

National Reporter System.—United States Series.

THE
SUPREME COURT REPORTER,
VOLUME 21.

CASES ARGUED AND DETERMINED
IN THE
UNITED STATES SUPREME COURT.
OCTOBER TERM, 1900.

PERMANENT EDITION.

NOVEMBER, 1900—JULY, 1901.

ST. PAUL:
WEST PUBLISHING CO.
1901.

JUSTICES
OF THE
UNITED STATES SUPREME COURT.

OCTOBER TERM, 1900.

CHIEF JUSTICE:

HON. MELVILLE W. FULLER.

ASSOCIATES:

HON. JOHN M. HARLAN.

HON. HORACE GRAY.

HON. DAVID J. BREWER.

HON. HENRY BILLINGS BROWN.

HON. GEORGE SHIRAS, JR.

HON. EDWARD D. WHITE.

HON. RUFUS W. PECKHAM.

HON. JOSEPH McKENNA.

ATTORNEY GENERAL:

HON. JOHN W. GRIGGS.¹

HON. PHILANDER C. KNOX.²

SOLICITOR GENERAL:

HON. JOHN K. RICHARDS.

¹ Resigned March, 1901.
21 S.O.

² Appointed to succeed Hon. John W. Griggs.
(III)

ALLOTMENT OF THE JUSTICES
OF THE
SUPREME COURT OF THE UNITED STATES.

FIRST CIRCUIT.

Comprising Maine, Massachusetts, New Hampshire, and Rhode Island.

JUSTICE HORACE GRAY, of Massachusetts. Appointed December 20, 1881, by President Arthur.

SECOND CIRCUIT.

Comprising Connecticut, New York, and Vermont.

JUSTICE RUFUS W. PECKHAM, of New York. Appointed December 9, 1895, by President Cleveland.

THIRD CIRCUIT.

Comprising Delaware, New Jersey, and Pennsylvania.

JUSTICE GEORGE SHIRAS, JR., of Pennsylvania. Appointed July 26, 1892, by President Harrison.

FOURTH CIRCUIT.

Comprising Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

CHIEF JUSTICE MELVILLE W. FULLER, of Illinois. Appointed July 20, 1888, by President Cleveland.

FIFTH CIRCUIT.

Comprising Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.

JUSTICE EDWARD D. WHITE, of Louisiana. Appointed February 19, 1894, by President Cleveland.

SIXTH CIRCUIT.

Comprising Kentucky, Michigan, Ohio, and Tennessee.

JUSTICE JOHN M. HARLAN, of Kentucky. Appointed November 29, 1877, by President Hayes.

SEVENTH CIRCUIT.

Comprising Illinois, Indiana, and Wisconsin.

JUSTICE HENRY BILLINGS BROWN, of Michigan. Appointed December 29, 1890, by President Harrison.

EIGHTH CIRCUIT.

Comprising Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wyoming.

JUSTICE DAVID J. BREWER, of Kansas. Appointed December 18, 1889, by President Harrison.

NINTH CIRCUIT.

Comprising California, Idaho, Montana, Nevada, Oregon, and Washington.

JUSTICE JOSEPH MCKENNA, of California. Appointed January 21, 1898, by President McKinley.

Supreme Court Reporter References

for cases reported in

United States Reports

VOL. 178, UNITED STATES REPORTS.

U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.
Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.
1	20	780	168	20	842	262	20	869	347	20	914	449	20
22	20	869	186	20	873	219	20	921	371	20	913	456	20
41	20	747	196	20	876	280	20	931	388	20	924	468	20
111	20	747	205	20	886	289	20	935	373	20	927	468	20
113	20	774	215	20	840	304	20	944	389	20	962	496	20
115	20	823	229	20	836	317	20	904	402	20	972	510	20
139	20	775	239	20	867	321	20	949	405	20	967	524	20
150	20	779	245	20	854	327	20	966	421	20	951	539	20
153	20	880	251	20	833	345	20	912	436	20	913		

VOL. 179, UNITED STATES REPORTS.

U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.
Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.
1	21	1	89	21	43	206	21	109	322	21	113	445	21
19	21	7	96	21	46	210	21	88	328	21	125	456	21
42	21	16	100	21	38	220	21	105	335	21	171	469	21
43	21	16	116	21	34	223	21	73	343	21	132	472	21
46	21	21	126	21	48	263	21	106	388	21	101	494	21
56	21	28	127	21	71	270	21	128	395	21	205	552	21
58	21	17	131	21	67	279	21	121	399	21	210	591	21
68	21	29	141	21	48	287	21	115	405	21	206	598	21
69	21	30	191	21	98	287	21	124	415	21	183	602	21
77	21	24	196	21	104	302	21	124	442	21	183	606	21
86	21	23	199	21	100	305	21	94	443	21	194	622	21
87	21	23	201	21	92	316	21	110	444	21	194	641	21

VOL. 180, UNITED STATES REPORTS.

U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.
Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.
1	21	240	109	21	302	208	21	331	320	21	378	452	21
26	21	282	126	21	308	250	21	357	333	21	390	471	21
28	21	251	126	21	329	253	21	364	343	21	371	484	21
41	21	256	122	21	326	261	21	358	356	21	403	486	21
49	21	278	139	21	309	271	21	362	382	21	399	496	21
59	21	297	167	21	354	276	21	368	371	21	406	499	21
72	21	289	173	21	319	284	21	395	379	21	402	506	21
81	21	293	180	21	322	295	21	383	383	21	409	533	21
87	21	295	185	21	347	311	21	389	402	21	430	536	21
92	21	283	199	21	353	314	21	376	440	21	445		

VOL. 181, UNITED STATES REPORTS.

U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.	U. S. Rep.	S. Ct. Rep.
Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.	Pg.	Vol.
1	21	516	131	21	570	244	21	642	396	21	645	473	21
29	21	512	142	21	575	248	21	603	399	21	634	481	21
33	21	507	151	21	584	264	21	611	399	21	645	500	21
45	21	536	153	21	584	269	21	613	402	21	609	516	21
47	21	531	156	21	544	277	21	646	402	21	645	531	21
49	21	532	175	21	551	283	21	648	404	21	609	548	21
57	21	526	179	21	553	324	21	625	404	21	645	558	21
68	21	514	183	21	555	371	21	616	405	21	688	562	21
73	21	536	188	21	557	389	21	609	409	21	709	567	21
77	21	537	198	21	594	394	21	623	434	21	670	575	21
92	21	561	202	21	585	394	21	645	453	21	680	580	21
104	21	565	218	21	591	396	21	644	464	21	684	584	21
117	21	573	227	21	597							740	

21 S.Ct.

(v)*

CASES REPORTED.

