PROGRESS OF THE LAW.

As Marked by Decisions selected from the Advance Reports for September.

Among the decisions reported during the past month are several that present novel and interesting points of law, as well as some cases of first impression, at least in the particular court. The Court of Common Pleas of New York City has held that a restaurant keeper is liable, in the absence of due care, for the loss of a customer's wraps left in his charge, on the ground that the bailment is not gratuitous, but for profit: *Buttman* v. *Dennett*, 30 N. Y. Suppl. 247. This is in accord with the previous decision of the same court in *Bird* v. *Everard*, 23 N. Y. Suppl. 1008, and of the Court of Errors and Appeals in *Bunnell* v. *Stern*, 122 N. Y. 539; *S. C.*, 25 N. E. Rep. 910. This reasoning would make any tradesman or business man liable for property put in his possession by customers, as has in fact been held in the case of a tailor: *Rea* v. *Simmons*, 141 Mass. 561; *S. C.*, 55 Am. Rep. 492; *McCollin* v. *Reed*, 16 W. N. C. 287.

Bailment

The Supreme Court of Missouri has ruled that the intent manifested by an advertisement for bids must govern its interpretation; that when the advertisement is nothing more than a suggestion to induce offers for a contract by others, it imposes no liability *per se;* and that an advertisement reserving the right to reject any or all bids gives the lowest bidder no right to the contract, even if the body advertising for bids acted arbitrarily, capriciously and through favoritism, in awarding the contract: *Anderson* v. *Board of Public Schools*, 27 S. W. Rep. 610.

Bids

It is held by the Supreme Court of New York, in accordance with the general doctrine on the subject, that a deed from a cemetery association to a lot in the cemetery, though absolute in form, conveys no title to the soil, but only a right of burial; and that, therefore, a statute

Cemeteries

directing a removal of the bodies interred in a cemetery, without providing for compensation to the lot-owners, is constitutional: *Went* v. *Meth. Prot. Ch. of Williamsburgh*, 30 N. Y. Suppl. 157.

In *Meuer* v. *Chic., M. & St. P. Ry. Co.*, 59 N. W. Rep. 945, the Supreme Court of South Dakota has held that a special contract, made in one state, between a railroad company and a shipper, for transporting property of the latter from a point in that state to a point in another state, is to be interpreted according to the laws of the former state; but that the courts of the other state will not take judicial notice of the laws of the former, and they must be proved as any other fact. If not so proved they will be presumed the same as those of the state where the suit is brought.

Conflict of Laws

The same principle is asserted by the Supreme Court of Vermont in *Barrett* v. *Kelley*, 29 Atl. Rep. 809, which decides that when a chattel is sold under a contract executed in another state, reserving the legal title to the vendor until the price is paid, the laws of the state where the contract is made will govern the rights of the parties. Similarly, the Supreme Court of Rhode Island has ruled, on the authority of *Milliken* v. *Pratt*, 125 Mass. 374, that when a married woman, a resident of one state, enters into a contract, in another state, intended to take effect in that state, which, though valid where made, is invalid in her own state, and the latter afterwards empowers her to make such a contract, the contract may be there sued on: *Case* v. *Dodge*, 29 Atl. Rep. 785. See *Ruhe* v. *Buck* (Mo.), 27 S. W. Rep. 412, mentioned in 1 Am. L. Reg. & Rev. (N. S.) 664.

The Supreme Court of New York has also adopted a very wise and salutary restriction upon the rule of criminal evidence which requires a conspiracy to be proved before the acts and declarations of one conspirator can be given in evidence against his fellow conspirators, by holding in *Peo.* v. *McKane*, 30 N. Y. Suppl. 95, that such declarations may, when justice requires it, be admitted before proof

Conspiracy

of the conspiracy. The Supreme Court of Arizona holds a contrary doctrine, under the provisions of the statutes of that territory: *Territory* v. *Turner*, 37 Pac. Rep. 368. This exception, however, is not exactly an innovation, having been asserted for years, though rarely. It may be applied when the state promises to introduce *prima facie* evidence of the conspiracy during the progress of the trial: *State* v. *Grant*, (Iowa), 53 N. W. Rep. 120; and in general, its application rests in the discretion of the court, and is only permissible under particular and urgent circumstances: *Hall* v. *State*, (Fla.), 12 So. Rep. 449; *State* v. *Flanders*, (Mo.), 23 S. W. Rep. 1086.

