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PROGRESS OF THE LAW.

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Carriers, Limited Ticket

The time limited on a railroad ticket for the completion of the trip must, in order to be binding, allow sufficient time for a person using ordinary diligence to accomplish the trip: *Gulf, C. & S. F. Ry. Co.*, (Court of Civil Appeals of Texas,) 30 S. W. Rep. 294.

A very peculiar decision on a somewhat similar point was rendered a year or so ago by the Court of Errors and Appeals of New Jersey, against the dissent of Justices MAGIE, ABBETT, BROWN and KREUGER. The plaintiff had bought an excursion ticket from R. to M. and return, "*via* B. Branch," "not good to stop off *en route*." The road from R. to B., where it was necessary to change cars, was the main line, and that from B. to M. was the B. Branch. On his return from M. the plaintiff would have been obliged, if his train were on schedule time, to wait in the B. station for half an hour for a train to R. Half a mile from B., however, his train had to wait to allow a belated train to pass. The plaintiff then left

the train, and walked to B., arriving there in time to catch the belated train. But the majority of the court held that he had no right to do this, under the conditions of his ticket; that the belated train was not a connecting train, and the ticket was not good on it; and that therefore he was liable to pay fare: *Penna. R. R. Co.* v. *Parry*, 27 Atl. Rep. 914. This, however, would seem to be an utterly indefensible ruling. It does not appear that one of the conditions of the ticket was that it should be good only on connecting trains, and his walk to the station from the point where the train stopped could hardly be called a stop-off, as he in fact anticipated his train. One cannot but wonder what the learned judges who decided this case would have held if his train had been so delayed as to render it impossible to get home before the time limit expired. Probably they would have said that it was his duty to start the day before.

Fares, Taking Wrong Train

In the opinion of the Supreme Judicial Court of Massachusetts, the rule that a person who by mistake takes a wrong train is not obliged to pay for his ride to the first station at which he has an opportunity to alight, does not apply to one who has a season ticket, and takes a train in the belief that it is good on that train; if not entitled to ride on that ticket on that train, the company may recover fare: *New York & N. E. R. R. Co.* v. *Feely*, 40 N. E. Rep. 20.

Champerty

The Supreme Court of Vermont has recently held, that an agreement by which the plaintiff is to take certain notes, collect them at his own expense without charge to the owner, and divide the amount collected with the latter, under which agreement he had implied authority to bring suits, is champertous and therefore void: *Hamilton* v. *Gray*, 31 Atl. Rep. 315.

Constitutional Law, Compulsory Labor, Roads

The Court of Appeals of Maryland has lately decided a very important question of constitutional law, in *Short* v. *State*, 31 Atl. Rep. 322. The Public Local Laws of that State, Art. 10, §§ 268–270, imposed upon persons residing in Dor-

chester county two days, at least, of compulsory labor in every year, for the purpose of keeping the roads in repair, with the privilege of furnishing a substitute, or of paying a certain sum per day in lieu of personal labor. This act was held to be constitutional, not being such a poll-tax as is prohibited by the constitution, nor being in violation of the Fourteenth Amendment to the Constitution of the United States, as that does not control the power of a State over its own citizens.

Such an act is not unconstitutional as denying the right of trial by jury: *Haney* v. *Board of Comrs. of Barton Co.*, 91 Ga. 770; S. C., 18 S. E. Rep. 28, nor is it in violation of a constitutional provision that no poll-tax shall be levied for county or state purposes, or of a provision of the bill of rights that there shall be no involuntary servitude in the state: *Dennis* v. *Simon*, (Ohio,) 36 N. E. Rep. 832.

Persons cannot be indicted jointly, however, for failing to work on a public road or to pay the statutory sum in lieu thereof: *State* v. *Wainright*, (Supreme Court of Arkansas,) 29 S. W. Rep. 981.

