PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

Abatement, Lis Pendens, State and Federal Courts

According to a recent decision of the Circuit Court for the Southern District of California, a suit in a state court cannot be pleaded in abatement of a suit as to the same matter in a federal court; but when a state court has first taken cognizance of a cause of which that court and the federal court have concurrent jurisdiction, the federal court, on motion, will dismiss a suit brought in it as to the same matter, or will suspend proceedings therein until the final action of the state court: *Gamble* v. *City of San Diego*, 79 Fed. Rep. 487.

This rule is by no means as well settled as the court supposes. The cases cited as authority for the ruling are almost all cases in which the state and the federal court did not have the same territorial jurisdiction, and hence came within the settled rule, that a suit pending in a foreign court cannot be pleaded in abatement: *Maule* v. *Murray*, 7 T. R. 470, 1798; *Wilson* v. *Ferrand*, 13 L. R. Eq. 362, 1871; *Buchner* v. *Finley*, 2 Pet. 586, 1829; *Humphries* v. *Dawson*, 38 Ala. 199, 1861; *Grider* v. *Afferson*, 32 Ark. 332, 1877; *Hatch* v. *Spofford*, 22 Conn. 485, 1853; *McJilton* v. *Love*, 13 Ill. 486, 1851; *DeArmond* v. *Bohn*, 12 Ind. 607, 1859; *Davis* v. *Morton*, 4 Bush. (Ky.), 442, 1868; *Seevers* v. *Clements*, 28 Md. 426, 1867; *Newell* v. *Newton*, 10 Pick. (Mass.) 470, 1830; *Goodell* v. *Marshall*, 11 N. H. 88, 1840; *Bonner* v. *Joy*, 9 Johns. (N. Y.) 221, 1812; *Walsh* v. *Durkin*, 12 Johns. (N. Y.) 99, 1815; *Lowry* v. *Hall*, 2 W. & S. (Pa.) 129, 1841; *Smith* v. *Lathrop*, 44 Pa. 326, 1863; *O'Reilly* v. *N. Y. & N. E. R. R. Co.*, 16 R. I. 388, 1889; *Drake* v. *Brander*, 8 Tex. 351, 1852.

But while there is hardly a dissenting voice to the proposition that a suit in a state court outside of the territorial jurisdiction of a federal court is no ground for abating a suit in

the latter, and *vice versa: Stanton* v. *Embrey*, 93 U. S. 548, 1876; *Ins. Co.* v. *Brune*, 96 U. S. 588, 1877; *Cook* v. *Litchfield*, 5 Sandf. (N. Y.) 330, 1851; the question whether a suit in a state court may be pleaded in abatement of a suit in a federal court of the same territorial jurisdiction, as in this case, is still undecided, the authorities pro and con being nearly equally balanced, and the Supreme Court not yet having pronounced upon it. In favor of the validity of such a plea are: *Earl* v. *Raymond*, 4 McLean, (U. S.) 233, 1847; *Brooks* v. *Mills Co.*, 4 Dill. (U. S.) 524, 1848; *Presbyterian Church* v. *White*, (U. S.) 4 AM. L. REG. 526, 1856; *Nelson* v. *Foster*, 5 Biss. (U. S.) 44, 1857; *Smith* v. *Atl. Fire Ins. Co.*, 22 N. H. 21, 1850; *Cent. R. R. Co. of N. J.* v. *N. J. West Line R. R. Co.*, 32 N. J. Eq. 67, 1880; *Mitchell* v. *Bunch*, 2 Paige Ch. (N. Y.) 606, 1831. Opposed to it are: *Wadleigh* v. *Veazie*, 3 Sumn. (U. S.) 165, 1838; *White* v. *Whitman*, 1 Curt. (U. S.) 494, 1853; *Loring* v. *Marsh*, 2 Cliff. (U. S.) 311, 1864; *Parsons* v. *Greenville & Columbia R. R. Co.*, 1 Hughes, (U. S.) 279, 1876; *New England Screw Co.* v. *Blivan*, 3 Blatchf. (U. S.) 240, 1854; *In re Brinninger*, 7 Blatchf. (U. S.) 168, 1870; *Ranitzer* v. *Wyatt*, 40 Fed. Rep. 609, 1889; *State* v. *N. O. & N. E. R. R. Co.*, 42 La. An. 11, 1890; *Wood* v. *Lake*, 13 Wis. 84, 1860.