Constitutional Law

The Court of Appeals of Maryland has recently passed upon one of the questions of constitutional law that continually recur in regard to the taking of property under the right of eminent domain. In *Garrett* v. *Lake Roland El. Ry. Co.*, 29 Atl. Rep. 830, that court decided that the building of abutments, to be used as the approach for elevated railway tracks, in the centre of the street, was not a taking of the property of abutting landowners, within the meaning of the clause of the constitution, forbidding the "taking" of property for a public use without compensation being first paid therefor or tendered, so as to entitle the landowners to enjoin the erection of the same, until compensation was paid for the injury; and this in spite of the fact that the bill showed that the street was narrowed by the abutments to a mere alley, and alleged that the erection deprived the adjacent premises of light and air. Bryan, J., dissented, in an able and forcible opinion.

The decision of the court *may* have been correct, on the state of facts presented; but it does not carry any very convincing weight of authority. It is unfortunately true that the tendency of recent years has been to narrow the constitutional provisions as to compensation for the taking of property to as slender a compass as possible, in direct violation of every principle of construction, as witness, *inter alia*, the trolley road cases. But to deny that the building of an elevated railroad

is an additional servitude on the street would be sheer nonsense; and accordingly the court rested its ruling on the ground that the deed of the landowners did not cover the soil of the street, and therefore the abutments imposed no burden on them. This is perhaps a tenable view, in the present unsettled state of opinion in regard to the ownership of the fee of the streets of a municipal corporation; but ought to vanish with a clear understanding of that point. The true solution of the problem seems to be this. Strictly, in spite of all dicta to the contrary, a municipal corporation does not own the fee of the streets. It owns only the easement of the public therein, and holds it in trust for the public; and can therefore apply it to none but public uses, a restriction which would not exist, if it owned the fee. The easement, however, is co-extensive with the use of the land, and the fee is therefore a mere reversionary interest, contingent on the surrender of the rights of the public on the vacating of the street. But to hold this would be an absurdity, for this reversion may never occur, or if it occur, there might be no heir of the original owner to receive it. A better doctrine would be, to hold that the deeds of the original owner to his vendees of lots bordering on such streets, though nominally bounded by the street, extended to the centre thereof, just as a deed of land bounded by a stream extends *ad filum aquæ*, unless the contrary intention is clear. On such a view, the erection in the present case would be a burden on the plaintiff lot-owners, and they could recover. But the chief objection to such a doctrine is, that it would remove a very efficient means of protecting the corporations which exercise the right of eminent domain, and it is therefore not likely to be adopted.

Contempt

The Supreme Court of California holds, that when a statute does not authorize a change of venue for bias, prejudice or partiality of a judge, it is a contempt of court to present an affidavit for a change of venue, alleging those grounds: *In re Jones*, 37 Pac. Rep. 385.

In *Allen* v. *Leavens*, 37 Pac. Rep. 488, the Supreme Court

of Oregon has ruled that when goods are sold on the written promise of the defendant to accept an order drawn by the purchaser for the amount of the purchase, the indorsement of the purchaser's name upon such promise is not an order on which the defendant will be liable.