Contempt, Validity of Commitment

According to a recent decision of the Supreme Court of Missouri, in *Ex parte* O'Brien, 30 S. W. Rep. 158, when a court issues a commitment for one charged with interrupting its proceedings by making a murderous assault upon a person named in the court's immediate presence without rendering any judgment, or ordering one to be entered before the commitment, adjudicating that the respondent had been guilty of contempt, the commitment is illegal; and a commitment for such cause is also illegal, when the proof shows that the assault, which was made in an attempt to arrest the person assaulted, occurred in the rotunda outside of the court-room, and that because of a swinging door, the density of the crowd, and the near-sightedness of the judge, he could not have seen the occurrence, and that his subsequent inquiries showed that he did not, in fact, see it.

When a company, composed of a large number of local

Contract in Restraint of Trade, Trust

milk dealers, which is incorporated for the purpose of "buying and selling milk at wholesale and retail," but only acts as a seller's agent to find purchasers, charging the former a commission for that service, adopts and acts under a by-law giving the board of directors the power to fix the price to be paid by the stockholders for milk, the company is an unlawful combination to control the price of milk: *Peo.* v. *Milk Exchange, Ltd.*, (Court of Appeals of New York,) 39 N. E. Rep. 1062; affirming 29 N. Y. Suppl. 259.

Courts, Supreme Court of the United States, Original Jurisdiction

The Supreme Court of the United States, in *State of California* v. *So. Pac. Co.*, 15 Sup. Ct. Rep. 591, has recently decided, (1) That when an original case is pending in that court, to be there disposed of in the first instance, and in the exercise of an exceptional jurisdiction, it is not befitting the gravity and finality of its adjudication to proceed to judgment in the absence of parties whose rights would be in effect determined thereby, even though they might not, in subsequent litigation in other tribunals, be technically bound; and therefore, when such absent parties cannot be made parties to the suit without ousting the jurisdiction of the court, the case will be dismissed; and (2) That the original jurisdiction of the Supreme Court in cases between a state and a citizen of another state rests solely in the character of the parties, and not at all on the nature of the case; and therefore, when the parties are not such as are prescribed by the constitution, the jurisdiction cannot be aided by showing that a federal question is involved.

Justices HARLAN and BREWER dissented from the former of these propositions.

Deed, Escrow, Fraudulent Possession by Grantee

When a deed, delivered in escrow, is fraudulently abstracted from the depositary by the grantee, without performing the conditions on which it was to be delivered to him, it is void, even in the hands of a *bona fide* purchaser of the land granted: *Jackson* v. *Lynn*, (Supreme Court of Iowa,) 62 N. W. Rep. 704.

The Supreme Court of Missouri has lately held, against the dissent of Chief Justice BLACK, and Judges MACFARLANE and GANTT, that since the wife's inchoate right of dower is defeated by the acquisition of land by a railroad, by condemnation proceedings, and also by a conveyance by the husband to the company of a right of way without joining her in the deed, she will be barred of her dower in land conveyed immediately in fee to a third party without her joining, but ultimately conveyed by a subsequent grantee to the railroad company, by a deed purporting to be in fee; because such a deed, in Missouri, conveys only an easement in the right of way: *Chouteau* v. *Mo. Pac. Ry. Co.*, 30 S. W. Rep. 299; *Baker* v. *Atchison, T. & S. F. R. R. Co.*, 29 S. W. Rep. 301. The logic of this is not apparent; and it is only necessary to read the profound and exhaustive dissenting opinion of BLACK, C. J., in the latter case, to be convinced of its injustice.

Dower, Extinction, Deed to Railroad

According to a recent decision of the Supreme Court of Vermont, when two water rights on opposite sides of a stream are owned by one person, and the spent water from the mills on one side of the stream has been discharged below the dam that fed the mills on the other side, the right to so discharge the spent water will continue, upon the owner's death, and the division of the estate in severalty among the respective heirs, by which the water right became vested in different persons: *Mason* v. *Horton*, 31 Atl. Rep. 291.

Easement, Creation

An act prohibiting the printing in more than one column, on the official ballot, the name of a candidate who has received the nomination of two or more parties, is constitutional, under a provision that the legislature shall have power "to pass laws to preserve the purity of elections and guard against abuses of the elective franchise:" *Todd* v. *Board of Election Commissioners*, (Supreme Court of Michigan,) 62 N. W. Rep. 564.

