PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports for August.

Adoption, Rights of Child Adopted, Descent

The Supreme Court of Kansas has accepted the doctrine that a child adopted in a sister state, in substantial compliance with its statutes, will inherit lands of the deceased adopting parent in the state of the latter's domicile on equal terms with a child of the parent born in wedlock; and holds that the heirs of an adopted child will inherit, through him, a share of the estate of the deceased adopting parent, just as if he were a child of that parent by blood: *Gray* v. *Holmes*, 45 Pac. Rep. 596.

The adoption of a child in one state will confer upon it the rights of a child born in wedlock, as to inheritance from its adopting parents, not only in the state of adoption, but also in all other states, unless the laws of the latter preclude such a result: *Van Matre* v. *Sankey*, 148 Ill. 536, 1893; *Ross* v. *Ross*, 129 Mass. 243, 1880; *Melvin* v. *Martin*, 18 R. I. 650, 1894. But adoption will not confer the right of inheritance from collaterals, if contrary to the laws of the state where the property is situate: *Keegan* v. *Geraghty*, 101 Ill. 26, 1881.

Attorney, Privilege, Service of Subpœna

When an attorney has come from another state to attend to business of his clients then pending in court, service of a subpœna upon him, to attend hearings as a witness, before he has had a reasonable time to take his departure, will be set aside, on his motion, as a violation of the protection which the law extends to all necessarily attending upon a court, especially when the business of his client requires his immediate presence in other states: *Central Trust Co. of N. Y.* v. *Milwaukee St. Ry. Co.*, (Circuit Court, E. D. Wisconsin,) 74 Fed. Rep. 442.

Bailment, Proprietor of Theatre

The proprietor of a theatre is not the bailee of the overcoat of a patron, who hangs it on a hook in a box occupied by him while witnessing a play: *Pattison* v. *Hammerstein*, (Supreme Court of New York, Appellate Term, First Department,) 39 N. Y. Suppl. 1039.

Board of Health, Compensation for Property Destroyed

According to a recent decision of the Supreme Court of Michigan, mandamus will issue to compel a board of health to award compensation to one whose property it has occupied or destroyed to prevent the spread of contagious disease, when it refuses to do so: *Safford* v. *Board of Health of City of Detroit*, 67 N. W. Rep. 1094.

Certiorari, Decision of Political Organization

Certiorari will not lie to review the decision of a political organization as to the election of its officers pursuant to the provisions of its constitution, as such an organization is not a judicial body: *Peo.* v. *Lauterbach*, (Supreme Court of New York, Appellate Division, First Department,) 39 N. Y. Suppl. 1117.

Champerty, Unclaimed Property, Secret Information

A contract by a person to communicate information on terms of getting a share of any property that may thereby be recovered by the person to whom the information is to be given, and nothing more, is not void for champerty. But if the contract be not merely that information shall given, but also that the person who gives it and who is to share in what may be recovered, shall himself recover the property, or actively assist in the recovery of it, then the contract is against the policy of the law, and void, even if the property is in the hands of trustees, or in court, and no hostile action may be necessary to recover it: *Rees* v. *DeBernardy*, (Chancery Division, Romer, J.,) [1896] 2 Ch. 437.

Contempt, Imputation of Official Misconduct to Judge, Purgation

In *In re Chadwick*, 67 N. W. Rep. 1071, the Supreme Court of Michigan has laid down some elementary principles of law with regard to the liability of an attorney for contempt in criticising the action of the court in reference to a cause before it which will bear repeating. It holds:

(1) That in a proceeding for contempt in writing a letter criticising the action of the court in rendering a certain decree, it is no defence that the case was not pending when the letter was written, if the decree was still open to modification, rehearing, or appeal;

(2) That a letter criticising a decree, and charging the judge with unfairness or improper conduct, is an attack upon the official conduct of the judge constituting a contempt; and,

(3) That a disavowal of an intent to charge improper conduct on the part of the judge will purge the defendant of contempt only when the language used admits of two interpretations; if but one interpretation is possible, the disavowal is of no avail.

