PROGRESS OF THE LAW.

As Marked by Decisions selected from the Advance: Reports for May.

The Circuit Court for the District of Kansas has lately held, that a "boycott" by the members of trades unions or assemblies, (the term boycott being understood to mean, in law, a combination to inaugurate and maintain a general proscription of articles manufactured by the party against whom it is directed,) is unlawful, and may be enjoined in equity; but that in such a suit a federal court has no jurisdiction of individual defendants who are citizens of the same state with the complainant, nor can the association be sued as a body, or members thereof be enjoined who are not parties to the record: *Oxley Stave Co.* v. *Coopers' International Union of North America*, 72 Fed. Rep. 695.

Boycott, Injunction, Jurisdiction of Federal Court

The Supreme Court of Illinois, in *Love* v. *People*, 43 N. E. Rep. 710, has lately rebuked a most flagrant example of a frequent abuse of the detective profession. It appeared on the trial that there had been numerous burglaries committed in a town, and that the authorities employed a detective to discover the criminals. This detective became acquainted with the defendants, spent money on them, loaned them money, and repeatedly suggested to them that they should engage in burglary as a means of raising money. At last he made arrangements with one Hoag to put marked money in his safe, with the understanding that it should be burglarized, and one night, having made the defendants drunk, he led them to Hoag's office, opened the office and the safe himself, and took out the money and handed it to the defendants, who took it, and afterwards divided it among themselves. The court held that these facts did not warrant a conviction for burglary, and discharged the defendants.

Burglary, Crime Induced by Detective

The portion of the opinion which discusses the actions of the detective is well worth quoting. "Day after day and night after night his efforts were not directed to the arrest of criminals, but his mental powers and robust health, with the use of money, were directed towards an effort to make criminals of these young men; with plenty to drink and smoke and eat at his expense, he sought to undermine and dazzle their mental and moral strength, and lead them into the commission of crime. Ambitious, doubtless, to succeed in his chosen pursuit, with him the conviction of those theretofore guilty was less an object than that he might fasten on some one the commission of a crime. If he could make the criminal, and induce the commission of the crime, and cause the arrest of the actor, or throw around him a web of circumstances that would lead to conviction, it would redound to the glory of his chief, and cause his advancement. With him the end justified the means, and the reputation of the agency to which he belonged and his own advancement were apparently his object. Such means and agents are more dangerous to the welfare of society than are the crimes they were intended to detect, and the criminals they were to arrest."

Carriers, Passengers in Excess of Capacity of Cars, Degree of Care Required

In *Chicago & Alton R. R. Co.* v. *Dunser*, 43 N. E. Rep. 698, the Supreme Court of Illinois has lately held, that when the number of passengers who have a right to take a certain train is in excess of its capacity, the company must exercise the same degree of care, vigilance and forethought in providing additional cars, as it is bound to exercise in its other relations to its passengers.

Injury to Passenger by Third Person, Liability

A railroad or sleeping car company is not liable for the death of a passenger at the hands of an intruder upon the cars for the purpose of robbery, in the absence of evidence to show that they or their employes knew of the danger impending, or of circumstances to arouse their suspicion: *Connell* v. *Chesapeake & Ohio Ry. Co.*, (Court of Appeals of Virginia,) 24 S. E. Rep. 467.

In a recent case in the Supreme Judicial Court of Maine, *Eaton* v. *McIntyre*, 34 Atl. Rep. 525, the incidents of the contract of carriage contained in a mileage book were briefly discussed. The plaintiff handed his mileage-book to the conductor, and requested him to take his fare from the back part of it. The coupons were numbered in regular order from front to back, and a portion of the leaves in the back part only had been detached, leaving six or eight coupons that were a part of the last leaf. The conductor took these coupons and the rest of the fare from the front of the book. The passenger thereupon sued him for the conversion of the book. This claim the court set aside as absurd, holding that mileage books contain a contract between the railroad and the passenger, to which the latter affixes his name, and expressly provide that the coupons shall be detached by the conductor; this provision fairly implies that the conductor has the right to determine from what part or parts of the book the coupons shall be taken; that the passenger had no right to determine from what part of the book the fare should be taken; and that the conductor, in detaching coupons from the front part of the book, contrary to the passenger's request, did not exercise an unlawful dominion over the book, and was not guilty of a conversion of it.

