Bulletin 181 Law Serial 19

DEPARTMENT OF THE INTERIOR
FRANKLIN K. LANE, SECRETARY
BUREAU OF MINES
VAN. H. MANNING, DIRECTOR

ABSTRACTS OF CURRENT DECISIONS
ON
MINES AND MINING

REPORTED FROM
JANUARY TO MAY, 1919

BY

J. W. THOMPSON

WASHINGTON
GOVERNMENT PRINTING OFFICE
1919

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First edition. October, 1919.

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ABSTRACTS OF CURRENT DECISIONS ON MINES AND MINING, JANUARY TO MAY, 1919.

By J. W. THOMPSON.

MINERALS AND MINERAL LANDS.

MINERALS.

MEANING OF TERM.

The term "minerals" when used in grants or in reservations or instruments of conveyance is not limited to metals or metalliferous deposits, whether contained in veins that have well-defined walls or in beds or deposits that are irregular and are found at or near the surface or otherwise.

Byron v. Utah Copper Co., —— Utah ——, 178 Pacific 53, p. 56.

The term "mineral" in its commercial sense has been defined as any organic substance found in nature having sufficient value separate from its situs as part of the earth to be mined, quarried, or dug for its own sake or its own specific use.

Rockhouse Fork Land Co. v. Raleigh Brick & Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 685.

CONSTRUCTION AND MEANING.

It can not be said that the term "minerals" includes only such substances as are procured by tunnelling and shafting, as much gold is procured by placer mining and rich deposits of manganese and other like ores are found upon the surface of the earth and are sometimes obtained without either quarrying or mining.

Rockhouse Fork Land Co. v. Raleigh Brick & Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 685.

GRANITE AS MINERAL.

It has been determined that granite was included in a grant of minerals.

Rockhouse Fork Land Co. v. Raleigh Brick & Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 685.

See Armstrong v. Lake Champlain Granite Co., 147 N. Y. 495, 42 Northeastern 186.

OIL A MINERAL.

Petroleum or mineral oil is within the meaning of the term "mineral" as it was used in the act of Congress (act of July 27, 1866, 14 Stats. 292) reserving mineral lands from railroad land grants.

Cheino Land & Water Co. v. Hamaker, —— Cal. App. ——, 178 Pacific 738, p. 739.

OIL AND GAS—NATURE—CONSTRUCTION OF CONTRACT.

Oil and gas are furtive, migratory and self-transmissive minerals, and because of these characteristics or qualities contracts and rights relating thereto require the application of principles different in many respects from those applicable to other minerals that are not affected with such characteristics.

Rechard v. Cowley, —— Ala. ——, 80 Southern 419, p. 420.

SUBSTANCES DEFINED AS MINERALS.

It has been variously held by courts that stone used for road making and paving, limestone, flintstone, slate, clay, and other like materials are minerals. But the determination may depend upon the language used by the parties in the grant as reflecting their intention.

Rockhouse Fork Land Co. v. Raleigh Brick & Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 685.

ORES REMOVED BY COTENANT—DUTY TO ACCOUNT—LIABILITY.

It is the duty of a coowner of a mining claim to keep the ore mined from the joint claim separate from other ore, and to keep an account of the ore mined and of its proceeds, and promptly to account for and pay to the coowner his just share of the proceeds. Failing to do this the operating coowner can receive no profits from his wrongful treatment of the ore and the other coowner is entitled to receive the just value of his property and its income. If in an action to account the issues are rendered uncertain or doubtful by reason of the failure of the mining coowner to discharge his duties or by his confusion of the ores mined from the joint claim with those mined by him from other sources, then the issues must be resolved against the wrongdoer.

Silver King Coalition Mines v. Conklin Min. Co., 255 Federal 740, p. 743.

SHIPMENT OF ORE—LIABILITY OF CARRIER—DUTY OF CARRIER TO DELIVER TO OWNER.

A railroad company as a common carrier received and shipped a certain quantity of ore. Before the ore was received for shipment the alleged real owner notified the railroad company that the ore would be tendered for shipment, but that it had been stolen and was in fact his property. Ordinarily, a common carrier is guilty of no con-

version where it receives property from one not rightfully entitled to possession and, acting as a mere conduit, delivers the property in pursuance of the bailment if this is done without notice. But if a carrier has received notice of the rightful ownership of the goods its status is altered and it acts at its peril. It was the duty of the carrier to deliver the ore to the rightful owner and the performance of that duty will not be adjudged to be tortious as against a bailor having no title. The delivery of the ore to the rightful owner would be a complete defense in an action by the wrongful bailor against the carrier.

Dixon v. Southern Pacific Co., —— Nev. ——, 177 Pacific 14 (rehearing).

See Dickson v. Southern Pacific Co., —— Nev. ——, 172 Pacific 368. (Bulletin 172, p. 6.)

ORE—SHIPMENT—LIABILITY OF CARRIER—DESCRIPTION OF ORE—WAIVER.

The owner of certain ore notified a railroad company that a quantity of ore would be delivered to it for shipment by a third person, and further notified the company that the ore had been stolen and that it was in fact his property. The company declared its intention pursuant to its common law duty to ship the ore if properly offered. When the ore was offered for shipment the railroad company required and received an affidavit from the possessor to the fact that he was the real owner and thereupon shipped and delivered the ore according to his order. In an action by the real owner against the carrier for conversion and for damages the railroad company could not defend on the ground that the description of the ore was too indefinite and uncertain to charge it with knowledge of the rights of the real owner. The avowal of the company to ship the ore if tendered and basing its decision on its legal rights rather than upon the indefinite description of which it made no complaint at the time, the company waived the right to insist that the description of the ore was too indefinite and uncertain to charge it with knowledge of the real owner of the ore.

Dixon v. Southern Pacific Co., —— Nev. ——, 177 Pacific 14, p. 16. (Rehearing.)

REMOVAL OF MINERALS—CONTEMPT OF COURT.

In an action of trespass for mining and removing minerals a witness can not be adjudged guilty of contempt of court for refusing to answer immaterial questions, but he may be adjudged in contempt of court and punished for refusing to answer an inquiry as to how much gold he had seen the defendant and his employees clean up, as the question was directly pertinent to the issue.

Kimball v. Superior Court, —— Cal. App. ——, 177 Pacific 488.

MINGLING GOLD WITH GOLD-BEARING ORE—INDICTMENT—FRAUD.

An indictment charged that the accused willfully and unlawfully and feloniously mingled gold with samples of gold-bearing ore taken from a test hole on placer ground and did thereby change the value of the gold-bearing ore with intent to deceive and defraud certain named persons. The indictment followed the Arizona statute and the offense is purely statutory and the time, place, and circumstances are stated with certainty, and an indictment is sufficient when it describes the offense substantially in the language of the statute.

Martinez v. State, —— Ariz. ——, 176 Pacific 582, p. 583.

MINERAL LANDS—SALE AND CONVEYANCE.

CONSTRUCTION OF DEED—MINERALS INCLUDED.

A deed conveying mineral lands granted the privilege to use so much of the stone and water as might be necessary or desirable for the operation of a coal mine or mineral plant, including the right to enter upon the land, mine, excavate, and remove the coal and to make and maintain roads, excavations, ways, shafts, drains, and openings necessary and convenient for mining coal and other minerals, and the rights and privileges to run with the coal and minerals. Under this grant it is clear that it was within the contemplation of the parties that the minerals granted were such as it was necessary to mine either by tunnel or by sinking shafts and the conveyance is limited to such minerals as may be secured by the ordinary process of mining. As against this grant a subsequent purchaser of the surface had the right to dig and remove a seam of clay valuable for the purpose of manufacturing brick, though such seam of clay was not a part of the soil used for agricultural purposes. The seam of clay was held not to be within the terms of the mineral grant.

Rockhouse Fork Land Co. v. Raleigh Brick & Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 686.

OPTION AGREEMENT TO PURCHASE.

An option or a contract to purchase certain mineral lands provided for the payment of a stated sum on or before a certain fixed date. There was no valid offer to perform the agreement and there was nothing to show that the purchaser was able to perform and pay the amount stipulated before or at the date named and the purchaser was in no position to compel a performance of the contract where he himself had failed to perform his part.

Langan v. Marriposa Commercial & Min. Co., —— Cal. App. ——, 178 Pacific 166, p. 168.

OPTION TO PURCHASE—INTEREST OF WIFE.

A husband procured an option to purchase certain valuable mineral lands and his wife contributed of her separate funds a large proportion of the sum paid for the option. Subsequently a corporation was formed that took over the option and stock was issued to the incorporators. Certain shares of stock were issued to the agent and attorney of the wife to be held until a certain sum due her from the corporation was paid. Under these facts a creditor of the husband could not compel the transfer of the stock of the husband in payment of his debts on the ground that it had been fraudulently transferred by the husband to the wife in fraud of his creditors. The fact that the option to purchase the mining property was taken in the name of the husband did not make it his property where the wife contributed of her separate funds a large share of the purchase price and where subsequently the stock was issued to the agent of the wife in part payment of the sum paid by her on the option purchase.

Farish v. Beeby, —— Ariz. ——, 179 Pacific 51.

OPTION TO PURCHASE—SERVICES RENDERED OPTIONEE—LIABILITY OF WIFE OF OPTIONEE.

A husband procured an option contract to purchase valuable mineral lands. While holding the option a mining engineer employed by him examined and reported on the property described in the option and his report induced the organization of a corporation that took over the option and finally purchased the property. The wife of the optionee contributed from her separate funds a large part of the purchase price of the option and stock of the corporation was thereafter issued representing her investment. The wife could not be held liable for the services of the mining engineer on the ground either that his services contributed to the value of her holdings or on the ground that she was estopped in failing to notify the mining engineer that she had contributed of her separate funds to help pay for the option. It could not be assumed that the mining engineer relied upon the inchoate and uncertain interest of the husband, a mere option upon unpatented and unpromising mining claims, for his compensation in experting the mine.

Farish v. Beeby, —— Ariz. ——, 179 Pacific 51, p. 52.

DISCLAIMER AS A CONVEYANCE.

Pending certain actions of ejectment and to quiet title to land a former owner of part of the land who was still in possession of other parts, in consideration of being released from all litigation to the particular tract of which he held possession, executed a writing whereby he disclaimed all right, title, claim, demand, or interest in

and to certain described parts of the land in controversy. Under the statute of West Virginia the disclaimer was in effect a quitclaim deed and in equity it was a contract by which the disclaimant relinquished all interest in the land and authorized the party claiming title to do what he chose with the land.

Woodall v. Clark, 254 Federal 526, p. 533.

LIMESTONE NOT INCLUDED IN MINERALS.

In a sale and conveyance of minerals the language of the deed making the grant may show that the parties only intended such minerals as were secured by the ordinary process of mining, and such a conveyance may not include limestone as mineral.

Rockhouse Fork Land Co. v. Raleigh Brick & Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 685.

See Brady v. Smith, 181 N. Y. 178, 73 Northeastern 963.

FRAUDULENT PURCHASE BY AGENT.

Certain mining property, with an operating mine, was owned by several persons as partners. On the death of one of the partners his widow inherited his entire interest. One of the other partners for many years had been the manager of all the mining operations and was familiar with the workings and knew something of its possibilities. The widow had had no practical experience in mining and was less competent to form an intelligent opinion or to speculate upon the ultimate value of the property than was the managing partner; but she was intelligent and familiar with business methods and with mining property generally and had an intelligent comprehension of the conduct of the mining operations and the revenues received from the mine. The managing partner after explaining truthfully and in detail the status of the property and after advising the widow of what had been done and what they were planning and expecting to do made, at her request, an offer for her interest. After consulting with other of the partners and after inducing the managing partner to increase his offer she sold her interest for $350,000. The fact that the mining property together with the smelting enterprise in which the partners engaged subsequently proved more profitable than was anticipated at the time of the sale will not justify a rescission of the sale on the ground that the managing partner failed to make full and fair disclosures of the mining conditions.

Cardoner v. Day, 253 Federal 572, p. 577.

RAILROAD GRANT—EXCEPTION.

A patent to the Southern Pacific Railroad Company duly issued by the proper authorities contained a clause "reserving all claim of the

United States to the same as mineral land." A patent upon collateral attack is a conclusive and official declaration that the land is agricultural and that all the requirements preliminary to the issuance of the patent have been complied with. The reservation and exception contained in the patent to the railroad company excepting mineral lands is a void exception. Persons not in privity with the Government in any respect at the time the patent was issued to the railroad company can not successfully attack the patent.

Cheino Land & Water Co. v. Hamaker, —— Cal. App. ——, 178 Pacific 738, p. 739. See Burke v. Southern Pacific R. Co., 234 U. S. 669, 34 Supreme Ct. Rep. 907.

DEED A MORTGAGE.

The owner of mineral lands conveyed the land by a deed to secure the grantee for a sum of money advanced by him to the grantor and under an agreement that the grantee should organize a corporation of a stated capital stock to take over the mineral lands and the grantee to hold 51 per cent and the grantor to hold 49 per cent of the capital stock of the corporation. On the failure of the grantee to organize the corporation the grantor brought suit to quiet the title and to have the deed canceled and set aside. Under the facts the grantor was not entitled to have the deed canceled and set aside and the title quieted, but the grantee was entitled to have the deed declared to be a mortgage to secure the sum advanced and to foreclose it accordingly.

Dunbar v. Morajeska, —— Ariz. ——, 178 Pacific 777, p. 779.

TRUST—ACTION TO COMPEL RECONVEYANCE—TWO-WITNESS RULE.

In an action by a wife to compel her husband to reconvey mineral lands held by him in trust for her, the two-witness rule does not require that every detail of the testimony of one witness must be verified by the direct evidence of another; but the rule has no application where the husband by his own testimony destroyed the absolute character of the deed and admitted that it was not intended to be an absolute conveyance.

Morrish v. Morrish, —— Pa. ——, 105 Atlantic 83, p. 85.

MINING PROSPECTS—MARKET VALUE.

Mining properties as such have no market value. The value lies not in a certainty of a return or a fair interest or income but in dreams and hopes. They are merely tables upon which cards are turned and courts are not disposed to hold that a prospect which was the subject matter of a contract was a borrowing asset.

Wilson v. Mears, —— Wash. ——, 177 Pacific 815, p. 818.

SURFACE AND MINERALS—OWNERSHIP AND SEVERANCE.

RESERVATION OF MINERALS—MINING OPERATIONS.

A landowner by deed conveyed to a copper company certain described land but reserved the right to all ores in and underneath the surface together with the right to mine and remove the same; but provided that the mining operations should not endanger buildings or improvements then or thereafter erected on a certain described portion of the surface, by reason of sinking or caving of the surface of such area caused by mining operations. At the time of the conveyance it was known that valuable copper ore had been found and was contained at and immediately under the surface area of the land conveyed and that mining operations had been carried on by employing surface as well as underground methods of mining, and that the method generally adopted for mining low grade copper ore was by taking and removing all the material from the surface downward and that such surface mining was the practical and more economic method and the only method of mining the ore at or immediately underneath the surface of the ground. By the conveyance the purchaser relinquished and waived all right to subjacent support to the surface except as to a small rectangular strip. After the conveyance the copper company, the purchaser, excavated the rectangular strip for the purpose of erecting buildings thereon and removed the material so excavated to other portions of the premises conveyed and there deposited the same in dumps. The materail removed and stored contained copper ore of economic and commercial value. Thereafter the original grantor as the owner of the minerals reserved gave a third person a mining lease for the mineral so reserved. Under such lease the lessee and his assigns had the right to carry on the business of mining in and underneath the surface of the demised premises excepting only such rectangular strip, and had the right to remove the ore contained in the material so removed by the copper company, and were entitled to an injunction restraining the copper company from in any manner interfering with or molesting the lessee or his assigns from mining and removing the ores and minerals in and underneath the surface of the premises including the ores contained in the dumps made by the copper company.

Byron v. Utah Copper Co., —— Utah ——, 178 Pacific 53, p. 54.

COAL AND COAL LANDS.

COAL IN PLACE—SUBJECT TO MORTGAGE OF LAND.

Coal in place is part of the real estate and is covered by a mortgage duly executed by the owner of the land and coal.

Reisinger v. Garrett Smokeless Coal Co., —— Pa. ——, 106 Atlantic 78, p. 79.

CONTRACT FOR DEED AND DEED—MERGER.

The owner of 167 acres of coal land gave an option agreement to purchase all the coal within the entire tract, the optionee to pay a stated price per acre with the privilege of electing the part of the tract and the number of acres to be conveyed and paid for. The optionee after due inspection elected to purchase and pay for 150 acres and a deed for the same was duly executed by the landowner and accepted by the optionee. The execution of the deed merged the contract to purchase and the rights of the purchaser were limited to the land described in the deed accepted by him.

Titus v. Poland Coal Co., —— Pa. ——, 106 Atlantic 90, p. 93.

GRANT OF RIGHT TO MINE AND REMOVE COAL—EXTENT OF GRANT.

A deed conveyed coal to the grantee together with the right to mine and remove the coal and with the necessary mining rights together with the right to remove and carry away "under said described premises" other coal of the grantee. The word "under" as used in grant must be accepted in its ordinary sense and can not be enlarged so as to be deemed to grant the right to carry and transport coal over the surface of the land as well as underneath it. The carrying of coal from adjacent tracts underneath the surface would occasion the grantor no inconvenience and would not interfere with the enjoyment of the surface rights. The grantor reserved to himself the surface rights and obviously had no purpose of giving the grantee any rights in the surface except such as were necessarily incident to the enjoyment of the right to remove the coal underneath the particular tract.

Shaulis v. Quemahoning Creek Coal Co., —— Pa. ——, 105 Atlantic 826, p. 827.

MORTGAGE AND LEASE—PRIORITY—WAIVER.

The owner of certain coal lands executed a mortgage covering the entire estate in the land and coal. A purchaser of the land subject to the mortgage executed a coal lease and the mortgagee for a sufficient consideration waived his right of priority and agreed that the coal lease should be superior to the lien of his mortgage. This agreement was recorded in the deed book but not in the mortgage book. Subsequently the land was sold to satisfy the mortgage, but the coal lessee was in possession and had knowledge of the sale, but gave no notice and made no claim of the priority of his lease. Under these facts the purchaser at foreclosure sale without notice or knowledge of the agreement to make the lease a prior lien, acquired the entire estate in the land and the coal and obtained thereby the right of possession of the entire premises.

Re'singer v. Garrett Smokeless Coal Co., —— Pa. ——, 106 Atlantic 78, p. 79.

OPTION TO PURCHASE—ELECTION—LIMITATION ON RIGHTS.

The owner of certain coal lands gave an option agreement to another by which he agreed to sell the nine-foot vein of coal and all coal, with a nominal exception, in and under the land described. The grantee of the option agreed to pay a certain price per acre for every acre of the nine-foot vein of coal as should be determined by the engineer of the purchaser. The option contract included 167 acres but the optionee elected to take only 150 acres, and by this election his mining rights were limited to the 150 acres and he could not exercise any mining rights on the remaining 17 acres not included in his deed.

Titus v. Poland Coal Co., —— Pa. ——, 106 Atlantic 90, p. 92.

DISCLAIMER AS TO MINERAL RIGHTS.

A landowner for a sufficient consideration expressly disclaimed all title or interest in all coal, except so much as should be required for domestic purposes and all iron ore, natural gas, and all other minerals in, upon, or under the tract of land described, with the exclusive right for rights of ways for tram, rail, and wagon roads through the land and to dig for and mine coal, iron ore, bore for oil or natural gas, and the necessary conveniences on the land for storing oil and coal. This disclaimer sufficiently shows the title to the minerals to be in the person in whose interest the disclaimer was given.

Woodall v. Clark, 254 Federal 526, p. 532.

OWNERSHIP OF CULM—PRELIMINARY INJUNCTION—RIGHT OF APPEAL.

A landowner averring ownership and possession of a culm bank containing over 170,000 tons and located on the surface of his lands is entitled to a preliminary injunction restraining a third person from entering upon his premises and removing the culm, especially where it was averred that the defendant and his employees had wrongfully and forcibly entered upon the premises and removed a large quantity of the culm and that he threatened to continue to do so and forcibly to eject the plaintiff and his servants; and where it was also averred that the plaintiff had no adequate legal remedy in that the defendant was financially unable to respond in damages.

Holden v. Llewellyn, —— Pa. ——, 105 Atlantic 639, p. 640.

SALE OF INCUMBERED PROPERTY—ASCERTAINMENT OF RENTS.

A court before decreeing the sale of trust property consisting of coal lands and a producing coal mine should ascertain by reference to a commissioner or by an express finding based upon the pleadings and the facts disclosed whether the rents and profits will be sufficient

to pay and discharge the lien indebtedness within the period specified in the lien or mortgage.

Abney-Barnes Co. v. Davey-Pocahontas Coal Co., —— W. Va. ——, 98 Southeastern 298, p. 302.

SALE TO JUSTIFY LIENS—APPLICATION OF PROCEEDS OF MINE.

The operations of a coal mine on a trust estate resulted in the accumulation of $95,000. While this fund was under the control of the court the mortgagees and creditors sought by a decree of foreclosure to enforce payment of trust liens and a mortgage by the sale of the incumbent mining property by reason of overdue and unpaid interest coupons. This fund in the treasury of the court and under its control arose out of the trust property and was a part of it and as such was subject to the payment of the liens binding the property and should have been applied to reduce the incumbrance before decreeing the sale of the land.

Abney-Barnes Co. v. Davey-Pocahontas Coal Co., —— W. Va. ——, 98 Southeastern 298, p. 303.

SHERIFF'S SALE—VALIDITY—BID INCREASED.

Certain coal lands were sold at a sheriff's sale for $4,325. Subsequently a third person filed a paper setting forth that on a resale he would open the bidding at $5,500. Thereupon by agreement of the parties the original purchaser increased his bid to $5,500 and the sheriff was permitted to amend his return and award the property to the purchaser. Later another person filed a paper making a conditional offer of $7,000. Under these facts and considering the nature of the conditional offer the sale to the original purchaser at his increased bid was properly confirmed.

Nutt v. Berlin Smokeless Coal & Clay Min. Co., —— Pa. ——, 105 Atlantic 627, p. 628.

ASSESSMENT FOR TAXATION.

Coal lands surrounding a proven mine, although in a prospective state only, may be given an assessed valuation for the purpose of taxation, where the taxing officers find and believe that the property has coal value.

Washington Union Coal Co. v. Thurston County, —— Wash. ——, 177 Pacific 774, p. 775.

OIL AND OIL LANDS.

OIL AND GAS AS MINERALS.

Petroleum oil and gas are included within the term "minerals."

Rockhouse Fork Land Co. v. Raleigh Brick & Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 685.

OIL AND GAS IN PLACE—OWNERSHIP.

Oil and gas are not capable of distinct ownership in place.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 95.
See Daughetee v. Ohio Oil Co., 263 Ill. 518, 105 Northeastern 308.

NATURE AND OWNERSHIP.

The owner of land has the qualified ownership of the oil and gas therein and an exclusive right, subject to legislative control against waste and the like, to erect structures on the surface of the land and explore therefor by drilling wells through the underlying strata and to take and reduce to possession and thus acquire absolute title as personal property to such oil and gas as may be found and obtained thereby.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 89.

OWNERSHIP—SALE.

The right of a landowner to drill and explore for gas and oil and to reduce the same to possession is a right that is the proper subject of sale and may be granted or reserved. The right so granted or reserved, and held separate and apart from the possession of the land itself, is an incorporeal hereditament or, as designated in the ancient French, a profit a prendre, analogous to a profit to hunt and fish on the land of another. This right may be granted to another as an interest in fee; but an interest of less duration may be granted and that for a term of years is a chattel real and is an interest in the land.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 89.

CONVEYANCE—CONDITION—EXPRESSION OF PURPOSE.

A landowner conveyed by deed to the proper school authorities a certain described tract of land "for school purposes only." The deed conveyed to the school authorities a perfect title in fee and was sufficient to authorize the school authorities to lease the tract for oil and gas purposes.

T. W. Phillips Oil & Gas. Co. v. Lingenfelter, —— Pa. ——, 105 Atlantic 888, p. 889.

GRANT—TITLE AND ESTATE.

Grant of oil and gas in situ does not vest title thereto, or any estate therein or pass anything which can be the subject of ejectment or other real action.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 95.

PURCHASE OF UNDIVIDED INTEREST BY LESSEE—MERGER.

A lessee of certain oil and gas lands subsequently acquired the title to the undivided one-half interest in the leased premises. This did not result in a merger of the estates as such only could be the result by agreement of the parties and not by mere operation of law. Where the terms created for a special purpose, not yet accomplished, were to be kept separate until that object was effected, then equity considers them distinct.

Patterson v. United Natural Gas Co., —— Pa. ——, 105 Atlantic 828.

CONTRACT TO DRILL WELL—RECOVERY OF PRICE.

A contract for drilling an oil well required the operator to drill a well into the oil sand or to a depth of 3,500 feet if required by the landowner. Payments were to be made sixty days after the perforating casing was carried into the oil sand or to 3,500 feet. The driller can not recover the price for drilling a well 3,215 feet deep in the absence of proof that the other party accepted the well at that depth and in the absence of proof that the well was drilled into the oil sand.

California Well Drilling Co. v. California Midway Oil Co., —— Cal. ——, 177 Pacific 849, p. 851.

CONTRACT TO DRILL WELL—VALUE OF SERVICES—CONTRACT PRICE.

An oil company contracted with oil well drillers to drill a well at $1.50 per foot. Pursuant to the contract the well was drilled something over 2,000 feet when gas was encountered and by reason of the failure of the oil company to furnish a sufficient packer to shut off the gas, according to the contract, the work of drilling was delayed and the oil company wrongfully prevented the drillers from completing the well or to give them an opportunity to drill another well near the same location. In an action by the drillers to recover the value of their services, it was proper to estimate the value of the work performed by the contract price per foot, in the absence of evidence showing that the application of this rule was unfair.

Elwood Oil & Gas Co. v. McCoy, —— Okla. ——, 179 Pacific 2, p. 4.

CONTRACT TO DRILL WELL—CUSTOM—PERFORMANCE PREVENTED.

An oil company contracted with drillers to drill an oil well at $1.50 per foot. It was not contemplated by the contract that either party should prevent performance by the other. The oil company, pursuant to a prevailing custom, furnished, the rig to be used in drilling, and it was its duty to furnish the packer to shut off any gas that might be encountered. In the process of drilling, gas in large quantities

was encountered, and a packer was furnished, but it failed to work and the oil company directed the drillers to draw the casing to determine other methods to shut off the gas. The drillers removed all but one piece of casing, and in attempting to remove this the crown block upon the rig broke, causing the casing to "telescope." Other efforts were made by the drillers under the direction of the oil company to remove the casing. The oil company finally demanded of the drillers that they complete the well within five days or remove their tools. The drillers continued their efforts for more than 30 days to remove the casing, when the oil company demanded that they remove their tools from the premises and cease operations, and the company went upon the premises and removed the drillers' tools from the rigs and from the premises. The evidence tended to show that the drillers could have removed the casing in a short time and that it was possible to drill by the casing. They were given no opportunity to drill another well near the same location. The fact that the oil company wrongfully prevented the oil drillers from performing their agreement entitled them to recover the value of the services rendered.

Elwood Oil & Gas Co. v. McCoy, —— Okla. ——, 179 Pacific 2, p. 3.

CONTRACT TO DRILL—DIFFICULTIES ENCOUNTERED—RIGHTS OF DRILLER.

An oil company employed a driller to drill an oil well. The oil company furnished the rig, according to a custom, and was to furnish a packer to shut off gas if encountered. At a depth of something over 2,000 feet gas was encountered and the packer furnished by the company was insufficient to stop the flow of gas. In attempting to draw the casing as directed by the oil company a piece of the casing was telescoped or hung up and the driller worked for more than 30 days in attempting to remove the piece of casing. The evidence showed that the driller had succeeded in removing the top of the casing to a point where he could insert a "bell socket" and was waiting for a tool of this kind, and the evidence showed that in a great majority of like cases the casing was removed. The oil company demanded that the driller remove his tools from the rig and leave the premises, and later itself, by its agents, removed the driller's tools from the rig and the premises. The law is that when one party to a contract becomes involved in difficulties not occasioned by his fault, the other party may not assume that he will be unable to continue and thereby deprive him of the opportunity to complete the contract and prevent him from recovering the value of the services performed. The driller had the right, if he was unable to recover the casing, to drill a new well, and there was nothing in the contract which prevented this

if the first well failed. The rule is where one party can show that the other prevented performance of the contract, it will usually be taken as prima facie true that the first party would have performed his part of the contract had he not been thus prevented. The oil company had no right to assume that the driller would not recover the casing, and if he did not, prevent him from drilling a new well.

Elwood Oil & Gas Co. v. McCoy, —— Okla. ——, 179 Pacific 2, p. 4.

OIL WELLS—STATUTE PROHIBITING DRILLING NEAR RAILROADS—VALIDITY.

The statute of Kansas (General Statutes, 1915, sec. 4979) making it unlawful to drill or operate oil and gas wells within 100 feet of the right of way of any steam or electric railway is not unconstitutional and is a proper exercise of the police power of the State.

Winkler v. Anderson, —— Kan. ——, 177 Pacific 521, p. 522.

INSPECTION OF OIL—AUTHORITY OF OFFICER.

An oil inspector appointed under the invalid act of 1901 (Burns, 1914, sec. 7980) is not a de facto officer and has no power or authority as against an oil inspector duly appointed under the valid act of 1891.

Felker v. Caldwell, —— Ind. ——, 121 Northeastern 538, p. 539.

INSPECTION LAWS—PURPOSE AND VALIDITY—INSPECTION FEES.

A State may in the exercise of its police power enact inspection laws for the inspection of oils, and these are valid if they tend in a direct and substantial manner to promote public safety and welfare or to protect the public from frauds and impositions as to which Congress has made no conflicting regulations. The State may also provide for a fee reasonably sufficient to pay the cost of such inspection although it probably may be moving in interstate commerce when inspected.

Pure Oil Co. v. State of Minnesota, 39 Supreme Ct. Rep. 35, p. 37.

OIL INSPECTION—REASONABLE INSPECTION FEES—PRESUMPTION.

Fees for inspection of oil and gas as determined by a legislature must be regarded as prima facie reasonable, and courts will not enter into nice calculations as to the difference between cost and collection; nor will they declare the fees to be excessive unless it is made to clearly appear that they are obviously and largely beyond that needed to pay for the inspection service.

Pure Oil Co. v. State of Minnesota, 39 Supreme Ct. Rep. 35, p. 37.

TRANSPORTATION—INTERSTATE COMMERCE.

The transportation of oil or gas from State to State through the medium of pipe lines is commerce between the States.

Pennsylvania Gas Co., In re, —— New York ——, 122 Northeastern 260, p. 261.
Public Utilities Commission of Kansas v. Landon, —— U. S. ——, 39 Supreme Ct. Rep. 389.

REGULATIONS BY STATE—CONTINUING POWER TO REGULATE.

A State may by statute regulate the sale and storing of petroleum and gasoline in dangerous quantities and may prohibit the storing of these oils within 300 feet of a dwelling in a city. The fact that an oil company removed its storage plant from a former to a less dangerous situation at the request of the municipality does not import a contract not to legislate further if the public welfare required it.

Pierce Oil Corp. v. City of Hope, 39 Supreme Ct. Rep. 172, p. 173.
See Pierce Oil Corp. v. City of Hope, 127 Ark. 38, 191 Southwestern 405.

ESCAPING OIL—LIABILITY.

The negligent discharge of oil into a stream was regarded as the proximate cause of fire resulting therefrom, rendering the owner of the oil liable in damages to the injured person. The liability exists, according to a majority of the cases, although the fire was started by the independent or careless act of a stranger.

Northup v. Eakes, —— Okla. ——, 178 Pacific 266, p. 269.
See Santa Rita (The), In re, 176 Federal 890.
Kuhn v. Jewett, 32 N. J. Equity 647.
Brennan Construction Co. v. Cumberland, 29 App. D. C. 554.
Rock Oil Co. v. Brumbaugh, 59 Ind. App. 640, 108 N. E. 260.
Texas Co. v. Clarke & Co., —— Tex. Civ. App. ——, 182 Southwestern 351.

SHIPPING OIL—LOSS OF OIL TRUCK—LIABILITY.

An oil company agreed to furnish to the owner of a boat oil for fuel to be delivered on board the vessel. The boat owner guaranteed "proper unloading facilities and access to dock." The oil truck delivering the oil was unloaded by backing onto an apron connecting the wharf and the boat and this was supplied and adjusted by the boat owner. Many truck loads of oil had been so unloaded, but at one time in the process of backing the truck onto the apron the apron gave way and the truck was lost in the sea. The boat owner was liable in damages for the loss of the truck under his guarantee of loading facilities and without regard to the effect of the tides on the boat or the apron.

Union Oil Co. v. Rideout, —— Cal. App. ——, 177 Pacific 196, p. 199.

NATURAL GAS.

RATES AND EFFICIENCY—DEDUCTION FOR INEFFICIENT SERVICE.

The Corporation Commission of Oklahoma established a maximum rate for natural gas based upon the adequacy of the service and the quantity of gas furnished. A pressure of four ounces or more was considered 100 per cent efficient as a basis for the maximum rate. As the pressure decreased the per cent of efficiency was decreased and the rates charged were to be reduced as the efficiency in pressure was reduced. The Commission has power to compel a gas company to reduce its rates by discounting its bills for the months when the efficiency was reduced if the discount ordered bears a fair relation to the falling off in efficiency.

Nowata County Gas Co. v. State, —— Okla. ——, 177 Pacific 618, p. 619.

REGULATION OF RATES—INTERSTATE COMMERCE.

The act of Congress regulating commerce (34 U. S. Stats. 584, 36 U. S. Stats. 539) expressly excepted gas and water companies and this permits the State of New York through its public service commission to regulate the distribution and to protect consumers against unreasonable charges for natural gas although the gas be transported through a pipe line from the State of Pennsylvania into the State of New York.

Pennsylvania Gas Co., In re, —— N. Y. ——, 122 Northeastern 260, p. 262.

TRANSPORTATION AND REGULATION—INTERSTATE COMMERCE.

The transportation of gas through pipe lines from one State to another is interstate commerce; and as a part of such commerce a receiver of a gas company may sell and deliver gas so transported to local distributing companies free from unreasonable interference by the State.

Public Utilities Commission of Kansas v. Landon, —— U. S. ——, 39 Supreme Ct. Rep. 389.

LOCAL COMPANIES—REGULATIONS—INTERSTATE COMMERCE.

Local gas companies received natural gas from a producing and transporting company with which they supplied their customers at various places. The fact that the distributing companies paid the producing and transporting company sums amounting to two-thirds of the product of their sales did not make them integral parts of the interstate commerce of the producing and transporting company and did not prevent them from being subject to regulations by local public utilities commissions.

Public Utilities Commission of Kansas v. Landon, —— U. S. ——, 39 Supreme Ct. Rep. 389.

PUBLIC LANDS.

BOARD OF EDUCATIONAL LANDS—JURISDICTION.

The Board of Educational Lands has no jurisdiction or control over the disposal of saline lands, as such lands granted by the enabling act to the State were not placed in the class of educational lands by the constitution.

Chicago, etc., R. Co. v. Neville, —— Nebr. ——, 170 Northwestern 176.

AGRICULTURAL AND MINERAL ENTRYMEN—PREFERENCE.

An agricultural entry made on the public lands under the act of June 11, 1906 (34 U. S. Stats. at Large 233), and approved by the Department of Agriculture under that act as against a subsequent mineral applicant seeking to have the land restored to the public domain, must prevail and must be held to be the prior and superior title and interest in and to the land, where the land was shown to be more valuable for agriculture than for mineral, and where the mineral discovery consisted only of a few colors of gold found in the beds of the water courses on the land.

Meyers v. Pratt, 255 Federal 765, p. 766.

EMINENT DOMAIN.

APPROPRIATION OF PROPERTY—COMPENSATION TO OWNER.

The constitution of Kentucky (Section 242) requires corporations and individuals invested with the privilege of taking private property for public use to make just compensation for the property taken, injured, or destroyed. Under this mandatory provision of the constitution a railroad company wrongfully appropriating lands and its successor may be liable for injury done to the remaining land in cutting off and destroying the ingress and egress to such remaining part of the owner's land.

Hazard Dean Coal Co. v. McIntosh, —— Ky. ——, 209 Southwestern 364, p. 366.

APPROPRIATION OF LAND—BURDEN OF PROOF AS TO USE.

In appropriation proceedings by a natural gas company to obtain land for a right of way for its pipe line, the burden of proof is on a landowner to show, as contended by him, that the land is to be devoted not to a public but to a private use.

Pittsburgh & West Virginia Gas Co. v. Cutright, —— W. Va. ——, 97 Southeastern 686, p. 688.

LAND FOR GAS PIPE LINE—INCIDENTAL USE—MANUFACTURING GASOLINE.

A natural gas company organized to transport and supply the public with natural gas is not to be denied the right to appropriate land for a right of way for its pipe line because one of its objects and purposes is to gather the gas at its compressor station from many sources and the gas is to be piped through lines laid on the land proposed to be taken is first to be passed through the condensing or gasoline plant and the gasoline and other liquid substances extracted before emitting it in and through its service pipes and by the compressor driven to the market; nor from the fact that these operations make it necessary to lay down two lines of pipes, one to carry the gas in its natural state into the gasoline or condensing station and the other to pass it out and on through the main discharge line to the consumers.

Pittsburgh & West Virginia Gas Co. v. Cutright, —— W. Va. ——, 97 Southeastern 686, p. 687.

PIPE LINE FOR NATURAL GAS—INCIDENTAL USES.

A natural gas company whose main business is not the production of gasoline is not to be denied the right of eminent domain and prevented from taking land for a right of way for its pipe line on the ground that it has erected compressors and gasoline plants or stations for extracting the gasoline and purifying the gas, and that incidentally the corporation will reap a profit from the gasoline so extracted. But the conservation of gasoline which is desirable if not almost imperative is not the only purpose of extracting it, but it thereby serves the public with a purer quality of gas without material detriment to its heat properties and it also avoids waste by doing away with line drips for draining and blowing out the gasoline and water that accumulates in the pipes, and it also prevents the destruction of the gaskets. According to experts such plants for conserving the product and facilitating its transportation is regarded as the best and most scientific methods used by practically all large companies engaged in the transportation of natural gas.

Pittsburgh & West Virginia Gas Co. v. Cutright, —— W. Va. ——, 97 Southeastern 686, p. 687.

PIPE LINE FOR NATURAL GAS—PRESUMPTION.

A company engaged in transportation and serving the public with gas may condemn land for its pipe line; and land taken for such use is none the less a public use because the pipe lines were carried to a gasoline plant for the purpose of extracting and preserving the gasoline and for extracting water and other liquid substances to purify the gas and to facilitate its transportation through the pipe lines to consumers.

Pittsburgh & West Virginia Gas Co. v. Cutright, —— W. Va. ——, 97 Southeastern 686, p. 687.

WRONGFUL APPROPRIATION—TRANSFER OF RIGHT.

No right can be acquired in private property under the power of eminent domain, except upon making just compensation for the land appropriated. The corporation or person originally taking or occupying the property can not transfer to a successor or another by lease or otherwise any right in the property taken, except subject to the same duty of making just compensation.

Hazard Dean Coal Co. v. McIntosh, —— Ky. ——, 209 Southwestern 364, p. 367.

WRONGFUL APPROPRIATION—LIABILITY OF PURCHASER.

A coal company by its purchase of the property rights and franchises of another coal company and entering upon and continuing, to the

exclusion of the landowner, the use of the lands occupied by its railroad, and that had been wrongfully appropriated by the former coal company and by such user continued the consequential injuries to the land, will be deemed to have adopted the wrongful appropriation of the land and to become equally with its vendor, the original wrongdoer, and liable to the landowner for damages resulting from the wrongful appropriation of the land.

Hazard Dean Coal Co. v. McIntosh, —— Ky. ——, 209 Southwestern 364 p. 366.

MINING CORPORATIONS.

INCORPORATION—SIMILARITY OF NAMES—RIGHT TO INJUNCTION.

A corporation was organized in the State of Washington under the corporate name of the "Diamond Drill Contracting Company." Subsequently another corporation was organized by the name of the "International Diamond Drill Contracting Company." The statute of Washington (Remington Code 1915, section 3680) provides that no corporation shall take a name so closely resembling the name of an existing corporation as to be misleading. The Diamond Drill Contracting Company could not maintain an action to enjoin the operations of the International Diamond Drill Contracting Company where it appeared that the name was not in fact misleading and where there was no evidence to show that the suing company had suffered any loss of business or to show that the defendant company had obtained any information as to the complainant's business and the defendant company had taken no advantage of the confusion to benefit thereby by reason of the similarity in names.

Diamond Drill Contracting Co. v. International Diamond Drill Contracting Co., —— Wash. ——, 179 Pacific 120, p. 122.

A corporation by the name of the Oklahoma Producing & Refining Company was duly incorporated under the laws of Delaware. Subsequently the Oklahoma Consolidated Producing & Refining Company was incorporated. When the similarity of the names of two corporations is such as that it is probable that the public would be deceived thereby and when the names are such as tend naturally and inevitably to harm the older corporation, then the older corporation is entitled to a preliminary injunction until the case can be fairly heard on the proofs.

Oklahoma Producing & Refining Co. v. Oklahoma Consol. Producing & Refining Co., —— Delaware ——, 106 Atlantic 38, p. 39.

FILING REPORT OF ORGANIZATION—DUTY DISPENSED WITH.

The Mississippi statute of 1906 (Hemingway's Code, section 4104) requires a corporation to file its report of organization within thirty days and on the failure to do so the charter shall be null and void and the incorporators shall be liable as partners. The legislature has power to dispense with such formality and an act passed after a failure on the part of a corporation to meet such requirement will prevent the charter from becoming void.

Southern Coal Co. v. Yazoo Ice & Coal Co., —— Miss. ——, 80 Southern 334, p. 335.

ACTS OF DIRECTORS—PAROL PROOF.

Any act of a board of directors of a mining corporation may be proved by parol testimony when it is shown that no record was made of such action or if a record was made and was lost.

