (Indiana Appeals), 103 Northeastern, 73, p. 76, November, 1913.

NEGLIGENCE OF FELLOW SERVANT—EFFECT.

EMPLOYEE OF PROHIBITED AGE—FELLOW-SERVANT RULE.

A boy under 16 years of age employed by a mine operator in violation of the statute of Kentucky, and without the consent of his father, is entitled to recover for injuries received while in the course of his employment in the mine, without proof of negligence on the part of the mine operator; and in an action by such youthful miner for injuries the fellow-servant doctrine can not be interposed as a defense.

Stearns Coal & Lumber Co. *v.* Tuggle (Kentucky), 161 Southwestern, 1112, p. 1113, January, 1914.

FELLOW-SERVANT RULE ABROGATED BY STATUTE.

The fellow-servant act of Colorado (R. S. 1908, sec. 2065) makes a coal-mine operator liable for the injury or death of a miner when in the exercise of due care, caused by the negligence of another miner, and in an action for the death of a miner it is sufficient to impose a liability upon the mine operator under the statute, to show that the death was caused by the negligence of a fellow-servant; and a judgment for damages will be upheld where the evidence shows the death was caused by the negligence of another miner.

National Fuel Co. *v.* Maccia (Colorado), 139 Pacific, 22, p. 23, March, 1914.

Under the fellow-servant act of Colorado that makes an employer liable for the injuries or death of an employee resulting from negligence of a coemployee, an employee does not under the statute, as a matter of law, assume the risk of the future unanticipated negligence of a coemployee.

National Fuel Co. *v.* Maccia (Colorado), 139 Pacific, 22, p. 24, March, 1914.

NEGLIGENCE OF MINE FOREMAN OR BOSS.

OPERATOR LIABLE—INSTANCES.

FOREMAN REPRESENTS OPERATOR.

Under the statute of Pennsylvania, act of June 10, 1907 (Pa. Laws, 523), the mine foreman represents the operator and the operator is liable for injury to a miner resulting from the negligence of a foreman.

Philadelphia & Reading Coal, etc., Co. *v.* Keslusky, 209 Fed., 197, p. 198, November, 1913.

FAILURE OF FOREMAN TO WARN MINER.

A mine owner and operator is liable for the negligence of a mine foreman under the Pennsylvania statute where a miner in obeying the orders of the mine foreman was injured by an explosion of dynamite caused by the lamp on his cap igniting a squib attached to the dynamite that the mine foreman had inserted in the hole under which the miner was required to pass in carrying out the orders of the foreman, and where the forman negligently failed to warn the miner of the presence of the squib and dynamite in time to avoid the explosion and injury.

Philadelphia & Reading Coal, etc., Co. *v.* Keslusky, 209 Fed., 197, p. 198, November, 1913.

NEGLIGENCE OF FOREMAN—DANGEROUS PLACE.

The statute of Oklahoma requires a mine operator to provide a mine foreman and makes it his duty to examine every working place in the mine at least once every day and to securely prop such working place and to prevent miners from working in any unsafe place except for the purpose of making the place safe, and a mine operator is liable for an injury to a miner resulting from a violation or the failure to comply with these provisions, though such violation is due to the negligence of the mine foreman; and a judgment for damages for the death of a miner caused by such failure to comply with the statute will not be reversed on appeal because of an error in an instruction as to the contributory negligence of the deceased miner where the evidence showed not only a failure of the foreman to inspect the mine as required but that he put miners to work in the mine immediately after water was pumped out of the shaft before the shaft was dry and when he knew that the shaft was not in a safe condition, by reason of the mine having been recently filled with water and standing in that condition for months prior to the accident, and that timbers and props had fallen and had not been replaced and that recent

blasting in the mine had weakened the roof, where it was also shown that the roof was 20 feet from the bottom of the drift and that the deceased miner was not required to and could not inspect the roof, and where such instruction though inaccurate or erroneous, when applied to the evidence before the jury, could not have mislead the jury to believe their duty was different from what it actually was.

Big Jack Min. Co. *v.* Parkinson (Oklahoma), 137 Pacific, 678, p. 681, December, 1913.

KNOWLEDGE OF NEGLIGENCE OF MINE FOREMAN.

Where a mine operator has knowledge through his superintendent or otherwise of the neglect of the certified mine foreman in performing a statutory requirement and that he has failed to furnish props to a miner on demand, as required by the statute, and the operator has knowledge of the dangerous condition of the mine by reason of such neglect of the mine foreman, he may he held liable for a consequent injury to a miner.

Peters *v.* Vesta Coal Co. (Pennsylvania), 90 Atlantic, 65, January, 1914.

FAILURE OF FOREMAN TO DISCOVER DANGEROUS ROOF.

If a clod or other hard substance in the roof of a mine constituted a dangerous condition, it is the duty of the mine examiner to discover such fact and mark the place, and if conditions in the mine are in fact dangerous the owner or operator can not excuse himself from liability for a willful violation of the mines and miners' act of Illinois if he fails to cause the places where the dangerous conditions exist to be marked, even though the mine examiner may have examined such places and in good faith believed that the conditions were not dangerous, and especially where it is known that a clod when it becomes exposed and is not supported is liable to fall in a certain length of time, but not right away.

Piazzi *v.* Kerens-Donnewald Coal Co. (Illinois), 104, Northeastern 200, p. 201, February, 1914.

NEGLIGENCE OF FOREMAN EMPLOYED BY OPERATOR.

The statute of Pennsylvania requires a mine operator to place the underground workings of his mine in charge of a competent mine foreman, and the operator is not liable for injuries resulting from the negligence of such mine foreman; but the statute does not prevent the mine operator from employing a mine foreman to perform services outside of the duties imposed by the statute, and if under such an employment a miner is injured by the negligence of the mine foreman while engaged in performing his duties under such a contract the mine operator is liable.

Calusky *v.* Lehigh Valley Coal Co., 212 Fed., 304, p. 306, March, 1914.

INCOMPETENT INSPECTOR—FAILURE TO INSPECT AND REPAIR.

Under the liability act of Alabama (Code, sec. 3910), if the duty of inspection is intrusted to a miner and is not, after reasonable time and opportunity are afforded, performed, and injury to another miner proximately results therefrom, the omission is negligence to liability, unless defeated by affirmative evidence; and the omission by one so intrusted to exercise, after reasonable time and opportunity are afforded, due care and diligence to make the necessary repairs and to remedy the known defect, and in proximate consequence thereof a miner is injured, such omission is negligence to liability, unless defeated by affirmative defense; but reasonable time and opportunity to discover or to repair after discovery are factors, and if either is absent negligence is not shown.

Espey *v.* Cahaba Coal Co. (Alabama), 64 Southern, 753, p. 755, February, 1.

FAILURE TO INSPECT CABLE.

A court can not say as a matter of law that a mine operator is not liable for the death of a miner caused by the breaking of a cable used in drawing the miners out of the mine, on the ground that the operator had employed a certified mine foreman as required by the statute of Pennsylvania and had placed him in entire charge of the mine workings, where the evidence was contradictory as to whether or not the mine foreman was given entire charge of the mine workings and as to whether or not it was made a part of his duty to inspect the cable, and where an assistant foreman testified that he did not have charge of the cable but the cable was inspected by the engineer, and where it appeared that the engineer had no authority to inspect the cable and had no technical knowledge of cables.

Dodd *v.* Summit Branch Min. Co. (Pennsylvania), 88 Atlantic, 927, p. 928, June, 1913.

OPERATOR NOT LIABLE—INSTANCES.

FAILURE TO PROVIDE PROPS.

The statute of Pennsylvania (Pa. Laws, 52) makes it the duty of a mine foreman to see that all dangerous roofs are secured against falling and that sufficient props and timbers are sent into the working place of the mine when required for that purpose, and it is made the duty of the operator or his superintendent to keep on hand at the mine a full supply of all materials required, and where a mine operator has on hand the necessary timber for propping the roof he is not liable to a miner injured by the fall of the roof of his entry due to the negligence of the mine foreman in failing to see that the timbers were furnished to the miner.

Peters *v.* Vesta Coal Co. (Pennsylvania), 90 Atlantic, 65, January, 1914.

FAILURE OF FIRE BOSS TO DISCOVER GAS.

While section 7381 of the Remington and Ballinger Code requires the owner or operator of a coal mine to furnish a sufficient amount of ventilation, and requires that every working place shall be examined every morning by a competent person and a record of such examination made in a book kept at the mine for that purpose, yet the operator is still responsible for such further care as the common law imposes upon him, but neither the statute nor the common law makes a fire boss, one of whose duties was to make tests for gases or fire damp before firing shots, a representative of the operator in the matter of discovering the presence of gas or fire damp; but such a fire boss is a fellow-servant of the miner, and the operator is not liable for his failure to make the required tests for the presence of gas during the working hours, but such fire boss is regarded as a fellow-servant of the miner and the operator is not liable to the injury caused by the negligence or the failure of such fire boss to make the required tests with a view of determining the presence of gas.

Pacific Coast Coal Co. *v.* Brown, 211 Fed., 869, p. 873, February, 1914.

STATUTORY ACTION FOR WRONGFUL DEATH.

RIGHT OF ACTION FOR WRONGFUL DEATH.

The common law furnishes no remedy by civil action for the wrongful death of a person, and it is only by express statutory provision that such an action can now be maintained.

Maronen *v.* Anaconda Copper Co. (Montana), 136 Pacific, 968, p. 969, November, 1913.

ACTION FOR WRONGFUL DEATH—DEFENSES AVAILABLE.

In an action by heirs or next of kin against a mine operator for death by wrongful act or neglect, given by section 6486 of the revised codes of Montana, where the death was caused by the violation of another section of such revised codes imposing a criminal liability for its violation, the defendant is not limited to those defenses only that would be valuable to him in a criminal action in which he is defendant, in a prosecution by the State charging the unlawful killing, but in such an action a defendant may plead and prove the ordinary defenses available in actions for negligence.

Maronen *v.* Anaconda Copper Co. (Montana), 136 Pacific, 968, p. 970, November, 1913.

APPLICATION OF STATUTE.

Section 6486 of the revised codes of Montana gives to certain persons a right of action against another for wrongful death where a wrongful act or neglect was the proximate cause of the death, and the words of the statute, "wrongful act or neglect of another," imply

actionable wrong or negligence toward the deceased and not a wrongful act or neglect toward the persons given the right to maintain the action; and such an action accordingly can only be maintained by the persons given the right to use where the decedent himself could have recovered damages had he survived the injury; and while the right of action given by this section to the heirs or personal representatives is independent of that which the deceased would have had in case of his survival, yet it is of the same character and depends upon the same facts.

Maronen *v.* Anaconda Copper Co. (Montana), 136 Pacific, 968, p. 970, November, 1913.

The action given by the Illinois statute (Laws of 1899, p. 300) for the wrongful death of a miner vests primarily in the widow, if there is one, and if not, then in the lineal heirs or adopted children, and in default of these, then in any other person or persons dependent for support on the deceased miner; and where a miner who lost his life in a coal mine left a father and mother and brothers and sisters the right of action under this statute vests in the father and mother alone, and as the right of action is purely statutory it was within the power of the general assembly in conferring the right to determine who should be authorized to bring the action and how the damages should be distributed, and in either case the right conferred is to recover the whole damages, and the statute authorizes but one action and one recovery for the entire loss and damage occasioned by the death.

McFadden *v.* St. Paul Coal Co. (Illinois), 105 Northeastern, 314, p. 315, June, 1914.

ACTION BY PARENT FOR DEATH OF SON—RECOVERY.

Under the statute of Iowa (Code, sec. 3471) providing that a father, or under certain circumstances the mother, may maintain an action for the expenses and actual loss of service resulting from the injury or death of a minor child, the word "expenses" has reference to the reasonable cost incurred for medical attendance, nursing, and including fit or suitable burial, and a general statement of the cost of funeral expenses, in the absence of any other evidence, will not justify the submission of the reasonable expenses thereof to a jury.

Carnego *v.* Crescent Coal Co. (Iowa), 146 Northwestern, 38, p. 39, March, 1914.

ACTION FOR WRONGFUL DEATH—COMPROMISE AND SETTLEMENT—EFFECT.

A father and mother as the sole heirs of a miner who lost his life in a coal mine may sue the operator for damages under the Illinois statute (Laws of 1899, p. 300), and they may settle and compromise such action while pending and release the cause of action, and such a release is a bar to any subsequent action brought by an admin-

istrator of the deceased miner under the act of 1853, this being the general act authorizing an action for death by wrongful act.

McFadden *v.* St. Paul Coal Co. (Illinois), 105 Northeastern, 314, p. 315, June, 1914.

MINES AND MINING OPERATIONS.

NEGLIGENCE OF OPERATOR.

PLEADING AND PROVING NEGLIGENCE—PRESUMPTIONS.

PLEADING NEGLIGENCE—SUFFICIENCY OF PLEADING—USE OF EXPLOSIVES.

In an action by a miner for injuries caused by an explosion of dynamite it is sufficient for the complaint to charge the defendant's negligence in having more than 3,000 pounds of explosives in the mine, in having explosives stored in a place in the mine where escape would be cut off in case of an explosion, in having explosives stored at and near the shaft, imperiling the lives of persons working in the shaft in case of an explosion, and in the method used for thawing dynamite in that electricity was used in such manner and to such a degree that the dynamite being thawed was heated to excess; but the plaintiff was not required to prove negligence in all the particulars alleged, and it was sufficient if the evidence introduced established the defendant's negligence in any of the particulars, thereby causing the injury complained of.

West Lake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 40.

SPECIFIC NEGLIGENCE MUST BE PLEADED.

An allegation in a complaint in an action for an injury to a miner to the effect that the foreman directed the plaintiff and another miner not to remove a large rock from its place where it had fallen from a hanging wall in the mine, and to leave all waste matter, including the rock in the stope, is not sufficient to charge the defendant operator with any specific act of negligence where it appeared from the evidence that the large rock, after it had so fallen and while the plaintiff and the other miner were taking out the mining ore from the stope, rolled over upon the plaintiff's foot, causing the injury complained of.

Knauff *v.* Highland Dev. Co. (Oregon), 136 Pacific, 846, p. 847, December, 1913.

An injured miner in an action for damages is not required to allege in his complaint the specific acts of negligence of omission or commission on the part of the operator, but when he undertakes in his complaint to define the particular negligence which caused the injury his declaration must be tested by these special allegations in that respect, and having done so the proof must correspond to these allegations or he can not recover.

Wyoming Coal Min. Co. *v.* Stanko (Wyoming), 138 Pacific, 182, p. 183, February, 1914.

USING DEFECTIVE APPLIANCES—PLEADING.

In an action by an injured miner caused by defective brakes on coal cars, an allegation in his complaint to the effect that the operator did not furnish or provide safe machinery and appliances with which to work, and did not repair the brake and appliances upon its coal cars, and did not exercise reasonable care in the furnishing of such coal cars and appliances, and that if the operator had exercised due care and diligence in the inspection and repair of its coal cars the same would have been in safe condition; and a further allegation to the effect that at the time of furnishing such coal cars for use in its mine the operator knew, or by the exercise of proper care would have known, that such coal cars and the brakes thereon were in disrepair and dangerous and unsafe, and that by reason of the premises the plaintiff was injured, is a sufficient charge of negligence; in failing to repair the brake and in negligently furnishing such unrepaired cars the operator violated its duty to furnish reasonably safe appliances, and each and all the allegations direct the attention to the matter of repair, but the specific allegations that the cars were in disrepair negatives the idea that they were originally defective or not sound and good.

Wyoming Coal Min. Co. *v.* Stanko (Wyoming), 138 Pacific, 182, p. 183, February, 1914.

SUFFICIENCY OF SPECIAL FINDINGS.

In an action by a miner for injuries caused by the alleged negligence of the operator in its failure to examine and inspect the coal cars and thereby discover their unsafe condition, a finding by the jury to the effect that the cars had been in disrepair for some definite length of time before the accident would not be sufficient to entitle the plaintiff to recover in the absence of a finding that the operator had knowledge of the defective condition of the cars, or a finding to the effect that such defect existed for a sufficient length of them under all the circumstances for the operator to have discovered the defects by the exercise of reasonable diligence.

Wyoming Coal Min. Co. *v.* Stanko (Wyoming), 138 Pacific, 182, p. 183, February, 1914.

SUFFICIENCY OF COMPLAINT BY INJURED MINER.

A complaint by an injured miner against a mine operator after averring the relationship between plaintiff and the defendant is sufficient where it avers that the plaintiff while in the discharge of his duty under his employment was riding on a car in a certain entry of the mine and was thrown from such car, dragged and crushed and permanently injured, all of which was proximately caused by a defect in the condition of defendant's ways, works, machinery, or plant, in

that the roof of the mine at the point where plaintiff was injured in such entry was so defective that it caught the plaintiff between the car and such roof, inflicting the injuries complained of.

Chocktaw Coal & Min. Co. *v.* Moore (Alabama), 63 Southern, 558, p. 559, November, 1913.

INJURY FROM CAR UPSETTING—PLEADING AND PROOF.

A miner injured while loading a car which he himself was filling by the car tipping over on him is entitled to recover damages on the ground of alleged negligence in that the operator failed to put under the rails of the track a sufficient number of ties to hold the track in place and failed to properly nail or fasten the rails to the ties, thereby causing the car as it was loaded with coal or dirt to tip over; and a recovery can not be denied because the proof shows that the specific negligence causing the injury was the failure of the operator to put another tie at or near the end of the rails, causing the car to tilt endwise rather than sidewise, caused by the track going down at the end rather than becoming lower upon one side than upon the other, as alleged; and it can not be regarded as a fatal variance where the general allegation of the pleading was sufficient to show that the injury was caused by the operator's failing to furnish a safe and secure track on which to operate the cars.

Thorton *v.* American Zinc, Lead & Smelting Co. (Missouri Appeals), 163 Southwestern, 293, p. 294, November, 1913.

PROOF OF NEGLIGENCE.

In an action against a mine operator for damages for the death of a miner on the ground of alleged negligence it is not sufficient as a basis of recovery merely to prove negligence and injury, but it is necessary to show that the proven injury was the natural and proximate result of the proven negligence; and the mere proof of the negligent removal of a prop supporting the roof of a mine is insufficient to sustain an action where it appeared that the prop was 7 or 8 feet from the rock that fell, and where there was a hill seam between the prop and the rock and the break stopped at the hill seam between the prop and the rock, and where it appeared that the prop was removed on Saturday and the accident took place on the following Tuesday.

Cooke-Jellico Coal Co. *v.* Richardson (Kentucky), 161 Southwestern, 537, p. 539, December, 1913.

EVIDENCE AS TO CAUSE OF EXPLOSION.

In an action by a miner for injuries caused by an explosion of dynamite it is proper to show, under an allegation of negligence in the method of thawing dynamite, that the dynamite was thawed by electricity and electric bulbs inserted in the thawer, and that by

reason thereof the dynamite was frequently overheated and when in such condition would explode from a jar or concussion such as would be caused from the bursting of an electric-light bulb, and that in the thawing of the dynamite moisture sufficient might be generated to cause an electric-light bulb to explode, the concussion being sufficient to explode the overheated dynamite. The admissibility of such evidence is based on the proposition that if the collapse of an electric bulb was a matter to be reasonably anticipated, and if such a collapse would suffice to explode dynamite heated to a degree possible in a thawer, then it was negligence in the operator to employ a system of thawing in which these conditions might occur.

West Lake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 43, October, 1913.

EVIDENCE AS TO THE USE OF ELECTRICITY FOR THAWING DYNAMITE.

In an action by a miner for injuries caused by an explosion of dynamite under a charge of negligence in the method of thawing dynamite by electricity, evidence is inadmissible to show that electricity was not employed in other or similar mines as a thawing agency; but such evidence is admissible under a general charge that the use of electricity for thawing dynamite is negligence, without regard to the manner of its use.

West Lake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 43, October, 1913.

EXPERT EVIDENCE AS TO METHODS OF THAWING DYNAMITE.

In an action by a miner for injuries caused by an explosion of dynamite where the method of thawing the dynamite was shown and where the evidence showed that in the method used the dynamite was frequently overheated to such extent that it was dangerous to use, it is competent to show by the opinions of qualified persons whether the method employed for thawing the dynamite was safe or otherwise.

West Lake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 43, October, 1913.

PROOF OF NEGLIGENCE—CIRCUMSTANTIAL EVIDENCE.

It is the duty of a mine operator to furnish its miners a safe working place, and it is sufficient where an operator directed a miner to work in a room in which no work had been done for several days and where, after draining out the water that had collected in the room, the miner undertook in the discharge of his employment to dig up a ledge of coal in the bottom and near the face of the room, and while so digging his pick struck dynamite or other explosive, which was thereby exploded and by reason of which the miner was injured, to show that the operator did not furnish the miner a safe working

place as was its duty; and direct proof of negligence in such a case is not required but may be established from the circumstances and from the fact that the miner was put to work in a room of a mine in which unexploded charges had been left. That there is a well-known practice of using explosives in mining coal, that an explosion did occur when the miner struck into the coal with his pick, are sufficient circumstances to show a prima facie case of negligence and to establish the negligence of the operator in failing to furnish the miner a safe working place.

Broseghini *v.* Sheridan Coal Co. (Kansas), 139 Pacific, 1025, p. 1026, April, 1914.

QUESTION OF FACT.

The owner and operator of a coal mine is not as a matter of law liable for an injury to a slate picker at a coal tipple who was called from his regular duty in the morning before daylight to assist in adjusting a belt to a large pulley wheel operated by electricity and was injured by a sudden and repeated starting of the wheel, but the question of negligence in such case is one of fact to be determined by a jury in connection with all the facts and circumstances of the case.

Valley Camp Coal Co. *v.* Kucewicz, 211 Fed., 953, p. 954.

In an action by a miner for personal injuries ordinarily the question of negligence of the mine operator is one for the jury, and it is only when the facts are undisputed and are such that reasonable men can fairly draw but one conclusion from them that the question of negligence is ever considered one of law for the court.

Carney Coal Co. *v.* Benedict (Wyoming), 140 Pacific, 1013, p. 1015, May, 1914.

PRESUMPTION OF NEGLIGENCE.

In an action against a mining corporation for the death of an employee caused by an electrical current while attempting to use a pump operated by electricity in the defendant's plant, while the question of negligence on the part of the mining company is a question of fact to be determined by the jury, yet where the cause of the death can not be certainly shown, and where it can not be attributed to mistake, neglect, or misconduct on the part of the deceased, and where the pump, the thing which caused the injury, was shown to be under the exclusive control of the defendant, a presumption of negligence arises and the circumstances afford reasonable evidence in the absence of explanation by the defendant that the accident arose from want of care.

Hill *v.* Pacific Gas & Electric Co. (California), 136 Pacific, 492, p. 499, November, 1913.

In an action by an employee who was injured while assisting in drilling an oil well, where the injury was caused by the fall of the roof of a derrick, and where it appears that the roof fell because of the giving away of certain nails driven through the end of the ridgepole into the derrick timbers, and where it appears that the derrick and machinery were being used by the oil company in the ordinary and proper way and while no defectiveness or insecurity of the roof or its fastenings had been observed from casual observance, yet the company is not excused by the mere fact that the derrick had been constructed in the usual manner and was at the time of its construction in a safe condition; but its duty was to use due care to maintain such condition, and that the falling of the roof under such circumstances and the consequent injury to the employee was sufficient to establish a prima facie case of negligence, and under the circumstances the jury had a right to find that the employee received his injury by reason of negligence of the employer and while he was engaged in his ordinary duties and without fault or negligence on his part.

Ingalls *v.* Monte Cristo Oil & Development Co. (California), 139 Pacific, 97, p. 100, March, 1914.
Broseghini *v.* Sheridan Coal Co. (Kansas), 139 Pacific, 1025, April, 1914.

INJURIES FROM ESCAPING OIL—JUDICIAL NOTICE.

In an action by the owner of cattle killed and injured by drinking water into which oil had escaped and flowed from the pipe line of the defendant company the court can not take judicial notice that the oil was poisonous or otherwise of such a character as would when drunk result in the injury or death of the cattle, and in the absence of proof to the effect that the oil was poisonous or would produce death or injury to cattle drinking water impregnated with the oil there can be no recovery.

Texas Co. *v.* Earles (Texas Civil Appeals), 164 Southwestern, 28, p. 30, February, 1914.

ADMISSABILITY OF DECLARATIONS AS TO CAUSE OF INJURY.

In an action against a mine operator for the death of a car driver caused by being caught between a loaded car and the walls of the tunnel or haulage way, statements as to the cause of the injury made by the injured miner shortly after the accident and while he was still lying at the place where the injury was inflicted and while suffering great bodily pain are admissible in evidence as a part of the res gestae, as in such case it is reasonable to conclude that the injured miner had opportunity to deliberate and design, such as to take from his utterances the impress of spontaneity.

Smith *v.* Stoner (Pennsylvania), 89 Atlantic, 795, p. 797, January, 1914.
Sams *v.* Grey (Kentucky), 161 Southwestern, 553, December, 1913.

DEGREE OF CARE REQUIRED.

CARE AND DILIGENCE—DEGREE.

A far higher degree of care and diligence is demanded of the mine operator who places his miners at work digging coal beneath the overhanging masses of rock and earth in the mine than of the master who places his employees at work on the surface of the earth where such dangers are not to be apprehended; and a reasonably prudent man would exercise greater care and watchfulness in the former than in the latter case, and in such cases the rule applies that the greater the danger a reasonably intelligent and prudent man would apprehend the higher is the degree of care and diligence the master must exercise.

Big Hill Coal Co. *v.* Clutts, 208 Fed., 524, p. 526, November, 1913.

The duty of a mine operator to use ordinary care to provide a reasonably safe place for a miner to work necessitates the exercise of more care than would be required to discover defects in the roof of such a character as to be readily discoverable by ordinary inspection.

Victor-American Fuel Co. *v.* Peccarich, 209 Fed., 568, p. 571, November, 1913.

It is the duty of an operator of a coal mine to exercise reasonable care and prudence to provide his servants with a reasonably safe place in which to work, with reasonably safe material upon which to work, and suitable and competent fellow-servants; but it is not error for a court in an action by an injured miner against a mine owner for damages to instruct the jury to the effect that it was the duty of the defendant to furnish the plaintiff a reasonably safe place in which to work, reasonably safe appliances and machinery with which to work, and a reasonably safe track over which the cars were to be hauled, and a failure to do so was negligence for which he was liable, as it was not the intention of the court by such instruction to impose upon the operator any duty higher than that of the use of ordinary or reasonable care under all the circumstances to furnish such safe place and appliances.

Great Western Coal & Coke Co. *v.* Malone (Oklahoma), 136 Pacific, 403, p. 406, November, 1913.

NEGLIGENCE AND ORDINARY CARE DEFINED.

Negligence is defined as the doing of a thing that a reasonably prudent person would not do under the circumstances surrounding him at the time, or it is the omission to do a thing that a reasonably prudent person would do under the circumstances. The degree of care required in any given case, to avoid the imputation of negligence, is ordinary care, and the law interprets ordinary care to be that degree

of care which a person of ordinary prudence under the particular circumstances is presumed to exercise to avoid injury, and such care is required to be in proportion to the danger to be avoided and the fatal consequences that may result from neglect.

Shirley Coal Co. *v.* Moore (Indiana), 103 Northeastern, 802, p. 804, January, 1913.

EXTENT OF LIABILITY.

A mine operator is not an insurer of the safety of his miners, but it is his duty to use ordinary care for the miners' safety, and he is liable where a miner is injured by a defect in the place of work, when the operator knows, or by ordinary care should have known of the defect.

Williamson *v.* Bluegrass Flourspar Co. (Kentucky), 160 Southwestern, 920, p. 921, November, 1913.

MAINTAINING DANGEROUS PLACE.

DUTY TO FURNISH SAFE WORKING PLACE NONDELEGABLE.

It is the duty of a mine operator to furnish a safe working place for his miners in which to work and it is his duty to continue to keep the place safe, and this duty is one which can not be delegated by the master so that the employee engaged to do the work of making the premises safe is to be treated as a fellow-servant of those who are enployed and engaged in the general work for which the premises are intended.

Panela *v.* Castile Min. Co. (Michigan), 144 Northwestern, 528, p. 533, December, 1913.

