

CASES
AND OTHER MATERIALS
ON
CIVIL PROCEDURE

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PREFACE

THE law student, for whom this book is prepared, will soon observe that much of his attention is directed to the Federal Rules of Civil Procedure of 1938. He may even wonder why he should study anything else. If these Rules are used in the United States courts and if more and more they are being adopted for use in state courts, why should he turn back to the Field Code of 1848, the Hilary Rules of 1834 and the procedures of eras still more remote?

Let him read in Federal Rule 2 that "there shall be one form of action to be known as 'civil action' ". Then let him ask himself: What is a "form of action"? Why is it necessary to say there is only one? If there used to be more than one, why was this—what were they—and what does it mean to say there is only one now? Such matters constitute the principal content of Part I of this book. Should the student be led to despair by its apparent antiquarianism, let him take heart from the assurance that Federal Rule 2 will be meaningful only after he has explored some of these ancient mysteries and that what he is really doing is laying the foundation for comprehension of this most modern of rules.

Part II develops the steps in an action from the original summons through the appeal, and may be considered the heart of the book. So far as this Part is historical, it deals with common-law procedure and the influences of trial by jury. The major emphasis, however, is upon modern problems of jurisdiction, pleading and practice.

Part III segregates those remedies (injunction, specific performance, etc.) and procedures (e. g., discovery, declaratory judgment) which stem from equity as a separate system. In view of the parallels between the forms of action and equitable remedies it may seem that the latter should be included in Part I. It may appear further questionable to separate such mechanisms as discovery from the otherwise comprehensive treatment of modern procedure in Part II. In preferring the present arrangement we are only slightly influenced by the fact that the matters covered in Part III have a common historical origin. Our principal reason is that in our experience earlier introduction of equitable remedies and procedure so complicates the first part of the course as to retard rather than facilitate the student's grasp of the total system.

Part IV treats the more complicated problems which arise when more than two parties are involved. Thus some of the matters considered earlier are reexamined on a higher level in this Part. Recent developments in this phase of procedure afford an unusual oppor-

PREFACE

tunity for inquiry as to how far historical and technical limitations may be altered to subserve the ends of economy and efficiency.

The editors believe that the subject of procedure is best presented through the medium of cases. They believe further that often the most provocative discussions of timeless problems are found in earlier cases. When this is found to be true, the older case has been chosen, but recent authorities have not, of course, been neglected. Basic and typical statutory materials, including the Federal Rules, necessarily play a prominent part in the book. In addition, the editors have not hesitated to employ text materials in appropriate places, both to shorten the exposition and to lend a helping hand. In the main, the materials denominated "Notes" either suggest some divergence of viewpoint or develop additional applications. Forms are included both in the principal cases and independently to show how procedural steps are actually taken.

Here and there throughout the book tabulations of judicial statistics are included. We have missed our mark, however, if these materials serve only to convey information. Our hope is that the student will find himself able to use this information not only in gaining a sense of the reality of procedural devices in the judicial process but also in evaluating their relative merits as effective and useful tools.

The editors are conscious of their indebtedness to editors of earlier casebooks—Ames, Hinton, Sunderland, Keigwin, Scott and Simpson, and others. As the citations show, much assistance and inspiration have been found in the work of Judge Charles E. Clark whose activities in the field of procedure as teacher, scholar, draftsman, publicist and judge have been unique in modern annals. Particular gratitude is expressed to Professor Roswell Magill for his kind permission to use the materials contained in his casebook on civil procedure, the last edition of which was in joint editorship with Professor Chadbourn. While the present volume represents a fresh undertaking for which the editors are jointly and equally responsible, they have profited from Professor Magill's work, especially from his wise selection of cases. Professor Philip Mechem helped us prepare the textual summary of equity jurisdiction, for which, however, he is absolved of all responsibility. Finally we are indebted to Professor Edmund M. Morgan who, as directing editor of the University Casebook Series, has read the manuscript, offered helpful suggestions and generously encouraged us in our task.

THOMAS E. ATKINSON
JAMES H. CHADBURN

April 1, 1948

TABLE OF CASES

[Cases printed in roman type are the cases reported as the text of this volume. Cases printed in italic type are found in the text notes and foot-notes.]