Copper King Min. Co. v. Hanson, —— Utah ——, 176 Pacific 623, p. 624.

AUTHORITY OF PRESIDENT.

The president of a corporation ordinarily has only the powers of a director or such additional powers as may be directly conferred upon him by the board of directors. The president or general manager of a corporation sometimes exercises quite extensive powers in the executive management of its business, but he is nevertheless acting all the time under the express or implied authority of the directors who are the real managers of the corporation.

Copper King Min. Co. v. Hanson, —— Utah ——, 176 Pacific 623, p. 625.

AUTHORITY OF PRESIDENT—LIABILITY OF CORPORATION.

The president of a mining corporation has authority to employ a general manager for the company and to bind the company to pay the employee such salary as he and the president agreed upon.

Virginia Talc & Soapstone Co. v. Hurkant, —— Va. ——, 98 Southeastern 681.

AUTHORITY CONFERRED ON PRESIDENT—IMPLIED RESCISSION—TERMINATION OF AGENCY.

At a meeting of a board of directors of a mining company the president was made the agent of the company to sell certain treasury stock for the purpose of raising funds needed for the use of the company. At a subsequent meeting the president reported to the directors that there was no sale for the stock, but no record was made of such proceedings. Subsequently the board of directors acting with the president, recognizing the necessity of having money to pay the indebtedness and expenses of the company levied an assessment upon the stock and from the funds thus raised the indebtedness was paid and a balance left in the hands of the treasurer. By this assessment the object for which the president was authorized to sell the treasury stock was removed and the necessity for the sale no longer existed. This action was an implied rescission of the former authority conferred upon the president and the authority so given him to sell the stock was canceled and repealed by the acts of the directors in which the president participated.

Copper King Min. Co. v. Hanson, —— Utah ——, 176 Pacific 623, p. 625.

AUTHORITY OF PRESIDENT—SALE OF STOCK.

The president of a mining company has no implied authority to sell its treasury stock.

Copper King Min. Co. v. Hanson, —— Utah ——, 176 Pacific 623, p. 625.

RESOLUTION MAKING THE PRESIDENT THE AGENT—CONSTRUCTION.

The directors of a mining corporation by a resolution gave the president authority to sell a certain number of shares of treasury stock The effect of this action was to name the president the agent of the company to do the acts mentioned in the resolution. Authority so granted is controlled and governed by the same rule applicable to contracts between individuals and the intent of the parties must be gathered from the reading of the resolution interpreted in the light of the circumstances and reasons existing at the time of its passage.

Copper King Min. Co. v. Hanson, —— Utah ——, 176 Pacific 623, p. 624.

PRESIDENT ACTING WITHOUT AUTHORITY—PERSONAL LIABILITY.

The president of a fuel company acting for it without authority and under circumstances by which the corporation itself would not be bound would himself be personally liable.

Clinchfield Fuel Co. v. Henderson Iron Works Co., 254 Federal 411, p. 416.

AUTHORITY OF OFFICER—NOTICE TO THIRD PERSONS—EXCEPTION.

Where a third person deals with an official of a corporation concerning the property of the corporation for a consideration personal to the officer himself and not for the benefit of the corporation, he is bound to inquire as to the authority of the officer to make the disposition of the corporate property. But the rule does not apply where a third person purchases or takes a certificate of stock for collateral security for a loan to the secretary of the company where the certificate on its face appeared to and had in fact for a period of two months or more been the property of the secretary and where it appeared to be regularly issued by the proper officers and attested by the seal of the corporation.

Green v. Caribou Oil Co., —— Cal. ——, 178 Pacific 950, p. 952.

AUTHORITY OF GENERAL MANAGER.

The general manager of a coal company operating coal mines on leased lands has no authority to give, sell, trade, or release to another coal company any part of the leasehold estate.

Carroll Cross Coal Co. v. Abrams Creek Coal & Coke Co., —— W. Va. ——, 98 Southeastern 148, p. 151.

COAL COMPANY—AUTHORITY OF GENERAL MANAGER.

It was the business of a general manager of a coal company to conduct the mining operations of the company, the digging and selling of coal, employment and direction of the necessary labor, payment of wages, and the like; but he had no implied authority to give, sell, or release any portion of the mining territory to another coal company.

Carroll Cross Coal Co. v. Abrams Creek Coal & Coke Co., —— W. Va. ——, 98 Southeastern 148, p. 151.

UNAUTHORIZED LEASE BY GENERAL MANAGER—ESTOPPEL.

A coal company was engaged in mining coal from mines on leased lands. Its mining operations were under the direction of a general manager. During the process of mining the general manager without authority executed an agreement and lease to another mining company by which it entered upon the leased land and mined and removed coal. The sublease was not ratified by the mining company and did not estop it from recovering compensation for the coal so mined nor from the enforcement of the statutory penalties inflicted for mining within a prohibited area along the boundary line between the leases under which the two companies were respectively operating. The sublessee was bound to know that the general manager had no authority to make such a lease unless the authority was expressly conferred and the sublessee must to protect itself ascertain whether such authority had been conferred upon the general manager.

Carroll Cross Coal Co. v. Abrams Creek Coal & Coke Co., —— W. Va. ——, 98 Southeastern 148, p. 152.

PROMOTERS AS AGENTS.

The promoters of a corporation to be formed are generally to be regarded as the agents of the corporation and a contract made by them on behalf of themselves and the corporation, when accepted by the corporation after organization, is binding upon both the promoters and the corporation accepting the benefits of the contract.

Wallace v. Eclipse-Pocahontas Coal Co., —— W. Va. ——, 98 Southeastern 293, p. 295.

CONTRACT OF PROMOTERS—NOTICE TO CORPORATION.

The promoters of a corporation entered into a contract for the purchase and taking over and operating a large tract of coal land. After the corporation was formed it accepted the contract of the promoters and received a conveyance of the land described in the contract. The corporation by receiving and accepting the benefits of the contract and the promoters and incorporators of the corporation are charged with notice of all the terms and conditions of the contract.

Wallace v. Eclipse-Pocahontas Coal Co., —— W. Va. ——, 98 Southeastern 293, p. 295.

CONTRACT BY PROMOTERS—ACCEPTANCE BY CORPORATION—SPECIFIC PERFORMANCE.

The owner of a lease of coal lands who agreed with promoters of a corporation to convey the leasehold to the corporation when formed in consideration of the issuance of stock equivalent to the one-fifth value of the property when equipped for mining, may on the acceptance of the contract by the corporation enforce specific performance thereof against the corporation and compel it to issue to him the shares of stock representing the one-fifth value of the property.

Wallace v. Eclipse-Pocahontas Coal Co., —— W. Va. ——, 98 Southeastern 293, p. 295.

CONTRACT WITH PROMOTERS—AGREEMENT TO TRANSFER PROPERTY FOR STOCK.

The owner of a lease of certain coal lands entered into a contract with promoters of a proposed corporation by which he was to sell and convey to the corporation the leasehold and to accept in payment fully paid up stock equal to a one-fifth interest of the value of the property when fully equipped for mining and producing coal. This agreement on acceptance by the corporation gave the contractor the position of a subscriber to the capital stock of the corporation and gave him the right by a bill in equity to compel the issue of the proper certificates of stock.

Wallace v. Eclipse-Pocahontas Coal Co., —— W. Va. ——, 98 Southeastern 293, p. 295.

PROMOTER'S CONTRACT TO PURCHASE MINE—ADOPTION BY CORPORATION—RIGHT OF VENDOR TO TREASURY STOCK.

The owner of mining property conveyed the same to a mining company pursuant to a contract entered into with the promoters of the company and accepted in part payment shares of the company's stock. A certain number of shares of stock was deposited in a bank to secure the second installment due on the purchase price. Under an agreement that on failure to make the payment the vendor should be entitled to an absolute delivery of the stock deposited, the vendor was, on the failure of the company to pay the installment, entitled to receive the stock deposited in escrow in lieu of the cash payment.

Wilson v. Mears, —— Wash. ——, 177 Pacific 815, p. 817.

CONTRACT WITH PROMOTERS—TRANSFER OF PROPERTY FOR STOCK—CONSTRUCTION.

A contract with promoters of a corporation provided for the sale and transfer to the corporation of a coal lease, the seller to accept in payment fully paid up stock to the value of one-fifth interest in the

property when fully equipped for mining and producing coal. The provision "a one-fifth interest in the property fully equipped," means in the light of the facts and circumstances surrounding the parties a sufficient amount of stock to equal one-fifth of the value of the property equipped with a tipple, tracks, haulways, cars, and all necessary machinery and motive power to successfully carry on one operation on the property; but the contract does not contemplate that the seller's interest would always represent a one-fifth interest in the property.

Wallace v. Eclipse-Pocahontas Coal Co., —— W. Va. ——, 98 Southeastern 293, p. 296.

PROMOTER'S PROPERTY EXCHANGED FOR STOCK—RELIEF.

The fact that the promoters of a corporation exchanged their property for stock of the company at a price agreed upon between themselves and the corporation, no rights of creditors being involved, and subsequent stockholders obtained full value in the purchase of their stock, gives no right of action in the corporation subsequently to cancel such promoter's stock upon the mere allegation that the property was of less value than as agreed upon.

Roberson v. Draney, —— Utah ——, 178 Pacific 35, p. 39.

STOCK ISSUED TO PROMOTERS—RIGHT OF STOCKHOLDER TO CANCELLATION.

The right of a stockholder to sue for the cancellation of stock wrongfully issued to promoters depends on whether the corporation or the stockholder has suffered any tangible wrong or injury to his property rights through the wrongful acts of the directors, officers, or stockholders complained of and not whether the suing stockholder acquired his stock before or after the acts complained of, if he is not a mere interloper and is acting in good faith and not estopped from otherwise maintaining the action.

Roberson v. Draney, —— Utah ——, 178 Pacific 35, p. 38.

PROMOTERS—LIABILITY TO ACCOUNT FOR STOCK ISSUED—GOOD FAITH.

A coal entryman, unable to complete his entries, pay his obligations, and obtain title to the land, arranged with three other persons to form a corporation and obtain funds by which the corporation could acquire the title to the coal lands. A corporation was organized with a capital of $50,000, the required 10 per cent of the capital was paid in by the promoters, and the coal entries completed and the title to the land conveyed to the corporation. Subsequently the capital stock of the corporation was increased to $250,000 and a large part

of the stock issued to the four promoters and the remaining part sold to purchasers at a small per cent of its par value. The corporation under the management of the original promoters proved successful and profitable, and the stock was worth from three to five times what the purchasers paid. The promoters were charged with no fraud or misrepresentation in the matter, neither in the increase of the capital stock, in the issuance of the stock to themselves as promoters, nor in the sale of the stock to the purchasers. Under this state of facts neither the corporation nor the stockholders could maintain a suit in equity to cancel any part of the shares issued to the promoters or to compel them to restore to the corporation any part of their stock on the sole ground that they had made greater profit out of the enterprise than those who had purchased their shares of the stock.

Roberson v. Draney, —— Utah ——, 178 Pacific 35, p. 39.

COAL LOCATION—STOCK TO PROMOTERS—LIABILITY AND CANCELLATION.

An entryman on public coal lands who had expended considerable labor and money in making developments and had incurred large obligations was not able to secure the funds to discharge his obligations and protect his entry. To avoid loss, he with others organized a corporation and the entries were transferred to it in payment for stock that was distributed in proportion to the money advanced. After the incorporation other persons purchased the stock and the entire transaction resulted in a profit to the corporation and its stock was worth par by reason of the coal values of the land. Under these circumstances a person who purchased stock of the corporation can not recover from the promoters on the ground alone that the promoters reaped greater profits than the purchasers of the stock.

Roberson v. Draney, —— Utah ——, 178 Pacific 35, p. 39.

ISSUE OF STOCK—TRANSFER—POWER OF CORPORATION.

An oil company can not enforce the code rule to the effect that a transfer of shares of stock is not valid, except as to the parties thereto until it is entered on the books of the corporation, as against the authority of its own officers to issue certificates of stock within the apparent scope of their authority.

Green v. Caribou Oil Co., —— Cal. ——, 178 Pacific 950, p. 952.

UNAUTHORIZED SALE OF STOCK BY PRESIDENT—VALUE OF STOCK—PROOF OF CONSPIRACY.

The president of a mining corporation without authority sold certain of its treasury stock to a third person. In an action by the corporation to cancel and set aside the sale on the alleged grounds

that it was without authority and was pursuant to a conspiracy between the president and the purchasers of the stock to obtain control of the corporation, it is proper on the trial of the case to prove the value of the stock and that it was sold for less than its value as tending to prove the charge of conspiracy.

Copper King Min. Co. v. Hanson, —— Utah ——, 176 Pacific 623, p. 625.
See Lochwitz v. Mine & Milling Co., 37 Utah 349, p. 355; 108 Pacific 1128.

UNAUTHORIZED SALE OF STOCK—SUIT BY CORPORATION TO CANCEL.

The president of a mining corporation without authority sold certain of its treasury stock to a third person. Thereupon the corporation by authority of the board of directors brought an action in a court of equity alleging the issuance of the stock without authority and tendered to the purchaser all the money paid for the stock. Under well-settled rules of equity and in view of the fact that the corporation offered to save the purchaser from loss a court of equity has power to cancel the stock and order its surrender and direct the repayment to the purchaser of such money as had been paid upon the stock.

Copper King Min. Co. v. Hanson, —— Utah ——, 176 Pacific 623, p. 625.

STOCK AS COLLATERAL—VALIDITY OF ISSUE—AUTHORITY OF OFFICERS.

A third person made a loan to the secretary and transfer agent of an oil company and accepted as collateral security a certificate representing shares of stock purporting to be owned by the secretary and bearing the signatures of the vice president and the secretary and the seal of the corporation. The secretary was insolvent, but the stock was worth more than the principal and interest of the sum loaned. The lender had the right to rely upon the secretary's honesty, the signature of the vice president, and upon the verity of the instrument presumed from the fact that the corporate seal was attached. The corporation could not, as against the claim of the lender of the money, show that the certificate was false and fraudulent where the names were not forged, but the vice president and the officers of the company were negligent in permitting the share of stock to be issued.

Green v. Caribou Oil Co., —— Cal. ——, 178 Pacific 950, p. 951.

FRAUDULENT ISSUE OF STOCK—ESTOPPEL.

A mining corporation is estopped from disputing the authority of its own officers to issue stock within the apparent scope of their authority; but the corporation is not estopped from disputing the validity of a transfer of stock or from refusing to enter the same on its books.

Green v. Caribou Oil Co., —— Cal. ——, 178 Pacific 950, p. 952.

FRAUDULENT TRANSFER OF STOCK—TITLE OF TRANSFEREE.

The stock of an oil refining company was kept by the owner in his private office, and without any authority and without being indorsed by him possession of the stock was obtained by a third person and was by such third person delivered to a purchaser and a creditor in payment of the indebtedness of the owner of the stock. Such a delivery and pretended transfer of the stock gave no title to the transferee.

Crichton v. Louisiana Oil Refining Co., 144 La. ——, 81 Southern 213.

FAILURE TO PAY DEBT—LIABILITY OF ONE DIRECTOR.

A mining company was managed by a board of directors of which a promoter was one. In the absence of proof that would lead to a contrary belief a court must assume that the company did not meet its payment for mining ground purchased because it did not have, and had no way of raising, money on the security it had with which to pay. Under such circumstances there is no ground for rendering a personal judgment against the promoter director, where the corporation had voluntarily assumed the liabilities.

Wilson v. Mears, —— Wash. ——, 177 Pacific 815, p. 818.

LIABILITY OF STOCKHOLDERS.

A stockholder in a mining corporation who owned stock for which payment had not been made to the corporation and who is not a bona fide holder of the stock is liable on the insolvency of the corporation to the creditors of the corporation for the unpaid balance of the par value of the stock, so far as may be necessary to pay such creditors, notwithstanding the fact that the stock may be fully paid and nonassessable as between the corporation and the stockholder.

Caledonia Coal Co., In re, 254 Federal 742, p. 746.

INSOLVENCY—INDEBTEDNESS TO STOCKHOLDER—RECOVERY.

A stockholder who purchased his stock from another with notice that the seller had not paid the corporation in full for such stock is not entitled to present and have allowed a claim against the company after bankruptcy as against other creditors until he has paid the amount remaining due upon the original purchase of the stock.

Caledonia Coal Co., In re, 254 Federal 742, p. 746.

LIABILITY FOR SERVICES OF ATTORNEY.

A mining corporation may be liable for the services of an attorney where such services were rendered for the company with knowledge of those whose duty it was to take charge of its affairs.

U. S. Molybdenum Co., In re, 255 Federal 790, p. 791.

LIABILITY TO ATTORNEY OF ADVERSE PARTY.

A mining corporation is under the statute of Oklahoma liable to the attorney of the adverse party in a pending suit where it compromised and settled the action in the absence of the attorney of such adverse party.

Oklahoma Coal Co. v. Hays, —— Okla. ——, 176 Pacific 931.

PURCHASE OF OIL LEASE—FRAUD—RECOVERY.

A corporation was induced by the fraudulent representations of the agent of another corporation to purchase from it a mining lease. The price agreed to be paid was some three times the actual value of the lease. The corporation did not so far ratify the contract that it could have no relief for a failure to rescind the purchase on discovery of the fraud, or from the fact that certain of its officers and stockholders innocently repeated the representation in order to sell the stock.

Barnett Oil & Gas Co. v. New Martinsville Oil Co., 254 Federal 481, p. 485.

NATURAL GAS COMPANY—METHODS OF DISCHARGING DUTIES—APPROPRIATION OF LAND.

A natural gas company authorized to serve the public assumes the burden of the public service, and the methods and manner of discharging its duties is largely left to the discretion of its board of directors, and this includes the right to determine the route and quantity of land necessary to be taken for the public use, subject to the control of the courts on the question of the public use.

Pittsburgh & West Virginia Gas Co. v. Cutright, —— W. Va. ——, 97 Southeastern 686, p. 688.

GAS COMPANY—INSUFFICIENT SERVICE—DISCOUNT OF BILLS.

A natural gas company was required by order of the corporation commission to furnish an adequate supply of gas for domestic purposes. The company was permitted to charge a maximum rate based upon the adequacy of the service rendered and the quantity of gas furnished. But on failure of a company to maintain the efficiency required and when the quantity of gas furnished is insufficient for domestic purposes, the commission may compel the company to discount its bills, where the discount ordered bears a fair relation to the falling off in service.

Nowata County Gas Co. v. State, —— Okla. ——, 177 Pacific 618.

LOCAL DISTRIBUTING COMPANIES—INTERSTATE COMMERCE.

A natural gas company engaged in the production and transportation of interstate commerce sold gas to various local distributing

companies at separate stations and places along its pipe line. The gas company received in payment of its gas from each distributing company a certain per cent of the receipts of such company's sales to their consumers; but this fact did not make the business of the local distributing companies any part of the interstate commerce engaged in by the producing company and did not prevent the regulation of the distribution and the rates charged by the local companies to their consumers by the State Public Utilities Commission.

Public Utilities Commission of Kansas v. Landon, —— U. S. ——, 39 Supreme Ct. Rep. 389.

MINING RATES—MEANING.

A coal company agreed to deliver to a carrier coal at one dollar per ton with an agreement that the price should be increased or decreased according to any subsequent changes in "mining rates." The term "mining rates" might be an easy matter to be determined by mine operators and by miners as a question of fact and the account settled between the mining company and the carrier on such basis.

West Virginia Traction & Electric, etc., Co. v. Elmgrove Min. Co., 253 Federal 772, p. 773.

"MINING RATES"—CONTRACT TO FURNISH COAL TO CARRIER—EFFECT OF FUEL ACT.

Under a contract made in 1910 a coal company agreed to supply a carrier with coal at the rate of one dollar per ton with an agreement that the rate should increase or decrease with any subsequent changes in "mining rates." After the passage of the act of August 10, 1917 (40 Stats. 276), controlling the distribution of food products and fuel and fixing the price of coal at $2.45, the mining company refused further to supply the carrier except on a basis and the payment of $2.45 per ton. The State fuel administrator on refusing to construe the contract made an order requiring the coal company to supply the carrier with coal, subject to the legal construction of the meaning of the contract. In an action by the carrier to compel the mining company to furnish coal that it might operate its line for the war period under the act of August 10, 1917, the court refused to compel the State fuel administrator to construe the contract and determine the price to be paid; and the court under a demand for equitable relief refused, during the war period, to construe the contract and determine the price that must be paid for the coal but ordered the coal company to furnish coal under the terms of the original contract without prejudice to its rights to recover according to the construction of the contract as to the meaning of "mining rates," as might be determined in an action at law.

West Virginia Traction & Electric, etc., Co. v. Elmgrove Min. Co., 253 Federal 772, p. 773.

EARNINGS—DIVIDENDS—TAXATION.

An oil company took over the earnings and surplus that had accumulated and had been used as capital before the taxing year of certain subsidiary corporations whose stock was owned by the oil company. The oil company with its subsidiaries constituted a single enterprise of transporting, buying, refining, and selling oil. These earnings and the surplus so taken by the oil company can not be called dividends within the meaning of the income-tax law.

Gulf Oil Corp. v. Lewellyn, 39 Supreme Ct. Rep. 135.

SEARCH AND SEIZURES—SUFFICIENCY OF AFFIDAVIT.

An affidavit on which a search warrant was issued stated that contracts, books of account, minute books, ledgers, journals, and other books and papers of a mining corporation had been used as the means of committing the felony of knowingly and willfully asking, demanding, and receiving higher prices per ton for bituminous coal at the mine than the prices prescribed by the regulations in the act of June 15, 1917. It also charged further felony in combining and conspiring with other persons to get excessive prices for bituminous coal, such prices being higher per ton at the mine than the prices prescribed by the regulations under the food and fuel act of August 10, 1917. The affidavit does not set forth the person who committed the alleged felony, does not sufficiently designate and describe the property to be seized, does not set forth how the books and papers were used as the means of committing the felonies, but the averments are mere conclusions and not facts and is wholly defective. The issuance of the search warrant and the seizure of the books, papers, and property of the corporation was a palpable and flagrant violation of the rights granted by the Constitution.

Tri State Coal & Coke Co., In re, 253 Federal 605, p. 607.
See Veder v. United States, 252 Federal 414.

FOREIGN CORPORATIONS—JURISDICTION OF COURT—APPEARANCE.

A foreign corporation submits itself to the jurisdiction of a court of another State where it appears in a pending case and makes a motion to continue the case without making any suggestion that the court was without jurisdiction and without any limitation on an application for a continuance, as all appearances are general unless specially limited and a general appearance is a waiver of process and confers jurisdiction over the person.

Republic Oil & Gas Co. v. Owen, —— Tex. Civ. App. ——, 210 Southwestern 319, p. 320.

FOREIGN CORPORATION—FAILURE TO COMPLY WITH STATUTE.

A West Virginia oil and gas company sought to enforce in the State of Kentucky certain oil leases purchased by it. The statute of Kentucky provides that it shall not be lawful for any foreign corporation to carry on business in that State without compliance with the statute. Under this statute a foreign corporation failing to designate an agent within the State upon which process might be served can not lawfully transact business or enforce any right claimed under a contract made within the State. Neither can such a corporation obtain the right to proceed by complying with the statute after the commencement of an action. A foreign corporation can not invoke the aid of the courts in assisting it to carry on a business which the law makes illegal and forbids such a corporation to do.

Hays v. West Virginia Oil & Gas & By-Products Co., —— Ky. ——, 210 Southwestern 174, p. 175.

MINING PARTNERSHIPS.

FORMATION—CONSTRUCTION OF CONTRACT—LIABILITY.

In definitions of partnerships the element of contract is fundamental and a partnership relation is created only by voluntary contract of the parties and does not arise in any case by operation of law. The cardinal rule for interpreting a contract and determining whether it constitutes a partnership or not is the intention of the parties.

Mackie-Clemens Coal Co. v. Brady, —— Mo. App. ——, 208 Southwestern 151, p. 153.

AGREEMENT TO CONSTITUTE—ACCOUNTING.

The owner of a coal mine was indebted to his mine superintendent in a large sum. It was thereupon agreed that the superintendent should purchase an interest in the mine and that the indebtedness should be taken as a part payment of the interest purchased. It was also agreed that the superintendent was to have a certain stated sum per month until the output reached a certain number of tons per day and the salary was then to be increased to another stated sum. The superintendent received money for the expenses of the mine and also made purchases at the commissary. Under these facts a bill for an accounting may lie as the remedy at law is inadequate, but the accounts must be so complicated as to require consideration by a chancery court.

Julian v. Woolbert, —— Ala. ——, 81 Southern 32, p. 33.

ASSOCIATION—LIABILITY FOR STOCK—ASSETS INCREASED BY STOCKHOLDERS.

A partnership association of miners was organized under the Michigan statute with a capital stock of 5,000 shares of the par value of $10 each. The members did not pay to the association the full face value of the stock, but after the issuance of the stock they performed voluntary labor for the association and thereby increased the value of the assets of the company until they actually exceeded the total capital stock and no dividends were paid the stockholders. On the bankruptcy of the association the claims of the stockholders could not, as against other creditors, be allowed and paid unless and until such stockholders had paid the full face value of their stock. The fact that the capital of the company was increased in value by the labor of the stockholders could not operate as a payment by the

stockholders any more than a decrease in value of the capital would reduce the amount to which the stockholders were entitled to credit for payments on their stock subscriptions.

Caledonia Coal Co., In re, 254 Federal 742, p. 746.

PURCHASE BY PARTNER—DUTY TO DISCLOSE FACTS.

A partner as manager of mining operations has the right to purchase the interest of a partner in the mining property, but it is his duty to deal fairly with the selling partner and to disclose the facts and conditions which have come to his knowledge as manager bearing upon the value of the property. He can not take advantage of the purchasing partner by misrepresentation, concealment, or omission to disclose. However, he is not required to express himself relative to matters merely of speculation or surmise, but if he chooses to give an opinion he must act honestly and in good faith. A purchase of an interest by a managing partner after giving fully and fairly the details of the mining operations, the reasonable prospective value of the separate shares where the seller is familiar with such operations and has a fair basis otherwise for determining the value, will not be rescinded because of the purchaser's failure to give a full statement of the conditions merely because the subsequent operations continued to be prosperous and profitable.

Cardoner v. Day, 253 Federal 572, p. 577.

JOINT INTEREST IN OIL LEASES PURCHASED.

Certain parties entered into an agreement to the effect that the parties were to be equally interested in such oil leases in a particular field as were submitted to either and such as all agreed to acquire, but there was no general agreement to become partners in all leases purchased by either of the parties and both parties became interested with other parties in oil leases. The fact that the parties were co-owners of several oil leases did not constitute them general partners as to all leases acquired by either. Under these circumstances one of the parties could not claim an interest in a lease acquired by the other where the particular lease was taken in the individual name of the second party, paid for by him, and when the complaining party never asserted any interest in the lease until many months after its acquisition when it was greatly enhanced in value.

Gorman v. Carlock, —— Okla. ——, 179 Pacific 38, p. 41.

JOINT OWNERS OF LEASE—PARTICIPATION IN PROFITS.

The fact that two persons are the joint owners of a mining lease does not of itself make them partners though they participate in the profits or losses arising from such joint ownership.

Mackie-Clemens Coal Co. v. Brady, —— Mo. App. ——, 208 Southwestern 151, p. 153.

PURCHASE OF MINING LEASES—PARTNERSHIP—LIABILITY.

By a contract in writing the owner of a mining lease agreed to sell a one-half interest in the lease to a purchaser for $500 cash and $700 payable after an inspection of the mine by the purchaser, after the mine was dewatered and the drifts cleaned out ready for inspection. The agreement and the mining lease were deposited in escrow until the mine should be prepared for inspection and should be inspected by the purchaser. The agreement for the sale of the half interest in the lease did not constitute the purchaser a partner of the seller to the extent of making him liable for coal purchased and for the debts incurred in pumping the water from the mine.

Mackie-Clemens Coal Co. v. Brady, —— Mo. App. ——, 208 Southwestern 151, p. 152.

See Diamond Creek Consol. Gold & Silver Min. Co. v. Swope, 204 Mo. 48, 102 Southwestern 561.

INSOLVENCY—CREDITORS—STOCKHOLDERS—RIGHT TO PREFERENCE.

Certain miners organized a partnership association under the statute of Michigan and engaged in the mining of coal on a cooperative plan. Subsequently, at a stockholder's meeting, the financial condition of the company was considered and a resolution adopted to the effect that part of the wages of the stockholders should be withheld on each pay day to provide necessary funds to meet running expenses. Subsequently the association became bankrupt. The deduction of wages under the resolution was in the nature of loans and after proceedings in bankruptcy the stockholders are not entitled to priority over other creditors on such claims on the theory that they were claims for wages for services performed for the association.

Caledonia Coal Co., In re, 254 Federal 742, p. 747.

MINING ASSOCIATION—BANKRUPTCY—WAGE CLAIM.

A mining partnership organized under the statute of Michigan became insolvent and filed a petition in bankruptcy. The association was composed of miners who themselves operated the mining property owned by the association. The statute of Michigan makes all claims for wages preferred and wage claimants are given priority over other creditors. But the bankruptcy act of Congress provides that claims for wages are limited to services performed during the three months immediately before bankruptcy and this statute controls and limits all wage claims to a period of three months preceding bankruptcy.

Caledonia Coal Co., In re, 254 Federal 742, p. 747.

MINING TERMS.

BREAKING ON THE SOLID.

Breaking on the solid is to break ahead, where the mining dirt has not been taken out.

Haney v. Texas & Pacific Coal Co., —— Tex. Civ. App. ——, 207 Southwestern 375, p. 377.

COAL MINE.

A coal mine is a mine or pit from which coal is obtained and the term includes a strip-pit mine.

Richards v. Fleming Coal Co., —— Kans. ——, 179 Pacific 380, p. 382.

DEWATER.

A term applied to pumping and removing water from a mine.

Mackie-Clemens Coal Co. v. Brady, —— Mo. App. ——, 208 Southwestern 151, p. 152.

ESCAPE WAY.

The term, escape way, used in the statute of Alabama means a passageway leading from the inside to the outside of a mine through which the miners can escape to the outside.

Roberts v. Tennessee Coal, Iron, etc., Co., 255 Federal 469, p. 471.

MINE AND MINERALS.

The words "mine" and "minerals" are not definite terms but are susceptible of limitation according to the intention with which the parties use them.

Rockhouse Fork Land Co. v. Raleigh Brick & Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 685.

MINERALS.

In its strict scientific definition "minerals" would include all inorganic matter, but in granting the minerals in a tract of land the term is not used in such comprehensive sense; and the term means primarily all substances other than the agricultural surface that may be used for mercantile or manufacturing purposes whether from mines, as the word signifies, or such as stone or clay that are taken by open workings. The term in its commercial sense may be defined as any organic substance found in nature having sufficient value separate from its situs as a part of the earth to be mined and quarried or dug for its own sake or its own specific use.

Rockhouse Fork Land Co. v. Raleigh Brick& Tile Co., —— W. Va. ——, 97 Southeastern 684, p. 685.

MINING.

Mining as applied to the act of coal mining at the face is the taking of the clay out from under the coal so a miner can get the coal down.

Haney v. Texas & Pacific Coal Co., —— Tex. Civ. App. ——, 207 Southwestern 375, p. 377.

MOIL.

A moil is a rock chisel used in cutting samples of ore.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 30.

MUCKER.

A mucker is a miner whose duty it is to load ore in the heading on cars after the ore has been extracted by the miners.

Republic Iron & Steel Co. v. Harris, —— Ala. ——, 80 Southern 426.

PUSHER.

A pusher is a man whose duty it is to push loaded cars from the face of the coal to the foot of the incline.

Abelstad v. Johnson, —— N. Dak. ——, 170 Northwestern 619, p. 620.

SHIFT.

By shift is meant a day's work.

Haney v. Texas & Pacific Coal Co., —— Tex. Civ. App. ——, 207 Southwestern 375, p. 377.

SKINNER.

A name given in some mines to the driver driving horse cars that haul the loaded cars out and the empty cars into the mine.

Johnson v. Silver King Consol. Min. Co., —— Utah ——, 179 Pacific 61.

SLOPE.

The term "slope" in a mining statute or in mining parlance means an inclined way, passage, or opening used for the same purpose as a shaft and is sometimes used as embracing the main haulage passage-way, whether inclined or level.

Roberts v. Tennessee Coal, Iron, etc., Co., 255 Federal 469, p. 471.

SQUEEZE.

A sqeeze is a term used where the whole earth comes down and settles over the timbers where the coal and stuff has been taken out and there is nothing to hold it up. It is a gradual coming down of the whole earth.

Haney v. Texas & Pacific Coal Co., —— Tex. Civ. App. ——, 207 Southwestern 375, p. 377.

STRAIGHT FACE.

A straight face in mining is not to allow the coal to have butts in it sticking out into the room but to keep it straight all along and even.

Haney v. Texas & Pacific Coal Co., —— Tex. Civ. App. ——, 207 Southwestern 375, p. 376.

MINING CLAIMS.

NATURE AND GENERAL FEATURES.

UNAPPROPRIATED GOVERNMENT LAND.

A mineral location to be valid must be made upon unappropriated Government land open to location and in which mineral has been actually discovered.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568.

MINERAL CHARACTER OF LAND.

LANDS MORE VALUABLE FOR AGRICULTURE.

An entry of a tract of land for agricultural purposes will prevail over a mineral entry where the only discovery of minerals was a few colors of gold in watercourses flowing through the tract and where the land was more valuable for agriculture than for minerals.

Meyers v. Pratt, 255 Federal 765.

LOCATION OF CLAIM.

METHOD OF MAKING—SUCCESSIVE STEPS.

The first required step in the location of a mining claim is the discovery of mineral-bearing rock within the claim, and such discovery must precede location. The subsequent steps, such as marking the boundaries, posting notice, and recording, are the declaration of title, and the patent is the final evidence of such title.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 234.

TIME FOR COMPLETION.

The time given by the local statute of Arizona within which a mineral location is required to be completed is limited to 90 days after the discovery of mineral on the ground, in any event, and such additional time until conflicting rights intervene.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568.

TITLE AND STATUS OF LOCATOR.

There is no analogy between the status of the locator of a mining claim and that of a mere licensee upon the lands of another. The paramount fee of a mining claim remains in the Government until patent, but as to all others the estate acquired by a perfected mining

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location possesses all of the attributes of a title in fee and so long as the requirements of the law with reference to continued development are satisfied the character of the tenure remains that of a fee. The interest of the locator is treated as a vested estate. The right may be forfeited by a failure to do the required work followed by a relocation; but such forfeiture is in no way similar to the revocation of a license. It is in fact the termination of the right of a vendee or option holder for failure to comply with the covenants or conditions upon which his right of possession and purchase depend. In such case the fixtures belong to the vendor and the defaulting vendee or option holder has no right to remove them, and no agreement for removal can be implied where the fixtures are annexed by a vendee.

Waterson v. Cruse, —— Calif. ——, 176 Pacific 870, p. 872.

LOCATION NOTICE.

COMPLIANCE WITH STATE STATUTES.

A notice of location of a mining claim that failed to comply with the State statute was defective.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 233.

See Hickey v. Anaconda Min. Co., 33 Mont. 46, 81 Pacific 806.

DISCOVERY.

MINERAL AND AGRICULTURAL ENTRIES.

The discovery in beds of watercourses of a few colors of gold is not a sufficient discovery on which to base a mining claim as against an agricultural entry.

Meyers v. Pratt, 255 Federal 765.

RIGHT TO CONTINUE SEARCH.

Until the actual discovery of mineral in place all acts tending to consummate a valid mineral location give the latter no right other than the right to continue a reasonable search for mineral.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568.

VEIN OR LODE.

OWNERSHIP OF VEINS.

When the required steps for the location of a mining claim have been properly taken the right is acquired to a vein or lode on its course or dip to the extent that its top or apex is within the surface boundaries of the claim or within the vertical planes drawn downward through them.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 234.

OWNERSHIP OF VEIN—PRIORITY OF LOCATION.

The prior locator of a valid mining location has the title to all veins or lodes whose tops or apexes are within the surface lines of his location. This ownership entitles him to follow the veins or lodes in their downward course and gives him the ownership of all ores within the intersection spaces of any of his veins with other veins from junior locations. These rules obtain although a junior adjoining locator may first obtain a patent for his claim.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 235.

MARKING LOCATION.

SURFACE LINES—EFFECT ON POSSESSORY RIGHT.

The boundary lines of a mining claim as marked on the ground, after the locator's failure to complete his location for any cause, are not evidence of a right to possession nor of the extent of the locator's possession.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 569.

ASSESSMENT WORK.

FAILURE TO PERFORM—FORFEITURE—OWNERSHIP OF FIXTURES.

A mining company as the locator of mining claims and mill site owned in connection therewith erected thereon a quartz mill and other buildings, improvements, and fixtures. At the time the company attached the improvements to the land it was vested with the right to hold the ground so long as it did the annual work required and thereafter until a valid location was made by another. It placed the improvements upon land in which it had an interest and in which presumably it expected to acquire an estate in fee. It failed for more than a year to perform the required assessment work, and a valid relocation was thereupon made of the ground and the quartz mill, buildings, and improvements were within the lines of the relocated claim. The loss of the company's right resulted from its own failure to meet the conditions which were imposed by law, and when a valid relocation of the ground was made the interest of the mining company as the former locator came to an end. These circumstances preclude the inference of any agreement that the company should be allowed to sever and remove the buildings and fixtures after it had permitted its rights in the land to terminate.

Waterson v. Cruse, —— Calif. ——, 176 Pacific 870, p. 872.

LIABILITY OF OWNER TO PERSONS PERFORMING WORK.

The owners of mining claims are liable to persons for furnishing materials and to men performing the assessment work where such

materials were purchased and the men were employed by a general agent having authority to do everything in connection with the mining claims necessary to protect the interests of the owners in the claims.

Thomas v. Furesman, —— Cal. App. ——, 178 Pacific 870, p. 873.

STATE STATUTES.

LOCAL REGULATIONS—COMPLIANCE.

Section 2322 (Revised Statutes United States) provides that in the location of mining claims there must be not only compliance with the laws of the United States but with "State, territorial and local regulations." The rule as supported by decisions of courts is that the requirements of State statutes are inoperative only when they conflict with the United States statutes, and the failure to comply with a State or territorial statute renders a mining location destitute of legal sufficiency and leaves a valid location subsequent in time prior and superior to an older location when the locator failed to comply with the State statute.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 234.

See Butte City Water Co. v. Baker, 196 U. S. 119, 25 Supreme Ct. Rep. 211.
Baker v. Butte City Water Co., 28 Mont. 222, 72 Pacific 617.
United States Mining Statutes Annotated, p. 190.

ABANDONMENT.

ACQUIESCENCE IN RELOCATION—EFFECT AS ABANDONMENT.

The owner of certain mining claims had knowledge that a third person had relocated a part of the ground embraced within his claims and that the relocator was in possession and developing the relocated claims. The original owner of the mining claims remained silent and failed to assert any right thereto for more than two years and then only after the relocator had spent a large amount of money upon the claims and had mined and shipped to the smelter much valuable ore. The silence and the long acquiescence of the original owner in the relocation of a part of his claims was in effect an abandonment by him of such relocated part of his claims.

Florence Rae Copper Co. v. Iowa Mining Co., —— Wash. ——, 178 Pacific 452, p. 463.

FORFEITURE.

IMPROVEMENTS—OWNERSHIP ON FORFEITURE.

Improvements or fixtures placed upon mining claims by a locator become a part of the realty and a subsequent appropriation of the land carried with it whatever may be affixed to it. Prior to the

determination of his estate by the perfection of a relocation, the original locator may sever and remove all machinery, buildings, fixtures, and improvements that by the manner of their attachment to the soil have become a part of the freehold; but his right of entry for that purpose ceases when his estate is terminated.

Waterson v. Cruse, —— Calif. ——, 176 Pacific 870, p. 871.

EXTRALATERAL RIGHTS.

OWNERSHIP AND ENJOYMENT OF VEINS—EXTENT OF MINING RIGHT.

Section 2322, United States Revised Statutes, gives to the locator of a mining claim the exclusive right of possession and enjoyment of all veins, lodes, or ledges throughout their entire depth. This does not include such veins only as are wide enough to permit of mining perations within their walls but includes all veins of whatsoever width. The statute gives not only exclusive right of possession of such veins, but the exclusive right of enjoyment throughout their entire depth. The exclusive right of enjoyment of a vein must include the right to mine and extract the mineral contained in it, and if the vein itself is too narrow to permit of mining operations within its walls he may under the implication of the statute cut into the country rock on either side of the vein, as otherwise the word "enjoyment" would be without a practical meaning.

Twenty-One Min. Co. v. Original Sixteen to One Mine, 255 Federal 658, p. 660.

EXTENT OF GRANT—MINING VEIN UNDER ADJOINING CLAIM—CONSTRUCTION OF STATUTE.

Section 2322 of the United States Revised Statutes gives to the owner of a mining claim all veins apexing within his surface lines with the right to follow all such veins on their dip, although they may depart from the side lines of his claim and enter or extend through an adjoining claim. But the statute prohibits the owner of any such vein from entering upon the surface of the adjoining claim for the purpose of pursuing his vein after it departs through the side line of his claim. This means that he must mine out the vein under the surface of the entire claim by following the vein itself in his mining operations. The gift and enjoyment of the vein would be fruitless and useless if the owner was limited to his operations within the walls of the vein where it was too narrow or where the changes in direction were so sharp and sudden as to prevent operations within the walls of the vein. To limit the owner absolutely to operations within the walls of the vein would give to the statute a construction entirely too narrow and one which in many, if not in all cases, would defeat the right which Congress granted in apt words.

Twenty-One Min. Co. v. Original Sixteen to One Mine, 255 Federal 658, p. 660.

RIGHT OF APEX OWNER TO FOLLOW BROKEN VEIN.