	Page		Page
Abraham v. Casey (179 U. S. 210).....	88	Austo-Americana S. S. Co., Malcolmson v. (179 U. S. 685).....	917
Adams v. Shirk (180 U. S. 638).....	920	Austo-Americana S. S. Co., Morgan v. (179 U. S. 685).....	917
Adams, Illinois Cent. R. Co. v. (180 U. S. 28).....	251	Austo-Americana S. S. Co., Munroe v. (179 U. S. 685).....	917
Adams, Yazoo & M. R. Co. v. (180 U. S. 41).....	256	Austo-Americana S. S. Co., Parsons v. (179 U. S. 685).....	917
Adams, Yazoo & M. V. R. Co. v. (180 U. S. 1).....	240	Austo-Americana S. S. Co., Malcolmson v. (179 U. S. 685).....	917
Adams, Yazoo & M. V. R. Co. v. (180 U. S. 28).....	256	Austo-Americana S. S. Co., Morgan v. (179 U. S. 685).....	917
Adams, Yazoo & M. V. R. Co. v. (180 U. S. 26).....	282	Austo-Americana S. S. Co., Munroe v. (179 U. S. 685).....	917
Adams, Yazoo & M. V. R. Co. v. (180 U. S. 28).....	729	Austo-Americana S. S. Co., Parsons v. (179 U. S. 685).....	917
Ainsworth, Ansley v. (180 U. S. 253).....	364	Auten, Joyce v. (179 U. S. 591).....	227
Ajax Gold Min. Co., Calhoun Gold Min. Co. v. (180 U. S. 253).....	885	Avery v. Popper (179 U. S. 305).....	94
Alaskan & N. W. Territories Trading Co., Moore v. (180 U. S. 253).....	914	Babcock, Consolidated Water Co. v. (179 U. S. 305).....	919
Allegheny Oil Co. v. Snyder.....	923	Baggs v. Martin (179 U. S. 206).....	109
Allen v. Allen.....	914	Baker v. Cummings (181 U. S. 117).....	578
Allen v. District of Columbia (181 U. S. 402).....	609, 645	Baldwin v. State of Maryland (179 U. S. 220).....	105
Allen, Grimes v. (180 U. S. 640).....	922	Balfour, Oregon Ry. & Nav. Co. v., two cases (179 U. S. 55).....	28
Allison, New York Life Ins. Co. v. (180 U. S. 640).....	923	Baltimore Building & Loan Ass'n, Archer v. (179 U. S. 679).....	917
Alvey, Queen v. (180 U. S. 640).....	876	Baltimore, C. & A. R. Co. v. City of Ocean City (179 U. S. 681).....	918
American Nat. Bank, Sully v. (179 U. S. 68).....	29	Bancroft & Sons Co. v. Bloede.....	924
American Oak Leather Co., United States Rubber Co. v. (181 U. S. 434).....	670	Barber Asphalt Pav. Co., French v. (181 U. S. 324).....	625
American Steamship Laurada, United States v. (181 U. S. 434).....	928	Barclay v. Barclay.....	923
American Sugar-Refining Co. v. City of New Orleans (181 U. S. 277).....	646	Barker v. Harvey (181 U. S. 451).....	690
American Sugar-Refining Co. v. State of Louisiana (179 U. S. 89).....	43	Barker, People of State of New York v. (179 U. S. 279).....	121
American Sugar-Refining Co. v. United States.....	830	Barker, People of State of New York v. (179 U. S. 287).....	124
American Sugar-Refining Co. v. United States.....	928	Barnstable, The (181 U. S. 464).....	684
Ames, Rice v. (180 U. S. 371).....	406	Beach, Hobbs v. (180 U. S. 383).....	409
Anderson, Elliott v. (179 U. S. 685).....	926	Beaser v. Vilas.....	914
Andrews, United States v. (179 U. S. 96).....	46	Bechman, Wood v. (180 U. S. 383).....	920
Ansley v. Ainsworth (180 U. S. 253).....	364	Beck, Supreme Lodge, K. P. of the World v. (181 U. S. 49).....	532
Archer v. Baltimore Building & Loan Ass'n (179 U. S. 679).....	917	Bedford v. Eastern Building & Loan Ass'n of Syracuse, N. Y. (181 U. S. 227).....	597
Arkansas v. Schlierholz (179 U. S. 598).....	229	Beebe, United States v. (180 U. S. 343).....	371
Armes, Magruder v. (180 U. S. 496).....	454	Beebe, United States v. (180 U. S. 640).....	922
Armijo v. Armijo (181 U. S. 558).....	707	Bell v. Bell (181 U. S. 175).....	551
Armijo, Chavez de Armijo v. (181 U. S. 558).....	707	Bell, City of Lampasas v. (180 U. S. 276).....	368
Armstrong v. United States.....	827	Benedict v. City of New York (179 U. S. 685).....	918
Arnley, Bradshaw v. (180 U. S. 59).....	297	Bernheimer, Bryan v. (181 U. S. 188).....	557
Ashville, Harkins v. (180 U. S. 635).....	922	Bidwell, De Lima v. (181 U. S. 188).....	743
Assyrian Asphalt Co., United States Repair & Guaranty Co. v. (180 U. S. 635).....	928	Bidwell, Downes v. (181 U. S. 188).....	770
Atherton v. Atherton (181 U. S. 155).....	544	Bills, Sorosis Fruit Co. v. (180 U. S. 356).....	914
Atlantic Mut. Ins. Co. v. International Nav. Co. (180 U. S. 155).....	926	Bird v. United States (180 U. S. 356).....	403
Atlas Glass Co. v. Simonds Mfg. Co. (179 U. S. 684).....	916	Black River Nat. Bank, Security Trust Co. v. (180 U. S. 638).....	927
Audubon v. Shufeldt (181 U. S. 575).....	735	Bloede, Joseph Bancroft & Sons Co. v. (180 U. S. 638).....	924
Austin v. State of Tennessee (179 U. S. 343).....	182	Blythe v. Hinckley (180 U. S. 333).....	390
		Board of Com'rs of Lake County, Colo., v. Sutliff.....	928

	Page		Page
Board of Com'rs of Meade County, Kan., v. Corning (180 U. S. 638).....	921	Chesapeake & O. R. Co. v. Dixon (179 U. S. 131).....	67
Board of Com'rs of Wilkes County v. Coler (180 U. S. 506).....	458	Chicago, Pennsylvania Co. v.....	921
Board of Education of City of Pierre v. McLean.....	925	Chicago, B. & Q. R. Co., Union Pac. R. Co. v.....	915
Board of Liquidation of City Debt of New Orleans v. State of Louisiana (179 U. S. 622).....	263	Chicago, M. & St. P. R. Co. v. Bosworth (179 U. S. 442).....	183
Board of Liquidation of City Debt of New Orleans v. United States, two cases.....	922	Chicago Title & Trust Co., Pirie v.....	906
Bolton, London Co. v.....	925	Chippis v. Lindeberg (179 U. S. 686).....	919
Bonestell, Gardner v. (180 U. S. 362).....	399	Choctaw Nation v. United States (179 U. S. 494).....	149
Bosworth v. Carr, Ryder & Engler Co. (179 U. S. 444).....	194	Choctaw Nation, Wichita v. (179 U. S. 494).....	149
Bosworth, Chicago, M. & St. P. R. Co. v. (179 U. S. 442).....	183	Christie v. Guaranty Trust Co.....	925
Bosworth, Hunting Elevator Co. v. (179 U. S. 415).....	183	Cincinnati St. R. Co. v. Snell (179 U. S. 395).....	205
Bosworth, Rau v. (179 U. S. 443).....	194	City of Ashville, Harkins v. (180 U. S. 635).....	922
Botany Worsted Mills, Knott v. (179 U. S. 69).....	30	City of Chicago, Pennsylvania Co. v.....	921
Bradshaw v. Ashley (180 U. S. 59).....	297	City of Danville, Danville Water Co. v. (180 U. S. 619).....	505
Brister, Reymann Brewing Co. v. (179 U. S. 445).....	201	City of Detroit v. Parker (181 U. S. 399).....	624, 645
British & Foreign Marine Ins. Co. v. In- ternational Nav. Co.....	926	City of Detroit, Cass Farm Co. v. (181 U. S. 396).....	644, 645
British & Foreign Marine Ins. Co., Crew- Levick Co. v. (179 U. S. 685).....	918	City of Fargo, Webster v. (181 U. S. 394)	623, 645
Brown, Gillmor v.....	923	City of Ft. Smith, Humes v.....	917
Browne v. Chavez, two cases (181 U. S. 68).....	514	City of Freeport, Freeport Water Co. v. (180 U. S. 587).....	493
Brundage, State of Minnesota v. (180 U. S. 499).....	455	City of Huron v. Ellwood.....	925
Bryan v. Bernheimer (181 U. S. 188).....	557	City of Huron v. Shepard.....	925
Buell v. Farmers' Loan & Trust Co. (180 U. S. 639).....	921	City of Huron v. Warren.....	925
Burgess, Western Union Tel. Co. v.....	924	City of Lampasas v. Bell (180 U. S. 276)..	368
Burke, Davis v. (179 U. S. 399).....	210	City of Memphis, Southern R. Co. v.....	914
Burrill, Crossman v. (179 U. S. 100).....	38	City of New Orleans v. Emsheimer (181 U. S. 153).....	584
Burt v. C. Gotzian & Co. (179 U. S. 684)	916	City of New Orleans v. Fisher (180 U. S. 185).....	347
Calhoun Gold Min. Co. v. Ajax Gold Min. Co.	885	City of New Orleans v. Warner (180 U. S. 199).....	353
California Fig Syrup Co., Worden v. (179 U. S. 686).....	926	City of New Orleans v. Warner.....	928
California Redwood Co. v. Johnson (179 U. S. 681).....	919	City of New Orleans, American Sugar-Re- fining Co. v. (181 U. S. 277).....	646
California Redwood Co. v. Mahan (179 U. S. 681).....	919	City of New York, Benedict v. (179 U. S. 685).....	918
Call Pub. Co., Western Union Tel. Co. v. (181 U. S. 92).....	561	City of New York, Workman v. (179 U. S. 552).....	212
Calumet Canal & Imp. Co., Kean v.....	914	City of Ocean City, Baltimore, C. & A. R. Co. v. (179 U. S. 681).....	918
Camden Iron Works, District of Columbia v. (181 U. S. 453).....	680	City of Pierre v. Dunscomb.....	925
Campbell v. Waite (180 U. S. 635).....	920	City of St. Louis, Wheless v. (180 U. S. 379).....	402
Carborundum Co. v. Electric Smelting & Aluminum Co. (179 U. S. 684).....	916	City of St. Paul, St. Paul Gaslight Co. v. (181 U. S. 142).....	575
Cargill Co. v. State of Minnesota (180 U. S. 452).....	423	City of Savannah, Wells v. (181 U. S. 531)	697
Carr, Ryder & Engler Co., Bosworth v. (179 U. S. 444).....	194	Clapp, Otoe County v. (180 U. S. 638).....	920
Carson v. Sewer Com'rs of Brockton.....	860	Clarke v. Larremore (180 U. S. 640).....	927
Casey, Abraham v. (179 U. S. 210).....	88	Clews v. Jamieson.....	845
Cass Farm Co. v. City of Detroit (181 U. S. 396).....	644, 645	Clyde S. S. Co., Interstate Commerce Com- mission v., two cases (181 U. S. 29).....	512
Cauca Co., Republic of Columbia v.....	924	Codlin v. Kohlhausen (181 U. S. 151).....	584
Central Baptist Church, Manchester v.....	923	Cohen, Mutual Life Ins. Co. v. (179 U. S. 262).....	106
C. Gotzian & Co., Burt v. (179 U. S. 684)	916	Colburn v. Grant.....	737
Chambers, Commercial Nat. Bank v.....	863	Coler, Board of Com'rs of Wilkes County v. (180 U. S. 506).....	458
Chapin v. Fye (179 U. S. 127).....	71	Colton v. Raymond (180 U. S. 639).....	921
Chavez, Browne v., two cases (181 U. S. 68).....	514	Columbia, In re, two cases (180 U. S. 250)	357
Chavez de Armijo v. Armijo (181 U. S. 558).....	707	Columbia v. Camden Iron Works (181 U. S. 453).....	680
Chesapeake & O. R. Co. v. Commonwealth of Kentucky (179 U. S. 388).....	101	Columbia v. Cauca Co.....	924
		Columbia v. Moulton.....	840
		Columbia v. Robinson (180 U. S. 92).....	283
		Columbia v. Talty.....	896
		Columbia, Allen v. (181 U. S. 402).....	609, 645
		Columbia, Wormley v. (181 U. S. 402)..	609, 645