- Aaron v. Missouri & Kansas Tel. Co., 499
Abraham v. Superior Court, 522
Acadian Production Corp. of Louisiana v. Land, 579
Adams v. Cline Ice Cream Co., 413
Adams v. Hall and Cootwire, 801
Adams v. Hemmenway, 23
Adelman v. Nordberg, 640
Ader v. Blau, 145, 804, 809
Aetna Life Ins. Co. v. Haworth, 662, 668
Aetna Life Ins. Co. v. Kepler, 579, 580
Akely v. Kinnicutt, 785
Akins v. Texas, 408
Alabama Great Southern R. R. Co. v. Daffron, 498
Alabama Independent Service Station Ass'n v. Shell P. Corp., 804
Albaugh v. Abbott, 818
Allegheny, County of v. Md. Cas. Co., 476
Allen v. Yarrowborough, 507
Allinger v. McKeown, 255
Allis v. Leonard, 498
American Chemical Paint Co. v. Dow Chemical Co., 564
American Lead Corporation v. Davis, 821
American League Baseball Club v. Chase, 591
American Machine & Metals v. De Bothezat Impeller Co., 663
American Mills Co. v. American Surety Co., 731
American Motorists Ins. Co. v. Vigen, 839
Ammel v. Noonar, 228
Anderson v. Brady, 551
Anderson v. Case, 117
Anderson v. Gouldberg, 58
Anderson v. Hapler, 34
Anderson v. Hill, 144
Anderson v. Newsome, 478
Andrews v. Hoeslich, 57, 110
Andrews v. McMahan, 672
Anonymous, 27, 78, 89, 90, 95, 289, 343
Armcast v. Lindley, 120
Armentrout v. Virginian Ry. Co., 516
Armstrong v. James & Co., 498
Arndt v. Williams, 593, 737
Asbury Park & S. G. Ry. Co. v. Neptune Twp., 592, 626
Ash v. Childs Dining Hall Co., 107
Aspinwall v. Aspinwall, 671
Associated Press v. United States, 395
Atchison, T. & S. F. R. Co. v. Swarts, 513
Atkins v. Steed, 809
Atkinson v. United Railroads, 248
Atlantic Coast Line R. Co. v. Brackin, 24
Atlantic Metal Products, Inc. v. Minskoff, 716
Auburn & Owasco Canal Co. v. Leitch, 368
Augusta & S. R. Co. v. Lark, 348
Auldridge v. Spraggin, 74
Avery v. Spicer, 110
Ayer v. Wilson, 794

Bach v. Quigan, 329
Bail v. New York, N. H. & H. R. R. Co., 468
Bailey v. Smith, 149, 151
Baker v. Fales, 54
Baker v. Union Stock Yards Nat. Bank, 203
Baldwin v. City of Aberdeen, 366
Baley v. Brauenstein, 611
Ball v. Paramount Pictures, Inc., 639
Ballin v. Los Angeles County Fair, 891
Baltimore Trust Co. v. Interocean Oil Co., 861
Baltimore & Carolina Line, Inc. v. Redman, 465, 466
Baltimore & Ohio Railroad Co. v. Saunders, 843
Banking Corp. v. Lazard-Godchaux Co., 389
Bank Line, Ltd. v. United States, 640
Bank of America Nat. Trust & Savings Ass'n v. McLaughlin, 563
Bank of New Brunswick v. Arrowsmith, 16