There existed within a mining claim a lode or vein of rock in place carrying gold and other valuable minerals. The vein on its strike traversed the claim from end to end, the top or apex of which was wholly within the side lines of the claim, but on its downward course or dip the vein departed from the perpendicular and passed out through the side line of the claim into and beneath the surface of the adjoining and of other claims. The owner of the claim was entitled to follow the vein under the statute granting extralateral rights, and this right was not to be denied because the vein terminated at a fault, where by dropping down a distance of 15 or 20 feet at the shaft and a distance of 35 or 40 feet at the boundary of the claim another vein, or a similar vein, was picked up, likewise terminating at a fault. The two existing segments in fact made a single vein sufficient to continue the extralateral rights.

Original Sixteen to One Mine v. Twenty-One Min. Co., 254 Federal 630, p. 631.

MINING VEIN UNDER ADJOINING CLAIMS—EXTENDING WORKINGS BEYOND WALLS OF VEIN.

In mining and operating a lode vein extralaterally underneath the surface of another claim the owner of the vein is not confined to working entirely within the walls of the vein, but he has the right to cut into the country rock on either side of the vein when necessary for the mining operations, either to keep the workings straight or regular, as is customary in such operations where the vein undulates or changes in direction or when the vein narrows down to a width less than the convenient and ordinary width of the usual mining operations. It is not the law that an owner of the vein in mining it under his extralateral rights is confined entirely within the walls of his vein and that these walls can not be transgressed no matter how narrow the space.

Twenty-One Min. Co. v. Original Sixteen to One Mine, 255 Federal 658, p. 659.

PRACTICAL OPERATIONS—DEVIATION FROM VEIN.

In practical mining operations a miner does not go to the expense of removing unnecessary rock, or wandering further from a vein the enjoyment of which the statute gives him, than is necessary for economical work. The extent to which a miner may deviate from a vein must depend upon the characteristics of each particular vein, and no rule can be formulated of general application; but the gift of "all veins" and the "enjoyment" of such veins can not be held to mean only all wide and straight veins that can be mined out through the veins themselves. The statute means that if a vein itself is too

narrow for mining operations then the miner may cut into the surrounding rock sufficiently to make the mining operations practical.

Twenty-One Min. Co. v. Original Sixteen to One Mine, 255 Federal 658, p. 660.

FINDING OF FACTS—EFFECT ON APPEAL.

Where a trial court in an action between contesting mineral claimants as to their extralateral rights makes a finding upon all the evidence submitted and on such evidence and finding adjudicates the rights of the contestants, such findings so made upon conflicting testimony are conclusive upon the court on appeal. It is the duty of the court on appeal under such circumstances to accept the finding of facts unless clearly and manifestly wrong.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 236.

RELOCATION.

RIGHT AND TITLE OF RELOCATOR.

A person making a relocation of a forfeited mining claim is clothed with the exclusive right of possession and enjoyment of all the surface included within the lines of his relocation. This carries with it the right of possessing and enjoying anything which has been so affixed to the land as to become a part of it.

Waterson v. Cruse, —— Calif. ——, 176 Pacific 870, p. 871.

LOCATIONS FOR SPECULATIVE PURPOSES—ASSERTION OF RIGHTS—ESTOPPEL.

Experience has taught that locations of mineral-bearing rock are frequently made on public land for speculative purposes only and are often considered of little value until paying ore is discovered in the immediate vicinity and the claims, without expense to the locators, may become of immense value. These possible fluctuations in value demand a different rule from that usually governing vested estates in land and necessitates immediate assertion of inchoate rights in mining claims when, by the exercise of reasonable diligence, locators could have discovered that their claims were being invaded. Locators with knowledge of the fact and after long acquiescence that a third person has located and has developed a part of their claims should be estopped to assert any interest in conflict with that of the relocator. To permit locators under such circumstances to assert an adverse claim to the relocated part of their original claims would be violative of every principle of equity and would result in rewarding them for encouraging the development of the property.

Florence Rae Copper Co. v. Iowa Mining Co., —— Wash. ——, 178 Pacific 462, p. 463.

COOWNER.

MINING COTENANT—ACCOUNTING—EXPENSE ALLOWANCE.

One tenant or coowner who secretly takes the ores of the joint claim and appropriates to himself his cotenant's share of the proceeds is to be allowed in an action for an accounting only the reasonable, proximate, causative expense of discovering and extracting and marketing the ore, but he is not entitled to an allowance of the remote and inconsequential expenses.

Silver King Coalition Mines v. Conklin Min. Co., 255 Federal 740, p. 752.

MINING BY ONE COOWNER—LIABILITY TO ACCOUNT—EXPENSES OF MINING.

A mining cotenant who mined and sold the ores from the joint claim is not entitled to an allowance by way of interest on the amount invested in mine buildings and machinery where there was no proof that such mine buildings and mining machinery were made for the purpose of handling the ore from the joint claim and where the suing cotenant had no title or right to the use of such buildings or machinery.

Silver King Coalition Mines v. Conklin Min. Co., 255 Federal 740, p. 752.

OPERATIONS BY COTENANT—TUNNEL DISCOVERY—ACCOUNTING—EXPENSES ALLOWED.

A coowner and cotenant of a mining claim extended and cleaned out a tunnel through his own individual claim and extended it into and through the claim jointly owned. While so extending the tunnel into the joint claim he discovered and secretly extracted, mined, and sold a large quantity of ore from the joint claim. In an action by the other coowner for an accounting for the ore so mined and sold the mining cotenant is not entitled to an allowance of the expense of extending and cleaning the tunnel, where the tunnel was run through another mining claim and its portal was nearly two miles from the stope from which the ore in dispute was taken, and where none of the ore was taken out from that portal and where the tunnel was used by the mining cotenant for other purposes, the proceeds and income exceeding the cost.

Silver King Coalition Mines v. Conklin Min. Co., 255 Federal 740, p. 750.

COOWNER AS TRUSTEE—DUTY TO ACCOUNT.

It is the duty of a coowner of a mining claim who, in fact, or in law, has become a trustee for the other coowner to notify the coowner of his entry and taking of the ore from the joint claim, and it is his duty to keep the ore separate, to keep an account of it and of its

proceeds, and promptly to account for and pay to the coowner and cotenant his just share of the proceeds of the ore.

Silver King Coalition Mines v. Conklin Min. Co., 255 Federal 740, p. 743.
See Silver King Min. Co. v. Silver King Consol. Min. Co., 204 Federal 166, p. 180.
Conklin Min. Co. v. Silver King Mines Co., 230 Federal 553.

POSSESSORY RIGHTS.

PRIORITY OF RIGHTS—DETERMINATION.

The priority of rights in a mining claim is not determined by dates of entries or patents of the respective claims but by priority of discovery and location, and these may be shown by testimony other than the entries and patents.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 235.

POSSESSION AS NOTICE.

The unequivocal possession of a mining claim is notice to all the world of the possessor's rights thereunder.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 234.

ESTOPPEL—ACQUIESCENCE IN RELOCATION.

The owner of certain mining claims had knowledge of an attempted relocation and that the relocator was in possession developing his claim. The original locator remained silent and failed to assert any claim to the property for more than two years. The first assertion of claim to the ownership of the property as against the relocator was after a large amount of money had been expended upon the claims and valuable ore had been mined and shipped to the smelter. At the time of the attempted relocation the original locator had only an inchoate title and the right to possession which was susceptible to abandonment. Under these circumstances the original locator is estopped to assert a possessory right to the mining claims.

Florence Rae Copper Co. v. Iowa Mining Co., —— Wash. ——, 178 Pacific 462, p. 463.
See Grand Prize Hydraulic Mines v. Boswell, 83 Oreg. 1, 151 Pacific 368, 162 Pacific 1063.

RIGHT OF LOCATOR AS AGAINST RAILROAD GRANT.

The possessory right of the locator of a valid mining claim on the public land is superior to any title or right of possession by a subsequent patent and grant to a railroad company; but as to all junior claimants a patent to such land as nonmineral land is conclusive.

Cheino Land & Water Co. v. Hamaker, —— Cal. App. ——, 178 Pacific 738, p. 739.

ADVERSE CLAIM—JURISDICTION OF FEDERAL COURTS—PLEADING.

A complaint in an action to contest the right of possession of a mining claim and the ownership of certain veins averred that the complainant's rights depended upon the construction and application of sections 2322, 2324, 2325, and 2332 of the United States Revised Statutes; and it averred also that the amount in controversy exceeded in value the sum of $3,000. The allegation as to the construction of the sections of the Revised Statutes had jurisdictional purpose and resort was had to a Federal court that the complainants might avail themselves of the provisions of these sections of the United States Revised Statutes; and the allegation was sufficient to show jurisdiction of the Federal court and that such jurisdiction made the suit one involving the application of these sections and was not based on diversity of citizenship and therefore the decision of the Circuit Court of Appeals was not final.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 233.

See Butte & Superior Copper Co. v. Clark-Montana Realty Co., —— Mont. ——, 248 Federal 609.

TERMINATION.

When a locator's exclusive right to the possession of his claim with its appurtenances ceases either by reason of his failure to perform all of the acts requisite to a completed mineral location, or his failure to discover minerals in place within 90 days after his location was initiated, then his exclusive right to possession based upon a mineral location is at an end and he is thereafter holding possession of the public lands by the sufferance of the sovereign owner.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 569.

METHOD OF TERMINATION.

The possession of a mining claim where the statutory requirements have not been complied with is subject to be terminated by the Government or by any citizen of the United States qualified to acquire title to public lands without notice by initiating a claim to the same premises under some law of Congress authorizing the disposal of public lands. But until the Government does intervene or some qualified citizen initiates a better claim to the premises attempted to be located, the locator can not be disturbed in his actual possession.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 569.

MINERAL AND MATTERS INCLUDED.

The unquestionable right of the locator of a mining claim to the area within the boundaries of the claim marked on the ground by the

requisite monuments as described in his location notice posted at the location monument carries the right to possession of every appurtenant belonging to the realty including timber, soil, country rock, percolating waters, natural springs, except certain mineral springs and some other matter.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568.

POSSESSORY ACTIONS.

ACTION TO RESTRAIN TRESPASS.

The locator of a mining location brought suit to restrain a third person from trespassing upon the claim under a pretended water-right location. The evidence showed that the complainant had not discovered minerals within the surface lines of his claim within the statutory period and it also showed that the defendant had not initiated any valid or legal right to the ground by his attempted and pretended appropriation of water rights. The action was dismissed at the cost of the plaintiff on the theory that he was attempting to restrain a trespass on a valid mineral location instead of bringing an action to protect his possessory right against a trespasser who had initiated no valid right or claim to the ground.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 570.

PURCHASE BY LESSEE—RIGHT TO POSSESSION.

A lessee of certain mining claims during the term of the lease purchased the claims of the owner and lessor. The agreement expressly provided that the sale and purchase should in no wise affect the terms of the lease. The agreement also provided for the deposit of a patent and deed with a certain bank and that on the payment of the full price the bank should deliver the patent and deed to the purchaser. On the deposit of the full amount in bank the owner and lessor of the claim was notified of the deposit of the purchase price but failed to tender the patent and the deed and also failed to demand the payment of the money. After the deposit of the money the lessee as such purchaser refused to pay the royalties as provided in the lease and thereupon the owner and lessor and grantor brought an action for unlawful detainer. But under the contract of purchase when the payment of the purchase price had been made the purchaser was entitled to possession of the property not as lessee but as purchaser and the purchaser was entitled to hold possession under the contract of purchase subject only to the right of the owner and lessor to collect the royalties under the terms of the lease. Upon this state of facts an action for unlawful detainer could not be maintained.

Rayburne v. Stewart-Calvert Co., —— Wash. ——, 178 Pacific 454, p. 456.

SALE AND TRANSFER.

CONVEYANCE—RELEASE OF RIGHTS—EFFECT ON EXTRALATERAL RIGHTS.

The owner of a fourth interest in a mining claim conveyed to the owner of the other interest all right, title, interest, claim, and demand in and to the veins or lodes or deposits therein, together with all the dips, spurs, and angles, and also all the metals, ores, gold, silver, and metal-bearing quartz, rock, and earth therein. The grantor in this deed was the owner of the adjoining prior location. The deed passed no rights or interest that did not belong to the claim or that would not appertain to it and passed the rights and interest only that were derived from the United States by the location of that claim and conveyed by the patent to the locator. The deed was not intended to convey any of the rights of the adjoining claim then owned by the grantor and did not denude it of the extralateral rights that the law conferred upon it and could not in any sense operate as a conveyance of such adjoining claim or any interest in it as well as a conveyance of an interest in the other claim. Neither could the deed operate to estop the grantor as owner of such adjoining claim from exercising his extralateral rights as owner of such claim and prevent him from subsequently following on their dip all veins apexing within his claim into and through the claim his interest in which he had so conveyed.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 236.

PURCHASE BY LESSEE SUBJECT TO LEASE—LIABILITY FOR ROYALTIES.

The owner of certain mining claims leased the claims and was to receive a certain stipulated royalty. During the term of the lease and after its assignment the assignee purchased the mining claims of the original owner and lessor. The contract of purchase expressly provided that it should in no wise affect the lease and agreement originally entered into and that the conveyance of the claims was subject to such lease. Under the terms of this contract of sale and purchase the purchaser, as the assignee of the lease, was bound to continue the payment of the stipulated royalties during the existence of the lease.

Rayburne v. Stewart-Calvert Co., —— Wash. ——, 178 Pacific 454, p. 455.

RIGHTS UNDER GRUB STAKE AGREEMENT.

A purchaser of a mining claim in good faith and for a valuable consideration is not responsible to a third person who is asserting some rights under an original grubstake contract.

Kimball v. Superior Court, —— Cal. App. ——, 177 Pacific 488.

PATENTS.

VALIDITY—IRREGULAR ISSUE—RIGHT TO ATTACK.

A patent to a mining claim or mineral land is not void though irregularly issued and it will pass the title subject to the right of the Government to attack the patent by direct suit for its annulment if the land was known to be mineral when the patent passed.

Cheino Land & Water Co. v. Hamaker, —— Cal. App. ——, 178 Pacific 738, p. 739.

CONCLUSIVENESS.

From the day when a patent issued for a mining claim the patentee's title not only to the surface of the claim, but to every vein or lode, the top or apex of which was found in the boundaries thereof, became unassailable

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 234.

EXCEPTION TO CONCLUSIVENESS—PATENTEE'S KNOWLEDGE OF POSSESSORY RIGHTS.

A patent for a mining claim may be conclusive as against a prior claimant to any part of the ground who had failed in his location to comply with State statutes and local regulations. But a patent for a mining claim, the location of which was subsequent in time to an existing location will not protect the patentee as against such prior location although the prior locator failed to comply with the State statute where the patentee had notice that the original locator was in unequivocal possession of his claim at the date of such junior location.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 234.

See Yosemite, etc., Min. Co. v. Emerson, 208 U. S. 25, 28 Supreme Ct. Rep. 196.

MATTERS CONSIDERED—PRESUMPTION.

In an action involving the possessory rights to mining claims in the absence of the record of an adverse suit there is no presumption that anything was considered or determined except the question of the right to the surface. The rule is that on the application for a patent only surface rights are determined.

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 235.

See Lawson v. United States Min. Co., 207 U. S. 1, 28 Supreme Ct. Rep. 15.
United States Mining Statutes Annotated, pp. 384, 405, 413, 444.

EVIDENCE OF COMPLIANCE WITH STATUTE

The statutes of some States Montana particularly, make the issue of a patent for a mining claim conclusive evidence of compliance with

the requirements of the laws of the State and make valid all locations under them theretofore made where the locator had in any respect failed to comply with the requirements of such laws "except as against one who has located the same ground in good faith and without notice."

Butte & Superior Copper Co. v. Clark-Montana Realty Co., 39 Supreme Ct. Rep. 231, p. 234.

See Yosemite, etc., Min. Co. v. Emerson, 208 U. S. 25, 28 Supreme Ct. Rep. 196.

SUIT TO CANCEL.

The act of Mar. 3, 1891 (26 Stats. 1099), provides that suits by the United States to annul patents shall be brought within six years after the date of the issuance of a patent. But this statute must be construed on the familiar equitable principle that where the victim of a concealed fraud exercises reasonable diligence and fails to discover the fraud or to receive such information as would excite the attention, or incite a person of ordinary prudence to an inquiry that would lead to a discovery of the fraud, the cause of action does not accrue until the discovery of the fraud or the receipt of such information and the bar of the statute does not begin to run until that time. The rule applies although there were no efforts on the part of the person committing the fraud to conceal it from the knowledge of the other person.

United States v. Diamond Coal & Coke Co., 254 Federal 266, p. 267.

SUIT TO CANCEL—LIMITATION OF ACTION—FRAUD—PROOF.

In an action by the United States to cancel a patent for certain coal lands after more than six years from the date of issuance on the ground of fraud, the United States, in order to be released from the bar of the statute, must plead and prove that it exercised reasonable care and diligence to discover the fraud before the expiration of the six years and that it had no knowledge or notice of any action that would have excited the attention of, or that would have incited a person of ordinary prudence and ability to an inquiry that would have led to a discovery of the fraud, and that the patentee concealed the fraud by some trick or artifice or so committed it that it concealed itself.

United States v. Diamond Coal & Coke Co., 254 Federal 266, p. 268.

ACTION TO ANNUL—LIMITATION—FRAUD—PLEADING.

In an action brought by the Government more than six years after the issuance of a patent to cancel and annul it on the ground of fraud, the complainant must set forth specifically what were the impediments to an earlier prosecution of the claim, how the Government

came to be so long ignorant of its rights and the means used by the patentee to fraudulently keep it in ignorance and how and when it first came to a knowledge of the matters alleged in the bill. It is not sufficient for the Government to aver that it was ignorant of its claim in 1903 and was aware of it in 1916.

United States v. Diamond Coal & Coke Co., 254 Federal 266, p. 269.

SUIT BY GOVERNMENT TO CANCEL—LIMITATION OF ACTION—FRAUD—APPLICATION TO GOVERNMENT.

The act of March 3, 1891 (26 Stats. 1099), requires actions to vacate and annul patents to be brought within six years after date of issuance. In a suit by the Government brought after the expiration of the six-year period, it must show fraud, want of knowledge of the fraud, and the concealment by the patentee. In such a case the equitable claims of a nation or state appeal to the conscience of a chancellor with the same, but with no greater or less, force than would those of a private citizen and barring the effect of mere delay they are judiciable in a court of chancery by every principle and rule of equity applicable to the rights of private citizens under similar circumstances. Under this statute it can not be said that the United States as a sovereign government is not bound by this statute of limitations. Congress by this act has clearly manifested its intention to make a delay for six years after the date of a patent fatal to a suit to avoid the patent for fraud, unless relief can be granted on equitable principles.

United States v. Diamond Coal & Coke Co., 254 Federal 266, p. 269.

TRESPASS.

WRONGFUL REMOVAL OF ORE—RECOVERY—BURDEN OF PROOF.

In an action by one cotenant to recover the value of ore wrongfully mined and removed the burden is upon the suing tenant to prove that his cotenant took the ore or its proceeds and mingled it with ore in which the complaining tenant had no interest Then the burden of proof and the duty rests upon the tenant charged with removing the ore to prove the amount it took and its proceeds or value and to account and pay therefor. If by reason of the wrongful acts and of the failure of the defendant to keep its cotenant's ore separate from other ore and to keep account of the ore taken and its proceeds or value, the proof of the amount, the proceeds or value, or any facts requisite to make such proof remained at the close evenly balanced, uncertain, or doubtful, the doubt should be resolved in favor of the complainant.

Silver King Coalition Mines v. Conklin Min. Co., 255 Federal 740, p. 743.

PLACER CLAIMS.

"SALTING"—FRAUD—CONSUMMATION OF ACT.

The statute of Arizona makes it a crime to salt a mine—that is, to mingle or sprinkle gold in a mine or in ore in order to change the value of the gold-bearing ore with intent to deceive, cheat, and defraud other persons. The crime is complete under the statute when the acts denounced as a crime were consummated although no person was injured or deceived or defrauded by the act of the person.

Martinez v. State, —— Ariz. ——, 176 Pacific 582, p. 583.

MILL SITE.

LOCATION AND OWNERSHIP.

Mill sites may be located under the United States statutes either in connection with the ownership of a vein or lode or independently of the ownership of a mine by the owner of a quartz mill or reduction works (United States Revised Statutes, section 2337).

Waterson v. Cruse, —— Calif. ——, 176 Pacific 870, p. 871.
See United States Mining Statutes Annotated, 593.

LOCATION—FORFEITURE—EFFECT ON IMPROVEMENTS.

On July 2, 1912, the Southern Belle Mines Company owned and possessed three mill sites located and used in connection with certain lode mining claims. A quartz mill, a dwelling, and a boarding house had been erected on the mill sites and a barn and office building on one of the mining claims. On the above date the mining company sold the quartz mill and the other buildings with the right to remove them. During the year 1913 neither the mining company nor the purchaser performed the labor or made improvements upon the mining claims or on the mill sites. On January 1, 1914, a third person upon making a discovery made a valid relocation of the ground, the boundaries of which included the ground occupied by the mill and the other buildings. Subsequently the relocator commenced to remove some of the buildings, whereupon the purchaser of the buildings brought suit to enjoin the relocator from removing them and from preventing him as such purchaser from removing them. At the time the mining company attached the improvements to the land it was possessed with the right to hold the land so long as it did the annual work required and thereafter until a valid location was made by another. The loss of its right resulted from its own failure to meet the conditions which were imposed by law. It placed the improvements upon land in which it had an interest and in which presumably it expected to acquire an estate in fee. These circumstances preclude the inference of any

agreement that it should be allowed to sever and remove the buildings after its rights in the land had terminated. When the relocator made his valid relocation of the ground the interest of the former locator came to an end. By his relocation the relocator acquired the exclusive right of possession and enjoyment of the land, and this necessarily includes everything that was a part of the ground. The purchaser could not by his purchase from the mining company acquire any better title than it had and he was not entitled to any relief whatever.

Waterson v. Cruse, —— Calif. ——, 176 Pacific 870, p. 871.

ABANDONMENT OF LODE CLAIM—EFFECT ON MILL SITE.

Section 2337 of the United States Revised Statutes authorizes the owner of a lode claim to locate a mill site on nonmineral land not contiguous to the vein or lode. The statute permits the location of a mineral site as an adjunct to a lode claim. But where the locator of such a site ceases by reason of abandonment or forfeiture to be the proprietor of the vein or lode the right to the associated mill site is also ended.

Waterson v. Cruse, —— Calif. ——, 176 Pacific 870, p. 871.

PRINCIPAL AND AGENT.

AUTHORITY OF AGENT—LIABILITY OF PRINCIPAL.

An agent located a large number of placer mining claims in the name of and for the benefit of his principals, and they gave him absolutely a free hand in dealing with the claims and trusted him to do everything in and about the location of the claims for the protection of their rights therein. Under this power the agent had authority to employ the owner of an automobile for the transportation of materials and men to and from the mining claims in performance of the annual assessment work.

Thomas v. Fursman, —— Cal. App. ——, 178 Pacific 870, p. 873.

EXTENT OF AUTHORITY—IMPLIED POWERS.

The agent and general manager of a coal company has no implied authority to make a gift or sell or release any part of the mining territory to another coal company.

Carroll Cross Coal Co. v. Abrams Creek Coal & Coke Co., —— W. Va. ——, 98 Southeastern 148, p. 151.

GENERAL MANAGER—IMPLIED POWERS—LIMITATION.

The implied authority of a general managing officer of a corporation is limited to matters that arise in the conduct of the ordinary business of the corporation; and he has no implied authority to transact matters outside of its ordinary business on the theory that any such transaction might enable him to make a profit for his principal.

Carroll Cross Coal Co. v. Abrams Creek Coal & Coke Co., —— W. Va. ——, 98 Southeastern 148, p. 151.

PROMOTERS AS AGENTS.

The promoters of a mining corporation to be formed are generally to be regarded as the agents of the corporation and a contract made by such agents when accepted by the corporation becomes binding.

Wallace v. Eclipse-Pocahontas Coal Co., —— W. Va. ——, 98 Southeastern 293, p. 295.

CONTRACTS OF AGENCY—SEPARATE CONTRACTS.

The effect of an agent's misconduct in respect of one contract relating to certain mining claims would not affect his compensation for services under a separate and distinct contract for the examination of other and distinct mining claims.

Beatty v. Guggenheim Exploration Co., —— N. Y. ——, 122 Northeastern 378, p. 379.

AGENT'S CONTRACT TO SELL COAL—MUTUALITY.

A contract by which a coal-mine operator employed an agent to handle and sell the entire output of lump coal from his mine and by which the agent agreed to use his best endeavors to sell the output of the mine at the full market price is not void for want of mutuality.

Warren v. Ray County Coal Co., —— Mo. App. ——, 207 Southwestern 883, p. 884.

CONTRACT FOR SALE OF COAL—MUTUALITY OF OBLIGATION.

Mutuality of obligation or a consideration for an obligation as applied to a contract between a coal-mine operator and an agent appointed and employed to sell the output of the operator's mine only means that one party agrees to do one thing and the other some other thing. It does not mean that the respective undertakings or obligations shall be equal to or commensurate with one another. If it did, then every contract where one party agreed to do less than the other would be called unalateral merely because the obligation upon one party was not as great as upon the other.

Warren v. Ray County Coal Co., —— Mo. App. ——, 207 Southwestern 883, p. 885.

AGENT'S CONTRACT TO SELL COAL—UNALATERAL CONTRACT MAY BE BILATERAL.

A mine operator appointed and engaged an agent to sell the entire output of lump coal from his mine, the coal to be loaded and shipped on orders supplied by the agent. The agent agreed to use his best endeavors to sell the coal at the full market price and to pay therefor, less a stated commission. If the contract when made was subject to the charge of being unalateral, it could become bilateral and binding by losing its one-sided character, and it became bilateral and valid from the fact that an obligation had arisen on the part of the agent as the second party and thus mutuality or a consideration appears as the binding force.

Warren v. Ray County Coal Co., —— Mo. App. ——, 207 Southwestern 883, p. 885.

CONTRACT OF EMPLOYMENT—CONSTRUCTION—AGENT TO SELL OUTPUT OF MINE.

By a written agreement a coal-mining company constituted a selling company its agent for the exclusive sale of the coal mined, except that sold to a certain railroad company and except during the months of April, May, and June. The selling company obligated itself to use every effort to sell at the highest prices and that it would advertise, introduce, and push the coal to the best possible result in consideration of the exclusive agency. This contract placed upon the agent the duty of selling the entire output of the mine except as

stated, and failing in this the principal, the coal-mining company, was authorized to employ another selling agent.

Cassidy Coal Co. v. Norfolk Coal Co., —— Ky. ——, 208 Southwestern 769, p. 771.

AGENT'S OPTION TO INVEST IN BUSINESS—WRITTEN AND ORAL CONSENT.

An agent was employed by a certain exploration company, under a contract by which he was to investigate certain mining claims and by which he agreed not to become interested in or connected with any person engaged in any similar business and such condition was not to be waived except by consent in writing. Subsequently the agent with knowledge of the president and general manager and with their oral consent became interested as a partner with a third person in the purchase of certain mining claims in opposition to the exploration company. Such consent was at least equivalent to an election that the agent, however delinquent, should not be charged as a trustee. The oral consent may not have created an estoppel or modified the contract, but it may have established an election and such an election could be made without a writing.

Beatty v. Guggenheim Exploration Co., —— N. Y. ——, 122 Northeastern 378, p. 381.

EXCLUSIVE AGENCY TO SELL COAL—BREACH OF CONTRACT—EMPLOYMENT OF ANOTHER AGENT.

A coal mining company employed a selling company as its exclusive agent to sell the entire output of its mine. The selling company obligated itself to use every effort to sell at the highest prices and to advertise, introduce, and push the coal of the producing company to the best possible results. The selling company failed to make sales of the entire output and failed to use every effort to sell and did not advertise and push the sale of the coal to the best possible results and failed to make payments for coal shipped on its orders. On failure of the selling company to comply with the contract of agency and to sell the entire output of the mining company's coal, the mining company was justified in the employment of another agent and was not liable to the selling company as for a breach of the contract.

Cassidy Coal Co. v. Norfolk Coal Co., —— Ky. ——, 208 Southwestern 769, p. 771.

LIMITATION ON AGENT'S AUTHORITY—EFFECT ON THIRD PERSON.

An agent under the authority of his principals located a number of placer mining claims and was given authority to do everything in and about the location of the claims for the protection of their rights,

including the assessment work. Acting under his authority he employed men to perform the assessment work on the claims and hired automobiles to convey the men and materials to and from the mining claims. Under such facts the principals can not escape liability on the ground that they had an understanding with the agent that he was to furnish the money to pay for the assessment work, as such a limitation on the authority of a general agent would not be binding on third persons dealing with the agent as such without knowledge of the limitation.

Thomas v. Fursman, —— Cal. App. ——, 178 Pacific 870, p. 873.

PURCHASE BY AGENT—DUTY TO DISCLOSE FACTS.

The position of an agent as general manager of a mining property gives him peculiar opportunity for knowing all the facts and estimating the reasonable probabilities with reference to the mine, and he must act fairly in all dealings with his partners, the persons for whom he is acting. He may purchase the interest of a partner and principal, but he is bound to disclose the facts and conditions which have come to his knowledge as manager bearing upon the value of the property and can take no advantage by misrepresentation, concealment, or omission to disclose. Under such circumstances he is not required to express himself relative to matters merely of speculation or surmise, but if he choose to give an opinion, he is bound to act honestly and in good faith.

Cardoner v. Day, 253 Federal 572, p. 577.

SECRET COMMISSION OBTAINED BY AGENT—FRAUD—ACCOUNTING.

Two men were employed at stated salaries as agents of an oil-producing company to examine the validity and value and recommend the purchase of leases by the oil company. As such agents they examined and recommended to the oil company the purchase of certain valuable leases. Subsequently the oil company discovered that its agents had secretly and fraudulently received in the transaction a large commission from the selling company, and thereupon sued the agents to recover the amount of the commission so received. The oil company as a part of its relief was entitled to an injunction to prevent the defendants, the former agents, from transferring stock received by them in payment of the secret commission and to the appointment of a receiver to take charge of and hold the stock pending the litigation on the theory that the remedy at law was not adequate.

Goldrick v. Roxana Petroleum Co., —— Okla. ——, 176 Pacific 932, p. 933.

SPECULATION BY AGENT—SURRENDERING PROFITS—TRUSTEE.

An exploration company employed an agent to investigate certain mining claims in the Yukon district, on which the exploration company held an option to purchase. The agent on his examination of the claims under option examined other claims not included in the option but essential to the successful operation of those so included. The agent and a third person as partners purchased rights in the new claims. The exploration company appreciating the importance of these claims in connection with their option determined to buy them. Under these circumstances the exploration company had a right to require the agent to renounce the profits of the transaction and transfer the mining claims at cost to it. Under these facts the agent became a trustee at the election of the principal. When property has been acquired by an agent under such circumstances that he may not in good conscience retain the beneficial interest, equity converts him into a trustee.

Beatty v. Guggenheim Exploration Co., —— N. Y. ——, 122 Northeastern 378, p. 380.

STATUTES RELATING TO MINING OPERATIONS.

CONSTRUCTION, VALIDITY, AND EFFECT.

MEANING OF WORDS AND TERMS.

The use of a word in a mining statute in relation to mines and mining operations is intended to convey the meaning the word has in mining parlance.

Roberts v. Tennessee Coal, Iron, etc., Co., 255 Federal 469, p. 471.

APPLICATION OF STATUTE TO DIFFERENT MINES—VIOLATION—RECOVERY FOR INJURIES.

Section 6326 of the statute of Kansas (General Statutes 1915) prohibits the use of dynamite or other detonating explosives in the preparation of shots intended to be used in a coal mine unless used under rules agreed upon between the mine operators and the miners and approved by the State mining inspector. Section 6327 makes it unlawful for any mine operator to permit the miners to go into any sinking shaft or development work in a coal mine after shots have been discharged before all smoke and gases have been removed. A miner injured by an explosion of dynamite while working as a shot firer sued the mine operator for damages. At the time of his injury he was working in a strip-pit coal mine and claimed that the statute applied only to shaft mines. A coal mine is defined as a mine or pit from which coal is obtained, and if the complainant was working in a pit to obtain coal he was working in a coal mine within the meaning of the act, and inasmuch as he was himself violating the statute he could not recover in an action against the mine operator.

Richards v. Fleming Coal Co., —— Kans. ——, 179 Pacific 380, p. 382.

TREBLE DAMAGES FOR REMOVAL OF COAL—APPLICATION.

The Pennsylvania act of May 8, 1876 (P. L. 142), imposing treble damages for mining and removing coal knowing the coal to be upon the land of another is highly penal and can not be extended beyond the terms expressed in the act. The liability to treble damages is expressly conditioned upon such facts appearing as would justify the conviction of the trespasser of a misdemeanor. The imposition of treble damages is allowable only where the defendant dug the coal "knowing the same to be upon the lands of another." A recovery of treble damages under this act is conditioned on actual knowledge.

Matthews v. Rush, —— Pa. ——, 105 Atlantic 817, p. 818.

OIL WELLS—DRILLING NEAR RAILROAD PROHIBITED.

The statute of Kansas (General Statutes 1915, section 4979) makes it unlawful to drill or operate oil and gas wells within 100 feet of the right of way of any railroad. This statute is not unconstitutional but is a proper exercise of the police power of the State.

Winkler v. Anderson, —— Kan. ——, 177 Pacific 521, p. 522.

DUTIES IMPOSED ON OPERATOR.

BURDEN TO SHOW WANT OF KNOWLEDGE OF DANGER.

The five-man act of Indiana (Burns 1914, section 8020a) places upon a mine operator the burden of proving that he did not know of any threatened danger in order to have avoided injury to a miner, or to have stopped the work before a miner was injured; but this burden is discharged when and however it is established by all the evidence that the danger arose in the progress of the miner's work and that neither the mine operator nor the miner could have known of the danger until the rock fell. The rule applies although the evidence was introduced on the part of the plaintiff.

Snapp v. Steinbaugh, —— Ind. ——, 121 Northeastern 81.

PROPS—FURNISHING AND SELECTING.

A mine owner and operator as required by the statute furnished props in large quantities and it was the duty of a miner to select the proper ones for the different places in which he desired to use them. A mine operator must not carelessly furnish props which he has reason to believe have latent defects that will deceive the miner. But if the operator furnished large quantities and some, for different reasons, are unsuitable in strength, while others are suitable, the miner is charged by the statute with the duty of selecting for himself. Under such circumstances if the miner selects a prop not sound and not of sufficient strength he simply made a bad and careless selection, which must be charged to his own misfortune in case of subsequent injury by reason of the breaking of the prop so selected.

Kube v. Northwestern Coal & Min. Co., —— Mo. App. ——, 209 Southwestern 614, p. 615.

INSUFFICIENT AND INSECURE CONSTRUCTION—EMPLOYMENT OF MINE FOREMAN NO DEFENSE.

The employment of a statutory mine foreman by a coal-mine operator will not relieve him from liability for injuries to a miner where the injury was caused by a defect that was due to original construction and not to want of repair.

Chamberaeti v. Susquehanna Coal Co., —— Pa. ——, 105 Atlantic 277, p. 279.

VIOLATION BY OPERATOR.

NO PRESUMPTION OF VIOLATION FROM ACCIDENT.

A violation of the five-man act on the part of a mine operator will not be presumed merely from the fact that a miner was employed in a mine where more than five persons were employed and that he was killed by the falling of a rock from the roof of his working place.

Snapp v. Steinbaugh, —— Ind. ——, 121 Northeastern 81.

DELEGATION OF DUTY—LIABILITY OF OPERATOR.

The statute of Indiana requires mine operators and other employers to guard dangerous machinery. A mine operator can not relieve himself of the responsibility to maintain such guards by delegating the duty to some one else, not even to a servant that was injured. This duty has by the statute been imposed upon the employer that those working in the plant may be protected and any limitation placed upon the performance of that duty must weaken the purpose and force of the statute.

Vandalia Coal Co. v. Moore, —— Ind. App. ——, 121 Northeastern 685, p. 687.

NEGLIGENCE—PROXIMATE CAUSE.

The death of a tool sharpener employed by a well-drilling company was caused by an explosion of gas that escaped from the well. The statute of Oklahoma prohibits the escape of gas from an oil well and provides a penalty therefor. In an action for damages for the death of the tool sharpener it was proper for the court to instruct the jury that if they found that the statute had been violated and that the facts constituting such violation amounted to negligence on the part of the well-drilling company and that such negligence was the proximate cause of the death of the tool sharpener then the verdict should be for the complainant.

Slick Oil Co. v. Coffey, —— Okla. ——, 177 Pacific 915, p. 917.

PROXIMATE CAUSE—CONCURRENT CAUSES.

In an action by a miner for damages for injuries caused by the failure of a mine operator to guard certain dangerous machinery as required by the statute (R. S. 1914, section 8029), the injured miner is entitled to recover though some other cause than the negligence charged proximately caused or contributed to the injury. In case of the violation of a statute, the proximity cause need not be the only cause.

Vandalia Coal Co. v. Moore, —— Ind. App. ——, 121 Northeastern 685, p. 687.

EMPLOYMENT OF CHILDREN—LIABILITY—PLEADING.

A complaint against a mine operator is sufficient where it alleged that the mine operator by its agents and employees employed a child under sixteen years of age in and about the mine, or where it averred that the defendant, the mine operator, permitted or suffered a child under sixteen years of age to be employed in the mining operations, and that while so employed the child was injured at the forbidden place and that such injury resulted from the employment and was incident to the risks or dangers in and about the business.

Brilliant Coal Co. v. Sparks, —— Ala. App. ——, 81 Southern 185, p. 186.

EMPLOYMENT OF CHILD—LIABILITY.

A complaint in an action for damages for injuries to a child under sixteen years of age employed in a mine must specifically allege that the defendant retained supervision and control of the mine to such an extent that he could have prevented the employment of the child, as otherwise the defendant could not be held liable for the injury complained of. But a complaint is sufficient that alleges that the injuries complained of were proximately caused by defendant's agents and servants who were at the time entrusted by the defendant with superintendence and while acting within the line and scope of their employ, permitted or suffered the plaintiff to be employed is sufficient.

Brilliant Coal Co. v. Sparks, —— Ala. App. ——, 81 Southern 185, p. 187.

EMPLOYMENT OF CHILD—INSUFFICIENT EXCUSE—INSTRUCTION BY MINE FOREMAN.

Where a mine operator employed or permitted to be employed in his mine a child under sixteen years of age, the fact that the mine foreman told the boy not to lie down and go to sleep that a car would run over him would not excuse the mine operator from the duty to keep the child out of the mine.

Brilliant Coal Co. v. Sparks, —— Ala. App. ——, 81 Southern 185, p. 187.

FAILURE TO GUARD MACHINERY.

The statute of Indiana (act of 1899) requires that all cogs shall be properly guarded. The fact that a mine operator permitted cog wheels in operating pumps in his mine to remain unguarded was such a violation of the statute as to constitute negligence per se.

Vandalia Coal Co. v. Moore, —— Ind. App. ——, 121 Northeastern 685, p. 686.

FAILURE TO GUARD MACHINERY—MINER WORKING UNDER SUPERIOR—ESTOPPEL.

A miner working as a pump man in a mine received injuries from dangerous cogs that could have been guarded. The mine boss under which the miner worked knew that the cogs were unguarded and the miner was at the time of his injury working in obedience to an order or direction from the mine boss. In an action by the miner against the mine operator for damages for the injury the mine operator can not be heard to say, after accepting the miner's services for three weeks, that the miner was not under any obligation to obey the order of the mine boss requiring him to work in the place where he was at the time of the injury.

Vandalia Coal Co. v. Moore, —— Ind. App. ——, 121 Northeastern 685, p. 687.

DEFENSES NOT AVAILABLE.

A mine engineer while engaged in his employment was killed by reason of his clothing being caught by a shaft projecting outside of the engine house. There was no covering, protection, or guard over the shaft as required by the bituminous mine statute. In an action for damages for the death of the miner neither the obviousness of the danger nor a usage of the business was a defense available to the mine operator, where the machinery of the shaft was in fact unguarded.

Carley v. Dexcar Coal Min. Co., —— Pa. ——, 105 Atlantic 651, p. 653.

DUTIES IMPOSED ON MINER.

DUTY TO PROP WORKING PLACE.

The five-man act of Indiana (Burns 1914, section 8020a) makes it the duty of the miners to place props where needed. Under this statute there can be no recovery for the death of a miner where the miner, experienced in the working of mines, had set props as near the working face of the coal as the work would permit and where there were in place in the room all props of the proper size and character that could be placed therein and permit the work to proceed and where the rock that fell and killed the miner broke out and fell when the miner picked away the coal which supported the end thereof extending into the working face.

Snapp v. Steinbaugh, —— Ind. ——, 121 Northeastern 81.

SELECTION OF INSUFFICIENT PROPS—LIABILITY OF OPERATOR.

The statute of Missouri imposes upon a mine operator the duty to supply props, and it makes it the duty of a miner to select his props from the supply furnished by the operator and to set props sufficient

to protect his working place. The question of when props are needed and what kind of props and the number is left to the judgment of the miner, and where the operator furnished a sufficient supply of props he discharged his duty, and if the miner was mistaken in his judgment as to the need of props in his working place, or if in selecting the props for his use he selected such as were insufficient, the mine operator could not be held liable for a resulting injury to the miner.

Kube v. Northwestern Coal & Min. Co., —— Mo. App. ——, 209 Southwestern 614, p. 615.

MINER'S WORKING PLACE.

DUTY OF MINER TO MAKE PLACE SAFE—DUTY AS TO PROPS.

In an action under the Missouri statute (R. S. 1909, Section 8473) by a miner for damages for injuries caused by the alleged negligence of the mine operator in failing to furnish him suitable props for the roof of his mine, as required by the statute, the evidence showed that the miner and his companion had five or six days previous to the injury selected and set a row of props. After the props were set and shots had been fired and while the miner was working, one of the props broke and a rock fell upon the miner and caused the injury for which he sued. According to the testimony of the injured miner himself and that of his companion, the mine operator had discharged his duty when he furnished props in abundant number and in proper lengths.