The reader may take his choice.

Aliens, Right to Inherit, Treaty, Conflict of Laws

The Supreme Coourt of Iowa, following its former decision in *Opel* v. *Shoup*, 69 N. W. Rep. 560, has lately held, that a treaty of the United States with a foreign country providing that aliens may inherit lands is controlling, and confers that right upon them, though the laws of the state may provide otherwise: *Doehrel* v. *Hillner*, 71 N. W. Rep. 204, and that, by the treaty between the King of Prussia and the prince of Waldeck, the citizens of Waldeck became subjects of the King of Prussia, and consequently entitled to the benefits of the treaty between the United States and Prussia governing the rights of inheritance of citizens of the respective countries: *Wilcke* v. *Wilcke*, 71 N. W. Rep. 201.

There is a note on this subject in the March number of this magazine: 36 AM. L. REG. & REV. N. S. 187 (1897).

Attorney-at-Law, Disbarment, Suspension of Proceedings

The Court of Appeals of New York has recently held, affirming 41 N. Y. Suppl. 1112, that upon a proceeding for the disbarment of an attorney, the fact that some of the charges of professional misconduct brought against him are such as also to involve liability to a criminal prosecution, does not entitle the respondent to a suspension of proceedings until he has had the opportunity for a jury trial upon those charges: *Rochester Bar Association* v. *Dorthy*, (Court of Appeals of New York,) 46 N. E. Rep. 835, affirming 41 N. Y. Suppl. 1112.

Building Contract, Liquidated Damages, Penalties for Delay, Extras

When it is stipulated in a building contract for the execution of specified works that it shall be completed by a certain day, and in default of completion, the contractor shall be liable to pay the liquidated damages, and there is also a provision that other work may be ordered by way of addition to the contract, and additional work is ordered which nececssarily delays the completion of the work, the contractor is exonerated from liability to pay the liquidated damages, unless by the terms of the contract he has agreed that, whatever additional work may be ordered, he will nevertheless complete the works within the time originally limited: *Dodd* v. *Chustron*, [1897] 1 Q. B. 562.

Cancellation, Forged Deed, Equity Jurisdiction

According to a recent decision of the Supreme Court of Appeals of West Virginia, *Hoopes* v. *De Vaughan*, 27 S. E. Rep. 251, a suit in equity to annul a forged deed of land and have it cancelled, and the record of it declared void, brought by the legal owner of the land, who is the grantor named in the forged deed, or the party holding title from that grantor, who instituted suit to annul the deed while he is out of possession, is not taken out of the jurisdiction of equity by the fact that the deed is void, and it is not necessary that the legal owner before bringing

suit should establish his title and obtain possession of the land by ejectment at law.

Carriers, Railroads, Express Messenger, Limitation of Liability

The Circuit Court for the Southern District of Ohio, (W. D.,) in *Voight* v. *Baltimore & Ohio S. W. Ry. Co.*, 79 Fed. Rep. 561, has lately held, that while a railroad company is under no obligation to carry an express messenger as such, yet when under such a contract with the express company it does carry him, it is acting as a common carrier of persons, and he does not lose his rights and character as a passenger because he travels in a special car provided by the express company; and consequently a contract by which an express messenger so carried in a special car agrees not to hold the railroad company liable for injury to him caused by the negligence of the company or its servants is void, as against public policy. (*See note in this number.*)

Civil Service, Competitive Examinations, When not Required

The Court of Appeals of New York has recently decided, by a bare majority, that when the mayor of a city has classified the positions in the civil service of the city, pursuant to the civil service law, and has determined that no examinations shall be required for certain positions, his action, until judicially determined to be erroneous, is binding upon the courts, and is a protection to the subordinate heads of departments in making appointments, and to the employes: *Chittenden* v. *Wurster*, 46 N. E. Rep. 857.

Conflict of Laws, Death by Negligence

The Circuit Court of Appeals for the Second Circuit has lately held, following *Dennick* v. *R. R. Co.*, 103 U. S. 11, that a right of action given by the statutes of Canada to the widow and children of one who has been killed in that country through the negligence of another, may be prosecuted to judgment by them in the courts of the United States, though the statute of the state within whose territory suit is brought (here Vermont) gives the right of action to the personal representatives of the deceased: *Boston & Maine R. R. Co.* v. *McDuffey*, 79 Fed. Rep. 934.