TABLE OF CASES

- Barclay v. Barclay*, 669
Bardwell v. Collins, 180
Barham v. Perry, 533
Barnard v. Kandiyohi County, 561
Barnard v. Kruzan, 890
Barnett v. Giltitz, 552
Barnett v. New England Mut. Life Ins. Co., 747
Barnsdall v. Waltemeyer, 579
Bash v. B. & O. Ry. Co., 433
Basset v. Thomas, 468
Basten v. Butter, 317, 318
Batimore, Inc. v. Standard Brands, Inc., 640
Beach v. Bird & Wells Lumber Co., 531
Beach v. Hotchkiss, 795
Beaufort Land & Investment Co. v. New River Lumber Co., 477
Beaunit Mills v. Eday Fabric Sales Corp., 746
Beck v. Beck, 596, 623
Bellavance v. Plastic-Craft Novelty Co., 723
Benbow v. Robbins, 404
Benedict v. Seymour, 291
Bennet v. McFall, 752
Benton v. Collins, 804
Bereslavsky v. Caffey, 560, 731
Bereslavsky v. Kloebe, 733
Bergman v. Liverpool & London & Globe Ins. Co., Ltd., 834
Berney v. Drexel, 359
Bertschy v. McLeod, 424
Best Foods, Inc. v. General Mills, Inc., 291
Bills v. Hyde, 116
Bino v. Veenhuizen, 504
Bird v. Randall, 289, 468
Black v. Miller, 594, 615
Blackmer v. U. S., 164
Blackwell v. Columbia Trust Co., 312
Blank v. Bitker, 212
Blease v. Garlington, 649
Bloomfield v. Hancock, 77
Bloss v. Holman, 27
Blum v. Fresh Grown Preserve Corp., 453
Blumb v. Getz, 444
Board of Com'rs of Mille Lacs County v. Morrison, 402
Board of County Com'rs v. American Loan & Trust Co., 382
Board of County Com'rs of Atchison County v. Challiss, 179
Board of Public Instruction for County of Hernando, State of Florida v. Meredith, 391
Boaz v. Mutual Life Ins. Co. of New York, 551
Bohnhoff v. Kennedy, 221
Boley v. Allred, 771
Bonnel v. Fouke, 99
Booth v. Farmers' & Mechanics' Nat. Bank, 241
Borden v. Borden, 154
Borman v. Oetzell, 735
Boslund v. Abbotsford Lumber Co., 206
Bossette v. W. B. Conkey Co., 682
Boston India Rubber Factory v. Hoit, 84
Bothwel v. Boston Elevated Ry., 469
Boyd v. Geary, 241, 350
Boyd v. Portland Elec. Co., 493
Bradley v. Davis, 31
Bradshaw v. Ashley, 74
Brand v. Longstreet, 290
Brannon v. May, 473
Brasfield v. U. S., 498
Brenner v. Title Guarantee Trust Co., 865, 891
Brent v. Chapman, 468
Bretton v. Barnet, 78
Bright v. Eynon, 514
Brinley v. Lewis, 270
Bromage v. Genning, 599
Brooke v. Brooke, 365
Brooks v. Wheeler, 72
Broom v. Davis, 317
Brotherhood of L. Engineers v. Chicago, M., etc., R. Co., 856, 890
Brown v. Baldwin, 716
Brown v. Beckham, 560
Brown v. Cranston, 840
Brown v. Ellison, 49, 142
Brown v. Haertel, 839
Brown v. Jones, 346
Brown v. Kalamazoo Circuit Judge, 594, 652, 654, 670, 728
Brown v. Saratoga Ry. Co., 361
Bruckman v. Hollzer, 723
Bruffarts v. Ober, 359, 801
Bruheim v. Stratton, 125
Brune v. McDonald, 847
Buckin v. Long Island Ry. Co., 581
Buckley v. Altheimer, 609
Buffington v. Harvey, 688
Bulkley v. Norwich & W. Ry., 351
Bull v. Mathews, 141, 346
Bulova v. E. L. Barnett, 312
Bunnell v. Rosenberg, 441
Burdick v. Kenyon, 335, 346
Burford v. Birdwell, Okl., 571
Burgin v. Richmond & Danville Ry. Co., 351

TABLE OF CASES

- Burgoyne v. Ohio Life Insurance & Trust Co.*, 794
Burley & Harris v. Harris, 795
Burroughes v. Bayne, 38
Burton v. Farmers', etc., Association, 654
Butler v. Ellis, 669
Butler v. Frontier Tel. Co., 68
Byard v. Holmes, 228
Bynum v. Prudential Life Ins. Co., 742
Byrd v. Rector, 196
- Cahill v. Chicago, M. & St. P. Ry. Co.*, 440
Cain v. Wright, 277, 771
Caines v. Fisher & M'Lachlan, 656
Cairns v. Fort, 845
Caldwell v. Fenwick, 51
Caldwell v. Wells, 517
California Apparel Creators v. Wieder of California, 394, 890
California Packing Corp. v. Kelly Storage & Distributing Co., 257
Calinan v. Federal Cash Register Co., 268
Callan v. Wilson, 406
Callen v. Pennsylvania Ry. Co., 747
Camden Safe Deposit & Trust Co. v. Barbour, 832
Campbell v. Bannister, 341
Caperton v. Schmitt, 74
Capital Fire Ins. Co. v. Langhorne, 767
Cardinal v. University of Rochester, 646
Carilli v. Hersey, 559
Carleton v. Griffin, 468
Carleton v. Lovejoy, 40
Carrel v. Early, 51
Carroll v. Pennsylvania R. R. Co., 432
Cartan v. Phelps, 696
Case v. Shepherd, 33, 67
Casey Pure Milk Co. v. Booth Fisheries Co., 813
Castle v. City of Madison, 813, 864
Cassady v. Laughlin, 77
Cassidy v. Sullivan, 401
Castriotis v. Guaranty Trust Co. of N. Y., 196
Catanzaritti v. Bianco, 711
Central Transportation Co. v. Pullman's Palace Car Co., 440
C. F. Simmonin's Sons Inc. v. American Can Co., 637
Chamberlain v. Hazlewood, 25
Chambliss v. Hass, 521
Chapman v. Potomac Chemical Co., 141
Chapman & Nelson v. Sloan, 314
Chetwood v. State Bank at Elizabeth, 82
Chicago & E. Ill. Ry. Co. v. Zapp, 487
Chicago & N. W. Ry. Co. v. Dunleavy, 512
Chicago & N. W. Ry. Co. v. McKeigue, 736
Chidester v. City of Newark, 771
Childress v. Emory, 49
Chinoweth v. Haskell, 468
Christian v. Williams, 203
Christopherson v. Bare, 290, 346
Cicotte v. Wayne County, 346
Citizens Bank v. Davis, 360
Citizens' Trust Co. v. Tindle, 755
City of New York Ins. Co. v. Tice, 761
City of. See under name of city
Clark v. Carlton, 30
Clark v. Chicago, M. & St. Paul Ry. Co., 245, 261
Clark v. Hellen, 152
Clark v. Jenkins, 517
Clark v. Skinner, 59
Clark v. Latham, 283
Clarke v. Turton, 614
Clayton v. Shoemaker, 656
Clements v. Moore, 620
Cleo Syrup Co. v. Coca Cola, 579
Cleveland v. Ward, 602
Clifford v. Dam, 297
Clough v. Goggins, 355
Coburn v. Travelers' Ins. Co., 233
Cochran v. Whitesides, 109
Coe v. Riley, 392
Cogswell v. New York, N. H. & H. R. Co., 723
Cole v. Forth, 600
Colegrove v. Green, 662
Colegrove v. N. Y. & N. H. R. R. and N. Y. & H. R. R., 418
Colten v. Ross, 613
Columbia Digger Sand & Gravel Co. v. Ross Island Sand & Gravel Co., 365
Columbus Oil Co. v. Moore, 504
Commercial Casualty Ins. Co. v. Consolidated Stone Co., 206
Comfort v. McCorkle, 93
Commonwealth v. Barry, 498
Comstock v. Johnson, 658
Conaughty v. Nichols, 116, 120, 230
Cone v. W. Va. Pulp & Paper Co., 476
Conger v. Johnston, 307
Conkling v. Weatherwax, 297
Considerant v. Brisbane, 766
Cooper v. Wyman, 157
Coppendale v. Bridgen, 468
Corbett v. Packington, 88
Corley v. McElmeel, 402
Corley v. N. Y. & H. R. Co., 521