Corporations, Officers, Auditors, Misfeasance

In *In re Kingston Cotton Mill Co.*, (No. 2,) [1896] 2 Ch. 279, it appeared that for some years before a company was wound up, balance-sheets signed by the auditors were published by the directors to the stockholders, in which the value of the company's stock-in-trade at the end of each year was grossly overstated. The auditors relied on certificates, wilfully false, given by one of the directors, who was also manager, and a man of great business ability and high repute, as to the value of the stock-in-trade. Dividends were paid for some years on the supposition that the balance-sheets were correct; but if the stock-in-trade had been stated at its true value, it would have appeared that there were no profits out of which a dividend could be declared. If the auditors had compared the different books and added to the stock-in-trade at the beginning of the year the amounts purchased during the year, and deducted the amounts sold, they would have seen that the statement of the stock-in-trade at the end of the year was so large as to call for explanation; but they did not do so. On winding-up, the liquidator sought to charge the auditors with the amount of the dividends improperly paid, on the ground that they had been guilty of misfeasance. This contention was upheld by the court below, (Vaughan Williams, J., [1896] 1 Ch. 331,) but his decision was reversed by the Court of Appeal, which held that an auditor is not bound to be suspicious where there are no circumstances to arouse suspicion; he is only bound to exercise a reasonable amount of care and skill; and that as it was no part of the duty of the auditors to take an account

of stock, they were justified in relying on the certificates of the manager, in view of his reputation in the business world, and were not bound to check his certificates in the absence of anything to raise suspicion; and that consequently they were not liable for the dividends wrongfully paid.

Deed, Reservation of Rooms, Rights of Grantor on Destruction of Building

The Court of Chancery Appeals of Tennessee has decided a rather peculiar question arising out of a deed. The owner of a lot and a brick house partly built thereon, sold and conveyed the same, in consideration "of six hundred dollars to me satisfactorily arranged," the deed expressly providing, however, that the grantor "is to complete said house and have cut off of the front on north end of said building, upstairs, twenty-eight feet, and divided into offices, as may be directed by said W. J. Leonard, [the grantor,] and keep the same in reasonable repair for his use, which twenty-eight feet upstairs in said building is not transferred by this deed, but the absolute title to same is retained, and the building of the same is a part of the purchase consideration for said house and lot." The grantee completed the house, and the grantor went into possession of the offices. The building was afterwards destroyed by fire, and in rebuilding, the claim of the grantor to office rooms such as those reserved in the deed was ignored. He then brought suit to determine his interest under the deed. It was held, that the consideration named in the deed was fully paid by the completion of the original offices, and that consequently the grantor had no claim which he could enforce as a vendor's lien; that as the deed contained no covenant to rebuild, the grantee fulfilled his contract so long as he kept the existing offices in reasonable repair; and that the contract in the deed was, in legal effect, simply a lease of the offices without further rent as long as the building existed, and after its destruction the lessee had no property in the brick which had inclosed the particular rooms occupied by him, but the material which remained after the fire belonged to the owner of the lot as a part of the building: *Leonard* v. *Read*, 36 S. W. Rep. 581.

Discount

In an ordinary commercial document the word "discount" means rebate of interest, and not "true" or mathematical discount: *In re Land Securities Co.*, (Court of Appeal,) [1896] 2 Ch. 320.

Election of Remedies, Different Relief

A bill in equity against the holder of a note to recover possession of it, and against the makers for the balance due thereon, may be maintained pending an action at law against the holders and makers to recover from the makers the balance due on it; and a judgment in the latter action, denying recovery on the ground that the plaintiffs were not in possession of the note, and that their rights thereto, as against the holder, could not be tried in that action, will not bar a bill in equity for the former purpose: *Cobb* v. *Fogg*, (Supreme Judicial Court of Massachusetts,) 44 N. E. Rep. 534.

Estates, Present and Expectant Life Estates, Apportionment of Interest on Mortgage

The Supreme Court of Michigan has recently decided a curious question as to the apportionment of interest on a mortgage between a present and expectant life estate. The plaintiff owned a present life estate, and the fee in the remainder, subject to an expectant life estate in the defendant, contingent on the plaintiff's death. The defendant's life estate and the fee were subject to a mortgage purchased by the plaintiff, who sued the defendant for interest. It was held that the latter was liable to the plaintiff for a share of the interest on the mortgage debt due or to become due during the expectancy, proportionate to the relative values of their estates; that upon the vesting of the life estate in the defendant she would become liable for the whole of the interest; and that the amount of the present payment of it should be computed upon the basis of the expectancy of life of both plaintiff and defendant: *Damm* v. *Damm*, 67 N. W. Rep. 984.