Railroads, Mileage Books, Taking Fare

In *Elder* v. *Whitesides*, 72 Fed. Rep. 724, the Circuit Court for the Eastern District of Louisiana has decided, following *Hagan* v. *Blindell*, 56 Fed. Rep, 696, 1893, and *Arthur* v. *Oakes*, 63 Fed. Rep. 310, 1894, that a conspiracy to prevent the loading or unloading of a vessel, except by such labor as may be acceptable to the defendants, may be enjoined, though no particular overt act or acts against that particular vessel is alleged or proved; that it is no ground for refusing an injunction to restrain conspirators from doing irreparable damage to complainant's property rights that some of the acts enjoined would subject the wrongdoers to a criminal prosecution; and that a suit by an alien against citizens of the United States to enjoin a conspiracy to prevent the loading or

Conspiracy, Injunction

unloading of the complainant's ship is within the equity jurisdiction of the federal courts, independent of any question as to interference with interstate or foreign commerce.

Constitutional Law, Freedom of the Press

The Supreme Court of California has set the seal of its approval upon that unbounded license of the press which, while it may possibly be the palladium of our liberties, is at the same time doing more than any other factor to debauch public morals and obstruct the cause of justice. During the Durrant trial in San Francisco, a fellow named Daily advertised that he would bring out in a theatre of that city a putative play entitled "The Crime of a Century." Durrant then presented an affidavit to the court setting forth that the said play was based upon the facts of his case as established at the preliminary examination and the coroner's inquest, and that the production of that play during the progress of his trial would be an interference with the administration of justice, and deprive him of a fair and impartial trial. The court granted this motion; but the Supreme Court reversed it, holding that it had no jurisdiction to take such action: *Daily* v. *Superior Court of City and County of San Francisco*, 44 Pac. Rep. 458.

Justices McFarland and Semple dissented, with a greater show of reason than those who concurred in the majority opinion. If that is correct, then no court has the power to preserve its proceedings intact from the defiling touch of the scavengers of the press and the variety shows.

Interstate Commerce, Penalty for Failure to Deliver Telegraph Message

According to a recent decision of the Supreme Court of the United States, a State statute which requires a telegraph company to transmit and deliver despatches with impartiality, good faith, and due diligence, under the penalty of one hundred dollars in each case, (Act Ga. 1887, Oct. 22: P. L. 111,) is not void, as to messages coming from without the state, as an interference with interstate commerce, in the absence of any legislation by Congress on that subject: *Western Union Tel. Co.* v. *James*, 16 Sup. Ct. Rep. 934.

The Supreme Court of Nebraska, in *Le Hane* v. *State*, 66 N. W. Rep. 1017, has recently passed upon a rather unusual question. An attorney applied to a trial judge for an order transferring a cause to another judge for trial, because of prejudice on the part of the former. He supported the application by proof that he had published a libel of and concerning the judge to whom the application was made, and attached a copy of the libelous publication to his affidavit. The application itself was made in respectful language, and it did not appear that it was not presented in a respectful manner. The judge, thinking this an excellent opportunity to get square with the attorney, forthwith adjudged him guilty of contempt, and sentenced him to fine and imprisonment. This the Supreme Court held that he had no right to do, summarizing the law on the subject as follows:

Contempt, Application for Another Judge

"A party to an action, or counsel, may, in good faith, apply to a judge, before whom a case would naturally come on for hearing, to have another judge try the case, because of prejudice on the part of the first judge which would prevent an impartial trial. Such an application, when presented in respectful language and in a respectful manner, is not, in itself, a contempt of court. Such an application must be supported by proof, and the tendering of proof in support thereof is not a contempt of court when offered, in good faith, for the purpose of establishing the judge's prejudice, and not for the purpose of reflecting upon his honor, integrity, or character. When such proof is of a documentary character, the proceeding is not rendered contemptuous, when it is so conducted in good faith, merely because documents introduced do reflect upon the character of the judge, and even though their original publication might have been contemptuous or criminal; and, finally, in a summary proceeding for contempt, the court cannot take notice of such original publication, or of such improper motive in making the application. To reach these matters the proceeding must be on information as for constructive contempt."

Contract, Latent Defect, Liability

The Court of Appeals of New York, in *Carleton* v. *Lombard*, 43 N. E. Rep. 422, has recently rendered a decision of great interest to the mercantile world. The defendants in that case—a corporation engaged in refining crude petroleum for sale and export—contracted in writing to manufacture and deliver to the plaintiffs, for shipment, oil of a certain brand, color, and fire test. Pursuant to the rules of the Produce Exchange, which were made a part of the contract, the plaintiffs appointed an inspector, who certified that the oil delivered was of the brand, color, and test contracted for. These rules also provided that the acceptance of the oil by the buyer's inspector should be an acknowledgment that the oil was in accordance with the contract. The court held that under this contract the defendant was bound to deliver oil free from latent defects, growing out of the process of manufacture, which would render it unmerchantable at the time and place of delivery, and which could be avoided by the use of reasonable care; and that this obligation of the defendant survived the acceptance of the oil by the inspector, if the latent defect was such as would not appear upon an inspection to ascertain whether oil accepted corresponded to that described in the contract.