TABLE OF CASES

- Corning v. Corning*, 238
Correll v. Granget, 154
Cottrell v. Gerson, 361
Coughlin v. Weeks, 504
County of. See under name of county.
Courtney v. Glanvil, 599
Cox v. Hall, 27
Coxhead v. Winsted Hardware Mfg. Co.,
 765, 865
Cozine v. Graham, 264
Crary v. Goodman, 735
Crease v. Barrett, 582
Creighton v. Kerr, 221
Crocker v. Manhattan Life Ins. Co., 592
Crofts v. Brown, 27
Cromicell v. County of Sac, 136
Cromicell v. Owings, 60
Crone v. Checker Cab & Baggage Co.,
 803
Crowder v. Fordyce Lumber Co., 113
Crown Co. v. Reilly, 63
Cummings v. Hubbell, 351
Cummings v. People for Use of Jersey
 County, 794
Cunningham v. Lyness, 299
Curley v. Dean, 230
Curtice Brothers v. Catts, 591
Cushman v. Bonfield, 613, 621
Cushman v. Savage, 283

Daggett v. Gray, 258
Dale v. Colfax Consol. Coal Co., 409
Daley v. Iselin, 221
Dallas Ry. & Terminal Co. v. Sullivan,
 490
Dalton v. Favour, 21
Darnell v. Mack, 199
Davis v. Chouteau, 770
Davis v. Cole, 291
Davis v. Dickson, 80
Davis v. Doe, 67
Davis & Fant v. Duncan, 40
Davison v. Baker, 154
Dawson Bank v. Harris, 706, 804
Day v. Edwards, 20, 22
Dearborn Nat. Casualty Co. v. Con-
 sumers Petroleum Co., 576
Dechert v. Pratt, 850
Deeley v. Heintz, 440
Delaware, Lackawanna & Western Rail-
 road Company v. Rellstab, 538, 560
De Moss v. Conart Motor Sales, 591
Denison v. Williams, 82
Dennison v. Musgrave, 439
Denton v. Stephens, 752
De Pinna v. Polhill, 300
Deputy v. Strong, 771