In the opinion of the Supreme Court of Vermont, the

Evidence, General Reputation, Proof of Death

"general reputation in the family," which is admissible in matters of pedigree, or to establish the facts of birth, marriage, or death, is confined to declarations of deceased members of the family, and family history and traditions handed down by declarations of deceased members, in either case made *ante litem motam*, and originating with persons presumed to have competent knowledge of the facts stated; and evidence of the opinion or belief of living members of a family as to the death of another member, or of general reputation among a person's living friends and acquaintances as to his death, is not within the rule, and is inadmissible: *In re Hurlburt's Estate*, 35 Atl. Rep. 77.

Insurance, Total Loss

When the identity of a building as such has been destroyed by fire, it is a total loss, though some of its materials have not been entirely destroyed; and if these facts are undisputed, the court may properly instruct that the loss is total: *Lindner* v. *St. Paul F. & M. Ins. Co.*, (Supreme Court of Wisconsin,) 67 N. W. Rep. 1125.

To the same effect are *Williams* v. *Hartford Ins. Co.*, 54 Cal. 442, 1880; *German Ins. Co. of Freeport* v. *Eddy*, 36 Neb. 461, 1893; *Ins. Co. of North America* v. *Bachler*, (Neb.) 62 N. W. Rep. 911, 1895; *Seyk* v. *Millers' Natl. Ins. Co.*, 74 Wis. 72, 1889.

An accident which cuts off all the fingers and half the palm of the hand, leaving only the thumb and a portion of the palm, causes a "total loss" of the hand: *Sneck* v. *Travellers' Ins. Co. of Hartford*, 34 N. Y. Suppl. 545, 1895, overruling 30 N. Y. Suppl. 881, 1894; See *Lord* v. *American Mut. Acc. Assn.* (Wis.), 61 N. W. Rep. 293, 1895.

When an insurance is effected on charter profits, and in consequence of accident the total amount of freights payable is less than the charter freights, there is a "total loss" of the profits: *Asfar* v. *Blundell*, [1896] 1 Q. B. 123, 1895, affirming [1895] 2 Q. B. 196, 1895.

The Circuit Court of Appeals, Second Circuit, has lately ruled, that an accident insurance policy, which provides that it shall not cover injuries or death "resulting from, or caused, directly or indirectly, wholly or in part, by . . . . walking or being on a railway bridge or roadbed," is not to be construed with absolute literalness, and does not bind the insured not to cross a railroad, on a public thoroughfare, at a place provided for the public to cross it, on pain of losing his right to recover; and, consequently, that one who is struck and injured or killed while crossing a railroad at such a crossing, can recover under such a policy: *Traders' & Travellers' Acc. Co. of N. Y.* v. *Wagley*, 74 Fed. Rep. 457.

Accident Insurance, Construction of Policy

The Court of Appeal of England has recently decided a very interesting point of accident insurance law. The plaintiff in the case was a signalman in the employment of the defendant railway company, which entered into a contract of insurance with him, agreeing to pay him a weekly allowance in case he should be incapacitated from employment by reason of accident sustained in discharge of his duty in the company's service. This insurance was to be absolute for all accidents, however caused, occurring to the insured in the fair and ordinary discharge of his duty. In the discharge of his duty the plaintiff endeavored to prevent an accident to a train by signalling the engineer, and the excitement and fright arising from the danger to the train produced a nervous shock which incapacitated him from employment. He then brought suit against the company for the weekly allowance, and was permitted to recover, on the ground that he had been incapacitated by accident, within the meaning of the policy: *Pugh* v. *London, Brighton & South Coast Ry. Co.*, [1896] 2 Q. B. 248.

Accident Insurance, Fright

The Supreme Court of Illinois, in *Fidelity & Casualty Co. of N. Y.* v. *Waterman*, 44 N. E. Rep. 283, affirming 59 Ill. App. 297, has decided, that an accidental asphyxiation by illuminating gas which escaped into the room where the assured slept, is not within a clause in an accident policy providing that "this insurance

Death from Inhaling Gas

does not cover . . . injuries, fatal or otherwise, resulting from poison or anything accidentally or otherwise taken, administered, absorbed, or inhaled." In reply to the contention that this construction was to make a new contract between the parties, the court observed that it was without merit, since years before the policy was issued the Court of Appeals of New York, where the policy was issued, had decided that accidental asphyxiation was not within a clause exempting the insurer from liability for injuries caused by taking poison or inhaling gases, and the policy in question must be understood to have been made with knowledge of that decision and its effect.

