assertions in *Slocum*.[69] In the second case[70] the Court sustained a United States district court in rejecting the defendant's motion for dismissal and in peremptorily directing a verdict for the plaintiff. The Supreme Court held that there was ample evidence to support the verdict and that the trial court, in following Arkansas procedure in the diversity action, had acted consistently with the Federal Conformity Act.[71] In the third case,[72] which involved an action against the government for benefits under a war risk insurance policy that had been allowed to lapse, the trial court directed a verdict for the government on the ground of the insufficiency of the evidence, and was sustained in so doing by both the appeals court and the Supreme Court. Justice Black, joined by Justices Douglas and Murphy asserted in dissent, "Today's decision marks a continuation of the gradual process of judicial erosion which in one-hundred-fifty years has slowly worn away a major portion of the essential guarantee of the Seventh Amendment."[73] That the Court should experience occasional difficulty in harmonizing the idea of preserving the historic common law covering the relations of judge and jury with the notion of a developing common law is not surprising.[74]

Jury Trial Under the Federal Employers' Liability Act.— One aspect of the problem of delineating the respective provinces of judge and jury divided the Justices for a lengthy period but now appears quiescent—cases arising under the Federal Employers' Liability Act. The argument was frequently couched by the majority in terms of protecting the function of the jury from usurpation by judges intent on subverting and limiting remedial legislation en-

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[69] 295 U.S. at 661. The Court's opinions in both *Redman* and *Slocum* were by Justice Van Devanter.

[70] Lyon v. Mutual Benefit Ass'n, 305 U.S. 484 (1939).

[71] Ch. 255, § 5, 17 Stat. 197 (1872), now superseded by the Federal Rules of Civil Procedure.

[72] Galloway v. United States, 319 U.S. 372, 389 (1943), in which the Court wrote, "the practice has been approved explicitly in the promulgation of the Federal Rules of Civil Procedure," citing Berry v. United States, 312 U.S. 450 (1941). In the latter case the Court remarked that the new rule has given "district judges, under certain circumstances, . . . the right (but not the mandatory duty) to enter a judgment contrary to the jury's verdict without granting a new trial. But that rule has not taken away from juries and given to judges any part of the exclusive power of juries to weigh evidence and determine contested issues of facts—a jury being the constitutional tribunal provided for trying facts in courts of law." Id. at 452–53.

[73] 319 U.S. 372, 397. The case, being a claim against the United States, need not have been tried by a jury except for the allowance of Congress.

[74] *See*, *e.g.*, Neely v. Martin K. Eby Construction Co., Inc., 386 U.S. 317 (1967), interpreting Rules 50(b), 50(c)(2) and 50(d) of the Federal Rules of Civil Procedure, as well as the Seventh Amendment.