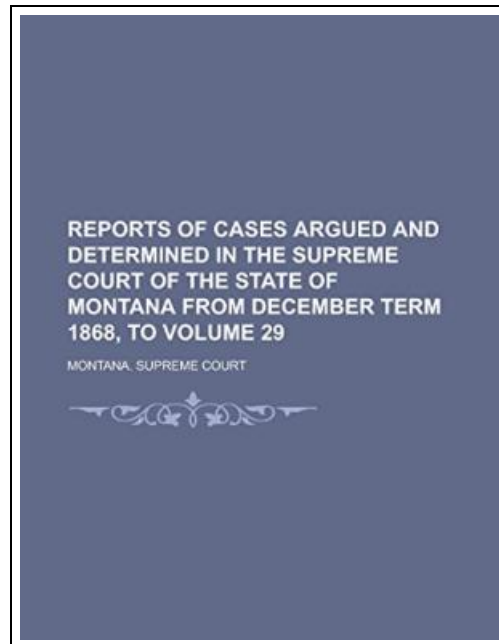


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Rarebooksclub.com, United States, 2013. Paperback. Book Condition: New. 246 x 189 mm. Language: English . Brand New Book ***** Print on Demand *****.This historic book may have numerous typos and missing text. Purchasers can usually download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1904 edition. Excerpt: .not considered o-r decided. This court is left somewhat in doubt as to the actual position of ap-pellant s counsel on the questions of assumed risk and contributory negligence of the plaintiff. In the brief filed counsel makes the assertion that the case is to be tested by the question as to whether or not plaintiff assumed the risks of the employment, and states that the question of contributory negligence is not in the case. Upon his oral argument to the court he announced that the above statement contained in his brief was not correct, and that he did rely on the contributory negligence of the plaintiff, and the first point he argued to the court was that the complaint in the case did not state facts sufficient to constitute a cause of action, because it contained no allegation negating the existence of contributory negligence. The defenses of contributory negligence and assumption of risk are entirely inconsistent with each other, and do not rest upon the same principles; and the existence of one necessarily excludes the existence of the other. (1 Bailey, M. S. Sec. 938 et seq.; Miner v. Connecticut River R. R. Co., 153 Mass. 398-403, 26 N. E . 994; Texas P. Ry. v. Bryant, 8 Tex. Civ. App. 134, 27 S. W. 825; Mundle v. Manufacturing Co., 86 Me. 400, 30 Atl. 16.) If the defense of the assumption of risk is maintained, the question of the existence of contributory...

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