The case referred to was *Paul* v. *Travellers' Ins. Co.*, 112 N. Y. 472, 1889, reversing 22 Hun, 187, where it was held that a policy providing that "this insurance shall not extend . . . . to any death or disability which may have been caused . . . . by the taking of poison, contact with poisonous substances, or inhaling of gas," did not prevent a recovery when the insured was found dead in bed in his room at a hotel, with the gas turned on, and the atmosphere of the room filled with it, it being found that the death was caused by breathing the vitiated air, and "by accidental means." This was followed in *Pickett* v. *Pacific Mut. Life Ins. Co.*, 144 Pa. 79, 1891, where the plaintiff's intestate was insured by a policy which provided that "this insurance shall not cover . . . . . death or injury resulting from or attributable partially or wholly to . . . . . taking of poison, contact with poisonous substances, inhalation of gas," etc. He went down into a well only ten or twelve feet deep, to fix the pump, and was asphyxiated by "the accidental and unconscious inhalation of carbonic acid or other deadly gas that had unexpectedly accumulated;" and the administrator was allowed to recover.

The most recent case on the subject, until now, was *Menneiley* v. *Employers' Liability Assurance Corp.*, 148 N. Y. 596, (1896,) reversing 72 Hun, 477; where the policy provided that it did not "insure against death or disablement arising rom *anything accidentally taken, administered or inhaled*, contact of poisonous substance, inhaling gas," etc. The deceased

was found dead in bed, with his room filled with illuminating gas, just as in the Paul case; the agreed statement of facts set out that his death was caused by accidentally breathing gas; and the death was held not to be within the exception in the policy. The clause in italics was thus construed by the court: "That provision in the policy clearly implies voluntary action on the part of the insured or some other person. The insured must take or inhale or another must administer. The manifest purpose of the provision is to exempt the insurer from liability where the insured has voluntarily and consciously, but accidentally, taken or inhaled, or something has been voluntarily administered which was injurious or destructive of life. We think that the particular accidents intended to be excepted by that provision are the accidental taking or inhaling into the system of some injurious or destructive agency under the mistaken belief that it was beneficial, or, at least, harmless. That is made more apparent by that portion of the provision which relates to something administered, as it cannot be reasonably construed as referring to a thing involuntarily and unconsciously administered. Indeed, it is quite difficult to understand how a thing could be involuntarily and unconsciously administered. Coupled together as these provisions are, the same rule of construction must be applied to that portion which relates to a substance accidentally taken or accidentally administered. All the cases thus provided for plainly involve voluntary and conscious action on the part of the insured or some other person. The leading and controlling idea in this provision is the performance of a voluntary act which accidentally causes the death or injury of the insured. That a proper construction of the policy requires us to hold that it applies only to cases where something has been voluntarily and intentionally, although mistakenly, taken, administered, or inhaled, there can, we think, be but little doubt."

These cases also hold that such a death is not within the exception of the policy providing that it does not insure against death, disablement or injury "from accidents that shall bear no external and visible marks," construing that provision to

mean, not that the accident must leave external and visible marks on the body of the deceased, but that it is sufficient if there are any perceptible signs of the cause of the accident to be found in the vicinity, such as the presence of gas.

Credit Insurance, Insolvency of Insurer, Recovery of Unearned Premiums, Proof of Loss

The Supreme Court of Minnesota has lately had before it several cases involving the construction of a credit insurance policy. This policy insured the plaintiffs against excess losses caused by the failure or insolvency of customers to whom they had made sales on credit, these losses to be ascertained by deducting from the total losses fifteen per cent. thereof and also one per cent. of the total year's sales, to be not less than a stipulated amount. One plaintiff took out such a policy for one year, in which it was stipulated that the year's sales on which the one per cent. was to be computed should not be less than $90,000. After the policy had run a trifle over ten months the insurer became insolvent, and assigned for the benefit of creditors, which was held to terminate the policy. During the life of the policy, the total amount of sales was $75,000; and it was held, that for the purpose of estimating the excess loss, the one per cent. should be computed on this amount, and not on the $90,000. Another plaintiff took out a policy, but did not suffer during its life enough loss to enable him to recover; and it was decided that he could not recover for losses subsequent to the assignment. A third policy ran for the full year, and the assignment was made nine days after it expired. By its terms the insured was barred from recovery unless it made final proof of the year's losses within thirty days after the expiration of the year, which it failed to do, but it was held that the assignment was a breach of the contract, and that the insured could recover on a *quantum meruit* without furnishing proofs of loss. It was also held that when the policy had not expired, the insured could recover back the unearned premium for the balance of the year after the assignment; but not the whole of the premium paid, though he had suffered no loss during the life of

the policy: *Smith* v. *Natl. Credit Ins. Co.*, 68 N. W. Rep. 28.