Corporations, Call on Shares by Order of Court, Effect

According to a recent decision of the Supreme Court of the United States, an order of court making a call or assessment upon all stockholders of a corporation who have not paid their shares in full is simply such a call as the directors might have made before the matter was brought within the court's jurisdiction, and is not a judgment against any particular stockholder, so as to be entitled to "full faith and credit" in the courts of another state, where an action is brought against a stockholder to recover the amount of the assessment on his shares. In such an action the defendant may set up any defence which he might have made to an action on the subscription contract: *Great Western Tel. Co.* v. *Purdy*, 16 Sup. Ct. Rep. 810.

In a late case in New York, involving the validity of the election of the officers of a corporation, it appeared that printed

Election of Officers

ballots had been prepared containing the names of those candidates who had been previously placed in nomination,—among them, a candidate for secretary. Another candidate was nominated for the position, and his name was directed to be written on all the ballots in a space left for that purpose. In casting the ballots the greater number of those who voted erased one of the two names; but two ballots were cast containing both names, with neither erased, and discarding these ballots, neither nominee had enough to elect. Another ballot was thereupon taken; and the court held this to have been correct, as the written name on the two ballots rejected could not be considered as controlling the printed one in indicating the choice of the voter: *People* v. *Pangburn*, (Supreme Court of New York, Appellate Division, First Department,) 38 N. Y. Suppl. 217.

Failure to File Annual Report, Liability of Directors

Judge McAdam, of the Supreme Court of New York, at Trial Term for New York County, has lately held that the limitation of the action to enforce the liability of directors of a corporation for their failure to file the annual report required by law, begins to run from the time the debt first became due and enforceable by action, and that the operation of the statute cannot be suspended by renewals or extensions granted without consultation with, or the knowledge of the director sought to be charged: *Blake* v. *Clausen*, 38 N. Y. Suppl. 514.

Officer as Witness, Transactions with Decedent

The Supreme Court of Georgia, following the settled rule, has lately held, that there is no reason which excludes a director or other agent of a corporation from testifying as a witness in a case to which the corporation is a party, concerning transactions had between that director or agent in behalf of the corporation and another person since deceased, whose executor or administrator is the other party to the case: *Ullman* v. *Brunswick Title Guaranty & Loan Co.*, 24 S. E. Rep. 409.

Pooling Stock, Public Policy

According to a recent decision of the Supreme Court of North Carolina, an agreement between stockholders holding a majority of the shares to pool their stock by transferring it to trustees, and authorizing them to

vote all such stock at corporate meetings, and to pledge it as collateral for loans, is void, as against public policy: *Harvey* v. *Linville Imp. Co.*, 24 S. E. Rep. 489.

An examination of the case will show that the language of this decision goes too far. Such an agreement, according to the best authority, is not void, but simply revocable at the will of any party thereto; and that was all that was necessary to the decision of the case in hand.

The Supreme Court of the United States has lately passed upon two questions which, though at no time in great doubt, it was well to have finally settled. The first of these is, that a holder of railroad stock, issued to him as full paid, in payment of undisputed debts due to a construction company, whose claims have been assigned to him, takes it free of all trusts or obligations in favor of the company issuing it, and is under no duty to that company or to its other stockholders to continue in the ownership thereof, for the purpose of facilitating pending regulations for the transfer of the control of the company to another railroad company, but may sell the same to a rival company also seeking control, or to whomsoever he sees fit, and for any price obtainable; the second, that when an act of the legislature simply takes away from one railroad company lands previously granted to it, because of its entire failure to comply with the conditions of the grant, and bestows them on another company, the courts cannot hold, in the absence of any provision in the statute to that effect, that the lands were transferred burdened with a continuing obligation for the debts of the former company, for the creditors of that company could have no legal or equitable claims on lands thus forfeited: *Farmers' Loan & Trust Co.* v. *Chicago, P. & S. Ry. Co.*, 16 Sup. Ct. Rep. 917.

