PROGRESS OF THE LAW.

As Marked by Decisions selected from the Advance Reports.

The Court of Appeal of England has recently decided, that a solicitor employed by a client in regard to his claim against a third person has no implied authority, before action is brought, to effect a compromise of the claim, there being no difference between the case of a solicitor who appears for a party in an action, and one who acts for a person where no action is as yet in existence: *Macauley* v. *Polley*, [1897] 2 Q. B. 122.

Attorney and Client, Compromise of Right of Action

The Supreme Court of Michigan has lately held, that under the statute of that state, (How. Ann. Stat. Mich. § 3582,) which gives turnpike companies a right to collect tolls from persons traveling on their roads in vehicles drawn by animals, a turnpike company has no right to charge for the use of its road, by persons using bicycles: *Murfin* v. *Detroit & E. Plank Road Co.*, 71 N. W. Rep. 1108.

Bicycles, Toll Roads

This case follows *Williams* v. *Ellis*, 5 Q. B. D. 175, 1880, and rejects *Geiger* v. *Turnpike Road*, 167 Pa. 583, 1895, where the Supreme Court of Pennsylvania prescribed that a bicycle should be charged toll, "according to the number of wheels and horses drawing the same."

An ordinance requiring every person who uses a bicycle to ring an alarm bell upon approaching any and all crossings or cross walks, enacted in pursuance of statutory authority to regulate the riding of bicycles, is not, as a matter of law, unreasonable: *City of Emporia* v. *Wagner*, (Court of Appeals of Kansas, Southern Department, C. D.,) 49 Pac. Rep. 701.

Warning of Approach

In *Nauman* v. *Weidman*, 37 Atl. Rep. 863, the Supreme Court of Pennsylvania recently ruled that a devise of land to a religious association in trust to devote the income to keeping the testator's family lot in the meeting house graveyard in order, and to distribute the balance in amounts specifically limited, to home or foreign missions, and the residue among the needy poor of the vicinity, as the trustees and their successors might think best, created a valid trust for charitable uses, and not a perpetuity.

Charities, Devise for Charitable Use, Burial Lot, Missions

Common Schools, Use of School House

School directors may not permit the use of school buildings for sectarian religious meetings, nor for the holding of public lyceums, nor for any purposes other than those recognized as school purposes: *Bender* v. *Streabich*, (Supreme Court of Pennsylvania,) 37 Atl. Rep. 853.

Constitutional Amendment, Adoption

A constitutional amendment may become a law, though the legislature made no joint resolution formally declaring that it should be submitted to the people, and though it was not printed upon each ticket upon the ballots voted in the general election: *State* v. *Herried*, (Supreme Court of South Dakota,) 72 N. W. Rep. 93.

Constitutional Law, Appointment of Officers

The Supreme Court of Minnesota has declared unconstitutional an act (Gen. Stat. Minn. 1894, § 7926,) which requires the governor to appoint members of the state board of pharmacy from among a certain number of pharmacists elected by the state pharmaceutical association, on the ground that it creates an unauthorized limitation upon the appointing power: *State* v. *Griffin*, 72 N. W. Rep. 117.

Administration, Estate of Supposed Decedent

The Supreme Court of Rhode Island has lately decided that the statute of that state, (Pub. Laws R. I. 1882–5, c. 298,) which provides for the administration of the estate of one who has been absent and "not heard from, directly or indirectly, for the term of seven years," as if he were dead, violates Art. I., § 10, of the state constitution, and the Fourteenth Amendment to the Constitution of the United States, providing that no person shall be deprived of property without due process of law: *Carr* v. *Brown*, 38 Atl. Rep. 9.

Contesting Tax Sales

The Supreme Judicial Court of Maine has recently held unconstitutional the statute of 1895, c. 70, § 11, amending Rev. Stat. Me. c. 6, § 205, which required the owner of land sold for non-payment of taxes to deposit with the clerk of court the amount of all taxes, interests and costs accrued up to that time, before he should be permitted to contest the validity of the tax or sale, on the ground that it infringed upon the constitutional rights of the citizen not to be deprived of his property, but by the judgment of his peers, or by the law of the land, to have remedy by due course of law for any injury done to his property, and to have right and justice administered to him freely and without sale: *Bennett* v. *Davis*, 37 Atl. Rep. 864.

A state may lawfully compel its counties and cities to indemnify against losses of property arising from mobs and riots within their limits, independently of any misconduct or negligence on the part of such city or county to which the loss can be attributed; and a statute imposing such liability is therefore constitutional: *Penna. Co.* v. *Chicago*, (Circuit Court, N. D. Illinois,) 81 Fed. Rep. 317.

Liability for Damage by Mob

The Court of Appeals of Kentucky, in *Schmitt* v. *Mitchell*, 41 S. W. Rep. 929, has recently had occasion to pass upon a number of questions in regard to voting at corporation elections.