Contract

A curious question has just been decided in the House of Lords in England, on appeal from Scotland. An employé of a stevedore, injured by a defect in the tackle of a vessel which he was engaged in unloading, brought suit against the vessel for supplying weak tackle, and against the stevedore for reckless negligence in the use of the same. A decree was rendered creating a joint and several liability; but the plaintiff, as was his right, recovered the amount of the judgment against one of the wrongdoers, who thereupon brought action against the other to recover his share. The Lords were of opinion, that in spite of the rule which forbids contribution between joint wrongdoers, and which, were the case an English one, would be applied, on the authority of *Merryweather* v. *Nixan*, 8 T. R. 186, the action could be maintained: *Palmer* v. *Wick and Pulteneytown Steam Shipping Co.*; *Ltd.*, [1894], App. Cas. 318. This decision is not really in contradiction of the general rule, above stated, but presents one of the two clearly defined exceptions to it, arising from the circumstances of the parties. Contribution between tort-feasors is allowed, in the first place, when the parties act in a *bona fide* belief that their act is lawful, and the wrong arises by construction or inference of law: *Vandiver* v. *Pollak*, (Ala.), 12 So. Rep. 473; or when the party seeking contribution was honestly ignorant of the fact that the act was wrongful: *Johnson* v. *Torpy*, 35 Neb. 604; *S. C.*, 53 N.W. Rep. 575. In the second place, it is allowed when, as in the case discussed, the torts of the two parties are not the same in their nature, though arising from the same conditions, and they cannot therefore be considered as strictly joint tort-feasors. In such a case, the mere fact that the judgment imposes a joint liability, cannot of course alter the true relation of the parties as between themselves. This rule was applied, on a

Contribution

state of facts much like this, in *Minneapolis Mill Co.* v. *Wheeler*, 31 Minn. 121, where it was held that the owner of premises was liable for their unsafe condition, though resulting from the negligence of a third person; but that he could recover a full indemnity from that third person, as they were not *in pari delicto*. The difference in the extent of the remedy between the two cases is due to the fact that in the latter case the negligence was passive, in the former active.

Copyright

The same body has decided in *Leslie* v. *Young*, [1894] App. Cas. 335, that the mere publication, in any particular order, of the time tables issued by railway companies, cannot be claimed as a subject matter of copyright by a publisher of a tourist's handbook, if no more has been done than to copy them in their order, leaving out such stations as the author sees fit.

Corporations

According to the Circuit Court of Appeals, Fifth Circuit, a corporation may vote, at the elections of a competing corporation, on stock held by the former in the latter, in spite of a law of the state to the contrary, where the competition affects interstate commerce only: *Clarke* v. *Richmond & W. P. Terminal Ry. Co.*, 62 Fed. Rep. 328.

Debentures

It has been decided by the Court of Appeals, in England, that when a debenture, issued by a company by way of floating security, contains a covenant for the payment of the principal money, on a specified day, though without any stipulation making the money immediately payable in the event of a winding-up, the occurrence of a winding-up before the specified day will render the money immediately payable, and will entitle the holder of the debenture at once to realize his security for the full amount of principal, interest, and costs: *Wallace* v. *Universal Automatic Machine Co.*, [1894] 2 Ch. 547. The same point was previously decided in *Hodson* v. *Tea Co.*, 14 Ch. D. 859. See also, *In re Panama, New Zealand and Australian Royal Mail Co.*, 5 L. R. Ch. 318.

The Supreme Court of New Hampshire has very justly ruled, in *Cressey* v. *Wallace*, 29 Atl. Rep. 842, that a devise to a married woman, to have and to hold to her sole and separate use, free from any interference or control of her husband, and to her heirs and assigns, gives her a fee, not a life estate, with remainder to her heirs; and they will take by descent, not by purchase, on the ground that the clause "to her sole and separate use, etc.," does not in any way qualify or limit the estate granted.