In *Re Chapman*, 17 Sup. Ct. Rep. 677, the Supreme Court of the United States has settled some vexed questions of law, which have been prominently before the public for sometime past, growing out of the investigation by the Senate into the truth of the charges that some of its members had been dealing in the stock of the American Sugar Refining Company, the value of which was likely to be much affected by the pending tariff bill. It holds, (1) That Rev. Stat. U. S. § 102, which makes it a misdemeanor, punishable by indictment in the Criminal Court of the District of Columbia, for any witness summoned by authority of either house of Congress to give testimony or produce papers upon "any matter under inquiry," before either house or any committee thereof, to make default, or refuse to answer, is not so connected with section 103, which declares that such witnesses are not privileged to refuse to give testimony on the ground that it may tend to disgrace or render them infamous, that, if the latter section should be held unconstitutional, the former must fall with it; (2) That the act is not unconstitutional on the ground that it delegates to the Criminal Court of the District of Columbia exclusive jurisdiction in such cases, and thereby deprives the houses of their constitutional right to punish the witness for contempt, or on the ground that, if the houses still retain their authority in that regard, the witness would be put twice in jeopardy for the same offense; since indictable statutory offences may be punished as such, while the offenders may likewise be subjected to punishment for the same acts as a contempt; (3) That the words "any matter of inquiry," used in § 102, are to be construed as meaning any matters within the jurisdiction of the two houses which are before them for consideration, and proper for their action, and any questions pertinent thereto or facts or papers bearing thereon; (4) That within the meaning of this section, the senate had jurisdiction to enter upon an inquiry in respect of the truth of charges in the newspapers as to alleged dealings of senators in the stock of the American Sugar Refining Company, thereby impugning the integrity and purity of such

Constitutional Law, Construction of Act, Investigating Committees, Jurisdiction, Unreasonable Searches, Twice in Jeopardy

members in a manner calculated to destroy public confidence in that body, and to subject the individuals to censure or expulsion; and that it was not essential to the jurisdiction that the preamble and resolution authorizing the investigation should state that the proceeding was taken for the purpose of censure or expulsion; and (5) That in such a case it is no invasion of the constitutional protection against unreasonable searches and seizures to require a member of a stock brokerage firm to state whether or not any senator had bought or sold such stock through his firm.

Freedom of Speech

The same court has also declared that a city ordinance which provides that no one shall make a public address in any of the public grounds of the city, "except in accordance with a permit from the mayor," is not an interference with the right to freedom of speech, and does not violate the Fourteenth Amendment: *Davis* v. *Commonwealth of Massachusetts*, 17 Sup. Ct. Rep. 731. *See note in this number.*

Contempt, Injunction

A court of equity has undoubted jurisdiction to commit for contempt a person not included in an injunction, nor a party to the action, who, knowing of the injunction, aids and abets a defendant in committing a breach of it: *Seaward* v. *Paterson*, (Supreme Court of Judicature, Court of Appeal,) [1897] 1 Ch. 545.

Copyright, Law Reports, Infringement

The West Publishing Company has at last secured a victory in its litigation with the Lawyers' Co-operative Publishing Company, the Circuit Court of Appeals holding that the evidence indicated a general systematic, and widespread unfair use of the copyrighted work of the complainant on the part of the editors who prepared over 6,000 of the syllabi for the cases digested from the complainant's series of reports, and that the entire work should therefore be enjoined, excepting the paragraphs digested from original sources, with the privilege, however, to

the defendant, to show by competent proof which paragraphs were prepared by the two editors found by the court not to have offended, and to move to have these paragraphs excepted from the injunction: *West Pub. Co.* v. *Lawyers' Co-op. Pub. Co.*, 79 Fed. Rep. 756, reversing 64 Fed. 360.

The principal points of law decided were, that a copyrighted syllabus to a legal opinion may be infringed without reproducing the original language; and that when the material evidence conclusively shows that a subsequent digester has made an unfair use of any part of a syllabus prepared by his predecessor, the presumption is that he made use of the whole syllabus, and the burden of proof lies upon him to prove that he did not do so.