Elections, Ballots

The Supreme Court of New York, First Department, has

again decided, following its former decision in *Goodman* v. *Bainton*, 31 N. Y. Suppl. 1043, that under the Constitution of New York, Art. 2, § 3, which provides that, for purposes of voting, no person shall be deemed to have gained a residence while a student in any seminary of learning, it is immaterial that a student has no other domicile than the seminary: *In re Garvey* 32 N. Y. Suppl. 689. But FOLLETT, J., who did not sit on the hearing of the former case, dissents in a very able opinion, which serves to throw a strong doubt upon the majority decision. All other considerations apart, it is hardly to be believed that the constitution intended to disfranchise any citizen, and yet this is the practical effect of such a decision. It will not do to put this aside by any plea of the duty of the courts to administer the law, regardless of consequences, or any reliance upon the worm-eaten maxim of "*ita lex scripta est.*" Courts are presumed to use common sense, if nothing else, in the construction of both statutes and constitutions, and to adopt the construction most consonant therewith. To allow such a voter the privilege of the franchise, which the constitution professes to secure him, is certainly doing no violence to the spirit of that document, while to blindly adhere to the letter thereof is, in this case, a flagrant example of sticking in the bark. It is to be hoped that the Court of Appeals will take a more liberal view of the case.

Voters, Students

As an ordinary rule, a student does not change his domicile by occasional residence at college: *Granby* v. *Amherst*, 7 Mass. 1; but the mere facts that a student, who has a domicile in one town, resides at a public institution in another town for the sole purpose of obtaining an education, and that he has his means of support from another place, do not constitute the sole test of his right to vote in the latter town. The right of suffrage is acquired only by change of domicile, and the question of change of domicile is to be decided by all the circumstances of the case. If the father is living and the son remains a member of his family, returns to his home to pass his vacations, and is maintained by his father, these circumstances will rebut any presumption of a change; but, if, on the other hand, the father is dead, and he

passes his vacation elsewhere than at his father's former home, or if he describes himself as of such a place, and, otherwise shows an intention to continue there, then a presumption of change will arise: *In re Opinion of Judges*, 5 Metc., (Mass.,) 587. The presumption, however, is against the change, and merely calling a place a person's residence does not make it so: *Sanders* v. *Getchell*, 76 Me. 158. Nor will the payment of road taxes while attending college have any weight in determining the question of residence, when the statute imposing the tax requires only *inhabitancy*, and not *residence*, as the condition of liability thereto: *Dale* v. *Irwin*, 78 Ill. 170; and one who becomes a resident of a county for the purpose of attending college, and who has formed no intention of remaining after the completion of his college course, is not entitled to vote in that county: *Vanderpool* v. *O'Hanlon*, 53 Iowa, 246; S. C., 5 N. W. Rep. 119.

A student at a theological seminary, however, being of age, and otherwise qualified to vote, and being also emancipated from his father's family, may vote in the town in which the seminary is situated: *Putnam* v. *Johnson*, 10 Mass. 488. An undergraduate of a college, free from parental control, who regards the place where the college is situated as his home, and who has no other home to which to return in case of sickness or domestic affliction, is as much entitled to vote as any other resident of the town pursuing his usual vocation. It is *pro hac vice* the student's home, his permanent abode in the sense of the statutes: *Dale* v. *Irwin*, 78 Ill. 170. So, if a student in good faith elects to make the place where the college is situated his home, to the exclusion of all other places, he may acquire a legal residence, though he may intend to remove therefrom at some fixed time, or at some indefinite period in the future: *Pedigo* v. *Grimes*, 113 Ind. 148; S. C., 13 N. E. Rep. 700. And even, (and this we commend to our New York friends,) when the constitution provides that the residence of a student at any seminary of learning shall not entitle him to the right of suffrage in the town where such seminary is situated, it does not prevent a student from gaining a voting residence there if the other conditions concur. He

does not gain a residence *as* a student, but in spite of that fact: *Sanders* v. *Getchell*, 76 Me. 158. See 2 AM. L. REG. & REV. (N. S.) 220.