Devise

The adoption of the Australian ballot system, in spite of its many advantages, has given rise to a vast deal of litigation over points that had theretofore been pretty well settled; and has also unfortunately called forth many conflicting decisions. One of the most vexed questions has been that which would seem to be the most simple,—the marking of the ballot, and the consequent validity or invalidity of the vote. In the most recent case on the subject, *Curran* v. *Clayton*, 29 Atl. Rep. 930, the Supreme Judicial Court of Maine held that, under a statute requiring a cross mark in the square at the right of the name of the party, or individual candidate, ballots marked as follows should be rejected: 1. Where the cross mark was placed above the name of the candidate, and not in the appropriate place at the right of it. 2. Where there was a cross mark above, and one below the name of the candidate, but none at the right. 3. Where the cross mark was placed at the left of the candidate's name. 4. Where there was a cross mark under the party name at the head of the ticket, and one at the left of the name of a candidate of another party. 5. Where there was no cross mark, but a short straight line, drawn across the square at the right of the party name at the head of the ticket. 6. Where there was a cross mark in the square at the right of the name of each candidate of one party, with one exception, and a cross mark in the square at the right of the party name on another column.

Elections

In all these cases, except the last, there could be no reasonable doubt as to the intention of the voter; but the court, dis-

regarding the plain intention of the statute, which is to give the voter a right to vote freely, without fear of intimidation, or deprivation of his right of free suffrage, deliberately assumed that the sole object of the act was to secure secrecy in voting, and that as the peculiar marks might possibly be used, by pre-arrangement with the election officers, as a means of identifying the ballot, they were therefore contrary to the spirit of the act, and rendered the ballot void. There never was a clearer instance of the confusion of the means with the end. The intent of the act was to secure a free vote; the secrecy provided for was the most effectual means of securing that freedom. It is little short of absurdity to claim that an independent voter would deliberately furnish means to identify his ballot. But even if he did so, it would be a most roundabout way of accomplishing what he could do by simple word of mouth, without let or hindrance—tell for whom he voted. If secrecy was the only thing desired, why did not the legislature forbid him to disclose his vote orally?

But the same misapprehension exists elsewhere, notably in Indiana: *Parvin* v. *Wimberg*, 130 Ind. 561; *S. C.*, 30 N. E. Rep. 790. The Rhode Island courts are a little more liberal, and, while insisting upon a mark to the right of the name, are indifferent to its position, whether within or without the square: *In re Vote Marks*, 17 R. I. 812. The same is the consensus of opinion in the lower courts of Pennsylvania: *Louck's Case*, 3 D. R. 127; *Weidknecht* v. *Hawk*, 13 Pa. C. C. 41; *York Election*, 13 Pa. C. C. 205.

On other questions they are not agreed: some hold the cross immaterial: *Weidknecht* v. *Hawk*, *supra*; and that it is sufficient to mark the ballot with a perpendicular stroke: *Hempfield Election*, 14 Pa. C. C. 577; *S. C.*, 3 D. R. 499; others insist upon the cross mark as the palladium of their liberties, or the well-known straw which the drowning man trusts to for salvation, and reject ballots marked with two horizontal lines in the circle intended for the mark: *East Coventry Election*, 3 D. R. 377. Some admit the validity of a cross mark without the square or circle, if close to the name of the candidate or party: *Louck's Case*, 3 D. R. 127; others

reject it unless within the circle: *East Coventry Election*, 377. But the most hopeless conflict is over ballots marked as in the sixth instance in the case under discussion, both after the name of the party and the name of a candidate of another party. Common sense would indicate that the voter intended to vote for that candidate, at any rate, and such has been the decision in some cases: *Weidknecht* v. *Hawk*, 13 Pa. C. C. 41; *Twentieth Ward Election* (*No. 2*), 3 D. R. 120. Legal acumen, however, which is not necessarily synonymous with law, in its boasted capacity of the perfection of human reason, would have it different. and would reject the vote for that office altogether: *In re Election Instructions*, 2 D. R. 1.