The rule that an employer owes to his employee the nondelegable duty to exercise reasonable care to furnish his employee a reasonably safe place to work applies to mining operations, and the peculiarly dangerous conditions under which mining operations are carried on make the duty of providing a safe place to work unusually pertinent as the more hazardous the employment the greater would be the care.

Dashner *v.* Hocking Min. Co., 212 Fed., 628, p. 631, April, 1914.

It is the duty of a mine operator to use reasonable care to furnish a miner a reasonably safe place in which to work, and this duty being material in character can not be delegated, and the person to whom such duty is intrusted, or who as a part of his work assumes to do it with the operator's knowledge and consent, is not a fellow-servant with the miner engaged simply as such, having no duty to perform as to the roof of the mine in which he was working.

Looney *v.* Garfield Coal Co. (Iowa), 147 Northwestern, 129, p. 130, May, 1914.

SAFE PLACE—APPLICATION OF DOCTRINE.

A mine operator is not liable for the death of a miner performing the work of a "hitch cutter" whose duty consisted in cutting holes called "hitches" in the rock of the footwall of a stope or tunnel of the mine for the purpose of receiving the lower ends of pieces of timber set upright and driven tight against the top or hanging wall or stope to prevent rock from falling, where it was the duty of such hitch cutter to assist in making the working place safe and to examine and see that everything was safe before going to work, and in case the place was not safe he, with his assistant, should take time to make it safe, where men were furnished to assist in making such place safe, and where it appeared that the deceased miner and his partner were fully convinced that the place was safe to go to work in and the head timberman informed the deceased miner that he and his partner could go to work as everything was safe, as in such case the miners were authorized and were expected to judge for themselves as to the safety of the place and were competent to do so and placed no reliance upon the judgment of any other employee, and under the circumstances the doctrine of safe place and the duty of the operator in that behalf does not apply.

Andrews *v.* Tamarack Min. Co. (Michigan), 146 Northwestern, 394, March, 1914.

CONTINUING DUTY TO KEEP WORKING PLACE SAFE.

The duty of a mine operator to use reasonable care to provide reasonably safe places for his servants to work is a continuing one and the mine operator does not discharge his duty in this regard by providing a safe place in the first instance and then remaining passive, but he must supervise, examine, and inspect as often as custom and experience require, and at all times use ordinary care to keep the working places in his mine in a reasonably safe condition where this duty does not rest upon the miner himself.

Shirley Coal Co. *v.* Moore (Indiana), 103 Northeastern, 802, p. 804, January, 1913.

LIABILITY WHERE ACCIDENTS CAN NOT BE ANTICIPATED.

A mine operator is chargeable with knowledge of all dangers to miners in the bottom of a shaft which are liable to result from the methods employed in timbering the shaft, which would be known to a person of reasonable skill and experience in the work and business of timbering shafts; and if reasonable care was not used to protect miners from injuries due to objects falling down the shaft it would not excuse a mine operator that he had given instructions to the timbermen to use such care for the miner's protection, as this was a duty that the operator could not impose on any other person so

as to escape responsibility, but under such circumstances a mine operator can not be held liable as for negligence in omitting to guard against accidents that are not likely to happen and that even a prudent man would not have been likely to anticipate, and where the injury occurs to a miner by the falling of timbers used in timbering a shaft it is a fair question to be submitted to the jury whether the accident can be said to be one which even a prudent man would have been likely to anticipate.

Kaaro *v.* Ahmeek Min. Co. (Michigan), 146 Northwestern, 149, p. 155, March, 1914.

INJURY FROM FALL OF ROOF—BLASTING OUT PILLARS.

A mine operator is liable for the negligence of its employees in blasting out pillars and thereby loosening and making dangerous the roof of a mine and causing an injury to a miner who had been directed to wall up a certain entry connecting the mine with an old mine to keep out black damp emitted from fire in such old mines though the injured miner had temporarily left his work and gone some distance to adjust and replace a temporary curtain extended across such entry to keep out such fire damp and which had been displaced by reason of such blasting.

Victor-American Fuel Co. *v.* Peccarich, 209 Fed., 568, p. 571, November, 1913.

DANGEROUS ROOF—DUTY TO WARN MINER.

Where a mine operator has knowledge, or might obtain knowledge by an inspection, of a defective condition of roof of his mine where one of his miners is required to work, which renders the place unsafe and dangerous, and the defect is such that it can not be readily detected by the miner, the operator is bound to inform him of the situation, and a failure so to do will make him liable to respond in damages to the miner if he is injured by reason of the defective condition of his working place.

Domestic Block Coal Co. *v.* Holden (Indiana Appeals), 103 Northeastern, 73, p. 75, November, 1913.

STORING EXPLOSIVES.

In an action by a miner for injuries caused by an explosion of dynamite it is sufficient to allege that the dynamite was negligently stored at a place where, should an explosion occur, the life of the plaintiff and other persons working in that shaft would be imperiled, as such an allegation is sufficient to invoke the doctrine of the operator's obligation to use reasonable care to furnish his employees with a reasonably safe place in which to work; and this is particularly true where all the facts relating to the storing, such as the particular point where the plaintiff was working, the precise place where the dynamite was stored, with the stated distance from the thawer in which the

dynamite was being heated, and where it is clearly made to appear that the place where the plaintiff was working was not a safe place if an explosion occurred.

West Lake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 41, October, 1913.

TIMBERING.

After a coal mine is once opened and timbered it is the duty of the owner or operator to use reasonable care and diligence to see that the timbers are properly set and to keep them in proper repair.

Big Hill Coal Co. *v.* Clutts, 208 Fed., 524, p. 526, November, 1913.

FAILURE TO TIMBER—PROXIMATE CAUSE.

In an action by a miner for injuries received while working in his stope, an allegation that the injury was received by reason of the mine operator's failure to timber the stope is not sustained where the proof shows that the absence of such timbering was not the proximate cause of injury complained of, where the evidence showed that the rock producing the injury had fallen from the hanging wall long before the injury was received.

Knauff *v.* Highland Dev. Co. (Oregon), 136 Pacific, 846, p. 847, December, 1913.

DUTY TO TIMBER MINE—MAKING PLACE SAFE.

A mine operator must timber up his mine and use ordinary care to keep it reasonably safe for the use of his miners; but he must have men to so timber the mine, and when a mine operator sends in one set of men to timber up a mine he is not required to first send another set of men to make the place safe for them; and men engaged in such work must understand that they are putting in the timbers to make the mine safe, and a mine operator is not liable for the death of a timberman sent with others to timber up a part of the mine and to make it safe for miners to work, where the danger was a hidden one unknown to the mine operator and not discoverable by ordinary care.

Williamson *v.* Bluegrass Fluorspar Co. (Kentucky), 160 Southwestern, 920, p. 923, November, 1913.

INSPECTION OF ENTRIES.

A mine operator owes the miner the duty of exercising reasonable care to make the entries in his mine reasonably safe, where the miner himself is not required to inspect or keep safe such entries; and this rule applies to miners employed by an independent contract under contract with the operator to mine coal, where his employees are required to pass through the entries maintained and inspected by the operator.

Big Hill Coal Co. *v.* Clutts, 208 Fed., 524, p. 527, November, 1913.

FAILURE TO FURNISH SAFE PLACE—INJURY TO MINER.

It is the duty of a mine operator to furnish his miners a reasonably safe place in which to perform their work and to take the proper precautions and use reasonable care to guard against injuries to the miners, and if injury occurs on account of the failure of the mine operator to discharge this duty and the injured miner is without fault the operator will be liable.

Shirley Coal Co. *v.* Moore (Indiana), 103 Northeastern, 802, p. 804, January, 1913.

LIVE ELECTRIC WIRES.

A mine operator is guilty of actionable negligence in case of resulting injury in the use of electricity in his mine by means of an uninsulated wire or other appliances where he knows any person may for any reason come in contact with it without knowledge of the use to which the applicance is devoted, and such a use is tantamount to the placing of a deadly mine or trap, however free the user may be from wrongful intent, and the silent, latent, deadly electrical power of a live wire, giving no warning of its presence through hearing, sight, or other faculty, renders it so highly dangerous that its use carries an extremely high degree of care.

Humphreys *v.* Raleigh Coal & Coke Co. (West Virginia), 80 Southeastern, 803, p. 805, February, 1914.

A mine operator using electricity must provide against all probable contingencies and every possibility that can be reasonably foreseen and anticipated, and if he knows any person is liable in any way or for any reason, whether on a mission or enterprise of business or pleasure, to come in contact with the heavily charged electrical wire he is using, he must insulate it, unless insulation is impossible by reason of incompatibility with the use to which it is devoted; and it is wholly immaterial that the place in which such a wire is used was not a way or passage or place of ordinary work, but where, in the instant case, such uninsulated wire was placed in the break-through and air course, not passageways or places of ordinary work, but where there was occasion for miners to enter them.

Humphreys *v.* Raleigh Coal & Coke Co. (West Virginia), 80 Southeastern, 803, p. 806, February, 1914.

DUTY TO PROP ROOF—LIABILITY FOR INJURY.

Where it was the duty of an injured miner to prop the roof and make his place safe, he can not recover against the mine operator for an injury caused by his failure to perform this duty; but if the roof was in such condition that it was the duty of the operator to timber and make it safe, and by reason of the operator's failure to do so the miner while exercising ordinary care for his own safety was injured and

killed, the fact that the company's foreman told the decedent to do the propping, when it was not his duty to do it, will not relieve the mine operator from liability.

Duncan Coal Co. *v.* Thompson (Kentucky), 162 Southwestern, 1139, p. 1140, February, 1914.

FAILURE TO PROP—MEANING OF "BAD PLACES."

A contract between the United Mine Workers and an Employers' Association is binding on a coal company that is a member of such association, and a "bad place" within the meaning of such a contract is a place in the roof which can not be made reasonably safe by the ordinary propping usually done by the miner himself, and if the roof in a room where a miner is employed was a "bad place" and if such condition was known to the mine operator, its agents and servants charged with the duty of timbering the roof, or by the exercise of ordinary care could have been known to them, and was not known to the miner, and was not so obviously dangerous as to charge a person of ordinary prudence with notice thereof, and the operator failed to timber the roof, and by reason thereof a miner, while exercising ordinary care for his own safety, was injured and killed, then the mine operator is liable in damages; but if the roof was an ordinary roof, one that could be made reasonably safe by the ordinary propping usually done by the miner himself, then the operator would not be liable.

Duncan Coal Co. *v.* Thompson (Kentucky), 162 Southwestern, 1139, p. 1140, February, 1914.

DANGEROUS ENTRY.

A mine operator is liable to a miner injured by a fall of rock from the roof of a room neck, the passageway to and from the room in which the miner was working, and which was in the care and keep of the operator, and he was bound to exercise ordinary care to keep the place reasonably safe, and where the operator was notified of the danger inhering in the roof two days prior to the time of the injury.

Gambino *v.* Manufacturers' Coal & Coke Co. (Missouri Appeals), 164 Southwestern, 264, p. 266, February, 1914.

HIDDEN DANGERS.

A person employed by a mining company to do outside work at its colliery is entitled to recover for an injury on the ground of negligence of the operator where on the morning of the accident he was directed by the foreman to go with him to another part of the works and in following the foreman along a well-defined path used by the workmen that led over a culm bank he was injured by stepping into an open barrel of hot water sunk to within 2 inches of the surface of

the bank and located in or close to the edge of the path, where it appeared that he had not before been over the path and did not know of the location of the barrel, and did not at the time see it because he was blinded by a sudden escape of steam from the barrel or from pipes that led to it.

Susko *v.* Harleigh-Brookwood Coal Co. (Pennsylvania), 90 Atlantic, 716, p. 718, March, 1914.

FAILURE TO INSPECT ROOF OF TRAVELING WAY.

Where a mine operator was aware of the existence of a pothole in the roof of a tunnel for a sufficient time before the accident resulting in an injury to a miner, and failed to make an inspection of the roof and the pothole by sounding or otherwise in order to detect the looseness of the rocks and to determine whether the rock in the pothole had become loose by reason of the action of the air, water, vibrations caused by blasting, or otherwise, the operator is liable for such neglect for an injury caused by the rock falling from the pothole and injuring a miner using such traveling way.

McInness *v.* Republic Coal Co. (Montana), 140 Pacific, 235, p. 237, April, 1914.

DANGEROUS EXCAVATIONS.

A miner and prospector who enters upon the public domain and prospects for minerals and who took possession of certain phosphate claims and dug holes and pits thereon, as required by the United States statute in order to hold his location, is not chargeable with negligence where cattle and live stock stray upon and trespass on such mining claim and are injured or killed by falling into such pit and excavations, as a locator or owner of a mining claim is not required by statute to fence or otherwise protect such excavations and shafts, and he is expressly authorized by the United States statutes to make such excavations in the development and possession of his claim.

Strong *v.* Brown (Idaho), 140 Pacific, 773, p. 774, May, 1914.

UNSAFE PLACE—OPERATOR DIRECTING MINER.

Where a mine foreman with miners went to work in a room neck in a mine and the foreman directed the miner to cut a hitch in one end of the room and directed another workman to cut another hitch on the opposite side, these being places cut in the coal or sides of the mine in which to rest the end of the timber, and one miner detecting a piece of loose slate was assisted in taking it down and it was then suggested that they investigate to see if there was any other loose slate, and whereupon the foreman took his pick and sounded the slate and said it was all right, and thereupon directed the miner to

go on and cut the hitch, and as the miner proceeded and after striking a few licks was injured by the slate falling upon him, the miner injured under such circumstances is entitled to recovery under a rule that where one is working under the immediate and direct orders of his superior, and that superior, after investigation, expresses an opinion that the place is safe, or directs the employee to proceed with the work, the employee has a right to rely upon the presumed superior knowledge of the employer and proceed with the work unless the danger is so obvious and apparent as that no reasonable man, in the exercise of a fair judgment for his own safety, would continue to work in it, even under the orders of his master.

Bracken *v.* Lam Coal Co. (Kentucky), 165 Southwestern, 686, April, 1914.

A coal miner in an action for damages for injuries received by falling rock from the roof of an entry constructed by him is entitled to recover on grounds of the alleged negligence of the operator where the proof shows that the pit boss was authorized to direct the injured miner how to perform the work and that he omitted timbering as directed by the pit boss, until the brushing had been completed, and where it appears that the omission to timber as the work progressed might have been the proximate cause of the injury.

Williams *v.* Craig Dawson Coal Co. (Iowa), 146 Northwestern, 735, p. 736, April, 1914.

NEGLIGENCE NOT PROXIMATE CAUSE OF INJURY—NO LIABILITY.

While a mine operator may be negligent in failing to keep the roof of an entry in his mine in a reasonably safe condition, such negligence can not be regarded as the proximate cause of an injury where the miner knew of the danger and with such knowledge used the entry and was injured by the falling of slate from the roof, where the miner was not required to use the entry or pass through it at the time he received the injury.

Elliott *v.* Greenville Coal Co. (Kentucky), 167 Southwestern, 424, p. 425, June, 1914.

EVIDENCE AS TO SUBSEQUENT CONDITION OF MINE.

In an action for damages by a miner for being overcome by gas on the ground of the alleged violation of the statute on the part of the mine operator in failing to keep the mine ventilated as required by the statute of Kentucky, the report of the mine inspector is admissible in evidence though made 17 days after the accident, where the plaintiff himself proved by the operator's mine superintendent that the condition of the air at that time was practically the same as it was immediately before and after the plaintiff's injury.

Mt. Morgan Coal Co. *v.* Shumate (Kentucky), 163 Southwestern, 1099, p. 1100, March, 1914.

WASTE IN STOPE.

A mine operator is not guilty of actionable negligence in leaving waste matter in a stope, and if it was the mine operator's duty to remove such waste from a stope, or if it was negligence to leave it in the stope, an injured miner complaining of such acts must allege and prove such duty or negligence.

Knauff *v.* Highland Dev. Co. (Oregon), 136 Pacific, 846, p. 847, December, 1913.

SUPERIOR SERVANT—PERSONAL LIABILITY.

Where a mine operator is guilty of negligence in failing to furnish a miner a reasonably safe place in which to work, a superior officer acting on behalf of the mine operator who fails to make an inspection or who fails to exercise ordinary care to see that the place is safe and directs a miner to proceed to work in such dangerous place is liable, together with the mine operator, for an injury resulting to the miner, under the rule that a superior officer is generally and severally liable with the common master for a failure to perform personal duties, whether of misfeasance or nonfeasance, which failure results in injury to one to whom the duty is owing; but notwithstanding this rule it must be observed that such superior servant is not liable for the failure of the mine operator to furnish the miner a safe working place, but his liability starts with the failure to make the proper inspection after an explosion for the purpose of discovering whether the miner would be put in danger from falling material.

Evans Chemical Works *v.* Ball (Kentucky), 167 Southwestern, 390, p. 394, June, 1914.

Ohio Valley Coal & Min. Co. *v.* Heine (Kentucky), 167 Southwestern, 873, p. 874, June, 1914.

UNSAFE PLACE—MINER OBEYING INSTRUCTIONS.

A miner in an iron mine whose duty it was to mark the quantity of ore the miners brought in and help the trammer turn the car on the turntable, keep the table free from dirt, and open the door of the car may recover for injuries on the ground of alleged negligence of the operator in failing to furnish a safe place to work, where while performing his ordinary duties the shift boss ordered him to go down a chute and loosen ore which had become clogged in the chute by pounding on the partition between a raise in the mine, and for this purpose a rope was tied around his body and he was lowered down the larger side of the raise and with a heavy hammer proceeded as instructed to pound upon the dividers, and while so engaged and without warning of the danger the clogged ore started to run into the opposite compartment when the ore chute broke through, and the ore carrying some of the dividers fell through the opening thus made upon the miner, causing the injury for which he sues.

Ranta *v.* Newport Min. Co. (Michigan), 147 Northwestern, 609, p. 610, June, 1914.

LIABILITY OF PIPE LINE COMPANY.

A pipe line company transporting oil through the ground is liable for damages for injury and death of cattle caused by drinking water poisoned by oil escaping and flowing into and down a creek in the pasture where the cattle were kept, regardless of the question and in the absence of proof of negligence on the part of the oil company in the construction or maintenance of its pipe line.

Texas Co. *v.* Earles (Texas Civil Appeals), 164 Southwestern, 28, p. 29, February, 1914.

USING DEFECTIVE APPLIANCES.

DEFECTIVE TRACK.

In an action by a miner for injuries occasioned by the car on which he was riding jumping from the track, due to the alleged defective condition of the track, together with the excessive speed of the car, it is not sufficient to relieve the operator from liability for negligence by proof that the engineer in charge did not know of the defective condition of the track.

Great Western Coal & Coke Co. *v.* Malone (Oklahoma), 136 Pacific, 403, p. 405, November, 1913.

DEFECTIVE TRACK—PROXIMATE CAUSE.

In an action by a miner for injuries caused by the derailment of a coal car on which he was riding due to the alleged defective condition of the track and to the excessive speed at which the cars were run, the plaintiff is not required to show that the defective condition of the track alone was the proximate cause of the injury.

Great Western Coal & Coke Co. *v.* Malone (Oklahoma), 136 Pacific, 403, p. 405, November, 1913.

HOISTING AND SIGNALING APPARATUS.

It is the duty of a mine operator to maintain a hoisting and signaling apparatus and the machinery connected therewith in a condition suitable to prompt action and service and to have the same so arranged and in such working order as they will promptly respond to signals given from the bottom of the shaft; and where miners were working in a shaft and desired to leave on account of impending danger and the usual and proper signals were given, by means of the apparatus provided, the operator must be liable for a resulting injury where the insufficiency of the signaling apparatus prevents a response by the man operating the hoist or cage in the shaft, if the failure to respond is due to some fault, defect in, or some failure of the machinery or apparatus in use; and in an action by a miner injured under such circumstances he is not required to point out the particular fault,

defect, or cause of failure, and he can not be reasonably expected to know whether the signals were received at the surface, whether the apparatus for signaling failed, whether an employee disregarded them if received, or whether in attempting to send down the cage or car in answer to the signals some part of the other machinery or apparatus was found to be defective or otherwise at fault.

Panela *v.* Castile Min. Co. (Michigan), 144 Northwestern, 528, p. 533, December, 1913.

INSUFFICIENT HOISTING APPARATUS.

The question of the negligence of a mine operator in using hoisting machinery for hoisting miners in a mine shaft, where it is necessary because of blasting being done in the shaft to hoist miners immediately upon a given signal, is one of fact to be determined by the jury in the trial of a case; but it is sufficient to entitle a case to go to the jury where the evidence shows that the puffer engine which operated the hoisting apparatus was a second-hand engine, was old, and that the company had been warned that it was out of repair and had in fact made some repairs, and that by reason of defects it would not operate quickly because of a bent shaft; that one of the valves was so slow that it required to be started slowly and that by reason of its defects the part connected with the shaft must be in a certain position or it could be started only with difficulty; and that at the time of the accident and consequent injury complained of there was a delay after the proper signal of three minutes before the engine started.

Panela *v.* Castile Min. Co. (Michigan), 144 Northwestern, 528, p. 534, December, 1913.

INSUFFICIENT SIGNALING SERVICE.

A mining company operated its mine and shaft by hoisting machinery located at a considerable distance from the mouth of the shaft and hoisted its elevator by means of a cable over a wheel or drum at an elevation of some 20 feet above the mouth of the pit. In elevating ore the elevator was hoisted to the crossbeam of the framework immediately below such wheel or drum, but in lifting the miners from the mine the elevator was halted at the ground level, and the signal for halting in either case was by wires attached to an angle iron on a pivot, one wire extending from such angle iron down the shaft and the other from such angle iron to a bell in the engine house near the hoisting engineer. Under such circumstances it is negligence for the mine operator to so adjust or permit the wire from such angle iron to the hoisting engine to be or become so slack that the proper signal whereby the elevator could be halted at the surface when lifting men from the mine could not be given, and the operator is liable for an injury to a miner where by reason of such slack and improper condition of the wire on the giving of the proper signal for halting

the elevator at the surface level the hoisting engineer, because of the defective wire, received the signal for hoisting ore and carried the elevator to the crossbeam, thereby causing the injury complained of to a miner riding on the elevator.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1022, January, 1914.

DEFECTIVE CABLE.

A mine operator is guilty of actionable negligence where he permits the wire rope drawing the cars on the tracks to become worn and defective, and where by reason of such worn and defective condition it broke, thereby causing a loaded car on one of the tracks to run with great and unrestrained speed down an incline and against the tipple building in which an employee was engaged in the performance of his duty as a weigher of coal, and with such force that it demolished the tipple and injured the weigher; and the operator in such case can not escape liability for permitting the use of the defective cable and for his negligent failure to furnish safe appliances and a safe place on the ground of the negligence of a fellow servant of the weigher in operating the particular car that caused the injury where the negligence of such fellow servant concurred with the operator's negligent use of the defective wire rope.

New Bell Jellico Coal Co. *v.* Oxendine (Kentucky), 160 Southwestern, 737, p. 742, November, 1913.
Burnet Fuel Co. *v.* Ellis (Texas Civil Appeals), 162 Southwestern, 911, p. 912, January, 1914.

A mine operator may be liable for the death of a miner caused by the breaking of the cable drawing a truck out of the mine on which the deceased miner and others were riding where the evidence shows that recently and prior to the accident the cable had parted and had been repaired and that there was a lack of proper inspection of the cable, and where a proper inspection might have disclosed the defects in the cable.

Dodd *v.* Summit Branch Min. Co. (Pennsylvania), 88 Atlantic, 927, p. 928, June, 1913.

KNOWLEDGE OF DEFECTS—DILIGENCE TO DISCOVER.

In an action against a mine operator for the death of a miner caused by the sudden starting of an engine due, as alleged, to the fact that the throttle valve had become worn and out of repair and leaked steam, a court can not say as a matter of law that prior inspection of the engine would have disclosed its defective condition in respect to the throttle valve, where such defect according to the proof was probably the result of long and gradual impairment by steam and hot water of the valve seat, nor can a court decide as a matter of

law that sufficient time and opportunity were or were not afforded to the mine operator to discover, by proper inspection, the particular defect in the valve and to have remedied the same.

Espey *v.* Cahaba Coal Co. (Alabama), 64 Southern, 753, p. 756, February, 1914.

SIMPLE APPLIANCES.

While it is the duty of a mine operator to exercise ordinary care to furnish a miner reasonably safe appliances with which to work, yet there are some appliances so simple in their arrangement and make-up that a miner who voluntarily uses them must exercise at least ordinary care to protect himself from injury on account of any open and obvious defect in their condition; and when an experienced miner voluntarily and without any assurance of safety undertakes to work with a simple tool or contrivance he can not close his eyes to the obvious things immediately before him and say he did not see or know the conditions that existed; and this rule applies to the harness used on a mule drawing cars out of the mine where the fastening at the lower end of the hames came loose and thereupon the gear came off and the mule walked away from the car causing the miner to fall from the place he was sitting to the track, producing the injuries complained of.

Picker Gill *v.* Nelson Creek Coal Co. (Kentucky), 160 Southwestern, 936, p. 937, December, 1913.

A mine operator, as other employers, is only required to use ordinary care to furnish tools that are reasonably safe, and it is not his duty to furnish any particular kind of tools, implements, or appliances, but his duty in this respect is to use ordinary care and prudence in furnishing safe and suitable tools and implements, and no inference of negligence can arise from evidence which shows that an implement was such as is ordinarily used for like purposes by persons engaged in the same kind of business, and the fact that a mine operator furnished a bowlder hammer, the same kind of a hammer used throughout the mining district for similar work, and the mine operator can not be charged with negligence by mere proof that the hammer furnished was in such condition, by reason of its rounded head, that particles of rock would fly and scatter more than they would had a hammer been furnished that was but slightly convexed or which had a flat striking surface.

Sager *v.* Sampson Min. Co. (Missouri), 162 Southwestern, 762, p. 764, January, 1914.

A pick used by a miner is a tool of common use and of utmost simplicity, and where one is reasonably fit in the first instance for work in a mine the mine operator owes no duty of subsequent inspection.

Toth *v.* Osceola Consol. Min. Co. (Michigan), 146 Northwestern, 668, p. 669, April, 1914.

USING EXPLOSIVES.

UNSAFE EXPLOSIVES.

A mine operator negligently permitting the powder used in the mine to become wet, damp, and deteriorated is liable to a miner injured by reason of the condition of the powder, though the injured miner called the operator's attention to the condition of the powder but was assured by the operator that the powder was all right and safe, and on this assurance the miner had the right to rely unless he knew to the contrary.

Calausky *v.* Leigh Valley Coal Co., 212 Fed., 304, p. 307, March, 1914.

INJURY FROM UNEXPLODED BLAST.

A mine operator is liable for an injury caused to a miner by an unexploded blast, where the miner drilled into the walls of his chamber in the usual and approved manner and properly charged the hole, and the charge failing to explode, the miner thereupon and according to custom drilled another hole near the former, charged it with powder from another can and exploded the same, a method and custom followed in the mine, as the last explosion under ordinary circumstances and with suitable powder will explode the charge remaining in the first hole and remove all danger therefrom, and where by reason of the dampness of the powder used in the first charge the result of the negligence of the operator in storing the powder in a damp place the charge did not explode, and subsequently while handling the coal the charge was then exploded and injured the miner.

Calausky *v.* Leigh Valley Coal Co., 212 Fed., 304, p. 305, March, 1914.

USE OF DYNAMITE.

A miner does not assume the risks that are created by the negligence of the mine operator where the danger is not obvious and the place was not created by the miner in the performance of his work, but where the dangerous conditions were made by the explosion of dynamite in a deep and narrow trench or ditch in the mining of barytes the mine operator is liable for an injury to a miner caused by a large chunk of dirt or clay, broken loose by the explosions and rolling down upon the miner, causing the injuries complained of, as in such case it was the duty of the mine operator to exercise ordinary care to furnish the miner a reasonably safe place in which to work.

Evans Chemical Works *v.* Ball (Kentucky), 167 Southwestern, 390, p. 394, June, 1914.

Ohio Valley Coal & Min. Co. *v.* Heine (Kentucky), 167 Southwestern, 873, p. 874, June, 1914.

METHODS OF THAWING DYNAMITE.