Homicide Justifiable, Resisting Illegal Arrest

According to the Court of Criminal Appeals of Texas, a person illegally arrested, even though he has acquiesced in the arrest, may use such force as is necessary to regain his liberty; and if there is reasonable ground to believe that the officer intends to shoot to prevent his escape, may shoot the officer in self-defense: *Miers* v. *State*, 29 S. W. Rep. 1074.

Injunction, Closing Alley, Trivial Damage

An injunction will not lie to restrain a city from closing a vacated and unimproved alley, ten to fifteen feet below street grade, when the plaintiff's land forms but a small part of the block through which the alley runs, and fronts on a street, and all the other owners desire to close it: *Christian* v. *City of St. Louis*, (Supreme Court of Missouri,) 29 S. W. Rep. 996.

Interstate Commerce, Discrimination Free Pass

Judge Morrow, of the District Court for the Northern District of California, in a recent charge to the grand jury, has asserted that an officer of a railroad company engaged in interstate commerce, who, as a matter of personal favor, issues a free pass for transportation from one state to another to a person not within any of the exceptions contained in § 22 of the interstate commerce act, is guilty of unjust discrimination, in violation of § 2 of that act: *In re Charge to Grand Jury*, 66, Fed. Rep. 146.

Intoxicating Liquors, Sale

One who solicits others to join with him in the purchase of a quantity of liquor, receives from each the money to pay for the share wanted by each, and afterwards buys and distributes the liquor among those who contributed to its purchase, is guilty of selling liquor without a license: *Hunter* v. *State*, (Supreme Court of Arkansas,) 30 S. W. Rep. 42. HUGHES and RIDDICK, JJ., dissented, with good reason. The objections to this decision are best stated in the language of the former: "It does not appear

from the evidence that the defendant had any interest in the whisky sold by the distillery, that he was the agent of the distillery, or that he received any money for the whisky purchase, save as agent of those who joined him in the purchase, and that what he received he paid over as agent for those interested with him in the purchase, with what he contributed. . . . It seems clear, beyond question, that in this case there was no sale by the defendant, and that he purchased the five gallons of whisky for himself and as the agent of others who joined him in the purchase; that the purchase was a joint purchase, out of which the defendant made no profit, and in which he had no interest, save, as stated, to the extent of his contribution to buy jointly with others. It seems that to hold this transaction to be a sale by the defendant would be to violate elementary principles of law and the plainest principles of reason."

Judicial Notice, Census

The courts will take judicial notice of the last official United States census, to determine the population of a county: *State* v. *Marion County Court*, (Supreme Court of Missouri,) 30 S. W. Rep. 103.

This rule has been generally adopted: *Hawkins* v. *Thomas*, (Ind.,) 29 N. E. Rep. 157; *Bank* v. *Cheney*, 94 Ill. 430; *Peo.* v. *Williams*, 64 Cal. 87; S. C., 27 Pac. Rep. 939; *Peo.* v. *Wong Wang*, (Cal.,) 28 Pac. Rep. 270; *State* v. *Braskamp*, (Iowa,) 54 N. W. Rep. 532; *Guldin* v. *Schuylkill Co.*, 149 Pa. 210. But it was rejected, on grounds of political expediency, by the Court of Appeals of New York, in *Peo.* v. *Rice*, 31 N. E. Rep. 921.

Jury, Majority Verdict

The Supreme Court of Utah has decided, that an act providing that in civil cases a verdict may be rendered on the concurrence therein of nine or more members of the jury, is constitutional: *Mackey* v. *Enzensperger*, 39 Pac. Rep. 541.

This follows the decisions in *Hess* v. *White*, 9 Utah, 61; S. C., 33 Pac. Rep. 243, and *Fred. W. Wolf Co.* v. *Salt Lake City*, (Utah,) 37 Pac. Rep. 262. But these cases stand almost alone, and the overwhelming weight of authority is, that in

the absence of any constitutional provision the right of trial by jury implies a right to the concurrent judgment of twelve men upon the matter in issue, and that a statute authorizing the rendition of a verdict by any less number is unconstitutional and void: *Jacksonville, T. & K. W. Ry. Co.* v. *Adams*, 33 Fla. 608; S. C., 15 So. Rep. 257; *In re Opinion of Justices*, 41 N. H. 550; *Carroll* v. *Byers*, (Ariz.,) 36 Pac. Rep. 499; *Bradford* v. *Territory*, 1 Okl. 366; S. C., 34 Pac. Rep. 66.