In marked contrast with this futile splitting of hairs and consequent nullification of the legislative intent, is the admirable decision in *Woodward* v. *Sarsons*, 10 L. R. C. P. 733, which holds that the main object of the ballot acts is to secure the carrying out of the intent of the voter, and that anything that goes to show that intent clearly is a valid marking; and that therefore ballots marked with two crosses, or three, instead of one, with a single stroke, a straight line, a mark like an imperfect P added to the cross, a star, a blurred or ill-marked cross, a pencil line through the names of candidates not voted for, a cross to the left of the name, and even a ballot paper torn in two longitudinally down the middle, are good. A comparison of the lucid opinion in which this doctrine was asserted with the abortive efforts at special pleading in the cases cited above makes one blush for his country. One American judge, however, has been found with sufficient judgment to approve this decision, and to assert, expressly on its authority, that a ballot without cross marks, but with the names of candidates erased with lead pencil, was to be counted for those whose names were not erased: *Coleman* v. *Gernet*, 14 Pa. C. C. 578; *S. C.*, 3 D. R. 500.

Elevators

The Circuit Court of Appeals, Fifth Circuit, has recently decided a very interesting point of law in *Mitchell* v. *Marker*, 62 Fed. Rep. 139, to the effect that a carrier by elevator, though not an insurer of the safety of his

passengers, is yet bound to exercise the highest degree of care, as a carrier by railway or stage coach; that this rule applies not only to the vehicle and machinery, but to the control and management of the means of transportation; and that it is the duty of the person who operates the elevator to give passengers a reasonable time to obtain a balance on entering the car, before beginning a sudden and rapid upward movement, having a tendency to disturb the equilibrium of one yet in motion.

Fixtures

In the opinion of the Superior Court of New York City, pictures painted on canvas, and cemented to the ceiling, are fixtures, and are subject to the lien of a mortgage on the building: *Cohn* v. *Hensey*, 29 N. Y. Suppl. 1107.

Fraud

According to the Supreme Court of South Carolina, when a debtor, with intent to defraud his creditors, compromises claims with his debtors, who have no knowledge or notice of such fraudulent intent, the compromise will not be set aside: *Anderson* v. *Pilgram*, 19 S. E. Rep. 1002.

Game Laws

The Supreme Court of California has added itself to the list of those courts which hold, in contradiction of every principle of reason and justice, that a statute, prohibiting the sale of game out of season, applies to game brought from without the state, with the exception of that sold in the original package: *Ex parte Maier*, 37 Pac. Rep. 402. This train of decision was set on foot by Chief Justice Coleridge, in *Whitehead* v. *Smithers*, 2 C. P. D. 553, on the totally inadequate ground that "it may well be that the true and only mode of protecting British wild fowl from indiscriminate slaughter as well as of protecting other British interests, is by interfering directly with the proceedings of foreign persons. The object is, to prevent British wild fowl from being improperly killed and sold under pretence of their being imported from abroad." But unhappily for his lordship, no ordinary man would ever suspect that fact from the wording of the act.

This has been adopted as the correct view in a majority of the courts that have had occasion to pass on the question: *Magner* v. *Peo.*, 97 Ill. 320; *State* v. *Randolph*, 1 Mo. App. 15; *S. C.*, 3 Cent. L. J. 187; *N. Y. Ass'n for Protection of Game* v. *Durham*, 19 J. & S. 306; *Roth* v. *State*, 7 Ohio Cir. Ct. 62; *S. C. aff.*, 37 N. E. Rep. 259; and the same rule has been applied to game killed in the state and kept in cold storage: *State* v. *Judy*, 7 Mo. App. 524; and to trout artificially propagated: *Comm.* v. *Gilbert*, 35 N. E. Rep. 454.

In refreshing contrast is the terse epigrammatic language of Chief Justice Paxson, in *Comm.* v. *Wilkenson*, 139 Pa. 298; *S. C.*, 27 W. N. C. 160; 21 Atl. Rep. 14; to the effect that the object of the act being the preservation of game within the commonwealth, the court could not assume that it was intended to preserve game elsewhere; and that it would be a forced construction to hold that it was intended to exclude from the markets of the state game killed in other states, where, by the laws of those states, the killing was lawful. This view has been adopted by the courts of Michigan: *Peo.* v. *O'Neil*, 71 Mich. 325; *S. C.*, 39 N.W. Rep. 1; and of Massachusetts: *Comm.* v. *Hall*, 128 Mass. 410. See also, *Allen* v. *Young*, 76 Me. 80.