Railroads, Rights of Stockholders, Forfeited Land Grants, Transfer to other Company, Rights of Creditors

The Supreme Court of Pennsylvania, extending the principle enunciated in *Goldey* v. *Morning News*, 156 U. S. 518, 1895, affirming 42 Fed. Rep. 112, 1890 (see 34 AM. L. REG. (N. S.) 680), has decided that nothing short of express statutory permission will authorize the commencement of an action against a railroad

Corporations, Suits Against, Venue, Service

company for personal injuries in a county where it has no office, agent, or property, by service on an officer temporarily within that county: *Bailey* v. *Williamsport & N. R. R. Co.*, 34 Atl. Rep. 556.

Criminal Law, Carrying Weapons, Brass Knuckles

The Court of Criminal Appeals of Texas has gravely decided, that an information charging a defendant with carrying "brass knuckles" is supported by proof of the carrying of knuckles made of any metal or hard substance, the kind of metal of which they are composed not being an element of the offence; for "this court judicially knows that 'brass knuckles' may be composed of metal other than brass, as steel, iron, &c:" *Louis* v. *State*, 35 S. W. Rep. 377.

Ex Post Facto Law, Selection of Jurors

In *Gibson* v. *State of Mississippi*, 16 Sup. Ct. Rep. 904, the Supreme Court of the United States has recently decided, that a constitutional provision, which required all grand and petit jurors to be qualified electors, able to read and write, and enjoined on the legislature the duty of providing by law for listing and drawing persons so qualified, but declared that, until otherwise provided by law, all crimes should be tried as though no change had been made, (Const. Miss. 1890, §§ 264, 283,) went into effect immediately on its adoption, so far as the qualifications of jurors were concerned; that one who committed a crime after the adoption of the constitution, but before the legislature passed a new jury law, could be tried, after the passage of such a law, by a jury selected under its provisions; and that, as the new law did not aggravate the crime previously committed, or inflict a greater punishment, or alter the rules of evidence, its application to the trial of the accused did not make it an *ex post facto* law.

Descent and Distribution, Murder of Ancestor

In *In re Fleming*, 38 N. Y. Suppl. 611, the Supreme Court of New York, at Special Term for New York County, has held, in accordance with the decision in *Riggs* v. *Palmer*, 115 N. Y. 506, 1889, that when an heir has been indicted for the murder of his ancestor, his petition to compel payment to him of his dis-

tributive share of the estate will not be heard until the indictment has been tried.

In *McKay* v. *Southern Belt Telephone & Telegraph Co.*, 19 So. Rep. 695, the Supreme Court of Alabama has lately ruled,

Electric Railway, Wires, Negligence

that when two wires charged with electricity, maintained concurrently by different parties, are so situated with reference to each other that one is likely to fall across the other, and produce dangerous consequences, this danger being within the common knowledge of both parties, it is the duty of each to abate the dangerous condition; and if they fail to do so, both are liable for accidents resulting therefrom.

A street car company which uses electricity is bound to employ the best mechanical contrivances and inventions; and

Proof of Similar Accidents

evidence that a particular trolley wire has been the subject of frequently recurring accidents is admissible, as showing that the company had notice of its unsafe condition: *Richmond Ry. & El. Co.* v. *Bowles*, (Supreme Court of Appeals of Virginia,) 24 S. E. Rep. 388.

A railroad ticket in such form as to show that an innocent holder of it is entitled to a ride over a railroad is property that

Embezzlement, Railroad Tickets, Indictment

may be embezzled; and the indictment therefor may charge in the same court the embezzlement of fifty pieces of paper, each of a certain stated value, and of fifty railroad tickets of like value: *Commonwealth* v. *Parker*, (Supreme Judicial Court of Massachusetts,) 43 N. E. Rep. 499.

The Supreme Court of Illinois, in two recent cases, has held that death by accidental poisoning is not within the provisions

Insurance, Life, Death by Poison

of a policy insuring against death from injuries received through "external, violent and accidental means," unless it is caused from "taking poison," "suicide," &c.: *Travelers' Insurance Co.* v. *Dunlap*, 43 N. E. Rep. 765, affirming 59 Ill. App. 515; or one which provides that "this nuisance shall not be held to extend to

. . . . poison in any way taken, administered, absorbed, or inhaled:" *Metropolitan Accident Assn.* v. *Froiland*, 43 N. E. Rep. 766, affirming 59 Ill. App. 522; since in each policy the exception extends only to poison taken by the voluntary, intelligent act of the insured; and that the insurer will be liable in both cases.

Insurance, Life, Murder of Insured by Insane Beneficiary

The same court has also held, that the killing of the insured by an insane beneficiary, under circumstances which would constitute murder if the beneficiary were sane, does not cause a forfeiture of the policy: *Holdorn* v. *Grand Lodge of Ancient Order of United Workmen*, 43 N. E. Rep. 772; reversing 51 Ill. App. 200.