	Page		Page
Columbia Tp., Loeb v. (179 U. S. 472)....	174	Dooley v. Hadden (179 U. S. 646).....	259
Columbus Const. Co. v. Crane Co. (180 U. S. 636).....	919	Dooley v. Pease (180 U. S. 126).....	329
Commercial Nat. Bank v. Chambers.....	863	Dooley v. United States.....	762
Commonwealth of Kentucky, Chesapeake & O. R. Co. v. (179 U. S. 388).....	101	Dorr v. Hunter.....	916
Commonwealth of Massachusetts, McDonald v. (180 U. S. 311).....	339	Dougherty v. United States.....	926
Conley, Day v. (179 U. S. 679).....	917	Dowagiac Mfg. Co., McSherry Mfg. Co. v. (179 U. S. 686).....	918
Connors v. United States (180 U. S. 271)...	362	Downes v. Bidwell.....	770
Consolidated Water Co. v. Babcock.....	919	Drainage Commission of New Orleans v. Wilder (179 U. S. 622).....	263
Contzen v. United States (179 U. S. 191)...	98	Duluth & I. R. R. Co. v. St. Louis County (179 U. S. 302).....	124
Cormode, Moore v. (180 U. S. 167).....	324	Dunscumb, City of Pierre v.....	925
Corning, Board of Com'rs of Meade County, Kan., v. (180 U. S. 638).....	921	Dunseth, Wilson v. (179 U. S. 683).....	916
County of Hughes, S. D., v. Livingston.....	926	Duss, Schwartz v. (180 U. S. 637).....	926
County of Lake, Colo., v. Sutliff.....	928	Eastern Building & Loan Ass'n of Syracuse, N. Y., v. Welling (181 U. S. 47)...	531
County of Meade, Kan., v. Corning (180 U. S. 638).....	921	Eastern Building & Loan Ass'n of Syracuse, N. Y., Bedford v. (181 U. S. 227)...	597
County of Otce v. Clapp (180 U. S. 638)...	920	East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission (181 U. S. 1).....	516
County of St. Louis, Duluth & I. R. R. Co. v. (179 U. S. 302).....	124	Ebner, Marx v. (180 U. S. 314).....	376
County of Wilkes v. Coler (180 U. S. 506)...	458	Edmondston, United States v. (181 U. S. 500).....	718
Courtney, Fidelity & Deposit Co. v. (179 U. S. 685).....	926	Edmonston, United States v. (181 U. S. 500).....	718
Cox, Terre Haute & I. R. Co. v.....	923	Eisner & Mendelson Co., Saxlehner v. (179 U. S. 19).....	7
Cox, Wall v. (181 U. S. 244).....	642	Electric Smelting & Aluminum Co., Carborundum Co. v. (179 U. S. 684).....	916
Craft, Simon v.....	836	Elgin National Watch Co. v. Illinois Watch Case Co. (179 U. S. 665).....	270
Craig, Red River Val. Nat. Bank v. (181 U. S. 548).....	703	Elliott v. Anderson (179 U. S. 685).....	926
Crane Co., Columbus Const. Co. v. (180 U. S. 636).....	919	Ellwood, City of Huron v.....	925
Crew-Levick Co. v. British & Foreign Marine Ins. Co. (179 U. S. 685).....	918	Ely & Walker Dry Goods Co., Passaic Print Works v.....	922
Crossman v. Burrill (179 U. S. 100).....	38	Emsheimer, City of New Orleans v. (181 U. S. 153).....	584
Crossman v. United States.....	742	Ewing, First Nat. Bank v. (179 U. S. 686)...	919
Cummings, Baker v. (181 U. S. 117).....	578	Fairbank v. United States (181 U. S. 283)...	648
Daingerfield Nat. Bank v. Ragland (181 U. S. 45).....	536	Falk v. United States.....	922
Danville, Danville Water Co. v. (180 U. S. 619).....	505	Falk v. United States (180 U. S. 636)....	923
Danville Water Co. v. City of Danville (180 U. S. 619).....	505	Fargo, Webster v. (181 U. S. 394).....	623, 645
Daugherty v. Hood (179 U. S. 680).....	917	Farmers' Loan & Trust Co. v. Penn Plate Glass Co. (179 U. S. 685).....	926
Davidson, Wight v. (181 U. S. 371).....	616	Farmers' Loan & Trust Co., Buell v. (180 U. S. 639).....	921
Davis v. Burke (179 U. S. 399).....	210	Farmers' Loan & Trust Co., Lake St. El. R. Co. v.....	870
Davis v. Magoun.....	921	Farmers' Loan & Trust Co., Lake St. El. R. Co. v.....	925
Day v. Conley (179 U. S. 679).....	917	Farraher v. United States.....	926
De Bara, Ex parte (179 U. S. 316).....	110	Farrell v. West Chicago Park Com'rs (181 U. S. 404).....	609, 645
De Lemos v. United States.....	925	Farr & Bailey Mfg. Co., International Nav. Co. v. (181 U. S. 218).....	591
De Lima v. Bidwell.....	743	Fears, Williams v. (179 U. S. 270).....	128
Delta & Pine Land Co., Guarantee Trust & Safety Deposit Co. v. (180 U. S. 636)...	919	Fergus, Rogers Park Water Co. v. (180 U. S. 624).....	490
Detroit v. Parker (181 U. S. 399).....	624, 645	Ferris, Missouri, K. & T. R. Co. of Texas v. (179 U. S. 602).....	231
Detroit, Cass Farm Co. v. (181 U. S. 396)...	644, 645	Ferry, Thompson v. (180 U. S. 484).....	453
Deweese, Scott v. (181 U. S. 202).....	585	Fidelity, Trust & Safety Vault Co., Zach-er v.....	924
Dingley, Mutual Life Ins. Co. v. (179 U. S. 684).....	926	Fidelity & Deposit Co. v. Courtney (179 U. S. 685).....	926
Dinsmore v. Southern Exp. Co. (179 U. S. 684).....	926	Fields, Niver v. (179 U. S. 682).....	919
District of Columbia, In re, two cases (180 U. S. 250).....	357	First Nat. Bank v. Ewing (179 U. S. 686)...	919
District of Columbia v. Camden Iron Works (181 U. S. 453).....	680	First Nat. Bank, Mitchell v. (180 U. S. 471).....	418
District of Columbia v. Moulton.....	840	Fisher, City of New Orleans v. (180 U. S. 185).....	347
District of Columbia v. Robinson (180 U. S. 92).....	283	Florida, United States v.....	915
District of Columbia v. Talty.....	896	Ft. Smith, Humes v.....	917
District of Columbia, Allen v. (181 U. S. 402).....	609, 645	Freeport, Freeport Water Co. v. (180 U. S. 587).....	493
District of Columbia, Wormley v. (181 U. S. 402).....	609, 645		
Dixon, Chesapeake & O. R. Co. v. (179 U. S. 131).....	67		
Domestic & Foreign Missionary Soc. of Protestant Episcopal Church, Holly v. (180 U. S. 284).....	395		