Corporations, Formation, Fraud on Creditors, Married Women

In a case recently before the Court of Errors and Appeals of New Jersey, *Taylor* v. *Wands*, 37 Atl. Rep. 315, a married woman united with her two sons and her insolvent husband in the formation of a trading corporation, and she and her sons took all the stock issued, except one share, which was allotted to the husband, without payment. The money paid in by her on her shares was her own. Her husband was employed as president and manager of the corporation, upon a salary not shown to be unreasonable. There was no sufficient proof that the arrangement was devised to cover from his creditors any property of his. Under these circumstances, it was held, that since, in New Jersey, a married woman may embark her own money and capital in any separate business or trade, may employ agents to carry on that business, and may avail herself of their skill and ability to make it successful, she may employ her insolvent husband as such an agent, if she does so in good faith, and the profits and earnings of the business will belong to her, though they are partly due to his business ability, experience and energy; and therefore, in the case in hand, the undivided earnings of the corporation, represented by the wife's shares of stock, belonged to her, though due in part to the skillful management of the business of the corporation by her husband.

Sole Owner of Stock, Powers

The Supreme Court of Alabama has recently decided, that a sole stockholder (a corporation), which, by vote of the stock, authorized, for its individual benefit, the issue of bonds secured by trust deed of the property of the corporation, and thereby impaired the value of the stock, could not, for its own acts, avoid the bonds in the hands of purchasers; and though these acts of the stockholder were in favor of its own bondholders, for whose benefit it had previously mortgaged the stock, reserving the legal title and the right to vote the stock until default, a purchaser of the stock on foreclosure of the mortgage, who obtained a perfect title thereto, took none of the equities of the bondholders, and hence could not attach the bonds, except in the name of the corporation, and subject to the disability of the original stockholder: *McCaleb* v. *Goodwin*, 21 So. Rep. 967.

Ownership of Stock by One Person, Effect

The fact that one person becomes the owner of a majority or all of the shares of stock of a corporation, does not work a dissolution of the corporation, nor necessarily destroy its identity as a business concern, and property conveyed to such a corporation does not become the individual property of the stockholder: *Harrington* v. *Conway*, (Supreme Court of Nebraska,) 70 N. W. Rep. 911.

A corporation is not dissolved by the concentration of its stock in the hands of one person: *Newton Mfg. Co.* v. *White*, 42 Ga. 148, 1871: *State* v. *Vincennes Univ.*, 5 Ind. 77, 1854; *Louisville Bkg. Co.* v. *Eiscinnon*, 94 Ky. 83, 1894; *Russell* v. *McTellan*, 14 Pick. (Mass.) 63, 1833; *Wilde* v. *Jenkins*, 4 Paige Ch. (N. Y.) 481, 1834; *Button* v. *Hoffman*, 61 Wis. 20, 1884; but see *Swift* v. *Smith*, 65 Md. 428, 1886. It remains a going concern, and the sole stockholder cannot bind it by a contract made in his own name: *Allemong* v. *Simmins*, 124 Ind. 199, 1890; *Donoghue* v. *Indiana & L. M. Ry. Co.*, 87 Mich. 13, 1891; or transfer the legal title to its property by a conveyance in his own name; or bind it by a mortgage: *Baldwin* v. *Canfield*, 26 Minn. 43, 1879; *Frank* v. *Drenkbrahm*, 76 Mo. 508, 1882; *Bundy* v. *Iron Co.*, 38 Ohio St. 300, 1882; *Parker* v. *Bethel Hotel Co.*, 96 Tenn. 252, 1896;

Wheelock v. *Moulton*, 15 Vt. 519, 1843; *Stewart* v. *Gould*, 8 Wash. 367, 1894; *Murphy* v. *Hanrahan*, 50 Wis. 485, 1880; *Button* v. *Hoffman*, (*supra*); or sue in his own name on a course of action belonging to it: *Fitzgerald* v. *Mo. Pac. Ry. Co.*, 45 Fed. Rep. 812, 1891; *Randall* v. *Dudley*, (Mich.) 69 N. W. Rep. 729, 1897.

Dogs, Property in, Police Power

The Supreme Court of the United States has ruled that the property in dogs is of an imperfect or qualified nature; and it is within the discretion of the legislature to say how far they shall be recognized as property and under what restrictions they shall be permitted to roam the street; but even if they were property in the fullest sense they would still be subject to the police power of the state, and might be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens; and that a state statute, (Rev. Stat. La. § 1201, as amended July 5, 1882,) which provided that no dog shall be entitled to the protection of the law, unless placed upon the assessment rolls, and limits the recovery by the owner for the killing or injury of a dog to the value fixed by himself for purposes of taxation, is a valid exercise of the police power: *Sentell* v. *New Orleans & C. R. R. Co.*, 17 Sup. Ct. Rep. 693.