There is a stronger objection to this doctrine, however, than that stated above. Many, if not all, of the statutes on this question punish the *possession* of game out of season; and it is submitted, that any law forbidding the possession of an article by a person into whose hands it has come lawfully, is an interference with the right of personal property beyond the power of any legislative body.

Gaming Contract

The judicial scrutiny of gambling transactions seems to grow steadily more severe, and any qualification of the contract, which affects the absolute ownership of the vendee, or evinces an intention to settle on the basis of differences in price, is eagerly seized upon as a badge of illegality. The Supreme Court of California, in the most recent case on the subject, *Sheehy* v. *Shinn*, 37 Pac. Rep. 393, has ruled, that an agreement between vendor and vendee for

the sale of stock upon payment of a part of the agreed price, with a stipulation that it should be retained by the vendor as security for the balance, and only be delivered upon full payment, and that the vendor should have the right to sell it at any time, without notice to the vendee, if it should so depreciate in the market as to be worth less than three times the unpaid balance, is a sale on margin and for future delivery, and void; and equally that an agreement that the defendant should act as agent for plaintiff in buying stock for her from third parties, and pay the whole price therefor, two-thirds of which was advanced by the plaintiff, with a stipulation that the stock should be held by the defendant until the balance was paid, and as collateral security for the balance due on other stock, the title to remain in defendant while so held by him,—was a sale on margin. This case seems very near the border line.

Guardian and Ward

It has been decided by the Surrogate's Court of Cattaraugus County, New York, that when a minor, ten years old, has been brought up by a married woman, who has treated him as a son, and to whom he is very much attached, the custody of the minor will not be taken away from her and given to his guardian: *Wentz's Estate*, 30 N. Y. Suppl. 211.

Injunction

The Supreme Court of Pennsylvania has very justly ruled that when subscriptions have been secured for the purpose of building a church at a particular place, as a memorial to a certain person, an injunction will issue to restrain the church society from tearing down that building, and removing the material to a different place, for use in a building to be erected by such society at the latter place: *Cushman* v. *Church of Good Shepherd*, 29 Atl. Rep. 872.

Jurisdiction

In the case of *The Willamette Valley*, 62 Fed. Rep. 293, the District Court for the Northern District of California has decided an interesting question as to the conflict of jurisdiction between the state and federal courts, by holding that a steamship owned by an insolvent corpora-

tion, and in possession of a receiver of the property of the corporation appointed by a state court, but employed by him in transporting merchandise and passengers in connection with the usual business of the corporation, between a port in the state and a port in another state, is not exempt, by any rule of comity, as *in custodia legis*, from maritime liens incurred in such other states, and seizure to enforce such liens by libel in the federal courts.

Lease Forfeiture

The Supreme Court of Arkansas has just decided, that when a lessee of a quarry agreed to pay a certain royalty on all rock sold, to furnish the lessor with copies of all contracts to deliver rock, to work the mine in a workmanlike manner, and to do a reasonable amount of work, and also agreed that a failure to perform any of these agreements should, at the option of the plaintiff, forfeit the lease; when the lessee used the quarry for two years, furnished no copies of contracts, and did not pay all the rent, but performed all the other covenants, while the plaintiff demanded no copies, till a short time before bringing action, and demanded and received rent many times after a failure to pay according to the terms of the lease; and when the lessee tendered copies of the contracts and all rents due at the commencement of the action—that under such circumstances the plaintiff must be considered to have waived his right to a forfeiture: *Little Rock Granite Co.* v. *Shell*, 27 S. W. Rep. 562.