The full and carefully considered opinion in *Hess* v. *White*, however, presents the opposite view with much force. It clearly disproves the conclusiveness of the argument that the jury meant by the Constitution of the United States was one of twelve jurors acting unanimously, since that was the only jury known to the common law, by showing that other equally essential qualifications of a common-law jury, (*e. g.*, that the jurors should be freeholders,) though in full force at the adoption of the Constitution, have now became obsolete, and are not reckoned as essential to the right of trial by jury, and points out the non-essential character of unanimity and the advantages of the majority verdict in the following terse language: "Wherever this provision has been tried, it has been found to be a distinct benefit. Such a provision is simply a change in the procedure of applying legal remedies. It is general in its application; it is fair and just to all. No man's property rights are injured by it, and no man can be said to have a vested right in the unanimous action of a jury, any more than in the fact that a juror was anciently required to be a freeholder. All litigants could waive, in civil trials at common law, and under our constitution, this unaminity of verdict. If they could waive it, then it was not one of the requisites which must be preserved in order to preserve a jury trial in civil actions." It is difficult to find arguments strong enough to carry this position.

But, while the weight of authority is at present opposed to permitting this rule to be established by statute, there would seem to be no valid objection to permitting it to be done by constitutional provisions. Yet even then, such a provision

will not authorize the legislature to provide for certain contingencies in which a jury shall consist of less than twelve men, in the discretion of the trial court: *McRae* v. *Grand Rapids, L. & D. R. Co.*, 93 Mich. 399; S. C., 53 N. W. Rep. 561.

The preceding observations, however, apply only to civil actions. In criminal suits, the defendant can neither waive his right to be tried by a jury of twelve, nor be deprived by the legislature of his right to the unanimous verdict of those twelve: *Allen* v. *State*, 54 Ind. 461; *Cancemi* v. *Peo.*, 18 N. Y. 128. Whether this right can be affected by constitutional provisions, is a doubtful question.

Libel, In Pleading

When the facts furnished by a client to his attorney are misleading, and defamatory in character, and their incorporation into the petition is foreign to the object and purposes of the suit, the client is responsible in damages: *Wimbish* v. *Hamilton*, (Supreme Court of Louisiana,) 16 So. Rep. 856.

Retraction

The Supreme Court of Georgia has very properly ruled, that an offer by the publisher of a newspaper, made pending a suit against him for a libel, to open the columns of the paper to the plaintiff for any explanation or statement he wishes to make, counts for nothing on the trial of the action: *Constitution Pub. Co.* v. *Way*, 21 S. E. Rep. 139.

Limitation of Actions

According to a recent decision of the Supreme Court of Pennsylvania, when a land-owner, by means of openings on his own land and subterranean passageways leading therefrom, mines and removes coal from adjoining land of another without his knowledge, the latter having also no means of obtaining knowledge of the trespass, the limitation of his right of action for compensation does not begin to run until he discovers the trespass, or until discovery is reasonably possible: *Lewey* v. *H. C. Frick Coke Co.*, 31 Atl. Rep. 261.

A finding by the examining court that there was probable

cause to believe the plaintiff guilty of the crime charged, and the binding of him over for trial, is only *prima facie* evidence of probable cause; and further, probable cause cannot be shown by admissions of the plaintiff after his arrest, nor by the finding of property on his premises, similar to that stolen, if that fact was not known to the defendant when he began the prosecution: *Louisville N. A. & C. Ry. Co.* v. *Hendricks*, (Appellate Court of Indiana,) 40 N. E. Rep. 82.

Malicious Prosecution, Probable Cause

An experienced lineman, who is provided with non-conducting rubber gloves, but does not use them, and is killed by touching the exposed ends of live wires, which were perfectly obvious to the view, must be held to have assumed the risk: *Junior* v. *Missouri Electric Light & Power Co.*, (Supreme Court of Missouri,) 29 S. W. Rep. 988.