In an action by a miner for injuries caused by an explosion of dynamite an allegation of negligence as to the method used for thawing the dynamite, in that electricity was used in such manner and to such a degree that portions of the explosives became heated to excess, is sufficiently sustained by proof that the dynamite when taken out for use by miners was so hot as to be sweaty and mushy and in that condition is especially dangerous to handle, the miners frequently feeling impelled to cool the overheated dynamite before using for fear of premature explosion; and where it also appeared that dynamite could be exploded by heat alone and where it was shown that on the day of explosion the dynamite had come from the thawer overheated.

West Lake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 42, October, 1913.

FAILURE TO INSTRUCT.

INSTRUCTION UNNECESSARY.

It is a matter of common knowledge that when a rock is struck with a great force by an iron tool, such as a pick, whether sharp or dull, splinters are liable to fly as a result of the concussion, and a man 33 years of age who has spent his life in ordinary laborious occupations can not reasonably be supposed to be ignorant upon such a question and require instruction, and a mine operator in such case is under no duty to warn such a miner of the danger of splinters striking him in the eye.

Toth *v.* Osceola Consol. Min. Co. (Michigan), 146 Northwestern, 668, p. 669, April, 1914.

Picker Gill *v.* Nelson Creek Coal Co. (Kentucky), 160 Southwestern, 936, December, 1913.

INEXPERIENCED OR YOUTHFUL MINER.

While a master or a mine operator is not required to give warning of visible and obvious dangers to a miner possessing the intelligence, understanding, and experience sufficient to comprehend and appreciate them, yet it is equally well settled that if a miner is employed to perform work of a dangerous character or in a dangerous place, and is not experienced, and because of his youth or inexperience he may fail to appreciate the danger, it then becomes the duty of the master or mine operator before exposing the miner to such danger to give him such instructions or cautions as will enable him to comprehend them and do his work safely with proper care on his part.

Carney Coal Co. *v.* Benedict (Wyoming), 140 Pacific, 1013, p. 1015, May, 1914.

It is the duty of a mine operator to warn an inexperienced miner of the special hazards and dangers incident to his employment.

Looney *v.* Garfield Coal Co. (Iowa), 147 Northwestern, 129, p. 130, May, 1914.

NEGLIGENCE OF FOREMAN OR MINE BOSS.

FAILURE TO WARN MINER OF DANGER.

It is negligence on the part of a mine foreman and for which the mine operator is liable, for failing to warn a miner of the presence of a stick of dynamite with a fuse or squib attached, inserted in the timbers in a dark passageway or entry by such mine foreman in such position as to be easily ignited by the lamp on the miner's cap, and which was so ignited while the miner was passing under the squib or fuse in obedience to the orders of the mine foreman and was injured by the explosion.

Philadelphia & Reading Coal, etc., Co. *v.* Keslusky, 209 Fed., 197, p. 198, November, 1913.

Ordinarily the foreman or boss of a gang of men employed in executing the master's orders is a fellow-servant with such men, or if he is discharging a nonassignable duty of the master he is to that extent a vice principal; and one of the nonassignable duties is to exercise ordinary care to provide a reasonably safe place in which an employee is to work, and if such a place was originally safe, but has become or has been made unsafe during the absence of an employee, and he is ignorant of such fact and can not discover it by the exercise of ordinary care, it is the duty of the master to inform him of such danger, and in the absence of the master or employer himself this duty devolves upon the foreman of the mine as vice principal.

Stonega Coke & Coal Co. *v.* Williams (Virginia), 80 Southeastern, 100, p. 102, November, 1913.

Where a mining company employed a carpenter to repair a chute and continued using the chute during the progress of the repair, and where such use was dangerous, unless prior warning of the impending danger was given to the carpenter, and where the mine operator required such notice to be given by another employee, the person charged with the duty of giving such notice is as to such carpenter a vice principal, and for his negligence resulting in an injury to the carpenter the mine operator is liable.

Maness *v.* Clinchfield Coal Corporation (Tennessee), 162 Southwestern, 1105, p. 1109, January, 1914.

Where a mine foreman visited the place where a miner was at work and undertook to make an investigation of the working place, and as a result of such investigation became aware that the place was unsafe, the mine operator is liable for a subsequent injury to the miner where the mine foreman failed to communicate this knowledge of the dangerous condition to the miner, or to take such other steps as would have relieved the operator from the consequences and responsibilities imposed by reason of such knowledge.

Big Branch Coal Co. *v.* Sanders (Kentucky), 166 Southwestern, 813, p. 814, May, 1914.

SHIFT BOSS AS VICE PRINCIPAL—UNEXPLODED BLASTS.

Where different shifts of miners are employed in sinking or extending a shaft and are using explosives in such operations, the shift boss performs for the operator the nondelegable duty of keeping the place safe where the work is performed, and as a part of such nondelegable duty it was the duty of the shift boss to prevent a miner in any shift from being kept in ignorance of and exposed to the unknown hazard of unexploded blasts.

Panela *v.* Castile Min. Co. (Michigan), 144 Northwestern, 528, p. 525, December, 1913.

HOISTING ENGINEER AS VICE PRINCIPAL.

An engineer operating a hoist by which miners are lowered and carried out of a mine shaft is performing for the mine operator the nondelegable duty of keeping safe the place where the miners must necessarily go, and in such case the hoisting apparatus, the engineer, and the signaling apparatus in connection therewith are the instrumentalities provided by the mine operator in maintaining a safe place for a miner to work and removing him from imminent peril necessarily incident to the employment when danger or necessity require, and the duty of the mine operator to the miner to continuously provide him a safe place in which to perform his work could only be fulfilled by the performance of such duty by himself of signaling apparatus, the engineer, and the hoisting apparatus, and a failure in respect of any such performance for any reason by any of these instrumentalities would of necessity be a failure in the performance of an absolute duty imposed upon the mine operator, and the engineer's negligence in the failure to perform his duty resulting in an injury to a miner is the negligence of a vice principal to be imputed to the mine operator for which he is liable.

Panela *v.* Castile Min. Co. (Michigan), 144 Northwestern, 528, p. 535, December, 1913.

FAILURE OF MINE BOSS TO INSPECT.

A mine operator is liable to a miner injured by a fall of rock from the roof where it was the duty of the mine boss, and not of the injured miner, to inspect the roof before directing the miner to work, by sounding the roof at the particular place with a pick and then direct the miner to work at the place, and where the mine boss knew that hill seams, regarded as dangerous, had appeared in the entry and in the vicinity of the place where the roof fell, and where after the rock fell a hill seam could be seen at the place from which it fell, indicating that the roof of the entry at that place was not safe, and in such case the miner had the right to rely on the inspection made by the mine foreman and his direction to work at the particular place was

to the miner an insurance of safety, and where the condition was not so dangerous or so obvious as to direct the miner's attention to it, or of such a nature as could be discovered by the exercise of ordinary care upon the miner's part.

Jellico Coal Min. Co. *v.* Helton (Kentucky), 163 Southwestern, 744, p. 745, February, 1914.

DUTY TO FURNISH SAFE PLACE.

A mine operator can not escape liability for injuries caused by falling rock, because of alleged negligence in failing to furnish a safe place, on the ground that the work that the miner was doing contributed to the falling of the rock, where the mine boss knew as well as the miner the kind of work he was going to do and how he was going to do it, and knew better than the miner whether the work he was doing would have a tendency to weaken the roof, thereby causing any loose rock or slate to fall, and where the mine boss knew that the roof in the particular vicinity was liable to fall, because of hill seams; and it was his duty before ordering the miner to work to take care commensurate with the probable danger to make the place safe, or to warn the miner that he must observe extra care on account of the dangerous condition prevailing.

Jellico Coal Min. Co. *v.* Helton (Kentucky), 163 Southwestern, 744, p. 746, February, 1914.

NEGLIGENCE OF FOREMAN—QUESTION OF FACT.

In an action by a miner for injuries caused by the alleged negligence of the mine foreman, where the evidence for the plaintiff shows that the foreman upon several different occasions had been negligent in his work and that his general reputation about the mine and where he had previously worked was that he was careless, and where the evidence on the part of the defendant showed that he was a careful and competent foreman, the question becomes one of fact to be determined by the jury trying the case.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1021, January, 1914.

INCOMPETENT FOREMAN—PROOF OF REPUTATION.

In an action by a miner for personal injuries caused by the alleged negligence of the mine foreman or pit boss it is competent for the plaintiff to show specific acts of incompetency of the foreman or pit boss under a general allegation of ignorance and incompetency, and it is likewise competent to show, after proof of specific acts of carelessness, the general reputation of the foreman or pit boss for competency and regard for the lives and limbs of the miners under his charge, and such evidence is admissible to prove not only the unfitness of the foreman or pit boss but also to charge the operator with knowledge of such incompetency, where it is his imperative duty to know the fitness of his foreman.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1021, January, 1914.

MINE FOREMAN—WHO IS.

A foreman is one who has immediate charge of a gang of workmen or miners and whose orders and authority in and about and concerning their work the workmen or miners are bound to obey, and a mine operator is under the duty toward his miners not to place incompetent or unfit persons in authority over them, and where a mine foreman for a long period of time has been in the employ of a mine operator the operator is charged with knowledge of foreman's general reputation in the community as to carelessness or incompetency.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1022, January, 1914.

LIABILITY FOR NEGLIGENCE OF FELLOW-SERVANT.

STAGING MAN FELLOW-SERVANT OF MINERS.

Timbermen working on a timber staging in the shaft of a mine while the shaft and timbering are in process of construction are fellow-servants of the miner working in the shaft, where such staging was changed from day to day and the blasting left irregularities behind the timbers used in placing the sets, and the duty of carefully constructing such stagings and working on them was not a nondelegable duty, but one which the mine operator could delegate to the coemployees of the miner, and such coemployees are his fellow-servants for whose negligence the operator is not liable, as the doctrine of safe place does not apply while the shaft and timbering were in process of construction.

Kaaro *v.* Ahmeek Min. Co. (Michigan), 146 Northwestern, 149, p. 156, March, 1914.

FELLOW-SERVANT DOCTRINE OF LIABILITY.

The fellow-servant doctrine can not be interposed to defeat the liability of the operator of a coal mine for the death of a miner where the death was due to the failure of the operator to perform properly a nondelegable duty.

Big Hill Coal Co. *v.* Clutts, 208 Fed., 524, p. 526, November, 1913.

NEGLIGENCE OF FELLOW-SERVANT NOT A DEFENSE.

Under the Missouri statute (R. S. 1909, sec. 5440), providing that every person operating a mine producing lead, zinc, coal, or other minerals shall be liable for all damages sustained by the employees while engaged in operating such mine, by reason of the negligence of any other servant or employee, in the absence of contributory negligence the fellow-servant rule can not be interposed as a defense.

Martin *v.* Farmers' Coal Co. (Missouri), 160 Southwestern, 816, p. 818, November, 1913.

CARE IN SELECTING SERVANTS.

A mine operator is not responsible to a miner for injuries resulting from the negligence of a fellow miner engaged in a common employment where the operator has exercised due care in the selection and employment of such fellow miner; neither is the operator liable where a person employed to represent him in the general supervision of the mining operations departs from the scope of his employment and does the work of a fellow miner.

Maness *v.* Clinchfield Coal Corporation (Tennessee), 162 Southwestern, 1105, p. 1108, January, 1914.

NEGLIGENCE OF OPERATOR AND OF FELLOW-SERVANT.

Ordinarily a miner assumes the risks of injury by the negligence of a fellow miner but not the negligence of the fellow miner plus that of the mine operator, and the liability of the operator may exist though the negligence of the fellow miner was nearest the injury in point of time, if it was not the sole cause of the injury and if the injury would not have occurred but for the more remote negligence of the operator.

Humphreys *v.* Raleigh Coal & Coke Co. (West Virginia), 80 Southeastern 803, p. 806, February, 1914.

FELLOW-SERVANT'S DUTY TO KEEP APPLIANCES SAFE.

In an action against a mine operator for the death of a miner caused by the alleged negligence of the operator there can be no recovery under a count based on the common-law duty of the operator to furnish safe appliances and machinery, where the evidence shows that the duty of keeping such appliances and machinery in proper condition was committed to the fellow-servants of the intestate and that the particular defect complained of was due to want of care and diligence in inspecting and in repairing the defective condition on the part of such fellow-servants.

Espey *v* Cahaba Coal Co. (Alabama), 64 Southern, 753, p. 754, February, 1914.

WHO ARE FELLOW-SERVANTS.

An employee of a smelting and refining company employed and working for a smelting works and who was directed to sweep off the tramway tracks is a fellow-servant with the motorman running a motor engine whose duties were to operate the cars and motor, being small ore cars and a motor used to haul ores from the roaster up to the reverberatories, and the smelting corporation is not liable an injury to such sweeper caused by the negligence of the man operating the motor.

Consolidated Kansas City Smelting & Refining Co. *v.* Lopez (Texas Civil Appeals), 166 Southwestern, 498, May, 1914.

NEGLIGENCE OF FELLOW-SERVANT AND OF INJURED MINER.

A mine operator is not liable for the death of a miner where either he or a coal miner in an adjacent entry, or both, drove their headings unduly wide, thereby leaving the wall or rib so thin that a blast in the adjacent entry or heading burst through the thin wall, causing his death, as this did not constitute an unsafe place within the common-law doctrine of the operator's duty in respect to furnishing his miner a safe place in which to work, for the reason that the work in which the deceased miner and his cominer were engaged created the place itself and the defective condition complained of.

Sloss-Sheffield Steel & Iron Co. *v.* White (Alabama), 65 Southern, 999, p. 1,000, May, 1914.

MINER'S WORKING PLACE.

WHAT CONSTITUTES—QUESTION OF FACT.

Where it is a miner's duty to make and keep his working place safe, and where it is the operator's duty to keep other places and entries in the mine safe, and where in an action for damages for the death of a miner caused by a fall of rock from the roof, and where there is a conflict of evidence as to whether the miner was killed in his working place and at a point where the mine operator would be liable, the question of what constitutes the miner's working place and whether the death occurred at such place becomes one of fact to be determined by the jury trying the case.

Goode *v.* Central Coal & Coke Co. (Missouri Appeals), 166 Southwestern, 844, May, 1914.

In an action to recover damages for the death of a miner caused by the falling of a large rock from the roof, due to the alleged negligence of the mine operator, under an allegation that the miner was killed while eating his lunch "at a point in the mine from 15 to 25 feet north of his working place," the plaintiff is not compelled literally to sustain the allegation in the petition that the miner was killed between 15 and 25 feet from his working place, as the substantial point of controversy was whether the miner was killed away from his working place, where the operator would be liable for the condition of the roof, or at his working place, where he was supposed to look out for himself, and the operator would not be liable; and if he was not at his working place when killed it is of no consequence whether he was at a less or a greater distance from his working place, and the distance is not material unless the exact distance affected the operator's liability on the main charge, and then it would be proper to require strict proof of the allegation.

Goode *v.* Central Coal & Coke Co. (Missouri Appeals), 166, Southwestern, 844, May, 1914.

MINER EATING LUNCH—WORKING PLACE.

A miner directed by the mine foreman to leave his regular work and working place to perform services in other parts of the mine and in a place that is in fact dangerous, and of which he has no knowledge, is within the scope of his employment where at the proper hour he was eating his lunch within a few feet of his working place and during that time received the injuries complained of, and he had not thereby voluntarily left his working place and was not outside of the scope of his employment.

Domestic Block Coal Co. *v.* Holden (Indiana Appeals), 103 Northeastern, 73, p. 77, November, 1913.

FAILURE TO MAKE WORKING PLACE SAFE.

A mine operator engaged in mining barytes by means of an open ditch some 25 feet wide at the top, 12 feet at the bottom, and of a depth varying from 15 to 25 feet, is guilty of actionable negligence in failing to exercise ordinary care to make the working place safe and by reason of the mine foreman negligently ordering the miner to work in such unsafe place where without any warning and without any knowledge on his part of the danger and by reason of the steep sides of the mining ditch a large lump of dirt and clay, loosened by reason of explosives used, rolled down the bank and caused the injuries complained of

Evans Chemical Works *v.* Ball (Kentucky), 167, Southwestern, 390, p. 391, June, 1914.

MINER MAKING PLACE SAFE.

The general duty of a master of an employer to provide safe working places for his employee does not apply where the employee either by custom or contract is engaged in making his own place safe and where the character of the work is such that the condition of the place as represents safety necessarily changes as the work progresses and by reason of the work itself, as it is impracticable, if not impossible, for the employer to look out and provide for the safety of the employee under such circumstances; and this exception has special application to the work in a mine of cutting down and blasting coal, as in such case the character of the place is constantly changing and the miner is in fact making his own working place; but when the place where the work is being done ceases to be one which the miner makes for himself as an incident to his work, and the work being done does not necessarily change the character of the place as respects safety within the obligation of reasonable care, then the duty to keep such places safe rests primarily upon the mine operator.

Dasher *v.* Hocking Min. Co., 212 Fed., 628, p. 632, April, 1914.

CONTRIBUTORY NEGLIGENCE OF MINER.

RECOVERY NOTWITHSTANDING CONTRIBUTORY NEGLIGENCE.

A miner may recover for an injury caused by the negligence of a mine operator, though his own negligence contributed to the injury, if the operator might by the exercise of reasonable care and prudence and by giving timely warning have avoided the consequence of the miner's negligence.

Big Hill Coal Co. *v.* Clutts, 208 Fed., 524, p. 526, November, 1913.

BURDEN OF PROOF.

In the Federal courts the burden is upon the defendant mine operator to show that the injury to a miner sustained while obeying the orders of his superior was the result of his contributory negligence or that his negligence contributed to the injury.

Philadelphia & Reading Coal, etc., Co. *v.* Keslusky, 209 Fed., 197, p. 199, November, 1913.

In an action against a mining company for the death of an employee where the cause of the death is not explicable and where nothing is shown as to the conduct of the deceased immediately prior and at the time of receiving his death by an electrical current, the burden of proving contributory negligence on the part of the deceased sufficient to relieve it from liability is on the defendant and is a question of fact for the jury unless there is but one conclusion which can reasonably be reached from the evidence.

Hill *v.* Pacific Gas & Electric Co. (California), 136 Pacific, 492, p. 499, November, 1913.

FAILURE TO COMPLY WITH RULES.

Where a rule of a mine provided that no employee should come into the shaft where timbering was going on without knocking on the pipe, and should not attempt to ascend without answer by the timberman by rapping on the pipe and calling down, and a machinist who failed to observe the rule and was killed at the bottom of a shaft by falling timber is guilty of such contributory negligence in failing to comply with the rule as will defeat a recovery.

American Zinc Co. *v.* Smith (Missouri), 161 Southwestern, 494, p. 495, November, 1913.

VIOLATION OF RULE OF MINE.

An experienced miner who was injured by a fall of slate from the roof of a mine can not recover for an injury where the evidence shows that at the time the slate fell, and as a cause of its falling, the

miner was digging down coal from an entry stump contrary to the rules of the mine, known to him, and while so digging down coal from the entry stump other miners warned him that the slate was loose and liable to fall.

Sams *v.* Grey (Kentucky), 161 Southwestern, 553, December, 1913.

DELEGATION OF DUTY—GIVING OF SIGNALS.

While under certain circumstances the giving of signals may be a nondelegable duty of the master, yet it is not meant by the word "nondelegable" that the master may not impose the duty upon a given employee to give signals prescribed for his own safety; and an action can not be maintained by an injured miner where it was his duty to direct other employees by means of signals, and where his own injury was due to the fact that such signals were improperly given, or were not given at such time and place as his duty required.

American Zinc Co. *v.* Smith (Missouri), 161 Southwestern, 494, p. 495, November, 1913.

QUESTION OF FACT.

The question of the contributory negligence of a miner is a question of fact to be submitted to a jury in an action by the miner for personal injuries unless the evidence is without conflict and is of such character as to afford no opportunity for fair-minded men to differ upon the conclusion to be reached thereon, and in such case it may become a question of law for the court.

Carney Coal Co. *v.* Benedict (Wyoming), 140 Pacific, 1013, p. 1015, May, 1914.

ADMISSIBILITY OF STATEMENTS OF INJURED MINER.

A voluntary declaration or statement made by an injured miner to a third person after he received the injury and after he had begun an action to recover damages, as to his knowledge of the cause of the injury and as to his negligence contributing to bring it about, is admissible in evidence as a declaration against his interest, and especially so if such statement or admission is contrary to the position taken by the party at the trial of the case.

Peterson *v.* Pittsburg Silver Peak Gold Min. Co. (Nevada), 140 Pacific, 519, p. 525, April, 1914.

KNOWLEDGE OF DANGER.

In an action by a miner for injuries occasioned by the falling of rock and slate from the roof of an entry the plaintiff can not recover if he was guilty of negligence which proximately contributed to cause his injuries, and if he had knowledge of the particular danger which caused the injury and of the alleged defect in the defendant's ways,

works, machinery, and with such knowledge went in close and dangerous proximity to such dangers and defects, knowing at the time that he would likely or probably be injured, and was in fact injured as a proximate consequence of such negligence.

Doss *v.* Wadsworth Red Ash Coal Co. (Alabama), 64 Southern, 341, p. 342, January, 1914.

KNOWLEDGE OF DANGER—MINER CREATING DANGEROUS CONDITION.

An experienced miner engaged at the direction of the pit boss in brushing the roof of an entry to make it of sufficient height to admit cars can not recover for the injuries caused by the fall of slate from the roof where he is working, though directed by the pit boss to proceed with the brushing until completed before timbering, where he knew how to test the condition of the roof by sounding, and where sounding would have revealed to him the danger; and in an action for damages under such circumstances the burden of proof was on him affirmatively to prove his freedom from contributory negligence.

Williams *v.* Craig Dawson Coal Co. (Iowa), 146 Northwestern, 735, p. 736, April, 1914.

INJURY TO MINER—PROOF OF CUSTOM.

In an action by a miner for injury caused while riding on a skip being drawn out of the mine it is proper to show, as against a charge of contributory negligence and a violation of rules in that not more than five persons should ride on a skip and that no miner should sit on the bail of the skip, a position regarded more dangerous, that it was customary for six miners to ride out of the mine in the skip at one time, and that when six persons were riding in the skip it was necessary that one of them should sit upon the bail.

Federal Min. & Smelting Co. *v.* Hodge, 213 Fed., 605, p. 607, May, 1914.

CAPACITY OF EMPLOYEE PRESUMED.

In an action by a miner for injuries against a mine operator the operator may, as against a charge of negligence, presume that an employee was a person of normal capacity for understanding and appreciating dangers, that he was in good health, and his general faculties as to memory and otherwise were excellent; but this presumption is only the equivalent of the statement that the question whether the employee ought to have known of the defective conditions surrounding him must be considered in the light of his capacity for understanding the dangers of his position, and an instruction to that effect is not erroneous.

Ingalls *v.* Monte Cristo Oil & Development Co. (California), 139 Pacific, 97, p. 99, March, 1914.

FAILURE TO HEED WARNING.

A miner is guilty of contributory negligence in attempting to pass through an open cage at the bottom of the shaft and not heeding a timely warning that the signal had been given and the cage would be started; and it is immaterial under such circumstances whether the warning was given by the mine foreman or by a coemployee if the warning was timely and sufficient to advise the miner of the danger in attempting to enter the cage.

Kentucky Midland Coal Co. *v.* Vincent (Kentucky), 166 Southwestern, 815, May, 1914.

EMPLOYEE PURSUING DANGEROUS METHOD.

An employee injured while pursuing a dangerous method of ascending a ladder on an oil derrick is guilty of contributory negligence where an ordinarily prudent person would have pursued a safer method for such purpose.

Guffey Petroleum Co. *v.* Dinwiddie (Texas Civil Appeals), 168 Southwestern, 439, p. 443, June, 1914.

In an action for the death of a miner due to the alleged negligence of the operator in that the miners working for the operator negligently caused a car to run against him, thereby killing him, a plea of contributory negligence is sufficient where it avers that the car was being drawn along the track by a cable attached to a drum near the opening of the mine, which the deceased miner knew; that the track was on a slope leading out of the mine; that the slope at the place where the deceased miner was struck by the car was unobstructed for a distance of 5 feet on either side of the track, and that the deceased miner, being aware that the car was approaching and was in dangerous proximity to him, negligently failed to get off the track before the car struck him.

Haigler *v.* Sloss-Sheffield Steel & Iron Co. (Alabama), 65 Southern, 801, p. 802, June, 1914.

There can be no recovery for the death of a miner under the Alabama statute on the alleged ground of negligence in the operator for a defect in the condition of the ways, works, machinery, or mine of the operator which had not been discovered or remedied where the defective condition was brought about either by the disobedient or negligent execution of the work of the deceased miner, or where his death occurred contemporaneously with and in the course of his creation of the particular condition.

Sloss-Sheffield Steel & Iron Co. *v.* White (Alabama), 65 Southern, 999, p. 1,000, May, 1914.

FREEDOM FROM CONTRIBUTORY NEGLIGENCE.

MINER MAY ASSUME PLACE IS SAFE.

Where a miner is ordered by a mine operator to leave his accustomed place and work, and engage in other work for the operator which subjects him to increased or additional danger, unknown to him, he has a right to assume that the operator has used ordinary and reasonable care to make the particular place where he is required to perform the new and temporary service reasonably safe and that the operator will, at least, use ordinary care to keep the place safe while he is doing the work.

Domestic Block Coal Co. *v.* Holden (Indiana Appeals), 103 Northeastern, 73, p. 75, November, 1913.

MINER MAY RELY ON OPERATOR PERFORMING DUTY.

A miner working in a mine as a driller, and whose only duty it was to drill after the place had been prepared for him and who was under no obligation to test or make inspection of the entry or place in which he is sent to work, has a right to rely upon an inspection made by the ground boss and shovelers whose duty it was to inspect and make such places safe, unless the danger was open and obvious, and under such circumstances he is entitled to recover for an injury received by falling rock, and especially where the evidence shows that while the injured miner was working in another part of the mine the foreman discovered that the place in question was dangerous and sent the driller there to work without warning him of the danger.

Dolphin *v.* Peacock Min. Co. (Wisconsin), 144 Northwestern, 1112, p. 1114, January, 1914.

ANSWER OF CONTRIBUTORY NEGLIGENCE INSUFFICIENT.

In an action for damages for injuries received in a mine the plaintiff alleged in his complaint that it was his business to drive cars loaded with coal drawn by mules along an air course in the defendant's mine leading to an entry therein, and that in performing such work he was required to pass a trapdoor, and that the superintendent in the mine while acting as such negligently caused cars to be placed in the air course between the entry and the trapdoor without the plaintiff's knowledge, and while driving along the air course, and without seeing the cars or knowing of their presence, plaintiff drove his mule up against the car so placed and thereby caused the injury complained of, and an answer by the mine operator to the effect that the plaintiff was guilty of negligence which proximately caused his injury, in that it was his duty to keep a lookout along the track in front of him to discover and avoid injuries from obstructions

therein, and that he negligently failed to keep such lookout and thereby failed to discover the obstruction in time to avoid injury, and thereby proximately caused the injury, is defective for failing to aver that the obstruction could have been discovered or that the injury could have been avoided by keeping a lookout.

Sloss-Sheffield Steel & Iron Co. *v.* Russell (Alabama), 65 Southern, 137, April, 1914.

KNOWLEDGE OF DANGER—ASSURANCE OF SAFETY.

A miner under 20 years of age who had had but little experience as a coal miner and had no previous experience in the particular mine can not be charged, as a matter of law, with contributory negligence for working in a dangerous place where it appears that the mine foreman assured him that the place where he was put to work was safe and where he examined and tested the slate and there was nothing in its appearance to indicate that it would fall and where the danger from draw slate was not so obvious that a person of ordinary prudence would have refused to go on with the work.

Interstate Coal Co. *v.* Trivett (Kentucky), 160 Southwestern, 728, p. 730, November, 1913.

WANT OF KNOWLEDGE OF DANGER—RIDING ON TOP OF ELEVATOR.