Interstate Commerce, Prohibition of Sunday Trains, Power of State

In *Hennington* v. *Georgia* (not yet reported), the Supreme Court of the United States has rendered a highly important decision with reference to the power of the States to pass statutes affecting interstate commerce. The case in hand was a prosecution under a statute of the State of Georgia, which made it a misdemeanor to run freight trains (with a few exceptions) on Sunday. This was urged by the defence to be in conflict with the clause of the Constitution giving Congress power to regulate commerce among the States, but the court refused to adopt this view, and affirmed the decision of the Supreme Court of Georgia, holding that the act in question was a proper police regulation, and therefore not obnoxious to the constitutional provision, unless it should come into conflict with congressional legislation on the subject.

After citing numerous authorities, Mr. Justice Harlan summarizes the principles that governed the decision in the following masterly manner:

"These authorities make it clear that the legislative enactments of the States passed under their admitted police powers, and having a real relation to the domestic peace, order, health, and safety of their people, but which, by their necessary operation, affect to some extent, or for a limited time, the conduct of commerce among the States, are yet not invalid by force

alone of the grant of power to Congress to regulate such commerce, and, if not obnoxious to some other constitutional provision or destructive of some right secured by the fundamental law, are to be respected in the courts of the Union until they are superseded and displaced by some act of Congress passed in execution of the power granted to it by the Constitution. Local laws of the character mentioned have their source in the powers which the States reserved and never surrendered to Congress, of providing for the public health, the public morals, and the public safety, and are not, within the meaning of the Constitution, and considered in their own nature, regulations of interstate commerce simply because, for a limited time or a limited extent, they cover the field occupied by those engaged in such commerce. The statute of Georgia is not directed against interstate commerce. It establishes a rule of civil conduct applicable alike to all freight trains, domestic as well as interstate. It applies to the transportation of interstate freight the same rule precisely that it applies to the transportation of domestic freight. And it places the business of transporting freight in the same category as all other secular business. It simply declares that, on and during the day fixed by law as a day of rest for all the people within the limits of the State from toil and labor incident to their callings, the transportation of freight shall be suspended.

We are of opinion that such a law, although in a limited degree affecting interstate commerce, is not for that reason a needless intrusion upon the domain of Federal jurisdiction, nor strictly a regulation of interstate commerce, but, considered in its own nature, is an ordinary police regulation designed to secure the well-being and to promote the general welfare of the people within the State by which it was established, and therefore, not invalid by force alone of the Constitution of the United States."

In *Pletts* v. *Beattie*, [1896] 1 Q. B. 519, the Queen's Bench Division of England has recently passed upon an interesting question arising under the laws regulating the sale of intoxicating liquors. The defendant, Pletts, who was duly licensed to sell beer and ale in one

Intoxicating Liquors, Sale

borough, sent a drummer around through other boroughs to obtain orders. The drummer gave to the customers on whom he called a printed and stamped postal card, addressed to the defendant, which read as follows:

Dear Sir,—

Please supply me weekly as under until further notice

. . . . . .

I assent to the appropriation by you to this order at your brewery of goods of the above description and in a deliverable state. Yours Truly,

. . . . .

The blank space on the card was filled in with the description of the liquors wanted, and then mailed to the defendants. In filling one of such orders, the defendant's carter selected at the brewery six bottles of the liquor ordered, one of which he labeled with the customer's name and address, and placed them in a box with six other bottles for another customer, one of which was also labeled. This box, with others, was then placed on a wagon and finally delivered at the customer's house, where they were paid for on delivery. Upon these facts, the court held, distinguishing *Pletts* v. *Campbell*, [1895] 2 Q. B. 229, that there was a complete sale and appropriation of the goods at the brewery, and the defendant could not be convicted (under § 3 of the Licensing Act of 1872,) of selling intoxicating liquor at a place where he was not authorized by his license to sell the same.

Social Club

The Court of Appeals of New York, following the weight of reason and authority, has decided, in *People* v. *Adelphi Club of City of Albany*, 43 N. E. Rep. 410, that the dispensing of liquors by a social club with a limited and select membership, organized for a legitimate purpose, to which the furnishing of liquors to its members on payment therefor is merely incidental, is not a sale, within the meaning of a statute (Laws N. Y. 1892, c. 401, § 31,) providing that any person who, without a license, shall sell spirituous liquors, shall be guilty of a misdemeanor.