Master and Servant, Assumption of Risk

The Queen's Bench Division of England has lately decided a very peculiar case. While an omnibus belonging to the defendants was being driven by their servant, a policeman, being of opinion that the driver was drunk, ordered him to cease driving at once. The driver and the conductor of the omnibus thereupon authorized a third person, who was passing, to drive the omnibus home on their master's behalf. That person, while driving, negligently drove over the plaintiff and injured him. The court held, that as, under the circumstances, the servants of the defendants had an implied authority to appoint another person to act as a servant on their master's behalf, it being a case of sudden emergency, the defendant was liable: *Gwilliam* v. *Twist*, [1895] 1 Q. B. 557.

Deputing Authority

According to the Supreme Court of New York, Fourth Department, the trainmen of a railroad company which runs its trains over the road of the defendant company, under a contract by which the superintendent of the latter arrange all the time tables and controls the conductors of the other company, are not fellow-servants with the employes of the defendant, though the same person is general

Fellow-servants

manager of both roads, and one person is superintendent of both on the division where the accident occurred: *Tierney* v. *Syracuse, B. & N. Y. R. Co.*, 32 N. Y. Suppl. 627.

Negligence of Fellow-servant, Notice

The Court of Appeals of New York has recently held, in *Cameron* v. *N. Y. Cent. & H. R. R. Co.*, 40 N. E. Rep. 1, that when a servant is competent when employed, but afterwards becomes habitually negligent, and causes the death of a fellow-servant by his violation of the employer's rules, the employer will not be liable, on the ground of negligence in failing to discover the servant's habitual misconduct, and in omitting to discharge him, if the work of the servant is of such a nature that the employer has no opportunity to learn of his misconduct, and it is not reported by his fellow-servants, although they were under positive instructions to report all violations of rules.

Negligence Imputed, Fellow-servant

One of the absurd claims ever made in a court of law was lately rejected by the Supreme Court of Indiana, in *Abbitt* v. *Lake Erie & W. R. R. Co.*, 40 N. E. Rep. 40. Two car inspectors were at work at night, one under the car, changing a coupler, and the other holding a torch to light him, when the employes of another company backed down upon them, without notice or warning, and the inspector under the cars was killed. The attorney for the company asked for an instruction which in effect would have imputed the negligence of the inspector with the torch, in not looking for the backing train, to the one under the car; but this was refused by the trial court, and the refusal was approved by the Supreme Court, HOWARD, J., saying tersely, "It is usually quite enough for a person to be responsible for his own negligence, without being called upon to answer for the negligence of some one else."

Injury to Child, Action by Mother

The Supreme Court of Georgia has recently held, that when a husband has abandoned his wife and child, and failed to provide for them, the wife, while living separate from her husband and having the entire care and custody of the child, may maintain an action against a railway company for injuries to the child caused by the negligence of the company since the separation took

place, by reason of which she is deprived of his services: *Savannah, F. & W. Ry. Co.* v. *Smith*, 21 S. E. Rep. 157.

According to the same court, the following questions: (1) Whether a railway company, having stopped a train immediately after the conductor called out the station, failed in extraordinary diligence towards the plaintiff by not warning him that the station had not been reached, so as to prevent him from alighting in the darkness of the night at an unsafe place; and (2) Whether the plaintiff was negligent in so alighting without first assuring himself that the station had been reached or that the place was safe, are more proper for submission to a jury than for determination by the court on a motion for non-suit: *Miller* v. *East Tenn., V. & G. Ry. Co.*, 21 S. E. Rep. 153. The non-suit granted in this case was accordingly set aside.

Railroad, Questions for Jury, Non-suit

When the water of a natural stream is polluted by the discharge of drainage therein by a city, and also by the discharge of noxious matter from gas works owned by a private individual, to the injury of one through whose lands the stream flows, the city and owner of the gas works, though not joint tort-feasors, are jointly and severally liable in damages; but a release of the owner of the works will not release the city from liability, unless executed in full satisfaction of all the injury sustained by reason of the nuisance: *City of Valparaiso* v. *Moffit*, (Appellate Court of Indiana,) 39 N. E. Rep. 909.