	Page		Page
Freeport Water Co. v. City of Freeport (180 U. S. 587).....	493	Holzapfels Compositions Co. v. Rahtjens American Compositions Co.....	928
French v. Barber Asphalt Pav. Co. (181 U. S. 324).....	625	Homer Ramsdell Transp. Co. v. La Com- pagnie Generale Transatlantique.....	831
Fuller, Ex parte.....	871	Hood v. Wallace.....	885
Funk v. United States (179 U. S. 683)...	916	Hood, Daugherty v. (179 U. S. 680).....	917
Furman, Mitchell v. (180 U. S. 402).....	430	Horton, New York Life Ins. Co. v.....	917
Fye, Chapin v. (179 U. S. 127).....	71	Hubbell v. United States (179 U. S. 77)...	24
Gableman v. Peoria, D. & E. R. Co. (179 U. S. 335).....	171	Hubbell v. United States (179 U. S. 86)...	28
Gadsden, Schuyler Nat. Bank v. (179 U. S. 681).....	918	Hubinger Co. v. Quincy Horse R. & Car- rying Co.....	918
Gardner v. Bonestell (180 U. S. 362).....	399	Hughes, Gould v. (179 U. S. 679).....	916
Gaylord, Williams v. (180 U. S. 637).....	926	Hughes County, S. D., v. Livingston.....	926
German Nat. Bank v. Speckert (181 U. S. 405).....	688	Humble, Texas & P. R. Co. v. (181 U. S. 57).....	526
Gies, Saxlehner v. (179 U. S. 42).....	16	Humes v. City of Ft. Smith.....	917
Gillett, Harding v.....	918	Hunter, Dorr v.....	916
Gillmor v. Brown.....	923	Hunting Elevator Co. v. Bosworth (179 U. S. 415).....	183
Glavey v. United States.....	891	Huron v. Ellwood.....	925
Goetze v. United States.....	742	Huron v. Shepard.....	925
Good Shot v. United States (179 U. S. 87) 33		Huron v. Warren.....	925
Gotzian & Co., Burt v. (179 U. S. 684)...	916	Huus v. New York & P. R. S. S. Co.....	827
Gould v. Hughes (179 U. S. 679).....	916	Hyde, New England R. Co. v.....	924
Grand Island & W. C. R. Co. v. Sweeney (179 U. S. 684).....	916	Idaho, Rasmussen v. (181 U. S. 198).....	594
Grand Island & W. G. R. Co. v. Sweeney 924		Ide, Rowan v.....	924
Grand View Building Ass'n, Northern Assur. Co. of London, Eng., v.....	928	Illinois, Keokuk & H. Bridge Co. v.....	914
Grant, Colburn v.....	737	Illinois, Missouri v. (180 U. S. 208).....	331
Greene, Sigma Iron Co. v. (180 U. S. 637) 920		Illinois Cent. R. Co. v. Adams (180 U. S. 28).....	251
Greene, Sigua Iron Co. v. (180 U. S. 637) 920		Illinois Cent. R. Co. v. Tutt (180 U. S. 640).....	922
Gregory v. Pike.....	922	Illinois Watch Case Co., Elgin National Watch Co. v. (179 U. S. 665).....	270
Gridley v. Thousand Island Park Ass'n... 921		Ingersoll, Werling v. (181 U. S. 131).....	570
Grimes v. Allen (180 U. S. 640).....	922	Insurance Co. of North America v. Inter- national Nav. Co.....	926
Guarantee Co. of North America v. Me- chanics' Sav. Bank & Trust Co.....	928	Insurance Co. of North America v. The St. Hubert.....	925
Guarantee Trust & Safety Deposit Co. v. Delta & Pine Land Co. (180 U. S. 636).. 919		International Nav. Co. v. Farr & Bailey Mfg. Co. (181 U. S. 218).....	591
Guaranty Trust Co., Christie v.....	925	International Nav. Co., Atlantic Mut. Ins. Co. v.....	926
Guaranty Trust Co., Paul Shean Sanitary Plumbing & Mfg. Co. v.....	925	International Nav. Co., British & Foreign Marine Ins. Co. v.....	926
Gulf, W., T. & P. R. Co. v. New York & T. Land Co. (180 U. S. 638).....	920	International Nav. Co., Insurance Co. of North America v.....	926
Gusman v. Marrero (180 U. S. 81).....	293	International Nav. Co., Thames & M. Ins. Co. v.....	926
Gusman v. Marrero.....	914	Interstate Commerce Commission v. Clyde S. S. Co., two cases (181 U. S. 29).....	512
Hadden v. Dooley (179 U. S. 646).....	259	Interstate Commerce Commission v. West- ern & A. R. Co. (181 U. S. 29).....	512
Hadley, Provident Sav. Life Assur. Soc. v. (179 U. S. 686).....	919	Interstate Commerce Commission, East Tennessee, V. & G. R. Co. v. (181 U. S. 1).....	516
Hagen v. Scottish Union & Nat. Ins. Co. (179 U. S. 686).....	926	Jacobs v. Marks.....	865
Hahn, United States v. (180 U. S. 639).. 921		Jacobson, Wisconsin, M. & P. R. Co. v. (179 U. S. 287).....	115
Hale v. Lewis (181 U. S. 473).....	677	Jamieson, Clews v.....	845
Hall, Southern Pine Co. v. (180 U. S. 639) 921		Jarman, Knights Templars' & Masons' Life Indemnity Co. v. (180 U. S. 640).....	927
Hancock, Luhrs v. (181 U. S. 567).....	726	J. C. Hubinger Co. v. Quincy Horse R. & Carrying Co.....	918
Hancock Mut. Life Ins. Co. v. Warren (181 U. S. 73).....	535	Jewett v. United States (179 U. S. 683).. 916	
Hanifen v. Price (180 U. S. 639).....	927	John Hancock Mut. Life Ins. Co. v. War- ren (181 U. S. 73).....	535
Harding v. Gillett.....	918	Johns v. Wilson (180 U. S. 440).....	445
Harkins v. City of Ashville (180 U. S. 635) 922		Johnson, California Redwood Co. v. (179 U. S. 681).....	919
Hart v. State of Utah (179 U. S. 681)...	918	Johnson, Lockhart v. (181 U. S. 516)...	665
Harvey, Barker v. (181 U. S. 481).....	690	Jones v. Newton.....	924
Harvey, Quevas v. (181 U. S. 481).....	690	Jordan v. Jordan.....	914
Hay, Whitney v. (181 U. S. 77).....	537	Joseph Bancroft & Sons Co. v. Bloede.. 924	
Hays v. Klopenstine.....	918	Joseph Schlitz Brewing Co. v. United States.....	740
Heman, Shumate v., two cases (181 U. S. 402).....	645	Joslin, Ward v. (180 U. S. 639).....	927
Henderlong, United States v.....	924		
Henkel, Neely v. (180 U. S. 109).....	302		
Henkel, Neely v. (180 U. S. 126).....	308		
Hewitt v. Schultz (180 U. S. 139).....	309		
Hiller v. United States (180 U. S. 639).. 921			
Hinkley, Blythe v. (180 U. S. 333).....	390		
Hobbs v. Beach (180 U. S. 383).....	409		
Holly v. Domestic & Foreign Missionary Soc. of Protestant Episcopal Church (180 U. S. 284).....	395		
Holt, Throckmorton v. (180 U. S. 552).... 474			

	Page		Page
Joyce v. Auten (179 U. S. 591).....	227	McCarthy, Speed v. (181 U. S. 269).....	613
Judges of the Court of Registration, Tyler v. (179 U. S. 405).....	206	McDonald v. Commonwealth of Massachusetts (180 U. S. 311).....	389
Jutte & Foley Co., Kelly v.....	922	McFadden, Mountain View Min. & Mill. Co. v. (180 U. S. 533).....	488
Kean v. Calumet Canal & Imp. Co.....	914	Macfarland, United States v.....	924
Kearney, Liverpool & L. & G. Ins. Co. v. (180 U. S. 132).....	326	McGilvray v. Knott (179 U. S. 680).....	917
Kelly v. Jutte & Foley Co.....	922	McKenzie, In re (180 U. S. 536).....	468
Kenaday v. Sinnott (179 U. S. 606).....	233	McLean, Board of Education of City of Pierre v.....	925
Kentucky, Chesapeake & O. R. Co. v. (179 U. S. 388).....	101	McSherry Mfg. Co. v. Dowagiac Mfg. Co. (179 U. S. 686).....	918
Keokuk & H. Bridge Co. v. People of State of Illinois.....	914	Magoun, Davis v.....	921
Kizer v. Texarkana & Ft. S. R. Co. (179 U. S. 199).....	100	Magruder v. Armes (180 U. S. 496).....	454
Klopfenstein, Hays v.....	918	Mahan, California Redwood Co. v. (179 U. S. 681).....	919
Knights Templars' & Masons' Life Indemnity Co. v. Jarman (180 U. S. 640).....	927	Maish v. United States.....	921
Knott v. Botany Worsted Mills (179 U. S. 69).....	30	Malcolmson v. Austro-Americana S. S. Co. (179 U. S. 685).....	917
Knott, McGilvray v. (179 U. S. 680).....	917	Malcolmson, The Styria v. (179 U. S. 683).....	926
Kohlhausen, Codlin v. (181 U. S. 151).....	584	Malcolmson v. Austro-Americana S. S. Co. (179 U. S. 685).....	917
Lackey, United States v.....	925	Malcolmson, The Styria v. (179 U. S. 683).....	926
La Compagnie Generale Transatlantique, Homer Ramsdell Transp. Co. v.....	831	Mallett v. State of North Carolina.....	730
Lake County, Colo., v. Sutliff.....	928	Manchester v. Central Baptist Church.....	923
Lake St. El. R. Co. v. Farmers' Loan & Trust Co.....	870	Manhattan Trust Co., Trust Co. of North America v.....	925
Lake St. El. R. Co. v. Farmers' Loan & Trust Co.....	925	Manley v. Larkin.....	915
Lampasas v. Bell (180 U. S. 276).....	368	Marks v. Shoup (181 U. S. 562).....	724
Lantry v. Wallace.....	878	Marks, Jacobs v.....	865
Larkin, Manley v.....	915	Marquet, Saxlehner v. (179 U. S. 42).....	16
Larremore, Clarke v. (180 U. S. 640).....	927	Marrero, Gusman v. (180 U. S. 81).....	293
Las Animas Land Grant Co. v. United States (179 U. S. 201).....	92	Marrero, Gusman v.....	914
Laurada, The.....	928	Martin, Baggs v. (179 U. S. 206).....	109
Lavin v. United States.....	926	Marx v. Ebner (180 U. S. 314).....	376
Leicester Mills Co. v. Powell.....	925	Maryland, Baldwin v. (179 U. S. 220).....	105
Lewis, Hale v. (181 U. S. 473).....	677	Mason v. State of Missouri (179 U. S. 328).....	125
Lindeberg, Chipps v. (179 U. S. 686).....	919	Massachusetts, McDonald v. (180 U. S. 311).....	389
Li Sing v. United States (180 U. S. 486).....	449	Masters v. Sargent (179 U. S. 682).....	915
Liverpool & L. & G. Ins. Co. v. Kearney (180 U. S. 132).....	326	Maynard, Looker v. (179 U. S. 46).....	21
Livingston, Hughes County, S. D., v.....	926	Meade County, Kan., v. Corning (180 U. S. 638).....	921
Lockhart v. Johnson (181 U. S. 516).....	665	Mechanics' Sav. Bank & Trust Co., Guarantee Co. of North America v.....	928
Lockwood, Ohio River R. Co. v. (180 U. S. 637).....	920	Memphis, Southern R. Co. v.....	914
Loeb v. Trustees of Columbia Tp. (179 U. S. 472).....	174	Michigan Cent. R. Co., Richards v. (179 U. S. 686).....	918
Loeb v. United States.....	923	Minnesota v. Brundage (180 U. S. 499).....	455
Loeng Un v. United States.....	925	Minnesota, Stearns v. (179 U. S. 223).....	73
Lombard v. West Chicago Park Com'rs (181 U. S. 33).....	507	Minnesota, W. W. Cargill Co. v. (180 U. S. 452).....	423
London Co. v. Bolton.....	925	Missouri v. Illinois (180 U. S. 208).....	331
Looker v. Maynard (179 U. S. 46).....	21	Missouri, Mason v. (179 U. S. 328).....	125
Los Angeles Farming & Milling Co., Thompson v. (180 U. S. 72).....	289	Missouri, K. & T. R. Co. of Texas v. Ferris (179 U. S. 602).....	231
Louisiana, American Sugar Refining Co. v. (179 U. S. 89).....	43	Mitchell v. First Nat. Bank (180 U. S. 471).....	418
Louisiana, Board of Liquidation of City Debt of New Orleans v. (179 U. S. 622).....	263	Mitchell v. Furman (180 U. S. 402).....	430
Louisiana, New Orleans Debenture Redemption Co. of Louisiana v. (180 U. S. 320).....	378	Modern Woodmen of America v. Union Nat. Bank.....	926
Louisiana, United States v.....	915	Montoya v. United States (180 U. S. 261).....	358
Louisville & N. R. Co., Shelbyville & B. R. Co. v.....	920	Moore v. Alaskan & N. W. Territories Trading Co.....	914
Lowry v. Silver City Gold & Silver Min. Co. (179 U. S. 196).....	104	Moore v. Cormode (180 U. S. 167).....	324
Ludden v. Winston.....	914	Moore v. Stone (180 U. S. 180).....	322
Luhns v. Hancock (181 U. S. 567).....	726	Moore, Sun Printing & Publishing Ass'n v. Morgan v. Austro-Americana S. S. Co. (179 U. S. 685).....	917
Lynde v. Lynde, two cases (181 U. S. 183).....	555	Morgan v. Austro-Americana S. S. Co. (179 U. S. 685).....	917
Lyon, Town of Tonawanda v. (181 U. S. 389).....	609	Morgan, The Styria v. (179 U. S. 683).....	926
McBratney, United States v.....	924	Morgan, United States v. (180 U. S. 638).....	920
		Morris v. New York & W. Water Co. (179 U. S. 683).....	915
		Morrison, United States v. (179 U. S. 456).....	195
		Moulton, District of Columbia v.....	840
		Mountain View Min. & Mill. Co. v. McFadden (180 U. S. 533).....	488
		Mt. Vernon v. Wesson (180 U. S. 637).....	920