It has been held by the Circuit Court for the Western Dis-

trict of Texas, that a statute imposing an occupation tax of five hundred dollars on every person, firm or association engaged in selling "the Sunday Sun, the Kansas City Sunday Sun, or other publications of like character," being applicable to all persons, whether residents of the state or not, engaged in selling "publications of like character" with those specifically mentioned, is not a discrimination either against the person or the property of the owners of the publications named, and is therefore not invalid as a regulation of interstate commerce: *Preston* v. *Finley*, 72 Fed. Rep. 850.

License Tax, Interstate Commerce

In *Chesapeake & Ohio Ry. Co.* v. *Lash*, 24 S. E. Rep. 385, the Supreme Court of Appeals of Virginia has recently decided, that chalk marks, meaning "out of order," placed on cars to inform the road from which they were received that the cars were out of order when received, and that the defendant company was therefore not liable for their repair, are not, as matter of law, notice to a brakeman that the bumpers are defective, so as to prevent a recovery for his death, caused by the defects therein while coupling the cars.

Master and Servant, Contributory Negligence, Brakeman

The Supreme Court of the United States has definitely ranged itself on the side of the master in the dispute over the question of what constitutes a fellow-servant. It holds that the general rule is that those who enter the service of a common master thereby become engaged in a common service, and are fellow-servants; that a vice-principal is only one who has charge of a distinct department of the service, with entire control therein; and that mere superiority of position, with the right to direct and control those working with him, does not prevent the servant so in control from being the fellow-servant of those working under him. Applying these manufactured principles, the court decided that neither a gang boss on a railroad (*Northern Pac. R. R. Co.* v. *Peterson*, 16 Sup. Ct. Rep. 843, reversing 51 Fed. Rep. 182) nor a section foreman (*Northern Pac. R. R. Co.* v. *Charless*, 16 Sup. Ct. Rep. 848, reversing 51 Fed. Rep. 562) is a vice-principal, but that they are merely fellow-ser-

Fellow-Servant, Vice-Principal

vants of those under them. Chief Justice Fuller and Justices Field and Harlan dissented in each case.

Fellow-Servants, Railroad Employes

Under the Laws of Texas of 1893, p. 120, which require as essentials of the relation of fellow-servants that they (1) be engaged in the common service, (2) in the same grade of employment, (3) be working together at the same time and place, and (4) be working to a common purpose, an engineer and a switchman, who are members of the same switching crew, engaged in switching cars under a common foreman, are fellow-servants, though employed and discharged by different superiors: *Gulf, C. & S. F. Ry. Co.* v. *Warner*, (Supreme Court of Texas), 35 S. W. Rep. 364.

Municipal Corporations, Defective Waterworks, Liability for Loss by Fire

The Court of Civil Appeals of Texas has lately held, that a city, incorporated under the general law of that state, by the voluntary act of its inhabitants, which, under that law, for its own advantage and profit, voluntarily maintains a system of waterworks for general purposes, including the putting out of fires, is liable to a patron of the works, for hire, whose property is consumed in consequence of the negligence of the city in permitting the works to get out of repair, and, allowing the water in the stand-pipe to get so low as not to afford sufficient pressure to throw the water from hydrants upon the burning property: *Lenzen* v. *City of New Braunfels*, 35 S. W. Rep. 341.

Liability to Indemnify Officer

The Appellate Court of Indiana has decided, that the fact that an ordinance provides that the funds derived by way of fines for its violation should enure to the use of the municipality does not enable the latter to lawfully undertake to indemnify a police officer for any damages recovered against him for an attempt to enforce it; and that when a police officer is sued for false imprisonment for arresting a person for violation of an ordinance, the municipality is not liable for the failure of its officers to make a defence to the suit, so as to render it liable to the officer on the recovery of a default judgment against him: *Vaughtman* v. *Waterloo*, 43 N. E. Rep. 176.

If a partially decayed tree is allowed to stand in such a position that, if it should fall, it would damage the house of another, and the owner of the lot on which it stands neglects to remove it, though notified that it is decayed and dangerous, he will be liable for damages caused by the fall of the tree on the plaintiff's house during a gale: *Gibson* v. *Denton*, (Supreme Court of New York, Appellate Division, Third Department,) 38 N. Y. Suppl. 554.

Negligence, Dangerous Premises, Decayed Tree

The Supreme Court of North Carolina has lately ruled that an act (Acts N. C. 1895, c. 116,) imposing a license tax on peddlers, and declaring any person carrying a wagon, cart or buggy for the purpose of exhibiting or delivering any wares or merchandise, to be a peddler, is not void, as an interference with interstate commerce, as applied to a foreign corporation, there being no discrimination against non-residents in favor of citizens of the state: *Wrought Iron Range Co.* v. *Carver*, 24 S. E. Rep. 352.