Electric Light Wires, Contributory Negligence

It is not contributory negligence in the owner of property to attempt to remove a broken live electric light wire lying upon his premises, in such a condition as to endanger his property, although it is emitting sparks and a blaze of electric light: *Leavenworth Coal Co.* v. *Batchford*, (Court of Appeals of Kansas, Northern Dept., E. D.,) 48 Pac. Rep. 927.

Electric Railroads, Right to Use of Street, Contributory Negligence

The Supreme Court of Errors of Connecticut has lately held that an electric street railway line has no right to the use of the street as a highway superior to that of a person driving on the highway; and therefore, when a driver of a wagon is on the wrong side of a street, on the track of an electric car which is approaching him, and knows that another car is approach-

ing from behind, and that it is so far away that, if it goes at its ordinary rate of speed, he can safely cross to that side of the street, he is not negligent in so doing, and in assuming that the car would not be run at a dangerous rate of speed: *Laufer* v. *Bridgeport Traction Co.*, 37 Atl. Rep. 379.

Estoppel, Preference of Creditors

When the assignee for creditors of a mortgagor, by delaying to question the validity of a pledge of bonds secured by the mortgage for over eight years after it was made, and by treating it as valid led the pledgee to rely entirely on his security, and to forbear to prosecute his action on the original debt, which had become barred in the meantime by the statute of limitations, he cannot avoid the pledge as a preference: *Elt* v. *Sears Commercial Co.*, (Supreme Court of Rhode Island,) 37 Atl. Rep. 311.

Extradition, Interstate, Sufficiency of Affidavit

When the indictment or affidavit, a copy of which is attached to a requisition for the return of a fugitive from justice would be held sufficient by the courts of the state where the offense was committed, the requisition must be granted, though the indictment or affidavit would not be held good by the courts of the state of asylum: *Webb* v. *York*, (Circuit Court of Appeals, Eighth Circuit,) 79 Fed. Rep. 616.

Habeas Corpus, Jurisdiction of Federal over State Courts

The Circuit Court for the Northern District of Texas has recently decided that while the general rule is that persons prosecuted in state courts will not be released by the federal courts on *habeas corpus*, but will be left to reach the Supreme Court of the United States by writ of error, yet the federal courts have power to issue the writ when special circumstances require, possessing a discretion which must be governed by the facts of each case: *In re Grice*, 79 Fed. Rep. 627.

The controlling facts which moved the court to interfere in this case were, that the Court of Criminal Appeals of Texas had intimated that it considered the statute (the Texas anti-trust law of 1889,) under which the petitioner was indicted constitutional, whereas the circuit court held it clearly uncon-

stitutional on several grounds; and that the statute prevented the petitioner from giving bond after conviction, and compelled him to submit to imprisonment during the time required for an appeal to the court of criminal appeals, and from there to the Supreme Court of the United States; together with several minor circumstances, such as the ruling of the trial judge in a similar case, and the delay in trying the petitioner.

Husband and Wife, Injury to Wife, Action by Husband

The married women's acts have only increased the rights of the wife, not abridged those of the husband, except as to his control over her property; and an action by a husband for the loss of *consortium*, caused by injuries to his wife through the negligence of the defendant, will still lie, though the wife has already recovered in her own right for the injuries received: *Kelly* v. *N. Y., N. H. & H. R. R. Co.*, (Supreme Judicial Court of Massachusetts,) 46 N. E. Rep. 1063.

Divorce, Alimony, Fraudulent Conveyance

A conveyance of his property by a husband will not be set aside at the suit of the wife as fraudulent, on the ground that it was made to defeat her right to attach the property to secure a contingent claim for alimony in a suit for divorce which she had threatened to bring in the absence of any showing that she had cause for divorce and alimony, or even brought, or attempted to bring, [or intended *bona fide* to bring?] any such action: *Ullrich* v. *Ullrich*, (Supreme Court of Errors of Connecticut,) 37 Atl. Rep. 393.

Injunction to Prevent Deforcement of Office

The Supreme Court of Washington has lately held in accordance with the general current of opinion, that when a candidate for office has duly qualified, and is in possession of his office under a certificate of election issued by the proper officer, and regular on its face, equity will protect him by injunction in the enjoyment of the office, and the exercise of its duties, without interference by others, until the title to the office can be adjudicated: *State* v. *Superior Court of Snohomish Co.*, 48 Pac. Rep. 741.