	Page		Page
Mueller v. Nugent (180 U. S. 640).....	927	Passaic Print Works v. Ely & Walker Dry Goods Co.....	922
Munroe v. Austo-Americana S. S. Co. (179 U. S. 685).....	917	Patton v. Texas & P. R. Co. (179 U. S. 658).....	275
Munroe v. Austro-Americana S. S. Co. (179 U. S. 685).....	917	Paul Shean Sanitary Plumbing & Mfg. Co. v. Guaranty Trust Co.....	925
Munroe, The Styria v. (179 U. S. 683)....	926	Pearce, Old Colony Steamboat Co. v. (180 U. S. 636).....	919
Murphy v. Storey.....	921	Pease, Dooley v. (180 U. S. 126).....	329
Mutual Life Ins. Co. v. Cohen (179 U. S. 262).....	106	Peck, Saunders v. (179 U. S. 682).....	915
Mutual Life Ins. Co. v. Dingley (179 U. S. 684).....	926	Penn Plate Glass Co., Farmers' Loan & Trust Co. v. (179 U. S. 685).....	926
National Bank of Daingerfield v. Ragland (181 U. S. 45).....	536	Pennsylvania Co. v. City of Chicago.....	921
Neely v. Henkel (180 U. S. 103).....	302	People of State of Illinois, Keokuk & H. Bridge Co. v.....	914
Neely v. Henkel (180 U. S. 126).....	308	People of State of Illinois, State of Missouri v. (180 U. S. 208).....	331
Neville, Territory of Oklahoma v.....	923	People of State of New York v. Barker (179 U. S. 279).....	121
New England R. Co. v. Hyde.....	924	People of State of New York v. Barker (179 U. S. 287).....	124
New Orleans v. Emsheimer (181 U. S. 153).....	584	People's R. Co. v. Rumsey.....	919
New Orleans v. Fisher (180 U. S. 185)....	347	Peoria, D. & E. R. Co., Gableman v. (179 U. S. 335).....	171
New Orleans v. Warner (180 U. S. 199)....	353	Phillips & Buttorff Mfg. Co. v. Whitney (180 U. S. 637).....	920
New Orleans v. Warner.....	928	Pierre v. Dunscomb.....	925
New Orleans, American Sugar-Refining Co. v. (181 U. S. 277).....	646	Pike, Gregory v.....	922
New Orleans Debenture Redemption Co. of Louisiana v. State of Louisiana (180 U. S. 320).....	378	Ping Yik v. United States.....	914
Newton, Jones v.....	924	Ping Yik v. United States.....	928
New York v. Barker (179 U. S. 279).....	121	Ping Yik, United States v.....	921
New York v. Barker (179 U. S. 287).....	124	Pin Kwan v. United States.....	914
New York, Benedict v. (179 U. S. 685)....	918	Pin Kwan v. United States.....	928
New York, Workman v. (179 U. S. 552)....	212	Pin Kwan, United States v.....	921
New York Life Ins. Co. v. Allison.....	923	Pirie v. Chicago Title & Trust Co.....	906
New York Life Ins. Co. v. Horton.....	917	Plummer v. United States.....	916
New York & P. R. S. S. Co., Hauss v.....	827	Popper, Avery v. (179 U. S. 305).....	94
New York & T. Land Co., Gulf, W., T. & P. R. Co. v. (180 U. S. 638).....	920	Porter, Sigafus v. (179 U. S. 116).....	34
New York & W. Water Co., Morris v. (179 U. S. 683).....	915	Postal Telegraph-Cable Co., Southern R. Co. v. (179 U. S. 641).....	249
Nielsen, Saxlehner v. (179 U. S. 43).....	16	Powell, Leicester Mills Co. v.....	925
Niver v. Fields (179 U. S. 682).....	919	Powers v. Slaght (180 U. S. 173).....	319
Norcross v. Sexton.....	918	President, etc., of Insurance Co. of North America v. The St. Hubert.....	925
Nordstrom v. State of Washington.....	925	Price, Hanifen v. (180 U. S. 639).....	927
Nordstrom v. Van De Vanter.....	923	Provident Sav. Life Assur. Soc. v. Hadley (179 U. S. 686).....	919
North Carolina, Mallett v.....	730	Pueblos of Santo Domingo & San Felipe v. United States.....	915
North Carolina, United States v.....	915	Put-in-Bay Waterworks, Light & R. Co. v. Ryan (181 U. S. 409).....	709
Northern Assur. Co. of London, Eng., v. Grand View Building Ass'n.....	928	Queen v. Alvey.....	876
Nugent, Mueller v. (180 U. S. 640).....	927	Queen of the Pacific, The (180 U. S. 49)...	278
Nute, Woodworth v. (179 U. S. 682).....	915	Quevas v. Harvey (181 U. S. 481).....	690
O'Brien v. Wheelock.....	928	Quincy Horse R. & Carrying Co., J. C. Hubinger Co. v.....	918
Ocean City, Baltimore, C. & A. R. Co. v. (179 U. S. 681).....	918	Ragland, National Bank of Daingerfield v. (181 U. S. 45).....	536
Ohio, Stevens v. (179 U. S. 680).....	917	Rahtjens American Compositions Co., Holzapfels Compositions Co. v.....	928
Ohio River R. Co. v. Lockwood (180 U. S. 637).....	920	Ramsdell Transp. Co. v. La Compagnie Generale Transatlantique.....	831
Oklahoma v. Neville.....	923	Rasmussen v. State of Idaho (181 U. S. 198).....	594
Old Colony Steamboat Co. v. Pearce (180 U. S. 636).....	919	Rau v. Bosworth (179 U. S. 443).....	194
Oregon Ry. & Nav. Co. v. Balfour, two cases (179 U. S. 55).....	28	Raymond, Colton v. (180 U. S. 639).....	921
Otoe County v. Clapp (180 U. S. 638)....	920	Reagan v. United States.....	842
Pacific Coast S. S. Co. v. Pande (180 U. S. 635).....	922	Red River Val. Nat. Bank v. Craig (181 U. S. 548).....	703
Pacific Mut. Life Ins. Co., Tompkins v. (179 U. S. 683).....	916	Reed v. Stanley (179 U. S. 682).....	915
Pande, Pacific Coast S. S. Co. v. (180 U. S. 635).....	922	Reliance Marine Ins. Co., Washburn & Moen Mfg. Co. v. (179 U. S. 1).....	1
Parker v. Squires.....	922	Republic of Columbia v. Cauca Co.....	924
Parker, City of Detroit v. (181 U. S. 399) 624, 645	917	Reymann Brewing Co. v. Brister (179 U. S. 445).....	201
Parsons v. Austo-Americana S. S. Co. (179 U. S. 685).....	917	Rhode Island, Watson v. (179 U. S. 679)...	915
Parsons v. Austro-Americana S. S. Co. (179 U. S. 685).....	917	Rice v. Ames (180 U. S. 371).....	406
Parsons, The Styria v. (179 U. S. 683)....	926		