Kube v. Northwestern Coal & Min. Co., —— Mo. App. ——, 209 Southwestern 614, p. 615.

DETAILS OF THE WORK—DUTIES INCIDENTAL TO EMPLOYMENT.

A mine operator is not required either actually or constructively to hover over every transaction to keep the miner from hurting himself at his work by an act sounding to folly. The operator may rest somewhat on the fact that the miners have eyes, reasoning faculties, experience, and knowledge in their trade, and a miner in the very act of employment agrees that he will use these faculties. On this theory mine owners and operators may entrust the details of inspecting drill holes and in using and setting props to the miners and he may trust the miner to perform the intermediate, ordinary, and simple duties incidental to his employment and rest upon the miner's knowledge and skill.

Kube v. Northwestern Coal & Min. Co., —— Mo. App. ——, 209 Southwestern 614, p. 616.

FELLOW SERVANT RULE—DEFENSE ABROGATED.

NEGLIGENCE AS A DEFENSE.

In an action for damages for wrongful death under the statute of Utah the defense of the negligence of a fellow servant is available to a mine operator, but in an application for compensation under the Industrial Act such a defense is not available.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 60.

ELECTRICAL APPLIANCES.

PROTECTION OF CONDUCTORS.

The statute of Alabama regulates the installation of electricity in mines and provides that conductors in shafts and slopes used as travelingways and in escapeways shall be protected. Under this provision there can be no recovery under the Employers' Liability statute (Code 1907, sec. 3910) for the death of an operator of a coal-cutting machine where the injury did not occur in a shaft or slope of an escapeway. The statutory requirement is applicable only to such conductors "in shafts and slopes used as travelingways and in escapeways."

Roberts v. Tennessee Coal, Iron, etc., Co., 255 Federal 469, p. 471.

EMPLOYMENT OF MINORS.

EMPLOYMENT OF CHILD—LIABILITY.

It is the duty of every mine owner who operates or retains supervision over a mine that is being operated by an agent or contractor, to see to it that no child under sixteen years of age is employed in the mine. This is a duty fixed by statute and when there is a failure to perform the duty, and injury thereby occurs, a cause of action is completed.

Brilliant Coal Co. v. Sparks, —— Ala. App. ——, 81 Southern 185, p. 187.

EFFECT ON CONTRIBUTORY NEGLIGENCE.

DANGERS INHERENT TO EMPLOYMENT.

A mine operator who violated the statute by failing to guard dangerous cog wheels can not allege contributory negligence on the part of an injured miner; nor can he assert as a defense that the dangers or hazards inherent or apparent to the employment in which the miner was engaged contributed to his injury.

Vandalia Coal Co. v. Moore, —— Ind. App. ——, 121 Northeastern 685, p. 687.

KNOWLEDGE OF DANGER.

A workman employed to make repairs in a gasoline tank had entered the tank previous to the time of the accident using without accident or injury an ordinary unguarded electric lamp. The employee knew some gasoline fumes remained in the tank, but suffered no injury or inconvenience because of this. Later in the day while working in the tank the electric lamp was accidentally broken causing an explosion that resulted in the death of the employee. The mere fact that the deceased employee entered the tank knowing that it contained an explosive gas would not of itself constitute contributory negligence; and the findings failed to show conclusively that the employee was guilty of contributory negligence in handling the electric lamp in the manner he did at the time he was injured.

Standard Oil Co. v. Allen, —— Ind. App. ——, 121 Northeastern 329, p. 334.

DEFENSE AVAILABLE.

In an action brought under the statute to recover damages for a wrongful death the defense of contributory negligence is available to a mine operator; but if an application for compensation under the Industrial Act is made, this defense is not available.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 60.

INJURY TO CHILD UNDER SIXTEEN.

In an action under the statute of Alabama for damages for an injury to a child under sixteen years of age, injured while employed and working in a coal mine, the defense of contributory negligence can not be invoked.

Brilliant Coal Co. v. Sparks, —— Ala. App. ——, 81 Southern 185, p. 187.

MINER'S DUTY TO SET PROPS—SELECTING INSUFFICIENT PROP.

The statute of Missouri requires a mine operator to furnish props for the use of his miners but it makes it the duty of a miner to select and set the props to protect his working place. If a miner selects and sets props that he knows are insufficient and not of the required strength and continues working with such known insufficient props, he is guilty of such contributory negligence as will defeat recovery for damages for injuries resulting from the use of such props.

Kube v. Northwestern Coal & Min. Co., —— Mo. App. ——, 209 Southwestern 614, p. 615.

EFFECT ON ASSUMPTION OF RISK.

DUTIES DISCHARGED BY MINE OPERATOR.

The evidence in an action for damages for the death of a miner showed that the mine operator had discharged all statutory and common law obligations owing to the miner, and the evidence showed that notwithstanding the discharge by the mine operator of all duties that the character of the work was such that the danger remained. Under such circumstances the deceased miner assumed the risk and the mine operator could not be held liable under a charge of negligence.

Snapp v. Steinbaugh, —— Ind. ——, 121 Northeastern 81.
See Snapp v. Steinbaugh, —— Ind. ——, 119 Northeastern 485.
Woolley Coal Co. v. Tevault, —— Ind. ——, 118 Northeastern 921.

INJURY TO CHILD UNDER SIXTEEN.

In an action under the statute of Alabama for damages for an injury to a child under sixteen years of age, injured while employed and working in a coal mine, the defense of assumption of risk can not be invoked.

Brilliant Coal Co. v. Sparks, —— Ala. App. ——, 81 Southern 185, p. 187.

DEFENSE ABROGATED.

A mine operator who violated the statute in failing to guard cog wheels can not allege in an action by a miner for damages for injuries caused by such unguarded cog wheels that the miner assumed the risk, nor can he defend on the ground that the miner assumed the dangers or hazards inherent or apparent to the employment in which he was engaged.

Vandalia Coal Co. v. Moore, —— Ind. App. ——, 121 Northeastern 685, p. 687.

A complaint in an action by a miner against a mine operator for damages for injuries, alleged that the mine operated had elected not to accept the provisions of the Illinois Workmen's Compensation Act. A coal-mine operator that has elected not to accept the provisions of that act waives his right to interpose the common law defense of assumed risk.

New Staunton Coal Co. v. Fromm, —— Ill. ——, 121 Northeastern 594, p. 596.

The Bituminous Mine Act of 1911 (P. L. 756) requires all shafting and machinery of every description to be properly guarded or properly fenced off by suitable railing. Under this statute in an action for the death of a miner caused by the failure of the mine operator to guard and fence off certain machinery as required by the statute the defense of assumption of risk is not open to the mine operator.

Carley v. Dexcar Coal Min. Co., —— Pa. ——, 105 Atlantic 651, p. 653.

DEFENSE AVAILABLE.

In an action brought under the statute to recover damages for a wrongful death the defense of assumption of risk is available to a mine operator, but if an application for compensation under the Industrial Act is made this defense is not available.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 60.

WRONGFUL DEATH.

PROOF—CIRCUMSTANTIAL EVIDENCE.

Where an accident occurs resulting in the death of an employee and there is no direct proof as to how the accident occurred, the manner of its occurrence may be shown by circumstantial evidence from which a jury may infer the manner and cause of the accident; but the inference must be a reasonable although not a necessarily resulting fact. A plaintiff in such an action is not required to prove his case beyond a doubt, but he is only required to make it appear to be more probable that the injury came in whole or in part from the defendant's negligence than from any other cause.

Silurian Oil Co. v. Morrell, —— Okla. ——, 176 Pacific 964, p. 967.
See Cash v. Kansas Oil Refining Co., —— Kans. ——, 176 Pacific 980.

PRESUMPTION AGAINST VOLUNTARILY INCURRING DANGER.

Where there are no eyewitnesses, the love of life speaks as a silent witness against the assumption of risk, against contributory negligence, and against suicide. The presumption against voluntarily incurring danger is of itself some evidence of lack of knowledge of a latent defect.

Silurian Oil Co. v. Morrell, —— Okla. ——, 176 Pacific 964, p. 967.
See Cash v. Kansas Oil Refining Co., —— Kans. ——, 176 Pacific 980.

CHILD DROWNED IN RESERVOIR—APPEAL—MOTION FOR A NEW TRIAL.

An action was brought by a parent against a mining and smelting company for damages for the wrongful death by drowning of his child, nine years of age, in a reservoir maintained by the mining and smelting company for the purpose of fire protection to its milling plant and reduction works. Recovery was sought on the theory that the reservoir was an "attractive nuisance" and was not safeguarded as required by the statute to secure persons and animals from danger arising from mining and other excavations. A verdict was returned for the defendant, the mining and smelting company. The plaintiff, without moving for a new trial, appealed directly from the judgment to the supreme court. Under the procedure all alleged errors must be presented to the trial court by the way of a motion

for a new trial, and errors can not be presented on appeal without such a motion.

Gill v. Goldfield Consol. Mines Co., —— Nevada ——, 176 Pacific 784, p. 785.

THEORY OF RECOVERY—DAMAGES.

The wrong giving a right of action for the death of a miner under the Arizona Employers' Liability Law is attributable not to any fault or negligence of the employer, but to the risks and hazards inherent in the occupation and which are unavoidable by the employees therein; and the "damages" recoverable include only such actual loss to the employee as he has sustained which flows proximately from the accident.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 32.

PERSONS ENTITLED TO DAMAGES—LOSS SUSTAINED.

An employer is liable under the statute of Arizona for the death of an employee to the personal representative for the benefit of the surviving widow and children; and if none, then to the employee's parents or next of kin; and if none, then to the personal representative for the benefit of the estate of the deceased. But no one authorized to prosecute an action can recover damages in an amount greater than the actual loss sustained by the employee.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 32.

EMPLOYERS' LIABILITY ACT.

OBJECT OF LAW.

The Employer's Liability Law is designed to give a right of action to an employee injured by accidents occurring from risks and hazards inherent in the occupation and without regard to the negligence of the employer.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 31.
See Inspiration Consol. Copper Co. v. Mendez, 19 Ariz. ——, 166 Pacific 278, 1183.

CONSTITUTIONALITY—LIABILITY FOR INJURIES.

The Employers' Liability Law of Arizona is not invalid because it attempts to deprive a mining company of its property without due process of law, nor because it denies the equal protection of the law by subjecting the company to unlimited liability for damages for personal injuries suffered by its employees without any fault or negligence on its part.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 840.

ACTION UNDER EMPLOYERS' LIABILITY LAW—IMMATERIAL AVERMENTS.

A complaint by a miner for damages for injuries expressly alleged that the action was under the Employers' Liability Law, and therefore the plaintiff is limited to a recovery under that law. Any allegations charging carelessness or negligence or other words used in setting forth negligence as a cause of action have no place in a complaint under the Employers' Liability Law and must be regarded as immaterial surplusage that need not be proved and may be ignored, if the facts stated otherwise are sufficient to constitute a cause of action under the Employers' Liability Law. A proper remedy in such a case is by motion to strike out or to treat such immaterial matter as surplusage.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 842.

PLEADING—INJURY RECEIVED IN SCOPE OF EMPLOYMENT.

A complaint by a miner for damages for injuries under the Arizona Employers' Liability Law alleged in substance that the plaintiff while assisting other employees to replace a fettle car on a track believed from a warning given by another employee that the car was overturning and falling upon him, and that to escape from the falling car he jumped back and fell, striking an open slag spout, thereby receiving the injuries for which he sued. The complaint did not allege that as a fact the fettling car was overturning or that it did overturn, but, the plaintiff was led to believe from the warning given that it was overturning, and that acting on such appearances and his belief from the warning he received the injuries. This is sufficient to show that the injury was occasioned by an accident arising out of and in the course of plaintiff's labor, service, or employment and due to a condition or conditions of such occupation or employment.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 841.

PLEADING—ALLEGATIONS AS TO NEGLIGENCE—PRACTICE.

A complaint by an injured employee for damages under the Employers' Liability Act of Arizona which also alleges facts constituting negligence is open to attack by a motion to strike out all the allegations of negligence as immaterial. Such a complaint is also subject to attack upon the grounds of duplicity, or to require the plaintiff to declare his purpose and elect whether he will pursue the remedy given by the Employers' Liability Law or the common law for negligence.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 31.

NEGLIGENCE—NO ELEMENT IN RECOVERY.

The Employers' Liability Law of Arizona takes no cognizance of negligence as an element in the right of action given, and the presence in or absence of negligence from the accident relied upon for recovery under the statute adds nothing to or takes nothing from the rights of the parties except that the negligence of the plaintiff may if pleaded be a partial or a complete defense.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 31.

NEGLIGENCE IMMATERIAL.

In actions under the Employers' Liability Law of Arizona the question as to whether the defendant was guilty of negligence which proximately caused the accident and resulting injuries to the plaintiff is wholly beyond the questions involved and immaterial to the inquiry. The cause of action and the right of recovery existed without regard to negligence on the part of the mine operator.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 31.

NEGLIGENCE—EXPLOSION—ACCIDENT—PROXIMATE CAUSE.

The Standard Oil Company was sued for damages for the death of an employee while in the act of repairing a gasoline tank. The death was caused by the breaking of an electric light bulb, which ignited the gasoline fumes and thereby caused the explosion resulting in the death complained of. The complaint charged that the oil company was negligent in not removing the fumes of the gasoline before directing the employee to enter the tank to make the repairs. The proof and the findings showed that the breaking of the electric lamp was accidental; but this could not make the resulting death a pure accident, and the explosion of the gasoline fumes following the breaking of the lamp was the proximate cause of the death, and this, as alleged, was due to the negligence of the oil company and was sufficient to make the oil company liable under the Indiana Employers' Liability Act.

Standard Oil Co. v. Allen, —— Ind. App. ——, 121 Northeastern 329, p. 333.

HAZARDOUS EMPLOYMENT—INJURY—PLEADING.

An injured miner suing to recover under the Employers' Liability Law of Arizona is required to allege in his complaint and to prove by the evidence that he was employed by the defendant in an occupation declared hazardous and while engaged in the performance of the duties required of him was injured, and the injury was caused by an accident due to a condition or conditions of such employment and was not caused by his negligence.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 840.

RISKS INHERENT IN OCCUPATION—PLEADING.

In an action under the Employers' Liability Law of Arizona for damages for injuries to a miner it was sufficient where the surroundings in which the plaintiff was performing his duties were described in the complaint with sufficient fullness to show that the risks and hazards assumed by the employee were great and inherent in the occupation and unavoidable by the workman. If there was any deficiency in this respect in the complaint, it was cured by an answer in which was described in detail all the appliances used and the manner of their use, expressly admitting that the occupation of the plaintiff was a hazardous one and required on the part of the employees great care.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 840.

NEGLIGENCE OF PERSON HAVING SUPERINTENDENCE—QUESTION OF FACT.

A mucker, working under the superintendence of a person having charge of a heading and of the miners working therein, was injured by a fall of rock. Under the evidence the jury might infer that the mucker suffered his injury by reason of the negligence of the bank boss while in the discharge of the superintendence, who was chargeable with the knowledge and nature of the danger from the loose rock and of the probable consequences of permitting it to remain in the dangerous condition and in the negligence of his superintendent negligently allowing the muckers to continue at work thereunder or in dangerous proximity thereto.

Republic Iron & Steel Co. v. Harris, —— Ala. ——, 80 Southern 426, p. 428.

ELECTION OF REMEDIES.

An injured miner suing for damages for the injuries alleged in his complaint that the action was brought under the Employers' Liability Law. By such election of remedy the plaintiff was precluded from a recovery other than that permissible under the Employers' Liability Law; and the sufficiency of his complaint to state facts constituting the cause of action given by that statute must be tested with reference to the requirements of the statute and the proof must support the complaint both as to the facts authorizing a recovery and as to the amount of damages recoverable.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 840.

INSTRUCTIONS—RECOVERY FOR NEGLIGENCE OR UNDER EMPLOYERS' LIABILITY LAW.

In an action by a miner for damages for injuries the court instructed the jury to the effect that the plaintiff claims damages for injuries

"by being carelessly and negligently thrown from a ladder" in the defendant's mine. Immediately following this the court instructed the jury that the action was brought under the Employers' Liability Law of Arizona and also instructed to the effect that an employer in mining is liable for the personal injury of an employee by an accident arising out of and in the course of such labor, service, and employment and due to a condition or conditions of such occupation or employment. The court also instructed that if the plaintiff received the injury as alleged and the jury found that such injury was not caused by the negligence of the defendant, but was the result of the plaintiff's own negligence, then the verdict should be for the defendant. These instructions are conflicting as regards the element of negligence, and the jury were required to assume that the burden was on the defendant to repel the presumption of its negligence as a cause concurring with the condition or conditions of the hazardous occupation of the plaintiff in the service of the defendant in order to recover. In an action under the Employers' Liability Law the negligence of the defendant is an immaterial matter in the controversy, and neither the plaintiff nor the defendant is called upon to make any proof in reference thereto, and any instruction as to the burden of proving or disproving negligence of the defendant would be misleading.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 31.

EMPLOYER—LIABILITY FOR LOSS TO EMPLOYEE—PAYMENT OF DAMAGES—MEANING.

The liability for damages under the Employers' Liability Law of Arizona has reference to and means that the employer becomes obligated to pay to the employee injured in an accident while engaged in an occupation declared hazardous, occurring without fault of the employer, all loss to the employee which is actually caused by the accident and the amount of which is ascertainable. But the idea of speculative, exemplary, and punitive damages are excluded from the meaning intended to be conveyed by the language of the statute.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 277 Pacific 29, p. 33.

CONTRIBUTORY NEGLIGENCE—DEFENSE—PLEADING.

An answer to a complaint by a miner for damages for injuries under the Employers' Liability Law of Arizona was not relied upon as stating facts sufficient to set forth contributory negligence as a defense, but the facts were stated as being sufficient to constitute negligence on the part of the plaintiff as the sole efficient and approximate cause of his injuries and therefore a complete defense to the action. Under such an answer the defendant was in no position to

raise the question of the validity of the proviso found in paragraph 3159 of the Arizona Employers' Liability Law (Civil Code 1913). The defendant by such answer did not rely upon the proviso or upon any right of defense which conflicts with or is modified by the proviso.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 842.

EFFECT ON CONTRIBUTORY NEGLIGENCE—PARTIAL AND COMPLETE DEFENSE.

Whether an employee's negligence becomes an element in actions based upon the Employers' Liability Law of Arizona depends upon whether the defendant sets up negligence on the part of the plaintiff as contributing to the plaintiff's injuries as a partial defense, or the negligence of the plaintiff as the sole, proximate, efficient cause of the injury.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 31.

CONTRIBUTORY NEGLIGENCE—PARTIAL DEFENSE.

An employee working in a smelter was injured in stepping back from a fettling car that he believed was toppling over upon him and stepped into an uncovered hole in the floor. The injuries might be partially attributable to his lack of care in failing to observe and avoid the hole and it might be said that the plaintiff's negligence concurred with the inherent risks and hazards of the employment in causing the injuries complained of. But this does not constitute negligence on the part of the plaintiff such as will defeat a recovery, but constitutes contributory negligence only such as within the contemplation of the proviso in paragraph 3159 of the Employers' Liability Law of Arizona (Civil Code 1913). This proviso is only a modification of the common law rule and is constitutionally valid. The right to interpose contributory negligence is not denied by statute, but is modified, and as modified is fully recognized as a just, though partial, defense.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 842.

PROOF OF LOSS—QUESTION OF FACT.

In an action by a miner for damages for injuries under the Arizona Employers' Liability Law the plaintiff must prove by a preponderence of the evidence the actual loss he sustained proximately caused by the alleged accident. Whether he suffered any loss and if any what loss he sustained are questions for the jury's determination from a consideration of all the evidence.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 843.

INDUSTRIAL COMMISSIONS.

CONSTITUTIONALITY AND CONSTRUCTION.

The constitution of Utah provides that the right of action to recover damages for a wrongful death shall never be abrogated and the amount recoverable shall not be limited. The constitution refers to and guarantees the statutory remedy for wrongful death. The legislature by the Industrial Commissions Act enlarged the right to compensation and it had the right to determine and to direct the persons who shall enjoy the fruits of the increased or enlarged remedy. An award in a case based entirely upon the enlarged remedy given by the Industrial Act is binding upon all persons. No rights guaranteed by the constitution are abridged or waived and no limitation is imposed contrary to the constitution, since such an award is entirely outside and beyond the right which is protected by the constitution. True, an award may be made in a case where the death was in fact caused by the wrongful act or negligence of the employer, but an applicant under the Industrial Act may ignore that fact and base the application on the provisions of the act alone.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 60.

PROCEDURE—RULES OF EVIDENCE—HEARSAY.

The Industrial Commissions Act of Utah provides that the commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure other than as provided. For the purpose of determining questions of fact arising under the Industrial Act the commission in order to arrive at the truth may pursue any course or method which to it seems best calculated to arrive at the truth so long as it does not depart from the provisions of the act; and it may thus have recourse to hearsay evidence if such evidence may lead to some technical evidence which sheds light on the ultimate question to be found and determined. But while the commission may have recourse to hearsay evidence to assist it to arrive at the real facts its finding when made must be based on some substantial legal and competent evidence. A finding based entirely on hearsay or other incompetent evidence is not supported by substantial evidence and can not be permitted to stand when seasonably and properly assailed.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 63.

ELECTION BETWEEN COMPENSATION AND DAMAGES—RIGHTS OF MINORS.

The Industrial Commissions Act of Utah provides for an election by heirs between compensation for death under the act, or damages

in an action at law. The right of action is given regardless of whether the heirs are minors or adults. The waiver provided for in the Industrial Act is not binding on an heir who is not sui juris. Such an heir is incapable of making an election, and his acts, whatever they may be, can not constitute an election and a waiver that binds him.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 60.

DEATH ARISING IN THE COURSE OF EMPLOYMENT—COMPENSATION.

Under the Industrial Commissions Act of Utah an accident causing death need not be caused through the wrongful act or negligence of a mine operator or through the wrongful act or negligence of one for whom he is responsible. It is sufficient to entitle a claimant under the act to compensation if the death resulted from an injury that arose in the course of the employment of the deceased, and his acts or negligence do not constitute a bar to the action. The action is barred only in case it is shown that the death was caused through the wilful or criminal act of the deceased.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 60.

CAUSE OF DEATH—RIGHT TO TRIAL BY JURY.

The Industrial Commissions Act of Utah gives an employee the right of trial by a jury in case the commission denies his claim for compensation upon the ground "that the accident did not arise out of and in the course of the employment." Inasmuch as the employee is entitled to a jury trial in case his claim is denied upon the ground that the accident causing the injury did not arise out of and in the course of his employment, the employer must be given the same right as otherwise he would be denied the equal protection of the law.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 62.

See Industrial Commission v. Evans, —— Utah ——, 174 Pacific 825.

MINOR HEIRS—DETERMINATION OF CAUSE OF DEATH.

Where a claim is made for compensation for the death of an employee against an employer which was caused by an injury arising in the course of the employment, and where the rights of minor heirs are to be determined, the question whether or not the death was caused through the wrongful act or negligence of the employer or of some one for whose acts or negligence he was responsible, the cause of death must be legally and judicially determined, and if it be determined that the death was caused by the wrongful act or negligence of the employer then the constitutional provision pro-

hibiting any abrogation of the right of action to recover damages for wrongful death at once becomes effective and the rights of the minor heirs are protected. But if the death was accidental or without any wrong or negligence of the employer then the constitutional rights of the minor heirs are not involved or affected.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 61.

WIDOW AND MINOR HEIRS—WAIVER.

The rights of minor heirs under the Industrial Commissions Act of Utah can not be determined by the mother's application for compensation under the act. Neither can she, by making such an application, waive the rights of the minor heirs; nor will she be deemed to have waived their rights unless such waiver is made in a judicial proceedings and in a manner known to the law affecting the rights of minors.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, pp. 61, 62.

APPLICATION TO MINOR HEIRS—INVALID IN PART.

The Industrial Commissions Act of Utah in so far as it provides compensation in cases where the death was caused by the wrongful act or negligence of the employer and where it assumes to limit the damages in such cases and attempts to impose a waiver on the rights of minor heirs, or the doctrine of election, is invalid, but this invalid part does not affect the other provisions of the act nor does it affect the provisions of the act in cases where the death was purely accidental.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 62.

AWARD TO MINORS—WAIVER OF CONSTITUTIONAL RIGHTS.

The Industrial Commission can not legally make an award which is binding on minor heirs unless they have waived their constitutional rights in conformity with law, and the commission should not make an award in such cases until the rights of the heirs have been judicially determined and their waiver has been obtained in a proper judicial proceeding. If that has not been done, no employer could safely pay an award made by the commission until the general statute of limitations had fully run. But where it is determined or where it is admitted that the death was not due to the wrongful act or negligence of the mine operator, but was entirely accidental, then the constitutional rights of the minors are not involved or affected and no waiver is essential.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 60.

WAIVER OF ACTION FOR DAMAGES.

The statute of Utah provides that the right of action to recover damages for wrongful death shall never be abrogated. The Industrial Commissions Act provides that heirs may elect to sue in actions at law or recover under the Industrial Commissions Act. The power thus given heirs to elect to sue for damages or receive compensation under the act is binding on adult heirs after an election has been made, and an award made by the commission pursuant to such election is not without jurisdiction and is not void. But in so far as the Industrial Commissions Act of Utah attempts to limit the amount of damages in case of death which arises in the course of the employment of the deceased and which was caused by the wrongful act or negligence of the employer, and in so far as the act attempts to enforce a waiver against minor children and in limiting the amount of recovery as against them in the face of the constitutional provision, it is invalid and not enforceable against such minor children.

Garfield Smelting Co. v. Industrial Commission, —— Utah ——, 178 Pacific 57, p. 60.

WORKMEN'S COMPENSATION ACT.

CONSTITUTIONALITY OF TEXAS ACT.

The Workmen's Compensation Act of Texas is not unconstitutional because it is compulsory as to an employee and takes from him his common-law remedy at the option of his employer.

Batson-Milholm Co. v. Faulk, —— Tex. Civ. App. ——, 209 Southwestern 837, p. 839.

CONSTITUTIONALITY OF STATUTE—REGULATION OF USE OF EXPLOSIVES.

The statute of Kansas (General Statutes 1915, section 6326) makes it unlawful to use dynamite or other detonating explosives in the preparation of blasts or shots in any coal mine in the State, except under rules and regulations agreed upon between the mine operators and the miners and approved by the State mine inspector and that the rules regulating the use shall be in writing. This act is not unconstitutional because it gives to mine operators and miners the power to make rules and regulations for the use of dynamite in coal mines if such rules and regulations are approved by the State mine inspector.

Richards v. Fleming Coal Co., —— Kans. ——, 179 Pacific 380, p. 381.

LEGISLATIVE POWER—DEPRIVING WORKMEN OF RIGHT TO SUE.

The legislature had the undoubted power to take away entirely the right of an injured employee to sue at common law, and it was clothed with equal authority to take it away upon such conditions

as it saw fit to employ and to require the employer not only to become a subscriber within the specified meaning of that term but also to give the prescribed notice before he could shut an employee who otherwise possessed the right to sue off from the right to hale him into court in a suit for damages.

Batson-Milholm Co. v. Faulk, —— Tex. Civ. App. ——, 209 Southwestern 837, p. 841.

PURPOSE AND CONSTRUCTION—ACCEPTANCE BY EMPLOYERS.

The Texas Workmen's Compensation Act is a public one with incidental benefits to the wageworkers as a class in that it provides for compensation for all injuries received by them in the course of their employment without regard to the fault of the person causing the injury. The act provides for payment of compensation out of a fund which is created by contribution from employers in the way of premiums paid for policies of insurance. In order to afford relief to injured employees and to their dependents, it is necessary that these contributions should be readily and speedily made, and this result can be better obtained by voluntary action on the part of employers rather than involuntary obedience to a direct command. In order to induce the employers to accept the provisions of the act and to make the acceptance voluntary, he was deprived of all common-law defenses if he refused to accept its provisions and stripped of his common-law rights, thereby bringing to pass the same result that the act might have compelled by direct command.

Batson-Milholm Co. v. Faulk, —— Tex. Civ. App. ——, 209 Southwestern 837, p. 841.

ADMINISTRATION—DISCRETION BY COMPENSATION BOARD.

It was the purpose of the legislature of Pennsylvania to vest those who administered the Workmen's Compensation law with broad discretion in the ascertainment of facts.

Jensen v. Atlantic Refining Co., —— Pa. ——, 105 Atlantic 545, p. 546.

ELECTIVE FEATURE—PRESUMPTION—PLEADING—LIMITATION.

A complaint in an action by an injured miner for damages contained no allegation that the parties had elected not to operate under the Workmen's Compensation Act. The Workmen's Compensation Act expressly provides that every employer included shall be conclusively presumed to be subject to the act. After two years or more had elapsed from the date of the injury the plaintiff amended his complaint by inserting an allegation to the effect that before the injury the defendant had elected not to operate under the Workmen's Compensation Act. The amendment changed the nature of the

action and made it subject to the two-year statute of limitations and barred a recovery.

Davis v. St. Paul Coal Co., —— Ill. ——, 121 Northeastern 181.

FAILURE OF EMPLOYER TO NOTIFY EMPLOYEES.

The Workmen's Compensation Act of Texas (Acts 1913) requires employers who become subscribers to give notice to all employees that he has arranged with the insurance association for payment of compensation for injuries. The failure of an employer to give the required notice relieves him of the statutory protection and an injured employee may sue as for common-law negligence.

Batson-Milholm Co. v. Faulk, —— Tex. Civ. App. ——, 209 Southwestern 837, p. 839.

See Farmers Petroleum Co. v. Shelton, —— Tex. Civ. App. ——, 202 Southwestern 194.

NOTICE BY EMPLOYER—RIGHT OF EMPLOYEE TO SUE.

The notice to be given by the employer as provided by the Texas Workmen's Compensation Act is not a condition precedent before bringing an employee within the terms of the act. The giving of the notice is not necessary to starting the statute in operation as between employer and employee if the employer has otherwise availed himself of the provisions of the statute; but the performance by him of the affirmative act of becoming a subscriber by payment of the specified premium, required of the employer, without any act on the part of the employee, puts the statute into effect and covers the employee, except that the one who before had that right is not thereby deprived of his still subsisting privilege of suing for damages unless and until the notice required is also met by the employer.

Batson-Milholm Co. v. Faulk, —— Tex. Civ. App. ——, 209 Southwestern 837, p. 841.

APPLICATION OF STATUTE TO SHOT FIRERS.

A shot firer in a strip-pit coal mine comes within the provisions of the statute of Kansas that makes it unlawful for any person engaged in coal mining to use dynamite in the preparation of any blast or shot in a coal mine within the State except on conditions prescribed.

Richards v. Fleming Coal Co., —— Kans. ——, 179 Pacific 380, p. 382.

PROOF OF INJURY OR DEATH—CIRCUMSTANTIAL EVIDENCE.

The fact of an injury or death and that such injury or death occurred in connection with the employment within the meaning of the Illinois Workmen's Compensation Act may be shown by circumstantial evidence.

Smith-Lohr Coal Min. Co. v. Industrial Commission, —— Ill. ——, 121 Northeastern 231, p. 232.

RECOVERY FOR INJURIES.

A shot firer employed in a strip-pit coal mine and using dynamite in the preparation of a blast in violation of the statute of Kansas can not recover damages for injuries sustained by him in the explosion of dynamite with which he was working where it was necessary for him to prove its illegality as a part of his cause.

Richards v. Fleming Coal Co., —— Kans. ——, 179 Pacific 380, p. 382.

COMPENSATION PERIOD—INSTANTANEOUS DEATH.

Under the Workmen's Compensation Act of Pennsylvania (act of June 2, 1915, arts. 3 and 4), where an accident resulted in the instantaneous death of a miner, the period of compensation did not begin to run until 14 days after his death.

Rakie v. Jefferson & Clearfield Coal & Iron Co., —— Pa. ——, 105 Atlantic 638, p. 639.

CONTINUOUS EMPLOYMENT—AVERAGE EARNINGS.

Average daily earnings may be determined by adding together the actual earnings received during the period and after making the deductions required by the act, the remainder to be divided by the number of days in the period, less Sundays, legal holidays, and half holidays, and days the employee was prevented from working by sickness or through no fault of his own, in order to find the average wage for a working day.

Jensen v. Atlantic Refining Co., —— Pa. ——, 105 Atlantic 545, p. 546.

Rakie v. Jefferson & Clearfield Coal & Iron Co., —— Pa. ——, 105 Atlantic 638, p. 639.

WORKING DAY—DEFINED BY COMPENSATION BOARD.

The Workmen's Compensation Act of Pennsylvania did not define a "working day." The compensation board under the authority conferred upon it provided that "working days" shall mean the total number of days in a period of employment covered according to the calendar, less: (a) Sundays, (b) legal holidays, (c) half holidays each week, (d) days the employee was prevented from working through no fault of his own. The number of days that an employee was sick within the employment period may be deducted as included within the phrase "through no fault of his own."

Jensen v. Atlantic Refining Co., —— Pa. ——, 105 Atlantic 545, p. 546.

Rakie v. Jefferson & Clearfield Coal & Iron Co., —— Pa. ——, 105 Atlantic 638, p. 639.

WORKING DAY—MINE CLOSED BY LABOR DISPUTE.

In determining the number of working days of a miner for the purpose of computing his average earnings, the number of days that the mine was closed, due to a labor dispute, must be deducted from the

entire number of calendar days, as the miner's idleness during these days was not due to any fault of his own.

Rakie v. Jefferson & Clearfield Coal & Iron Co., —— Pa. ——, 105 Atlantic 638, p. 639.

ALLOWANCE FOR HOSPITAL CHARGES—MAXIMUM AMOUNT.

The Workmen's Compensation Act of Illinois provides that compensation for an injury not resulting in death shall include a sum not exceeding $200 for medical, surgical, and hospital services, but for a period not longer than eight weeks. A payment of a greater amount and for a longer time must be regarded as having been made gratuitously or in the expectation of saving the life of the employee and reducing the total compensation for which the employer would eventually be liable, but otherwise the amount can not be allowed as a deduction in the absence of an agreement.

Crescent Coal Co. v. Industrial Commission, —— Ill. ——, 121 Northeastern 171.

DISTRIBUTION OF AWARD—AUTHORITY TO MAKE.

The Workmen's Compensation Act of Illinois provides that in case of voluntary payment by the employer the compensation may be paid either to the personal representative of the deceased or to his beneficiaries, and distributions by the personal representative, if paid to him, shall be on the order of the court appointing him. This statute applies only in cases where the employer voluntarily pays the compensation to the personal representative, but if there is a hearing and compensation is fixed by the Industrial Commission it must determine who is entitled to the compensation before it can determine the amount, and in such case the probate court has no jurisdiction to determine who is entitled to an award made by the Industrial Commission.

Smith-Lohr Coal Min. Co. v. Industrial Commission, —— Ill. ——, 121 Northeastern 231, p. 234.

POWER OF COURT TO REVIEW EVIDENCE.

Where the Industrial Commission has made an award for the death of a miner under the Illinois Workmen's Compensation Act (Hurds Revised Stats. 1917, chap. 48), a court in reviewing the evidence is not authorized to pass upon its weight, but can go no further than to see if there is any evidence tending to show that the death arose out of and in the course of the deceased miner's employment.

Smith-Lohr Coal Min. Co. v. Industrial Commission, —— Ill. ——, 121 Northeastern 231, p. 232.

See Big Muddy Coal Co. v. Industrial Commission, 279 Ill. 235, 116 Northeastern 662.

MINES AND MINING OPERATIONS.

ACTIONS—PLEADING AND PROOF OF NEGLIGENCE.

PROOF INSUFFICIENT—COURT DIRECTING VERDICT.

In an action by a miner for damages for injuries received in the mining operations due to the alleged negligence of the mine operator the court may direct a verdict for the defendant where the evidence of negligence on which recovery was sought was so indefinite and uncertain as not to warrant a verdict thereon.

Barna v. Gleason Coal & Coke Co., —— W. Va. ——, 98 Southeastern 158, p. 161.

AVERMENT OF FACTS SHOWING DUTY.

It is not sufficient in an action by a miner against a mine operator for damages for injuries to allege that it was the duty of the mine operator to do certain things, but the pleading must allege facts from which the law will raise the duty on the part of the mine operator.

New Staunton Coal Co. v. Fromm, —— Ill. ——, 121 Northeastern 594, p. 595.

GENERAL ALLEGATIONS OF NEGLIGENCE—NATURAL CAUSES.

In an action for the death of a miner the negligence of the operator as alleged consisted in laying the mine tracks so close together that loaded cars would not pass empty cars on a sidetrack without interference, and that the miner was killed by reason of a loaded car striking an empty car and driving it against him. The specific thing which caused the cars to interfere was not alleged and was probably not known to the complainant; but it was not the essential thing so long as the cause was natural, usual, and ordinary and which could and should have been obviated in laying the tracks.

Johnson v. Silver King Consol. Min. Co., —— Utah ——, 179 Pacific 61, p. 65.

ALLEGATIONS OF NEGLIGENCE—PROBABLE ACTS INCLUDED.

In an action for damages for the death of a miner the complaint averred negligence on the part of the mine operator in laying and maintaining the tracks in a tunnel so close together that loaded cars on the main track would not pass empty cars on the sidetrack without coming in collision. It also averred that the miner was killed as a result of such negligence by reason of a loaded car striking an empty car and driving it against the miner. This allegation of negligence

was sufficiently broad to include any collision that might result either from the fact that the tracks were so close together that the cars would without other cause collide, or that they might collide by the tilting of the track or by a rock falling on the track and causing a car to tilt, or by the moving of the main track under the weight of the loaded cars, or by the speading of the rails, and if any one or all of these causes were as likely to have caused the cars to interfere in passing as that the interference was caused by the tracks being laid too close together to permit cars to pass without interference, then the allegation of negligence included all these. In laying the tracks ordinary prudence required that the things enumerated be kept in mind, as these things were liable to occur at any time.

Johnson v. Silver King Consol. Min. Co., —— Utah ——, 179 Pacific 61, p. 64.

PLEADING AND PROOF—VARIANCE—PROOF INSUFFICIENT.

A complaint in a miner's action for damages for injuries alleged that the defendant operator was negligent in failing to clean up a fall and in negligently failing to furnish a helper to assist the plaintiff to clean up and remove a fall and by reason of which the plaintiff was injured, and that the defendant operator was negligent in failing to remove the débris or obstruction caused by the fall of earth or coal in his mine chamber. The plaintiff's own evidence on the trial of the case showed that the débris and obstruction was entirely removed before the plaintiff received the injury of which he complained, and that at the time he was injured his room was in a normal condition, and at that time he had the right to perform his work as he pleased, and at the time of the injury he was mining under the coal with a pick and the removal of the dirt from under it caused the coal to come down, resulting in the injury complained of. The allegations of negligence were not supported by the proof, and the failure to remove the débris or fall was not the proximate cause of the injury.

Haney v. Texas & Pacific Coal Co., —— Tex. Civ. App. ——, 207 Southwestern 375, p. 381.

AMENDMENT OF PLEADING—STATUTE OF LIMITATIONS.

Where an original declaration or complaint for damages for injuries to a miner caused by the alleged negligence of the mine operator states a cause of action, though imperfectly and defectively, subsequent amendments filed after the statute of limitations has run will not be barred by the statute if the amendments amount to no more than a restatement in a different or better form of the cause of action originally declared upon.

New Staunton Coal Co. v. Fromm, —— Ill. ——, 121 Northeastern 594, p. 596.

AMENDMENT OF PLEADING—STATUTE OF LIMITATIONS.

A complaint in a common-law action by a miner for damages on the ground of the alleged negligence of the operator for injuries contained no allegation that the defendant had elected to operate under the Workmen's Compensation Act of Illinois. The act provides that mine operators shall be conclusively presumed to be subject to the act unless the contrary is made to appear. After a demurrer was sustained to the complaint and after more than two years from the date of the accident the complainant amended his complaint by inserting an allegation to the effect that the defendant mine operator had elected not to accept the provisions of the Workmen's Compensation Act. This amendment changed the nature of the action and made it subject to the two-year statute of limitations.

Davis v. St. Paul Coal Co., —— Ill. ——, 121 Northeastern 181.

ELEMENTS OF NEGLIGENCE.

In an action by a miner against a mine operator for damages for injuries on the ground of negligence it is necessary to allege and prove: (1) The existence of a duty on the part of the mine operator to protect the miner from the injury of which he complains, (2) the failure of the mine operator to perform that duty, and (3) an injury to the miner resulting from such failure.

New Staunton Coal Co. v. Fromm, —— Ill. ——, 121 Northeastern 594, p. 595.

SUFFICIENCY OF EVIDENCE.

A motor helper on an underground ore train was injured while standing on the running board in the performance of his duties. He alleged negligence in operating the locomotive without a headlight and with a defective running board, and in traveling at a dangerous rate of speed, and in piling timbers so near the track that insufficient space was left for the locomotive to pass. The jury was warranted in finding that the place where the accident occurred was not a reasonably safe one, or that the mine operator was negligent in failing to furnish an adequate running board or an adequate headlight on the motor, or that its train was moving at an excessive rate of speed at the time of the accident, and that the situation of timber in close proximity to the track was an extraordinary risk unknown to the employee and a danger concealed from him and one that could have been known to the operator by the use of ordinary care.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 26.

EVIDENCE EQUALLY BALANCED.

In an action by a miner for damages for injuries caused by the alleged negligence of the mine operator it is not improper to leave

the matter with the jury where the evidence was equally consistent with the existence and the nonexistence of the negligence charged, as in such case the plaintiff has failed to establish the alleged negligence by a preponderance of the evidence.

Connors-Weyman Steel Co. v. Kilgore, —— Ala. ——, 80 Southern 454, p. 455.

OPINION EVIDENCE OF NONEXPERTS.

In an action by a miner for damages for injuries received in the course of the mining operations the opinion of the plaintiff to the effect that if he had been permitted to lay the track in the manner he desired he would not have received the injuries was not admissible in evidence. Nonexpert witnesses are not permitted to give an opinion on a matter where from the facts stated the jury is as competent as the witness to form an opinion.