The Court of Appeals of Maryland has decided, that when the transaction out of which an alleged debt arose occurred in Maryland, being within the statute prohibiting gambling, and both parties were citizens and residents of that state, a court of equity in Maryland would restrain the creditor from proceeding against the debtor in another state, to which he had resorted to evade the Maryland laws prohibiting imprisonment for debt, the means which the foreign court would have for ascertaining the statute on which the debtor relied to avoid the transactions being imperfect, and the procuring of evidence being difficult and expensive: *Miller* v. *Gittings*, 37 Atl. Rep. 372.

Injunction, Suit in Foreign Court

Since a court of equity acts *in personam*, it may restrain a person within its jurisdiction from prosecuting a suit, whether at law or in equity, in a foreign court, upon a showing of facts sufficient to invoke its jurisdiction: *Pickett* v. *Ferguson*, 45 Ark. 177, 1885; *Engel* v. *Schenerman*, 40 Ga. 206, 1869; *Cole* v. *Young*, 24 Kan. 435, 1880; *Great Falls Mfg. Co.* v. *Worster*, 23 N. H. 462, 1851; *Hayes* v. *Ward*, 4 Johns. Ch. (N. Y.) 123, 1819; *Vermont & Canada R. R. Co.* v. *Vermont Central R. R. Co.*, 46 Vt. 792, 1873. This power is most frequently exercised to restrain attempts to evade the laws of the state of the party's domicile, *e. g.*, to attach property exempt by those laws: *Allen* v. *Buchanan*, 97 Ala. 399, 1892; *Wilson* v. *Joseph*, 107 Ind. 490, 1886; *Zimmerman* v. *Franke*, 34 Kan. 650, 1886; *Keyser* v. *Rice*, 47 Md. 203, 1877; *Snook* v. *Suetzer*, 25 Ohio St. 516, 1874; *Griggs* v. *Doeter*, 89 Wis. 161, 1895; and to elude the operation of the insolvent laws: *Dehon* v. *Foster*, 4 Allen, (Mass.) 545, 1862; *Dehon* v. *Foster*, 7 Allen, (Mass.) 57, 1863; *Cunningham* v. *Butler*, 142 Mass. 47, 1886; or to vexatious suit, or multiplicity of actions: *Texas & Pac. Ry. Co.* v. *Kertman*, 54 Fed. Rep. 547, 1892; *Lawrence* v. *Manning*, 9 N. Y. Suppl. 223, 1890; *Cuthbert* v. *Chanoet*, 14 N. Y. Suppl. 62, 365, 1891; *Norfolk & N. B. Hosiery Co.* v. *Arnold*, 143 N. Y. 265, 1894. But an injunction will not be granted for this purpose, if the complainant has an adequate defence at law: *Attalla Wire & Mfg. Co.* v. *Winchester*, 102 Ala. 184, 1893; *Met. Life Ins. Co.* v. *Fuller*,

61 Conn. 252, 1891; *Alley* v. *Chase*, 83 Me. 537, 1891; *Jordan* v. *Chase*, 83 Me. 540, 1891; *Baxter* v. *Baxter*, 77 N. C. 118, 1877; or because the complainant prefers to try the matter in the courts of his own state: *Cole* v. *Young*, 24 Kans. 435, 1880; *Carson* v. *Dunham*, 149 Mass. 52, 1889; *Bank of Bellows Falls* v. *Rutland & Burlington R. R. Co.*, 28 Vt. 470, 1856. In New York, and some other states, it is held that, from principles of comity, a suit in a foreign court should never be restrained, except in very special cases: *Harris* v. *Pullman*, 84 Ill. 20, 1876; *Thorndike* v. *Thorndike*, 142 Ill. 450, 1892; *Mead* v. *Merritt*, 2 Paige Ch. (N. Y.) 402, 1831; *Williams* v. *Ayrault*, 31 Barb. (N. Y.) 364, 1860. But if such a case arises, relief will be afforded: *Prudell* v. *Quinn*, 7 Ill. App. 605, 1880; *Dobson* v. *Pearce*, 12 N. Y. 156, 1854; affirming 1 Duer, (N. Y.) 142, 1852; *Vail* v. *Knapp*, 49 Barb. (N. Y.) 299, 1867; *Dinsmore* v. *Neresheimer*, 32 Hun, (N. Y.) 204, 1884.