	Page		Page
Richards v. Michigan Cent. R. Co. (179 U. S. 686).....	918	Slaght, Powers v. (180 U. S. 173).....	319
Richardson, Turner v. (180 U. S. 87).....	295	Sloan v. United States.....	924
Rieger v. United States.....	923	Smith v. St. Louis & S. W. R. Co. of Texas (181 U. S. 248).....	603
Robinson v. Southern Nat. Bank (180 U. S. 295).....	383	Smith v. State of Tennessee.....	917
Robinson, District of Columbia v. (180 U. S. 92).....	283	Snell v. United States.....	915
Rogers Park Water Co. v. Fergus (180 U. S. 624).....	490	Snell, Cincinnati St. R. Co. v. (179 U. S. 395).....	205
Ross, United States Life Ins. Co. v. (179 U. S. 683).....	916	Snyder, Allegheny Oil Co. v.....	923
Rothschild v. United States (179 U. S. 463).....	197	Sorosis Fruit Co. v. Bills.....	914
Rowan v. Ide.....	924	South Carolina, United States v.....	915
Rumsey, People's R. Co. v.....	919	Southern Exp. Co., Dinsmore v. (179 U. S. 684).....	926
Russell v. United States.....	899	Southern Nat. Bank, Robinson v. (180 U. S. 295).....	383
Ryan, Put-in-Bay Waterworks, Light & R. Co. v. (181 U. S. 409).....	709	Southern Pine Co. v. Hall (180 U. S. 639).....	921
St. Hubert, President, etc., of Insurance Co. of North America v.....	925	Southern R. Co. v. City of Memphis.....	914
St. Louis, Wheless v. (180 U. S. 379).....	402	Southern R. Co. v. Postal Telegraph-Cable Co. (179 U. S. 641).....	249
St. Louis County, Duluth I. R. R. Co. v. (179 U. S. 302).....	124	Speckert, German Nat. Bank v. (181 U. S. 405).....	688
St. Louis & S. W. R. Co. of Texas, Smith v. (181 U. S. 248).....	603	Speed v. McCarthy (181 U. S. 269).....	613
St. Paul, St. Paul Gaslight Co. v. (181 U. S. 142).....	575	Squires, Parker v.....	922
St. Paul Gaslight Co. v. City of St. Paul (181 U. S. 142).....	575	Stanley, Reed v. (179 U. S. 682).....	915
Santo Domingo & San Felipe v. United States.....	915	State of Arkansas v. Schlierholz (179 U. S. 598).....	229
Sargent, Masters v. (179 U. S. 682).....	915	State of Florida, United States v.....	915
Saunders v. Peck (179 U. S. 682).....	915	State of Idaho, Rasmussen v. (181 U. S. 198).....	594
Savannah, Wells v. (181 U. S. 531).....	697	State of Illinois, Keokuk & H. Bridge Co. v.....	914
Saxlehner v. Eisner & Mendelson Co. (179 U. S. 19).....	7	State of Illinois, State of Missouri v. (180 U. S. 208).....	331
Saxlehner v. Gies (179 U. S. 42).....	16	State of Louisiana, American Sugar-Refining Co. v. (179 U. S. 89).....	43
Saxlehner v. Marquet (179 U. S. 42).....	16	State of Louisiana, Board of Liquidation of City Debt of New Orleans v. (179 U. S. 622).....	263
Saxlehner v. Nielsen (179 U. S. 43).....	16	State of Louisiana, New Orleans Debenture Redemption Co. of Louisiana v. (180 U. S. 320).....	378
Saxlehner v. Siegel-Cooper Co. (179 U. S. 42).....	16	State of Louisiana, United States v.....	915
Schlierholz, State of Arkansas v. (179 U. S. 598).....	229	State of Maryland, Baldwin v. (179 U. S. 220).....	105
Schlitz Brewing Co. v. United States.....	740	State of Minnesota v. Brundage (180 U. S. 499).....	455
Schultz, Hewitt v. (180 U. S. 139).....	309	State of Minnesota, Stearns v. (179 U. S. 223).....	73
Schuyler Nat. Bank v. Gadsden (179 U. S. 681).....	918	State of Minnesota, W. W. Cargill Co. v. (180 U. S. 452).....	423
Schwartz v. Duss (180 U. S. 637).....	926	State of Missouri v. People of State of Illinois (180 U. S. 208).....	331
Scott v. Deweese (181 U. S. 202).....	585	State of Missouri, Mason v. (179 U. S. 328).....	125
Scott v. Texas & P. R. Co. (180 U. S. 635).....	920	State of New York v. Barker (179 U. S. 279).....	121
Scottish Union & Nat. Ins. Co., Hagen v. (179 U. S. 686).....	926	State of New York v. Barker (179 U. S. 287).....	124
Scranton v. Wheeler (179 U. S. 141).....	48	State of North Carolina, Mallett v.....	730
Security Trust Co. v. Black River Nat. Bank (180 U. S. 638).....	927	State of North Carolina, United States v.....	915
Sewer Com'rs of Brockton, Carson v.....	860	State of Ohio, Stevens v. (179 U. S. 680).....	917
Sexton, Norcross v.....	918	State of Rhode Island, Watson v. (179 U. S. 679).....	915
Shean Sanitary Plumbing & Mfg. Co. v. Guaranty Trust Co.....	925	State of South Carolina, United States v.....	915
Shelbyville & B. R. Co. v. Louisville & N. R. Co.....	920	State of Tennessee, Austin v. (179 U. S. 343).....	132
Shepard, City of Huron v.....	925	State of Tennessee, Smith v.....	917
Shirk, Adams v. (180 U. S. 638).....	920	State of Utah, Hart v. (179 U. S. 681).....	918
Shoup, Marks v. (181 U. S. 562).....	724	State of Washington, Nordstrom v.....	925
Shufeldt, Audubon v. (181 U. S. 575).....	735	Stearns v. State of Minnesota (179 U. S. 223).....	73
Shumate v. Heman, two cases (181 U. S. 402).....	645	Stevens v. State of Ohio (179 U. S. 680).....	917
Siegel-Cooper Co., Saxlehner v. (179 U. S. 42).....	16	Stone, Moore v. (180 U. S. 180).....	322
Sigafus v. Porter (179 U. S. 116).....	34	Storey, Murphy v.....	921
Signa Iron Co. v. Greene (180 U. S. 637).....	920	Streitwolf v. Streitwolf (181 U. S. 179).....	553
Silver City Gold & Silver Min. Co., Lowry v. (179 U. S. 196).....	104	Styria, The, v. Malcolmson (179 U. S. 683).....	926
Simon v. Craft.....	836	Styria, The, v. Malcolmson (179 U. S. 683).....	926
Simonds Mfg. Co., Atlas Glass Co. v. (179 U. S. 684).....	916	Styria, The, v. Morgan (179 U. S. 683).....	926
Sinkler, Wiley v. (179 U. S. 58).....	17	Styria, The, v. Munroe (179 U. S. 683).....	926
Sinnott, Kenaday v. (179 U. S. 606).....	233		