Peddlers, License Tax, Interstate Commerce

This seems erroneous, in view of the decision in *Brennan* v. *Titusville*, 153 U. S. 289, 1894.

The Supreme Court of Iowa has ruled, in accordance with the weight of reason and principle, that the fact that a physician has been guilty of negligence in the treatment of his patient, resulting in damages to the latter, does not necessarily prevent his recovering any compensation whatever for his services; but the amount of his recovery, if any, depends on the amount of damages suffered because of his negligence: *Whitesell* v. *Hill*, 66 N. W. Rep. 894.

Physicians, Malpractice, Recovery of Compensation for Service

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In *Pearsall* v. *Great Northern Ry. Co.*, 16 Sup. Ct. Rep. 705, the Supreme Court of the United States has recently decided, against the dissent of Justices Field and Brewer, (1) That a contract by which one railroad agrees to guaranty the bonds of a parallel, competing road, in consideration of which half the stock of the latter road is to be transferred to the stockholders of the

Railroads, Control of Competing Road, Vested Rights

former road, or to a trustee for their use, is within the prohibition of Laws Minn. 1874, c. 29, which provides that no railroad shall consolidate with, lease, purchase, or in any way control, any parallel or competing line; and (2) That a general power given a railroad by its charter, to consolidate with, purchase, lease, or acquire the stock of other roads, may, while it remains unexecuted, be limited by the legislature to cases where the other roads are not parallel or competing, without impairing any vested right.

According to another decision of the same court, a constitutional prohibition against the consolidation of one railroad with a parallel or competing road, is not an interference with the power of Congress over interstate commerce: *Louisville & N. R. R. Co.* v. *Commonwealth of Kentucky*, 16 Sup. Ct. Rep. 714; affirming 31 S. W. Rep. 476.

Removal of Causes

In *Gibson* v. *State of Mississippi*, 16 Sup. Ct. Rep. 904, the Supreme Court of the United States has lately held, following *Neal* v. *Delaware*, 103 U. S. 370, 1880, that when the constitution and laws of a state, as interpreted by its highest court, contain no provisions preventing the enforcement of rights secured by any law of the United States for the protection and enforcement of the equal rights of all citizens thereof, the possibility that, during the trial of a particular case, a state court may not respect and enforce the right to the equal protection of the laws, constitute no ground for removing the prosecution to a federal court in advance of the trial; and therefore the fact that the officers charged with the selection of jurors purposely exclude colored citizens from jury service on account of their color, is no ground for the removal of a prosecution against a colored man to a federal court, when the state laws do not provide for any such discrimination.

Slander, When not Actionable

The Supreme Court of Louisiana has given a very sensible decision in a suit for slander. The defendant in the case, a woman eighty years old, was the lessor of the plaintiff, and in the course of a dispute between them over some matters relating to the tenancy,

she applied to him several opprobrious epithets. These the court refused to consider actionable, saying, "We are disposed to regard them as the irate and impulsive utterances of an old woman, whose only means of defence against a fancied or real wrong, which she had suffered at the hands of the plaintiff, was an unruly and mischievous tongue. In this view of the case, we are of the opinion that the plaintiff's damages are more imaginary than real:" *Mihojevich* v. *Bodechtel*, 19 So. Rep. 672.

Statutes, Enactments, Journals as Evidence

The Court of Appeals of Kentucky has carried to its logical conclusion of absurdity the doctrine of the sacred character of an enrolled bill, before which so many courts have recently fallen on their knees with all the superstitious reverence of a fetich worshipper. It holds that when a bill is once properly enrolled and signed by the presiding officer of each of the two houses, and signed and approved by the governor, it cannot be impeached by reference to the journals of either house to show that its mode of enactment was not in conformity to all constitutional requirements: *Lafferty* v. *Huffman*, 35 S. W. Rep. 123.

Comment on this decision is useless. If it is the law (and no other court has yet held it to be so,) then the presiding officers, and not the houses, are the real law-makers; and nothing on earth can prevent them, and the governor, from conspiring to enact, by themselves alone, any legislation they choose. *Vogue la galere!*

Subrogation, Payment of First Mortgage

According to a recent decision of the Court of Appeals of Kansas, Northern Department, when a mortgage is taken upon land with the understanding that it shall be a first lien thereon, and that the money to be loaned on the mortgage is to be applied by the mortgagee to the payment and discharge of a prior encumbrance on the same land, and it is so applied, the mortgagee will be subrogated to the rights of the prior encumbrancer whose debt was so discharged, when it is equitable to do so, although there was, before the discharge of the prior encumbrance, a second mortgage on the land, of which the subse-

quent mortgagee had no actual knowledge or notice: *Traders' Bank* v. *Myers*, 44 Pac. Rep. 292.