As a general rule, the federal courts will not enjoin the prosecution of a suit in a state court, being prohibited by statute: Rev. Stat. U. S. § 720; *Diggs* v. *Wolcott*, 4 Cr. 179, 1807; *Dillon* v. *Ry. Co.*, 43 Fed. Rep. 109, 1890; *Haines* v. *Carpenter*, 91 U. S. 254, 1875; *Dial* v. *Reynolds*, 96 U. S. 340, 1877; *The Mamie*, 110 U. S. 742, 1884. But cases may arise which fall without the statute: *Fish* v. *Union Pac. Ry. Co.*, 10 Blatchf. (U. S.) 518, 1873; *French* v. *Hay*, 22 Wall. 250, 1874; *Texas & Pac. Ry. Co.* v. *Kuteman*, 54 Fed. Rep. 547, 1892. So, though a state court generally will not enjoin the prosecution of a suit in a federal court: *Riggs* v. *Johnson Co.*, 6 Wall. 166, 1867; *U. S.* v. *Keokuk*, 6 Wall. 514, 1867; *Mead* v. *Merritt*, 2 Paige Ch. (N. Y.) 402, 1831; *Schuyler* v. *Pellissier*, 3 Edw. Ch. (N. Y.) 191, 1838; *Thompson* v. *Norris*, 63 How. Pr. (N. Y.) 418, 1882; it may do so in a proper case, and punish the offender for contempt, if he persists: *Hines* v. *Ransom*, 40 Ga. 356, 1869.

In a recent case before the Court of Appeals of England, *Lamond* v. *Richard*, [1897,] 1 Q. B. 541, the plaintiff sued to

Innkeeper, Guest, Liability for Ejection

recover damages for unlawfuily ejecting her from a hotel in which she was residing. The facts were as follows: she came in November, 1895, to the Hotel Metropole, at Brighton, of which the defendant was the manager, and stayed there until August, 1896, paying her board regularly. Her condition and conduct were not such as to justify the defendant in refusing her accommodations. On August 25, 1896, by order of the directors of the corporation which owned the inn, the undermanager had an interview with her, in which he asked her when she was going to leave the hotel; and on her replying that she should stay there as long as she liked, he gave her verbal notice that her room must be at the manager's disposal by noon on the 27th. She did not leave on that day; and on the 31st she was told that she must leave, and that if she declined to do so, her luggage would be packed up by the hotel servants. In the afternoon she went out for a walk, and on her return was refused admission. Her things had been packed by servants and brought down into the hall, whence they were subsequently removed by the plaintiff. There were vacant rooms in the hotel at the time, and the plaintiff's room was not required for the accommodation of other guests. On these facts the court held, that the common law liability of an innkeeper to receive and lodge a guest attaches only so long as the guest is a traveler, and a person who has been received at an inn as a traveler, does not necessarily continue to reside there in that character; that it is a question of fact whether the guest is still a traveler at any given time during his residence at the inn, and one of the ingredients for determining this fact is the length of time that has elapsed since his arrival; and that if the guest has lost the character of traveler, the innkeeper is not bound to supply him with lodging; but is entitled on giving reasonable notice to require him to leave, and affirmed the judgment of the county court for the defendant, on the ground that the hotel was a "common inn."

In *Wyman* v. *Gay*, 37 Atl. Rep. 325, the Supreme Judicial Court of Maine lately held, that, exemption being a personal

Insolvency, Preference, Exemption, Waiver

privilege of the debtor, which may be waived by him, it should be regarded as being waived when he conveys the property to another; and therefore, if the conveyance is a fraudulent preference under the insolvent laws, the assignee for the benefit of creditors may recover the property or its value.

Preferences, Judgment by Default

The Supreme Court of Minnesota has ruled that it cannot be held, as matter of law, that because a technically insolvent merchant or trader suffers an action to be commenced against him upon a claim to which he has no defence, by creditors who know him to be technically insolvent, and allows a judgment to be entered and docketed against him for want of an answer, which judgment becomes a lien upon his real estate, that he intended to permit the judgment creditors to obtain an unlawful preference: *Bean* v. *Scheffer*, 70 N. W. Rep. 854.