Barna v. Gleason Coal & Coke Co., —— W. Va. ——, 98 Southeastern 158, p. 159.

PROOF INSUFFICIENT.

The evidence in an action for the death of a miner for the alleged negligence of the mine operator showed that the roof of the miner's working place was properly propped, and the mine boss inspected the place about two hours before the accident occurred and discovered no indications of danger, and there was no evidence to show any dangerous condition in the roof, and the evidence showed no indication of the presence of a loose rock or of danger from the roof falling. The evidence showed that the rock that did fall and kill the miner broke out and fell when the miner picked away the coal that supported the end extending into the working face. This evidence wholly failed to sustain the allegation of negligence on the part of the mine operator.

Snapp v. Steinbaugh, —— Ind. ——, 121 Northeastern 81.

ADMISSIONS IN PLEADING—EFFECT ON WEIGHT OF EVIDENCE.

In an action by a miner for damages for injuries he alleged in one paragraph of his complaint that the injury complained of was caused by the negligence of fellow servants; the other paragraph sought to recover damages on the ground of the negligence of the mine operator. The first paragraph of the complaint was dismissed and the cause tried on the second. The defendant, the mine operator, introduced in evidence the paragraph so dismissed as an admission on the part of the plaintiff that his injury was caused by the negligence of fellow servants, but the court trying the cause found for the plaintiff and that the injuries complained of were caused by the negligence of the mine operator. The court, on appeal, can not say that the admission in the pleading conclusively destroyed the plaintiff's cause of action

on the second paragraph but must conclude that there was substantial testimony to uphold the finding of the trial court.

Forlow v. Athletic Min. & Smelting Co., —— Mo. App. ——, 209 Southwestern 117, p. 120.

PROOF OF NEGLIGENCE—EXPERT TESTIMONY.

The true test of the admissibility of testimony as to the condition of entries in a mine, tracks, and mine cars is not whether the subject matter is common or uncommon, or whether many persons or few have some knowledge of the matter, but the question is whether the witnesses offered as experts have any peculiar knowledge or experience not common to the world which renders their opinion, based on such knowledge or experience, any aid to a court or jury in determining the questions at issue.

National Fuel Co. v. McNulty, —— Colo. ——, 177 Pacific 979, p. 981.

FAILURE OF PROOF—PEREMPTORY INSTRUCTION—PRESUMPTION.

The trial of an action for damages for the death of a miner proceeded on the merits and a peremptory instruction was given the jury to return a verdict for the defendant. On appeal, in the absence of a bill of exceptions containing the evidence, it will be presumed that such peremptory charge was given because of the failure of the evidence to support the complaint.

Black v. Sloss-Sheffield Steel & Iron Co., —— Ala. ——, 80 Southern 794.

ACCIDENT NO PRESUMPTION OF NEGLIGENCE.

It is a general rule that the happening of an accident carries with it no presumption of negligence on the part of the employer.

Johnson v. Silver King Consol. Min. Co., —— Utah ——, 179 Pacific 61, p. 64.

DEATH FROM INHALING NATURAL GAS—FAILURE TO WARN.

A minor 19 years of age, without experience in working on oil and gas wells, employed as a roustabout, was ordered to build a platform around the casing of a well where the gas was escaping beneath the floor of the rig for the purpose of holding earth that was to be thrown and packed around the casing. He proceeded with the work and later was found lying face downward on the floor of the rig dead. On the day before he had been twice overcome by gas but each time after being revived returned to his work. The natural gas contained carbon dioxide, or choke damp, and carbon monoxide, or fire damp, and the choke damp, by reason of its greater density, remains closer to the earth and produces instant death, while the fire damp produces death by a much slower process. The evidence was sufficient from which a jury might have reasonably inferred that the deceased while stooping down to measure the floor of the rig for the purpose of

ascertaining the dimensions of the platform which he was to construct beneath it came in contact with the strata of choke damp which caused his instant death. The evidence was also sufficient to justify the inference on the part of the jury that the operating company was negligent in failing to instruct and warn the deceased of the danger from inhaling the gas.

Silurian Oil Co. v. Morrell, —— Okla. ——, 176 Pacific 964, p. 966.
See Cash v. Kansas Oil Refining Co., —— Kans. ——, 176 Pacific 980.

OPERATION OF HOIST—INJURY—BURDEN OF PROOF.

In an action by a miner for injuries a complaint was sufficient, which averred that the defendant operated a mine and that the plaintiff and other miners were lowered through a shaft into the mine by means of a hoist operated with a steel cable attached to a large steel tub or cage; that while the plaintiff, with others, was being lowered into the mine by means of the hoisting machinery the agents and servants of the mine operator, who were in the exclusive control of the hoisting apparatus, so negligently conducted the operations that the tub or cage was caused to descend the shaft at an excessive and dangerous speed, and it was caused thereby to strike the bottom of the shaft with great force and violence, by reason of which the plaintiff was injured. These allegations were sufficient to cast upon the mine operator the burden of showing freedom from negligence under the maxim res ipsa loquitur.

Daugherty v. Neosho-Granby Min. Co., —— Mo. App. ——, 207 Southwestern 253, p. 254.

RELATION OF MASTER AND SERVANT.

RELATION AND LIABILITY—QUESTION OF FACT.

Whether or not the relation of master and servant exists is, under an issue of master and servant, a question of fact to be submitted to the jury.

Connors-Weyman Steel Co. v. Kilgore, —— Ala. ——, 80 Southern 454.

PROOF OF RELATION—BURDEN—PEREMPTORY INSTRUCTION.

In an action by a miner for damages for injuries caused by a fall from the roof of the mine, where there was some controversy as to whether the plaintiff's direct employer and the plaintiff were under the control and in the employ of the defendant, it was error for the court to give a peremptory instruction to the effect that the complainant was the defendant's servant without requiring the jury to accept and believe the plaintiff's evidence, although it was undisputed on this particular point.

Woodward Iron Co. v. Cooper, —— Ala. ——, 80 Southern 804, p. 805.

PROOF AND RIGHT OF RECOVERY.

Unless the relation of employer and employee exists at the time of an injury or the death of an employee there can be no recovery. But this relation may be proved by facts and circumstances, and the mode of payment of the wages of the employee is a circumstance in solving the question of whether the relation of master and servant exists, but it is not conclusive. So the furnishing of tools and appliances for work are circumstances that may be considered in determining whether the relation exists.

Standard Oil Co. v. Allen, —— Ind. App. ——, 121 Northeastern 329, p. 332.

BURDEN OF PROOF ON EMPLOYEE.

In an action by a miner for damages for injuries alleged to have been received in the course of his employment and as the employee of the mine operator, the burden of proof is on the complainant to show that he was an employee or a servant of the defendant mine operator, as alleged in his complaint.

Woodward Iron Co. v. Cooper, —— Ala. ——, 80 Southern 804, p. 805.

SCOPE OF EMPLOYMENT—CHANGE OF WORK.

A miner was employed and working in a mine as a lineman and while so engaged the mine foreman ordered and directed him to work as a general utility man and that as such he had performed every kind of service in the mine except shoveling. While acting as such utility man he was within the scope of his employment and the relation of master and servant was not suspended, and the mine operator was liable in damages for injuries received while the miner was so working.

Forlow v. Athletic Min. & Smelting Co., —— Mo. App. ——, 209 Southwestern 117, p. 120.

RELATION SUSPENDED—VOLUNTARY ABANDONMENT OF EMPLOYMENT.

A servant or employee who voluntarily and without necessity abandons the employment for which he was engaged and steps outside of the line of his duty suspends the relation of master and servant. A servant in order to hold the master liable must be engaged in the service of the master and not be acting for some purpose of his own, and if he during the employment goes without necessity to a place where in his line of service he should not be and is there injured he can not recover.

Forlow v. Athletic Min. & Smelting Co., —— Mo. App. ——, 209 Southwestern 117, p. 120.

NEGLIGENCE OF OPERATOR.

ACTIONABLE NEGLIGENCE.

A mine operator may be liable for negligence to a motor helper injured while standing on the footboard of a locomotive motor on the ground either for a failure to furnish a safe and adequate footboard or an adequate headlight on the motor, or that the train was run at an excessive speed on a sharp curve and that timbers were piled in such close proximity to the track as to constitute an extraordinary hazard.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 26.

PRESUMPTION AND PROOF.

As between an employer and an employee no presumption arises from the mere fact of injury unless the circumstances attending the injury were sufficient to establish negligence without any direct proof thereof.

Coosa Portland Cement Co. v. Crankfield, —— Ala. ——, 80 Southern 451, p. 453.

QUESTION OF FACT.

A miner was directed by the mine foreman to pass through a dark tunnel and while so passing through the tunnel he was struck by cars loaded with coal that were run without lights or signals. The question of the mine operator's negligence under such circumstances was one of fact to be determined by the jury in the miner's action for damages.

Ford v. Philadelphia & Reading Coal & Iron Co., —— Pa. ——, 105 Atlantic 885, p. 886.

ACCIDENT AS PROOF OF NEGLIGENCE.

Where machinery or instrumentalities producing an injury were under the management of a mine operator or his servants and the accident complained of was such that in the ordinary course of things would not have happened if those having the management used proper care, the accident itself affords reasonable evidence, in the absence of explanation by the mine operator, that the accident arose from want of care.

Daugherty v. Neosho-Granby Min. Co., —— Mo. App. ——, 207 Southwestern 253, p. 254.

UNUSUAL ACCIDENT—INJURY NOT ANTICIPATED.

Miners were attempting to unchoke a blast hole and after unsuccessful efforts with a pole they procured and used at the direction of the mine superintendent a drill in the process of unchoking the hole. While so engaged the powder exploded, filling the eyes of one miner

with smoke and dust and dirt, and in fleeing from the place of the explosion he ran over a high bank and was injured by the fall. According to some evidence, the use of a drill for such a purpose was common, and it was not regarded as dangerous, and that in the long experience of witnesses such an accident had never occurred. The mine operator would not be guilty of actionable negligence if the accident was of such an unusual character as not to be anticipated on the part of the mine operator in the exercise of ordinary care, and the plaintiff would not be entitled to recover as the proof would not make such conduct actionable negligence.

Sloss-Sheffield Steel & Iron Co. v. Thomas, —— Ala. ——, 80 Southern 69, p. 71.

PROOF AND PRESUMPTION—CIRCUMSTANTIAL EVIDENCE.

A plaintiff is not bound to prove more than enough to raise a fair presumption of negligence on the part of a defendant and of resulting injury to himself. When he has done this, he is entitled to recover unless the defendant produces evidence sufficient to overcome this presumption. If the facts proved make it probable that the defendant violated his duty, it is then for the jury to decide whether he did so or not; otherwise it would be a denial of the value of circumstantial evidence. However, the facts proved must be more consistent with the negligence of the defendant than with the absence of it, but they need not be inconsistent with any other hypothesis. Evidence of negligence need not be direct and positive, but may be circumstantial. Negligence is susceptible of proof by evidence of circumstances bearing more or less directly on the fact of negligence, and it is sufficient if it satisfies an unprejudiced mind.

Johnson v. Silver King Consol. Min. Co., —— Utah ——, 179 Pacific 61, p. 65.

PROOF—BREACH OF DUTY—VIOLATION OF STATUTE.

A tool sharpener while engaged in and about the drilling or construction of an oil well was killed by reason of an explosion of gas escaping from a well. In an action to recover damages it was alleged that the oil operator negligently and carelessly permitted large volumes of natural gas to escape from the well and from the earth surrounding it contrary to the laws of the statute to such an extent that the atmosphere around the well became impregnated and saturated with gas so as to be dangerous, and that the defendant failed to use proper care to prevent the existence of such condition, and that by reason of such negligence an explosion occurred. In an action to recover evidence of acts amounting to negligence may be shown, though such acts may also show a violation of a statute enacted for the benefit of the public generally and not for the class of persons to which the deceased employee belonged. The passage of the statute

did not affect the common-law duty owing by the oil well operator to the tool sharpener nor change the liability arising from a negligent breach thereof resulting in his death.

Slick Oil Co. v. Coffey, —— Okla. ——, 177 Pacific 915, p. 916.

COMMON-LAW REMEDY—BASIS.

The common-law remedy of an employee against his employer to recover damages for personal injuries received depends wholly on the failure of the employer in performing a duty he owes to the employee. The basis of all such actions is the employer's negligence.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 30.

COMBINATION OF CAUSES—UNCERTAINTY.

There can be no recovery under a charge of negligence where there are several causes that may have brought about injury for some of which the employer is liable and for some of which he is not, and it can not be assumed that the negligence of the employer was the real cause when there was no satisfactory foundation in the testimony for such a conclusion.

Johnson v. Silver King Consol. Min. Co., —— Utah ——, 179 Pacific 61, p. 64.

EXERCISE OF CARE—EMPLOYMENT OF CUSTOMARY METHODS AND APPLIANCES.

An employer can not as a matter of law be said to be exercising ordinary care merely because he uses methods and appliances customarily employed by others in the same character of work, nor to be without such care solely because he fails to adopt the latest and most improved devices known. Whether or not an employer under such circumstances exercised ordinary care was a question of fact to be left to a jury.

Batson-Milholm Co. v. Faulk, —— Tex. Civ. App. ——, 209 Southwestern 837, p. 843.

MINER'S WANT OF KNOWLEDGE OF DANGER—FAILURE TO WARN.

A miner was employed by a mine operator and put to work in a mine with which he was wholly unacquainted. He was directed to work as a miner on the sixth set of a stope that was timbered. The seventh set was above him and not timbered, but the timberman was working on the seventh set taking down material preparatory to timbering it, and lagging was over the sixth set to catch the falling material. No lights were in the stope except the ordinary carbide lamps used by the miners, and from the miner's position he could not see the roof from the seventh stope, where the fall occurred. The miner was directed to run the machine drill on the sixth set without

any suggestion or instruction as to the conditions surrounding him. While so at work the miner was directed to take his machine to the seventh set and deliver it to the timberman for the purpose of making tenants preparatory to setting timbers. As the miner handed the machine to the timberman the material fell from the face of the stope, producing the injuries complained of. The miner was not previously warned of the dangerous condition of the roof of the stope at the seventh set, although the timberman and the mucker boss both knew and appreciated the fact that there was danger of loose rock falling from the face of the stope. Under these facts the mine operator was negligent in not warning the miner of the existing danger.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 773.

FIRE FROM BURNING OIL—PROXIMATE CAUSE.

The owners of oil leases permitted crude oil to escape from their separate leases into a creek where it became ignited and was carried by the wind and the stream and burned and destroyed a barn on the banks of the stream. Negligence to be the proximate cause of an injury must be such that the injury was the natural and probable cause of the negligence or wrongful act and that it ought to have been foreseen in the light of attendant circumstances. The act of the lease owners in negligently discharging crude oil, a highly inflammable substance, into the stream above complainant's barn was the proximate cause of the injury, for the reason that the injury done by the floating oil ought to have been foreseen in the light of all the surrounding circumstances. The wrongdoers can not be heard to say that they did not know that crude oil was inflammable or that they had no reason to believe that the crude oil, which they negligently allowed to flow into the creek, would become ignited and be driven by the wind and natural flow of the stream upon complainant's premises. The question is not whether such an act would produce a conflagration in a majority of cases but whether it has a natural tendency to produce such a result.

Northup v. Eakes, —— Okla. ——, 178 Pacific 266, p. 269.
See Santa Rita (The), In re, 176 Federal 890.
Kuhn v. Jewett, 32 N. J. Equity, 647.
Brennan Construction Co. v. Cumberland, 29 App. D. C. 554.
Rock Oil Co. v. Brumbaugh, 59 Ind. App. 640, 108 N. E., 260.
Texas Co. v. Clarke & Co. —— Tex Civ. App. ——, 182 Southwestern 351.

FIRE FROM OIL WELL.

Several persons and corporations owning and operating separate oil and gas leases negligently permitted the crude oil to escape from their respective leases into a creek whereby it became ignited and

was carried by the wind and natural flow of the stream and the flames came in contact with and burned and destroyed a barn situated upon the stream, together with its contents. The owners of such oil and gas leases were jointly and severally liable for the wrongdoing, and the injured party might at his option maintain an action to recover against one or all of the persons contributing to the injury.

Northup v. Eakes, —— Okla. ——, 178 Pacific 266, p. 268.

FAILURE TO TIMBER—QUESTION OF FACT.

The question as to whether or not a mine operator was negligent in failing to timber the face of a stope before a miner was directed for the first time to work at the particular place under existing conditions and circumstances was a question of fact to be determined by the jury in an action by the miner for damages for injuries.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 774.

INJURY TO MULE DRIVER—SAFE PLACE—OPINION EVIDENCE.

A mule driver in a coal mine was injured while driving cars in the mine from the mine rooms along an entry to the bottom of the shaft from which the coal was hauled to the surface. In an action for damages the negligence complained of was that the entry was insufficiently lighted; that the grade of the entry was too steep; that the sand rails were inadequate to sufficiently check the speed of the car while rounding a curve; that the frame of a door through which the track passed was built too close to the rails to permit a safe passage; and that no warning of these hazards had been given the employee. On the trial of such action the testimony of an expert coal miner was admissible to show that the place in which the driver worked was not a reasonably safe place. The roadways and entries of a mine and their adaptability to the use intended are not matters of common knowledge and are proper subjects for expert opinion.

National Fuel Co. v. McNulty, —— Colo. ——, 177 Pacific 979, p. 981.

NEGLIGENT INSTRUCTIONS OF FOREMAN.

A mine operator may be liable for injuries to a miner caused by negligent instructions given by the mine foreman to the miner. An instruction by a court in the trial of an action for damages to the effect that the foreman negligently instructed the miner to occupy a certain dangerous position is not erroneous in that he should have directed the jury to find whether or not the instruction was negligent in view of the fact that the jury was required to find facts which, if true, constituted negligence on the part of the mine operator.

Medley v. Parker-Russell Min., etc., Co., —— Mo. App. ——, 207 Southwestern 887, p. 890.

SCOPE OF EMPLOYMENT—IMPLIED COMMAND OF EMPLOYER.

An inexperienced person was employed as a shoveler in a coal mine. When he went to work he found other shovelers engaged in the same line of work and also in breaking or "popping" bowlders with dynamite in the presence of the mine foreman, and the fact that there was no one there ready to do the work of breaking the bowlders for him was an implied command for him to break bowlders with dynamite and was sufficient to fix the liability of the mine operator to the same extent as if the shoveler had been specially directed to use the dynamite.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 746.

FAILURE TO WARN—QUESTION OF NEGLIGENCE.

A mine operator who knows the great danger to an inexperienced miner in doing a particular kind of work can not shut his eyes and assume, without any knowledge on the subject, or attempting to acquire any, that every adult man in possession of his ordinary faculties has the skill and experience to do that work which can be done with safety only by the few who have by experience and training acquired such knowledge. The fact that a danger is such that the work can be done safely only after experience and training is a fact that must be taken into consideration in determining the mine operator's negligence in directing or permitting an inexperienced miner to engage in such extrahazardous occupation.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 744.

OPERATION OF MINE CARS—UNSAFE TUNNEL TRACKS—DANGERS ANTICIPATED.

A miner working in a tunnel was killed by reason of a loaded mine car striking an empty car standing on a sidetrack and driving it from the track against the miner. The mine operator's negligence as alleged consisted in laying and maintaining the rails of the tracks so close together that loaded cars on one track would not pass empty cars on the other track without striking them and that the negligence of the mine operator in so laying and maintaining the tracks resulting in a collision was the direct cause of the miner's death. The testimony did not show definitely and directly the cause of the accident but the circumstances and conditions as described were sufficient to justify the inference that the accident did happen and the death was caused by the loaded car striking the empty car and driving it against the miner. The mine operator might be liable under the charge of negligence for so laying and maintaining the tracks if there

should be a collision of the cars resulting from any cause reasonably anticipated, such as the tilting of the track, or a rock falling on the track and causing the car to tilt, or by the moving of the main track under the weight of the loaded cars, or by the spreading of the rails. If either one or all of these causes were just as likely to have caused the cars to interfere in passing as that the interference was caused by the tracks being laid too close together to permit the cars to pass without interference, then all of these causes were included within the allegation that the tracks were in fact laid too close together to permit cars to pass without interference.

Johnson v. Silver King Consol. Min. Co., —— Utah ——, 179 Pacific 61, p. 64.

ALIEN MINER—RECOVERY FOR INJURIES.

Proof that the miner suing for damages for injuries in a mine was born in Austria, but had resided in this country since 1904, does not prove alienage and though an alien, if residing in this country for such length of time and conducting himself properly he was not precluded from maintaining suits in the courts to vindicate his rights. If the plaintiff was an alien enemy the question should be raised by pleadings and can not be established by an admission on cross-examination that he was born in Austria.

Barna v. Gleason Coal & Coke Co., —— W. Va. ——, 98 Southeastern 158, p. 162.

DUTY OF OPERATOR TO FURNISH SAFE PLACE.

CARE REQUIRED OF EMPLOYER.

It is the duty of a coal mine operator to use reasonable care to provide a miner a reasonably safe place in which to work.

New Staunton Coal Co. v. Fromm, —— Ill. ——, 121 Northeastern 594, p. 595.
Thompson v. Standard Oil Co., —— N. C. ——, 98 Southeastern 712, p. 713.

The duty rests upon a mine operator to use ordinary care to make the miner's place of work reasonably safe.

Henness v. Pend D'Oreille Min. & Reduction Co., —— Idaho ——, 178 Pacific 836, p. 837.

SAFE PLACE—MEANING.

A safe place is a relative term; and to furnish such a place in which employees may work the duty of the employer is declared as limited to the reasonable care and skill necessary to have the place reasonably safe for the purpose for which it was designed, used, or operated, provided the place is reasonably safe for the employee to work in the exercise of due care in the discharge of the duties of his employment. But the degree of care and skill exacted of the employer is that it must be proportionate to the dangerous nature of the mines, instruments, and machinery used.

Coosa Portland Cement Co. v. Crankfield, —— Ala. ——, 80 Southern 451, p. 452.

INSTRUCTION AS TO DUTY OF MINE OPERATOR—CONSTRUCTION.

In an action by a miner for damages for injuries occasioned by a fall from the roof the court instructed the jury to the effect that it was the duty of the mine operator to use reasonable and ordinary care to provide the miner with a safe place in which to do his work; and that it was the duty of the operator to make the miner's place of work reasonably safe and that the miner had the right to assume that this duty had been performed. These instructions are not susceptible of construction that the jury might assume that the mine operator was an insurer and that it was his duty to furnish an absolutely safe place for the miner to work; but the court meant to tell the jury that it was the duty of the mine operator to use ordinary care to furnish the miner a reasonably safe place to work.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 776.

INSTRUCTION—"MANNER" OF USE OF STEPS.

A miner was injured by the fall of one of a series of steps by which the miners ascended a travelingway. The steps were supported at one end by props and at the other by being inserted into the wall of coal. The particular step causing the injury by its falling was not inserted sufficiently deep into the coal to give it a secure support. The injured miner had no knowledge of the insecurity of the step by reason of its not being inserted a sufficient depth into the coal bank. On the trial the court instructed the jury to the effect that the plaintiff was fully acquainted with the steps "and the manner that they were fastened and secured." The word "manner" as used by the court was susceptible to two meanings, one referring simply to the general construction of the steps and the other including also the depth of their insertion into the coal. As referring to the former meaning the instruction would be accurate, but if given the latter it would be inaccurate and misleading, as there was nothing to show that the plaintiff knew how deep the steps were inserted into the coal.

Chamberaeti v. Susquehanna Coal Co., —— Pa. ——, 105 Atlantic 277, p. 278.

FAILURE TO FURNISH—LIABILITY.

It is the duty of a coal-mine operator to exercise care to provide a reasonably safe place for a miner in which to do the work assigned him, and a mine operator may be liable for injuries to a miner while passing through a dark tunnel by direction of the foreman caused by being struck by loaded cars passing through the tunnel without lights or signals on the theory that the mine operator did not furnish a safe place.

Ford v. Philadelphia & Reading Coal & Iron Co., —— Pa. ——, 105 Atlantic 885, p. 885.

MINER'S ASSUMPTION OF EMPLOYER'S DUTY.

It is the duty of a mine operator to furnish a reasonably safe place for a miner to work, and the miner has the right to assume that the mine operator has fulfilled his duty.

Abelstad v. Johnson, —— N. Dak. ——, 170 Northwestern 619, p. 620.

A miner in entering the employment of a mine operator has a right to assume that the operator has exercised ordinary care to provide him with a reasonably safe place in which to work.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 774.

Henness v. Pend D'Oreille Min. & Reduction Co., —— Idaho ——, 178 Pacific 836, p. 837.

UNSAFE TRACKS IN MINE TUNNEL—INJURY FROM OPERATION OF CARS.

A miner assisting in the construction of a tunnel was killed by reason of a loaded car, as it was being hauled out, striking an empty car on the sidetrack and thrusting it against and pinning him between the car and the side of the tunnel. The negligence charged was the failure of the mine operator to furnish a safe working place in that the rails of the main track and of the sidetrack were so close together that the loaded car would not pass an empty car without striking it. The proof of the particular accident was indefinite and the fact of the loaded car striking the empty car and driving it against the miner was an inference. But negligence in failing to maintain a safe place might be inferred if the tracks were so close together that the cars might collide, and a loaded car might push an empty car off the track and against the tunnel side on any one of the several theories advanced by the mine operator in his attempt to show that the accident might have happened in a number of different ways for the purpose of avoiding liability under the rule that where there are a number of causes that might have brought about the injury and for some of which the employer was not liable there could be no recovery.

Johnson v. Silver King Consol. Min. Co., —— Utah ——, 179 Pacific 61, p. 64.

EXCEPTION—MINER'S WORKING PLACE.

It is the duty of a mine operator to make and maintain every part of the mine reasonably safe, and the operator is absolved from the performance of that duty as against a miner only at the particular place where the miner is engaged in his regular work, but not so with respect to any other place in the mine.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 774.

DRILLING OIL WELLS—SAFETY FROM ESCAPING GAS.

An oil company had absolute control of all that part of an undertaking which related to the handling of escaping gas and the stopping and restricting the flow thereof. The oil company employed an independent contractor to drill an oil and gas well and by express agreement undertook to handle and care for the escaping gas. Under such circumstances it was bound by its original duty and by its express agreement to an employee of the independent contractor, and its duty to such employee was the same as though it had originally undertaken the work of drilling without the intervention of the independent contractor.

Slick Oil Co. v. Coffey, —— Okla. ——, 177 Pacific 915, p. 917.

EVIDENCE OF GENERAL CONDITIONS AFTER INJURY ADMISSIBLE.

A miner while pulling a pillar in a mine was injured by falling coal and rock. The injury as alleged resulted from the falling of the roof some distance from the miner and extending to the portion over or near him, resulting from a failure to pick down the roof or have it propped at the point where it first broke and started to fall. Under this theory it was proper on the trial of the cause to admit evidence showing that coal or rock, other than that at the pillar where the complainant was injured, had fallen. The issue under the plaintiff's theory was whether the fall of coal was confined to the pillar at which he was working, and a competent witness examining the roof after the fall could testify whether the fall was confined to the pillar at which the plaintiff was working.

Woodward Iron Co. v. Cooper, —— Ala. ——, 80 Southern 804, p. 805.

DUTY TO PROVIDE SAFE APPLIANCES.

CARE REQUIRED.

An employer of labor in the exercise of reasonable care is required to provide an employee with implements, tools, and appliances suitable for the work in which he is engaged.

Thompson v. Standard Oil Co., —— N. C. ——, 98 Southeastern 712, p. 713.

A coal mine operator is bound to use reasonable care to provide a miner with reasonably safe machinery and implements with which to discharge his duties.

Long v. Pocahontas Consol. Collieries Co., —— W. Va. ——, 98 Southeastern 289, p. 292.

A mine operator owes his miners and employees the duty to supply appliances reasonably suitable for the purposes in view and in the selection of which reasonable care and skill has been exercised.

Connors-Weyman Steel Co. v. Kilgore, —— Ala. ——, 80 Southern 454, p. 456.

CARE IN FURNISHING AND INSPECTING APPLIANCES.

It is the duty of an oil-well driller to use ordinary care in both furnishing its employees reasonably safe appliances with which to work and in making periodic inspection thereof.

Batson-Milholm Co. v. Faulk, —— Tex. Civ. App. ——, 209 Southwestern 837, p. 843.

INSUFFICIENT APPLIANCES—PROXIMATE CAUSE OF INJURY.

A mine operator provided and maintained a wooden pole across the entry of the mine to prevent loose cars from running back into the mine and that had to be removed before the cars entered the mine. In some similar mines a "derailing switch" was used to keep the cars from running back into the mine. The negligence charged in an action for the death of a miner was the operator's failure to provide safe means to prevent the mine cars from running back into the mine. But the proof did not show that the mine operator was negligent in providing or maintaining the wooden pole across the entry of the mine instead of a derailing switch or other device, and there was no proof to show that the death of the miner would not have occurred as and when it did had such derailing switch been installed and in use at the mine at the time. The burden of proof was upon the complainant to show by an unbroken sequence of cause and effect that the negligence alleged was the proximate cause of the intestate's injury and death.

Connors-Weyman Steel Co. v. Kilgore, —— Ala. ——, 80 Southern 454, p. 455.

USE OF OLD APPLIANCES—ADOPTION OF NEW IMPROVEMENTS.

A mine operator is not required to adopt machinery and appliances of any particular kind and character, nor to provide the best and safest to be had, nor employ every device, although greater immunity from dangers would be thereby assured. His duty is only to discontinue the old and insecure and to adopt such improvements and advancements as are in ordinary use by prudently conducted mines engaged in like business and surrounded by like circumstances.

Connors-Weyman Steel Co. v. Kilgore, —— Ala. ——, 80 Southern 454, p. 455.

DEFECTS OBVIOUS.

A mine operator will be liable to a miner for injuries sustained by him on account of the defects in machinery and implements furnished by the operator, unless the defects occurred in the use thereof by the miner is slight and easily remedied by him; or unless it appears that under all the circumstances the defects were open and apparent

and that the miner should by the reasonable use of his faculties discover the defects in time to avoid the injury.

Long v. Pocahontas Consol. Collieries Co., —— W. Va. ——, 98 Southeastern 289, p. 292.

See Texas Co. v. Hearn, —— Ga. ——, 98 Southeastern 419.

INSUFFICIENT APPLIANCE—LIABILITY.

A boy seventeen years of age was employed at a colliery as a driver. His duty was to take empty cars from the turnout within the mine to the face of the gangway and return the cars when reloaded to the turnout. While unloading timbers the heavy gate of the car was elevated and kept in its position by an iron bar used for that purpose. On the occasion of the injury no bar was used but in its stead a wet wedge, by reason of the insufficiency of which the gate fell and injured the boy. The failure to use an iron bar can not be ascribed to the negligence of fellow servants where no iron bar had been provided by the mine operator, and the operator's negligence in failing to furnish the proper appliance was sufficient to render him liable for the injury to the boy.

Sebastian v. Philadelphia & Reading Coal & Iron Co., —— Pa. ——, 105 Atlantic 887, p. 888.

FAILURE TO INSPECT—PLEADING AND PROOF.

An employee of an oil-well driller while assisting in drilling a well was injured by the fall from the top of the derrick of a sheave or pulley. The negligence charged consisted in the failure of the employer to inspect the sheave or pulley and in negligently permitting it to become loose in its axle and in permitting the axle to work out of its groove in the crown block thereby causing the sheave to fall upon and injure the employee. The allegations of negligence were also broad enough to include the way the sheave and axle were attached to or placed on the crown block. On the trial of the action for damages the evidence showed that the oil drilling company had made no inspection for four days to determine whether the sheave was loose upon the axle before the accident, and no inspection of any sort was made since early morning of the next preceding day. Under the allegations of the complaint the proof was sufficient to sustain a finding of negligence on the part of the oil drilling company.

Batson-Milholm Co. v. Faulk, —— Tex. Civ. App. ——, 209 Southwestern 837, p. 843.

DEFECTIVE BRAKE ROD—LATENT DEFECTS.

A coal mine operator is not liable in damages to an employee injured by the breaking of a defective brake rod where the defect was latent and could not be discovered by ordinary inspection.

Desbia v. Monongahela R. Co., —— Pa. ——, 105 Atlantic 55.

DEFECTIVE CABLE—MINER'S ASSUMPTION OF EMPLOYER'S PERFORMANCE OF DUTY.

It is the duty of a mine operator to furnish reasonably safe appliances for a miner to work and a miner may assume that the mine operator has fulfilled this duty. Under this rule a mine operator is liable for injuries resulting from the use of defective and worn cables in hauling loaded cars out of a mine.

Abelstad v. Johnson, —— N. Dak. ——, 170 Northwestern 619, p. 620.

UNCHOKING DRILL HOLE—USE OF STEEL DRILL—OPINION OF WITNESS.

A witness who had had many years' experience with powder in drilling holes through earth and rock and as to the method and danger of unchoking the hole with the use of a steel drill may give his opinion as to whether or not it was safe or unsafe to use a steel drill in unchoking a blast hole.

Sloss-Sheffield Steel & Iron Co. v. Thomas, —— Ala. ——, 80 Southern 69, p. 71.

EVIDENCE OF CONDITION AFTER INJURY NOT ADMISSIBLE.

A miner was injured by a fall of coal and rock from the roof of his working place. In an action by the miner for damages for the injuries, it was not proper for a witness to describe the conditions in the miner's working place when he first saw it after the injury, in the absence of evidence showing that the conditions were unchanged between the time the witness saw it and the time of the accident.

Woodward Iron Co. v. Cooper, —— Ala. ——, 80 Southern 804, p. 805.

MINER'S WORKING PLACE—SAFE PLACE.

DUTY OF MINER AS TO WORKING PLACE.

It is the duty of a miner to take notice of and avoid obvious defects in his working place.

Henness v. Pend D'Oreille Min. & Reduction Co., —— Idaho ——, 178 Pacific 836, p. 837.

DUTY OF MINER—INSPECTION.

A miner is charged only with the duty of inspecting and making reasonably safe the place where he works. He has nothing to do with inspecting any other portion of the mine or maintaining it safe. As to his particular working place the miner absolves the mine operator from the duty of making it safe, but not so with respect to other places in the mine.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 774.
See Urich v. Apex Min. Co., —— Utah ——, 169 Pacific 263.

MINER NOT REQUIRED TO INSPECT.

A miner ordinarily is not employed or directed to make the place of his employment safe in the sense that it is his duty to discover and remedy latent defects.

Henness v. Pend D'Oreille Min. & Reduction Co., —— Idaho ——, 178 Pacific 836.

MAKING DANGEROUS PLACE SAFE—DUTY TO WARN.

It is the duty of a master to warn an inexperienced miner of the hidden and latent dangers of his employment and this rule applies as well to servants who are engaged in making a dangerous place safe as to any other class of employees. If an employee engaged in an occupation attended with danger is left by his employer without knowledge of latent dangers and suffers thereby the employer is liable in damages for the injuries.

Silurian Oil Co. v. Morrell, —— Okla. ——, 176 Pacific 964, p. 967.

SAFETY—DUTY OF OPERATOR—DETAILS OF WORK.

A miner employed to haul fire clay and whose duties required him to assist in loading his wagon by shovelling the clay was directed by the foreman to take a position near an embankment and was engaged in shovelling up the loose clay when he was killed by a fall of the embankment. The foreman had been warned by the superintendent that the particular bank was dangerous and liable to fall; and in the meantime the foreman himself had rendered the embankment more dangerous by picking at its base. The foreman failed to go upon the top of the embankment to look for cracks and failed to warn the driver of the danger, but on the contrary, specifically assigned the driver to the dangerous position. Under these circumstances the mine operator can not escape liability on the ground that it was not his duty to guard the details of the work and that the scene of the work was constantly changing and the dangers that arose were necessarily incident to the execution of the work.

Medley v. Parker-Russell Min., etc., Co., —— Mo. App. ——, 207 Southwestern 887, p. 889.

DUTY TO PROP—PROOF—OPINION OF WITNESS.

In an action by a minor for damages for personal injuries caused by a fall of rock from the roof, it was proper to permit the miner to describe fully and in detail his working place, but it was not proper to permit the miner to express an opinion as to his duty to prop or inspect the roof as this was a question of law.

Stone v. Pratt Consol. Coal Co., —— Ala. ——, 80 Southern 882.

INSPECTION—SOUNDING ROOF—SECOND TRIAL AND APPEAL—LAW OF CASE.

The evidence in the first trial and appeal and in the second trial and appeal was to the effect that the only practical way of determining the condition of the roof of the mine was by soundings made for that purpose and that the fact that the miner used a pick for the purpose of making a hole in the roof for the jack was sufficient to detect the condition of the roof. The testimony being substantially the same the opinion of the first case upon the particular issue must govern and the trial court on the second trial was required to abide by the decision on the first appeal.

Consolidation Coal Co. v. Bailey, —— Ky. ——, 208 Southwestern 762, p. 763.

DUTY TO WARN OR INSTRUCT.

INEXPERIENCED MINER—INSTRUCTIONS AS TO DANGERS.

It is the duty of a master who has actual knowledge that the employee is inexperienced in the work for which he is employed to use reasonable care in cautioning and instructing such servant in respect to the dangers he will encounter and how best to discharge his duties.

Silurian Oil Co. v. Morrell, —— Okla. ——, 176 Pacific 964, p. 967.

INEXPERIENCED MINER—EXTENT OF INSTRUCTIONS.

In the matter of a mine operator instructing an inexperienced miner as to abnormal and extraordinary risks and hazards it is not sufficient that the employer merely informs the miner that there is danger, or the source from which the danger comes, but there must be such instruction as will enable him to avoid the danger. The warning must be accompanied with such explanation as will enable the miner to understand it and when required to perform dangerous work the operator must instruct him fully as to the safest mode of doing such work and warn him of liability to special danger of which he was not aware.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 744.

A master's culpability in failing properly to warn a servant may reasonably be inferred from evidence which indicated that the servant although he had been warned in general terms as to the danger of the work had received no special warning in regard to the particular danger to which the injury complained of was due, or no explicit instructions as to the proper manner of avoiding it. Under the cir-

cumstances the information which the master thus failed to communicate was necessary to enable the servant to obtain an intelligent comprehension of the danger.

Silurian Oil Co. v. Morrell, —— Okla. ——, 176 Pacific 964, p. 967.

SUFFICIENT WARNINGS—QUESTION OF FACT.

The question whether or not a miner should have been warned is always for the jury where the evidence is fairly susceptible of the construction that the peril to which his injury was due was one of which he had no knowledge and where there is no positive evidence tending to charge him with actual or constructive knowledge of such peril. This principle applies whether the risks in question existed at the time the miner commenced the performance of his contract or were afterwards created by some material change in the intrinsic conditions or relative arrangement of the instrumentalities by which the work was being done, or the substances which the injured miner was required to handle.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 744.

DANGERS KNOWN TO OPERATORS.

Where a miner who was an entire stranger to the operator's mine was taken to a particular stope and put to work as a miner the mine operator owed him the duty of acquainting him with any dangerous condition that would surround him of which the operator had knowledge and that would not be apparent to the miner while acting in obedience to the operator's orders.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 774.

OBVIOUS DANGERS.

There is no duty resting upon a mine operator to notify or instruct even an inexperienced miner as to dangers which are open and apparent to every person.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 744.

FAILURE TO WARN—EXCUSE.

The only thing which excuses a mine operator from his duty to warn and instruct an inexperienced miner as to hazards and dangers not usually comprehended by the inexperienced is that at the time of his application for employment the miner held himself out to the operator as being capable of performing the work with its attendant dangers and as knowing and comprehending the same. But where hazardous work was imposed on an inexperienced miner by force of

the circumstances under which he worked, or by direct commands from the employer, then the element of the miner holding himself out as being qualified is wholly lacking and the operator can not be relieved of the duty to warn and instruct the inexperienced miner.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 744.

LIABILITY FOR FAILURE TO WARN—QUESTION OF FACT.

An inexperienced person applied to a mine operator for work as a shoveler and made no representations as to being experienced in exploding dynamite. The work in the mine as a shoveler does not include "popping" bowlders with dynamite and there is no presumption that a person applying for such a position would be experienced in the use of dynamite for breaking bowlders. Under such circumstances the question of a mine operator being put on notice as to the inexperience of the shoveler and of his negligence in not informing the shoveler of the dangers was a question of fact to be determined by a jury on the trial of the case.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 745.

DUTY TO PROMULGATE RULES.

EMPLOYER'S KNOWLEDGE OF VIOLATION.

Where a mine operator knowingly suffered his rule to be habitually violated by his miners its observance must be treated as waived by the employer and he will not be permitted to set up a violation as contributory negligence in an action against him by an injured employee.

Red Feather Coal Co. v. Murchison, —— Ala. ——, 80 Southern 354, p. 355.

UNCERTAIN AND IMPRACTICAL—WAIVER.

Where a rule of a mine operator, the disobedience of which was charged as contributory negligence of the miner, was so impractical that it could not be carried into execution, then as to an employee it is to be treated as waived by the employer.

Red Feather Coal Co. v. Murchison, —— Ala. ——, 80 Southern 354, p. 355.

PROOF OF EXISTENCE OF RULE.

The proof of the existence of a mine operator's rule must be proved in a more direct way than by asking a witness if he had not been told what the rule was.

Sloss-Sheffield Steel & Iron Co. v. Bearden, —— Ala. ——, 80 Southern 42, p. 44.

RECISION OF RULE—DIRECTIONS TO DISOBEY.

A rule adopted by a mine operator that is not statutory may be waived or rescinded and it is a sufficient recision or waiver where the mine operator directed a miner to do some act contrary to or in violation of the rule.

Sloss-Sheffield Steel & Iron Co. v. Bearden, —— Ala. ——, 80 Southern 42, p. 44.

VIOLATION OF RULE—RECOVERY PREVENTED.

A servant who violates known rules adopted and promulgated by the employer to promote his safety and is injured in consequence of such violation can not make his own fault the ground of recovering damages for his employer, but must take the consequence of his disobedience.