A miner is not to be charged with contributory negligence where in being hoisted from the mine he was directed by the foreman to take a position on the top of the cage, there being insufficient room for all the miners in the cage, and where the foreman in the cage gave the proper signal for hoisting the cage and for stopping it at the surface level, pursuant to the regular signal code, but where by reason of the operator's negligent and improper method of maintaining the signal wire and appliance the proper signal for stopping the cage at the surface level was not received by the hoisting engineer, but by reason of such negligent and improper method of maintaining the signal wire and appliance the hoisting engineer received a different signal indicating that the cage was to be carried to the top of the framework supporting the elevator drum or wheel, to which point the cage was carried in dumping ore, and where by reason of such defective signaling system the miner received the injuries complained of, and where the injured miner did not know that the position in itself was dangerous, and where it did not appear to be dangerous, and where he did not know of the defective signaling system, and where it appeared that miners did frequently take a position on the top of the cage in riding out of the shaft.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1022, January, 1914. See Federal Min. & Smelting Co. *v.* Hodge, 213 Fed., 605, p. 607.

OBEDIENCE TO FOREMAN'S ORDERS—RIDING ON TOP OF CAGE.

A miner injured while riding on the top of the cage in being carried out of a mine is not to be charged with contributory negligence where he took his position on the top of the cage in obedience to the orders of the mine foreman, and where the danger was not so glaring and apparent that a reasonably prudent person would have refused to obey the order given and where miners frequently rode out of the mine on the top of the cage, and a miner under such circumstances is required to obey and is still under the direction of the foreman in going to or from his work as much as while actually engaged in the work itself.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1023, January, 1914.

FAILURE TO HEED WARNING.

A miner killed in the haulageway or tunnel of a mine by cars of loaded coal is not to be charged with contributory negligence because he did not heed the suggestion of a trapper boy and wait for the trip of cars out of the mine, where it appeared that the trapper boy had no knowledge as to when the driver would be out or how long it would be necessary to wait, as the cars ran at irregular periods, and where to attribute contributory negligence to the deceased miner for failing to wait for the trip out would necessarily imply that the haulageway or tunnel beyond the trapdoor was inherently dangerous as it was then being operated.

National Fuel Co. *v.* Maccia (Colorado), 139 Pacific, 22, p. 24, March, 1914.

PERFORMANCE OF UNUSUAL DUTIES.

A motorman operating a motor in a coal mine injured by projecting timbers from another motor or coal car standing on the track, and of which he had no knowledge, can not be charged with contributory negligence for failing to observe the cars and the projecting timber and avoiding the danger where it appeared that the trolley line at and near the point where the cars were standing had for sufficient reasons been elevated and that it was necessary for the motorman at and near this point to hold the trolley on his motor up against the trolley wire, and in addition to the ordinary conditions existing at this place a kink in the trolley wire made it necessary for him to give attention to keeping the trolley pole in contact with the trolley wire instead of looking ahead of his motor, and especially in view of the fact that he had a right to rely upon the premises being kept reasonably safe for him to do the work that his foreman had directed him to do.

Stonega Coke & Coal Co. *v.* Williams (Virginia), 80 Southeastern, 100, p. 102, November, 1913.

OBEYING INSTRUCTIONS OF PIT BOSS.

A coal miner engaged in brushing an entry under the directions of the pit boss has the right to assume that work may be done safely in the manner directed by such pit boss, unless obviously dangerous, or as an ordinarily prudent man he must have known better and whether acting as an ordinarily cautious person would in a like situation, he ought to have proceeded with the work as directed.

Williams *v.* Craig Dawson Coal Co. (Iowa), 146 Northwestern, 735, p. 736, April, 1914.

INEXPERIENCED MINER.

An inexperienced miner put to work in a part of a mine where it was not his duty to inspect the roof and who did not know of the dangerous condition of the roof, or the hazards incident to work thereunder, can not be charged with contributory negligence in case of injury, nor does he under such circumstances assume the risk of such danger.

Looney *v.* Garfield Coal Co. (Iowa), 147 Northwestern, 129, p. 131, May, 1914.

QUESTION OF FACT.

A car driver in a drift mine injured by a collision with an empty car can not as a matter of law be charged with contributory negligence where after he had left a train of empty cars at a suitable place he then hitched to the train of loaded cars and started them out of the mine, and where in the meantime the driver of another train of empty cars had so dumped his cars that one of them obstructed the track, and where the lights in the trackway were so dim that the driver in passing out with the loaded train could not see that one of the empty cars protruded from the track on which he was passing.

Martin *v.* Farmers' Coal Co. (Missouri), 160 Southwestern, 816, p. 818, November, 1913.

RIDING ON BAIL OF SKIP.

It is not contributory negligence as a matter of law for a miner to sit on the bail of a skip while being drawn out of the mine at an angle of about 45° and where it was customary for a miner to so ride when the skip was crowded with men, and a miner occupying such position and injured by coming in contact with the bulkhead is not, as a matter of law, prevented from recovering where the injury could have been avoided by the use of the statutory indicator or a competent signaling device.

Federal Min. & Smelting Co. *v.* Hodge, 213, Fed., 605, p. 608, May, 1914.

PRESUMPTION AS TO PERFORMANCE OF DUTY.

Where the obligation on the part of an employer to exercise reasonable care to furnish a reasonably safe place exists, the employee may properly act upon the presumption that the duty has been performed, and he is not guilty of contributory negligence in so doing unless he knows, or by the exercise of reasonable care or prudence should have known, of the defect and danger complained of.

Dasher *v.* Hocking Min. Co., 212 Fed., 628, p. 629, April, 1914.

INSTINCTS OF SELF-PRESERVATION—PRESUMPTION.

Where an accident occurred in a mine resulting in the death of a miner by being caught and crushed between a car and the ribs of a tunnel, and where there was no witness to the accident, the presumption will be indulged that the deceased was in the exercise of ordinary care under the circumstances at the time of the accident.

Smith *v.* Stoner (Pennsylvania), 89 Atlantic, 795, p. 797, January, 1914.

Where a miner was injured by a fall of over 50 feet from a ladder, due to the negligence of the operator, and the injuries to the employee were such that the incidents of the accident are a blank to him and he is unable to give any account of his acts or doings at the particular time of the accident, it will be presumed that he was exercising due care at the time, unless the circumstances point to the contrary; but if the injured employee was pursuing a dangerous method of ascending the ladder, and if an ordinarily prudent man would have pursued a safer method for that purpose, then the presumption of the exercise of due care can not prevail.

Guffey Petroleum Co. *v.* Dinwiddie (Texas Civil Appeals), 168 Southwestern, 439, p. 443, June, 1914.

A miner injured by a fall of rock from the roof of a room neck is not, as a matter of law, to be charged with contributory negligence, because he admitted that he knew that the roof was bad and had notified the mine foreman of the condition and requested him to make it safe, where the situation was not such as to show that it was obvious to the miner that the roof threatened immediate danger; and he had a right to continue using the passageway, provided a reasonably prudent man in his situation would have concluded that he could do so without subjecting himself to the danger of immediate injury.

Gambino *v.* Manufacturers' Coal & Coke Co. (Missouri Appeals), 164 Southwestern, 264, p. 266, February, 1914.

PROOF OF CUSTOM.

In an action by a miner injured while riding on a skip being drawn up in a shaft, and where it appeared that the miner was sitting on the bail and cable, it is proper to prove that it was customary for

miners to ride where the injured miner was riding, for the purpose of showing the customary method of using the skip and for the light which it might incidently afford on the question of the miner's contributory negligence, and the mere fact that other miners may have ridden in the same position is not conclusive of the question of the negligence or want of negligence on the part of the injured miner, nor does it expressly show the assent of the mining company to any particular manner or method of using the skip.

Federal Min. & Smelting Co. *v.* Hodge, 213 Fed., 605, p. 607, May, 1914.

CONTRIBUTORY NEGLIGENCE OF MINER EXCUSED.

An action for the death of a miner can not be defeated by the mine operator by showing that after the miner made the proper request for props and after the operator failed to furnish the props on the miner's demand, by showing that the miner was guilty of contributory negligence in continuing to work in the place he regarded dangerous and that there were other places in which he could have worked safely, where it is not made to appear that the danger of working in the place in which the miner lost his life was not so apparent and impending that an ordinarily prudent person would have rejected the risk.

Continental Coal Corporation *v.* York (Kentucky), 167 Southwestern, 131, p. 132, June, 1914.

ASSUMPTION OF RISK.

RISKS ASSUMED.

BURDEN OF PROOF.

Where a miner shows that he was injured in consequence of an unusual risk, due to the operator's negligence, the operator then has the burden of proof of showing that the miner knew of the unusual dangers; but the rule only becomes applicable in a case where the servant is injured on account of some risk unusual and unknown, and he is entitled to recover if he establishes either proposition.

Oiva *v.* Calumet & Hecla Min. Co. (Michigan), 146, Northwestern, 181, p. 185, March, 1914.

QUESTION OF FACT.

Whether or not a miner assumed the risk of injury is a question of fact for the jury in an action by the miner for personal injuries, and a court is not authorized to say, as a matter of law, that the danger was obvious, unless it is shown by the evidence without conflict that an ordinarily prudent man or one with the experience of the injured miner ought to have known the danger.

Carney Coal Co. *v.* Benedict (Wyoming), 140 Pacific, 1013, p. 1015, May, 1914.

DISTINCTION BETWEEN ASSUMPTION OF RISK AND NEGLIGENCE.

There is a wide distinction between assumption of risk and negligence; and while in assuming a risk where danger is so imminent as to make such assumption a rash act an employee may be guilty of negligence, and while upon the other hand an employee who has not assumed a risk may yet suffer an injury for which he can not recover damage owing to the negligence on his part contributing to the injury, but ordinarily mere assumption of risk is not in itself negligence.

Perreault *v.* Wisconsin Granite Co. (South Dakota), 144 Northwestern, 110, p. 113, September, 1913.

KNOWLEDGE OF DANGER.

If a miner has knowledge of a defect in the roof of his entry or working place, or if such defect was so obvious to him that he could not but have known it, he is to be charged with the assumption of the risk if he continues to work with knowledge of such danger.

Victor-American Fuel Co. *v.* Peccarich, 209 Fed., 568, p. 571, November, 1913.

It is the duty of a mine operator by its foreman or mine boss to use ordinary care to timber the roof of a mine, and the failure to exercise such care will render the mine operator liable in case of injury to a miner; but if the miner by the work he does makes the place dangerous and he knows the danger, or by ordinary care in the discharge of his duties should have known it, and with this knowledge continues the work, he assumes the risk and the operator is not liable for a resulting injury.

Cooke-Jellico Coal Co. *v.* Richardson (Kentucky), 161 Southwestern, 537, p. 540, December, 1913.

A miner injured by slate falling from the roof at a point where he was working, assumes the risk of danger where he has knowledge of the dangerous condition of the roof and knew that props were necessary to the safety of the place and where props had been furnished by the operator for the purpose of propping the roof but were not used because they would make it more inconvenient for the miner to get the coal from the place where he was digging to the cars.

Branson *v.* Clover Fork Coal Co. (Kentucky), 164 Southwestern, 304, p. 305, March, 1914.

An employee in a stone quarry assumes the risk of injury from dangers of which he has knowledge, and the rule applies to dangers which he might have discovered by the exercise of reasonable care, and especially where the danger is of such a character that any person of ordinary intelligence could understand and appreciate; and in cases to which the doctrine of assumption of risk applies it must be held, as a matter of law, that an employee who voluntarily encounters a known and appreciated danger assumes the risks of any injury resulting therefrom.

Sare *v.* Hoadley Stone Co. (Indiana Appeals), 105 Northeastern, 582, p. 584, June, 1914.

SAFE PLACES—MINER MAKING PLACE SAFE.

A mine operator is not liable for the death of a trammer on the ground of alleged negligence in failing to furnish a safe working place where it appears that trammers and miners were working together in a stope and it was the duty of the miners to inspect the wall, and had in fact inspected and taken down loose rock from the hanging wall of the stope recently before the accident, and the operator can not be charged with negligence in failing to furnish a safe working place where inspection was properly and carefully made by the proper persons and especially where the trammers and miners jointly acting together were making the place of work, in part at least.

Kochin *v.* Superior Copper Co. (Michigan), 148 Northwestern, 252, p. 253, July, 1914.

DIFFERENT METHODS OF PERFORMING SERVICE.

Where there are two methods by which a service may be performed one perilous and the other safe, a miner who voluntarily chooses the perilous rather than the safe one assumes the risk of such perilous one; but the rule does not apply where it is not shown that the miner knew that the method he adopted was a dangerous one, or that it was in fact more perilous than the other, in the absence of the operator's negligence; and if a danger is not so absolute or imminent that injury must almost necessarily result from an obedience on the part of the miner to an order, and the servant obeys the order and is injured, the operator can not defend himself on the ground that the miner should not have obeyed the order.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1022, Januray, 1914.

KNOWLEDGE OF SAFE AND DANGEROUS METHODS.

A miner engaged in a coal mine assumes the risk of the dangerous condition of a roof in an entry, notwithstanding the negligence of the mine operator in permitting the roof of the entry to remain in a dangerous condition, where with knowledge of such danger the miner voluntarily uses the entry, when there is a safe entry equally convenient and known to him, on the theory that where there is open to a servant or miner the selection of a safe and an unsafe way of using implements or premises, and with knowledge of the conditions he voluntarily and knowingly selects the unsafe way, he takes the risk of any accident that may happen to him.

Elliott *v.* Greenville Coal Co., 167 Southwestern, 424, p. 425, June, 1914.

MINER MAKING HIS OWN WORKING PLACE.

The duty of a mine operator to furnish a reasonably safe place to work and to use ordinary care to keep safe, or as to directing and permitting work in an unsafe place, is a qualified duty and does not

extend to all the passing risks that may arise in ever changing conditions of the safety of the work in the ordinary and usual conditions of the work of which the miner is as well informed as the mine operator, or the danger is open and obvious, or can be discovered by the use of ordinary care, or under circumstances which impose on the miner the duty of making safe, or where he is engaged in making safe the place where he works.

Lehigh Portland Cement Co. *v.* Bass (Indiana), 103 Northeastern, 483, p. 486, December, 1913.

ASSUMPTION OF RISK.

A miner employed to look after the safety of the room, chamber, or entry, and whose duty it is to make dangerous places therein safe, assumes the risk incident to such work and the mine operator is not liable for resulting injury.

Big Hill Coal Co. *v.* Clutts, 208 Fed., 524, p. 529, November, 1913.

Where a danger is obvious to a miner he assumes the risk and the employer will not be liable for injuries that may happen to him; and generally a miner assumes the ordinary risks of the employment, and where the miner creates the danger in the progress of his work he must take care to protect himself.

Evans Chemical Co. *v.* Ball (Kentucky), 167 Southwestern, 390, p. 393, June, 1914.

MINER INJURED BY FALLING TIMBER.

A miner whose duty was to load material from the mills at the foot of the stopes in a mine into a tramcar and push the car to a hoist assumes risks directly connected with his work, among them the risk that, notwithstanding skillful inspection of the walls at proper intervals, material may become dislodged from the wall of a mine and go down a stope into the mills at the foot of the stope.

Oiva *v.* Calumet & Hecla Min. Co. (Michigan), 146 Northwestern, 181, March, 1914.

UNEXPLODED BLASTS—LIABILITY.

Where the evidence shows that four experienced miners were employed by a mine operator in sinking a winze, and two worked on the day and two on the night shift and did the drilling, blasting, and cleaning out of the winze as they proceeded, and after some days the miners on the day shift had drilled in the rock seven holes filled with explosives from 5 to 6 feet in length, one of which was in the center of the circle made by the other six, and in making the explosion and while one cap and one fuse were used to each drill hole, the charges were so close to each other that in fact one explosion was all that sometimes could be heard, two or more at other times, and the fact that a less number than seven explosions could be counted was no evidence that any charge remained unexploded, all of which was

known to the miners, and usually the results of the blast were left in the pit to be cleaned out by the succeeding shift and these took conditions as they found them with such warning as the outgoing shift might leave, and the miners under the circumstances are the men upon whom rests the duties to do all that is required to be done, under such circumstances and under the manner in which the work was necessarily performed the mine operator can not be charged with negligence in failing to notify the miners of an oncoming shift that there remained unexploded blasts or that the preceding shift who shot off the blasts did not hear as many explosions as there were blast holes; but in such case the miner assumes the risk of the injury from unexploded blasts.

Conradsen *v.* Osceola Consol. Min. Co. (Michigan), 146 Northwestern, 638, p. 642, April, 1914.

CONSTRUCTION OF ENTRY IN COAL MINE.

Ordinarily a miner in making or completing an entry in a coal mine takes the risk of the dangers which develop as the work progresses, for he makes his own working place.

Williams *v.* Craig Dawson Coal Co. (Iowa), 146 Northwestern, 735, p. 736, April, 1914.

DRIVER OPERATING SWITCHES.

A driver employed to haul coal cars out of a mine and whose duty it was among other things to operate and adjust the switches along the tracks by means of levers, assumes the danger necessarily incident to such work and can not recover for an injury where in attempting to reach a switch while standing inside of an empty car he reached out in an effort to throw the switch and lost his balance and fell thereby causing the injury, though he had been directed to throw the switches while the cars were in motion, yet he had the right to stop and throw the switch if he desired.

Wallace *v.* Columbia Coal Co. (Kentucky), 166 Southwestern, 769, May, 1914.

RISKS NOT ASSUMED.

MAKING DANGEROUS PLACES SAFE.

A miner contracted to build a wall across a certain entry to keep out fire damp coming through such entry from an old mine must be regarded as in the line of his duty where he left the work of building the wall and went some distance to replace a curtain or blanket to keep out the fire damp from the old mine and supply his working place with fresh air and which had been displaced by blasting carried on by other miners at the direction of the mine operator and which blasting weakened the roof of the entry through which the miner was required to pass and by reason of which he was injured.

Victor-American Fuel Co. *v.* Peccarich, 209 Fed., 568, p. 572, November, 1913.

NEGLIGENCE OF OPERATOR.

A motorman operating a motor hauling coal cars in and out of a mine does not assume the risk of dangers due to the negligence of the operator and does not assume the dangers incident to projecting timbers on cars on an adjoining track where, by reason of the condition of the trolley line and acting under the direction of the foreman, his attention was taken from the operation of the motor by being required to hold the trolley pole against the wire at the time he received the injuries for which he sues.

Stonega Coke & Coal Co. *v.* Williams (Virginia), 80 Southeastern, 100, p. 103, November, 1913.

A mine operator must take reasonable care to protect his miners from injury and he owes them the duty of providing them with a reasonably safe place in which to work and of maintaining it in a reasonably safe condition during the employment, having regard to the character of service required and the dangers that a reasonably prudent man would apprehend under the circumstances of each particular case; and this positive duty which the mine operator owes is not one of the perils or risks assumed by the miner in the contract of employment, and the miner is entitled to rely upon the assumption that the mine owner has performed the duty imposed on him by law.

Big Jack Min. Co. *v.* Parkinson (Oklahoma), 137 Pacific, 678, p. 681, December, 1913.

A miner injured while riding out of the mine on the top of a cage, having been directed to take such position by the mine foreman where the cage was filled with other miners, is not to be charged with assumption of the risk, because of the presence of a ladder up the shaft and by which he could climb out of the shaft with perfect safety, where his alleged injury was caused by the negligence of the mine operator and where it was customary for miners to ride out of the mine on top of the cage and the position was not in itself dangerous in the absence of the operator's negligence.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1022, January, 1914.

A miner never assumes the risks of perils arising from the negligence of the mine operator, but assumes only such risks as are ordinarily incident to his employment after the mine operator has performed his whole duty with respect to furnishing a reasonably safe place to work and reasonably safe appliances.

Gambino *v.* Manufacturers' Coal & Coke Co. (Missouri Appeals), 164 Southwestern, 264, p. 266, February, 1914.

A miner does not assume the risk of negligence of the mine operator; and where it is the duty of a mine operator to inspect and care for the roof of the mine so as to render it safe, and the operator failed

to do so, a miner injured by reason of such failure can not be said to have assumed also the duty of inspection or care as incidental to his employment.

Carnego *v.* Crescent Coal Co. (Iowa), 146 Northwestern, 38, p. 42, March, 1914.

UNEXPLODED BLASTS.

Whatever may be said as to dangers incident to the employment of miners, however forceful it may be contended that missed holes are frequent occurrences in mining operations and that such is known to the average miner, it can not be asserted that in modern mining operations, where one group of men follow and take up the work of a previous group, they should assume the risks attendant upon latent or immediate dangers left by those who had previously been engaged in prosecuting the work at the same place; and a miner, however diligent and painstaking in looking out and taking care of his own safety, is not expected to assume either the mistakes of those who preceded him or their failure to carry out the work in the usual customary manner; and this rule applies in the case of a missed hole left by a previous shift, hidden and obscure as it would necessarily be, and where the miner with the oncoming shift receives no warning or notice of its existence; and the failure of the mine operator to provide a regular system whereby notice of unexploded holes was bulletined or reported by the offgoing shift must be regarded as actionable negligence rendering the operator liable for a resulting injury.

Peterson *v.* Pittsburg Silver Peak Gold Min. Co. (Nevada), 140 Pacific, 519, p. 522, April, 1914.

See Panela *v.* Castile Min. Co. (Michigan), 144 Northwestern, 528, pp. 533-535, December, 1913.

See Conradsen *v.* Osceola Consol. Min. Co. (Michigan), 146 Northwestern, 638, April, 1914.

EXPLOSIVES.

Where mining operations are carried on by blasting and the work is done by different shifts of miners, all of the miners of one shift going out at a particular time and the other shift coming on, a miner in such new shift does not assume the risk of explosives remaining in missed holes, and the operator is chargeable with negligence, in case of an injury to a miner having no knowledge of any such unexploded charge, if he fails to adopt a proper and efficient method of communicating to the new shift any missed holes or unexploded charges.

Peterson *v.* Pittsburg Silver Peak Gold Min. Co. (Nevada), 140 Pacific, 519, p. 522, April, 1914.

Panela *v.* Castile Min. Co. (Michigan), 144 Northwestern, 528, p. 535, December, 1913.

EXPLOSIVES—DANGERS NOT DISCOVERABLE.

A miner working in a mine where dynamite is used for blasting and where it is permitted to be stored under statutory rules assumes the risk of all dangers incident to the storing of the dynamite as he

saw it, but he does not assume the risk from a negligent method employed by the operator in thawing the dynamite where the thawer was out of his sight and with which he had nothing to do and had no knowledge of the dangers incident to the particular method employed in thawing the dynamite.

West Lake *v.* Keating Gold Min. Co. (Montana), 136 Pacific, 38, p. 44, October, 1913.

DANGERS NOT DISCOVERABLE.

Reasonable care and reasonable diligence in securing his safety is required on the part of a miner, to the end that he shall not by his own willful negligence bring about his own injury or death; but when a hidden danger is placed by others over whom he has no control, and from whom he may receive no warning or notice, in a place where he has to perform his services, he does not assume the risk thereof, and under this rule dangers arising from a missing blast can not be classified with dangers which are incidental to nature's hidden forces and which can not be known or foreseen by human prescience.

Peterson *v.* Pittsburg Silver Peak Gold Min. Co. (Nevada), 140 Pacific, 519, p. 522, April, 1914.

USE OF HAULAGE WAY.

It is the duty of a mine operator to exercise reasonable care to make a traveling or haulage way in a mine a reasonably safe place and to maintain it in that condition, and a miner using such traveling or haulage way does not assume the risk arising from the operator's failure to discharge that duty, unless the danger is obvious and the miner with knowledge of the danger, appreciation of the risk attending it, and without any assurance from the operator that it would be remedied, continued to use the way.

McInness *v.* Republic Coal Co. (Montana), 140 Pacific, 235, p. 237, April, 1914.

CHANGE OF WORK—UNKNOWN DANGERS.

Where a mine operator takes a miner from his regular working place and his regular work, to engage in other work in the mine which subjects him to increased or additional danger unknown to him, the miner does not assume the increased hazard or risk of the new place of work.

Domestic Block Coal Co. *v.* Holden (Indiana Appeals), 103 Northeastern, 73, p. 75, November, 1913.

KNOWLEDGE OF DANGER—DEFECTIVE APPLIANCES.

The fact that a cable drawing cars out of a mine was worn and had been broken on the end next to the car, but the end which broke had been put upon the drum and the other end used to fasten to the cars, was known to an employee in a mine whose business it was to assem-

ble the loaded cars in a coal mine, fasten them together, and fasten the cable to the front car by which the loaded cars were drawn out of the mine, is not sufficient, as a matter of law, to charge the employee with the assumption of risk, where he believed the cable to be safe after it was so fixed and did not know of its unsafe condition, and where it was perfectly safe to be on the track if the cable did not break, and where in walking down the track for the purpose of having another car ready he was in the discharge of his duty.

Burnet Fuel Co. *v.* Ellis (Texas Civil Appeals), 162 Southwestern, 911, p. 913, January, 1914.

INJURY FROM VICIOUS MULE.

A driver of a mule in a mine assumes the dangers ordinarily incident to such an occupation, but he does not assume the risk where the mine operator knowingly furnishes him with a vicious mule, unsafe for use, and where the miner did not know of the viciousness and unsafeness of the animal; and the mine operator can not escape liability for an injury resulting from a vicious mule on the ground either that a mule is inherently and unreliably a dangerous animal or that a driver must be regarded as assuming any and all risks attending work with a mule.

Gatliff Coal Co. *v.* Wright (Kentucky), 163 Southwestern, 1110, p. 1112, March, 1914.

DANGERS IN ROOM NECK.

The danger from falling rock and débris in a room neck, the passageway leading from an entry in a mine to a room where the miner mines coal, is not one of the risks of the employment assumed by a miner, and where a miner was injured because of the operator's negligence in failing to repair or remedy the roof, after notice of the defective condition, then the danger therefrom was not a risk which the miner assumed.

Gambino *v.* Manufacturers' Coal & Coke Co. (Missouri Appeals), 164 Southwestern, 264, p. 266, February, 1914.

CONTRACTS RELATING TO OPERATIONS.

OPERATING CONTRACT—UNCERTAINTY.

A contract whereby a landowner and coal company employed the contractee to go upon its land and upon what was known as the Ida ore and Big Seam ore, and quarry therefrom and furnish to the coal company all the outcrop of such Ida ore and 6 feet of the Big Seam ore, the contract further providing that the contractee was to get out for and furnish to the coal company all the outcrop ore contained in what is known as the Ida ore and 6 feet of the Big Seam ore, in the property of the coal company, at a certain stated price per ton, is

too indefinite and uncertain as applied to the subject matter of the contract or area sought to be designated to be enforceable, as the word "outcrop" of itself has no quality definitive of quantity or area in respect of the mineral, and used as a noun it describes that part of a mineral strata that lies at or near the surface of the earth, and used thus alone does not define or describe at what particular point, or at what line from the outer edge of the strata beneath the earth's surface at which it can be said the outcrop ends; and the provision that the contractee should get out all the outcrop ore designated as the Ida and the Big Seam ore has no force to render more certain, as to quantity, the amount of ore stipulated for extraction and delivery, as all outcrop only comprehends the entire outcrop, and the designation of the "6 feet of the Big Seam ore" and of "6 feet of the outcrop of the Big Seam ore" are alike ineffectual to impart requisite certainty to the contract; and the further fact that the contractee delivered under the contract and was paid for many tons of ore can not avail to avert the uncertainty in the particulars named.

Sloss-Sheffield Steel & Iron Co. *v.* Payne (Alabama), 64 Southern, 617–619, February, 1914.

PURCHASE OF MINING PROPERTY—RIGHT TO RESCIND FOR FRAUD.

A mining corporation organized to purchase certain mining property under an agreement to pay off certain liens and operate the property and pay the vendors certain royalties until a specified sum was paid can not rescind the contract on the ground of fraud where after knowledge of such fraud it retained possession of the property and treated the contract as valid, nor can it recover the amount paid in discharge of the liens where it fails to comply with the contract according to its terms and the contract is forfeited in an action by the vendors to recover the property.

Gordon-Tigar Min. & Reduction Co. *v.* Brown (Colorado), 138 Pacific, 51, p. 55, February, 1914.

CONTRACT OF PURCHASE—LIABILITY OF PURCHASER.