In *Mascott* v. *Granite State Fire Insurance Co.*, 35 Atl. Rep. 75, the Supreme Court of Vermont has recently passed upon some very interesting questions arising under a policy of fire insurance, holding that when the policy provided for an insurance on "paints, oils, varnishes, leather, rubber and enameled cloth, broadcloth, carriage tops, backs, dusters and cushions, paint mill, tools, letter patterns, and such other articles as are usually kept in a sign painter's and carriage painter's and trimmer's shop," parol evidence was admissible to amplify the clause, and show what articles are thus usually kept; that when there is a repugnancy between a type-written rider on a policy and the printed parts of the policy, the provisions of the rider will prevail; and that, therefore, when a type-written rider provided for insurance on such articles as are usually kept in a painter's shop, as above, while a printed stipulation in the body of the policy provided that "this entire policy, unless otherwise provided by agreement hereon, or added hereto, shall be void . . . . if, (any usage or custom of trade or manufacture to the contrary notwithstanding,) there be kept, used, or allowed, on the above-described premises, benzine," etc., and it was shown that benzine was usually kept in a shop such as that maintained by the insured, the prohibition of keeping benzine applied only when that article was not insured, and by insuring it, *per* the rider, it was "otherwise provided, by agreement indorsed upon the policy," that benzine might be kept on the premises.

Insurance, Fire, Policy, Construction, Parol Evidence

Under a contract of life insurance issued by a mutual company, conditioned that it shall be subject to any by-law thereafter enacted, the insured is bound by a subsequent by-law, forfeiting the policy if the insured dies by his own hand: *Daughtry* v. *Knights of Pythias*, (Supreme Court of Louisiana,) 20 So. Rep. 712.

Life Insurance, Mutual, By-Laws, Suicide,

Joint Obligation, Judgment Against One Defendant, Merger of Debt

According to a recent decision of the Supreme Court of Minnesota, if the plaintiff in an action brought upon a joint contract obligation elects to enter judgment against one of the defendants upon his default to plead or answer, that judgment is a bar to a subsequent action against the other, since the debt is merged in the judgment: *Davison* v. *Harmon*, 67 N. W. Rep. 1015.

Libel, Privilege, Candidate for Office

The publication in a newspaper of a false accusation against a man, though based upon information giving reasonable ground for belief in its truth, is not justified by the fact that the man against whom the charge is made is an applicant for a federal office, to be filled by the president, and is not privileged: *George Knapp & Co.* v. *Campbell*, (Court of Civil Appeals of Texas,) 36 S. W. Rep. 765.

Privilege, Mercantile Reports

The Supreme Court of Louisiana has lately held, that the publications of a commercial agency, issued on printed lists, and generally distributed among their subscribers, are not privileged communications; and if they are erroneous, and cause damage to any one, the agency may be held liable: *Giacona* v. *Bradstreet Co.*, 20 So. Rep. 706.

Lost Property, Rights of Finder and Owner of Land where Found

According to a recent ruling of the Chief Justice of England, the possessor of land is generally entitled to chattels found thereon, as against the finder; and, therefore, when one found two rings while cleaning out a pool of water on the land of a corporation, under its orders, and declined to deliver them to the latter, but failed to find the real owner, the corporation was held entitled to recover the rings in an action of detinue: *South Staffordshire Water Co.* v *Sharman*, [1896] 2 Q. B. 44.