	Page		Page
Styria, The, v. Parsons (179 U. S. 683)...	926	United States v. Wolff (179 U. S. 456)...	195
Sully v. American Nat. Bank (179 U. S. 68).....	29	United States, American Sugar-Refining Co. v.....	830
Sun Printing & Publishing Ass'n v. Moore	928	United States, American Sugar-Refining Co. v.....	928
Supreme Lodge K. P. of the World v. Beck (181 U. S. 49).....	532	United States, Armstrong v.....	827
Sutliff, Board of Com'rs of Lake County, Colo., v.....	928	United States, Bird v. (180 U. S. 356)...	403
Sweeney, Grand Island & W. C. R. Co. v. (179 U. S. 684).....	916	United States, Board of Liquidation of City of New Orleans v., two cases.....	922
Sweeney, Grand Island & W. C. R. Co. v. (179 U. S. 684).....	924	United States, Connors v. (180 U. S. 271)	362
Talty, District of Columbia v.....	896	United States, Contzen v. (179 U. S. 191)	98
Tennessee, Austin v. (179 U. S. 343).....	132	United States, Crossman v.....	742
Tennessee, Smith v.....	917	United States, De Lemos v.....	925
Terre Haute & I. R. Co. v. Cox.....	923	United States, Dooley v.....	762
Territory of Oklahoma v. Neville.....	923	United States, Dougherty v.....	926
Texarkana & Ft. S. R. Co., Kizer v. (179 U. S. 199).....	100	United States, Fairbank v. (181 U. S. 283).....	648
Texas & P. R. Co. v. Humble (181 U. S. 57).....	526	United States, Falk v.....	922
Texas & P. R. Co., Patton v. (179 U. S. 653).....	275	United States, Falk v. (180 U. S. 636)...	923
Texas & P. R. Co., Scott v. (180 U. S. 635)	920	United States, Farrar v.....	926
Thames & M. Ins. Co. v. International Nav. Co.....	926	United States, Funk v. (179 U. S. 683)...	916
Thompson v. Ferry (180 U. S. 484).....	453	United States, Glavey v.....	891
Thompson v. Los Angeles Farming & Milling Co. (180 U. S. 72).....	289	United States, Goetze v.....	742
Thousand Island Park Ass'n, Gridley v.....	921	United States, Good Shot v. (179 U. S. 87)	33
Throckmorton v. Holt (180 U. S. 552).....	474	United States, Hiller v. (180 U. S. 639)...	921
Tompkins v. Pacific Mut. Life Ins. Co. (179 U. S. 683).....	916	United States, Hubbell v. (179 U. S. 77)...	24
Tonawanda v. Lyon (181 U. S. 389).....	609	United States, Hubbell v. (179 U. S. 86)...	28
Tourville, Wabash R. Co. v. (179 U. S. 322).....	113	United States, Jewett v. (179 U. S. 683)...	916
Town of Mt. Vernon v. Wesson (180 U. S. 637).....	920	United States, Joseph Schlitz Brewing Co. v.....	740
Town of Tonawanda v. Lyon (181 U. S. 389).....	609	United States, Las Animas Land Grant Co. v. (179 U. S. 201).....	92
Treat v. White (181 U. S. 264).....	611	United States, Lavin v.....	926
Trust Co. of North America v. Manhattan Trust Co.....	925	United States, Li Sing v. (180 U. S. 486)	449
Trustees of Columbia Tp., Loeb v. (179 U. S. 472).....	174	United States, Loeb v.....	923
Turner v. Richardson (180 U. S. 87).....	295	United States, Loeng Un v.....	925
Tutt, Illinois Cent. R. Co. v. (180 U. S. 640).....	922	United States, Maish v.....	921
Tyler v. Judges of the Court of Registration (179 U. S. 405).....	206	United States, Montoya v. (180 U. S. 261)	358
Union Nat. Bank, Modern Woodmen of America v.....	926	United States, Ping Yik v.....	914
Union Pac. R. Co. v. Chicago, B. & Q. R. Co.....	915	United States, Ping Yik v.....	928
United States v. American Steamship Laurada.....	928	United States, Pin Kwan v.....	914
United States v. Andrews (179 U. S. 96)...	46	United States, Pin Kwan v.....	928
United States v. Beebe (180 U. S. 343)...	371	United States, Plummer v.....	916
United States v. Beebe (180 U. S. 640)...	922	United States, Pueblos of Santo Domingo & San Felipe v.....	915
United States v. Choctaw Nation (179 U. S. 494).....	149	United States, Reagan v.....	842
United States v. Edmondston (181 U. S. 500).....	718	United States, Rieger v.....	923
United States v. Edmonston (181 U. S. 500).....	718	United States, Rothschild v. (179 U. S. 463).....	197
United States v. Hahn (180 U. S. 639)...	921	United States, Russell v.....	899
United States v. Henderlong.....	924	United States, Sloan v.....	924
United States v. Lackey.....	925	United States, Snell v.....	915
United States v. McBratney.....	924	United States, Weil v.....	915
United States v. Macfarland.....	924	United States, Whitney v. (181 U. S. 104)	565
United States v. Morgan (180 U. S. 638)...	920	United States, Wolfson v. (180 U. S. 637)	919
United States v. Morrison (179 U. S. 456)	195	United States, Wright v.....	924
United States v. Ping Yik.....	921	United States Life Ins. Co. v. Ross (179 U. S. 683).....	916
United States v. Pin Kwan.....	921	United States Repair & Guaranty Co. v. Assyrian Asphalt Co.....	928
United States v. State of Florida.....	915	United States Rubber Co. v. American Oak Leather Co. (181 U. S. 434).....	670
United States v. State of Louisiana.....	915	Utah, Hart v. (179 U. S. 681).....	918
United States v. State of North Carolina...	915	Van De Vanter, Nordstrom v.....	923
United States v. State of South Carolina...	915	Vidal, In re (179 U. S. 126).....	48
		Vilas, Beaser v.....	914
		Wabash R. Co. v. Tourville (179 U. S. 322)	113
		Waite, Campbell v. (180 U. S. 635).....	920
		Wall v. Cox (181 U. S. 244).....	642
		Wallace, Hood v.....	885
		Wallace, Lantry v.....	878
		Ward v. Joslin (180 U. S. 639).....	927
		Warner, City of New Orleans v. (180 U. S. 199).....	353
		Warner, City of New Orleans v.....	928
		Warren, City of Huron v.....	925

CASES REPORTED.

KV

	Page		Page
Warren, John Hancock Mut. Life Ins. Co. v. (181 U. S. 73).....	535	Wilder, Drainage Commission of New Orleans v. (179 U. S. 622).....	263
Washburn & Moen Mfg. Co. v. Reliance Marine Ins. Co. (179 U. S. 1).....	1	Wiley v. Sinkler (179 U. S. 58).....	17
Washington, Nordstrom v.	925	Wilkes County v. Coler (180 U. S. 506) ..	458
Watson v. State of Rhode Island (179 U. S. 679).....	915	Williams v. Fears (179 U. S. 270).....	128
Webster v. City of Fargo (181 U. S. 394) ..	623, 645	Williams v. Gaylord (180 U. S. 637).....	926
Weil v. United States.....	915	Wilson v. Dunseth (179 U. S. 683).....	916
Welling, Eastern Building & Loan Ass'n of Syracuse, N. Y., v. (181 U. S. 47)....	531	Wilson, Johns v. (180 U. S. 440).....	445
Wells v. City of Savannah (181 U. S. 531) ..	697	Winston, Ludden v.	914
Werling v. Ingersoll (181 U. S. 131).....	570	Wisconsin, M. & P. R. Co. v. Jacobson (179 U. S. 287).....	115
Wesson, Town of Mt. Vernon v. (180 U. S. 637) ..	920	Wolff, United States v. (179 U. S. 456) ..	195
West Chicago Park Com'rs, Farrell v. (181 U. S. 404).....	609, 645	Wolfson v. United States (180 U. S. 637) ..	919
West Chicago Park Com'rs, Lombard v. (181 U. S. 33).....	507	Wood v. Bechman.....	920
Western Union Tel. Co. v. Burgess.....	924	Woodworth v. Nute (179 U. S. 682).....	915
Western Union Tel. Co. v. Call Pub. Co. (181 U. S. 92).....	561	Worden v. California Fig Syrup Co. (179 U. S. 686).....	926
Western & A. R. Co., Interstate Commerce Commission v. (181 U. S. 29).....	512	Workman v. City of New York (179 U. S. 552) ..	212
Wheeler, Scranton v. (179 U. S. 141)....	48	Wormley v. District of Columbia (181 U. S. 402).....	609, 645
Wheelock, O'Brien v.	928	Wright v. United States.....	924
Wheless v. City of St. Louis (180 U. S. 379) ..	402	W. W. Cargill Co. v. State of Minnesota (180 U. S. 452).....	423
White, Treat v. (181 U. S. 264).....	611	Yazoo & M. R. Co. v. Adams (180 U. S. 41) ..	256
Whitney v. Hay (181 U. S. 77).....	537	Yazoo & M. V. R. Co. v. Adams (180 U. S. 1).....	240
Whitney v. United States (181 U. S. 104) ..	565	Yazoo & M. V. R. Co. v. Adams (180 U. S. 28) ..	256
Whitney, Phillips & Buttorff Mfg. Co. v. (180 U. S. 637).....	920	Yazoo & M. V. R. Co. v. Adams (180 U. S. 26).....	282
Wichita v. Choctaw Nation (179 U. S. 494) ..	149	Yazoo & M. V. R. Co. v. Adams.....	729
Wight v. Davidson (181 U. S. 371).....	616	Zacher v. Fidelity Trust & Safety-Vault Co.	924

*

CASES
ARGUED AND DETERMINED
IN THE
UNITED STATES SUPREME COURT

OCTOBER TERM, 1900.

(179 U. S. 1)

WASHBURN & MOEN MANUFACTURING COMPANY, *Petitioner*,
v.
RELIANCE MARINE INSURANCE COMPANY (LIMITED).

Marine insurance—constructive loss—actual total loss of part—right to abandon—refusal to accept abandonment—insurer's forwarding of goods—effect of state decisions.

1. A rider on the margin of a policy of marine insurance stating: "Free of particular average, but liable for absolute total loss of a part if amounting to 5 per cent."—is in part *materia* with a memorandum by which goods are "warranted by the assured free from average unless general," and qualifies the memorandum so that, instead of limiting the liability to an actual total loss, it permits recovery for an actual total loss of a part.
2. The construction of a policy of marine insurance, depending on questions of general commercial law, is a matter on which courts of the United States are at liberty to exercise their own judgment, and are not bound to accept the decisions of the courts of the state in which the contract was made.
3. The general rule that a damage exceeding 50 per cent justifies abandonment and recovery on a marine policy as for a constructive total loss does not apply to memorandum articles in respect of which the exception of particular average excludes a constructive total loss, though a rider extends the insurance to an actual total loss of a part.
4. The jury cannot be permitted to pass on the question of actual total loss on a marine policy, when a large part of the goods reach their destination *in specie*, and a substantial part of them are wholly uninjured.
5. A consignee who refuses to accept uninjured goods, and unjustifiably endeavors to abandon them to the insurer, who refuses to accept the abandonment, cannot hold the insurer liable for any loss sustained by the forced sale of the goods.
6. An insurer which has stipulated in the policy that its acts in recovering, saving, and

preserving the property in case of disaster shall not be considered an acceptance of abandonment cannot be deemed to accept an attempted abandonment of the goods by carrying them from a place where there is no agent of the assured, no adequate means of protection, and no market, to the port of destination where there are excellent facilities for protecting and handling them, easy access to the head agency of the assured, and a good market.

[No. 6.]

Argued March 15, 16, 1899. Decided October 15, 1900.

ON WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the First Circuit to review a decision affirming a decree of the Circuit Court in an action at law brought on a policy of marine insurance in a state court and thence removed into the Circuit Court of the United States for the District of Massachusetts. *Affirmed.*
See same case below, 50 U. S. App. 231, 82 Fed. Rep. 296, 27 C. C. A. 134.