De Ran v. Colonial Sav. Bank & Trust
 Co., 735
De Vall v. De Vall, 532
Devoe v. Lutz, 310
De Waltoff v. Third Ave. R. R. Co., 317
Dewey v. Carey, 769
Dick v. Hyer, 145
Di Menna v. Cooper & Evans Co., 731
Dimick v. Schiedt, 466, 524
Dioguardi v. Durning, 268
Ditcham v. Bond, 24, 141
Dodd v. Reese, 848
Dodson v. Southern Ry. Co., 371
Doe d. Greaves v. Raby, 72
Doe d. Jefferson v. Howell, 72
Doherty & Co. v. Goodman, 182
Doherty v. Moreschi, 183
Dolph v. Ferris, 24
Dooley v. Pease, 579
Doolittle v. Shaw, 45
Dougherty v. Salt, 468
Dowd-Feder, Inc. v. Truesdell, 409
Drakesly v. Roots, 589, 601, 671
Draper v. Brown, 818
Draycot v. Piot, 42
Drittzel v. Friedman, 390
Du Cate v. Brighton, 513
Duckworth v. McClelland, 338
Dudley v. Duval, 382
Dunbould v. Thompson, 504
Duncan v. Landis, 554
Dunklee v. Goodenough, 365
Dunlevy v. Fenton, 368
Dwan v. Massarene, 384
Dwyer v. Shalck, 182

Eames v. Prentice, 36
Eccles v. Peoples Bank of Lakewood
 Village, 666
Eddy v. Brady, 283
Edgcomb v. Dee, 98
Eldon v. Doe d. Wynn, 74
Elmer v. Copeland, 770
Ellenwood v. Marietta Chair Co., 128
Elliott v. Lawhead, 204
Elsee v. Smith, 27
Emerson v. Universal Products Co., 637
Emery v. Pacific Employers Ins. Co., 790
Emery v. Pease, 712
Employers' Fire Ins. Co. v. Cotton, 61
Engelman v. Traeger, 394
Engels v. Lubeck, 603
English v. Dalbrow, 57
Ensley v. Coolbaugh, 74
Eppinger & Russell v. Trembly, 394
Epstein v. National Transportation Co.,
 576

TABLE OF CASES

- Escherick v. Traver*, 736
Eskridge & Wife v. Ditmars & Co., 338
Estabrook v. Butte, A. & P. Ry., 516
Etiwan Fertilizer Co. v. Johns, 374
Ettleson v. Metropolitan Life Insurance Co., 732, 744, 747

Fahey, Ex parte, 560
Fairfield v. Southport National Bank, 818
Fairmount Glass Works v. Cub Fork Coal Co., 475
Fall v. Eastin, 601
Farmers Grain & Supply Co. v. Atchison, T. & S. F. Ry. Co., 801
Farron v. Sherwood, 241
Fawcett v. Atherton, 546, 594
Fechheimer Bros. Co. v. Barnwasser, 790
Feder v. Midland Cas. Co., 233
Federal Housing Administrator v. Christianson, 804
Federal Life Ins. Co. v. Rumpel, 440
Feldmann v. Conn. Mut. Life Ins. Co., 513
Felt v. Williams, 51
Ferrier v. McCabe, 351
Finney v. Guy, 356
First National Bank v. Peck, 509
First National Bank v. Reynolds, 832
First National Bank v. White, 167
First National Bank of Florence v. Edwards, 878
First National Bank of Pittsburgh v. Stallo, 239, 262
Fisher v. Pacific Mut. Life Ins. Co., 603
Fisher, Sons & Co. v. Crowley, 217
Fitzhugh v. Reid, 159
Flanagan v. Camden Mut. Ins. Co., 78
Fleischer v. Detroit Cadillac Motor Car Co., 136
Fleming v. Palmer, 579
Fleming v. Van Der Loo, 534
Fleming to use of De Bolle v. Ins. Co. of Pa., 428
Flesher v. Hasler, 275
Flechner v. Farson, 183
Folkner v. Hopkins, 507
Ford v. C. E. Wilson & Co., 723
Ford Motor Co. v. Vanover, 519
Foster v. Hill, 154, 543
Fowle v. Common Council of Alexandria, 418
Francis v. Humphrey, 245
Franklin v. Dorsey-Jackson Chevrolet Co., 852
Franklin Fire Ins. Co. v. Massey, 78
Franz Corp. v. Fifer, 490

Fraser v. Doing, 689
Fraser v. Geist, 723
Frechette v. Ravin, 129
Frey & Horgan Corp. v. Superior Court of the City & County of San Francisco, 168
Friedman v. Harris, 861
Friend v. Childs Dining Hall Co., 108
Fruit Growers Co-op. v. California Pie & Baking Co., 845
Fulton County Gas & Electric Co. v. Hudson River Tel. Co., 368
Furman v. Tuxbury L. & T. Co., 125