A mining corporation organized to purchase and purchasing certain mining properties under a contract by which it agreed to pay off certain liens on the mining property and erect a mill on the premises for the treatment of ores and operate the property without delay and pay certain royalty on the profits to the vendors until a specified sum was paid; and under the further agreement that if the property could not be worked profitably possession would be surrendered and the deeds, placed in escrow, returned and all moneys paid and all machinery and improvements made by the purchaser should be forfeited, is not entitled to rescind the contract on the ground of fraud and false representations, where the corporation after learning of

the alleged fraud, treated the contract as valid and continued for 21 months to hold possession of the property, but placed no improvements whatever on the property and did not mine or sell any ore or operate any machinery for the treatment of ores, and it can not in an action by the vendors to recover the property for failure to comply with the contract recover money paid in discharge of the liens or expended by it in working the property, as it waived the right to rescind for the fraud, and it was not entitled to recover damages for the alleged fraud because of its failure to comply with the contract so as to entitle it to demand an absolute conveyance.

Gordon-Tigar Min. & Reduction Co. *v.* Brown (Colorado), 138 Pacific, 51, p. 53. February, 1914.

PREVENTING PERFORMANCE—LIABILITY.

A breach of a contract to mine coal, together with damages resulting therefrom, is sufficiently shown by a pleading stating that while the plaintiff was engaged in performing the contract on his part according to its terms and had on a certain day furnished defendant a statement of the work done under the contract, the coal mined, and also a statement of the number of linear yards of entry worked, and also of break-through or lateral entry work, showing the amounts due from the defendant to the plaintiff according to the terms of the contract, and that the defendant refused to pay the amounts so shown to be due for work done in driving such entries and break-through or lateral entry work, or any part thereof, and denied its liability to pay the same under the terms of the contract, and refused to carry out the contract on its part, and so conducted itself in other ways as to prevent the plaintiff from carrying out the contract on its behalf, whereby the plaintiff has lost and been deprived of divers gains and profits which might and otherwise would have arisen and accrued to him from the mining of such coal from the land described under the terms of the agreement.

Bare *v.* Victoria Coal & Coke Co. (West Virginia), 80 Southeastern, 941, p. 942, February, 1914.

BREACH OF CONTRACT TO MINE COAL—ELECTION OF REMEDIES.

Where a mine owner repudiated a contract with a miner to mine coal and refused longer to be bound thereby, the miner may (1) treat the contract as rescinded and recover on a quantum meruit to the extent of performance on his part; or (2) he may keep the contract alive for the benefit of both parties, being at all times himself ready and able to perform, and at the end of the specified time for performance sue to recover for the alleged breach; or (3) he may treat the repudiation as putting an end to the contract for all purposes of performance and sue for the profits he would have realized if he had not

been prevented from performing; but the renunciation or repudiation on the part of the operator that will excuse performance and entitle the injured party to the remedies stated must be unequivocal and absolute and must deal with the entire performance to which the contract binds the other party, or must relate to such a material part thereof as to prevent performance by him.

Bare *v.* Victoria Coal & Coke Co. (West Virginia), 80 Southeastern, 941, p. 942, February, 1914.

BREACH OF CONTRACT TO MINE COAL—MEASURE OF DAMAGES.

In an action for damages for breach of a contract to mine coal, where the operator has wrongfully terminated the contract, the damages will not be limited to the bare account then due upon the contract, but the injured party may recover profits measured by the difference between what it would have cost to perform the contract and the contract price.

Bare *v.* Victoria Coal & Coke Co. (West Virginia), Southeastern, 941, p. 944, February, 1914.

GRUBSTAKE CONTRACT—CONSTRUCTION AND LIABILITY.

A grubstake contract entered into in 1898 and providing for a division of all the proceeds of the venture, and that wages earned should be treated as proceeds and providing that the agreement should continue during the entire time the prospecting party was in Alaska, is a continuing one and operates so long as the prospector was in Alaska, and the division of the proceeds provided for means net proceeds, and there is no liability on the part of the prospector where he returned from Alaska without any money whatever, though he had returned in the meantime twice and each time invested the funds he then had in mining machinery and appliances and both times returned to Alaska.

Troutman *v.* Polhill (Washington), 140 Pacific, 319, p. 320, April, 1914.

An action can not be maintained on a grubstake contract whereby the suing party advanced to the other two the sum of $500 "as part grubstake or outfit for prospecting and mining in Alaska," under an agreement that all finds or locations made by the two parties should be owned in equal parts by the three and that the two contracting parties would pay to the other one-third "of all proceeds derived from said venture," and that wages earned should be considered a find and divided equally, the agreement to continue during the time that such two parties were in the Klondike country of Alaska or British America, after a delay of 13 years, and where one of the contracting parties lost his life shortly after the two had proceeded to Alaska and where the remaining party subsequently returned with a considerable amount of money, invested this in an outfit and again returned to

Alaska, a second time returning with a small amount, invested this in machinery and returned to Alaska and subsequently came back penniless, and where the plaintiff made no attempt to excuse the delay in asserting the claim, and no claim had ever been made upon the surviving partner prior to the commencement of the action.

Troutman *v.* Polhill (Washington), 140 Pacific, 319, April, 1914.

CONVEYANCE OF COAL—IMPLIED COVENANT TO OPERATE.

A 99-year conveyance or lease of all coal and mineral rights, in certain described real estate, providing for the payment of a specified royalty for each ton of coal mined, but specifying no date for commencing mining operations and containing no clause forfeiting the instrument for failure to mine within a reasonable time, contains in effect an implied covenant by the lessee to begin mining within a reasonable time, and if he fails to do so, he will be presumed to have abandoned his right, and a court of equity will, at the instance of the lessor, cancel the lease as constituting a cloud on the title.

Chandler *v.* French (West Virginia), 81 Southeastern, 825, p. 827, May, 1914.

INDEPENDENT CONTRACTOR.

WHAT CONSTITUTES.

An independent contractor as applied to mining operations is one who exercises an independent employment and represents the mine operator only as to the results of his work and not as to the means whereby it is accomplished, and the independent contractor selects his men, provides equipment, provides the mode or manner of doing the work, and the relation is not qualified by a reservation which gives the operator the right to supervise the work for the purpose of determining merely whether it is being done in accordance with the contract; but the chief consideration is that the mine operator has no right of control as to the mode of doing the work.

Watson *v.* Hecla Min. Co. (Washington), 140 Pacific, 317, p. 318, April, 1914.

MASTER AND SERVANT—EMPLOYEE OF INDEPENDENT CONTRACTOR.

A coal-mine owner and operator occupies the position of a master to a miner employed by an independent contractor where such owner and operator had the oversight and control of the entry through which the employees of the independent contractor were compelled to pass and where it was not the duty either of the contractor or of his employees to make such entry safe and where the mine owner himself inspected the roof of the entry, but had failed to remove the dangerous part thereof which resulted in the death of the employee.

Big Hill Coal Co. *v.* Clutts, 208 Fed., 524, p. 525, November, 1913.

LIABILITY FOR NEGLIGENCE OF INDEPENDENT CONTRACTOR.

While a mine operator is not liable for an injury to a miner caused by the negligence of an independent contractor, yet where the contract relied upon to show the relation does not specify the character of the work other than that it shall be done in a workmanlike and substantial manner, and where the evidence casts a doubt as to whether the relation of independent contractor did not exist, it then becomes a question of fact to be determined by a jury in an action by an injured miner against the mine operator.

Watson *v.* Hecla Min. Co. (Washington), 140 Pacific, 317, p. 319, April, 1914.

MINER PAID BY TON.

A miner employed by a mine operator and paid by the ton for mining coal is not an independent contractor where the mine operator retains control over the manner and method of work; but in such case he is regarded as a servant whose compensation depends upon the amount of coal mined and is a miner entitled to the protection of the statute.

Interstate Coal Co. *v.* Trivett (Kentucky), 160 Southwestern, 728, p. 731, November, 1913.

Interstate Coal Co. *v.* Trivett (Kentucky), 160 Southwestern, 731, p. 732, November, 1913.

Big Branch Coal Co. *v.* Sanders (Kentucky), 166 Southwestern, 813, p. 814, May, 1913.

Employers' Indemnity Co. *v.* Kelly Coal Co. (Kentucky), 160 Southwestern, 914, p. 916, November, 1913.

LIABILTY OF OPERATOR FOR DEATH OF EMPLOYEE OF THIRD PERSON.

A coal mine owner and operator is liable for the death of a miner in the employ of an independent contractor who had intended to mine coal, but where it was shown the miner was killed in the cross entry by the fall from the roof of a block of slate, and where it also appeared that the operator exercised supervision and control over such cross entry and paid the wages of the miners, including that of the deceased miner, for the work performed in preparing such cross entry.

Big Hill Coal Co. *v.* Clutts, 208 Fed., 524, p. 525, November, 1913.

LIABILITY OF INDEPENDENT RAILROAD COMPANY.

A railroad company may be liable on the ground of negligence for the death of a miner in the employ of a coal company where the coal company owned a sidetrack which the railroad company had permission to use, and while the miner was engaged in repairing a car of the coal company the servants of the railroad company negligently pushed a car against the one beneath which the miner was working

and where the miner was at the time in the line of his employment for the coal company and was not working for the railroad company; and he can not under the Pennsylvania law of 1868 be chargeable as a fellow-servant of the railroad employees.

Magnuson *v.* Pennsylvania R. Co. (Pennsylvania), 89 Atlantic, 462, p. 463, November, 1913.

CONSTRUCTION OF CONTRACT—PAROL EVIDENCE TO SHOW RELATION.

In an action by an injured miner against a coal-mine operator for damages, under the defense that the miner was working for an independent contractor operating under a written contract and agreement, the plaintiff is entitled to introduce evidence showing the real relation of the parties, and the rule which prohibits the introduction of oral evidence for the purpose of contradicting or modifying a written instrument does not apply, as the plaintiff was not a party to the agreement and would not be bound by its terms; and in such case the injured miner may show by oral testimony that the relation of master and servant subsisted between the mine operator and the alleged independent contractor and that the operator had direction and charge of the work being done by the alleged independent contractor.

Watson *v.* Hecla Min. Co. (Washington), 140 Pacific, 317, p. 318, April, 1914.

NOTE.—The court after broadly stating the rule proceeds to cast doubt upon the rule by saying: "If the contract is certain and definite the question whether a person operating under it is an independent contractor is for the court; but where the terms of the contract are doubtful, or are rendered doubtful by the introduction of oral testimony the question generally becomes one for the jury." The rule stated is further nullified by a quotation from Fehrenbacher *v.* Oaksdale Copper Min. Co. (65 Wash., 134; 117 Pacific, 870), as follows: "Where the contract is certain the question of whether a person operating under it is an independent contractor or a mere servant is a question of law for the court. But where the terms of the contract are in doubt the relation of the parties is generally a question for the jury."

LIABILITY TO EMPLOYEE OF INDEPENDENT CONTRACTOR.

A mine operator may, on the ground of negligence, be liable to an employee of a person under contract with such operator whereby such person delivered coal into buggies and drove entries for a stipulated price, paying such employee and one or more other men out of the contract price, the earnings of the assistants being credited upon the books of the operating company and payment therefor being made by the operator, and where the company furnished power and equipment and the mine foreman had authority to discharge anyone employed in the mine, as a mine operator can not escape liability for negligence by such an arrangement.

Big Branch Coal Co. *v.* Sanders (Kentucky), 166 Southwestern, 813, p. 814, May, 1914.

MANAGING COMPANY—INDEPENDENT CONTRACTOR.

A coal company can not escape liability for an injury to a miner caused by its alleged negligence on the ground that it was not operating a coal mine but was merely a holding company and that the coal mine was in fact operated by another company, and that the two companies were separate and distinct, where the same officers and stockholders constituted both companies and where the evidence shows that metal checks were given to the employees in payment of labor and supplies bearing the name of the defendant company.

Stearns Coal & Lumber Co. *v.* Tuggle (Kentucky), 164 Southwestern, 74, p. 75, March, 1914.

PARTNERSHIP AGREEMENTS.

PARTNERSHIP AGREEMENTS—SETTLEMENT OF ACCOUNTS.

An action by the administrator of a deceased miner against his partner for an accounting for moneys expended in the development of the claim will be defeated by proof that the defendant repudiated the agreement at a particular time and gave notice that he would not contribute longer to the enterprise and thereupon the partners settled and adjusted the accounts to that date.

Goldsmith *v.* Murray (Montana), 138 Pacific, 187, December, 1913.

CONSTRUCTION AND RIGHTS.

Under an agreement between the plaintiff and defendant by which the former advanced money to the latter for his expenses in procuring oil leases and options and was to have an equal interest in such leases and options, even though the defendant was to give all his time to such business, this did not prevent him from joining in the organization of a corporation for the purpose of developing oil property, where this took no part of his time and did not conflict with the partnership business and where it appeared that the plaintiff refused to put any money into any drilling propositions and a subsequent agreement by which plaintiff was no longer to furnish money, of itself terminated the original agreement and the plaintiff could have no interest in the corporation subsequently organized, even though defendant's interest in the corporation would have been partnership property if acquired prior to the termination of the partnership agreement.

Hamman *v.* Emerson (135 Louisiana), 65 Southern, 765, p. 767, May, 1914.

SUIT FOR AN ACCOUNTING.

Mining partners in a suit for an accounting should each be charged and credited with the sums received and paid out according to their respective interests, and one partner is entitled to a credit and the

other should be charged with one-half of a sum paid by one partner for an interest owned by the partners equally.

Kleesattel *v.* Orr (Washington), 141 Pacific, 355, June, 1914.

METHODS OF OPERATING.

EXPERT EVIDENCE.

While the rule is that where all the circumstances can be fully and adequately described to the jury, and are such that their effect can be understood by all men, without special knowledge or training, then the opinion of witnesses, expert or otherwise, is not admissible; but where the roof of a tunnel in a mine had been cracked from the effect of a shot fired by the miner, and where an inexperienced miner was unable to pry down the loosened parts with a bar, and where he was subsequently injured by the fall of this loosened material, expert miners may give their opinion as to whether experience and knowledge of the sounding test were necessary to determine whether the roof of the tunnel in such condition was liable to fall, and the evidence is admissible on the theory that all men are not familiar with the operation of coal mines or with the various conditions that might or might not indicate danger, and are not as capable as experienced miners in determining whether a situation described to them would or would not obviously indicate a danger.

Carney Coal Co. *v.* Benedict (Wyoming), 140 Pacific, 1013, p. 1018, May, 1914.

JUDICIAL NOTICE.

While neither a court nor jury can properly take judicial notice of how a coal mine should be operated, or what is practicable and good usage among prudent operators, yet where the negligence of an operator is shown to be gross, resulting in the death of a miner, neither courts nor juries may properly shut their eyes, forswear their judgment, and await the coming in of expert testimony concerning some physical fact or omission of duty patent to everyone.

National Fuel Co. *v.* Maccia (Colorado), 139 Pacific, 22, p. 25, March, 1914.

PREVENTING OPERATIONS—INJUNCTION.

TRADE UNIONS—RIGHT OF EMPLOYEES TO STRIKE.

An employee, or any number of employees, in the absence of a contract to work a definite time, has a right to quit the service of the employer without any reason or for any reason he may regard satisfactory to himself; and employees of a coal company have a right to protest to the employer against the employment or retention of a nonunion employee and to make the discharge of such nonunion employee a condition to their continuation in his employment, and

that unless such nonunion employee is discharged the union employees will strike, or the equivalent, will simultaneously cease to work; and if under such circumstances the nonunion employee is discharged by the common employer he has no cause of action against either the union as an organization or the members thereof as individuals.

Roddy *v.* United Mine Workers of America (Oklahoma), 139 Pacific, 126, p. 127, January, 1914.

ENJOINING STRIKERS—PLEADING.

A bill for an injunction filed by a mining corporation against the Western Federation of Miners is sufficient for the purpose where, after formal declaration, it avers that the general strike was called and inaugurated by the defendant in the copper mining district of Lake Superior on a certain day; that 4,000 miners in the complainant's employ not allied with the defendant refused to participate in the strike and endeavored to continue work; that the defendant by threats and violence interfered with and drove them from their work, stopped the pumps at the mine, causing the latter to partly fill with water, thus forcing a suspension of work; that a condition of violence and lawlessness developed in the district where the strike prevailed beyond the power of the civil authorities to control; that from the day of the inception of the strike the members of the federation did unlawfully combine and conspire together with the unlawful purpose and by illegal and unlawful means to prevent the employees of the mining company from working at the mines, and to force the cessation of all operations, and that such members have assaulted and beaten many of the employees of the mining company and continued daily to make such assaults and beatings and threats of deadly harm, and do, systematically, by threats, intimidations, force, violence, assaults, picketing, threatening parades, riotous and threatening gatherings in large numbers, and by other unlawful means, interfere with and molest and disturb, without authority of law, the miners employed by the mining company.

Baltic Min. Co. *v.* Houghton (Michigan), 144 Northwestern, 209, December, 1913.

MINING LEASES.

LEASES GENERALLY—CONSTRUCTION.

COVENANTS CONSTRUED IN FAVOR OF LESSEE.

In oil and gas leases the compensation of the lessor is generally a royalty, and the covenants to be performed by the lessee which relate to the right to drill or explore for oil or gas are generally construed most strongly in favor of the lessor; but this rule has its limitations, and when a lessee has faithfully performed all his covenants and has discovered oil in paying quantities and the lessor is receiving the royalty as the lease contemplates, the lessor can not then invoke

this rule to aid him in dispossessing the lessee, and the lessee having performed his covenants he thereby obtained a vested interest in the oil and gas in the leased premises because of his exclusive right to drill, and the lessee holds such interest as security against the lessor.

Burgan *v.* South Penn Oil Co. (Pennsylvania), 89 Atlantic, 823, p. 825, January, 1914.

NATURE AND CONSTRUCTION—CONSIDERATION AND RIGHTS OF PARTIES.

The holder of a State mining lease conveyed to another a one-fifth interest, the grantee at the time signing and delivering to the grantor a writing to the effect that under certain conditions the grantor would take back one-half of the interest conveyed within six months of the date of the sale, at the option of the purchaser, and such agreement is binding as an option agreement and is based on a sufficient consideration and the seller is bound by such contract though he did not in fact sign it, and the contract is capable of specific enforcement.

Gregory Co. *v.* Shapiro (Minnesota), 145 Northwestern, 791, p. 793, February, 1914.

LICENSE TO MINE—KNOWLEDGE OF CONDITION—FORFEITURE.

A license to mine for a specified time can not be forfeited for the failure to pay a royalty amounting to no more than $4.30; nor can such a license be forfeited because the licensee made a verbal agreement with two persons by which they were to carry on mining operations "six months at a time" for a percentage of the ore mined, where the transaction was not a sale or assignment of the mining license, or any interest in the same, but the licensee was still the sole owner of the mining license and did not lose control of the mining operations; nor can the licensor forfeit the license for the failure of the licensee to do continuous mining, where it appeared that no work was done during the latter part of October and during the month of November, and where the licensor was aware of the fact and made no complaint at the time.

Gates *v.* Steckel (Missouri), 161 Southwestern, 1185, p. 1186, January, 1914.

LICENSE TO MINE—RIGHTS OF LICENSEE—REVOCATION.

While a mere licensee acquires no estate or interest in the land, mines, or minerals, and had no possession sufficient to enable him to maintain a possessory action, yet the right to mine can not be revoked at will and he can not be arbitrarily deprived of this right under his license in the absence of some substantial violation of the terms and conditions imposed by the mining lease.

Gates *v.* Steckel (Missouri), 161 Southwestern, 1185, p. 1186, January, 1914.

STATE LEASE—ASSIGNMENT.

The statute of Minnesota (R. L. 1905, sec. 2493) provides that an assignment of mining leases shall be signed by both parties, executed in the presence of two witnesses, duly acknowledged, with the approval of the auditor thereon; but this law is not a statute of frauds and was not intended to make invalid contracts relative to the property evidenced by a State mining lease when executed and conformable to the requirements of contracts relative to real property, and an agreement to repurchase within a specified time a certain interest in a mining lease, though not in writing, may be enforced.

Gregory Co. *v.* Shapiro, 145 Northwestern, 791, p. 794, February, 1914.

COAL LEASES.

CONSTRUCTION—ASSIGNMENT.

A coal lease or contract providing that "the words 'trustee and lessee' as understood herein shall be construed to mean successors, heirs, executors, and assigns" evinces an intention on the part of the parties to the contract to make the contract or lease transferable by assignment, and there is nothing to indicate that the term "assigns" should have reference alone to the assignee of the lessee.

Young Coal Co. *v.* Hill (Arkansas), 165 Southwestern, 292, p. 293, March, 1914.

LEASE OF COAL WITH RIGHT TO MINE—CONSTRUCTION AND EFFECT.

A lease of all the coal underlying a tract of land with the right to mine and remove the same at a given price per ton as royalty is equivalent to a sale of the coal in place.

Trustees, etc., Kingston *v.* Lehigh Valley Coal Co. (Pennsylvania), 88 Atlantic, 768, p. 769, June, 1913.

FAILURE TO PAY ROYALTIES—DAMAGES.

A coal-mining lease providing that the lessor was to receive a certain stipulated royalty per ton for all coal mined and requiring the lessee to keep an accurate account of the coal mined and to develop the coal on the premises leased, and expressly providing that the failure of the lessee to pay the royalties stipulated should operate as a forfeiture of the lessee's rights, may be forfeited by the lessor and the lessee's rights terminated on failure of the lessee to pay the royalties according to the terms of the lease; and the lessor is entitled to recover damages for failure to prosecute the mining operations with diligence, and such damages are recoverable as incidental to the accounting for the unpaid royalties.

Pollak *v.* Stouts Mountain Coal & Coke Co. (Alabama), 63 Southern, 531, p. 532, November, 1913.

ASSIGNMENT—SUBLETTING—LIABILITY OF ASSIGNEE.

A lessee parting with his interest in the whole of the leasehold estate for the balance of his term, or with his interest in the part of the demised premises for the entire term, is in effect an assignment of lease, and the assignee becomes an assignee of the term with the rights and liabilities incident to such a position, and it is immaterial by what kind of an instrument or conveyance the term is so disposed of, if the lessee parts with his entire interest in the whole or part of the premises and the assignee of a coal lease becomes liable for the royalty on the coal mined to the original lessor, and does not occupy the position of a mere sublessee.

Pennsylvania Min. Co. *v.* Bailey (Arkansas), 161 Southwestern, 200, November, 1913.

ADJUDICATION OF TITLE—EFFECT.

An adjudication of title in an action for injunction to prevent a lessee of coal lands from wrongfully mining coal, and a determination by a court that the lease under which the mining was prosecuted was a lease of the surface only and that the coal in place belonged to the reversioner, is not res adjudicata in a subsequent action by the reversioner against the lessee for damages for the wrongful mining of coal prior to the judgment enjoining further operations.

Trustees, etc., Kingston *v.* Lehigh Valley Coal Co. (Pennsylvania), 88 Atlantic, 763, p. 767, June, 1913.

LIABILITY OF SURETY OF LESSEE.

The fact that a lessor of a mining lease simply forebore to sue the lessee from time to time on his past due indebtedness for royalties, where such forbearance was without any consideration, does not release a surety of the lessee from his obligation to make good the violation of the lease on the part of the lessee; nor is the lessor, on the failure of the lessee to pay the royalties according to the lease, bound to declare the lease forfeited, as the forfeiture was at the option of the lessor, and the failure of the lessor to declare a forfeiture and to bring suit for royalties that had accrued and that were permitted to remain due more than a year was but forbearance for past due indebtedness without consideration, and did not release the surety.

Young Coal Co. *v.* Hill (Arkansas), 165 Southwestern, 292, p. 293, March, 1914.

LIABILITY FOR COAL USED IN OPERATIONS.

Under a custom prevailing in the anthracite coal region of Pennsylvania coal used by a lessee in the operation of the mine is not subject to royalties.

Trustees, etc., Kingston *v.* Lehigh Valley Coal Co. (Pennsylvania), 88 Atlantic, 768, p. 769, June, 1913.

MINERALS REMOVED UNDER SUPPOSEDLY VALID LEASE.

Where coal was mined by the assignee of a 999-year lease under the belief that the lessee and his assignees were the owners of the coal, but it had been judicially determined that the lease conveyed the surface of the land only, the reversioner in an action for damages for the wrongful mining of the coal can not invoke the rule of treble damages under the Pennsylvania act of 1876, as the act does not apply to such cases, but the reversioner is limited to an action for ordinary damages as for an innocent trespass.

Trustees, etc., Kingston *v.* Lehigh Valley Coal Co. (Pennsylvania), 88 Atlantic, 768, p. 770, June, 1913.

ACTION FOR COAL WRONGFULLY MINED—STATUTE OF LIMITATIONS.

A reversioner under a 999-year lease may sue to protect the estate and may sue and recover for the unlawful mining and conversion of coal by the tenant or his assignee, but such an action is barred by the statute of limitations after six years, and the statute of limitations begins to run against the reversioner's right from the time he discovered, or by due diligence should have discovered the wrongful mining of the coal.

Trustees, etc., Kingston *v.* Lehigh Valley Coal Co. (Pennsylvania), 88 Atlantic, 763, p. 765, June, 1913.

REFORMATION DENIED.

A lessor is not entitled to the reformation of a lease granted by him for the operation of a coal mine providing for a stipulated royalty on coal mined where the lessee subsequently assigned the lease to a corporation organized for the purpose of operating the mine, on the ground of mutual mistake in that he had a separate agreement with the lessee that in the event the lease was assigned to a third person an increased royalty should be paid, where it appeared that the corporation at the time of its organization and at the time of the assignment of the lease had no notice of such independent agreement.

Rockport Coal Co. *v.* Carter (Kentucky), 163 Southwestern, 734, p. 736, February, 1914.

OIL AND GAS LEASES.

CONSTRUCTION—RIGHTS AND LIABILITIES GENERALLY.

DUTIES AND LIABILITIES IMPOSED.

Where the object of the operations contemplated by parties to an oil and gas lease is to obtain a benefit or profit for both lessor and lessee, neither is, in the absence of stipulations to that effect, the arbiter of the extent to which or the diligence with which the

operation shall proceed; but both are bound by the standard by what in the circumstances would be reasonably expected of operators of ordinary prudence, and the development and protection of lines which is implied when the lease is silent is such as is usually found in the same business of an ordinarily prudent man, neither the highest nor the lowest, but about the average; and where under such a lease at the completion of the first well the lessor and lessee by agreement changed the terms of the lease, the effect of which was a waiver by the lessor of the implied condition for further development on other portions of his land, and therefore a limitation upon the production on the whole tract, the lessee must, notwithstanding the amended agreement, if conditions subsequently arise which require the lands to be protected, use reasonable diligence in this behalf and sink as many wells as the exercise of due diligence should suggest to an ordinarily prudent person engaged in the same undertaking under the same circumstances; and on his fraudulent refusal to develop and protect the premises the lessor may resort to equitable relief, and in such case he does not have an adequate remedy at law.

Jennings *v.* Southern Carbon Co. (West Virginia), 80 Southeastern, 368, p. 370, November, 1913.

RIGHTS AND LIABILITIES.

An oil lease imposing on the lessee, under certain conditions, the duty to drill a certain number of wells, may be canceled by the lessor for failure to drill as provided for by the lease; but the potestative condition can not be invoked as to that part of the lease and of the leased premises where the lessee had drilled a number of wells, but not the number required.

Caddo Oil & Min. Co. *v.* Producers' Oil Co. (134 Louisiana), 64 Southern, 684, p. 686, March, 1914.

A lease of land for oil and gas purposes in the usual form, providing for payment of royalties and the drilling of one well within a stated time, and providing also that if the lessee felt justified in drilling more than one well then the parties were to share equally in all expenses of such additional drilling, and providing also that if operations for oil or gas ceased for a period of 60 days the lease should become null and void, may be forfeited in an action by the lessor for that purpose in case operations have ceased for more than the 60-day period, and the lessor is not bound to tender the lessee any sum or one-half of the cost of the drilling of a subsequent well, as the drilling of any additional wells depends upon the lessee's feeling justified in so doing, and as the cost of such drilling is indefinite the lessor's liability would arise only when the lessee proceeded to drill the second well.

Ditman *v.* Keller (Indiana), 104 Northeastern, 40, p. 41, February, 1914.

A lease of land for a period of five years and as much longer as the premises should be operated for oil and gas, for the purpose of operating for oil and gas and mineral, and of laying pipe lines, building tanks and stations, the lessor to receive one-half of the profits from all wells, is not ambiguous and will be interpreted and enforced according to the plain meaning of its provisions where nothing is shown that changes the rights of the parties as therein expressed.