Statement by Mr. Chief Justice Fuller: "This was an action at law brought in the superior court of Massachusetts for the county of Suffolk, and thence removed into the circuit court of the United States for the district of Massachusetts, by the Washburn & Moen Manufacturing Company against the Reliance Marine Insurance Company (Limited) of London, England, on a policy of marine insurance taken out, March 15, 1893, in the sum of \$48,800, on a cargo of wire shipped from Boston to Velasco, Texas, on the schooner Benjamin Hale, John Hall, master.

The memorandum clause of the policy ran thus: "Memorandum. It is also agreed that bar, bundle, rod, hoop, and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wickerware, and willow (manufactured or otherwise), salt, grain of all kinds,

tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, hay, vegetables and roots, rags, hempen yarn, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting, and cassia, except in boxes, free from average under 20 per cent unless general; and sugar, flax, flaxseed, and bread are warranted by the assured free from average under 7 per cent unless general; and coffee in bags or bulk, pepper in bags or bulk, and rice, free from average under 10 per cent unless general."

And on the margin the following was stamped or written: "Free of particular average, but liable for absolute total loss of a part if amounting to five (5 %) per cent."

It was also provided: "And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, their factors, servants, and assigns, to sue, labor, and travel for, in, and about the defense, safeguard, and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof the said assurers will contribute according to the rate and quantity of the sum herein insured."

The Benjamin Hale sailed for Velasco, March 31, 1893, and on April 15 ran ashore on Bahama Banks, but, after throwing overboard 200 reels of barbed wire, floated and proceeded. On the night of April 19 the schooner again ran ashore, on Bird Key, near Dry Tortugas, and largely filled with water. Wreckers came on board April 21. The master went to Key West, and from thence telegraphed the Washburn & Moen Company, April 24, that the vessel was ashore, and he thought the loss was total. April 24, 25, or 26 the agent of that company told the agent of the insurance company, in Boston, "what he knew in regard to the troubles, and said that he wished to abandon the cargo to the underwriters." April 29 a written notice of abandonment was given, which the insurance company explicitly declined to accept. The master returned at once with further assistance, reaching the wreck the morning of April 25, and the vessel was floated April 29, and finally taken to Key West, arriving May 4. The captain testified that "from the time the vessel went ashore until she came off they were taking the cargo out as they could so as to get her off. . . . Think about one half of cargo was discharged on the reef, of which he thinks about 1,300 reels were dry." This was substantially all carried to Key West, where the unloading was completed May 10.

Captain Hall made a memorandum at Key West as to the condition of the cargo when

landed there. From this it appeared that out of 13,051 reels of barbed wire, shipped from Boston, 12,277 (or 12,625) were landed at Key West, of which 989 were perfectly dry, and 10,448 had received "hardly perceptible" damage. Of plain wire, 1,102 bundles were shipped, and all landed at Key West, and 464 were stated to be nearly dry. Five reels of salamander wire and a wire rope were all landed and transshipped dry and unimpaired; also 243 kegs of staples out of 249; and 478 bundles of hay bands out of 1,050.

Libels for salvage were filed against vessel and cargo at Key West, and the schooner condemned and sold, but the cargo was released and the amount decreed in respect thereof paid by the insurance company.

The goods were forwarded from Key West to Velasco on the schooner Cactus, where they were tendered to the Washburn & Moen Company, which refused to receive them. That company again abandoned, and the insurance company again declined to accept abandonment.

At this time a very large part of the goods existed *in specie*, and a considerable part was practically uninjured. There were no facilities for handling, and no market for, barbed wire at Key West, but there were at Velasco, which was also but 60 miles by rail from Houston, the headquarters of the general agent of the manufacturing company in Texas.

The goods were afterwards sold by order of court on the libel of the master of the Cactus for freight, demurrage, and expenses, and realized \$10,000. Plaintiff was not present and made no bid at the sale.

As the cost of saving the cargo and bringing it to Key West, and expenses there, exceeded the sum realized at forced sale, and the freight to Velasco added some hundreds of dollars to that, plaintiff contended that the cost was more than the value at Key West and at Velasco.

In respect of the forwarding of the cargo from Key West to Velasco, the charter party was signed by Captain Hall as master of the Benjamin Hale. This was in Boston several days after Hall had left Key West, but there was evidence that he had previously authorized the agents of the vessel at Key West, and who paid for the discharge of the cargo there, to charter the Cactus, and the second bill of lading was signed by one of them as attorney in fact for Captain Hall, and stated that the goods were shipped by him.

The agent for the board of underwriters testified that he instructed the agent at Key West to see that a vessel was secured and the cargo properly shipped to Velasco according to the original bill of lading; that Hall authorized the Cactus to be chartered; and that he always insisted that Hall should forward the cargo; while Hall said that he received a request from defendant's agent to so forward.

The circuit court ruled that the defendant was not liable for a constructive total loss; that the transshipment of the cargo at Key West, though made by the underwriters as

he thought it was, did not, under the circumstances, make them liable for the property as underwriters; and that "inasmuch as a portion of this cargo—a considerable portion, including the staples and a very large percentage of the fencing wire—was at Key West in a condition to be transhipped, and did in fact arrive at Velasco *in specie*, and suitable for the purposes for which it was intended, although not so suitable as it would have been if it had not been submerged in the sea," there was no absolute total loss of the whole.

It was agreed that there was an actual total loss of parts of the cargo to the amount of \$2,500 and that, under the views expressed by the court, plaintiff was entitled to a finding that there was a constructive total loss.

Accordingly a verdict was directed for \$2,500, and a special verdict "that there was a constructive total loss."

Judgment was rendered in favor of plaintiff, and each party prosecuted a writ of error from the circuit court of appeals.

That court concurred in the rulings of the circuit court, but was of opinion that the cargo was forwarded from Key West to Velasco under authority of the captain of the Benjamin Hale. 50 U. S. App. 231, 82 Fed. Rep. 296, 27 C. C. A. 134.

Judgment having been affirmed, the Washburn & Moen Manufacturing Company applied for and obtained a writ of certiorari from this court.

Errors were relied on by petitioner, in substance, that the circuit court erred in not ruling that plaintiff was entitled to recover for a constructive total loss under the policy; and in not allowing the question whether there was an absolute total loss to go to the jury; or the question whether defendant had accepted plaintiff's abandonment of the cargo.

* * Messrs. Eugene P. Carver and Edward E. Blodgett for petitioner.

Mr. F. J. Stimson for respondent.

Mr. Chief Justice Fuller delivered the opinion of the court:

By the memorandum, wire of all kinds was expressly "warranted by the assured free from average unless general;" and by the rider, "free of particular average, but liable for absolute total loss of a part if amounting to 5 per cent."

The memorandum and marginal clauses were *in pari materia* and to be read together. They were not contradictory, and the rider merely operated to qualify the memorandum by allowing recovery for an actual total loss in part, which could not otherwise be had. In other words, the qualification was manifestly inserted so that, while conceding that under the memorandum clause no liability was undertaken for a constructive total loss but only a liability for an actual total loss, the insurers might be held for an actual total loss of a part.

The contracting parties thus recognized the rule that articles warranted free of particular average, or free from average unless

general, are insured only against an actual total loss.

The warranty or memorandum clause was introduced into policies for the protection of the insurer from liability for any partial loss whatever on certain enumerated articles, regarded as perishable in their nature, and upon certain others none under a given rate per cent. This was about 1749, and since then, in the growth of commerce, the list of articles freed by the stipulation from particular average has been enlarged so as to embrace many, which, though they may not be inherently perishable, are in their nature peculiarly susceptible to damage.

The early form ran as follows: "Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general or the ship be stranded; sugar, tobacco, hemp, flax, hides, and skins are warranted free from average under five pounds per cent; and all other goods, and also the ship and freight, are warranted free from average under three pounds per cent unless general or the ship be stranded."

In 1764 Lord Mansfield in *Wilson v. Smith*, 3 Burr. 1550, held that the word "unless" meant the same as "except," and that "the words 'free from average unless general' can never mean to leave the insurers liable to any particular average."

In *Cocking v. Fraser*, 4 Dougl. 295 (1785), the court of King's bench held, Lord Mansfield and Mr. Justice Buller speaking, that the insurer was secured against all damage to memorandum articles, unless they were completely and actually destroyed so as no longer physically to exist.

Chancellor Kent in his Commentaries commended this rule as "very salutary, by reason of its simplicity and certainty, . . . considering the difficulty of ascertaining how much of the loss arose by the perils of the sea, and how much by the perishable nature of the commodity, and the impositions to which insurers would be liable in consequence of that difficulty;" and declared that, notwithstanding the authority of *Cocking v. Fraser* had been shaken in England, the weight of authority in this country was "in favor of the doctrine that, in order to charge the insurer, the memorandum articles must be specifically and physically destroyed, and must not exist *in specie*." He added, however, that it had been "frequently a vexed point in the discussions, whether the insurer was holden, if the memorandum articles physically existed, though they were absolutely of no value." 3 Kent, 1st ed. 1828, 244; 12th ed. *296.

The general rule is firmly established in this court that the insurers are not liable on memorandum articles, except in case of actual total loss, and that there can be no actual total loss where a cargo of such articles has arrived, in whole or in part, *in specie*, at the port of destination, but only when it is physically destroyed, or its value extinguished by a loss of identity. *Biays v. Chesapeake Ins. Co.* (1813) 7 Cranch, 415, 3 L. ed. 389; *Marcadier v. Chesapeake Ins. Co.* (1814) 8 Cranch, 39, 3 L. ed. 481; *Mo-*