Gable v. Bingler, 801
Gale v. Grannis, 589, 695
Gale v. Hines, 69
Galloway v. U. S., 455
Galpin v. Page, 542
Galveston, H. & S. A. Ry. Co. v. Templeton, 418
Gannon v. Laclede Gaslight Co., 444
Garabettian v. Garabettian, 159
Gardner v. Clark, 286
Gardner v. Turner, 408
Garfein v. McInnis, 672
Gartside v. Nixon, 57
Gasoline Products Co. v. Champlin Refining Co., 466
Gates v. Miles, 22
Gellens v. 11 W. 42d St., 754
George v. Benjamin, 865
Gephart v. Taylor, 351
Germofert Mfg. Co. v. Castles, 377
Gibbons v. Cannaven, 573
Gibbons v. Pepper, 291
Gila Valley Electric, Gas & Water Co. v. Arizona Trust & Savings Bank, 538
Gilbert v. Burnstine, 164
Gill v. Pelkey, 744
Gilmer v. Felhour, 627
Gins v. Mauser Plumbing Supply Co., 128, 147
Girard Trust Co. v. Vance, 833
Glasser v. Wessel, 835
Globe Liquor Co. v. San Roman, 480
Godby v. Chambers, 159
Golob v. Pasinsky, 255
Gompers v. Buck's Stove & Range Co., 670, 677, 681, 682
Good Health Dairy Products Corp. v. Emery, 137
Goodman v. Henry Caplan Inc., 591
Goodright d. Balch v. Rich, 73
Goodwin v. Monds, 156
Goodwin v. Smith, 587, 590, 607
Gordon v. Bruner, 100

TABLE OF CASES

- Gordon v. Harper*, 29, 110
Gordon v. Hostetter, 42
Gossard v. Gossard, 351
Goulet v. Asseler, 110
Graham v. Grigg, 84
Graham v. Peat, 32
Grandin v. LeRoy & Smyth, 616
Grannis v. Ordean, 196
Grant v. Kellogg Co., 212
Grant v. Phoenix Mut. Life Ins. Co., 692
Grauman v. City Company of New York, 711
Graves v. Harrington, 803
Gray v. First National Bank of Chicago, 689
Gray v. Givins, 771
Grazebrook v. McCreddie, 603
Great Northern Telegraph Co. v. Yokohama Specie Bank, 809
Green v. Creighton, 363
Green v. Horne, 87
Greenfield v. Blumenthal, 620
Greenleaf v. Huntingdon & B. T. M. R. & Coal Co., 845
Greenleaf v. Safeway Trails, Inc., 791
Gregory v. Woodworth, 244
Grier v. Ferrant, 802
Grimes v. French, 596, 611
Grossman v. United States, 627
Guille v. Swan, 24
Gulbenkian v. Gulbenkian, 720
Gulf, C. & S. F. R. Co. v. Guin, 513
Gulf Refining Co. v. Fetschan, 513
Gumperz v. Hofman, 159
Gunder v. New York Times, 382
Gunning v. Cooley, 444
Gurley v. O'Dwyer, 508
Guth v. Texas Co., 773
Gutowitz v. Pennsylvania R. Co., 861
Guynn v. McDanel, 159

Hackett v. Hackett, 535
Haffner v. First Nat'l Bank of Seiling, 228
Hagerott v. Adams, 689
Hague v. Warren, 637
Hahl v. Sugo, 727
Haithcock v. Haithcock, 477
Hall v. Dean, 42
Hall v. Fearnley, 291
Hall v. Pickard, 30
Hall v. Weare, 475
Hallock's Estate, In re, 720
Halsey v. Carpenter, 265
Hamilton v. Hamilton, 401

Hammans v. Powell Myers Lumber Co., 321
Hancock v. Blackwell, 747
Hancock National Bank v. Ellis, 355
Hancock Oil Co. v. Independent Distributing Co., 829
Hanke v. Milwaukee Electric Ry. & Transport Co., 646
Hanley v. Donoghue, 358
Hanley's Estate, In re, 569
Hanna v. Stedman, 837
Hansberry v. Lee, 873
Harlan v. Murrell, 589, 656
Harris v. Avery, 143
Harris v. Balk, 187
Hart v. Langfitt, 80
Hart v. Skinner, 45
Hartray v. Chicago Rys. Co., 351
Harvey-Watts Co. v. Worcester Umbrella Co., 696
Haut v. Gunderson, 321
Hawk v. Thorn, 145
Hawn v. Norris, 74
Hays v. Hogan, 508
Hays v. Younglove, 26
Hazel-Atlas Glass Company v. Hartford Empire Co., 689
Heath v. Rydley, 593, 599
Heidritter v. Elizabeth Oil-Cloth Co., 178
Heiser v. Loomis, 238
Helfer v. Corona Products, 596, 650
Hellams v. Switzer, 778
Henderson v. Chaires, 620
Hendrickson, In re, 156, 160
Hepburn v. Sewell, 47
Herbert v. Wortendyke, 202
Heron v. Gaylor, 297
Hersey v. Northern Assur. Co., 78
Hess v. Oregon German Baking Co., 500
Hess v. Pawloski, 180
Heydon and Smith's Case, 30
Hickman v. Taylor, 629, 635, 641, 646
Hicks v. Southwestern Settlement & Devel. Corp., 771
Hill v. City Cab & Transfer Co., 542, 594
Hill v. Hawes, 573
Hill v. S. S. Kresge Co., 244
Himes v. Schmehl, 771
Hines v. Allen, 61
Hodges v. Easton, 512
Hoffman v. City of Maysville, 346
Hoffman v. Knollman, 568
Holiday v. Hicks, 42
Hollingsworth v. General Petroleum Corporation, 747
Holstun v. Embry, 394