Red Feather Coal Co. v. Murchison, —— Ala. ——, 80 Southern 354, p. 355.

VIOLATION BY MINOR—PARENT'S RIGHT TO RECOVER.

A minor, a convict, was being worked in a mine under some arrangement with the State. While so working he used a slope in the mine where empty and loaded cars were taken in and out of the mine that were operated rapidly over the tracks. A manway near by was provided for the use of the employees in going to and from their work in the mine, and a rule of the mine operator expressly prohibited the miners from using the slope in passing in and out of the mine and the minor convict was warned of the danger in passing in and out of the mine by way of the slope. While so violating the rule the minor convict was killed. Under these facts his father could not recover damages from the mine operator for the alleged wrongful death of his son.

Red Feather Coal Co. v. Murchison, —— Ala. ——, 80 Southern 354, p. 355.

VICE PRINCIPALS.

RELATION AND NEGLIGENCE.

A mine operator is liable for the negligence of his vice principal who ordered a workman into a position that he knew or ought to have known was dangerous without any warning and without taking any precautions whatever for his safety and where the vice principal himself increased the danger after he had been informed by the superintendent that the place was in fact dangerous.

Medley v. Parker-Russell Min., etc., Co., —— Mo. App. ——, 207 Southwestern 887, p. 889.

NEGLIGENCE OF SUPERINTENDENT—LIABILITY OF MASTER.

A mine operator is liable for the negligence of the person having superintendence of a heading and the muckers and drill helpers and other miners therein, where such person negligently orders or permits a mucker to work under a loose and dangerous rock and where while so working the mucker was injured by the fall of the rock.

Republic Iron & Steel Co. v. Harris, —— Ala. ——, 80 Southern 426, p. 428.

NEGLIGENCE AND GROSS NEGLIGENCE—INJURY TO EMPLOYEE—LIABILITY OF EMPLOYER.

Under what is known as the Kentucky rule an injured employee can not recover in an action for damages against the mine operator on the ground of the negligence of a superior who has immediate control or supervision of the employee unless the negligence of such superior was gross. The reason of the rule is that the employee undertakes not to hold the employer liable for the ordinary negligence of the employees with whom he is engaged, whose actions and conduct he can observe and guard against.

Tway Min. Co. v. Tyree, —— Ky. ——, 208 Southwestern 817, p. 820.

NEGLIGENCE OF PERSON HAVING SUPERINTENDENCE—QUESTION OF FACT.

An employee of a mine operator had superintendence of a particular heading, and the muckers, drill helpers, and other miners working in the heading had to obey him. In the course of mining operations the bank boss and the miner having superintendence in the heading inspected the place and discovered a rock that should have been taken down. In an action by a miner for injuries caused by the fall of the rock it was a question of fact for the jury to determine whether the undertaking by the miner having superintendence of the muckers to remove the rock was in pursuance of orders of his immediate superintendent, the bank boss, or whether it was of the concurrent judgment of both.

Republic Iron & Steel Co. v. Harris, —— Ala. ——, 80 Southern 426.

DUAL POSITION—EMPLOYEE SUPERINTENDING WORK.

An employee was placed in charge of a fire clay pile and of the men working to remove it with authority to direct the movements of the haulers both as to where to drive the wagons and when and where to load the clay into the wagons, and he was charged with the duty to exercise due care to discover indications of danger and to warn the men thereof. The superintendent of the mine was rarely at this particular portion of the premises and the supervision of the work was

left to the employee. The employee in charge of the work did also some of the manual labor in picking and shovelling. The employee thus occupied a dual capacity being a vice principal of the master with respect to his authority over the haulers and shovellers and his duty to take precautions for their safety and an ordinary laborer with respect to the mere manual duties which he performed.

Medley v. Parker-Russell Min., etc., Co., —— Mo. App. ——, 207 Southwestern 887, p. 889.

FELLOW SERVANTS—RELATION—NEGLIGENCE.

LIABILITY OF OPERATOR FOR NEGLIGENCE OF FELLOW SERVANT.

The rule in Kentucky is that operators or drivers of separate cars in a coal mine are not fellow servants of other employees of the same master engaged in operating other cars, and if a servant or driver engaged in operating one car is injured by the negligence of a servant engaged in operating another car, the mine operator will be liable. The rule applies whether the cars are hauled by mules, propelled by steam or electricity, or pushed by hand.

Tway Min. Co. v. Tyree, —— Ky. ——, 208 Southwestern 817, p. 819.
See Harris v. Rex Coal Co., 177 Ky. 630, 197 Southwestern 1075.
Elkhorn Corp. v. Paradise, 180 Ky. 572, 203 Southwestern 291.
Forlow v. Athletic Min. & Smelting Co., —— Mo. App. ——, 209 Southwestern 117.

NEGLIGENCE—LIABILITY OF EMPLOYEE.

The Kentucky court of appeals is committed to the doctrine of the "association theory" or to the rule that a mine operator will not be excused for negligence resulting in injury to one employee inflicted by a fellow employee, unless the employees are so engaged and situated as that each by carefulness and attention in the performance of his duties may protect himself from injury caused by the negligence of the employee with whom he is working.

Tway Min. Co. v. Tyree, —— Ky. ——, 208 Southwestern 817, p. 819.

NEGLIGENCE—ORDINARY OR GROSS—LIABILITY.

An employee was injured by the negligence of another employee of the same employer, who was not directly associated with him or in any degree subject to his control or advice and against whose negligence he had no means of protecting himself. Under such circumstances the injured employee may recover of the employer damages for injuries caused by the negligence of such other employee, whether it was ordinary or gross and without any reference to the position and place the employee causing the injury held.

Tway Min. Co. v. Tyree, —— Ky. ——, 208 Southwestern 817, p. 820.

CONTRIBUTORY NEGLIGENCE OF MINER.

EXERCISE OF CARE IN USE OF APPLIANCE.

Where contributory negligence is charged arising from the use of an appliance the controlling question is not whether by the use of ordinary care the injured employee could have used the appliance so as to have avoided injury, but whether he exercised ordinary care in using it in the manner in which he did use it at the time of the injury.

Standard Oil Co. v. Allen, —— Ind. App. ——, 121 Northeastern 329, p. 337.

QUESTION OF FACT.

A motor helper was injured while standing on the footboard of the locomotive motor. The alleged negligence of the mine operator was in failing to furnish a suitable footboard, running the motor without a headlight, and in running it at too great a speed on a sharp curve. Whether under these circumstances the employee was guilty of contributory negligence was a question of fact to be determined by the jury.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 26.

MAXIM OF RES IPSA LOQUITUR—BURDEN OF PROOF.

The maxim of res ipsa loquitur applies where the means and instrumentalities employed by a master, a mine operator, are peculiarly within his knowledge and under his control. The reason of the rule is that the master is in a better condition to explain the cause of the accident than the injured party and the burden of proof is cast upon him to disprove the allegation of negligence.

Daugherty v. Neosho-Granby Min. Co., —— Mo. App. ——, 207 Southwestern 253, p. 254.

PROOF BY PLAINTIFF—PEREMPTORY INSTRUCTION.

In an action by a miner for damages for personal injuries occasioned by a fall of the roof in the miner's working place, the evidence tended to show that no negligence proximately contributed to the injury but the negligence of the plaintiff himself. Under such circumstances it was proper for the court to give a peremptory instruction to the jury requiring them to return a verdict for the defendant.

Stone v. Pratt Consol. Coal Co., —— Ala. ——, 80 Southern 882.

FREEDOM FROM—PRESUMPTION.

The presumption of freedom from contributory negligence always obtains in case of the death of a miner or an employee.

Carley v. Dexcar Coal Min. Co., —— Pa. ——, 105 Atlantic 651, p. 653.

INATTENTION—INDIFFERENCE—FORGETFULNESS.

On the trial of an action for damages for the death of a miner caused by his coming in contact with a live electric wire, the trial court instructed the jury as follows: "If the jury believe from the evidence that the plaintiff's intestate knew of the location of the wire which caused his death, and of the danger therefrom, and if the jury believe from the evidence that the death of the plaintiff's intestate was proximately due to his inattention, indifference, absentmindedness, or forgetfulness of the presence and danger of said wire, then their verdict must be for defendant." This charge was criticised on the ground that the deceased's forgetfulness of the presence and danger of the wire was not negligence unless a reasonably prudent man under the circumstances would have been likely to have been mindful of the peril from the wire. The Federal Court in passing upon the correctness of the instruction and upon the criticism said that it might be conceded that the criticism of the correctness of the instruction would merit consideration if the question were presented to that court without previously having been passed upon by the Supreme Court of Alabama. "One's conduct in Alabama must be treated in this court as amounting to contributory negligence if the settled law of that State requires that it be so treated."

Roberts v. Tennessee Coal, Iron, etc., Co., 255 Federal 469, p. 473.

INSTRUCTION DEFINING.

An instruction defining contributory negligence is not erroneous where the language used made it plain enough that the negligence of the deceased miner that would deprive his personal representative of a right of action must have been an effective cause of the injury in the same manner as the alleged fault of the employer must have been the cause of the injury for the latter to be liable, in the absence of contributory negligence on the part of the miner.

Roberts v. Tennessee Coal, Iron, etc., Co., 255 Federal 469, p. 473.

MINER OBEYING ORDER OF SUPERIOR.

A miner employed in hauling fire clay and whose duty required him to assist in loading the clay was directed by the mine foreman to work near an embankment in shoveling the loose clay into his wagon. The position assigned the hauler while so shoveling was known to the mine foreman to be dangerous and the foreman himself had increased the danger by picking under the embankment. While shoveling up the loose clay, the embankment fell and killed the shoveler. The deceased, in an action for damages for his death could not, as a matter of law, be charged with contributory negligence and the action defeated, but the question of his contributory

negligence under the circumstances was one of fact to be determined by the jury.

Medley v. Parker-Russell Min., etc., Co., —— Mo. App. ——, 207 Southwestern 887, p. 889.

MINER OBEYING INSTRUCTION—DANGER IMMINENT AND GLARING.

On the trial of an action for damages for the death of a miner on the ground that the mine foreman negligently ordered and directed the miner to occupy a dangerous position while performing his work, an instruction by the court to the jury to the effect that if they believed that the deceased was at the time he received his injuries causing his death working at a place in obedience to instructions of the mine foreman he could not be charged with contributory negligence unless the danger was so imminent and glaring that no reasonably careful and prudent man would have obeyed the instructions and worked in the particular place.

Medley v. Parker-Russell Min., etc., Co., —— Mo. App. ——, 207 Southwestern 887, p. 890.

BREAKING BOWLDERS WITH DYNAMITE.

Whether or not an inexperienced person working as a shoveler in a mine was guilty of contributory negligence in undertaking to use dynamite in breaking bowlders in view of his knowing his own inexperience and the danger of so doing depends upon whether the danger was so obvious and glaring that a reasonably prudent man would not under the same circumstances undertake to do so.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 745.

KNOWLEDGE OF DANGER—NECESSARY USE OF DANGEROUS WAY.

A miner can not be charged with contributory negligence because of his knowledge of the location of dangerous machinery along or near the place he was required to travel in going to and from his work, where no other place was provided and where he was required to use the particular way in traveling to and from his work.

Carley v. Dexcar Coal Min. Co., —— Pa. ——, 105 Atlantic 651, p. 653.

OBEYING DIRECTION OF FOREMAN—QUESTION OF FACT.

A miner was directed by the mine foreman to pass through a dark tunnel in the mine. While passing through the tunnel he was struck and injured by loaded cars passing through the tunnel without lights or signals. The question of the miner's contributory negligence under such circumstances was one of fact for the jury to determine in his action for damages.

Ford v. Philadelphia & Reading Coal & Iron Co., —— Pa. ——, 105 Atlantic 885, p. 886.

VIOLATION OF RULE—UNCERTAINTY AND WAIVER.

A miner can not be charged with contributory negligence in the violation of a rule where either the rule was so impractical that it could not be carried into execution, or where the employer knowingly suffered the rule to be habitually violated by the employees.

Red Feather Coal Co. v. Murchison, —— Ala. ——, 80 Southern 354, p. 355.

VIOLATION OF RULE—PROXIMATE CAUSE.

A rule of a mining company prohibited employees from riding on tram cars. A miner was sent to load certain pipes on a tram train and after putting the pipe on the train attempted to board one of the cars and the operator of the dinkey engine attached to the cars suddenly accelerated the speed of the cars and in consequence of the sudden movement the miner's foot passed under the wheels and was mashed. Under the circumstances the particular negligence that proximately caused the injury was the sudden movement of the engine and tram train by the operator of the engine. The violation of a rule of the operator forbidding the miners to ride on the trams would not have been negligence on the plaintiff's part proximately contributing to his injury nor so related to the event as to preclude a recovery for the injury proximately caused by the act of the defendant's operative in suddenly accelerating the movement of the cars.

Sloss-Sheffield Steel & Iron Co. v. Bearden, —— Ala. ——, 80 Southern 42.

ATTEMPTING TO BOARD MOVING TRAM.

A miner attempting to board a slowly moving tram train was not to be charged with contributory negligence and his action for damages defeated because he was attempting, when injured, to board the moving train, where the engineer of the dinkey engine drawing the tram train saw the miner as he was in the act of getting on the moving car and suddenly accelerated the speed of the cars, whereupon in consequence of the sudden movement of the car the miner's foot passed under the wheel and was mashed.

Sloss-Sheffi eld Steel & Iron Co. v. Bearden, —— Ala. ——, 80 Southern 42, p. 43

CARE REQUIRED—NEGLIGENCE OF COEMPLOYEE.

A mule driver in a mine was required to pass under an air curtain, but the driver had received no particular instructions as to the method of passing the curtain in order to avoid collision with mules and cars coming from the opposite direction. A driver is not to be charged with contributory negligence and his action for damages for injuries by a collision defeated because he did not stop or get off his car and lift the curtain to see if mules or cars were coming from the opposite

direction where the collision was caused by a loose mule being chased down the same track by another driver.

Tway Min. Co. v. Tyree, —— Ky. ——, 208 Southwestern 817, p. 818.

WANT OF KNOWLEDGE OF DANGER—QUESTION OF FACT.

A miner was employed as a pusher in a lignite coal mine and his duties consisted in pushing out cars of lignite coal and in attaching the loaded cars to a cable preparatory to being hauled up an incline to the unloading place. He was instructed to watch the loaded cars as they were drawn up and if a car ran off the track to ring a bell in order to stop the team hauling the car. On one occasion as a loaded car started up the incline the pusher stooped down in order to see if the car ran off the track and while in that position the cable attached to the car broke and the car started down the incline and caught and injured him. Under these facts he could not as a matter of law be charged with contributory negligence where he had no knowledge of the worn and defective condition of the cable and had no knowledge of the presence of a manhole at the side of the track from which he should have watched the operation of the car.

Abelstad v. Johnson, —— N. Dak. ——, 170 Northwestern 619, p. 620.

MINER'S WORKING PLACE—ASSUMPTION OF SAFETY.

A miner is not guilty of contributory negligence for working in a place where he had a right to assume in the absence of patent and obvious defects that the place was reasonably safe.

Henness v. Pend D'Oreille Min. & Reduction Co., —— Idaho ——, 178 Pacific 836.

ASSUMPTION OF RISK.

RISKS ASSUMED.

RISKS INCIDENT TO EMPLOYMENT.

An employee assumes the ordinary risks incident to his employment.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 25.

The doctrine that an employee assumes the ordinary risks and dangers of his employment that are known to him or which by the exercise of ordinary diligence he should have known is one of universal application.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 774.

KNOWLEDGE OF DEFECTS.

Where an employee in a mine knows of defects in a machine or other instrument furnished him with which to work and continues to

use it as a general rule he assumes the risk and the mine operator is not liable for injuries thus incurred.

Long v. Pocahontas Consol. Collieries Co., —— W. Va. ——, 98 Southeastern 289, p. 292.

OPEN AND OBVIOUS DANGERS.

An employee assumes the risk of injury from the extraordinary and unusual dangers and hazards of his work if they were open and obvious to and were fully observed and understood and appreciated by him.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 25.

RISKS NOT ASSUMED.

QUESTION OF FACT.

A motor helper was injured while standing on the footboard of the locomotive motor. The alleged negligence of the mine operator was in failing to furnish a suitable footboard, running the motor without a headlight, and in running it at too great a speed on a sharp curve. Whether under such circumstances the employee assumed the risk was a question of fact to be determined by the jury.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 26.

DANGERS UNKNOWN TO MINER.

A miner does not assume risks which are unknown to him or dangers which by reason of his inexperience he does not comprehend. A mine operator is prima facie bound to instruct an inexperienced miner as to all risks which are abnormal or extraordinary and at the same time of such a kind that the servant can not be held chargeable with an adequate comprehension of their nature and extent or of the proper means by which to safeguard himself.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 744.

EMPLOYEE'S IGNORANCE OF DANGER—HAZARDS OF SERVICE.

An employee does not assume the risks from the dangers of the employment of which he was ignorant and as to which he had been given no reasonable instruction, although they are the ordinary hazards of the service, unless they are so obvious that even an inexperienced man would observe them by the exercise of ordinary care.

Silurian Oil Co. v. Morrell, —— Okla. ——, 176 Pacific 964, p. 967.

RISKS OF EMPLOYMENT—QUESTION OF FACT.

Under certain circumstances and conditions the question as to whether a risk was incident to the employment may be one of fact for the jury in an action by a miner for damages for injuries.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 774.

NEGLIGENCE OF MASTER.

Negligence of an employer is never a risk assumed by an employee.

Miller v. Utah Consol. Min. Co., —— Utah ——, 178 Pacific 771, p. 774.

NEGLIGENCE OF OPERATOR—DANGER IMMINENT.

An employee does not assume the risk of the negligence of the employer, unless the danger thereof was so imminent that a man of ordinary prudence would not have incurred the risk or hazard.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 25.

WORKING UNDER ORDERS—DANGERS.

An employee does not assume the extraordinary risk of the negligence of the employer, or while in obedience to the employer's order he works in a dangerous place with unsafe appliances, or in a dangerous manner, unless such danger was so imminent that a man of ordinary prudence would not have incurred the risk or hazard.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 25.

SHOVELER BREAKING BOULDERS WITH DYNAMITE—PROOF OF CUSTOM.

A shoveler in a mine was injured while attempting to break up a large boulder with dynamite. In an action against the mine operator for damages it was error for the court to admit evidence showing that in mining operations, as generally carried on in the particular district the work of "popping" boulders with dynamite was not entrusted to common laborers such as shovelers but to men specially chosen and skilled in such work. Such evidence shows that such work required special knowledge and skill to minimize the danger and that the injured shoveler in applying for and accepting the job of shoveler was not contracting to break boulders with dynamite or holding himself out as competent to do such work.

Batesel v. American Zinc, Lead & Smelting Co., —— Mo. ——, 207 Southwestern 742, p. 743.

DANGERS FROM DEFECTIVE APPLIANCES.

A pusher was employed to push loaded cars to the foot of an incline and there attach a cable by which the cars were drawn up the incline. While stooping down to see if a car did or would run off the track, the cable broke and the car ran down the incline and injured him. Under such conditions it can not be said as a matter of law that the pusher assumed the risk of the danger where the breaking of the cable was due to its worn and defective condition of which he had no knowledge.

Abelstad v. Johnson, —— N. Dak. ——, 170 Northwestern 619, p. 620.

PROXIMATE CAUSE OF INJURY.

WHAT CONSTITUTES PROXIMATE CAUSE.

To constitute a proximate cause of an injury it is not necessary that the act or omission complained of as negligent should be the direct or immediate cause, but there must be a causal connection between the two, a continuous flow of consequences which culminated in the injury so that it can be said that the negligence alleged entered into and became an actual agency or efficient cause.

Haney v. Texas & Pacific Coal Co., —— Tex. Civ. App. ——, 207 Southwestern 375, p. 381.

NEGLIGENCE OF OPERATOR—BURDEN OF PROOF.

In an action for the death of a miner caused by the alleged negligence of the mine operator, the burden of proof rested on the complainant to show by an unbroken sequence of cause and effect, that the negligence charged was the proximate cause of the death of the miner.

Connors-Weyman Steel Co. v. Kilgore, —— Ala. ——, 80 Southern 454, p. 455.

PROXIMATE CAUSE—INTERVENING AGENCY.

A wrongful act or omission relied upon as constituting the proximate cause of an injury must be such as that therefrom the injury or some similar injury might be reasonably contemplated. The negligence must be the cause of the injury; but if the causal connection is broken by the intervention of a wholly independent act of another which of itself causes the injury, then the original act of negligence becomes the remote and not the proximate cause of the injury.

Haney v. Texas & Pacific Coal Co., —— Tex. Civ. App. ——, 207 Southwestern 375, p. 381.

CONTRACTS RELATING TO OPERATIONS.

CONTRACT TO DRILL OIL WELL—CONSTRUCTION.

A contract by which the second party agreed to drill an oil well stipulated that the well should be drilled into the oil sand or to a depth of 3,500 feet, if required by the contractor. The "oil sand" contemplated by the contract was producing oil sand, or sand producing oil in reasonably paying quantities, and in default of drilling into such producing oil sand the contractor was justified in requiring the well to be drilled to a depth of 3,500 feet unless the phrase "into the oil sand" has some special local meaning with reference to which the parties contracted.

California Well Drilling Co. v. California Midway Oil Co., —— Cal. ——, 177 Pacific 849, p. 852.

CONDITIONAL SALE OF CASING FOR OIL WELLS.

Casing for use in drilling an oil and gas well was delivered to the driller under a contract by which a specific rental was to be paid, but if the well produced oil or gas in paying quantities, or if the casing was used in any other well, then the same should be paid for at the stipulated price in addition to the rental, otherwise the casing was to be returned to the seller. This agreement constituted a bailment and not a sale of the casing and the title did not pass and the seller could not maintain an action to recover the price of the casing.

U. S. Supply Co. v. Andrews, —— Okla. ——, 176 Pacific 967, p. 968.

MINER'S CONTRACT FOR SERVICES—PAYMENT OUT OF PROCEEDS OF MINE.

A mining company employed a miner to work for it in its mine under a contract entered into in the State of Idaho. The contract of employment expressly provided that the miner was to receive compensation in a specified manner and partially payable out of the proceeds of the company's mine in which he worked. The miner brought suit in a court in Washington to recover the value of his services on the ground that the statute of Washington (Remington Code, 1915, sections 6560–61) makes such contracts entered into in the State of Washington unlawful. The defendant mining company was a Washington corporation but carried on all of its mining operations wholly within the State of Idaho and the miner also was a resident of the State of Washington. The mining company performed its part of the agreement and paid the miner according to the terms of the contract. The contract as made involved no inherent element of immorality or coercion and it would be illegal if made to be performed in Washington only because of the statute, but aside from the statute it was not in contravention of public policy. The parties both voluntarily went into the State of Idaho and made the contract there and thereby voluntarily submitted themselves to the laws of Idaho in so far as their rights under it were concerned. In seeking to enforce the contract in Washington either affirmatively or as a defense, the parties should be treated and their rights measured by the courts of Washington as if they were residents of Idaho. When a resident of one State voluntarily goes into another State and there makes a contract to be wholly performed there, which is valid and binding under the laws of that State, and it is sought to be enforced by the other party thereto in the courts of another State as the basis of a cause of action, he should not have any higher or better right to invoke the public policy of the State of his residence in avoidance of the contract than he would have if he were a nonresident of the State. Under these circumstances a miner is not in a

position to claim any special rights or privileges looking to the avoidance of the contract merely because he was a resident of the State of Washington and he can not rightfully claim to be injured thereby as a resident of the State. The statute of Washington can not make a contract executed and to be performed in another State unenforceable in the courts of Washington.

Hatcher v. Idaho Gold & Ruby Co., —— Wash. ——, 179 Pacific 106, p. 107.

INDEPENDENT CONTRACTOR.

RELATION—QUESTION OF FACT.

Under a proper issue and the proof to sustain it, the question of whether the person under whom an injured miner was working was an independent contractor or a lessee of the mine was a question of fact to be determined by the jury.

Connors-Weyman Steel Co. v. Kilgore, —— Ala. ——, 80 Southern 454.

INJURY TO EMPLOYEE—LIABILITY OF OPERATOR.

Where an employer reserves the right to direct the manner in which the work shall be performed in any particular, or where he undertakes to provide any of the instrumentalities used in the process of the work he owes to the employees of an independent contractor the duty of ordinary care in directing such matters over which he retained control or undertook to perform.

Slick Oil Co. v. Coffey, —— Okla. ——, 177 Pacific 915, p. 917.

METHODS OF OPERATING.

GRANT TO TRANSPORT COAL UNDER THE SURFACE—CONSTRUCTION.

A deed for coal gave the grantee the right to mine and remove the coal under the land conveyed and also gave the grantee the right to remove and carry away "under said described premises" other coal belonging to the grantee. Under this deed the grantee could open drifts and haulageways to the surface and lay on the surface of the land its tracks for the transportation of the coal mined under the surface of the tract conveyed, but the surface owner had the right to enjoin and restrain the grantee from hauling and transporting over such tracks on the surface of his land coal mined from other lands owned by the grantee. The grant restricted the grantee's right to transport coal mined by the grantee from other lands "under said described premises." This did not give the grantee any right to convey or transport over or upon the surface of the grantor's land any coal mined and taken from lands other than described in the grant.

Shaulis v. Quemahoning Creek Coal Co., —— Pa. ——, 105 Atlantic 826, p. 827.
See Potter v. Wren, 201 Pa. 318, 50 Atlantic 821.

ENTRIES UNDER STREET—RIGHT OF LANDOWNER TO ENJOIN.

A mining corporation obtained consent of the township authorities to construct entries under the surface of a road and in front of the lands of an abutting owner, but the nearest point the entry approached was within six feet of the complainant's land. No mining operations had been conducted by the company under the road and no coal under the road within the lines of the complainant's land had been removed nor was it the intention of the coal company to remove any. Under these facts the landowner was not entitled to a preliminary injunction, because of his failure to show irreparable injury.

Nugent v. Bowerton Min. Co., —— Pa. ——, 106 Atlantic 112.

SURFACE AND SUBTERRANEAN EXCAVATIONS.

Where the term "mines and minerals" is used in grants or in reservations in instruments of conveyance or in statutes the word "mines" is not limited to mere subterranean excavations or workings, nor is the word "minerals" limited to metals or metalliferous deposits whether contained in veins having well-defined walls or in beds or deposits that are irregular or are found at or near the surface.

Byron v. Utah Copper Co., —— Utah ——, 178 Pacific 53, p. 56.

UNCHOKING BLAST HOLE WITH STEEL DRILL.

A miner with others was attempting to unchoke a blast hole. After the unsuccessful use of a pole and under the direction of the superintendent they used a diamond drill and while so engaged the powder exploded, filling the eyes of the suing miner with smoke and dust and dirt, and in running from the place of danger he ran over a high bank and was injured by the fall. On the trial of the case for damages it was proper to permit experienced witnesses to testify that it was the custom among well-regulated ore mines to unchoke blast holes with a drill and it was proper for a witness to state that in many years of experience in employment for the defendant he had never known the powder to explode.

Sloss-Sheffield Steel & Iron Co. v. Thomas, —— Ala. ——, 80 Southern 69, p. 71.

RIGHT TO SURFACE SUPPORT.

MINERALS "IN OR UNDER THE SURFACE"—MINING AND REMOVING.

A deed conveying the surface but reserving to the grantor the right to all ores "in and under the surface," with the right to mine and remove the same, reserves to the grantor all the valuable mineral whether in or under the surface and gives him the right to mine and remove the same without leaving support for the surface or without in fact leaving any surface where surface mining was the method of

operating at the time of the conveyance and where the parties by the conveyance contemplated such method of mining.

Byron v. Utah Copper Co., —— Utah ——, 178 Pacific 53, p. 56.

WAIVER OF RIGHT.

A lease of coal rights gave to the lessee the exclusive privilege of mining and carrying away coal with as full right as if the lessee were the actual owner of the land, the same to be exercised without any liability for damages resulting from the use and exercise of such right. This grant indicates in the clearest terms the intention of the lessor that the lessee should not be liable for damages for failure to support the surface.

Weakland v. Cymbria Coal Co., —— Pa. ——, 105 Atlantic 558, p. 559.

NUISANCE.

SMELTER OPERATIONS—INJURY FROM POISONOUS GASES—PROOF.

A complaint in an action for damages alleged that crops, fruits, vines, berries, and vegetables of the plaintiff were damaged and destroyed from smoke and fumes blown over the lands from a nearby smelter and that such smoke and fumes contained sulphur, arsenic, lead, and zinc in various combinations and of sufficient quantities to destroy the vegetation and poison animals. It was sufficient for the plaintiff to sustain the burden of proof when he showed at the time his plants and vegetation were destroyed and damaged the defendant's smelter was freely emitting fumes, gases, and acids that were destructive of plant and animal life, and that the wind did blow such fumes and poisonous gases toward his premises near which the smelter was located and that there was no other known agent of destruction existing in the vicinity.

Courtney v. American Zinc, Lead & Smelting Co., —— Kans. ——, 179 Pacific 342.
See Wichers v. New Orleans Acid & Fertilizer Co., 128 La. 1011, 55 Southern 657.

SMELTER OPERATIONS—PROOF OF DAMAGES—COMPETENCY OF TESTIMONY.

In an action against a smelting company for damages for injuries to animals and vegetation, it was proper for experts to give an opinion that stock in the vicinity of the smelter had been made sick from smoke and fumes from the smelter, without proof that the smoke and fumes contained poisonous and deleterious substances. It was not necessary to prove the precise nature of the gases and fumes that came from the stacks of the smelter. Proof that at some seasons of the year when the winds prevailed in one direction the crops on lands opposite thereto and in the vicinity of the smelter were affected or

destroyed by the fumes and that these fumes had an effect on the health of animals and live stock. It was also competent to prove the condition of other premises and the experience of other farmers located at varying distances and in different directions from the smelter in order to establish the fact that whatever the fumes consisted of they were poisonous and deleterious to the lives of animals and live stock.

Courtney v. American Zinc, Lead & Smelting Co., —— Kans. ——, 179 Pacific 342, p. 343.

OIL TANKS—ESCAPE OF OIL—INJURY TO LAND.

The Standard Oil Company maintained a large number of oil tanks surrounded by tank dikes several feet high, built for the purpose of conserving oil in case the tanks should catch on fire and the oil run out of the tanks. The company maintained an open drainpipe in the bottom of the dikes and any oil accumulating in the dike would pass through this drainpipe onto the adjoining lands. Crude oil was permitted to accumulate in the dike and run through the drainpipe onto the lands of the complainant to his damage. It was the duty of the oil company as owner of the tanks and dikes to exercise ordinary care to prevent any oil from escaping and flowing onto the adjacent premises. The question of the negligence of the oil company in so maintaining its tanks, dikes and the drainpipe and its effort to close the drainpipe were questions of fact to be determined by the jury.

Standard Oil Co. v. Glenn, —— Okla. ——, 176 Pacific 900.

INJUNCTION.

CONTRACT FOR SALE OF COAL—INJUNCTION TO PREVENT BREACH.

A coal-mine operator entered into a contract with an agent by which the agent was to handle and sell the entire output of the lump coal from the mine from March 1, 1917, to March 1, 1918. The contract provided for the loading and shipping of coal and the sale and accounting, less a stated commission. The agent fulfilled his part of his contract from its date to October 25, 1917, when the coal-mine operator notified him that the contract was not binding and refused to make further shipments on the order of the agent. The agent thereupon demanded the entire output of the mine and notified the operator of numerous contracts that he had made on the faith of the terms of his employment, some with the special approval of the mine operator, and that he was unable to fill these unless the coal was shipped pursuant to the contract. The rule that no ground for equitable relief was shown does not obtain in the State of Missouri, as the statute of that State broadens the grounds for the intervention

of equity and justifies equitable relief "to prevent the doing of any legal wrong whatever, whenever in the opinion of the court an adequate remedy can not be enforced by an action for damages." An adequate remedy by an action for damages could not be afforded in this case, as no coal of like quality could be had and supplied to fill the agent's contracts, and he would be subject to a large number of suits for damages for his inability to comply with his contracts, due to the breach of the contract on the part of the mine operator.

Warren v. Ray County Coal Co., —— Mo. App. ——, 207 Southwestern 883, p. 886.

WRONGFUL DEATH.

DEATH OF MINOR CONVICT—RIGHT OF PARENT TO RECOVER.

A minor, as a convict, by some arrangement with the State, was being forced by a mine operator or his agents or servants, acting within the line and scope of their authority as such, to labor in a coal mine for the mine operator against his will, and while so working he was, through the alleged negligence of the mine operator, run over by a tram car and killed. Under such facts the father of the deceased minor and convict had the right to maintain an action against the negligent mine operator for damages for the death of his minor son.

Red Feather Coal Co. v. Murchison, —— Ala. ——, 80 Southern 354, p. 355.

NEGLIGENCE—PROOF INSUFFICIENT.

Proof that an employee was overcome by fumes of gasoline from a tank car and while in this condition fell from the car to a ditch at the side of the track and inhaled water, mud, and gasoline, and other waste products, and there died from suffocation, was insufficient to establish negligence. There was no substantial evidence, direct or express, fairly tending to prove the actual cause of the death, and the evidence was insufficient to justify a recovery on the ground of negligence in assigning the employee to a dangerous place to work.

Cash v. Kansas Oil Refining Co., —— Kans. ——, 176 Pacific 980.

POLLUTION OF STREAMS.

INJURY TO FISH—QUESTIONS OUTSIDE OF ISSUES.

In an action by a riparian owner against a mine operator for damages for the pollution of a stream and for injuries to the complainant's land by mining and smelting operations, the question of the existence or nonexistence of fish in the stream at any given time was outside of the issues and properly excluded.

Jones v. Tennessee Coal, Iron & R. Co., —— Ala. ——, 80 Southern 463, p. 464.

RIGHTS OF RIPARIAN PROPRIETOR—USE OF WATER.

A riparian owner has the right to use a stream and the water that flows through his land for ordinary purposes and the gratification of the natural needs even though the stream be consumed in such use, and this right has to be exercised both by himself and all living things in his legitimate employment.

Jones v. Tennessee Coal, Iron & R. Co., —— Ala. ——, 80 Southern 463, p. 464.

USE OF WATER—ABATEMENT OF FORMER RULE.

Public concern about the reasonable exigencies of agricultural and manufacturing enterprise must be allowed to abate somewhat of the right of riparian proprietors to have a stream flow as it has been accustomed to flow, to receive and discharge it without appreciable impairment of its original volume or purity.

Jones v. Tennessee Coal, Iron & R. Co., —— Ala. ——, 80 Southern 463, p. 464.
See Sloss-Sheffield Steel & Iron Co. v. Morgan, 181 Ala. 587, 61 Southern 283.

EXTRAORDINARY USE OF WATER—RESTORING WATER TO STREAM.

A riparian proprietor has the right to the extraordinary or artificial use of a stream and its waters, if by the use of the water it is not forced back or unreasonably or improperly precipitated on the lands of adjacent proprietors and after its use it is restored to its natural channel without unreasonable or material diminution before it leaves the land of the person so diverting or subjecting it to such artificial uses, and provided also it is not so polluted as to unreasonably or materially affect its ordinary and extraordinary use by the proprietor of the land into which the unused waters flow by its accustomed channel.

Jones v. Tennessee Coal, Iron & R. Co., —— Ala. ——, 80 Southern 463, p. 464.
See Stout's Mt. Coal & Coke Co. v. Ballard, 195 Ala. 283, 80 Southern 172.
Parsons v. Tennessee Coal, Iron & R. Co., 186 Ala. 84, 64 Southern 591.

USE OF WATER FOR MANUFACTURING PURPOSES—DIMINUTION.

Reasonable diminution of the quantity of water in a stream in gratifying and meeting customary wants has always been permitted, and the temporary detention of the waters of streams for manufacturing purposes followed by its release in increased volume is a necessary consequence of its utilization as a propelling force, and it is conceded that these uses necessarily detract somewhat from the normal purity of the waters so used. These modifications of individual right must be submitted to in order that the greater good of the public be conserved and promoted. Notwithstanding these changes the water course must not be diverted from its channel or so diminished in quantity or so corrupted and polluted as practically to destroy or

greatly impair its value to the lower riparian proprietor. But no rule can be declared so clear and precise that it can be applied with certainty to every case that may arise.

Jones v. Tennessee Coal, Iron & R. Co., —— Ala. ——, 80 Southern 463, p. 464.
See Alabama Consolidated Coal & Iron Co. v. Turner, 145 Ala. 639, 39 Southern 603.
Sloss-Sheffield Steel & Iron Co. v. Morgan, 181 Ala. 587, 61 Southern 283.
Parsons v. Tennessee Coal, Iron & R. Co.,186 Ala. 84, 64 Southern 591.

CONTRIBUTING CAUSES—INDIVIDUAL LIABILITY.

A mining company maintaining an ore-washery plant can not be held liable to a lower riparian proprietor for damages for the pollution of the waters of a stream caused by other mining and ore-washing companies and other independently contributing causes that precipitated detrius or polluting elements into the stream above the complainant's lands and particularly where many of the contributing causes intervened between the complainant's land and the location of the defendant's washery.

Jones v. Tennessee Coal, Iron & R. Co., —— Ala. ——, 80 Southern 463, p. 464.
See Tennessee Coal, Iron & R. Co. v. Hamilton, 100 Ala. 252, 14 Southern 167.
Tutwiler Coal & Iron Co. v. Nichols, 146 Ala. 364, 39 Southern 762.

MINING LEASES.

LEASES GENERALLY—CONSTRUCTION.

CONSTRUCTION—MINERALS IN AND UNDER THE SURFACE—MEANING.

A mineral lease granted all the ores and minerals "in and underneath the surface." At the time of the execution of the lease it was known that the leased premises contained valuable ores and metals, and that at and before that time mining operations in the locality were carried on by mining at the surface as well as by underground operations, and that surface mining was the usual method employed by the lessee on property in close proximity to the leased premises. Under the lease as construed in the light of the situation of the parties and the existing conditions, the lessee had the right to mine and remove all minerals in and under the surface as well as dumps containing valuable ores and metals that had been piled upon the leased premises from excavations made thereon.

Byron v. Utah Copper Co., —— Utah ——, 178 Pacific 53, p. 56.

FAILURE TO PERFORM COVENANTS—NOTICE TO SURRENDER.

A mining lease provided that in the event the lessee failed to work the mine in a workmanlike manner and to properly timber the same so as to protect ores not removed, or failed to comply with any of the covenants or conditions of the lease, to the prejudice of the lessor, the lessor might forfeit the lease after thirty days' written notice and demand requiring performance by the lessee. A notice by the lessor to the lessee under this lease either to perform the covenants or to relinquish possession must point out specifically the default claimed so that the lessee could correct the same within the time limited. When a lease provides for a notice requiring the tenant in the alternative to perform the covenant or relinquish possession the notice must recite the breach or stipulation relied on with sufficient particularity to enable the lessee to correct his default.

Tri-Bullion Smelting & Dev. Co. v. Ozark Smelting & Min. Co., —— N. Mex. ——, 176 Pacific 817, p. 818.

TERMINATION BY NOTICE—SUFFICIENCY OF NOTICE.

Where a mining lease provides for its termination upon the failure of the lessee to comply with any of its terms and conditions after thirty days' notice of default and demand for compliance, a complaint by a lessor filed in a suit for possession of the premises setting

up default in the terms and conditions of the lease will not take the place of the notice provided for by the terms of the lease and under which the lessee was to have thirty days' time within which to comply with its terms.

Tri-Bullion Smelting & Dev. Co. v. Ozark Smelting & Min. Co., —— N. Mex. ——, 176 Pacific 817, p. 818.

LEASES TO HIGHEST BIDDER.

The statute of Nebraska (Acts, Extra Session, 1918, section 16) provides that the holders of mineral leases that have been declared invalid may apply for new leases, and the Board of Educational Lands and Funds may in its discretion determine if the bonus and royalties are equal or better than the bona fide competitive bids and if the lessee has made extensive or expensive preparations and is prepared to proceed with development, the board may consider the same and issue a new lease. But the board under this section should call for competitive bids, and the holders of such invalid leases may bid with others and specify the bonus and royalty provided for in their former contracts, and if such lessees have paid money under leases declared void the payment will be taken into consideration and allowed as payment upon their new leases if they are successful bidders, otherwise the money paid on former void leases should be returned. The board may include more than one tract of land in a proposed lease of mineral rights if, in its discretion, the State would realize larger returns by so doing, but under the statute all leases must be made to the highest bidder in open competition and upon due notice.

Briggs v. Neville, —— Nebr. ——, 170 Northwestern 188, p. 189.

MINERAL LEASE OF AGRICULTURAL LANDS—ISSUANCE NOT ENJOINED.

The statute of Nebraska (Acts, Extra Session, 1918, section 16) authorizes mineral leases of State lands already leased for agricultural purposes. An agricultural lessee cannot enjoin the State Board of Educational Lands and Funds from issuing a mineral lease on lands held by him under an agricultural lease on the ground that the statute provides no method for determining or assessing his damages, although the act expressly provides that the mineral lessee shall pay all damages to growing crops caused by his operations.

Briggs v. Neville, —— Nebr. ——, 170 Northwestern 188, p. 190.

AGRICULTURAL AND MINERAL LESSEES—RELATIVE RIGHTS—DAMAGES.

Section 8 of the statute of Nebraska (Acts, Extra Session, 1918, section 16) provides that lessees of mineral rights shall pay all damages to growing crops caused by his operations and for the use of the land necessarily occupied. But the act contains no provision for

ascertaining the amount of damages, and the lessee of the mineral rights is not authorized by his lease to interfere in any respect with the rights of the agricultural lessee without providing for the satisfaction of such damages; and if he is willing to accept the lease upon such conditions the rights of the agricultural lessee are not injured by this statute. The mineral rights lessee would rely upon being able to make a reasonable adjustment with the former agricultural lessee and he could not be wholly and arbitrarily deprived of his right to extract the minerals by unreasonable demands of the agricultural lessee. But if there is no other method provided for adjusting such claims or damages, a court of equity might provide a method.