Ditman *v.* Keller (Indiana Appeals), 104 Northeastern, 40, February, 1914.

The rule that oil and gas leases are construed most strongly against the lessee and in favor of the lessor does not apply in an action sounding in damages on the ground of an alleged trespass by the lessee after the expiration of the lease.

Cooke *v.* Gulf Refining Co. (135 Louisiana), 65 Southern, 758, p. 760, May, 1914.

NATURE AND ESTATE.

An oil and gas lease in the usual form providing that the lessee should hold the premises for the term of five years and as much longer as gas and oil is found in paying quantities on the premises, conveys to the lessee a freehold estate, for the reason that it may continue indefinitely.

Daughetee *v.* Ohio Oil Co. (Illinois), 105 Northeastern, 308, p. 310, June, 1914.

WANT OF MUTUALITY AND CONSIDERATION.

A lease of land for oil and gas for a period of 40 years imposing no duty upon the lessee except to pay a nominal royalty on oil and gas produced, and not requiring the lessee to expend any money in prospecting or developing oil or gas lands, lacks both consideration and mutuality and the lessor may withdraw therefrom at any time before performance by the lessee, as such instrument is but a lease option.

Davis *v.* Riddle (Colorado), 136 Pacific, 551, p. 552, November, 1913.

MUTUALITY AND VALIDITY.

A condition in an oil and gas lease in the usual form granting to the lessee the right to operate the premises for oil and gas, the lessee reserving the right to abandon the premises whenever it desires to cease operation and to remove the property placed thereon by it, at discretion, is clearly potestative and makes the execution of the lease depend upon the will of the lessee, thereby destroying the obligation which the lessee had assumed and which was the legal tie that gave the lessor the right to enforce the lease, and as the money consideration was merely nominal it follows that there being no obligation resting on the lessee, and therefore no consideration moving to the lessor, there was no contract; but if the lessee has actually complied with and discharged the obligation which, but for the potestative

condition, would have been imposed upon him, and the lessor accepted and profited by the advantage resulting therefrom, the lessor can not while retaining such advantage, or in case of his inability to reinstate the status quo, be permitted to repudiate the obligations thereby assumed and have the lease canceled and set aside.

Caddo Oil & Min. Co. *v.* Producers' Oil Co. 134 (Louisiana), 64 Southern, 684, p. 687, March, 1914.

PLEADING PERFORMANCE OF CONDITIONS.

A lease of land for the purpose of operating thereon for oil and gas and in consideration of which the lessee agrees to pay the lessors the one-fifth part of all the oil produced and saved therefrom, and further agrees to pay $150 a year for each well secured on the premises, when utilized off of the premises, and the lessees were to commence a well within 10 days from the day of the lease, is sufficiently complied with where the lessee began the drilling of a well for oil within the stated time and prosecuted the drilling diligently for more than three months, reaching a depth of 1,950 feet, drilling through the oil-producing sand in the particular district and at the expense of $7,000, but without discovering oil or gas; and, subsequently and while still in possession of the leased premises the lessees, for the purpose of further developing the premises for oil and gas, procured the right to and did proceed to drill on adjoining premises and within 300 feet of the line of the leased premises, a well producing oil in large quantities, and the lessor could not while the lessees were so in possession and so developing the leased premises execute a new and valid lease of the same premises to a third person having notice and knowledge of the original lease, and in an action by the lessees of such first lease to have declared void and have canceled such second lease it is sufficient as a matter of pleading to allege generally the performance of all the conditions to be by them performed according to the terms of the lease.

Cahill *v.* Pine Creek Oil Co. (Oklahoma), 136 Pacific, 1100, November, 1913.

NATURE OF TITLE—VESTED RIGHTS.

Under a lease granting a right to operate for oil and gas the title is inchoate and granted for purposes of exploration only until oil or gas is found, and if not found no estate vests in the lessee, and his title, such as it is, ends when the unsuccessful search is abandoned; but if oil or gas is found, then the right to produce becomes a vested right and the lessee will be protected in exercising it in accordance with the terms and conditions of his contract.

Burgan *v.* South Penn Oil Co. (Pennsylvania), 89 Atlantic, 823, p. 826, January, 1914.

VESTED RIGHTS—ABANDONMENT.

A landowner leased three several tracts of land and granted the exclusive right to produce oil and gas from each as long as these could be produced, with a covenant on the part of each lessee to commence drilling within 30 days and diligently prosecute the same to completion, and to commence a second well within 60 days and prosecute the same in like manner, and to commence drilling a third well within 60 days from the completion of the second, and on failure to commence the second well within the specified time the lessee should forfeit all the land except 8 acres around the first well, and on failure to commence the third well within the specified time he should forfeit all the land except 17 acres around the first and second wells, and there can be no forfeiture where the original lessee completed three wells in the time specified, and on the performance of the covenant in this manner each lease becomes valid and binding as to the entire tract therein described and the lessee is entitled to hold the entire tract and continue sinking other wells thereon so long as either oil or gas is produced, and the abandonment of any one of the three wells after it ceased to be profitable was not an abandonment by the lessee of his vested right to take the oil in and under the tract out through other wells.

Burgan *v.* South Penn Oil Co. (Pennsylvania), 89 Atlantic, 823, p. 826, January, 1914.

VESTED RIGHTS OF LESSEES.

An owner of land having leased the same for development for oil and gas on certain stated terms and conditions, can not, while the lessee is in possession of the lease premises performing the conditions of the lease and diligently engaged in developing the land as the lease contemplated, make a valid lease of the premises to a third person with notice of the original lease and with knowledge of the development of the same by the lessees.

Cahill *v.* Pine Creek Oil Co. (Oklahoma), 136 Pacific 1100, November, 1913.

INTEREST AND RIGHTS GRANTED BY LEASE.

Under an oil and gas lease providing that if oil, gas, coal, water, and other minerals be found in paying quantities, but, none the less, if the grantee discontinues the work or fails to develop the oil wells, he is to be held to have abandoned all the lands leased, except 10 acres in a square to be held by the grantee for 25 years; and further in the event oil, gas, water, or other minerals are produced in paying quantities, the lessee can not claim the 10 acres in a square in the absence of proof that he has discovered oil, gas, coal, or other minerals in paying quantities, as this right is dependent upon the condition that the enumerated substances shall be found in paying quantities.

Brown *v.* Producers' Oil Co. (134 Louisiana), 64 Southern, 674, p. 676, March, 1914.

LEASE OF OIL LANDS.

A lease or agreement reciting that for and in consideration of a nominal sum and other considerations of mutual covenants and other agreements set out, the lessor did thereby lease to the lessee certain described lands, and grant to the lessee the exclusive right to sink shafts, to drill wells, and to extract any and all kinds of minerals, especially petroleum from the land, the lease to extend for a term of 20 years unless sooner forfeited, and the lessee in consideration thereof agreed to incorporate a company for the operation and development of the leased property before commencement of active operations on the property and to commence active work of boring for oil not later than a certain specified date, and to prosecute such labors diligently, is a lease of the land itself and is not an ordinary oil and gas lease by which the lessor remains in possession and control of the land, giving the mere right of entry to the lessee to begin the prosecution of search for oil; and the discovery of oil was not a prerequisite to the existence of a cause of action on the part of the lessee or its assigns for the failure of the lessor to place the lessee in possession of the property.

Kline *v.* Guaranty Oil Co. (California), 140 Pacific, 1, p. 3, April, 1914.

METHOD OF MEASURING GAS.

An oil and gas lease provided that for any gas well producing gas of marketable quantities a semiannual sum was to be paid as rental, to be ascertained by gauging such well every six months in the casing in which it was completed, and if the well showed for the first minute of the gauging a pressure of 200 pounds or more the rental for the ensuing six months was to be $250, and for less amounts of pressure smaller sums of rental in proportion were to be paid; and the method of measurement and computation and the right to recover is not lost from the fact that the company operating the gas well inserted a smaller tube inside the casing that necessarily changed the pressure and made it impossible to gauge the gas in the original casing, as provided by the terms of the lease, where the evidence shows that by taking the pressure in the tubing and using a well-known mathematical formula the practical equivalent could be obtained for the pressure in the casing, and where the evidence also shows that the calculations of the minute pressures of gas are only practically accurate and the calculation of the equivalent pressure in the smaller tube was necessarily of the same general character.

Addleman *v.* Manufacturers' Light & Heat Co. (Pennsylvania), 89 Atlantic, 674, January, 1914.

APPLICATION OF STATUTORY RULES.

The statutes of Louisiana are silent on the subject of mineral rights and contracts for the reason that minerals under and within the soil of Louisiana were not in contemplation of the lawmakers; and when parties enter into a contract of lease of oil lands containing terms inconsistent with, if not antagonistic to, the laws and jurisprudence of the State, and they did so under the advice of learned and competent counsel, a court will be slow in holding one of the parties to a technical bad faith in insisting upon a compliance with the terms of the lease as interpreted by it and its legal adviser, or in continuing in possession under a provision which continued the lease in force and effect so long as oil or gas may be produced in paying quantities, and especially so when there is a difference of opinion as to what may be properly termed paying quantities.

Cooke *v.* Gulf Refining Co. (135 Louisiana), 65 Southern, 758, p. 758, May, 1914.

APPLICATION OF EXISTING LAWS.

Oil and gas leases are apart by themselves and there is scarcely any comparison between them and the ordinary farm and house lease, though there is some resemblance to coal or solid mineral leases; and the law with reference to sales and leases in ordinary legislative enactments can not be always applied to oil leases, as these are the nature of both sale and lease, and the law with reference to good or bad faith can not be applied with the same degree of certainty as would attend the interpretation of the law with reference to an ordinary trespass.

Cooke *v.* Gulf Refining Co. (135 Louisiana), 65 Southern, 758, p. 759, May, 1914.

EFFECT OF EXCEPTIONS AND RESERVATIONS.

A clause in a conveyance or lease of land and the oil and gas therein "excepting and reserving from this conveyance and the warranty herein all of the estate, right, title, and interest in and to the premises above described which were conveyed by said Louisa D. Cracraft, deceased, to James Townsend Russell by and (an) instrument in writing bearing date of January 28, 1901, and also excepting and reserving all the rents, royalties, and compensation reserved by and agreed to be paid to said Louisa D. Cracraft by said James Townsend Russell in and by said written agreement," is in effect a reservation of the oil and gas in place, though the lease therein referred to was, at the suit of the lessor, by decree in her favor, after the drilling of a profitable gas well on the land, forfeited and removed as a cloud on her title.

Updegraff *v.* Blue Creek Coal & Land Co. (West Virginia), 81 Southeastern, 1050, May, 1914.

OWNERSHIP OF GAS.

A gas and oil lease for a tract of land in the ordinary form with an agreement to furnish free gas to the lessor, and a further agreement to pay on the part of the lessee a certain specified sum yearly until a well is completed, does not by its terms convey to the lessee any title to the gas under the land, but rather creates in the lessee the right to reduce it to possession by means of drilling wells, and when so reduced to possession it becomes the personal property, the absolute title to which is in the lessee, subject to the terms of the lease, and the lease extends to all gas under the entire tract of land; but the title thereto remains in the lessor subject to the lessee's right to explore for it and reduce it to possession; and by a deed by the lessor for any part of the premises to a third person the lessor and grantor parts with his title to so much of the land included in such conveyance, and conveys to his grantee the qualified ownership in the gas under the tract so conveyed; but the grantee of such part of the land covered by the original lease can have no right or interest whatever in any gas produced through or by a well on the residue of such leased land, even though such gas or some part of it may have flowed immediately or remotely from underneath the land conveyed to him.

The owner of the fee of land owns everything that goes to make up the realty, and natural gas beneath the surface is a part of the realty and the owner of the fee is the owner of the gas; and by reason of the fugitive character of natural gas the owner of the land is owner of the gas only in a qualified sense, and owns it only while it remains beneath the surface of his land, but if by its natural tendency to flow it escapes to the lands of an adjoining proprietor such ownership then ceases; but this qualified ownership in the gas authorizes the landowner to reduce it to possession by sinking wells on his land and thus permit it by natural means or its own ordinary pressure to flow to the surface and into a receptacle he may prepare to receive the same, and when thus reduced to possession through a well, and regardless of whether it came from beneath his own land or remotely from the lands of an adjoining proprietor, it then becomes personal property, the absolute ownership of which is in the landowner.

Fairbanks *v.* Warrum (Indiana Appeals), 104 Northeastern, 983, p. 986, April, 1914.

MINING LEASE WITH OPTION TO PURCHASE.

An ordinary mining lease, with an option to purchase, providing for development work in general, but with no provisions for specific buildings or other permanent improvements except the work done in the usual operation of an active mine, does not create the relation of vendor and vendee.

Milwaukee Gold Min. Co. *v.* Thompkins-Cristy Hardware Co. (Colorado), 141 Pacific, 527, p. 529, June, 1914.

LEASE EXECUTED BY LIFE TENANT—AUTHORITY OF REMAINDERMAN.

A remainderman has no power to authorize a widow holding a dower interest in land, or life tenant, to execute an oil and gas lease upon the land unless such authority is given by an instrument in writing, duly signed by him as the owner of the fee.

Prout *v.* Hoy Oil Co. (Illinois), 105 Northeastern, 26, p. 29, April, 1914.

LEASE BY LIFE TENANT.

Neither a widow owning a dower interest in land nor a life tenant has the power to make a lease of land under which oil or gas or other minerals can be removed from the land as against the remainderman.

Prout *v.* Hoy Oil Co. (Illinois), 105 Northeastern, 26, p. 29, April, 1914.

VALIDITY—FRAUD—WITHHOLDING INFORMATION.

Where the lessor and the lessee of an oil and gas lease stand upon equal footing and where there is no fiduciary relation of any character existing between them, but they deal at arms' length, the lessee is not bound to give the lessor any information in his possession, but he has the right to remain silent without violating any rule of law or equity and without subjecting himself to a charge of fraud; but if the lessee volunteered to give information for the purpose of influencing the lessor, then it became his duty to tell the truth and the whole truth; and a lease executed under such circumstances is valid and can not be nullified by the execution of a subsequent lease.

Prout *v.* Hoy Oil Co. (Illinois), 105 Northeastern, 26, p. 30, April, 1914.

PRESUMPTION AS TO LOCATION OF OIL WELL.

Under the allegation in a complaint to the effect that the owner of a certain tract of land executed an oil and gas lease thereon, and that the lessee drilled on said tract a gas well which produced gas in paying quantities, and further averring that subsequently the owner conveyed a certain portion of the first-described tract, it will be presumed, in the absence of an allegation, that the gas well mentioned was on the residue of the said tract rather than on the part conveyed.

Fairbanks *v.* Warrum (Indiana Appeals), 104 Northeastern, 983, p. 986, April, 1914.

RIGHT OF LESSEE TO CONSTRUCT ROAD—LIABILITY FOR DAMAGES.

A lessee having the right under his lease to go upon certain described land of the lessor and bore and develop said land for oil and gas, with the necessary usual and convenient rights therefor, has a right to build a road over the land where the building of such road is necessary to enable him to haul material for his rig and tools and machinery for drilling; but if after building such road he in good faith

abandons the contemplated exploration for oil and gas before drilling a well, he is liable to the lessee for damages to the land caused by the building of such road.

Coffindaffer *v.* Hope Natural Gas Co. (West Virginia), 81 Southeastern, 966, p. 967, May, 1914.

FRAUDULENT ALTERATION.

The lessee in an oil and gas lease can claim no rights under a lease where, according to the evidence and circumstances, he made a fraudulent change in the date for the purpose of extending the term and life of the lease, and where no operations were begun within the original lifetime of the lease.

Southern *v.* South Penn Oil Co. (West Virginia), 81 Southeastern, 981, April, 1914.

ESCROW—DELIVERY TO LESSEE.

There can be no delivery of an oil and gas lease in escrow where the lease is complete in itself and the delivery was made to the lessee, as such a delivery is absolute, notwithstanding any verbal agreement between the parties.

Gaffney *v.* Stowers (West Virginia), 80 Southeastern, 501, p. 504, December, 1913.

WHEN TENANT MAY DENY TITLE OF LANDLORD.

A lessee holding leases of two adjacent landowners took possession of a particular part of the leased lands of one lessor and drilled an oil-producing well and operated the same for more than 10 years, and during such time paid the oil royalties to the lessor under whose lease the entry was made, and during all of such time maintained a sign in large letters on the walking beam, in plain view of public highways and railroads, showing under whose lease the well was drilled and operated, is not, after the expiration of the period of the statute of limitations estopped to deny the title of the other lessor in an action by such lessor for an accounting, on the ground that the well was on his land; and in order to work an estoppel in such case on the part of the lessee the lessor claiming the land must do more than show the lease contract, but must show actual possession by himself of the particular land involved and that the lessee was let into possession by him and not by the lessor of the other tract.

Lockwood *v.* Carter Oil Co. (West Virginia), 80 Southeastern, 814, p. 817, February, 1914.

FAILURE OF TITLE—RECOVERY FOR MONEY PAID.

Money paid as rent under an oil and gas lease may be recovered back as money paid on a consideration that has partially failed, where the lessee could not enter because of the doubtful title in the lessor, if the money was paid without knowledge of the facts showing defect

in the title; but if the money was paid voluntarily with knowledge of all the facts, but under a mistake as to the law arising thereon, then it can not be recovered.

Gaffney *v.* Stowers (West Virginia), 80 Southeastern, 501, p. 504, December, 1913.

BREACH OF COVENANT—LIABILITY OF LESSOR.

The lessor of an oil and gas lease is not liable in an action of assumpsit for the breach of a covenant for quiet enjoyment where the lease expressly excepted the minerals retained for the sake of a compromise with a certain named corporation, and on the ground that the lessor had wholly failed to place the lessee in possession of the minerals, and where it appeared that no person had been in possession of the oil and gas by drilling or otherwise, between the date of the lease and the date of its alleged surrender, and no one was shown to have set up any claim to the oil or gas in any way to have prevented the lessee from taking possession, and where the lessee made no effort to obtain possession, and no act of obstruction on the part of the lessor was shown, and where the only matter relied upon as constituting an eviction or breach of the covenant was a lack of title to the oil and gas in the lessor.

Gaffney *v.* Stowers (West Virginia), 80 Southeastern, 501, p. 503, December, 1913.

LIABILITY OF LESSOR FOR FAILURE TO DELIVER POSSESSION.

A person executing a pretended lease for land of which he had no title, because of his own default in the performance of a prior agreement with the owner of the legal estate, and imposing conditions upon the lessee which required of him the expenditure of money in advance of the taking possession of the leased premises, and so acting in bad faith, knowing the impossibility of performance on his part, is liable to the lessee either in an action for a breach of the covenant for peaceable possession, or for breach of an agreement to convey an estate in real property, and the damages for the breach in either case would be those which would ordinarily and proximately follow from the breach of such a contract under the peculiar circumstances, which were known to both parties.

Kline *v.* Guaranty Oil Co. (California), 140 Pacific, 1, p. 4, April, 1914.
See Gaffney *v.* Stowers (West Virginia), 80 Southeastern, 501, December, 1913.

DEFECTS CURED BY OPERATIONS.

A condition in an oil lease to the effect that if the lessee should fail to commence operation within 24 months then the lessor might declare the lease null and void by giving written notice to the lessee, subject to the right of the lessee to the continuance of the oil and mineral rights granted by the lease, by the payment to the lessor of rental

at the rate of 50 cents per month per acre, until operations shall have been begun, may have made the lease potestative in the beginning, but the defect was cured by the subsequent commencement of the work by the lessee at the instance and request of the lessor, and after the work had actually commenced and after the discovery of oil on the adjacent premises by the operations of the lessee, the lessor can not then declare the lease null and void, and the assignee of the lessor, after the commencement of such operations by the lessee, has no greater rights than the original lessor and is bound by all the equities between the lessor and lessee.

Hudspeth *v.* Producers' Oil Co. (134 Louisiana), 64 Southern, 891, p. 893, March, 1914.

LIABILITY OF LESSEE FOR BREACH OF COVENANT—LESSOR'S RIGHT TO SUE.

The lessor in an oil and gas lease for a term of five years, and containing the usual terms and conditions and requiring the lessee to drill a well within a stated time and to pay certain stipulated royalties, may sue the lessee for a breach of any express or implied covenant of the lease resulting in damages to him; and a cause of action immediately arises in his favor, and he is not required to wait until the abandonment of the premises or expiration of the lease to bring his action, and the remedy in such case is not forfeiture but a right to sue for a breach of the contract.

Daughetee *v.* Ohio Oil Co. (Illinois), 105 Northeastern, 308, p. 310, June, 1914.

BREACH OF COVENANT—MEASURE OF DAMAGES.

A lessor leasing to an oil company land one body aggregating 2,200 acres and various tracts in the vicinity aggregating 3,000 acres, in consideration that the oil company should develop the land by boring for oil and gas and should drill a well to a depth of 1,200 feet, is entitled to recover as damages for a breach of the lease in failing to drill the well to the depths specified, and in the lessee's abandoning the well before reaching the specified depth, the reasonable market value of the leases, as this must be regarded as the actual value paid by the lessor to have the well drilled as specified.

Henry Oil Co. *v.* Head (Texas Civil Appeals), 163 Southwestern, 311, November, 1913

In an action by a lessor against the lessee of an oil and gas lease for damages for breach of a covenant, in that the lessee failed to diligently develop the premises after the discovery of oil in paying quantities, the lessor is not prevented from recovery because the damages are speculative or conjectural, and the rule is that while the law will not permit witnesses to speculate or conjecture as to the possible or probable damages, still the best evidence of which the

subject will permit is receivable, and this is often nothing better than the opinion of well-informed persons on the subject matter under investigation; and the lessee in such an action is not immune from damages though he has committed no fraud and has acted in good faith and has not drained oil from the lessor's premises by means of wells on other adjacent lands; nor is he permitted to escape for a failure to drill and operate additional wells if, acting on his own judgment, he believes that it will not be profitable for him to do so, as his determination in such case is not final, and such a lease can not be construed to save the lessee harmless on his arbitrary refusal to further explore and develop the leased premises; and in such case the lessor is not required to prove that oil and gas have actually been lost to him by being drawn from the leased premises through wells on adjacent premises or by some wrongful or fraudulent act of the lessee, but under such a lease it is clearly the contemplation of the parties and the primary object in making the lease that the lessee shall go on and drill additional wells, market the product, and pay the lessor his royalties thereon, and the lessee in effect agrees to do this in order that the lessor can realize on the value of the product.

Daughetee *v.* Ohio Oil Co. (Illinois), 105 Northeastern, 308, p. 311, June, 1914.

FRAUD OF OFFICER—LEASE TO HIMSELF.

A person purchasing a majority of the stock of a mining corporation for the fraudulent purpose of obtaining possession of its mines can not, after electing himself president and managing officer, make a lease of the mining property to himself and take possession of and operate the company's mine, and can not in this manner acquire any equities in the property or growing out of the unlawful contract as against the corporation or a stockholder.

Franklin *v.* Havalena Min. Co. (Arizona), 141 Pacific, 727, p. 730 (June, 1914).

INJUNCTION TO PREVENT OPERATION.

A preliminary injunction to prevent a lessee from operating for oil and gas under a lease should not be granted where the evidence shows that the lessee has been in undisputed possession of the land and has drilled thereon a number of wells, built tanks, established pipe-line connection, and is actually producing large quantities of oil.

Ingram *v.* Bream (Pennsylvania), 88 Atlantic, 880, June, 1913.

DEVELOPMENT IMPLIED.

DILIGENCE REQUIRED IN OPERATION.

Where the object of the operations under an oil and gas lease is to obtain a benefit or profit for both the lessor and lessee, neither is in the absence of stipulations to that effect the arbiter of the extent to which or the diligence with which the operation shall proceed,

but both are bound by the standard of what under the circumstances would be reasonably expected of an operator of ordinary prudence having regard to the interest of both.

Indiana Oil, Gas & Development Co. *v.* McCrory (Oklahoma), 140 Pacific, 610, p. 613, May, 1914.

PRESUMPTION AS TO DEVELOPMENT.

From the fact that lessors in oil and gas leases usually receive no consideration except in royalties from oil or gas after their discovery the presumption always is that such leases are made for the purpose of immediate development unless the contrary appears from the terms of the lease itself.

Burgan *v.* South Penn Oil Co. (Pennsylvania), 89 Atlantic, 823, p. 825, January, 1914.

IMPLIED OBLIGATION TO DEVELOP.

An oil and gas lease, the only consideration of which on the part of the lessee was that he should drill for oil, imposed the implied obligation on him that he would use reasonable diligence in operating the premises after they had been developed, and where oil had been found on the land there arose an implied obligation on the part of the lessee to put down as many wells as may be reasonably necessary to secure the oil for the common advantage of both lessor and lessee.

Caddo Oil & Min. Co. *v.* Producers' Oil Co. (134 Louisiana), 64 Southern, 684, p. 690, March, 1914.
Brown *v.* Producers' Oil Co. (134 Louisiana), 64 Southern, 674, p. 676.

IMPLIED COVENANT TO DEVELOP.

An oil and gas lease reserving to the lessor royalties in kind and in money on the oil produced and saved and the gas used off the premises as the consideration and inducement for the lease, and which, while expressly requiring the drilling of one well during the first five years, does not expressly define the measure of diligence to be exercised after the expiration of that period, contains, however, a covenant on the part of the lessee, arising by necessary implication from the nature of the lease and the character of the mineral sought, that if during the term allowed for original exploration and development oil or gas is found in paying quantities the work of development and production shall be continued with reasonable diligence, to the end that the extraction of the oil and gas from the leased lands shall be mutually advantageous and profitable to the lessor and lessee; and this implied obligation is as effectual as if expressed, and if it arises from the language of the lease it is controlling, and if the lessee fraudulently fails or refuses to conduct such proper operations equity will, at the suit of the lessor, decree either total or partial cancellation of the lease, according to the facts and circumstances averred and proved.

Jennings *v.* Southern Carbon Co. (West Virginia), 80 Southeastern, 368, p. 368, November, 1913.

IMPLIED COVENANT—BINDING EFFECT.

Leases for oil and gas are subject to the implied covenants that the lessee will do all that is necessary to carry into effect the purposes and objects of the lease, and there is an implied covenant, in the absence of an express agreement to begin work within a certain time, to begin the operations within a reasonable time; and this implied covenant is, after oil or gas has been discovered, as effectual and forceful as if it were expressed in direct terms, as implication is but another term for intention; and the practically universal interpretation of oil and gas leases is that in the absence of an express covenant there arises a legal implication that the lessee will drill as many wells as will afford sufficient protection against drainage and otherwise so develop the leased premises as to serve the mutual benefit of both lessor and lessee.

Jennings *v.* Southern Carbon Co. (West Virginia), 80 Southeastern, 368, p. 369, November, 1913.
Chandler *v.* French (West Virginia), 81 Southeastern, 825, p. 828, May, 1914.

DISCOVERY OF OIL—IMPLIED COVENANT TO DEVELOP.

The lessee of an oil lease in legal form, after a test well has been drilled and oil found in paying quantities, is bound to proceed with reasonable diligence to put down as many additional wells as may be necessary to properly develop the premises and to operate such wells and pay the lessor the royalty provided by the lease, and in the absence of an express covenant to this effect a covenant will be implied.

Daughetee *v.* Ohio Oil Co. (Illinois), 105 Northeastern, 308, p. 309, June, 1914.

CONTRACT FOR DEVELOPMENT—FORFEITURE.

A lease for oil and gas for the sole and only purpose of prospecting, drilling, or operating for oil, gas, petroleum, coal, or other minerals for a term of 20 years, and as long thereafter as such oil, gas, coal, or other minerals are found in paying quantities, reserving to the lessor a certain stipulated royalty on the oil and the customary royalty on the other minerals, required the lessee to begin drilling within 30 days and to prosecute the work with due diligence until a well is completed, and, providing that a failure to drill a well as provided shall render the lease null and void, can not be forfeited where the lessee did commence and complete a well within the specified time and obtained oil in paying quantities, as he thereby acquired a vested right under the lease for the time stipulated and was not subject to forfeiture for failure of the lessee to further drill and develop the leased premises.

McAfee *v.* Grubb (Texas Civil Appeals), 164 Southwestern, 925, p. 926, March, 1914.

IMPLIED COVENANTS.