Succession Tax, Bonds of Foreign Corporation

In *In re Whiting*, 38 N. Y. Suppl. 131, the Supreme Court of New York, Fifth Department, has rendered a curious decision, to the effect that bonds of a foreign corporation, owned by a non-resident, and kept on deposit for safe keeping merely with a safe deposit company in New York, are liable to a succession tax, on the death of the owner. The vice of the decision consists in assuming that the state had jurisdiction of the bonds; whereas, under the facts, it could have none.

Trade-Mark, Infringement, Damages

In an action to recover damages for the infringement of a trade-mark, the plaintiff may show a falling off of his custom concurrent with the first use of the trade-mark by the defendant, it being for the jury to say whether that use was the cause of the diminution: *Shaw* v. *Pilling*, (Supreme Court of Pennsylvania,) 34 Atl. Rep. 446.

Trade Names, Similar Corporate Names, Unfair Competition

It has been recently held by the Circuit Court for the Southern District of California, that where a bill in equity alleged that the complainant, the Investor Publishing Company, had for many years published a trade journal called "The United States Investor," which acquired a high reputation and large circulation in the United States and other countries; that the defendant, the Investor Publishing Company of California, had begun the publication of a similar paper, called "The Investor," at the head of the editorial column of which it placed the words, "Published by the Investor Publishing Company; and that these acts of the defendant had caused confusion in the complainant's business, diverted its trade and caused it damage;—that the bill stated a case for equitable relief, and a demurrer thereto should be overruled: *Investor Pub. Co. of Massachusetts* v. *Dobinson*, 72 Fed. Rep. 603.

The owner of a process or invention for manufacturing an

article, which was kept secret from all but confidential employes,

Trade Secrets, Use by Employes, Injunction

may restrain former employes from disclosing or using in a rival establishment their knowledge thereof, acquired while occupying such confidential relation; and it is immaterial that there was no written contract between them, or that, at the commencement of the employment, the employes were minors, and performed comparatively unimportant duties: *Little* v. *Gallus*, (Supreme Court of New York, Appellate Division, Fourth Department,) 38 N. Y. Suppl. 487. See 34 AM. L. REG. (N. S.) 26.

In *Stanley* v. *Schwalby*, 16 Sup. Ct. Rep. 754, the Supreme Court of the United States has reversed the decision of the

United States, Suits Against

Court of Civil Appeals of Texas (29 S. W. Rep. 90; see 34 AM. L. REG. (N. S.) 152), holding that a judgment for plaintiffs in an action against army officers in possession of land used as a fort, in which the plaintiffs claimed a one-third interest, was a judgment directly against the United States and against their property, and not merely against their officers, and therefore came within the rule which declares that no suit can be maintained against the United States, or their property, without the express authority of Congress, and that such a judgment must be set aside.

Percolating waters belong absolutely to the owner of the

Waters and Watercourses, Percolating Waters

soil; and his title thereto is not affected by the fact that an impervious stratum beneath, on which the porous stratum containing the water rests in close contact, diverts the course of percolation to and over adjoining land, into a natural stream: *Gould* v. *Eaton*, (Supreme Court of California,) 44 Pac. Rep. 319.

According to a recent decision of the Supreme Court of Illinois, the facts that a testator was a spiritualist, and had,

Will, Testamentary Capacity, Belief in Spiritualism

prior to the date of his will, been induced through that belief to do many strange things, (*inter alia*, making unreasonable dispositions of his property,) were insufficient to invalidate the will on the ground of mental incapacity, when it appeared that he was

otherwise of sound mind, and that the disposition of his property made by his will was such as any person of sound mind might be expected to make, and there was no evidence that in making it he was influenced in the slightest degree by his spiritualistic belief: *Whipple* v. *Eddy*, 43 N. E. Rep. 789.

This subject is fully discussed in 31 AM. L. REG. (N. S.) 569.

Witness, Incriminating Testimony

A witness cannot be compelled to give testimony tending to incriminate himself, on the ground that a prosecution for the offence is barred by limitation, unless it is affirmatively shown that no prosecution is pending against him: *Lamson* v. *Boyden*, (Supreme Court of Illinois,) 43 N. E. Rep. 781.