Briggs v. Neville, —— Nebr. ——, 170 Northwestern 188, p. 190.

LEASE TO MINE IRON ORE—MISTAKE AS TO EXISTENCE OF ORE—RIGHT OF PARTIES.

The owner of lands containing iron ore entered into a contract and lease to extend for a period of forty years by which the lessee was to conduct mining operations and to mine at least 20,000 tons of ore each year and to pay a royalty of 50 cents per ton to the lessor. At the time of the execution of the lease both lessor and lessee believed that the lands contained merchantable iron ore in sufficient quantity to last for the full lease period on the basis of the required annual amount to be mined. After conducting mining operations for about 18 years the lessee gave notice of his intention to cancel and surrender the lease because iron ore could no longer be found on the leased premises either of the quality or quantity that could be profitably mined. It is manifest that the parties contracted entirely with reference to iron ore supposed to exist and that did exist on the land. The obligation proceeded upon the presumption that the ore was there and continued to be there in sufficient quantities to enable the lessee to perform his contract; but if the ore was not there so that it could no longer be taken out in the quantities specified, the lessee was entitled to be relieved of the lease. He could not do an impossible thing and therefore could not be held liable for not doing it. Such a lease imposes no obligation to pay the minimum royalty after the ore in the premises has become exhausted.

Virginia Iron, Coal & Coke Co. v. Graham, —— Va. ——, 98 Southeastern 659, p. 663.

See Boyer v. Fulmer, 176 Pa. 282, 35 Atlantic 235.
Ridgley v. Conewago Iron Co., 53 Federal 988.

PAYMENT OF ROYALTIES—MINIMUM BASIS—EXHAUSTION OF ORE.

A lease for mining iron ore was to continue for forty years and the lessor was to receive 50 cents per ton as compensation for each ton of good merchantable iron ore mined and shipped. The lease provided

that no less than 20,000 tons were to be shipped each year and that was made the minimum basis of royalty; but any deficit in quantity in one year was to be equalized by a surplus in another year. The contingency provided against was the failure to mine and not the exhaustion of the ore assumed by both parties to exist. It is manifest that if the ore did not in fact exist, the lessee should be relieved from the obligation to pay the royalty provided for in the lease because the paramount consideration has failed and performance by the lessee has become impossible.

Virginia Iron, Coal & Coke Co. v. Graham, —— Va. ——, 98 Southeastern 659, p. 664.

PURCHASE OF LESSOR'S INTEREST BY LESSEE—MERGER.

The lessee of certain mining claims purchased during the existence of the lease, the lessor's interest. Ordinarily a purchase of the lessor's interest by a lessee merges the two estates; but the rule does not obtain where the contract of purchase expressly recited that the purchase should in no wise affect the existing lease and agreement and the lessee after the purchase was bound to pay the stipulated royalties for the full term of the lease.

Rayburne v. Stewart-Calvert Co., —— Wash. ——, 178 Pacific 454, p. 455.

PURCHASE OF HALF INTEREST—LIABILITY AS PARTNER.

An agreement by which one party was to sell and another to purchase a half interest in a mining lease on certain conditions and to become effective in the future after the mine was dewatered and ready for inspection and should in fact be inspected by the purchaser, does not create a partnership and make the purchaser liable as a partner for debts incurred by the seller in pumping the water from the mine and preparing it for inspection by the purchaser.

Mackie-Clemens Coal Co. v. Brady, —— Mo. App. ——, 208 Southwestern 151, p. 152.

SALE—CONSIDERATION—PAYMENTS TO THIRD PARTY.

A lessee of certain mining property was required to pay to the lessor a stipulated royalty and was also obliged to pay a three per cent royalty to three other persons by reason of some former interest in the mining property. The lessee by a written agreement sold the mining lease to a purchaser for a stipulated sum and in connection with the sale and in consideration of the royalty due to the third persons the purchaser executed his several notes to such persons in payment of the surrender of their royalty rights. In an action to recover by one of the parties on a note so executed, the purchaser could not defeat a recovery on the ground that there was a failure of consideration in that the royalty contract was not a lien on the mining property, as represented.

Pate v. Mullen, —— Mo. App. ——, 209 Southwestern 291, p. 293.

COAL LEASES.

NATURE OF GRANT—SURFACE SUPPORT.

A coal lease conveyed to the lessee the absolute right to enter upon the leased lands and mine and remove the coal and to use the surface as fully as if the lessee owned the same. It expressly relieved the lessee from all liability from injury to the surface caused by mining operations. The terms of the lease were sufficient to show an intention on the part of the lessor to waive his right to the support of the surface and to relieve the lessee from any liability for injuries to the surface occasioned by his mining operations.

Weakland v. Cymbria Coal Co., —— Pa. ——, 105 Atlantic 558, p. 559.

GRANT OF RIGHT TO USE TIMBER—CONSTRUCTION.

A coal-mining lease gave the lessee the right to use the timber on the leased land within certain stated boundaries. This grant of the right to use the timber must be construed as intending only such use as may be necessary to effectuate the purpose of the demise. The right of appropriation is seldom enlarged into an unqualified ownership, such as authorizing a severance and a sale without regard to the right to use for mining purposes. Until such time as the lessee found it necessary to elect to exercise the right, the title to the timber remained vested in the lessor.

Paxton Lumber Co. v. Panther Coal Co., —— W. Va. ——, 98 Southeastern 563, p. 565.

See Godfrey v. Weyanoke Coal & Coke Co., —— W. Va. ——, 97 Southeastern 186.

PRIORITY OF MORTGAGE.

A coal lease on certain lands executed after the execution of a valid mortgage is subject to such mortgage. A judgment of foreclosure of the mortgage prima facie binds the entire estate, including the coal.

Reisinger v. Garrett Smokeless Coal Co., —— Pa. ——, 106 Atlantic 78, p. 79.

MORTGAGE AND LEASE—AGREEMENT AS TO PRIORITY—NOTICE TO PURCHASER.

A lessee of certain coal rights accepted a lease subject to a mortgage on the land. The mortgagee for a valuable consideration agreed that the lease should be prior and superior to his mortgage. But the landowner repudiated and refused to be bound by the agreement and the agreement was not properly recorded in the mortgage record. Subsequently the mortgage was foreclosed and notice of the foreclosure duly served on the coal lessee who was in possession of the land, but he failed to give notice to the purchaser of the priority of his coal lease. The improper record of the agreement to give priority to the coal lease was not constructive notice and the purchaser at the sheriff's

sale had no actual knowledge of such agreement and obtained by his purchase an absolute title to the land, including the coal, together with the right of possession.

Reisinger v. Garrett Smokeless Coal Co., —— Pa. ——, 106 Atlantic 78, p. 80.

OIL AND GAS LEASES.

CONSTRUCTION—INTENTION OF PARTIES.

An oil and gas lease contained a clause in writing to the effect that if the lessee did not commence operations within one year the lease should be null and void. A printed clause in the lease provided that if the lessee failed to commence a well within one year he should pay a yearly rental of $82. In construing a lease containing such provision it is proper to look at the purposes and objects to be gained by its execution in order to ascertain the intent of the parties as expressed in the lease. The evidence shows that at the time of the execution of the lease it was agreed and understood that it should be null and void if operations were not commenced in a year. Such is the more natural, probable, and reasonable interpretation to be placed upon the lease, and the written provision should prevail over the printed part.

Johnston v. Shaffer, —— Okla. ——, 176 Pacific 901.

CONSTRUCTION—LANDOWNER FAVORED.

The construction of contracts or leases relating to oil and gas, where their terms admit of doubt or uncertainty, should favor the land owner, the lessor, because of the peculiar characteristics of these minerals.

Rechard v. Cowley, —— Ala. ——, 80 Southern 419, p. 421.

CONSTRUCTION—ONE DOLLAR CONSIDERATION.

A mining lease, in consideration of one dollar paid, granted to the lessee the oil and gas in and under the land described, and granted all other rights and privileges convenient for conducting mining operations, with the right of ingress and egress and the right of transportation of oil, gas, and water upon and from the described land. The nominal consideration of one dollar, the receipt of which was formally acknowledged, was effective and sufficient to support the obligation assumed by the lessor, whereby rights were conferred on the lessee.

Rechard v. Cowley, —— Ala. ——, 80 Southern 419, p. 420.

CONSTRUCTION—CONTRACTUAL CONSIDERATION—EFFECT.

Oil and gas leases are not dependent for their validity on an agreement to pay royalties and a consequent expressed or implied covenant

to develop. They may be for any other consideration agreeable to the parties and valuable in law, or the consideration may be wholly executory, or it may be in money only, paid at the time of the execution and delivery of the instrument. The amount recited may be small, only one dollar, but a dollar is a unit of value and is a thing of value in fact and in the eyes of the law. One dollar is a sufficient consideration to support a conveyance of land, and if sufficient to support a conveyance of the whole estate in land it is sufficient to support a grant of a less interest. Where one dollar was the sole consideration paid for an oil and gas lease and the payment was recited in the instrument, the instrument would not be void. But aside from this it may be that development and prospective royalties are the real or moving consideration for such a lease. But this can not be where the parties expressly agree that development may be deferred for a stated time. One of the considerations and perhaps the principal one for such a grant is the covenant to develop and yield prospective royalties or pay the stipulated price in lieu thereof.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 91.
See Guffey v. Smith, 231 U. S. 101, 35 Supreme Ct. 526.
Eastern Oil Co. v. Beatty, —— Okla. ——, 176 Pacific 104.

CONSTRUCTION—JOINT AND SEVERAL COVENANTS.

A covenant in an oil and gas lease may be construed to be joint or several according to the interest of the parties appearing upon the face of the lease, if the words are capable of such construction; but the covenant will not be construed to be several by reason of several interests if it be expressly joint. This rule was applied to an oil and gas lease executed by a husband and wife as "parties of the first part," where the rentals were to be paid to the "parties of the first part." Under this ruling a payment of rentals to the wife was a discharge of the obligation although the title to the land was in the husband.

Jens Marie Oil Co. v. Rixse, —— Okla. ——, 178 Pacific 658.

CONSTRUCTION—VARIANCE BETWEEN WRITTEN AND PRINTED PORTIONS OF LEASE.

An oil and gas lease contained a printed provision to the effect that the lessee agreed to commence a well within twelve months from its date or pay the lessor a stipulated yearly rental. There was written in the lease immediately below this printed clause: "'The second party agrees to commence operations on this land within one year, otherwise this lease shall be null and void." The written portion, being at variance with the printed matter, must control and govern in the construction as best indicative of the intention of the parties.

Johnston v. Shaffer, —— Okla. ——, 176 Pacific 901.

CONSTRUCTION—UNILATERAL—MEANING.

The term "unilateral" is often used to express absence of mutuality, particularly in relation to oil and gas leases. Where contracts made up solely of mutual promises, each the consideration for the other, where the promises of one party are so expressed as not to be absolutely binding on him, but to be performed only if such party so wills, or a promise on but one side and no consideration therefor, the one making the absolute promise in the one case, or the sole promise of the other, is not bound to perform. The reason for this conclusion as sometimes given is that the contract is unilateral or void for want of mutuality; but the real reason is that there is not enough consideration for the promise. Consideration is essential, but mutuality of obligation is not unless the want of mutuality would leave one party without a valid or available consideration for his promise.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 90.

CONSTRUCTION—LEASE NOT UNILATERAL.

An oil and gas lease for a stated term required the lessee to drill a well within one year or thereafter to pay the lessor a quarterly rental in advance and give the lessor one-eighth of the oil and a stated sum for each gas well and permitted the lessee at any time to remove all his property and reconvey the premises, and provided that the payments made were to be retained by the lessor as the full damages for failure to comply with the lease. This lease was not subject to cancellation on the ground that it was unilateral in form and was therefore void for want of mutuality.

Hughes v. Parson, —— Ky. ——, 209 Southwestern 853.
See Killabrew v. Murray, 151 Ky. 345, 151 Southwestern 662.
Rechard v. Cowley, —— Ala. ——, 80 Southern 419, p. 421.

CONSTRUCTION—OPTIONAL AS TO ONE—RIGHT OF OTHER.

The rule that contracts unperformed without sufficient consideration which are optional as to one of the parties are optional as to both, applies to contracts or oil and gas leases consisting entirely of mutual promises wholly executory and unperformed. The promises on one side being the sole consideration for the promise on the other and in which if it is optional with one of the parties whether he will perform his promise, then prior to performance by him it is optional with the other whether he will perform his promise. The correct statement of the rule is that contracts unperformed, without sufficient consideration, which are optional as to one are optional as to both.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 91.
See Hill Oil & Gas Co. v. White, 53 Okla. 748, 157 Pacific 710.

CONSTRUCTION—NATURE OF ESTATE GRANTED.

A contract to explore and take and remove gas and oil is usually denominated a lease, but strictly speaking it is not such, but is in fact a grant in presenti of all the right to the oil and gas to be found in the lands described, with the right for the term named to enter upon the land and search therefor, and, if found, to produce and remove them according to the terms of the agreement. The grant implies, where it is not expressed, a right to occupy so much of the surface of the land as may be necessary for the purpose of exploration and production.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 90.

CONSTRUCTION—RIGHTS ACQUIRED BY LESSEE.

A lessee under an ordinary oil and gas lease acquires the right to go upon the premises, erect and maintain all necessary structures, and explore for oil and gas, and, if found, produce them according to the terms of the lease.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 95.

CONSTRUCTION—OIL AND GAS IN PAYING QUANTITIES—MEANING.

An oil and gas lease provided that one well was to be drilled to the top of the Mississippi lime unless oil or gas was found in paying quantities before the lime was reached, unavoidable accidents excepted. The phrase "oil or gas is found in paying quantities" taken in connection with other provisions of the lease must mean the finding of oil or gas in such quantities as would justify the expectation of a reasonable profit above the entire cost, including the cost of drilling and equipping the well.

Ardizonne v. Archer, —— Okla. ——, 178 Pacific 263, p. 264.

RIGHTS GRANTED—EXCLUSIVE PRIVILEGE.

An ordinary oil and gas lease is a grant of a present vested interest in land and gives the right for the term named of mining and operating on the described premises for oil and gas, which includes the right to explore therefor and extract therefrom and reduce to possession, as personal property, such as may be found in the land. It is a grant of the exclusive right for the time specified to take all the oil and gas that can be found by drilling wells upon the lands described, with the accompanying incidental right to occupy so much of the surface as may be required to do the things necessary to the discovery and for the enjoyment of the principal right to take oil and gas. Such a lease does not convey a vested interest in any oil or gas by reason of the nature of these substances, but only the right to search for and reduce to posses-

sion such as may be found; and after discovery, when reduced to possession, an estate therein as corporeal property would vest.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 89.

CONSTRUCTION—NATURE OF GRANT.

An oil and gas lease in consideration of one dollar granted to the lessee all the oil and gas in and under the tract of described land, with the right to operate thereon for oil and gas and the right to transport the oil and gas from the described premises. It is manifest that this lease was not intended to make a grant in presenti of the oil and gas as a part of the realty.

Rechard v. Cowley, —— Ala. ——, 80 Southern 419, p. 421.

NATURE—RIGHTS GRANTED—TITLE TO OIL—VALUATION.

An oil and gas lease carries with it not only the privilege of going upon the lands for the purpose of drilling, but the right to take therefrom during the continuance of the lease such oil and gas as may be found. Title to the oil and gas is vested by the lease in the lessee and it becomes his property of recognized value and he controls it and may dispose of it as his own. Not only is the oil or gas property, but the lease under which it is taken from the ground is property which has a substantial value and is the subject of frequent sale and is property that is subject to taxation.

Raydure v. Board, etc., Estill County, —— Ky. ——, 209 Southwestern 19, p. 24.
See Mt. Sterling Oil & Gas Co. v. Ratliff, 127 Ky. 1, 104 Southwestern 993, 31 Ky. Law. Rep. 1229.

MINIMUM TERM FOR EXPLORATION—ESTATE AT WILL.

An oil and gas lease granted the lessee all the oil and gas in and under the land described, with the right of conducting operations thereon and the right of transporting the oil and gas from the premises for a term of twelve years and as much longer as oil and gas are found in paying quantities. Such a lease does not create a tenancy at will as it fixed so far as the lessor was concerned a minimum term for the exploration and possession to accomplish the end.

Rechard v. Cowley, —— Ala. ——, 80 Southern 419, p. 421.

CONSTRUCTION—FAILURE TO DRILL WELL OR PAY RENTALS.

An oil and gas lease provided among other things that if a well was not commenced within one year the lease should be void unless the lessee should pay or tender to the lessor one dollar per acre for each additional year that such commencement was delayed. The lease was dated July 1, 1916, and no well was commenced during the first

year and no rental was paid or tendered before July 1, 1917. The right to extend the lease existed on the payment of the rental and was not a consequence flowing from the original consideration alone. If the lessee desired to continue the lease he should have paid or tendered the rentals on or before July 1, 1917. If he wished to avoid paying the rentals by drilling operations, such operations should have been commenced before July 1, 1917. The lease compelled the lessee either to pay rent or commence drilling before July 1, 1917. He did neither, and under its terms the lease became null and void and subject to forfeiture.

Doornboss v. Warwick, —— Kan. ——, 177 Pacific 527.

CONSIDERATION—DELAY RENTALS—NO IMPLIED COVENANT TO DEVELOP.

No covenant to develop the land can be implied under an oil and gas lease in the face of an expressed stipulation for periodical payments for delay thereof not extending beyond a definite term. Development on other lands in the vicinity may show the premises to be situated in an oil and gas territory and prove the adaptability of the land for profitable mining operations but the lessor has no legal cause for complaining so long as he receives compensation for the delay for which he had contracted and the operations on neighboring lands do not drain the leased premises. Under such circumstances a court will not imply a covenant for diligent operation or operations at all. The lessor is deemed to have assented to the postponement through the several periods and bound to accept the periodical payments therefor.

Eastern Oil Co. v. Beatty, —— Okla. ——, 177 Pacific 104, p. 105.

CONSIDERATION—CASH BONUS—EFFECT ON COVENANTS.

By an oil and gas lease the lessee agreed to complete a well within twelve months or pay at the rate of $100 for each additional twelve months after such completion was delayed. The completion of a well was to operate as a full liquidation of rent during the remainder of the term of the lease. A cash bonus as a money consideration was paid for the lease at the time of its execution. A cash bonus paid for an oil and gas lease is a sufficient consideration to support each and all of the covenants in the lease.

Carter Oil Co. v. Tiffin, —— Okla. ——, 176 Pacific 912.

CONSIDERATION—MUTUALITY—TERMINATION.

A landowner executed an oil and gas lease for the sole purpose of mining for a term of five years, giving the lessee the right to operate for oil and gas, laying pipe lines, building tanks, power stations, and structures thereon and to procure and take care of the oil and gas.

A consideration of one dollar was named and the lessee was to deliver to the the lessor one-eighth of the oil and to pay a stipulated sum per annum for each gas well and for gas used from each oil well. The lessee was to complete a well within six months or pay at the rate of $15 for each additional month such completion was delayed. The lease gave the lessee the right at any time on payment of one dollar to the lessor to surrender the lease for cancellation and all liability thereunder was to cease. The consideration recited is sufficient to support the grant of the right to explore the land for oil and gas and to take and remove such as may be found. The agreement is not void for want of mutuality as it gave the lessee the right on compliance with the conditions expressed to terminate the lease; but the lessor could not terminate the lease at his pleasure on the theory that the instrument created a tenancy at will, within the rule that an estate at the will of one party is equally at the will of the other.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 89.
See Eastern Oil Co. v. Beatty, —— Okla. ——, 176 Pacific 104.

CONSIDERATION—MUTUALITY—SURRENDER CLAUSE—TERMINATION.

An oil and gas lease executed for a valuable consideration in the way of a cash bonus in addition to the covenant to develop and pay royalties or to pay rental in lieu of such development is valid and binding upon the lessor notwithstanding a surrender clause, and is not subject to cancellation by the lessor on the ground that the contract is unalateral and void for want of mutuality. The right given the lessee to terminate the lease does not confer a corresponding right of termination upon the lessor.

Eastern Oil Co. v. Beatty, —— Okla. ——, 177 Pacific 104, p. 105.

CONSIDERATION—OBLIGATIONS UPON LESSEE.

An oil and gas lease for a term of five years was for the stated consideration of one dollar and the lessee also agreed to pay certain stipulated royalties for the oil and for each gas well, and to complete a well within six months or pay $15 for each additional month the completion was delayed. The lease gave the lessee the right to surrender the lease at any time on payment of one dollar and all liabilities were to terminate. Such a lease is not unalateral on the theory that the lessee was not bound to do anything. On the contrary, his obligation was to do one of three things: (1) drill and complete a well in a fixed time; or (2) surrender all his rights and pay in addition the sum of one dollar; or (3) pay during the term of the lease, or until surrendered, $15 per month for each additional month the completion of a well was delayed. The lessee may escape from two of these obligations but he was absolutely bound to do one of the three. If he

performed the first and failed to find oil and gas he suffered a detriment, and if oil and gas were discovered the lease conferred a benefit on the lessor by way of royalties. If the lessee performed the second he would suffer a detriment and confer a corresponding benefit on the lessor; but if he did neither of these he was absolutely obligated to the other and the amounts agreed to be paid for the delay could be recovered in an action by the lessor.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 90.

CONSIDERATION—DEVELOPMENT DELAYED INDEFINITELY.

An oil and gas lease provided that the lessee was to begin a well on the premises within one year of its date or pay at the rate of 25 cents an acre per year for each year such beginning was delayed. In such a lease the main consideration is the development of the property and the payment of royalty and the lessee can not as against the wishes of the lessor refuse to begin the development of the property for an unreasonable time and extend the lease indefinitely by the payment of a mere nominal rent.

Warren Oil & Gas Co. v. Gilliam, —— Ky. ——, 207 Southwestern 698.

PAYMENT OF DELAY RENTALS—FAILURE OF CONSIDERATION—RIGHT OF LESSEE.

A lease for oil and gas covered 280 acres alleged to be owned by the lessor; but as to 67 acres of the land described the lessor had title only to a one-half undivided interest in the oil thereunder. This variance as to the ownership is not such a total failure of consideration as to authorize the lessee to maintain an action to recover the delay rentals paid, in an action by him against the lessor as for money had and received.

Philadelphia Co. v. Shackelford, —— W. Va. ——, 98 Southeastern 568, p. 570.

OPERATIONS—EXTENT—DILIGENCE REQUIRED.

The large expense incident to the work of exploration and development and the fact that the lessee must bear the loss if the operations are not successful require that he proceed with due regard to his own interests as well as to those of the lessor. No obligation rests on him to carry the operations beyond the point where they will be profitable to him, even if some benefit to the lessor will result therefrom. It is only to the end that the oil and gas shall be extracted with benefit or profit to both that reasonable diligence is required. The rule is that whatever, under the circumstances, would be reasonably expected of operators of ordinary prudence, having regard to the interest of both lessor and lessee, is what is required.

Eastern Oil Co. v. Beatty, —— Okla. ——, 177 Pacific 104, p. 107.
See Hall v. South Penn Oil Co., 71 W. Va. 82, 76 Southeastern 124.

DELAY IN DEVELOPMENT.

An oil and gas lease required the lessee to begin a well within one year or pay at the rate of 25 cents an acre for each year the beginning of development was delayed. The lessee can not under such a lease refuse to begin the development of the property for an unreasonable time and extend the lease indefinitely by the payment of a mere nominal rent.

Warren Oil & Gas Co. v. Gilliam, —— Ky. ——, 207 Southwestern 698.

DUTY TO DEVELOP—INDEFINITE EXTENSION.

An oil and gas lease provided that the lessee was to begin a well on the premises within one year from the date of the lease, or pay a stipulated rental per year for each additional year such beginning was delayed. The main consideration of such a lease is the development of the property and the payment of the royalty and the lessee can not, in opposition to the wishes of the lessor, refuse to begin the development of the property for an unreasonable time and extend the lease indefinitely by the payment of a mere nominal rent.

Hughes v. Parson, —— Ky. ——, 209 Southwestern 858, p. 854.
See Warren Oil & Gas Co. v. Gilliam, 182 Ky. 807, 207 Southwestern 698.

FAILURE TO DEVELOP—LESSOR'S RIGHT TO FORFEIT.

An oil and gas lease recited as its consideration the receipt of one dollar and granted to the lessee for five years the land described, the lessee to give to the lessor one-eighth of the oil produced and to pay a stated sum per annum for each gas well, and the lessee was bound to complete a well within six months or pay at the rate of $15 for each additional month such completion was delayed. After the payment of the stipulated amount of one dollar and the payment of the $15 for two months as the delay rental where a well had not been completed within the time stated, and such sums received and accepted by the lessor, the lessor has not the option to refuse timely tenders of payments for delay in completing a well and terminate the grant, and can not maintain an action to compel a surrender of the lease.

Rich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 92.
Eastern Oil Co. v. Beatty, —— Okla. ——, 176 Pacific 104.

OFF-SET WELLS—LESSEE NOT REQUIRED TO DRILL.

There can be no implied covenant in an oil and gas lease by which a lessee is required to drill off-set wells, and a lessor can not under a lease in the absence of a covenant refuse further to accept delay rentals and compel the lessee to drill off-set wells or forfeit the lease where there was no evidence that an off-set well would be profitable to the

lessee or any facts from which it could be reasonably inferred that operators of ordinary prudence having regard for the interest of both lessor and lessee would have drilled such wells; and where it was not made to appear that the oil that was being drawn from the lessor's land and that could have been saved by operating an off-set well, would pay the lessor sufficient royalty or bonus to equal the amounts to be paid in the way of delayed rentals. Under such circumstances it can not be said that there was drainage in a substantial sense and that there arose an obligation on the part of the lessee to prevent such drainage by drilling off-set wells.

Eastern Oil Co. v. Beatty, —— Okla. ——, 177 Pacific 104, p. 108.

OFF-SET WELLS—ACCEPTANCE OF DELAY RENTALS—RIGHT OF LESSOR.

A lessor of an oil and gas lease can not maintain an action to forfeit and have canceled an oil and gas lease that provided for delay rentals in lieu of drilling, on the ground of the failure of the lessee to drill off-set wells to prevent drainage of the leased premises, where the lessor has received and accepted payments of delayed rentals with knowledge of the drainage of the leased lands.

Eastern Oil Co. v. Beatty, —— Okla. ——, 177 Pacific 104, p. 106.

FAILURE TO DRILL OFF-SET WELLS—DRAINAGE—FORFEITURE.

It may be assumed that under an oil and gas lease for a ten-year period given for a valuable cash bonus but containing a provision for delay rentals an obligation to drill off-set wells during such period for the protection of the leased lands against drainage from wells operated on adjacent lands may be implied. Where the lessor in such lease demands that off-set wells be drilled and declines to accept further payments for delay in completing a well, a cancellation or forfeiture of the lease may be decreed if the lessee fails to drill such wells within a reasonable time. But a forfeiture or cancellation will not be decreed under circumstances where drilling such off-set wells would not reasonably be expected of operators of ordinary prudence, having regard for the interest of both lessor and lessee, and where the lessee makes timely tender of all payments due for delay of operations, and especially so where it reasonably appears that such off-set wells would not be profitable to the lessee and where it does not reasonably appear that the value of the interest of the lessor in the oil that probably could be saved from drainage by the off-set wells would substantially exceed the amount stipulated to be paid for delay in completing a well as provided by the lease.

Eastern Oil Co. v. Beatty, —— Okla. ——, 177 Pacific 104, p. 107.

DELAY RENTAL—PAYMENT OR TENDER—TIME OF MAKING.

An oil and gas lease provided that if the lessee did not drill a well within one year a stipulated rental was to be paid for each additional year the beginning of operations was delayed. Where no operations were commenced during the second year the stipulated rental was not due until the end of that year and the tender of the rental for the second year before the end of that year was sufficient to avoid forfeiture.

Hughes v. Parson, —— Ky. ——, 209 Southwestern 853, p. 854.
See Dicks River Barytes Co. v. Pence, —— Ky. ——, 123 Southwestern 263.

DELAY RENTALS—REFUSAL TO ACCEPT—EFFECT OF PROVISION.

Where an oil and gas lease is for a definite term and provides for the payment of a stipulated sum for delay during that term and that provision is still effective, the lessor can not refuse the stipulated payments for delay and recover damages, or invoke a forfeiture for a failure to develop on demand. This in fact would permit one party to the contract to demand and enforce immediate performance of which he has agreed may be deferred. A lessor suffers no injury in consequence of his inability to compel development under such circumstances except delay in realizing royalties upon oil and gas that might be produced. The oil and gas are still available for later operation and to the delay in producing that he has solemnly consented to by his contract for the compensation payable as stipulated.

Eastern Oil Co. v. Beatty, —— Okla. ——, 177 Pacific 104, p. 106.

DELAY RENTAL—TIME FOR PAYMENT—TENDER.

An oil and gas lease required the lessee to begin a well within one year or to pay at the rate of 25 cents an acre per year for each additional year such beginning was delayed. Under the lease the stipulated rental was not payable for the first year but only for each additional year the beginning of operations was delayed. It can not be inferred from the lease that the rental was payable in advance and if operations were not commenced during the second year, the stipulated rental was not due until the end of that year and a tender of the rental for the second year before the end of that year, according to the terms of the lease was sufficient to avoid a forfeiture.

Warren Oil & Gas Co. v. Gilliam, —— Ky. ——, 207 Southwestern 698, p. 699.

TENDER OF RENTALS—DEPOSIT IN BANK.

An oil and gas lease provided for the payment of one dollar per acre in advance for each additional twelve months after the first year that completion of a well should be delayed. It provided that pay-

ment should be made to the first party or deposited in a named bank to his credit. The lease also provided that the lessee should not be bound by any change in the ownership of the leased land until duly notified of such change, either by notice in writing or by the receipt of the original instrument of conveyance or a certified copy thereof. The lessor conveyed the premises by an ordinary deed to a third person and the deed was duly recorded. Under the lease the payment of the rental to the grantee as named in the deed of record or a deposit in the bank to his credit was a compliance with the terms of the lease and sufficient to prevent a forfeiture, although it was subsequently shown that the deed was only a mortgage.

Riddle v. Keechi Oil & Gas Co., —— Okla. ——, 176 Pacific 737, p. 739.

RECOVERY OF DELAY RENTALS.

To warrant recovery in an action of assumpsit by a lessee against the lessor in a lease for oil and gas of rentals paid by him for delay in drilling a well as for money had and received by the lessor for the use of the complainant, there must have been a total failure of consideration for such payment, or after an ejection by a third person, for mesne profits for the period for which rents have been paid.

Philadelphia Co. v. Shackelford, —— W. Va. ——, 98 Southeastern 568, p. 570.
See Gaffney v. Stowers, 73 W. Va. 420, 80 Southeastern 501.

SURRENDER CLAUSE—RIGHTS OF LESSOR AND LESSEE.

An oil and gas lease after reciting the covenants to be performed on the part of the lessee provided that the lessee should have the right at any time on payment of one dollar to the lessor to surrender the lease for cancellation and all liability thereunder should terminate. The lease also provided that the surrender clause and the option reserved to the lessee should cease and become inoperative upon the institution of any suit by the lessee to enforce any of the terms of the lease. If this option was not exercised the lessee would be bound by his covenants and if exercised the lessor would be free to deal with the premises as he chose. A surrender under this clause was not to affect any existing liability but only to avoid liabilities thereafter accruing. Such a surrender clause does not give the lessor the same option to surrender the lease on the theory that it creates a tenancy at will within the operation of the rule that an estate at the will of one party is equally at the will of the other.

Eich v. Doneghey, —— Okla. ——, 177 Pacific 86, p. 94.
See Eastern Oil Co. v. Beatty, —— Okla. ——, 176 Pacific 104.

SURRENDER CLAUSE—CONSIDERATION NOT NAMED.

A lessee in an oil and gas lease agreed to commence a well within one year or pay at the rate of one dollar per acre in advance for each

additional twelve months the completion of the well was delayed. The lease also provided that the lessee should have the right at any time on payment of $— to the lessor to surrender the lease for cancellation and release and all liability should terminate. With the blank amount unfilled the lease is silent as to the amount of money which should be paid by the lessee for the privilege of surrendering the lease and it has no binding force or effect because the amount of the consideration to be paid was not inserted.

Riddle v. Keechi Oil and Gas Co., —— Okla. ——, 176 Pacific 737, p. 739.

SURRENDER CLAUSE—MUTUALITY.

An oil and gas lease provided that the lessee might, on payment of a stipulated amount, surrender the lease at any time for cancellation. This provision did not render the lease void for want of mutuality and the assignees of the lease may be held liable for the payments stipulated to be paid for delay in commencing a well.

Ardizonne v. Archer, —— Okla. ——, 177 Pacific 554, p. 555.
See Rich v. Doneghey, —— Okla. ——, 177 Pacific 86.
Overruling Brown v. Wilson, —— Okla. ——, 160 Pacific 94.

MUTUALITY—SURRENDER CLAUSE—RIGHT TO SURRENDER.

The fact that an oil and gas lease contains a "surrender clause" does not give the lessor the right to refuse to accept rentals and demand a surrender and cancellation of the lease.

Gypsy Oil Co. v. Van Slyke, —— Okla. ——, 178 Pacific 683, following Northwestern Oil & Gas Co. v. Branine, —— Okla. ——, 175 Pacific 533.

SURRENDER CLAUSE—MUTUALITY—TERMINATION.

An oil and gas lease provided among other things that upon the payment of a further sum of one dollar the lessee should have the right to surrender the lease for cancellation and all liabilities thereafter to accrue should cease and terminate. A cash bonus was paid for the lease and the lessee was required to drill a well within one year or pay a stipulated amount for each year completion was delayed. The presence of the surrender clause in the lease does not render the lease void for want of mutuality nor does it confer on the lessor the right to terminate the lease at will.

Carter Oil Co. v. Tiffin, —— Okla. ——, 176 Pacific 912, p. 913.
See Northwestern Oil & Gas Co. v. Branine, 8 Okla. App. 489, 175 Pacific 533.

SURRENDER CLAUSE—OPTION—MUTUALITY—EFFECT AND VALIDITY.

The option to surrender an oil and gas lease can not be declared inequitable. In case it was not exercised the lessee would be bound by his covenants and if exercised the lessor would be free to deal with the premises as he chose. A surrender was not to affect any existing

liability but only to avoid those thereafter to accrue. A lease containing a surrender clause is not void for want of mutuality.

Rechard v. Cowley, —— Ala. ——, 80 Southern 419, p. 421.

CONTRACT OF SALE—APPROVAL OF TITLE—PRESUMPTION.

A contract for the purchase of an oil lease provided that an abstract of title should be submitted to a certain named attorney for approval. On submission of the abstract the attorney examined and disapproved the title and so reported. In such case the presumption is that the attorney in the examination of the title acted in good faith.

First National Bank v. Clay, —— Okla. ——, 177 Pacific 115, p. 118.

CONTRACT FOR SALE OF LEASE—APPROVAL OF TITLE.

A contract for the sale of an oil and gas lease provided that the lessor should submit to the attorney of the lessee a complete abstract of title to the leased land and that the lease should take effect and the mutual obligations of the parties become binding on the approval of the abstract by the attorney. The abstract was furnished and was examined by the attorney within a reasonable time and the title to the land was disapproved by the attorney. A vendee can not be compelled to accept a title that his attorney in good faith refused to approve where by the contract of purchase the title was to be approved by the attorney of the purchaser. The opinion of the attorney under such circumstances is final and binding in the absence of fraud or bad faith.

First National Bank v. Clay, —— Okla. ——, 177 Pacific 115.

CONTRACT OF PURCHASE—CONSTRUCTION—APPROVAL OF TITLE—DEPOSIT OF EARNEST MONEY.

A contract for the purchase of an oil and gas lease required the lessor to submit to a certain named attorney a complete abstract of title to the leased land and that the lease should take effect and the obligations of the parties accrue "only in case such attorney should approve the title to the land." The contract provided that the lessee should deposit in a bank $1,500 as earnest money and on the failure of the lessee to comply with the contract in beginning work as agreed, the money should be paid to the lessor as liquidated damages. On the submission of the abstract of the title the attorney disapproved the title. The reasonable conclusion from the language of the contract is that in the event of the approval of the abstract the contract should be effectual and binding but in the event of the disapproval of the title the contract should not take effect. The mutual obligations of the parties should accrue only in the case of the approval of

the title. A bank was not authorized to pay the deposit to the lessor after the disapproval of the title and the lessee was entitled to recover from the bank and the lessor.

First National Bank v. Clay, —— Okla. ——, 177 Pacific 115, p. 117.

CONTRACT OF PURCHASE—CONSTRUCTION—ATTORNEY'S DECISION AS TO TITLE.

In a contract for the purchase of an oil and gas lease the parties have the right to provide that an arbitrator's decision in the absence of fraud, should be final, and they have a right to stipulate that the attorney of the purchasing party should be the exclusive and final judge as to whether or not the title was defective. In such case courts will leave the parties to abide by the contract as made and no bad faith will be presumed even if the attorney selected was interested in the subject matter of the contract.

First National Bank v. Clay, —— Okla. ——, 177 Pacific 115.

APPROVAL OF TITLE—BURDEN OF PROOF AS TO BAD FAITH.

A contract for the purchase of an oil and gas lease provided that a certain named attorney should approve the title as shown by a complete abstract to be submitted to him by the lessor. In an action by the lessor to enforce the sale after the title has been refused by the attorney, the burden was upon the lessor to prove that the lessee or the attorney acted in bad faith in rejecting the title.

First National Bank v. Clay, —— Okla. ——, 177 Pacific 115.

AGREEMENT TO PURCHASE—JOINT OWNERSHIP—PARTNERSHIP.

A mere agreement between two or more persons by which they were to purchase and own jointly such oil leases in a particular field that might be submitted to and agreed upon by them, does not create a general partnership as to all leases purchased, or owned by either of the parties, and one of the parties can not claim an interest in a lease acquired by another one where the price was paid by the purchasing party, none of the expenses were ever assumed or paid by the alleged partnership, and where no claim was made to the lease until long after its purchase and when its value was greatly enhanced.

Gorman v. Carlock, —— Okla. ——, 179 Pacific 38, p. 41.

FRAUDULENT SALE—RATIFICATION—REMEDY OF BUYER.

An oil company was induced to purchase an oil and gas lease through the fraudulent representations of the agent of another oil company. The price agreed to be paid, due to the fraudulent repre-

sentations, was some three times the actual value of the property. After the purchase the officers and stockholders of the purchasing company repeated the representations to third persons in order to sell stock and finance the company. The purchasing company owing to its financial distress did not rescind the contract of purchase immediately on discovering the fraud. The peculiar circumstances of the case and in view of the fact that many of the innocent stockholders who were not parties to the transaction would suffer by reason of the fraud justified a decree authorizing an abatement in the price, reducing it to the actual value of the property at the rate of value the parties contracted to pay if the lease had been as represented and on a basis of a 255 barrel daily production.

Barnett Oil & Gas Co. v. New Martinsville Oil Co., 254 Federal 481, p. 488.

PURCHASE BY FOREIGN CORPORATION—VALIDITY NOT DETERMINED.

A stipulation of facts failed to show in what State a contract was made and executed by which a foreign oil company acquired certain oil leases. In the absence of such a stipulation the court will not pass upon the validity or invalidity of the leases, and especially so where the adverse party only contests the right of a foreign corporation to enforce rights which it claims to have growing out of the leases.

Hays v. West Virginia Oil & Gas & By-Products Co., —— Ky. ——, 210 Southwestern 174.

LESSOR'S RIGHT TO FORFEIT—NOTICE REQUIRED.

An oil and gas lease gave the lessee the right to enter upon the premises and drill for and remove therefrom oil and gas for a period of five years, and as much longer as oil or gas was found, with the right to use the oil or gas, or water, and all rights and privileges necessary or convenient for the operation and the right to remove at any time all improvements and pipes placed upon the land. The lessee was required to drill a well within one year or thereafter to pay the lessor quarterly 25 cents per acre in advance until a well was completed. If oil was found in paying quantities, the lessor was to have one-eighth and if gas was found he was to have $100 every year for the product of each well. If the lessee unreasonably delayed the beginning of operations, the lessor in order to obtain a forfeiture of the lease must notify the lessee that he will not accept the stipulated annual rental and demand immediate performance of the covenants of the lease; and if the lessee does not then begin performance in good faith within a reasonable time the lessor may have the lease cancelled.

Hughes v. Parson, —— Ky. ——, 209 Southwestern 853, p. 855.
See Warren Oil & Gas Co. v. Gilliam, 182 Ky. 807, 207 Southwestern 698.

RIGHT TO FORFEIT FOR NONDEVELOPMENT—NOTICE AND DEFAULT.

The right of a lessor to forfeit an oil and gas lease for nondevelopment can not arbitrarily be exercised. The lessor must first notify the lessee that he will no longer accept the annual rentals and will require the lessee to develop the land in good faith according to the intention of the parties. After such notice and demand if the lessee fails to begin the development within a reasonable time, the lessor may then have the lease forfeited.

Hughes v. Parsons, —— Ky. ——, 209 Southwestern 853, p. 854.

FORFEITURE—RIGHT AND DUTY OF LESSOR.

The right of a lessor to forfeit an oil and gas lease for nondevelopment can not be arbitrarily exercised. In order to forfeit the lease, the lessor must first notify the lessee that he will no longer accept the annual rents and permit his land to remain idle and undeveloped but will require the lessee to execute the contract according to the intention of the parties by beginning the development in good faith and if after such notice and demand the lessee fails to begin the development within a reasonable time the lessor may then have the lease forfeited.

Hughes v. Parson, —— Ky. ——, 209 Southwestern 853, p. 854.
See Monarch Oil, Gas & Coal Co. v. Richardson, 124 Ky. 602, 199 Southwestern 663.

LOCATION OF WELLS—VIOLATION OF CONDITION—FORFEITURE—INJUNCTION.

An oil and gas lease provided that no wells were to be drilled within 200 feet of the buildings on the leased premises without the consent of the lessor. During the develpment of the land by the lessee and over the objections of the lessor the lessee located and drilled a well within the prohibited 200 feet with full knowledge that the well was located within the prohibited distance. The lessor was entitled to an injunction perpetually restraining the lessee from operating the well so drilled and from entering upon or in any manner using any ground within 200 feet of the buildings thereon.