Nuisance, Joint Liability, Release

The son of a clerk of court, acting as his father's deputy, and generally recognized as such, is an officer *de facto* with respect to his acts in that capacity; and an affidavit in attachment made before him is not void, although, on account of his minority, he could not have been lawfully appointed as deputy: *Wimberly* v. *Boland*, (Supreme Court of Mississippi,) 16 So. Rep. 905.

Officer de facto, Minor

The Court of Appeals of New York has lately rendered a

very interesting decision, to the effect that under the statute of that state, (New York Laws, 1885, c. 364,) providing for the retirement on pension of members of the police force of the city of New York, who have served twenty years or upward, the police commissioners have a discretionary power to retire members of the force, and cannot be compelled to do so by mandamus: *Peo.* v. *Martin*, 39 N. E. Rep. 960.

Pensions, Retirement, Discretion

The Court of Civil Appeals of Texas has recently held, in accord with the weight of authority, that the governor of a state has power to pardon a person convicted of crime after he has served his term of imprisonment, and that such a pardon will restore the person to competency as a witness on the trial of an action, the right of which accrued before the pardon was granted: *Missouri, K. & T. Ry. Co. of Texas* v. *Howell*, 30 S. W. Rep. 98.

Pardon, Effect

The Supreme Court of New York, Second Department, has lately ruled, in *In re Quigley*, 32 N. Y. Suppl. 828, that a police justice, who, during a strike of the employes of a street railway company, discharged strikers who were arrested and brought before him, charged with throwing stones at the cars and assaulting the main operator of the cars, in spite of the evidence against them, and who stated that the strikers had a perfect right to take men off the cars if they could do so in an orderly way, is guilty of such misconduct as to warrant his removal.

Police Justice, Misconduct Removal

In *Frame* v. *Felix*, 31 Atl. Rep. 375, the Supreme Court of Pennsylvania has held, that if a board of city commissioners, in specifications for work to be done, fix a minimum price to be paid by the contractor for labor, and award the contract for the work on the basis of those specifications, their action is a violation of a statutory provision requiring such work to be awarded to the lowest responsible bidder, and is void, and may be set aside on bill filed by a tax-payer and property owner.

Public Contracts, Awarding

According to the Supreme Court of Illinois, a receiver appointed by an Illinois court on a creditor's bill to enforce an Illinois judgment may hold the debtor's assets as against an attaching creditor, who is a citizen of Illinois, even though the bill was brought by a citizen of New York; the mere fact that the creditor who brought the bill is a non-resident does not make the enforcement of the judgment a matter of comity, when the ancillary proceedings are brought in the same state: *Holbrook* v. *Ford*, 39 N. E. Rep. 1091.

Receiver, Right to Assets

The Court of Civil Appeals of Texas has just rendered a very interesting decision on the question of the right of a parent whose child has been expelled from boarding school to recover advance payments for tuition, as follows: (1) When the evidence shows that it is the understanding between the parties that, in case of expulsion of the pupil for misconduct, advance payments should be liquidated damages, and not recoverable, and the rules of the school provide that there will be no reduction in case of withdrawals, and that all payments will be forfeited on expulsion, there can be no recovery; (2) That the conduct of a pupil at a boarding school, in continually playing truant, and finally leaving for his home, is ground for expulsion; especially when the father refuses to permit the teacher to whip his son for misconduct, and takes no steps himself to correct him: *Fessman* v. *Seeley*, 30 S. W. Rep. 268.

Schools, Private, Advance Payments, Recovery on Expulsion

The Court of Appeal of England has recently laid down the broad rule that an action of slander will lie, without proof of special damage, for words imputing dishonesty or malversation in a public office of trust, although the office is not one of profit, and whether there is a power of removal from the office for such misconduct or not: *Booth* v. *Arnold*, [1895] 1 Q. B. 571.