Marine Insurance, Particular Average Clause, In Collision

The Supreme Court of the United States has recently decided, affirming 68 Fed. Rep. 247, that a vessel is in "collision," within the clause in a policy of marine insurance, "free of particular average unless the vessel be sunk, burned, stranded, or in collision," when, after being completely loaded, and casting off her moorings, she is made fast again to await the regulation of some insignificant trouble about her machinery, and is then run into by a scow, in tow of a tug, which makes a substantial break in her iron bulwarks, though the injury is not sufficient to impair her seaworthiness: *London Assurance* v. *Companhia de Moagens do Barreiro*, 17 Sup. Ct. Rep. 785.

Jury, Misconduct, New Trial

A verdict will be set aside when some of the jurors, during the trial, took dinner at a restaurant with the successful party, who invited them to do so, and paid for it: *Marshall* v. *Watson*, (Court of Civil Appeals of Texas,) 40 S. W. Rep. 352.

Lease, Rental, Equity Jurisdiction

A court of equity has jurisdiction to appraise the rent to become due under a lease for an ensuing part of the term, when an arbitration as to the amount of the rent, provided for, has failed; and there is a failure of the arbitration, when one of two arbitrators, who were empowered to select a third, was governed as to such selection entirely by the wishes and instructions of one of the parties, and, without any other reason, refused to agree to any one of several competent and disinterested men proposed by his associate: *Grosvenor* v. *Flint*, (Supreme Court of Rhode Island,) 37 Atl. Rep. 304.

Malicious Prosecution, Evidence

Since the plaintiff in an action for malicious prosecution is entitled, if successful, to recover damages for the injury to his reputation, he may prove newspaper publications containing plain accounts of the prosecution, without comment thereon. "A plain, uncolored statement of such proceedings in a newspaper is a privileged publication, and not in itself a tort. Such a publication is a natural and probable consequence, and a direct consequence of the institution of the prosecution; and the fact that the prosecution resulted in such a publication may properly be shown to aid the jury in estimating the damages:" *Minneapolis Threshing-Machine Co.* v. *Regier*, (Supreme Court of Nebraska,) 70 N.W. Rep. 934.

Married Women, Power to Contract, Divorce a Mensa et Thoro

The Superior Court of Pennsylvania has lately decided that neither a divorce *a mensa et thoro*, with alimony, nor a settlement by her with an absconding husband of her claim for money under such divorce proceedings by accepting land in lieu of money, nor the fact that she has been declared a *feme sole* trader, will make her anything but a married woman in respect of her contracts; nothing but an absolute divorce *a vinculo matrimonii* will have that effect; and therefore a note signed by a married woman, not so divorced, though the other circumstances mentioned all exist, as surety for another, is

void, under the married women's acts of Pennsylvania: *Harley* v. *Leonard*, 4 Pa. Super. Ct. 431.

Mortgage, Assumption of Debt by Grantee

The Supreme Court of Wisconsin has adopted the rule which seems consonant with reason and justice, that when a subsequent grantee of mortgaged premises, in the conveyance to him, assumes the mortgage as part of the consideration, his liability rests solely on that consideration and promise, and no other consideration need pass from the mortgagee to the grantee, though his immediate grantor was not personally liable to the mortgagee: *Enos* v. *Sanger*, 70 N. W. Rep. 1069.

Transfer of Property, Assumption of Debt by Grantee

When a mortgagor, by recorded deed, conveys part of the mortgaged premises to one who assumes the entire mortgage debt, and then conveys the balance, free from the incumbrance, the first parcel, even in the hands of a subsequent grantee, who agrees to pay only a proportionate part of the debt, is primarily liable for the whole amount, and the mortgagee may first resort thereto, reserving the balance of the tract as a separate fund to satisfy a later indebtedness secured on that part alone: *Skinner* v. *Harker*, (Supreme Court of Colorado,) 48 Pac. Rep. 648.

Foreclosure, Inverse Order of Alienation

According to a recent decision of the Supreme Court of Alabama, the rule that mortgaged premises will be subjected to foreclosure in the inverse order of alienation by the mortgagor, does not apply when the mortgage provides that any part of the land sold by the mortgagor shall be released on payment of the purchase-money on the mortgage, and the mortgagor sells a part of the premises to one who has notice of this provision, reserving a lien for the deferred payments, and delivering the notes therefor to the mortgagee. In such a case foreclosure should first be had on lands so sold for the amount due on the notes before resorting to that held by the mortgagor, or by a person who succeeds to his equities: *Northwestern Land Assn.* v. *Robinson*, 21 So. Rep. 999.

Ardemus Stewart.