The general rule as to the right to the possession of lost property is, that the finder has a right to retain it as against all but the rightful owner: *Armory* v. *Delamirie*, 1 Stra. 504, 1722; *Lawrence* v. *Buck*, 62 Me. 275, 1874; *Mathews* v. *Harsell*, 1 E. D. Smith, (N Y.) 393, 1852; *Durfee* v. *Jones*,

11 R. I. 588, 1877; *Tancil* v. *Seaton*, 28 Gratt. (Va.) 601, 1877.

Ordinarily the place of finding is immaterial. A servant who finds property on his master's premises, as for instance, a conductor finding money or other property on the cars: *N. Y. & Harlem R. R. Co.* v. *Haws*, 56 N. Y. 175, 1874; *Tatum* v. *Sharpless*, 6 Phila. 18, 1865.; an employe in a paper-mill, who finds notes among old papers bought to be manufactured over: *Bowen* v. *Sullivan*, 62 Ind. 281, 1878; or a servant in a hotel, who finds money in the public parlor: *Hamaker* v. *Blanchard*, 90 Pa. 377; may retain it as against the master or employer; and *a fortiori*, a stranger who finds money in a shop or other place may retain it as against the shop-owner: *Bridges* v. *Hawkesworth*, 21 L. J. Q. B. 75, 1851; unless it has been simply laid aside and left by mistake: *McAvoy* v. *Medina*, 11 Allen, Mass. 548, 1866; *Loucks* v. *Gallogly*, 1 Misc. Rep. N. Y. 22, 1892.

This rule is, however, subject to an as yet ill-defined exception, which is thus laid down by the Chief Justice in the case cited:

"Where a person has possession of house or land, with a manifest intention to exercise control over it and the things which may be upon or in it, then, if something is found on that land, whether by an employe of the owner or by a stranger, the presumption is that the possession of that thing is in the owner of the *locus in quo*." This language applies to land with respect to which the public has no easement which differentiates the case from findings in shops and other public places. The real distinction, however, is this, that those things belong to the owner of the premises in which they are found, which, either from their nature, or from the circumstances attending the loss, become practically part and parcel of the freehold, such as the rings, covered by the water and mud, which undoubtedly belonged to the owner of the land, and the aerolite in *Goddard* v. *Winchell*, 86 Iowa, 71, 1892, which buried itself in the ground to the depth of three feet; or, to use the language of some of the cases, those things belong to the owner which may be regarded as *accretions* to his land, such as

the aerolite, the rings, or drift-logs; though the latter may be pursued and taken by a former finder, from whom they have escaped: *Deaderick* v. *Oulds*, 86 Tenn. 14, 1887.

If a finder attempts to retain lost property as against the owner, or converts it to his own use, when he knows the owner, he will be guilty of larceny: *Lawrence* v. *State*, 1 Humph. (Tenn.) 228, 1839; *Pritchett* v. *State*, 2 Sneed, (Tenn.) 285, 1854. See *Porter* v. *State*, Mart. & Yerg. (Tenn.) 226, 1827.

Lottery, Insurance Policies

In *United States* v. *Fulkerson*, (District Court, S. D. California,) 74 Fed. Rep. 619, the defendants, under the name of the "United Indemnity Company," conducted a business, the plan of which was essentially as follows: In consideration of a membership fee of five dollars and monthly dues of two dollars thereafter, it entered into contracts with persons who desired to become members, which purported to be contracts of indemnity in case of sickness, accident, or death, and issued to them certificates, containing the usual provisions of similar insurance policies. To each of these certificates were attached fifty coupons of ten dollars each, numbered consecutively, those on the first certificate issued running from 1 to 50, those on the second from 51 to 100, and so on. The certificates were issued in the order in which the applications were received by mail or otherwise, and there was no means of knowing, prior to the issue of a certificate, how many had been issued previously, nor what would be the numbers of the coupons to be attached to it. It was provided that one-half of the amounts received from monthly dues should be placed in a so-called "maturity fund," and that, whenever there should be sufficient money in said fund to pay one or more coupons, such number of coupons should be paid, and that the coupons to be paid should be determined by taking, first, the coupon numbered 1, then that numbered 5, and so on, in a geometrical progression, with the ratio 5, until the series reached the highest numbered coupon sold; then that numbered 2, then 10, etc., in a second series, with

the same ratio, and so on, until the numbers of all the coupons sold should be included in some series. It was also provided that, at the end of three years, each certificate-holder should receive the full amouut paid in monthly dues; at the end of five years, $150; at the end of seven years, $300; and at the end of ten years, $500; but the only resources to provide for these payments were the membership fees, and certain inconsiderable portions of the monthly dues,—the remainder of these dues, after providing for the maturity fund, being devoted to an expense fund, and a sick, accident, and death fund. This whole scheme was accordingly held to be a lottery, under Rev. Stat. U. S., § 3894.