Slander, Misconduct of Public Officer

A difference in the punctuation of similar statutes does not

necessarily indicate a change in the construction; especially when the punctuation is the work of the printer, not of the legislature: *Griffiths* v. *Montandon*, (Supreme Court of Idaho,) 39 Pac. Rep. 548.

Statutes, Punctuation

See 34 Cent. L. J. 253.

The Supreme Court of the United States has added another laurel to the crown it has of late been so industriously weaving for itself by deciding, by a vote of five to four, that the Income Tax act is wholly unconstitutional, on the ground that an income tax is a direct tax, and therefore must be apportioned according to representation. This result was brought about by a change of heart on the part of one Mr. Justice SHIRAS, of Pennsylvania.

Taxation

The Circuit Court for the Southern District of New York has lately ruled, in *William Rogers Mfg. Co.* v. *R. W. Rogers Co.*, 66 Fed. Rep. 56, that the rule that the user of a personal name as a trade-mark will not be protected against its use in good faith by a defendant who has the same name, does not apply to the case of a corporation, which selects its own name, especially when that name was selected in order to mislead.

Trade Mark, Use of Names

The owner of land, across which there is a private way for passage only, has the right to protect his fields by such a gate or other structure as will not unreasonably obstruct the use of the way: *Hartman* v. *Fick*, (Supreme Court of Pennsylvania,) 31 Atl. Rep. 342.

Ways, Private, Obstruction

The Master of the Rolls of Ireland has recently decided, that a gift over of real estate in the event of the devisee marrying a man "beneath her in life, that is to say, below her in social position," is good: *Greene* v. *Kirkwood*, 1 Ir. R. 130.

Will, Condition in restraint of Marriage

In a recent case in the Court of Chancery for Ireland, a

Demonstrative Legacy, Inaccurate Description

decedent by her will declared that she had certain sums of money on deposit in "the Australian Bank" and another, and bequeathed to certain legatees specific portions of the gross amount. She had, however, no sum on deposit in either bank, but had, standing in her name, eleven shares in the Union Bank of Australia. The vice-chancellor accordingly held that these shares passed under the bequest of the sum on deposit in the Australian Bank: *Mosse* v. *Cranfield*, [1895] 1 Ir. R. 80.

A devise of No. 204 Lexington avenue, when the only premises owned by the testator on that avenue, both at the time of the execution of the will and of his death, were No. 738 Lexington avenue, and he never at any time owned No. 204, will pass No. 738: *Govin* v. *Metz*, 29 N. Y. Suppl. 988; and directions to an executor to sell a house and lot in N., and pay certain legacies out of the proceeds, empowers him, in the light of evidence that the testatrix owned no realty except a house and lot in B., a suburb of N., to sell and make title to the property in B.: *Hawkins* v. *Young*, (N. J.,) 29 Atl. Rep. 511.

Insane Delusion, Spiritualism

A belief in spiritualism is not conclusive evidence of a want of testamentary capacity, provided the testator is not affected with any delusion respecting matters of fact connected with the making of the will or the objects of his bounty: *McClary* v. *Stull*, (Supreme Court of Nebraska,) 62 N. W. Rep. 501. See 31 AM. L. REG. 505, 569.

Writ, Service in Corporation

The Supreme Court of Louisiana has lately ruled, in *Gravely* v. *Southern Ice Machine Co.*, 16 So. Rep. 866, that any service which would be sufficient as against a domestic corporation may be authorized by statute as sufficient to commence an action against a foreign or non-resident corporation; and that such service may therefore be made upon the president of a foreign corporation during the time he is temporarily abiding within the jurisdiction of the court in which the suit is brought.

The Supreme Court of the United States, however, has

recently held, that in a personal action against a foreign corporation, neither doing business within the state, nor having an agent or property therein, the service of a summons on its president, while temporarily within the jurisdiction, is not a sufficient service on the corporation: *Goldey* v. *Morning News of New Haven*, 15 Sup. Ct. Rep. 559; affirming 42 Fed. Rep. 112. To the same effect is *Fidelity Trust & Safety Vault Co.* v. *Mobile St. Ry. Co.*, 53 Fed. Rep. 850.