License

In *Fish* v. *Capwell*, 29 Atl. Rep. 840, the Supreme Court of Rhode Island holds, in opposition to the general view, that an instrument purporting to convey all the standing wood on a certain lot of land, "with two years from date hereof, to cut and remove said wood," does not convey any interest in the land, but is a mere license or executory contract, revocable at any time before the wood is cut, and is revoked by the grantor's conveyance of the land to another. This may be true as to contracts in which the consideration is a royalty on the wood cut; but could not be justly applied to the sale of standing timber for a lump sum. In that case the contract would be executed by the pay-

ment of the consideration, or if payable *in futuro*, perhaps by the very fact of its being so fixed and determinate; and while it is unnecessary to hold that the buyer had an interest in the land, he would have the right of ingress and egress to cut and remove his property, just as in the case of a sale of standing grain, or potatoes in the ground.

Master and Servant

The House of Lords, in *Hewlett* v. *Allen*, [1894] App. Cas. 383, has laid down a rule that will be of great interest to all those concerned in the [in]voluntary relief associations that have been established in connection with many large corporations. The plaintiff, on entering the service of the defendant, had signed an agreement to conform to all the rules and regulations of the defendant's works, one of which was that all employés should become members of the sick and accident club. In accordance with the rules of this club, weekly payments were made to the club treasurer by the firm on account of each employé, and from the fund thus established relief was given to members in case of sickness or accident. The plaintiff received each week a ticket, showing the gross amount of wages due her, and a weekly deduction on account of the payment to the club, the balance alone being paid her. She never required and never received any relief from the fund. After leaving the employ of the defendant she brought an action to recover the amount thus retained, alleging that it was in violation of the English statute, providing that "the entire amount of the wages earned by or payable to any artificer . . . shall be actually paid to such artificer in the current coin of this realm and not otherwise." But the lords held, affirming [1892] 2 Q. B. 662, that the retention of the club dues was not unlawful, on the principle that any payment made by an employer, at the instance of a person employed, to discharge some obligation of the employé, or to place the money in the hands of some person in whose hands the person employed wishes it to be placed, is as much a "payment in current coin" as if put in the hands of the employé himself.

The District Court for the District of Maryland has recently held that a stevedore, bringing the baggage of a passenger on

board a steamship, and placing it where requested by the passenger, is not exercising an independent employment, but is performing a duty which rests on the ship; and it is the duty of the ship's officers to see that risk of accidents to persons on board is avoided: *Unitus* v. *The Dresden*, 62 Fed. Rep. 438.

In the opinion of the House of Lords, the failure of a station master to detain a train at the request of a passenger, in order to give an opportunity for arresting persons by whom the passenger has been robbed, and for the recovery of the property stolen, creates no cause of action against the company: *Cobb* v. *Great Western Ry. Co.*, ||1894] App. Cas. 419.

The Supreme Court of Washington has lately afforded a curious instance of the judicial propensity to give an unsound reason for a just decision. In *Anderson* v. *Guinean*, 37 Pac. Rep. 449, that court held, that a substitute, hired by an employé, stands in the place of the latter, with all of its responsibilities and liabilities, so far as the master is concerned, and a fellow servant with the employé is a fellow servant with the substitute, though no contractual relation exists between the substitute and the master, and though the employé alone is responsible for the wages of the substitute. This doctrine is wholly untenable. It would lead to monstrous results if an employé could thus, by his own act, burden the master with responsibility for the acts of a substitute of whose employment he is ignorant. The master was not liable in the case under discussion, it is true, but because there was no privity between him and the substitute, not because the other servants of the master were fellow servants of the substitute. Or, if this view be preferred, the substitute was a mere licensee, or perhaps a trespasser, to whom the master owed no duty. On the other hand, if the master is ever liable to third persons for the acts of such a substitute, it is not on the ground that the act of the substitute is the act of the master, but that the master, in allowing the substitute to act, though ignorant of the fact of his acting, failed to perform a duty with which he was charged.