TABLE OF CASES

- Home Ins. Co. of New York v. Tydal Co.*, 579
Home Owners' Loan Corp., v. Huffman, 479
Hopkins v. Clark, 433
Hopwood v. Patterson, 286
Horne v. Richards, 100
Houghton v. Myer, 655
Houston v. Sledge, 336
Howe v. McKernan, 593, 596, 618, 638
Hower v. Roberts, 491
Hoy v. Hoy, 79
Hudson v. The Wabash Western Ry. Co., 298
Huffstutler v. Louisville Packing Co., 424
Hughes v. Hughes, 433
Hume v. Bowie, 475
Humphreys v. Irvine, 752
Hunter, Appeal of, 361
Hurd v. Case, 626
Hurwitz v. Hurwitz, 577, 723

Imhoff v. Chicago & M. Ry. Co., 493
Indiana Railway Co. v. Maurer, 492
Interchemical Corp. v. Mirabelli, 183
Intermountain Lumber Co. v. Radetsky, 358
International Ladies Garment W. U. v. Donnelly Garment Co., 124
International Photo Recording Machines, Inc. v. Microstat Corporation, 716
International Shoe Co. v. State of Washington, 168
Inyo Chemical Co. v. Los Angeles, 580
Ircin v. Taubman, 382
Isham v. Miller, 614
Ivy v. Kekewick, 597, 634

Jack v. Hudnall, 801
Jackson v. Anderson, 42
Jackson v. Hansard, 478
Jackson v. Strong, 714, 716
Jackson v. Williamson, 522
Jackson d. Loux v. Buel, 71
Jackson d. Murray v. Hazen, 74
Jackson d. Saxton v. May, 71
Jacobs v. Vaill, 373
Jasper v. Wabash Ry. Co., 244
Jefferson Standard Life Ins. Co. v. Keeton, 731
Jennings v. Beach, 801
Jennings v. Parr, 124
Jeub v. B/G Foods Inc., 845
Jewell v. Parr, 468

J. H. Day Co. v. Mountain City Milling Co., 635
John Doig's Case, 90
Johnson v. C. & N. W. Sand & Gravel Co., 34
Johnson v. Metropolitan Life Ins. Co., 334
Johnson v. Nichols, 728
Johnson v. Pate, 373
Johnson v. Pensacola & Perdido R. Co., 368
Johnson v. Rudolph, 800
Johnston v. Reily, 561
Jones v. Chapman, 301
Jones v. Dowle, 51
Jones v. Hoar, 100
Jones v. Lofton, 72
Jones v. Puckett, 770
Jones v. Spencer, 442
Jones v. Winsor, 114
Jordahl v. Berry, 137
Jordan v. U. S., 498
J. R. v. M. P., 593

Kasishke v. Baker, 690
Katz Underwear v. United States, 579
Kay Ferer, Inc., v. Hulen, 560
Kearney v. Andrews, 592, 608
Keary v. Mutual Reserve Ass'n, 775
Keay v. Goodwin, 346
Kellems v. California CIO Council, 535
Kelly v. Lett, 23
Kelly-Springfield Tire Co. v. Lotta Miles Tire Co., 635
Kemmish v. McCoid, 433
Kenlee Corp. v. Isolantite, Inc., 16
Kennedy v. Empire State Underwriters of Watertown, 148
Kennedy v. Lamb, 193
Kennon v. Gilmer, 531
Kentucky Natural Gas Corporation v. Duggins, 772
Keokuk & Hamilton Bridge Co. v. Witzel, 277
Kerna v. Trucking, Inc., 762
King v. Boston, 318
King v. Burr, 587, 597
King v. Standish, 600
King v. Williams, 49
Kingsley v. Gilman, 292
Kingsnorth v. Baker, 74
Kirby v. Gilliam, 770
Kirkpatrick v. Parker, 766
Kirschbaum v. Eschmann, 621
Klitzke v. Herm, 647
Kluska v. Yeomans, 248
Kraft v. Smith, 809