A lease of certain lands granted "all the oil and gas" under the lands described together with the right to enter at all times for the purpose of drilling and operating, with the right to erect and maintain structures, pipe lines, and machinery necessary for the production and transportation of oil and gas and give the right to use sufficient water, oil, and gas to run the necessary engines in the prosecution of the business, and reserved to the lessor substantial royalties in kind and in money on the oil produced and saved and on the gas used off the premises, the lease indicating that the promise of such royalties was the controlling inducement to the grant, and while expressly requiring that drilling commence within 90 days from the date of the lease, but not expressly defining the measure of diligence to be exercised by the lessee in the work of development and production after the expiration of the stated period, it is held to contain a covenant on the part of the lessee arising by necessary implication from the nature of the lease and the stipulations therein contained, to the effect that if during the term of the lease either oil or gas is found in paying quantities then the work of development and production shall be continued with reasonable diligence and along lines as will be reasonably calculated to make the extraction of oil and gas from the leased land of mutual advantage and profit to the lessor and lessee.

Indiana Oil, Gas & Development Co. *v.* McCrory (Oklahoma), 140 Pacific, 610, p. 613, May, 1914.

FORFEITURE AND CANCELLATION.

FAILURE TO OPERATE.

A lease of land for oil and gas for a period of 40 years, imposing upon the lessee no duty whatever save and except the nominal one of paying to the lessor as royalty 1 per cent of the net proceeds derived from all oil or gas obtained, should the lessee see fit to develop the land, may be a valid lease, but will be forfeited at the suit of the lessor where it is shown that the lessor for a period of 18 months or more made no move to prospect for oil or do anything whatever in that direction and gave no explanation of his delay in that behalf, as such unexplained delay is sufficient to work the forfeiture of a lease.

Davis *v.* Riddle (Colorado), 136 Pacific, 551, November, 1913.

FAILURE TO OPERATE—TERMINATION OF LEASE.

Where an oil and gas lease provided that in case the grantee should sink a well and discover oil or gas or other mineral within the specified time, then the lease should be in full force and effect for the period of 20 years from the discovery of such mineral and as much longer

as minerals are produced in paying quantites, the lease itself must terminate when the lessee ceases to operate, as the term was dependent upon a continuance of operation by the lessee.

Brown *v.* Producers' Oil Co. (134 Louisiana), 64 Southern, 674, p. 676, March, 1914.

FORFEITURE FOR BREACH OF COVENANT.

While courts of equity generally refuse to aid in the enforcement of a forfeiture, yet a court of equity will decree a forfeiture of an oil and gas lease on account of a breach of an implied covenant to diligently operate and develop the property when such forfeiture will effectuate justice and is more consonant with the principles of right, justice, and morality than to withhold equitable relief.

Indiana Oil, Gas & Development Co. *v.* McCrory (Oklahoma), 140 Pacific, 610, p. 614, May, 1914.

ACTION TO FORFEIT LEASE—DAMAGES.

In an action by a lessor to forfeit a lease of land for oil and gas purposes for breach of an implied covenant to diligently prosecute the work, a court can not decree damages together with a judgment of forfeiture where the rules by which damages are established are so indefinite and uncertain as to amount at most to a mere guess, and where the production from the wells on the lease in suit, as well as that from the wells on the adjoining land, was unequal and varying, and where from wells drilled into the same sand and only a few hundred feet apart the production was so variant that it would be absurd for a court to fix any stated amount of damages for failure of the lessee to operate diligently.

Indiana Oil, Gas & Development Co. *v.* McCrory (Oklahoma), 140 Pacific, 610, p. 615, May, 1914.

FORFEITURE—COMPLIANCE WITH CONDITION.

An oil and gas lease giving the lessee the right of developing, producing, and marketing oil and gas for a term of five years and as long thereafter as oil and gas should be found, the lessee to complete a well within one year or pay an annual rental of 25 cents per acre until a well should be completed, the lessor to have one-eighth of all oil produced and saved on the premises and the lessee to pay $100 per annum for each well from which gas was marketed, can not be cancelled at the suit of the lessor where the annual rental had been paid and where the lessee had drilled a well and was engaged in pumping it, though the production was unprofitable and the lessor had received no royalty.

Gillespie *v.* Ohio Oil Co. (Illinois), 102 Northeastern, 1043, p. 1044, October, 1913.

A lease of land for oil and gas purposes in the usual form and providing that the lessor should receive one-half of the profits from all wells, and providing that in case the lessee should cease operations

for oil or gas for a period of 60 days then the lease should become null and void at the option of the lessor, indicates that development is the central purpose, and if a forfeiture is provided for in case of a failure to develop according to the terms of the lease a forfeiture will be declared and enforced where the lessor brings himself within the provisions authorizing such forfeiture.

Dittman *v.* Keller (Indiana Appeals), 104 Northeastern, 40, February, 1914.

FAILURE OF LESSEE TO PERFORM.

A grantee in a conveyance or lease that provides that in consideration of the payment of the sum of $105 the grantors agree to grant and convey by deed of general warranty to the said grantee the undivided one-sixteenth part of the oil and one-half of the gas within and underlying the land described, and containing a provision to the effect that "it is hereby agreed and understood that the essence of this agreement is the payment of the sum of $200 for each well to be paid within 90 days after said wells are tapped and tested, and a failure to pay the same within the time hereinbefore specified is to render this contract null and void, and the parties of the first and second part are to stand relieved from all damages and responsibility for the nonexecution and nonfulfillment of this contract, by reason of the failure to make said payment, within the time before specified," can not maintain an action for an accounting against the lessor and a subsequent lessee, for oil or gas produced, if he fails to show payment of the sum stipulated and performance by him of all other conditions precedent, as the payment of the $200 for each well within the time stipulated was a condition precedent to the assertion of any right in the oil or gas by the grantee or lessee.

Freeman *v.* Carnegie Natural Gas Co. (West Virginia), 81 Southeastern, 572, p. 574, April, 1914.

UNCERTAINTY IN DESCRIPTION—CANCELLATION OF INSTRUMENT.

A complaint in an action by a senior lessee of oil and gas to cancel a lease held by a junior lessee covering part of the same land is not insuffcient because the descriptions are too vague and uncertain where the description in the complaint and the lease filed as an exhibit bounds the senior lessee's land on every side by reference to lines of other landowners and names the quantity bounded as 340 acres, and the leased premises so described necessarily include the oil underlying the various tracts composing such 340 acres, and a description of land by references to lines of other landowners is a sufficient identification if the lines adopted can be identified on the ground.

South Penn Oil Co. *v.* Gardner Oil & Gas Co. (West Virginia), 82 Southeastern, 203, May, 1914.

PERIOD AND TERMINATION.

An oil and gas lease which stipulates that it is to continue during the time that gas or oil are found in paying quantities is at an end and may be annulled when the time during which the lessee has the right to exploit the land has expired and no oil or gas has been found.

Cooke *v.* Gulf Refining Co. (135 Louisiana), 65 Southern, 758, p. 759, May, 1914.

MINING PROPERTIES.

TAXATION.
TRESPASS.
TITLE.
CONTRACTS OF SALE.
STATUTORY LIENS.

TAXATION.

CONSTRUCTION OF STATUTE—RECOVERY OF TAX.

The right of appeal granted by the Wisconsin income-tax law (sec. 1087*m*–13, Stat. 1911), authorizing a corporation feeling aggrieved by the decision of the State Tax Commission regarding the assessment of its income, shall be granted the same rights of hearing and appeal as are now granted corporations assessed by said commission, refers to a review before the tax commission of its preliminary decisions as to the amount of income on which the corporation must pay income tax, and does not authorize a corporation to sue to recover an income tax illegally levied and collected.

Montreal Min. Co. *v.* State (Wisconsin), 144 Northwestern, 195, December, 1913.

CLAIM OF UNJUST ASSESSMENT—REMEDY.

A mining corporation whose property is duly assessed for taxation by the assessing officer can not assert that the assessment was unjust in an action by the State to collect the taxes assessed without first making application to the county board of equalization at the time fixed by the statute, although the assessing officer was in fact guilty of fraudulent and corrupt conduct.

Arizona Copper Co. *v.* State (Arizona), 137, Pacific 417, December, 1913.

MINERALS RESERVED FROM CONVEYANCE.

A reservation in a deed executed by the Northern Pacific Railroad Co. contained the clause "excepting and reserving unto the grantors, its successors and assigns, forever, all mineral of any nature whatsoever upon or in said land, including coal and iron, and also the use of such surface ground as may be necessary for exploring for and mining or otherwise extracting and carrying away the same," constitutes property that is subject to taxation under the laws of Montana.

Northern Pacific R. Co. *v.* Mjelde (Montana), 137 Pacific, 386, p. 387, December, 1913.

MINING CLAIMS SUBJECT TO TAXATION.

The constitution of Montana (art. 12, sec. 3) provides that all mines and mining claims, whether placer or lode, containing gold, silver, copper, lead, coal, or other mineral deposits, when purchased from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground of such mine or claim is used for other than mining purposes and has a separate and independent value for such other purposes, in which case the surface ground so used for other than mining purposes shall be taxed at its value for such other purposes as provided by law; and all machinery used in mining and all property and surface improvements in connection with a mine or a mining claim, having a separate and independent value, as well as the annual net proceeds of all mines and mining claims, are subject to taxation, is not a provision exempting property from taxation, but is a revenue measure and fixes an arbitrary valuation upon the surface of patented mining claims as such, and makes the net value of the proceeds the standard by which the value of a mine shall be determined; but neither an unworked mining claim nor an operated mine is relieved of the revenue upon the basis thus established, and a nonproducing mine is not exempted though there is an implication that the nonproducing mine, independently of its surface, does not have any value for the purpose of taxation and that minerals while in a mine or mining claim have no taxable value.

Northern Pac. R. Co. *v.* Mjelde (Montana), 137 Pacific, 388, p. 387, December, 1913.

WHAT CONSTITUTES A MINE.

Under article 12, section 3, of the constitution of Montana providing for the taxation of mines and mining claims, the sense in which the term "mine" is used, if there is any doubt, must be determined in favor of a definition under which public revenue will be raised rather than a meaning which will defeat the purpose of the constitutional provision, as it was the evident intention of the convention forming the constitutional provision to make such mining properties subject to taxation and not to exempt them from taxation.

Northern Pac. R. Co. *v.* Mjelde (Montana), 137 Pacific, 386, p. 390, December, 1913.

MINES AND MINING CLAIMS—WHAT CONSTITUTES FOR TAXATION.

Under the constitution of Montana providing for the taxation of all mines and mining claims the term "mining claim" as therein used indicates a tract of land to which the right of possession or title has been acquired pursuant to the acts of Congress relating to the disposition of mineral lands, including coal lands, and a mine, independently of the surface, in the revenue sense as there employed, is a mineral deposit, whether metallic or nonmetallic, developed to the point of production and actual yielding or capable of yielding pro-

ceeds; and an undeveloped body of ore is not a mine though title to it was secured under the mining laws, but is merely a part of the real estate itself; and the word "mine" in this section of the constitution does not include hidden, unknown, or undeveloped deposits of ore or coal.

Northern Pac. R. Co. *v.* Mjelde (Montana), 137 Pacific, 386, p. 391, December, 1913.

RESERVATIONS OF MINERAL TAXABLE AS PROPERTY.

A reservation in a deed conveying real estate to the effect that the grantor reserves all minerals of whatsoever kind, together with the right to use the surface to explore for and mine and remove all minerals found, is not under the constitution of Montana taxable as a mine, but the presumption is, in the absence of proof that such a reservation has some appreciable value, though it does not produce revenue, and such a reservation constitutes an interest in real estate and is taxable as such under the general statute providing for the taxation of all property, and the fact that the value of such property may be difficult to determine can not operate to defeat the purpose of taxation.

Northern Pac. R. Co. *v.* Mjelde (Montana), 137 Pacific, 386, p. 391, December, 1913.

ASSESSMENT—GROSS PROCEEDS.

Under a statute authorizing mining property to be assessed at a sum equal to one-fourth of the gross proceeds unless the net proceeds shall exceed them in value, the gross proceeds of a mine can not be construed to mean the gross value of the ores disposed of, and the assessor must determine the sum received by the mine operator for his ore by deducting from its gross value all expenses mentioned in the statute except the cost of extracting it from the mine; and the statute means to give to the terms "gross value" and "gross and net proceeds" the distinctive meanings which, as usually employed, they convey.

Paxson *v.* Cresson Consolidated Gold Min., etc., Co. (Colorado), 139 Pacific, 531, p. 532, March, 1914.

The statute of Colorado (secs. 5619–5620) requires the operator of a producing mine to make out and deliver to the county assessor a statement showing the name of the mine, the name of the owner, the number of acres, the number of tons of ore extracted during the preceding year, the gross value of the ore extracted, the annual cost of extracting the same, not including salaries of officers or agents not actively engaged in mining, the actual cost of transportation to place of reduction or sale, and the net proceeds after deducting all such expenses; and the assessor shall for the purpose of assessment for taxes value such mine at a sum equal to one-fourth of the gross pro-

ceeds for the preceding year, and this statute requires the assessor from the statement furnished to ascertain the gross and net proceeds, but he is not required to value the mine at one-fourth of the gross value of the ore shown by the statement, but he is to ascertain the gross proceeds of the mine and value it at one-fourth of that amount, unless the net proceeds exceed that sum, as the legislature evidently intended that the "gross value" of ore extracted from a mine and the "gross proceeds" of such mine had different meanings.

Paxson *v.* Cresson Consolidated Gold Min., etc., Co. (Colorado), 139 Pacific, 531, p. 532, March, 1914.

TAXATION OF MINING CLAIMS—INVALID INCREASE.

Where 65 separate mining claims containing a total area of 636 acres were returned and assessed as one parcel by the proper assessing officer, the county board of supervisors, sitting as a board of equalization, has no power under the statute of Arizona (R. S. 1887, par. 2654) to segregate from this area eight separate mining claims and impose on these an additional assessment, without first determining that such tract was improperly assessed as a whole and causing it to be assessed and raised in subdivisions in such manner as to preserve the right of the taxpayer to discharge the lien of taxes upon any one of the several tracts; and such increased assessment must not be arbitrary but must be based upon evidence as to value; and in case the assessment of any given tract is increased the increased amount must be set opposite such tract together with a statement of the original valuation.

Arizona *v.* Copper Queen Min. Co., 233 U. S., 87, p. 92, April, 1914.

SEVERANCE OF SURFACE AND MINERALS—IMPROPER ASSESSMENTS.

The owner of lands containing coal that was assessed in 1903 for taxation for its full cash value and on the same basis as other lands of the same nature and fertility in the same neighborhood were assessed may recover taxes for 1904 and 1905 paid under protest where it appears that the auditor of the county, without authority or right, placed upon the tax duplicate an assessment for the years 1904 and 1905 against such lands an amount largely in excess of the original valuation and assessment, which increased valuation and assessment was on the alleged ground that the owner had sold and conveyed a separate estate in the coal underneath such land, as the auditor had no authority to make such increased valuation, but in case of a sale of a part or severance he can only apportion values already fixed.

Riggs *v.* Board of Commissioners, Sullivan Co. (Indiana), 103 Northeastern, 1075, January, 1914.

MINERAL INTERESTS TAXABLE.

Where mineral interests in real estate have been separated from the surface and are separately owned such mineral interests are land and taxable as such, especially so under the statute of Minnesota (G. S. 1913, sec. 1973), which provides whenever any mineral, gas, coal, oil, or other mineral interests are owned separately from the surface such mineral, gas, coal, or oil may be assessed and taxed separately from the surface rights and may be sold for taxes in the same manner as other interests are sold for taxes.

Washburn *v.* Gregory Co. (Minnesota), 147 Northwestern, 706, p. 707, May, 1914.

TAX CERTIFICATE—MINERAL INTERESTS.

A tax certificate based upon tax proceedings in which the property is described by its Government description without any reference to mineral interests owned separately from the surface does not cover or include such mineral interests.

Washburn *v.* Gregory Co. (Minnesota), 147 Northwestern, 706, p. 707, May, 1914.

TRESPASS.

MINING COAL UNDER INVALID LEASE—LIABILITY.

In an action against an assignee of a lessee under a 999-year lease of coal lands who believed the lease conveyed the coal in place, but where it was legally determined that the lease conveyed the surface only, the measure of damages for mining and converting the coal is the fair market value of the coal in place, if there is a market price for the coal in place in the pit or mine; but in the absence of evidence to fix the value of coal in place, then the value at the pit's mouth may be determined by deducting all the cost of bringing the coal to the pit's mouth; and in the absence of evidence showing the value either in place or at the pit's mouth then its value at a distant market may be determined by deducting from the value at such market the cost of taking the coal to the market; but the true rule is the value of the coal in place, and the alternative methods of measuring the damages are exceptions to the rule.

Trustees, etc., Kingston *v.* Lehigh Valley Coal Co. (Pennsylvania), 88 Atlantic, 763, p. 766, June, 1913.
Stark *v.* Pennsylvania Coal Co. (Pennsylvania), 88 Atlantic, 770, June, 1913.

MINING COAL UNDER SUPPOSEDLY VALID LEASE—VALUE OF COAL IN PLACE.

In an action against a lessee operating under a supposedly valid lease for wrongful mining of coal the measure of damages is the market value of coal in place, and in such a case it is proper to allow a recovery on the basis of royalty value where the mine is so located

with reference to a market that it has a market value for operating purposes at a price per ton, or on a royalty basis, and this value must be ascertained as of the time when the trespass was committed and must be the actual market value of the coal in place at that time and not the prospective value in the future when conditions may be changed and the value of coal increased.

Trustees, etc., Kingston *v.* Lehigh Valley Coal Co. (Pennsylvania), 88 Atlantic, 763, p. 767, June, 1913.
Stark *v.* Pennsylvania Coal Co. (Pennsylvania), 88 Atlantic, 770, June, 1913.

CONVERSION OF COAL—PROOF OF TITLE.

An action of trover for the wrongful mining and conversion of coal may be maintained by a plaintiff either in the actual or constructive possession of the land, and in such an action legal title may be proved in order to show constructive possession essential to the maintenance of the action; but such proof can not be made and trover can not be maintained where the evidence shows that the defendant was in the adverse possession of the land.

Pearce *v.* Aldrich Min. Co. (Alabama), 64 Southern, 321, p. 322, February, 1914.

LIABILITY—JOINT WRONGDOER.

A railroad company appropriating land for a right of way over and across lands within and under which is located a mine is liable for trespass where it authorized a contractor constructing its roadbed to go upon the land of the mine owner outside of its right of way and cut down the land to a point within 4 feet of the top of the mine, and where the contractor in the process of cutting down the land blasted into and injured the mine, and the fact of the contractor's wrong by blasting into the mine does not relieve the railroad company, as its liability arises on the theory that he who counsels, advises, abets, or assists another to commit a tort or joins in its commission is responsible for all the injury done, whether specifically authorized or not, and can not excuse himself from liability because the particular injury complained of was occasioned by a contractor in connection with the wrongful acts authorized.

Cincinnati, etc., R. Co. *v.* Simpson (Indiana), 104 Northeastern, 301, p. 306, February, 1914,

LIABILITY FOR PRODUCING GAS AFTER EXPIRATION OF LEASE.

An action for damages for trespass by a lessor against the lessee under a lease of lands for gas and oil, for damages for trespass after a well had been drilled and after the expiration of the lease, and after the lease has been judicially annulled, can not be regarded as a suit for damages to the land for the reason that the well is an advantage, but

it must be construed as a suit for so much gas that plaintiff alleges the defendant took from the land; but until the gas was produced the plaintiff had the exclusive right to reduce the gas below the surface of the land to possession and to become the owner thereof, and that right was leased to the defendant, and if because of a wrong interpretation of the lease the defendant produced gas from plaintiff's land and converted it to his own use, he may be held for the value of such gas, and the damages can not be limited to the lease price of a paying well, where there was no such paying well during the life of the lease; and the lease in such case can not be the law between the parties; and accordingly the plaintiff is entitled to recover damages from the defendant for the usurpation of and abuse by him of the exclusive right of drilling, which right was the property of the plaintiff, the owner of the soil, and of appropriating the gas produced by him from the soil of the plaintiff, and the value of such gas at the well is the measure of damages for which the defendant must be held liable, and the real value of the gas used by plaintiff is its value in place, but as the plaintiff was not the owner of the gas at that time and where the expense of drilling the well and the cost of its equipment constituted the cost of the production of the gas, and such cost exceeds the highest possible estimate of the value of the gas at the mouth of the well, the defendant would owe the plaintiff nothing whatever by reason of the alleged trespass, and the defendant can not be held for exemplary damages where it appears that he acted in good faith and under the advice of competent counsel before the commencement of the action.

Cooke *v.* Gulf Refining Co. (135 Louisiana), 65 Southern, 758, p. 760, May, 1914.

POLLUTION OF WATERS.

In an action by a lower riparian owner against a mining company for damages on the alleged ground that the coal company was maintaining a mining camp and operating a coal washery upon its superior estate and depositing the coal washings and other débris in the stream, which were thereupon carried down upon plaintiff's land, rendering the water unfit for use, the plaintiff can not recover damages for slight inconvenience from the mere discoloration of the water, or the deposit of coal or other débris therein, nor can he recover damages on the alleged ground that the water was unfit for any use where the evidence does not tend to show that the plaintiff had in fact been deprived of the use of the water for domestic purposes or for the use of his live stock during the 12-month period immediately before the commencement of the suit.

Parsons *v.* Tennessee Coal, Iron & R. Co. (Alabama), 64 Southern, 591, February, 1914.

MEASURE OF DAMAGES.

In an action by a landowner against a mining company for damages for wrongfully depositing tailings on his land, the measure of damages is the difference in the value of the land with and without the value of the tailings thereon.

Robinson *v.* Moark Nemo Consol. Min. Co. (Missouri Appeals), 163 Southwestern, 885, p. 886, February, 1914.

MITIGATION OF DAMAGES.

In an action against a mining corporation for trespass for wrongfully depositing tailings from its mills upon the land of the complainant the mining company may show in mitigation of damages that it had abandoned the tailings and that the tailings themselves were of some value because of the ore contained therein and that there was a market value for such tailings, that contractors would purchase and remove them from the land, and that the value of such tailings was fully or at least partially equal to the damages to the land.

Robinson *v.* Moark Nemo Consol. Min. Co. (Missouri Appeals), 163 Southwestern, 885, p. 886, February, 1914.

TITLE.

QUIETING TITLE TO MINING MACHINERY.

Under an option contract a grantee acquired possession of a mining claim with the privilege of operating the mine during the life of the option, and under an agreement to place upon the mine machinery and improvements sufficient to operate the same bound itself not to dispose of such machinery or remove the same from the mine without the written consent of the grantor, and if payment was not made according to the option the mining machinery should become the property of the vendor as liquidated damages, the grantor may, on failure of the purchaser to make the payment as provided, maintain an action to quiet his title to such mining machinery as against persons claiming such machinery under a chattel mortgage or conditional sale where it was shown that the machinery was firmly fixed to the premises so as to become a part of the realty and where the purpose of placing the machinery was to use it in operating the mine.

Arizona Mine Supply Co. *v.* Bloman (Arizona), 140 Pacific, 490, p. 491, May, 1914.

CONTRACTS OF SALE.

SALE OF PHOSPHATE—CONSTRUCTION OF CONTRACT.

A phosphate mining company entered into a contract with a fertilizer manufactory by which the former agreed to sell and the latter to purchase 2,000 tons of phosphate rock at a stipulated price per ton to be shipped by the seller at the rate of 200 tons per week, unless hindered or delayed by either a shortage of cars or the weather, and

in the construction of this contract it is to be presumed that the parties were fully aware of the fact that there might be more or less delay in making shipments due to the causes stated, and accordingly it was natural that the seller should take the precaution to insert the proviso that shipments should be made as agreed upon unless prevented by the failure of the railroad company to furnish cars, and as the purchaser acquiesced in this condition it must be concluded that it was the intention of the parties that if the seller was not delayed on account of car shortage the shipments should be made continuously until the entire amount was shipped; but if there should be any delay caused by car shortage or bad weather the seller would be entitled to deliver the rock within a reasonable length of time after the car service had assumed its normal condition; and this proviso as to the shipment must have been intended to relate to the time of delivery and can not be construed to relate to the life of the contract.

Jackson Phosphate Co. *v.* Caraleigh Phosphate & Fertilizer Works, 213 Fed., 743, p. 745, February, 1914.

CONTRACT FOR SALE OF COAL CARS—CONSTRUCTION AND EFFECT.

An agreement between an equipment company and a coal company for the sale of a stated number of secondhand coal cars at a stipulated price per car recited that the agreement was merely tentative and the cars are to be placed upon a trust subject to a car trust agreement, and though tentative can not be set aside by a subsequent detailed agreement substituting a different vendor of the cars and not conforming to the character of the car trust and omitting the provision as to sale through a trustee; and the seller, by thus presenting a proposed different contract, must be regarded as having abandoned the contract as contained in the tentative agreement; and the fact that the corporation owning the secondhand cars from which they were proposed to be purchased would not part with the cars upon any other terms than those expressed in the new agreement does not alter the fact that the contract was substantially different and the proposed purchaser was not bound to execute it.

Cincinnati Equipment Co. *v.* Big Muddy River Consol. Coal Co. (Kentucky), 164 Southwestern, 794, p. 795, March, 1914.

STATUTORY LIENS.

ASSIGNMENT—RIGHTS OF ASSIGNEE.

The owner and holder of a lien for wages against a mining company may sell and assign the same after it has been placed in the hands of an attorney for suit and judgment taken, and the assignee may on demand and notice enforce the same against the attorney of the

assignor, and a complaint in a justice's court alleging such facts is sufficient, and the attorney can not escape liability on the ground that he had paid the residue of the claim into the estate of the deceased assignor.

State *v.* Langan (Nevada), 137 Pacific, 517, January, 1914.

MINERS' LIEN—EXTENT.

The statute of Nevada (sec. 2213 R. L.) gives all miners, laborers, and others who work or labor in the amount of $5 or more in or about any mine designed or used for the purpose of prospecting, draining, or working such mine, and all persons furnishing material to the value of $5 or more to be used in or about a mine, whether done or furnished at the instance of the owner of such mine or his agent, a lien upon such mine for the amount and value of the work performed or material furnished; and under this statute a person performing labor or furnishing material for the development of mining property or for facilitating the extraction of ore from a mine is entitled to the lien given by this statute although the labor performed or the material furnished was at the instance of and for the benefit of a lessee of the mining property, operating under a lease to develop the mine, as in such case the lessee is regarded as the agent of the lessor.

Lamb *v.* Goldfield Lucky Boys Min. Co. (Nevada), 138 Pacific, 902, p. 903, February, 1914.

THEORY OF MINERS' LIEN.

The general theory upon which the labor or mechanics' liens is based is that they are remedial and intend to aid the laborer who gives his services or the material man who furnishes his material a security for the value of such services or material, on the principle that the labor performed or the material furnished has enhanced the value of the property and the equitable right is given the laborer to pursue the result of his toil and to the material man to follow his material into the structure of which it became a part; and it is not just that the owner of the property should acquire the benefits of the labor or the improvements accruing from the material without compensating the person furnishing such labor or material; and this rule applies strictly to miners and mining property, though the work may be done for or the material furnished to the lessee of the mine, if the work done or material furnished is done or furnished for the improvement of the property.

Lamb *v.* Goldfield Lucky Boys Min. Co. (Nevada), 138 Pacific, 902, p. 903, February, 1914.

ENFORCEMENT OF LIEN AGAINST LESSOR OF MINE.

By the provision of the statute of Nevada the right of a lien is granted to persons furnishing timber or other materials to be used in or about any mine and also to laborers and others who work or labor in or upon any mine, shaft, tunnel, adit, or other excavation

designed for the purpose of prospecting, draining, or working in such mine, and this right to a lien is given whether the work is done or the material is furnished at the instance of the owner of the property or of his agent; and the statute further provides that every contractor, subcontractor, architect, builder, or other person in charge or control of any mining claim or any part thereof shall be held to be the agent of the owner for the purpose of the application of the law; and a lease given by the owner of the mining property to another with the sole object and view of prospecting the property, or of improving the property in the way of determining the existence of ore bodies therein, or for the extraction of ores without any provision for the lessee to acquire benefit from the ore extraction, makes such lessee a contractor working on the property in the interest of the lessor and must be held to be the agent of the owner under the provisions of the statute; but if by the provisions of the lease under which the lessee operates the property the lessor was to derive a stipulated benefit from the ore extraction by the lessee or some share in the net profits derived from the property, then the lease must be regarded as a contract between the parties, the lessee to do the mining work and both the lessee and lessor to share in the proceeds and benefit of the work, and in either case the lessor is the beneficiary of the labor performed in the property and all the material furnished therein, and it is the obvious intent and the manifest spirit of the statute to allow a lien for mining work done upon a mine against the estate or interest therein of the person who is to be benefited thereby.