The Superior Court of New York City has reasserted the doctrine, abundantly substantiated by the cases cited, that the

fact that a servant was working on Sunday, in violation of the Sunday laws, when injured by reason of the master's negligence, will not preclude a recovery for such injuries: *Solarz* v. *Manhattan Ry. Co.*, 29 N. Y. Suppl. 1123.

In *McCormick* v. *South Park Comrs.*, 37 N. E. Rep. 1074, the Supreme Court of Illinois has decided, that where a city has repeatedly allowed property owners to erect buildings projecting into the streets, but has in each case required the plan of the proposed projection to be presented to and approved by the city authorities before it was allowed to be built, the citizens do not thereby acquire any right to build such projections without permission.

Municipal Corporations

The Supreme Court of Washington has given a valuable decision in regard to the manner of voting in deliberative bodies, in *Buckley* v. *Tacoma*, 37 Pac. Rep. 446, by holding that when, by law, a certain proportion of the body is required to pass a measure before it, it cannot be done by a *viva voce* vote, on the ground that "in no case where a fixed proportion of members must vote to carry a measure, is it possible to ascertain the result by the *viva voce* plan."

The Supreme Court of Missouri holds, that it is, as a matter of law, actionable negligence for a manufacturer to obstruct for weeks the street in front of his premises for the purpose of receiving and discharging his goods: *Gerdes* v. *Christopher and Simpson Architectural Iron and Foundry Co.*, 27 S. W. Rep. 614; but according to the Circuit Court of Appeals, Fifth Circuit, in the absence of a statute giving a remedy, a city is not liable for damages for the taking of human life by a mob, although its officers may have been negligent in preserving the public peace: *New Orleans* v. *Abbagnato*, 62 Fed. Rep. 240.

Negligence

The Supreme Court of South Dakota has recently ruled that the constitutional prohibition against changing the compensation of any public officer "during his term of office," does not apply to a deputy appointed by an officer to hold during the pleasure of the latter, as the word

Officers

"term" applies to a fixed period: *Somers* v. *State*, 59 N. W. Rep. 962. See *State* v. *Johnson*, (Mo.), 27 S. W. Rep. 399.

Partnership

The Supreme Court of Minnesota adheres to the doctrine that partnership capital invested in land for the benefit of the partnership will be treated as personalty, and not be subject to dower or inheritance, until it has performed all its functions to the partnership, and has thereby ceased to be partnership capital, and that accordingly the inchoate title of the wife of a partner attaches to only that part of such real estate remaining *in specie*, unconverted, after the complete termination of the partnership: *Woodward-Holmes Co.* v. *Medd.*, 59 N. W. Rep. 1010.

Promissory Notes

The Supreme Court of New Hampshire holds an instrument for the payment of money at the death of the maker good: *Marten* v. *Stone*, 29 Atl. Rep. 845; and the Supreme Court of Idaho has ruled, that a note without grace made payable in a bank, placed and remaining therein for collection, till due, may be sued upon after banking hours on the evening of the day it falls due, when the opening and closing hours are well known to the maker: *Sabin* v. *Burke*, 37 Pac. Rep. 352.

Quo Warranto

According to the Supreme Court of Florida, a plea of *non usurpavit* is not proper in proceedings on an information in the nature of a *quo warranto*, at the relation of a private person, upon refusal of the attorney general to institute suit; for in such a proceeding, when the relator has shown a *prima facie* right to the office, the respondent must show by what title he holds: *Buckman* v. *State*, 15 So. Rep. 697.

Statutes, Construction

In *Chicago, R. I. & P. Ry. Co.* v. *Stahley*, 62 Fed. Rep. 363, the Circuit Court of Appeals, Eighth Circuit, has decided that when a statute of one state, which has there received a settled construction, is adopted in another state, and the Supreme Court of that state puts a different construction upon it, the latter construction will be accepted by the Federal courts as the true construction within that state.