Master and Servant, Fellow-Servants

In the opinion of the Supreme Court of Minnesota, the motorman of an electric car and a track repairer are fellow-servants; and the latter cannot recover from the company operating the road for injuries caused by the negligence of the former: *Lundquist* v. *Duluth St. Ry. Co.*, 67 N. W. Rep. 1006.

Procuring Discharge of Servant, Liability

The Supreme Court of Vermont has lately held, that when a contract under which an employer takes stone from a quarry is for no definite period, and can be terminated at the pleasure of the superintendent of the quarry, the latter is not liable to a servant of the employer, whose discharge he procures by refusing to allow the employer to take stone from the quarry unless he discharges him, if he does not act maliciously: *Raycroft* v. *Tayntor*, 35 Atl. Rep. 53.

Militia, Authority of Officers, False Imprisonment

A captain of a company of the National Guard of a state has no authority, when the company is not acting as a military force, to summarily punish with imprisonment a member of his company for a refusal to obey his orders, unless that authority is conferred by statute; and if he does so punish him, he will be liable for false imprisonment: *Nixon* v. *Reeves*, (Supreme Court of Minnesota,) 67 N. W. Rep. 989.

Promissory Note, Negotiability

The Appellate Court of Indiana has recently adopted the doctrine which holds that a note payable "with exchange" is not negotiable:" *Nicely* v. *Commercial Bk. of Union City*, 44 N. E. Rep. 572. (See note in this issue of THE AMERICAN LAW REGISTER AND REVIEW.)

The addition of "with exchange" or "current rate of exchange," will render a note non-negotiable, if it is to be paid at a different place: *Saxton* v. *Stevenson*, 23 U. C. C. P. 503, 1874; *Hughitt* v. *Johnson*, 28 Fed. Rep. 865, 1886; *Culbertson* v. *Nelson*, (Iowa,) 61 N. W. Rep. 854, 1895; *Phila. Bk.* v. *Newkirk*, 2 Miles, (Pa.) 442, 1840; *contra*, *Bradley* v. *Till*, 4 Biss. (U. S.) 473, 1867; *Clauser* v. *Stone*, 29 Ill. 114, 1862; *Bullock* v. *Taylor*, 39 Mich. 137, 1878; *Orr* v. *Hopkins*, 3 N. M. 45, 1883; *Whittle* v. *Fond Du Lac Natl. Bk.*, (Tex.) 26 S. W. Rep. 1106, 1894; but if it is to be paid in current coin, there can be no exchange, and those words will be rejected as surplusage, leaving the note negotiable: *Hill* v. *Todd*, 29 Ill. 101, 1862; and if it is to be paid at the place where it is drawn, there can also be no exchange, and the note is negotiable: *Christian Co. Bk.* v. *Goode*, 44 Mo. App. 129, 1891.

So, a note for the payment of a specified sum, with the "current rate of exchange on New York," or simply "with exchange on New York," or elsewhere, is not negotiable, as the addition renders the sum payable uncertain: *Palmer* v. *Fahnestock*, 9 U. C. C. P. 172, 1860; *Nash* v. *Gibbon*, 4 Allen, (N. B.) 479, 1860; *Cazet* v. *Kirk*, 4 Allen, (N. B.) 543, 1860; *Russell* v. *Russell*, 1 MacArthur, (D. C.) 263, 1874; *Windsor Sav. Bk.* v. *McMahon*, 38 Fed. Rep. 283, 1889; *Lowe* v. *Bliss*, 24 Ill. 168, 1860; *Fitzharris* v. *Leggatt*, 10 Mo. App. 527, 1881; *Flagg* v. *School Dist.* No. 70, (N. Dak.) 58 N. W. Rep. 499, 1894; *Read* v. *McNulty*, 12 Rich. L. (S. Car.) 445, 1860; *Carroll Co. Sav. Bk.* v. *Strother*, 28 S. Car. 504, 1887; *contra*, *Smith* v. *Kendall*, 9 Mich. 241, 1861; *Johnson* v. *Frisbie*, 15 Mich. 286, 1867; *Hastings* v. *Thompson*, 54 Minn. 184, 1893; *Leggett* v. *Jones*, 10 Wis. 34, 1859.

The same rule applies when a note is payable "with exchange and costs of collection:" *Second Natl. Bk.* v. *Basuier*, 65 Fed. Rep. 58, 1894; *First Natl. Bk. of New Windsor* v. *Bynum*, 84 N. C. 24, 1881.