TABLE OF CASES

- Kramer v. Kansas City Power & Light Co., 251, 363
 Kramer v. Kister, 502
 Kraushaar v. Leschin, 351
- La Bove v. Balthazor*, 404
 Lady Shandois v. Simpson, 79
 Lamb v. Cramer, 682
 Lamb v. Schmitt, 159
 Landwehr v. Gillette, 538
 Lane v. Thompson, 34
 Langley v. Metropolitan Life Ins. Co., 360
 Lansing v. M'Killip, 230
 La Plant v. Implement Dealers Mut. Fire Ins. Co., 647
 L. A. Thompson Scenic Ry. Co. v. Young, 655
 Lawe v. Hyde, 368
 Leach v. Rhodes, 239, 255
 Leame v. Bray, 21, 22, 24
 Leary, Matter of, 398
 Lee v. Troy Citizens' Gas-Light Co., 245
 Leeds Music Corporation v. Jones, 861
 Lesh v. Johnston Furniture Co., 580
 Lewis v. Coulter, 292
 Libbey-Owens Ford Glass Co. v. Syl-
 vania Industrial Corporation, 568
 Liberty Oil Co. v. Condon National
 Bank, 738
 Lindsey v. Bird, 589, 596, 697
 Lineberger v. City of Gastonia, 818
 Little v. Fossett, 31
 Little Schuylkill Nav. Ry. & Coal Co. v.
 Richards, 818
 Livingston v. Ruff, 259
 Local Federal Savings & Loan Ass'n v.
 Carlock, 832
 Local Federal Savings & Loan Ass'n v.
 Stokes, 832
 Logansport, City of, v. Kihm, 255
 Lombard v. Coucham, 736
 Long v. Cassiero, 522
 Longueville v. Thistleworth, 275
 Lopez v. Townsend, 803
 Lord Portarlington v. Soulby, 615
 Los Angeles Brush Mfg. Corp. v. James,
 733
 Losee v. Krieger, 238
 Lotan v. Cross, 30
 Louis E. Bower, Inc. v. Silverstein, 552
 Louisville, H. & St. L. Ry. Co. v. Schwab,
 408
 Louisville N. R. Co. v. Paynter's Adm'x,
 331
 Loving v. First Nat. Bank, 152
 Low v. Mumford, 795
- Lowe v. Western Express Co.*, 182
 Lowman & Co. v. Ballard, 154
 Lucas v. Gansler, 56
 Luddington v. Goodnow, 238
 Lufkin v. Harvey, 239
 Lyman v. U. S., 479
 Lytton v. Lytton, 689
- McAlister v. Clark, 368, 568
 McAlpine v. Fidelity & Casualty Co. of
 New York, 314
 McArthur v. Moffet, 145
 McBride v. Des Moines City Ry. Co., 495
 McBryde v. Burnett, 773
 McCall v. Price, 794
 McCaughey v. Schuette, 259, 346
 McClelland v. Climax Hosiery Mills, 370,
 535
 McCown v. Muldrow, 440
 McCoy v. Moore, 756
 McCullough v. Cosgrave, 651
 McDermott v. Travelers Ins. Co., 747
 McDonald v. Mabee, 178
 McDonald v. Metropolitan St. Ry. Co.,
 450
 McDonald v. Pless, 521
 Macedonia Baptist Church v. City of
 Columbia, 477
 McFarlane v. Ray, 341
 McGanahan v. The East St. Louis and
 Carondelet Ry. Co., 255
 McGovern v. Eckhart, 582
 McGuire v. Blount, 74
 McIlvaine Patent Corp., v. Walgreen Co.,
 476
 McIntosh v. Leisk, 579
 Mackay v. Benjamin Franklin Co., 42
 McKenney v. Minahan, 767
 McKenzie v. L'Amoureux, 863
 McKinsty v. Pennoyer, 283
 McKyring v. Bull, 293
 McLennan v. Church, 716
 McManus v. Cassidy, 102
 McNulty v. Kuser, 507
 McPherson v. Klemm, 323
 McRae v. Lois Grunow Memorial Clinic,
 720
 McRanie v. Palmer, 773, 800
 Macurda v. Lewiston Journal Co., 344
 McWhirter v. Otis Elevator Co., 759
 Maggs v. Ames, 291
 Magin v. Lamb, 544, 594
 Mahoney v. Bostwick, 658
 Mails v. Kansas City Public Service Co.,
 262
 Maisonnaire v. Keating, 201
 Major v. Shaver, 773