Kelly v. S. W. Phillips Oil & Gas Co., —— Pa. ——, 105 Atlantic 631, p. 632.

SEQUESTRATION OF OIL—FORFEITURE OF LEASE.

A court would not order an oil lease and the property of the operator sequestered and the operations suspended and development stopped on the mere allegation that the operating company had failed to make a payment and thereby forfeited its rights, where such allegations are expressly denied and where the operating company has been in possession and is entitled to possession under its lease.

Dickison v. Texana Oil & Refining Co., 144 La. ——, 80 Southern 669.

CANCELLATION—LEGAL REMEDY.

A lessor in an oil and gas lease can not maintain an action to cancel a lease for violation of its covenants, where the lessor had his remedy by common law action of ejectment, and where it appeared that the lessee had acquired an undivided half interest in the premises.

Patterson v. United Natural Gas Co., —— Pa. ——, 105 Atlantic 828.

LESSOR'S RIGHT TO CANCELLATION.

The terms, stipulations, and conditions of an oil and gas lease were clear, certain, unambiguous, and there was no trick, artifice, or deception on the part of the lessee to procure the execution of the lease and no necessary stipulations were inadvertently or fraudulently omitted. The lessor, a man of ordinary intelligence and able to read and fully understand all the terms of the lease, was not entitled, under the evidence, to a decree canceling the lease.

Freeman v. McKay, —— Ga. ——, 98 Southeastern 263.

GUARANTEE AGAINST INCUMBRANCES—SUBLEASE.

An oil and gas lease provided that all the expenditures in connection with the boring of wells, erecting derricks, pumps, tanks, pipes, and material, should be provided by the lessee at his own expense; and the lessee expressly agreed that he would keep the premises clear and free of incumbrances and liens, particularly mechanics', material men's, and laborers' liens. There was no agreement in the lease against subletting and the lessee had a right to sublease portions of the land for the development of oil and a sublease could not be considered an incumbrance within the meaning of the lease.

Smith v. United Crude Oil Co., —— Cal. ——, 178 Pacific 141, p. 142.

SUBLEASE—RIGHT OF ORIGINAL LESSOR—PROPER REMEDY.

A lessee of certain oil and gas lands sublet a portion of the leased premises to a third person. The original lease contained a covenant against incumbrances. The lessor brought suit to recover the rents collected from a subtenant and to forfeit the original lease on the ground that the subletting was for a purpose not contemplated by the provisions of the lease and was an incumbrance in violation of the covenants of the lease. The complaint made no claim for damages nor was any proof offered of any damages by reason of the subletting and of the alleged improper use of the premises by the sublessee. The Civil Code of California (Section 1930) provides that when a thing is let for a particular purpose the hirer must not use it for any other purpose, and if he does he is liable for all damages and the lessor may treat the contract as rescinded. Under this section of the code the

lessor could only maintain an action for damages, and he could not sue to recover rents received from the sublessee and have the original lease rescinded; nor could he on appeal change the theory of his action and insist that it was an action for damages.

Smith v. United Crude Oil Co., —— Cal. ——, 178 Pacific 141, p. 142.

SECOND LESSEE—NOTICE—PRIORITY—INTEREST AND INJUNCTION.

A second lessee in an oil and gas lease of certain described lands had actual and constructive notice of a prior existing lease of the same lands. Such a second lessee acquired no rights under his lease as against the lessee of the prior lease. Under these circumstances the original lessee had the right to have his title to the oil and gas under the leased lands quieted as against the second lessee and to have such second lessee enjoined from interfering with his right to enter upon the land and mine and remove the oil.

Warren Oil & Gas Co. v. Gilliam, —— Ky. ——, 207 Southwestern 698, p. 699.

DEATH OF LESSOR—POSSESSION OF HEIRS.

The owner of land leased the same for oil and gas for a period of two years and as long thereafter as oil and gas should be found in paying quantities. The lessee failed to drill on the land but drilled a producing well believed to be on adjoining lands, but subsequently the well was discovered to be on the leased lands. After the death of the lessor and after the expiration of two years from the date of the original lease the heirs executed a second lease to a third person but continued to receive the royalty from the well operated by the first lessee on the assumption that the well was on the land leased by their ancestor. Under these facts the lease to the original lessee was recognized as valid and continuing and he was entitled to the leased premises as against the second lessee of the heirs.

Powell v. Schoenfield, —— Pa. ——, 106 Atlantic 110, p. 111.

LEASE BY HUSBAND AND WIFE—JOINT OBLIGATION—PAYMENT TO ONE.

A husband and wife executed an oil and gas lease as "parties of the first part," as the interest of the lessors might appear. The lease provided that the rentals were to be paid "to the parties of the first part." The lease contained no provisions defining the interests of the lessors, but in law they were joint obligees and the payment of the rentals to the wife was a discharge of the obligation, although the record title to the land was in the husband.

Jens Marie Oil Co. v. Rixse, —— Okla. ——, 178 Pacific 658.

See Freeman v. Swiger, —— W. Va. ——, 98 Southeastern 440.

Allen v. South Penn Oil Co., 72 W. Va. 155, 77 Southeastern 905.

BREACH OF EXPRESSED COVENANT TO DRILL—MEASURE OF DAMAGES.

An oil and gas lease provided that one well was to be drilled to the top of the Mississippi lime unless oil or gas was found in paying quantities before the lime was reached. The lessee failed to perform the covenant to drill a well to the Mississippi lime and in an action for damages the lessor could not recover the cost of casing, tubing, and other equipment, as this was not a proper element of damages, as the casing, tubing, and equipment would have been the property of the lessee to be by him removed, but the lessor was entitled to compensation only for the cost of drilling.

Ardizonne v. Archer, —— Okla. ——, 178 Pacific 263, p. 266.

SCHOOL LANDS—AUTHORITY TO LEASE.

A tract of land was conveyed to the proper school authorities for "school purposes only." This did not create a conditional estate but conveyed to the school district an estate in fee simple including the oil and gas. The grantee had power under such a conveyance to execute a valid oil and gas lease for the land described.

T. W. Phillips Oil & Gas Co. v. Lingenfelter, —— Pa. ——, 105 Atlantic 888, p. 889.

VALUATION AND ASSESSMENT.

An oil and gas lease by which the lessee is granted the privilege of drilling for and producing oil, if it can be found on the premises, is property and is regarded as a thing of value and is subject to taxation.

Raydure v. Board, etc., Estill County, —— Ky. ——, 209 Southwestern 19, p. 23.

DRILLING WELL NEAR RAILROAD—STATUTE PROHIBITING.

The fact that an oil and gas lease covered a strip of ground from 37 to 50 feet wide adjoining the right-of-way of a railroad and that the lease would be valueless under the statute of Kansas (General Stats. 1915, sec. 4979) prohibiting the drilling and operating oil and gas wells within 100 feet of the right-of-way of any railroad, can have no effect on determining the validity or invalidity of the statute. The statute is valid as an exercise of police power.

Winkler v. Anderson, —— Kans. ——, 177 Pacific 521, p. 522.

MINING PROPERTIES.

TAXATION.

VALUATION—PERSONS COMPETENT TO MAKE.

Mining property consisting of a developed and proved coal mine operated for commercial purposes and surrounding coal lands in a prospective stage, partially proven to be coal lands, may be given an assessed valuation not as a mine, but as a prospect, where the assessing officers have reason to find and believe that the property has coal values.

Washington Union Coal Co. v. Thurston County, —— Wash. ——, 177 Pacific 774, p. 775.

COMPETENCY OF TAXING OFFICERS TO MAKE VALUATION.

A county assessor and a board of equalization are not required to be mining experts nor are they required to employ experts to properly and legally assess mining property as a prospect, where there is reason for the officers to find and believe that the property has coal values.

Washington Union Coal Co. v. Thurston County, —— Wash. ——, 177 Pacific 774, p. 775.

REASONABLENESS OF VALUATION—PRESUMPTION—BURDEN OF PROOF.

Valuations placed upon coal lands and mining properties by taxing officers are presumed to be reasonable, and one who challenges such valuations assumes a task not measured or accomplished with less than clear and convincing proof.

Washington Union Coal Co. v. Thurston County, —— Wash. ——, 177 Pacific 774, p. 775.

OIL LEASE AS PROPERTY.

A lease granting the right to enter upon land for the purpose of drilling for oil and gas, and if found to remove and market the same, extending for a period of five years or so long thereafter as oil or gas is found and produced, is property within the meaning of the Kentucky statute, and as such is subject to taxation.

Raydure v. Board, etc., Estill County, —— Ky. ——, 209 Southwestern 19, p. 22.

OIL LEASE—TAXATION AT CASH VALUE.

An oil lease giving the lessee the privilege of drilling for and producing oil, if it can be found on the leased premises, has a cash value in some amount and this value can be ascertained by offering it for sale; and the lease should be assessed for taxes at its fair cash value, estimated at the price it would bring at a fair voluntary sale. It would be a violation of the constitution to hold that an oil lease having a cash value and that could be sold on the open market for cash in some amount at a fair, voluntary sale, was not assessable property.

Raydure v. Board, etc., Estill County, —— Ky. ——, 209 Southwestern 19, p. 23.

See Wolfe County v. Beckett, 127 Ky. 252, 105 Southwestern 447, 33 Ky. Law Rep. 167.

OIL-PRODUCTION TAX—NATURE.

The statute of Kentucky (Section 4223c, Acts 1917), provides that every person or corporation producing crude oil shall, in lieu of all other taxes on wells producing oil, pay, for State purposes, an annual tax of one per centum of the market value of the oil produced. The statute also authorizes counties to impose a like tax for road and other purposes. The tax imposed by this act was intended as a license tax and the tax was not intended to make any classification of property within the meaning of the constitution and it was not intended that the production tax should be in lieu or a substitute for an ad valorem tax.

Raydure v. Board, etc., Estill County, —— Ky. ——, 209 Southwestern 19, p. 24.

PRODUCTION TAX AND AD VALOREM TAX.

The constitution of Kentucky (Section 171) gives the general assembly power to divide property into classes and to determine what classes of property shall be subject to taxation. Section 181 of the constitution provides that the general assembly may by general laws only provide for the payment of license fees on franchises, the various trades, occupations, and professions. The act of 1917 as amended by the act of 1918 imposing a license on persons engaged in the production of crude oil was passed pursuant to the mandate of Section 181, but this license tax could not take the place of the ad valorem tax provided for under Section 171.

Raydure v. Board, etc., Estill County, —— Ky. ——, 209 Southwestern 19, p. 25.

LICENSE TAX—VOLUME OF OIL PRODUCED.

The legislature under the constitution of Kentucky has power to fix a reasonable license tax to be determined by volume of oil produced. The tax imposed is not levied upon the property but is

simply a license tax which the constitution authorizes the legislature to impose, and the legislature may impose such a tax even in the absence of constitutional authority.

Raydure v. Board, etc., Estill County, —— Ky. ——, 209 Southwestern 19, p. 26.

DOUBLE TAXATION—FRANCHISE AND AD VALOREM TAX.

The provisions of the constitution and the statutes of Kentucky relating to an ad valorem tax on oil and gas leases and the provisions relating to a production tax on oil, result in double taxation on the owner of an oil and a gas lease who is also the owner of an oil-producing well on the leased lands, as his oil lease is subject to an ad valorem tax and the oil produced to a license production tax. This result does not render the scheme of taxation invalid as many persons and especially professional people who pay ad valorem taxes are also subject to license taxes.

Raydure v. Board, etc., Estill County, —— Ky. ——, 209 Southwestern 19, p. 26.

FAILURE TO ASESS OTHER PROPERTIES.

The owner of coal lands consisting of a proven mine and surrounding coal lands as a prospect can not be released from taxation of such mine and lands because other lands in the community are not assessed for coal values where the proof fails to show lack of foundation for the difference in the opinion and judgment of the assessing officers.

Washington Union Coal Co. v. Thurston County, —— Wash. ——, 177 Pacific 774, p. 776.

TRESPASS.

CONVERSION OF COAL—MEASURE OF DAMAGES.

Under a charge of mining and taking coal where the taking was tortious, the measure of damages ordinarily is the value of the coal in place and not the value at the tipple, less the expense of mining and conveying it there.

Matthews v. Rush, —— Pa. ——, 105 Atlantic 817, p. 818.

MINING AND REMOVING COAL—TREBLE DAMAGES—ACTUAL KNOWLEDGE.

The Pennsylvania Act of 1876 (P. L. 142) imposes treble damages for removal of coal "knowing the same to be upon the lands of another." A recovery of treble damages under the act is conditioned on actual knowledge. Under this statute the knowledge of the superintendent of a mine owner and operator was not sufficient to make the mine owner liable in treble damages in the absence of proof of actual knowledge on his part. The rule that the knowledge of an agent is binding upon his principal does not apply under such a statute.

Matthews v. Rush, —— Pa. ——, 105 Atlantic 817, p. 818.

MEASURE OF DAMAGES—INSUFFICIENT VERDICT.

The owner of a mining claim sued the owner of the adjoining claim in trespass for mining and removing ore from a vein that apexed within the claim of the plaintiff. In such case the measure of damages, if the trespass was wilful, is the full value of the ore taken; but if the trespass was an innocent one, the measure of damages is the value of the ore in place, or the value of the ore after its removal, less the actual cost of mining, transporting, and reducing the ore.

Original Sixteen-to-One Mine v. Twenty-One Min. Co., 254 Federal 630, p. 632.

DEFECTIVE VERDICT—NEW TRIAL AS TO SINGLE ISSUE.

The owner of a mining claim sued the owner of an adjoining claim for damages for mining and removing ore from a vein that apexed within the surface lines of the plaintiff's claim. The court instructed the jury that if the trespass was an innocent one the measure of damages was the value of the ore in place or the value of the ore after its removal less the actual cost of mining, transporting, and reducing the ore. The jury returned a verdict assessing the damages against the defendant in the sum of $100,000 "less the cost of extraction of the ore, on account of unwilful trespass." The cost of mining the ore was shown to be $46,315.58 and the plaintiff moved for a judgment on the verdict for the sum of $100,000 less the sum shown as the cost of mining. The defendant asked for a new trial on the ground that the verdict was indefinite, uncertain, and void. Under such circumstances it would not be in the interest of justice or the exercise of a wholesome discretion to try the case over in its entirety and the court has the power to grant a new trial as to a single issue. Accordingly the verdict was permitted to stand in so far as it found the issues in favor of the plaintiff and a new trial was awarded for the sole purpose of assessing the amount of recovery.

Original Sixteen-to-One Mine v. Twenty-One Min. Co., 254 Federal 630, p. 632.

DAMAGES FOR INJURIES TO MINERS.

ELEMENTS OF DAMAGES.

COMPENSATION—ACTUAL DAMAGES.

Damages are defined to be the compensation which the law will award for an injury done. Actual damages are such compensation for an injury as would follow from the nature and character of the act and which the injured party is entitled to recover for the wrongs done and the injuries received when none were intended. Actual damages are such losses as are actually sustained and are susceptible of ascertainment.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 33.

The liability of an employer for personal injuries sustained by an employee from an accident arising out of and in the course of the employment in hazardous occupations as specified in the Arizona Employers' Liability Law, is such an amount as will compensate an employee for the injuries sustained by him directly attributable to such accident.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 32.

REASONABLE COMPENSATION.

No fixed rule exists for estimating the amount of damages to be recovered by one permanently disabled from laboring through the negligence of another. A jury should award a fair and reasonable compensation, taking into consideration what the plaintiff's income would probably have been, how long it would have lasted, and all the contingencies to which it was liable.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 26.

INSTRUCTION AS TO ELEMENTS TO BE CONSIDERED—GROUND OF OBJECTIONS.

In an action for damages for personal injuries the court instructed the jury to the effect that in arriving at the amount of the plaintiff's damages they could consider the nature and extent of his injuries, whether these were permanent or temporary, the disfigurement of his person, bodily pain, and mental suffering he had endured and is reasonably certain to endure, the loss of earnings since the injury and the loss of earnings, if any, in the future of his life, by virtue of his alleged decreased capacity, his age and reasonable expectancy of life,

his vocation and earning capacity prior to his injury, and his probable chance, if any, of increased earnings had he not been injured. This instruction was subject to criticism on the ground that the probable chance of increased earnings, had the plaintiff not been injured, is necessarily included in the element of "loss of earnings, if any, in the future of his life." This clause of the instruction could be misunderstood as a general element to be considered by the jury and might serve to mislead them, but no complaint was made to the effect that the verdict was excessive because of this instruction.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 27.

INJURIES PERMANENT—QUESTION OF FACT.

It can not be determined as a matter of law that an injury to a miner was not permanent, and notwithstanding the statement of the physician to the contrary it was a question of fact for the jury to determine.

Sloss-Sheffield Steel & Iron Co. v. Bearden, —— Ala. ——, 80 Southern 42, p. 44.

MENTAL AND PHYSICAL SUFFERING—LOSS OF TIME—EXPENDITURES.

Mental and physical suffering experienced by an injured employee, proximately resulting from the accident, the reasonable value of working time lost, the necessary expenditures for the treatment of injuries and compensation for the employee's diminished earning power directly resulting from the injury and any other result causing direct loss, are matters of actual loss and as such recoverable.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 33.

INSTRUCTION AS TO EXPECTANCY OF LIFE—LIFE TABLES—JUDICIAL NOTICE.

In an action for damages for the death of a miner the court instructed the jury as to the number of years of the life expectation of the deceased according to the American table of experience, but the instruction was given as a suggestion and was not to be binding upon the jury. Such an instruction is not erroneous on the ground that the life tables were not introduced in evidence. Courts take judicial notice of these tables and it is not error to instruct a jury concerning them though they are not in fact introduced in evidence.

Medley v. Parker-Russell Min., etc., Co., —— Mo. App. ——, 207 Southwestern 887, p. 890.

LOSS OF EARNING CAPACITY.

An injured person may recover for loss or diminution of his earning capacity during his entire expectancy of life and he is entitled to recover such an amount as will compensate him for such loss. A

jury in estimating the damages may consider how far an injury will in all probabilities disable the complainant from engaging in pursuits and occupations for which in the absence of the injury he would have been qualified.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 26.

DECREASED EARNING CAPACITY—ABSTRACT CHARGE.

In an action for injuries no claim was made for damages on account of decreased earning capacity, but the court properly refused a requested instruction to the effect that only nominal damages could be recovered on account of decreased earning capacity because of no demand for such damages.

Sloss-Sheffield Steel & Iron Co. v. Thomas, —— Ala. ——, 80 Southern 69, p. 70.

RECOVERY BY MINOR—MEASURE OF DAMAGES.

In an action by an unemancipated infant for personal injuries, damages for the consequent impairment of earning capacity during the minority are not recoverable, as the parents are entitled to such earnings.

Sloss-Sheffield Steel & Iron Co. v. Bearden, —— Ala. ——, 80 Southern 42, p. 44.

FORMER INJURY—INSTRUCTION.

In an action by a miner for damages for an injury to his arm, it was proper for the court to instruct the jury not to allow damages for a former injury or for any aggravation of the last injury by the first, but the instruction confined the recovery to such damages only as were shown to have resulted directly from the last injury.

Tway Min. Co. v. Tyree, —— Ky. ——, 208 Southwestern 817, p. 820.

PROOF—OPINION OF PHYSICIAN.

In an action by a miner for damages for injuries received in mining operations, the opinion evidence of an attending physician as to the nature of the injuries and whether permanent or temporary is competent on the question of damages.

Barna v. Gleason Coal & Coke Co., —— W. Va. ——, 98 Southeastern 158, p. 159.

INTENTIONAL WRONG—RECOVERY OF DAMAGES.

In determining the damages, if any intentional wrong was committed by the employer by reason of which wrong the employee's loss was augmented, such loss is no part of the "damages" recoverable in an action under the Employers' Liability Law of Arizona. The reason of this is that the injury arising from an intentional wrong did

not arise from the risks and hazards inherent in the occupation and that are unavoidable by the employee therein engaged, but arose from the fault, negligence, or active intentional wrong of the employer.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 32.

PUNITIVE DAMAGES NOT RECOVERABLE.

Where humiliation and mortification furnish grounds for the recovery by an injured employee the right of recovery depends upon whether the employer purposely and designedly committed the wrong, thereby intending to humiliate the employee and outrage his feelings. The damages recoverable for such wrong are punitive in character and furnish no grounds for recovery in an action under the Employers' Liability Law of Arizona for the reason that such character of damages do not amount to actual damages but to punitive damages.

Arizona Copper Co. v. Burciaga, —— Ariz. ——, 177 Pacific 29, p. 33.

FUTURE PAYMENTS—PRESENT WORTH.

In an action by a miner for personal injuries occasioned by the alleged negligence of the mine operator, an instruction was held to be proper to the effect that the rule that future payments are to be capitalized and that only the present worth of such future payments are to be awarded does not apply to damages recoverable on account of pain and suffering and inconveniance that the miner suffered by reason of the injury.

Ford v. Philadelphia & Reading Coal & Iron Co., —— Pa. ——, 105 Atlantic 885, p. 886.

Sebastian v. Philadelphia & Reading Coal & Iron Co., —— Pa. ——, 105 Atlantic 887, p. 888.

EXCESSIVE DAMAGES—BASIS FOR DISTURBING.

A court on appeal can only disturb a verdict of a jury for excessive damages where it appears that the damages are so excessive that the award can not be sustained on any other theory than that it was the result of passion or prejudice on the part of the jury.

Inspiration Consol. Copper Co. v. Lindley, —— Ariz. ——, 177 Pacific 24, p. 27.

QUESTION NOT PRESENTED.

The question of excessive damages can not be properly presented to the court on appeal unless it is alleged as a ground for a new trial.

Calumet & Arizona Min. Co. v. Chambers, —— Ariz. ——, 176 Pacific 839, p. 843.

DAMAGES NOT EXCESSIVE.

INSTANCES.

A verdict for $700 can not be said to be excessive where there was practically total impairment of the use of the miner's right arm, in addition to the physical and mental suffering, loss of time and expense of cure.

Tway Min. Co. v. Tyree, —— Ky. ——, 208 Southwestern 817, p. 820.

A verdict of $4,000 is not excessive where a young miner had his foot mashed by being run over by a tram car.

Sloss-Sheffield Steel & Iron Co. v. Bearden, —— Ala. ——, 80 Southern 42, p. 44.

DAMAGES EXCESSIVE.

INSTANCES.

A verdict for $30,000 for the death of a tool sharpener employed by an oil well drilling company was excessive. The court ordered a remittitur of all in excess of $20,000 or on failure to make the remittitur a reversal of the case.

Slick Oil Co v. Coffey, —— Okla. ——, 177 Pacific 915, p. 919.

QUARRY OPERATIONS.

CARE EXERCISED BY EMPLOYER—QUESTION OF FACT.

In the operation of a quarry by a cement company, the employees on a signal given were permitted to use a rock house and an oil house as places of refuge. On a signal being given an inexperienced employee with others resorted to the oil house for protection from flying and falling stones. While so waiting a fragment of stone tore through the house and killed the employee. In an action for damages for the death of the employee it was a question of fact for the jury to determine whether the employer exercised reasonable care to provide a safe place for his employees proportionate to the dangerous nature of the means and instrumentalities employed in the business of quarrying stone. Whether the signals and places of refuge provided by the employer were reasonably sufficient and proximate to the place of work, as to afford time within which employees so engaged and about to be imperilled might retreat to such places of refuge and whether such places were reasonably sufficient to afford protection to the employees, were questions of fact for the jury to determine.

Coosa Portland Cement Co. v. Crankfield, —— Ala. ——, 80 Southern 451, p. 453.

INTERSTATE COMMERCE.

TRANSPORTATION OF NATURAL GAS—STATE REGULATION.

The transportation of natural gas through pipe lines from one State to another is interstate commerce, and a natural gas company or its receiver may sell and deliver gas so transported to local distributing companies free from unreasonable interference by a State.

Public Utilities Commission of Kansas v. Landon, —— U. S. ——, 39 Supreme Ct. Rep. 389.

TRANSPORTATION OF NATURAL GAS—REGULATION AT POINT OF CONSUMPTION.

The transportation of natural gas through pipe lines from one State to another is interstate commerce, but the sale and delivery of the gas by distributing companies to their customers after purchase from a producing and transporting company constitutes no part of interstate commerce.

Public Utilities Commission of Kansas v. Landon, —— U. S. ——, 39 Supreme Ct. Rep. 389.

NATURAL GAS—PURCHASE AND DISTRIBUTION BY LOCAL COMPANIES—REGULATION.

Local distributing natural gas companies purchased and received their supplies of gas that had moved in interstate commerce and sold and disposed of the same at retail in due course of their own local business. The fact that the local companies paid to the producing and transporting company sums amounting to two-thirds of the product of their sales did not make them integral parts of the interstate business, especially where the producing and transporting company lacked authority to engage by agent or otherwise in the retail transactions carried on by the local companies.

Public Utilities Commission of Kansas v. Landon, —— U. S. ——, 39 Supreme Ct. Rep. 389.

TRANSPORTATION OF OIL AND GAS.

The transportation of oil or gas from State to State through the medium of pipe lines is interstate commerce.

Pennsylvania Gas Co., In re, —— New York ——, 122 Northeastern 260, p. 261.

Public Utilities Commission of Kansas v. Landon, —— U. S. ——, 39 Supreme Ct. Rep. 389.

CARRIER'S DUTY TO FURNISH CARS—JURISDICTION OF COURTS.

The courts have jurisdiction to administer a remedy in an action by a shipper for a carrier's refusal to accept proper shipments or to supply reasonably adequate facilities of carriage.

Chicago, etc., R. Co. v. Lawton Refining Co., 253 Federal 705, p. 707.

CARRIERS—DUTY TO RECEIVE AND CARRY SHIPMENTS.

There is a general duty resting upon common carriers to receive and carry by suitable means goods which they assume to transport or which are usually carried. This obligation requires that special kinds of cars be supplied for the transportation of goods which the carrier has accepted or which it holds itself out to carry.

Chicago, etc., R. Co. v. Lawton Refining Co., 253 Federal 705, p. 707.

CARRIER—DUTY TO FURNISH TANK CARS.

There are limitations to a carrier's duty to accept goods growing out of the usual course of business and the limitations of convenience. If a shipper wishes to compel a carrier to accept his goods he must properly prepare and pack his product to suit the cars that the carrier assumes to supply and which are ordinarily furnished by carriers for such products. It is not the usual practice of railway companies to furnish tank cars for shippers of oil. A railway company may publish a tariff announcing its readiness to transport oil in tank cars without obligating itself to furnish such cars for the particular purpose. A tank car is not only a car but a package for the goods. There is an economic waste in the use of tank cars because such cars usually are returned empty from where their contents are discharged to the point of the origin of the shipment and they are not adapted for general use. Even under the rules of exchange of cars a railway company may have a large supply of tank cars and yet have none immediately available for its own lines. As a rule carriers have never furnished such cars and it has come to be mutually understood that they shall not do so. The oil refiner like the meat packer demands an adequate supply of cars at all times, but neither an adequate supply nor their efficient distribution can be afforded by carriers.

Chicago, etc., R. Co. v. Lawton Refining Co., 253 Federal 705, p. 708.

CARRIER—RIGHT TO WITHDRAW TANK CARS FOR GENERAL USE.

A railway company published a tariff announcing its readiness to transport oil in tank cars, but the tariff did not purport that the carrier would furnish cars for such purposes and it did not hold itself out as ready to furnish tank cars for shipments. The company had leased five tank cars for its own use in operating its railway and these

had been temporarily furnished for the use of a refining company until the railway company should again have need for them. When a prolonged drought endangered its water supply it was the right of the railway company to withdraw these cars from the use of the refining company in order to supply its engines and roundhouses with water. It owed a duty to the public to keep its trains in operation and this duty was superior to the demand of the refining company for the use of the particular tank cars. Under such circumstances the refining company could not compel the railway company to furnish the particular tank cars for shipment of its refined petroleum.

Chicago, etc., R. Co. v. Lawton Refining Co., 253 Federal 705, p. 709.

TRANSPORTATION OF COAL—FREIGHT CHARGES—CARRIER'S POWER TO RELEASE.

The Act of Congress of 1887 (24 U. S. Stats. 739) controls as to the liability for transportation charges of coal and a carrier has no right to release the consignor from liability to pay the freight charges on an interstate shipment and can not by any act estop itself from accepting the lawful freight rate.

New York Central R. Co. v. Philadelphia & Reading Coal & Iron Co., —— Ill. ——, 121 Northeastern 581.

INSPECTION OF OIL IN TRANSIT—FEES.

A State statute may provide for an inspection of oil and gasoline in tank cars and may fix fees for the inspection notwithstanding the oil and gasoline was moving in interstate commerce.

Pure Oil Co. v. State of Minnesota, 39 Supreme Ct. Rep. 35, p. 37.

EXPLOSIVES.

STORING—DEGREE OF CARE EXERCISED—QUESTION OF FACT.

A railroad company had in its possession and gathered together on its pier 38 cars of not less than 60,000 pounds of an explosive known as T N T. An explosion was caused by fire that started at or near the ammunition cars. This vast quantity of explosives was stored in proximity to the habitations and businesses of millions of human beings whose lives and properties were thereby exposed to the risk of unusual danger. Whether the railroad company had exercised that degree of care commensurate with the risk or danger arising from the accumulation of the vast quantity of high explosives upon its premises in cars standing in close proximity to each other was a question of fact for a jury.

New Jersey Fidelity & Plate Glass Ins. Co. v. Lehigh Valley R. Co., —— N. J. Equity ——, 105 Atlantic 206, p. 207.

STORING LARGE QUANTITIES OF T N T.

The Lehigh Valley Railroad Company was held liable in damages to an insurance company for sums paid by it for glass broken and damaged by the terrific explosion that occurred on the morning of July —, 1916, at the Jersey dock of the railroad company where it had large quantities of the explosive known as T N T stored and several freight cars standing near-by loaded with the dangerous explosive. The defendant's liability for damages was not based upon the violation of the interstate commerce commission's regulations in regard to the shipment and storage of explosives, but was based on negligence in the transportation of explosives in that it failed to exercise care commensurate with the risk of danger.

New Jersey Fidelity & Plate Glass Ins. Co. v. Lehigh Valley R. Co., —— N. J. Equity ——, 105 Atlantic 206, p. 208.

GASOLINE—LIABILITY FOR FIRE.

An oil company engaged in the business of selling gasoline is not liable on the grounds of negligence where its agents rolled a barrel of gasoline down a street to the complainant's buildings, and where the barrel was then opened in the usual way for the purpose of emptying it into a tank and while so emptying the barrel, the gasoline became ignited and the fire extended to and burned the complainant's buildings.

O'Brecht v. Cedar Rapids Oil Co., —— Iowa ——, 170 Northwestern 785, p. 786.
See Carter v. Marshall Oil Co., —— Iowa ——, 170 Northwestern 798.

STORAGE OF OIL AND GASOLINE—VALIDITY OF ORDINANCE.

An ordinance of the city of Santa Fe attempting to regulate the storage and selling, handling and distributing of petroleum and gasoline was so vague and uncertain as to be wholly inoperative and the omissions were such that a court could not complete or make certain the otherwise incomplete and uncertain ordinance.

Continental Oil Co. v. City of Santa Fe, —— N. Mex. ——, 177 Pacific 742, p. 744.

EXPLOSION OF GASOLINE FUMES—LIABILITY FOR DEATH OF EMPLOYEE.

An oil company was liable where it negligently failed to remove the fumes from a gasoline tank before sending an employee into the tank to make certain repairs, and where while the employee was engaged in his work he accidentally broke an electric lamp thereby causing an explosion of the gasoline fumes resulting in his death.

Standard Oil Co. v. Allen, —— Ind. App. ——, 121 Northeastern 329, p. 332.

REGULATION OF GASOLINE FILLING STATIONS.

A city permitted an oil company to establish and conduct a gasoline filling station at and near the intersection of certain streets. Subsequently the conduct of the gasoline filling station became a menace to pedestrians and a nuisance to street traffic by reason of the dangers growing out of the handling of the gasoline. The fact that the city originally authorized the location of such gasoline station would not estop the city to abate it when it became a nuisance or a meance to pedestrians.

Oriental Oil Co. v. City of San Antonio, —— Tex. Civ. App. ——, 208 Southwestern 177, p. 181.

ORIGINAL VENDOR OF EXPLOSIVES—LIABILITY.

When a vendor sells to a vendee who in turn sells to another a dangerous article or an article inherently dangerous and harmful, such as gasoline, for the ultimate purpose of retailing to the public, a purchaser of such dangerous article who may be injured has the right to claim that the original vendor owed him a duty, the violation of which would create liability.

Kearse v. Seyb, —— Mo. App. ——, 209 Southwestern 635, p. 636.

See Pierce Oil Co. v. Deselmns, 212 U. S. 159, p. 177.

Standard Oil Co. v. Parrish, 145 Federal 829.

Stowell v. Standard Oil Co., 139 Mich. 18, 25, 102 Northwestern 227.

NEGLIGENCE OF VICE PRINCIPAL—LIABILITY OF EMPLOYER.

An employer is liable for an injury to an employee caused by the bursting of a barrel through the negligence of a vice principal of the employer who inserted a lighted match into the barrel to ascertain the amount of liquid remaining and thereby caused the explosion.

Coca Cola Co. v. Williams, —— Tex. Com. App. ——, 209 Southwestern 396, p. 397.

DYNAMITE—CONDITIONS FOR USE—AGREEMENT BETWEEN OPERATOR AND MINER—RULES APPROVED BY MINE INSPECTOR.

The statute of Kansas (General Statutes, 1915, section 6326) prohibits the use of dynamite or other detonating explosives in shot firing in coal mines except under rules and regulations agreed upon between the operator and the miners and approved by the State mine inspector. A contract of employment between a mine operator and a miner provided that the management of the mine, the direction of the working force, and the right to hire and discharge are vested in the operator, and that any mine committee that shall attempt to execute any local rule in conflict with this agreement shall be deposed as committeemen. This agreement does not satisfy the statute and does not of itself constitute "rules and regulations for the use of dynamite" and was not approved by the State mine inspector.

Richards v. Fleming Coal Co., —— Kans. ——, 179 Pacific 380, p. 382.

STORING DANGEROUS OILS—STATE REGULATIONS.

A State may by statute prohibit the sale of dangerous oils though manufactured under a patent, and it may make the place where they are kept or sold a criminal nuisance and may prohibit the storing of petroleum and gasoline in certain designated quantities within 300 feet of a dwelling in a city.

Pierce Oil Corp. v. City of Hope, 39 Supreme Ct. Rep. 172.
See Pierce Oil Corp. v. City of Hope, 127 Ark. 38, 191 Southwestern 405.

JUDICIAL NOTICE OF EXPLOSIONS.

Courts take judicial notice that disastrous explosions have occurred for which no satisfactory explanations have been given.

Pierce Oil Corp. v. City of Hope, 39 Supreme Ct. Rep. 172, p. 173.
See Pierce Oil Corp. v. City of Hope, 127 Ark. 38, 191 Southwestern 405.

WATER RIGHTS.

APPROPRIATION FOR MINING PURPOSES—EXTENT.

The right to appropriate water for mining and other beneficial purposes under the Arizona statute (par. 5344, R. S. A. 1913) is not limited to rivers, creeks, and streams of running water on State and privately owned lands, but extends to public lands by grant of Congress under section 2339, R. S. 1878.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 569.
See Peterson v. Eureka Hill Min. Co., —— Utah ——, 176 Pacific 729, p. 730.

MANNER AND PURPOSES OF APPROPRIATION.

The manner of appropriating water on the public domain is delegated to the States, and in Arizona the right to appropriate water for any beneficial purpose and thereby acquire a vested right in the water is limited to the appropriation of the waters of "rivers, creeks, and streams of running water in this State."

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 569.
See Peterson v. Eureka Hill Min. Co., —— Utah ——, 176 Pacific 729, p. 730.

WATERS SUBJECT TO APPROPRIATION.

Before a party giving notice as provided by the statute of Arizona can acquire any water right thereof, his claimed appropriation must be of waters of a river, creek, or stream of running water. Congress by section 2339 (R. S. 1878) has reserved all waters on the public lands other than the waters of rivers, creeks, and running streams from appropriation by anyone separately from the land.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 569.

RIGHT TO APPROPRIATE PERCOLATING WATER.

Percolating water unconfined to a definite channel is not under the statute of Arizona the subject of appropriation, but belongs to the realty. A spring which does not constitute the source of a watercourse, the flow of its water being subterranean and concealed and a matter of uncertainty as to direction and volume, belongs to the owner of the land who may appropriate and use its entire flow.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 569.
See Peterson v. Eureka Hill Min. Co., —— Utah ——, 176 Pacific 730.

ATTEMPTED APPROPRIATION.

A person can not appropriate the waters of a spring by posting a notice which failed to show that the notice was posted at a spring or at a point from the spring on a stream having its source at the spring; but where the inference is that the notice was posted at a spring which was not the source of a stream but simply a seeping spring or well, there can be no appropriation. By the attempted appropriation the person acquired no right whatever in the water nor in the land by reason of his notice so posted or work done pursuant thereto.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 569.

SPRING WATER—RIGHT TO APPROPRIATE.

The waters from a spring rising on lands that have been segregated from the public domain and the title vested in private ownership can not be appropriated by a person other than the owner of the land, unless the water from the spring should flow below the tract of land on which it is located.

Peterson v. Eureka Hill Min. Co., —— Utah ——, 176 Pacific 729, p. 731.

APPROPRIATION OF SPRINGS—RIGHT TO USE FOR MINING PURPOSES.

A mining corporation in 1881 appropriated all the water flowing from a spring by building a pipe line and conducting the water from the spring through its pipe line to its mine and used the same in mining operations. In 1885 the mining company, to increase the flow of water, dug a tunnel from the spring into the mountain nearly 200 feet, and all the water flowing from the tunnel and from the spring was collected and conducted to the defendant's mine and used for mining purposes. About the year 1900 the pipe line was broken and for several years the water was leased by the mining company to other persons for beneficial purposes. In 1904 certain persons located a placer claim, and the spring of water and the tunnel as constructed were wholly within the limits of such placer mining claim. Under these facts, the locator of the placer mining claim was not entitled to the waters of the spring and could not as against the mining company appropriate and use the water from such spring and tunnel.

Peterson v. Eureka Hill Min. Co., —— Utah ——, 176 Pacific 729, p. 730.

SPRINGS—BENEFICIAL USE—SECOND APPROPRIATION.

A mining company has the right to appropriate the waters of a spring and apply them to a beneficial use where the soil upon which the spring was located was a part of the public domain; and a third person can not locate a mining claim so as to include within its limits

such spring and claim the right to appropriate and use the water from such spring.

Peterson v. Eureka Hill Min. Co., —— Utah ——, 176 Pacific 729, p. 730.

WATER RIGHTS PROTECTED.

A man residing upon public land and relying upon natural spring water for use ought not, after developing the flow of the spring and piping the flow to a reservoir for watering stock and for domestic use of a tenant living in a house near the spring, to be deprived of the water or the water and improvements by one who has no better title to the land than the person first using the water.

McKenzie v. Moore, —— Ariz. ——, 176 Pacific 568, p. 570.

See Peterson v. Eureka Hill Min. Co., —— Utah ——, 176 Pacific 729, p. 730.

PUBLICATIONS RELATING TO MINING LAWS.

A limited supply of the following publications of the Bureau of Mines has been printed and is available for free distribution until the edition is exhausted. Requests for all publications can not be granted, and to insure equitable distribution applicants are requested to limit their selection to publications that may be of especial interest to them. Requests for publications should be addressed to the Director, Bureau of Mines.

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PUBLICATIONS AVAILABLE FOR FREE DISTRIBUTION.

BULLETIN 75. Rules and regulations for metal mines, by W. R. Ingalls and others. 1915. 296 pp., 1 fig.

BULLETIN 90. Abstracts of current decisions on mines and mining, December, 1913, to September, 1914, by J. W. Thompson. 1915. 176 pp.

BULLETIN 101. Abstracts of current decisions on mines and mining, October, 1914, to April, 1915, by J. W. Thompson. 1915. 138 pp.

BULLETIN 118. Abstracts of current decisions on mines and mining, reported from October to December, 1915, by J. W. Thompson. 1916. 74 pp.

BULLETIN 126. Abstracts of current decisions on mines and mining, reported from January to April, 1916, by J. W. Thompson. 1916. 90 pp.

BULLETIN 152. Abstracts of current decisions on mines and mining, reported from January to April, 1917, by J. W. Thompson. 1917. 79 pp. 10 cents.

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BULLETIN 172. Abstracts of current decisions on mines and mining, reported from January to May, 1918, by J. W. Thompson. 1918. 160 pp.

BULLETIN 174. Abstracts of decisions on mines and mining, reported from May to September, 1918, by J. W. Thompson. 1919. 138 pp.

BULLETIN 179. Abstracts of decisions on mines and mining, reported from September to December, 1918, by J. W. Thompson. 1919. 166 pp.

TECHNICAL PAPER 138. Suggested safety rules for installing and using electrical equipment in bituminous coal mines, by H. H. Clark and C. M. Means. 1916. 36 pp.

PUBLICATIONS THAT MAY BE OBTAINED ONLY THROUGH THE SUPERINTENDENT OF DOCUMENTS.

BULLETIN 61. Abstracts of current decisions on mines and mining, October, 1912, to March, 1913, by J. W. Thompson. 1913. 82 pp. 10 cents.

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BULLETIN 94. United States mining statutes annotated, by J. W. Thompson. 1915. 1772 pp. In two parts, not sold separately. Cloth, $2.50 per set; paper, $2.

BULLETIN 113. Abstracts of current decisions on mines and mining, reported from May to September, 1915, by J. W. Thompson. 1916. 124 pp. 15 cents.

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TECHNICAL PAPER 53. Proposed regulations for the drilling of oil and gas wells, with comments thereon, by O. P. Hood and A. G. Heggem. 1913. 28 pp., 2 figs. 5 cents.

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