Lamb *v.* Goldfield Lucky Boys Min. Co. (Nevada), 138 Pacific, 902, p. 905, February, 1914.

NOTE.—The Supreme Court of Colorado and the Supreme Court of Arizona alike have held that the miner is not entitled ordinarily to a lien on the mining property for services rendered or material furnished where the property is operated by a lessee.

Reynolds *v.* Norman (Colorado), 141 Pacific, 466, p. 467, June, 1914.

Milwaukee Gold Min. Co. *v.* Tompkins-Cristy Hardware Co. (Colorado), 141 Pacific, 527, p. 529, June, 1914.

See Wilkins *v.* Abell, 26 Colo., 462, 58 Pacific, 612.

See Griffin *v.* Hurley, 7 Ariz., 399; 65 Pacific, 147.

LIEN FOR LABOR PERFORMED FOR LESSEE—KNOWLEDGE OF LESSOR.

In an action by a laborer to foreclose a lien upon mining property where the complaint alleged that the services were performed at the instance of and for the lessee of a mine acting under a lease executed for the purpose of developing and improving and extracting ore from the property, it must be presumed that the lessor had notice and knowledge that such services were being performed and that laborers were being employed and materials furnished in furtherance of the development and improvement of the property under the terms of the lease.

Lamb *v.* Goldfield Lucky Boys Min. Co. (Nevada), 138 Pacific, 902, p. 904, February, 1914.

LIEN ON LEASED MINE—LIABILITY OF LESSOR.

The owner of a mine who leased it to a third person for operation is ordinarily not liable to a laborer employed by the lessee or to a material man furnishing material to such lessee; but if the lessor knows or has reason to believe that persons performing labor or furnishing materials were relying on him for pay therefor and he remains silent, or if he encouraged the doing of the work or the furnishing of the materials, he then becomes liable on an implied contract.

Reynolds *v.* Norman (Colorado), 141 Pacific, 468, June, 1914.

PROOF TO OBTAIN BENEFITS OF STATUTE.

The provisions of the Colorado statute (sec. 4028 R. S., 1908, and sec. 4583 Mills's A. S. 1912) applying to liens on mining property are governed by the same rules that apply to liens upon other property, and it is necessary for a party invoking the benefits of the statute to prove that at the time the material was furnished there was a mutual understanding between the material man and the contractor that the material was furnished to be used in the construction of a particular building or the improvement of a certain property, or that there was such understanding upon the part of the material man.

Milwaukee Gold Min. Co. *v.* Tompkins-Cristy Hardware Co. (Colorado), 141 Pacific, 527, p. 529, June, 1914.

LIENS ON LEASED MINE—IMPLIED CONSENT OF OWNER.

Section 4584 of Mills's Annotated Statutes of Colorado provides that improvements made upon land with the knowledge of the owner shall be held to have been made at his instance and request, to the extent that the land shall be subject to a lien for such improvements, unless the owner shall, within five days after he shall obtain notice of the same, give notice that his interest shall not be subject to a lien for the same; and a material man seeking to enforce his claim against a mine operated by a lessee under a lease with the owner must aver and prove that the owner had knowledge or notice of the making of the improvements, or that the materials furnished were used in the construction or repair or improvement of his property, and it must always be shown that the materials were furnished to be used in the building or improvement upon the property sought to be charged with the lien, and with the knowledge or understanding that they were to be so used, and credit thereby given to the property into which they were wrought or incorporated, as well as to the purchaser.

Milwaukee Gold Min. Co. *v.* Tompkins-Cristy Hardware Co. (Colorado), 141 Pacific, 527, p. 530, June, 1914.

STATUTORY LIEN FOR LABOR.

The object of the law giving miners a lien on mining property is to secure payment for those who perform labor upon any mining property or who perform labor upon or furnish material in the construction of any building or structure in connection with a mine or mining operations, and a construction or application of the statute should be avoided which sacrifices substance to a mere matter of form, and while there must be a substantial compliance with the essential requisites of the statute the pleadings and notices required by the law should be liberally construed in order that justice may be promoted and the desired object may be effected.

Ferro *v.* Bardo Mining & Milling Co. (Nevada), 140 Pacific, 527, p. 528, April, 1914.

JOINDER OF LIEN FOR DAY AND CONTRACT WORK—ENFORCEMENT.

Where a miner performs labor by the day and where he also runs tunnels or crosscuts or sinks winzes, working at times under a special contract at a stipulated price per foot, the statute gives him a lien on the mining property for such services, but it does not require him to file separate liens for the work done by the day and for the work done under a contract, and in the filing and the enforcement of such a lien he may properly join the work done by the day and the work done under contracts and treat the employment as one continuous transaction; and the courts will treat the employment as one continuous transaction for the purpose of ascertaining the time within which the liens should be filed, and the statute of Nevada does nor prohibit the joining in one lien claim of rights of lien as an original contractor and for labor as an employee where the same person has both such rights or liens and where the character of the work performed was the same and the work was continuous.

Ferro *v.* Bargo Mining & Milling Co. (Nevada), 140 Pacific, 527, p. 528, April, 1914.

DAMAGES FOR INJURIES TO MINERS.

ELEMENTS OF DAMAGES.

PRESENT WORTH OF EARNINGS.

In an action by a father to recover damages caused by the death of a minor son the plaintiff is entitled to recover the present worth of the probable earnings of the deceased up to the time he would have become of age less the probable cost of clothing and maintenance.

Carnego *v.* Crescent Coal Co. (Iowa), 146 Northwestern, 38, p. 42, March, 1914.

MENTAL ANGUISH.

To sustain a finding and judgment involving damages for mental anguish it is not necessary that direct evidence of such anguish should be produced, but damages for mental suffering may be recovered for injuries where such mental suffering is an element of the physical pain, or is a necessary consequence of the physical pain, or is the natural or proximate result of the physical injury, and such suffering may be inferred as a result from physical pain, and neither courts nor juries can draw a definite or exact line between physical pain and mental suffering.

Baisdrenghien *v.* Missouri, etc., R. Co. (Kansas), 139 Pacific, 428, p. 429.

MEASURE—LOSS TO WIDOW.

Under the statutes of Oklahoma a surviving wife may maintain an action for damages for wrongful death of her husband for the benefit of herself and minor children in the absence of administration on his estate, and in such an action the measure of damages is the pecuniary loss suffered by the widowed wife and children by reason of being deprived of the care, protection, and support of the deceased, to be determined by the age, physical condition, occupation, earning capacity, habits, and the use made by the deceased of his earnings.

Big Jack Min. Co. *v.* Parkinson (Oklahoma), 137 Pacific, 678, p.681, December, 1913.

PROOF OF SUFFERING.

In an action by an injured miner for damages it is proper for witnesses who visited the miner soon after his injury to testify that judging from his general appearance he seemed to be suffering.

Kentucky Midland Coal Co. *v.* Vincent (Kentucky), 166 Southwestern, 800, p. 801, May, 1914.

COMPROMISE PROCURED BY FRAUD—EFFECT.

In an action against a mine operator for damages for injuries to a miner caused by the alleged negligence of the operator a compromise and settlement of the claim procured by fraud is no bar to the prosecution of the case where the sum paid upon the alleged fraudulent compromise is refunded or paid into court.

Interstate Coal Co. *v.* Trivett (Kentucky), 160 Southwestern, 728, p. 730, November, 1913.
Interstate Coal Co. *v.* Trivett (Kentucky), 160 Southwestern, 731, p. 732, November, 1913.
New Bell Jellico Coal Co. *v.* Oxendine (Kentucky), 160 Southwestern, 737, p. 740, November, 1913.

DAMAGES EXCESSIVE.

INSTANCES.

A verdict for $12,000 for injuries sustained by a miner must be regarded as excessive where it appears that the miner was 53 years of age and had been a coal miner for nine years and was injured while being lowered in a cage and by reason of the excessive speed and the

negligent failure of the operator to furnish the proper safeguards the miner was thrown upon the bottom of the shaft with such violence as to break his leg, split his knee, and injure his rib, leaving him with a permanently disabled leg, a permanent injury to the rib, and where it appeared that he was earning when hurt $100 per month.

Domineck *v.* Western Coal & Min. Co. (Missouri), 164 Southwestern, 567, March, 1914.

DAMAGES NOT EXCESSIVE.

INSTANCES.

A judgment for $2,000 in favor of a boy under 16 years of age employed in a mine is not excessive where the evidence shows that the ankle and foot were caught between the cars and severely injured; that he was confined to his bed a month; that he went on crutches about the same length of time, and after he disposed of the crutches he was unable to wear a shoe on the injured foot, and that for two years after the injury the foot was stiff and would swell from walking and would remain in such condition for three or four days.

Stearns Coal & Lumber Co. *v.* Tuggle (Kentucky), 161 Southwestern, 1112, p. 1113, January, 1914.

A judgment in favor of an injured miner for $18,000 can not, as a matter of law, be regarded as excessive where the records show that the miner was 29 years old at the time of the accident and was capable of earning $4 a day and his board and lodging and where the miner had been crushed and badly injured.

Johansen *v.* Pioneer Min. Co. (Washington), 137 Pacific, 1019, p. 1023, January, 1914.

In an action for the death of a miner a judgment for $8,000 can not be regarded as excessive where the deceased was 35 years of age, a qualified electrician earning $85 per month, and had an expectancy of over 31 years, and left a widow and five children.

Shirley Coal Co. *v.* Moore (Indiana), 103 Northeastern, 802, p. 804, January, 1914.

Where a miner 43 years of age, healthy and able-bodied, was injured by a fall of rock from the roof, his leg being broken at the ankle so that the bone protruded through the skin and the ankle was badly crushed, the injury difficult to treat and his leg kept in plaster of Paris for three months and the evidence of the attending physician showed that the limb would be permanently injured, that there would always be an enlargement about the ankle, stiffness and weakness at the joint; where he had been engaged in mining for 14 years and earned from $50 to $75 every two weeks, a judgment of $4,500 is not excessive.

Gambino *v.* Manufacturers' Coal & Coke Co. (Missouri Appeals), 164 Southwestern, 264, p. 270, February, 1914.

A verdict for $1,000 for an injury to a miner can not be regarded as excessive where the miner was severely injured by a fall of rock, was on crutches for two months, suffered great pain in various parts of his body, and, though later was able to work, suffered greatly with pain in his ankle and especially so when attempting to walk after resting, and where it is doubtful whether he will ever fully recover.

Jellico Coal Min. Co. *v.* Helton (Kentucky), 163 Southwestern, 744, p. 747, February, 1914.

A verdict of $1,000 for injuries to a miner is not excessive where the injury was caused by the explosion of a pump and a small piece of iron struck the miner just over the eye, where it was sufficient to knock him down and render him unconscious, and where he was confined to his room from three to five days and where his eyesight is affected and he is unable to read for any length of time on account of the injury, and where there is some evidence to show that his mind was affected as a result of the injury.

Stearns Coal & Lumber Co. *v.* Tuggle (Kentucky), 164 Southwestern, 74, p. 75, March, 1914.

Under a statute permitting a recovery of any sum not exceeding $5,000 for the death of an employee, a verdict for $3,500 precludes any contention of passion, prejudice, or undue sympathy on the part of the jury, and can not be regarded as excessive when taken in connection with the age, the exemplary habits, the earning capacity, and the industry of a deceased miner, all of which were shown by the evidence.

National Fuel Co. *v.* Maccia (Colorado), 139 Pacific, 22, p. 24, March, 1914.

A judgment for $250 in favor of a miner injured by a vicious mule, where the evidence showed as a result of the alleged injury that the miner was unconscious when removed from the mine and his injuries were of such a character as to confine him for two weeks or more to his house and to keep him from work, is not excessive.

Gatliff Coal Co. *v.* Wright (Kentucky), 163 Southwestern, 1110, p. 1111, March, 1914.

In an action by a coal miner for injuries from being overcome by black damp in the mine, a judgment for $500 can not be regarded as unsupported by the evidence or as flagrantly against the evidence where the plaintiff testified that as he moved along in the mine he was overcome by the noxious gas and that he then made his way along the entries and in a short time became unconscious, and after he came to he dragged himself to the mine entrance, and that as a result he was weak all summer, could not do any work and could hardly walk, where the report of the mine inspector showed that the

air was not in good condition, though the plaintiff's evidence was not supported by any other witness.

Mt. Morgan Coal Co. *v.* Shumate (Kentucky), 163 Southwestern, 1099, p. 1100, March, 1914.

A judgment for $3,000 for injuries to a miner in an action for personal injuries can not be said as a matter of law to be excessive where it was difficult to tell whether it is an injury from which the miner will recover in a few months or he will recover the full use of his foot, the injured part, by the use of mechanical appliances, or whether he will be a cripple for life.

Crooks *v.* Tazewell Coal Co. (Illinois), 105 Northeastern, 132, p. 135, April, 1914.

A verdict for $1,000 can not be regarded as excessive for a miner whose leg was broken and the injured leg by reason of the breaking was rendered shorter than the other.

Big Branch Coal Co. *v.* Sanders (Kentucky), 166 Southwestern, 813, p. 815, May, 1914.

In an action for damages for injuries by a boy 17 years of age who was employed to drive a coal car in a mine a verdict for $850 is not excessive where it appears that the boy was in bed for three weeks as a result of the injury, that he slept very little during the time, and had not been able to do the full labor of a man since, and where it appears that while his leg was not broken the muscles were seriously and permanently injured, and that at the time of the trial the leg was not in its normal condition.

Kentucky Midland Coal Co. *v.* Vincent (Kentucky), 166 Southwestern, 800, p. 801, May, 1914.

QUARRY OPERATIONS.

CONTRIBUTORY NEGLIGENCE—KNOWLEDGE OF DANGER.

An employee in a quarry is chargeable with notice of what is apparent, but not necessarily that the apparent is dangerous, and can be barred of recovery for injuries resulting from perils arising during the course of his employment only when he realizes their nature and extent with full comprehension of the danger and continues in the service with such added exposure voluntarily and intelligently; but the mere fact that such an employee knows the defects does not necessarily charge him with contributory negligence, or the assumption of risks growing out of such defects, but the question is, did he know, or ought he, in the exercise of ordinary common sense and prudence to have known, the risks to which the conditions of the instrumentalities exposed him.

Perreault *v.* Wisconsin Granite Co. (South Dakota), 144 Northwestern, 110, p. 114, September, 1913.

ASSUMPTION OF RISK—CONTRIBUTORY NEGLIGENCE—KNOWLEDGE OF DANGER.

Where the evidence shows that an injury to an employee in a quarry was caused by a danger which ought not to have attended his employment and would not have attended it had the operator performed his whole duty toward the employee, there is no presumption that the employee assumed the unusual risk, and the burden of proof is on the employer to show affirmatively that he did, to the same extent that it is on him to show any other contributory negligence on the part of the employee, as the assumption of an unusual risk in any employment by an employee is in the nature of negligence on his part, which, like any other contributory negligence, prevents his recovery.

Perreault *v.* Wisconsin Granite Co. (South Dakota), 144 Northwestern, 110, p. 113, September, 1914.
See Oiva *v.* Calumet & Hecla Min. Co. (Michigan), 146 Northwestern, 181, March, 1914.

ASSUMPTION OF RISK—BURDEN OF PROOF.

While the law presumes that an employee in a quarry assumed all the ordinary risks incident to his employment, including those connected with the use of proper machinery when properly located, and therefore no proof of assumption of risk in such cases need be pleaded or proved, yet when a risk claimed to have been assumed is out of the ordinary, as when an employer has failed to furnish a reasonably safe place in which his employees shall work, then if the employer seeks to defend an action based upon injury received owing to his own alleged negligence in not furnishing such a proper place and seeks to defend upon the ground that the employee assumed the risk, there being no presumption that such risk was assumed, it then becomes a matter of affirmative defense to be alleged and proved by the employer.

Perreault *v.* Wisconsin Granite Co. (South Dakota), 144 Northwestern, 110, p. 113, September, 1913.

ASSUMPTION OF RISK—INJURY TO WORKMAN.

A person employed as a driller in a stone quarry and whose duty it was to go upon and around the sides of a great pile of pieces of stone varying in size that were thrown upon the pile as they were blasted from the face of the quarry, and who was required to drill holes in the larger pieces of the loose stone in such pile in order that these larger pieces could be broken up so that they could be handled, and where the pieces of stone as piled were sometimes loose and liable to slip and fall or roll down the side of such pile, is not entitled to recover for an injury caused by a mass of stone in the ledge above him breaking loose and rolling down over and upon him to his injury,

where it sufficiently appears that the driller himself was as well informed as the operator of the quarry of the likelihood of the stone falling, and where he knew of the constantly changing conditions of the mass of stone, and where it also appears that an inspection by the operator would have been of no consequence to the driller because of the constantly changing conditions, and where the injury arose either from the cause of the changing conditions and work, of which the driller was fully informed, which changing condition of work and of the subject of the work he was employed to assist in producing, or from no known cause.

Lehigh Portland Cement Co. *v.* Bass (Indiana), 103 Northeastern, 483, p. 487, December, 1913.

An employee in a quarry of many years' experience and whose duty among other things was head hooker to hook the hooks or dogs of a traveler used to move stone, and whose duty it was to determine for himself the way and manner in which to move stone in the quarry and in the yard, can not recover for an injury received while in the line of his duty, where he was directed to move a stone, above but not on which was a larger stone, and where without first moving the larger stone he with an assistant put the hooks or dog in the small and underneath stone and himself gave the signal to the engineer operating the traveler, and where in lifting the smaller stone the larger stone was thereby caused to fall on the plaintiff, causing the injuries for which he sued.

Sare *v.* Hoadley Stone Co. (Indiana Appeals), 105 Northeastern, 582, p. 583, June, 1914.

EXERCISE OF REASONABLE CARE—PROOF OF GENERAL PRACTICE.

In an action for damages for the death of an employee in a stone quarry due to the alleged negligent manner in which the operator conducted his quarrying operations, the plaintiff may show the general practice of other employers in similar lines of employment, as tending to show whether the employer has exercised reasonable and ordinary care in providing and maintaining safe appliances and places for work.

Bowles *v.* Virginia Soapstone Co. (Virginia), 80 Southeastern, 799, p. 801, January, 1914.

SAFE PLACE AND APPLIANCES—DEGREE OF LIABILITY.

The operator of a stone quarry, like other employers, is bound to exercise ordinary care in providing safe appliances and places, and the care must be such as reasonable and prudent men use under like circumstances, in providing safe and suitable appliances and instrumentalities for the work to be done and in providing generally for the safety of the employees, regard being had to the work and

the difficulties and dangers attending it; but he is not bound to provide the latest inventions nor the most newly discovered appliances, and he is not required to use more than ordinary care, no matter how hazardous the business may be, and ordinary care depends upon the circumstances of the particular case and is such care as a person of ordinary prudence under all the circumstances would exercise, and this must be ascertained by the general usages of the business.

Bowles *v.* Virginia Soapstone Co. (Virginia), 80 Southeastern, 799, p. 801, January, 1914.

EMPLOYER NOT AN INSURER OF SAFETY OF EMPLOYEES.

The operator of a stone quarry is not held to any higher degree of skill than the fair average person of his profession or trade, and he is not an insurer of the safety of his employees and is liable for the consequences not of danger but of negligence.

Bowles *v.* Virginia Soapstone Co. (Virginia), 80 Southeastern, 799, p. 801, January, 1914.

DANGERS IN SOAPSTONE QUARRY.

The quarrying of soapstone is necessarily hazardous and the elements of danger can not be wholly eliminated, and such a quarry can not be conducted without blasting and the use of machinery which causes vibrations, and the operator of such a quarry can not be held liable for an injury to or the death of an employee from the fall of a rock, on the ground of alleged negligence in keeping the walls so perpendicular that loosened stones would be liable to fall from the jar incident to the work, where the proof showed that the wall for some 60 feet was almost perpendicular and the discovery of a seam no thicker than a knife blade, and where the quarrying was carried down to a considerable distance and after some 3 or 4 yards another seam of the same character of the first was discovered, and where iron pins were introduced along the lower edge of the seam, and during all of the time frequent and careful inspections were made of the face of the wall by sounding with heavy hammers and crowbars and there was no evidence of the slightest character of any movement of the stone, and no discovery of anything to indicate that any movement was to be apprehended, except the seams mentioned, and where the quarrying continued for a year after the discovery of the second seam without indications of danger, when suddenly and without warning a great mass of stone fell and caused the death complained of.

Bowles *v.* Virginia Soapstone Co. (Virginia), 80 Southeastern, 799, p. 802, January, 1914.

EVIDENCE OF SUBSEQUENT REPAIRS INADMISSIBLE.

In an action for the death of an employee in a quarry caused by a fall of rock due to the alleged negligence of the operator in failing to properly inspect and make safe the wall of the quarry, evidence is not admissible to show that the inspection of the walls of the quarry was more frequent after the accident than before, and that the operator subsequent to the accident put more pins in the wall for the purpose of making it safe.

Bowles *v.* Virginia Soapstone Co. (Virginia), 80 Southeastern, 799, p. 800, January, 1914.

NOISES—NUISANCE.

The owner and operator of a granite quarry may be enjoined from operating surfacing machines, though necessary in the process of the development of the granite industry and necessary for the successful prosecution of the particular quarry, where by reason of being operated by compressed air the surface machines produce a loud, penetrating, confused, and disagreeable noise that interferes with the reasonable comfort and enjoyment of life to the inhabitants of the particular locality used principally for residences.

Stevens *v.* Rockport Granite Co. (Massachusetts), 104 Northeastern, 371, p. 373, February, 1914.

LEASE OF LANDS AND QUARRY—GRANT OF RIGHT OF WAY—CONSTRUCTION.

The owner of a stone quarry leased the same for a term of 25 years, and at the same time and by the same instrument granted to the lessee the right to construct and maintain a switch over other lands of the lessor by which lessee should quarry and remove stone by means of such switch and to connect the stone quarry with a nearby railroad, and the lessee reserving the right, on the termination of the lease, to remove all buildings, sidetracks, switches, and property of every kind from said premises; and the fact that the lessor subsequently conveyed the land over which the switch was laid and maintained, on the termination of the lease, and leased the quarry to other persons, did not in anywise affect the rights of the lessee and did not extend the time or make permanent the easement to maintain the switch, but the original lessee on the termination of the lease had the right to remove the buildings on the leased premises, including the switch, and the easement for the maintenance of the switch terminated at the end of the 25-year period.

Spencer Stone Co. *v.* Sedwick (Indiana Appeals), 105 Northeastern, 525, p. 527, June, 1914.

PATENT FOR STONE LAND—FRAUD—CANCELLATION.

Patents issued under the timber and stone act may be set aside and canceled for fraud on the part of the patentee in conspiring to purchase entries pursuant to a prior agreement on the part of the entryman to transfer the title to persons not bona fide purchasers for value.

United States *v.* Kettenbach, 208 Fed., 209, p. 214, October, 1913.

WATER RIGHTS.

CONSTRUCTION OF STATUTE.

Congress evidently perceived that the time had come when the changed conditions and the complex interests and relations of the national life demanded a change in the rules relating to water rights on the public domain in the arid regions of the Western States, as applied under the original act of July 26, 1866 (14 Stat., 251, sec. 9), and as embodied in section 2339 of the Revised Statutes of the United States, and accordingly modified that act by the subsequent legislation as seen in the acts of March 3, 1891 (26 Stat., 1095), February 4, 1911 (36 Stat., 1235, p. 1253).

United States *v.* Utah Power & Light Co., 209 Fed., 554, p. 561.
Reversing United States *v.* Utah Power & Light Co., 208 Fed., 821, p. 823, November, 1913.

The acts of May 14, 1896 (29 Stat., 120), and of March 4, 1911 (36 Stat., 1235, p. 1253), authorizing the Secretary of the Interior and other public officers to grant rights of way and the use of ground on the public domain to electric power companies, modify and limit, at least as to such companies, the general provisions of section 2339 of the Revised Statutes of the United States; and while these later acts can not deprive corporations or persons of vested water rights for mining and domestic purposes, corporations can not acquire rights of way over the public domain to be used in generating electric power under the original section 2339, but a right of way for such purposes can be granted under the later acts by the Secretary of the Interior only.

United States *v.* Utah Power & Light Co., 209 Fed., 554, p. 561, November, 1913.
Reversing United States *v.* Utah Power & Light Co., 208, Fed., 821, p. 823.

VESTED RIGHTS PROTECTED—PURPOSE OF STATUTE.

The purpose of section 2339 of the Revised Statutes of the United States was to confirm title to possession acquired under forms and regulations sanctioned by the State and molded by its courts, with the acquiescence and tacit encouragement on the part of the Government; and the section was a voluntary recognition of the preexisting right of possession, constituting a valid right of claim to its continued use, rather than the establishment of a new right.

United States *v.* Utah Power & Light Co., 209 Fed., 554, p. 560, November, 1913.

APPROPRIATION NECESSARY FOR USE ON MINING CLAIM.

The locator of a lode mining claim is not entitled to the use of water flowing from a spring in a natural channel without making a proper appropriation of the same to a beneficial use, and in the absence of such an appropriation a third person may by proper appropriation acquire a vested interest in the use of such water.

Campbell *v.* Goldfield Consol. Water Co. (Nevada), 136 Pacific, 976, p. 978, December, 1913.

WATER RIGHTS—CUSTOMS.

The effect of a custom prevailing in an Alaska mining district by which an entry upon unpatented mining claims was permitted to one seeking to appropriate water flowing through such unpatented claim, becomes wholly immaterial where the mining claim was held to be invalid because of the failure to prove discovery.

Ebner Gold Min. Co. *v.* Alaska-Juneau Min. Co., 210 Fed., 599, p. 604, January, 1914.

VESTED RIGHTS FOR MINING PURPOSES.

Where vested water rights for mining purposes have accrued under section 2339 of the Revised Statutes of the United States, and such rights are recognized and acknowledged by local customs, laws, and decisions of the courts, such rights are protected by the statute and can not be forfeited or otherwise lost by any acts of the Government officers.

United States *v.* Utah Power & Light Co., 208 Fed., 821, p. 822, March, 1913.

RIGHT OF WAY PROTECTED.

A power company obtaining a right of way for a pipe line to conduct water to its plant and mine for mining purposes will be protected in its right to the continued use of such right of way and pipe line where the land is subsequently incorporated in a forest reserve.

United States *v.* Utah Power & Light Co., 208 Fed., 821, p. 823, March, 1913.

PUBLICATIONS ON METHODS OF MINING.

Limited editions of the following Bureau of Mines publications are temporarily available for free distribution. Requests for all publications can not be granted, and applicants should select only those publications that are of especial interest to them. All requests for publications should be addressed to the Director, Bureau of Mines, Washington, D. C.

BULLETIN 17. A primer on explosives for coal miners, by C. E. Munroe and Clarence Hall. 61 pp., 10 pls., 12 figs. Reprint of United States Geological Survey Bulletin 423.

BULLETIN 45. Sand available for filling mine workings in the northern anthracite coal basin of Pennsylvania, by N. H. Darton. 1913. 33 pp., 8 pls., 5 figs.

BULLETIN 48. The selection of explosives used in engineering and mining operations, by Clarence Hall and S. P. Howell. 1913. 50 pp., 3 pls., 7 figs.

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TECHNICAL PAPER 59. Fires in Lake Superior iron mines, by Edwin Higgins. 1913. 34 pp., 2 pls.

TECHNICAL PAPER 61. Metal-mine accidents in the United States during the calendar year 1912, compiled by A. H. Fay. 1913. 76 pp., 1 fig.

TECHNICAL PAPER 92. Quarry accidents in the United States during the fiscal year 1913, compiled by A. H. Fay. 1914. 45 pp.

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