Corporations, Elections, Voting, Executors

It holds (1) That the stock of a decedent belongs to and may be voted by his personal representatives, until there has been a settlement and division of his estate; that one of several executors may vote stock belonging to the estate, in the absence of his co-executors, and that a proxy given by one of the absent executors is revoked by the vote of the one who is present; and that the provision in such a proxy that it shall remain in force until revoked by the grantor in a certain way does not prevent its revocation by the co-executor; (2) That under the constitutional provision for cumulative voting, (Const. Ky. § 207,) it is no objection to the validity of an election that the stockholders did not vote cumulatively, when it does not appear that any of them claimed the right to do so; (3) That one who holds stock as executor may be elected a director of a corporation; (4) That the fact that a full board of directors is not elected at an election because one of the candidates is ineligible, does not authorize the old board to hold over; those who are duly elected constitute the board and have power to fill the vacancy; and (5) That notice to stockholders of the fact that one for whom they vote as a director is not a stockholder does not authorize the ignoring of their votes, so as to give the election to a candidate who has a minority of the votes cast, unless it clearly appears that they knew that that fact amounted to a disqualification.

Cumulative Voting

Directors

A vendor's promise to compensate the officers of a private corporation for services in its promotion and organization, and for procuring the sale of his land to it, which has not been rescinded, is not necessarily illegal by reason of the antagonistic relations involved and the special opportunities afforded for fraud, no actual fraud

Promoters, Compensation from Vendor

having been disclosed: *Dexter* v. *McClellan*, (Supreme Court of Alabama,) 22 So. Rep. 461.

Rights of Stockholder

The sale of the entire property of a corporation will not be enjoined at the instance of a single stockholder, in the absence of unfairness, fraud, or, oppression, when the sale was authorized by a vote of more than eleven hundred out of one thousand three hundred and fifty shares: *Peabody* v. *Westerly Waterworks*, (Supreme Court of Rhode Island,) 37 Atl. Rep. 807.

Directors, Fraud

An action for money had and received will not lie at the suit of a corporation to recover a sum received by a former director as a bribe for resigning his office and procuring the delivery of the control of the corporation to the briber for fraudulent purposes; the only remedy of the corporation in such a case is an action to recover damages for the fraud practiced upon it by the directors: *McClure* v. *Law*, Supreme Court Appellate Division First Department, 46 N. Y. Suppl. 775; *McClure* v. *Trask*, 46 N. Y. Suppl. 780.

Election of Remedies

When a stock broker has converted securities belonging to his customers, by pledging them to third parties, the fact that the customers receive from the pledgees whatever proceeds of the securities remain after satisfying the pledge does not constitute such an election of remedies as to debar them from pursuing the broker for the rest of their loss: *In re Pierson's Estate*, (Supreme Court of New York, Appellate Division, Third Department,) 46 N. Y. Suppl. 557.

Elections, Disability, Marking Ballots

The Supreme Court of Missouri has lately decided, that under the election law of that state, April 18, 1893, (Laws 1893, p. 164,) which provides that "any elector who declares under oath to the judges of election having charge of the ballots that he cannot read or write, or that by reason of physical disability he is unable to mark his ballot, may declare his choice of candidates to the judges, having charge of the ballots, who, in the presence of the elector, shall prepare the ballot for voting. . . . Provided, however, that the provisions of this section shall not be construed to allow any judge or judges of any election to enter a booth for the purpose of assisting any elector in preparing his ballot. Such judges, after reading to the elector the contents of the ballot shall without leaving their respective positions prepare such ballot as the elector may dictate," a ballot is not vitiated by the fact that the judges assisted in preparing it without the preliminary oath

required by statute, or by the fact that they went into a booth, in violation of the statute, to assist in preparing the ballot: *Hope* v. *Flentge*, 41 S. W. Rep. 1002.

Barclay, C. J., and Macfarlane and Robinson, JJ., dissented.

Ballots, Marking

When a cross outside the circle in a ballot appears to have been made intentionally with a pencil, while a cross within the circle was made with the official stamp, it is to be presumed that the cross outside the circle was made as an identifying mark, and the ballot should not be counted; but when an imperfect cross is made at the right of the name of a certain candidate, and may have been made for the purpose of voting for the candidate for the same office on another ticket, without accomplishing that purpose, the ballot should be counted, though the mark was intentionally made; and ballots defaced by ink blots should not be rejected, when the blotting seems to be not intentional, but accidental, and due chiefly to the use of poor paper for the ballots: *Church* v. *Walker*, (Supreme Court of South Dakota,) 72 N. W. Rep. 101.

Under the election law of New York, (Laws. N. Y. 1896, c. 909,) a ballot on which the cross-mark is placed before the name of a candidate, but not in the "voting space," is not valid, and should not be counted: *People* v. *Common Council of City of Elmira*, (Supreme Court of New York, Appellate Division, Third Department,) 46 N. Y. Suppl. 701.

The cross-mark on a ballot need not be perfect, but it must be in the proper place; and under Election Law N. Y. § 105, as amended by Laws 1896, c. 909, which provides that the cross-mark shall be made "before" the name of each candidate for whom the voter wishes to vote, a ballot will not be counted for an office if no cross is placed before any name printed thereon for that office, though one is placed after one of the names printed in the space provided for voting for a person whose name may be written in the blank space left for that purpose, no name, however, being written therein: *People* v. *Mehrer*, (Supreme Court of New York, Appellate Division, Second Department,) 46 N. Y. Suppl. 898.

Electric Railways, Escape of Electricity, Negligence

On the principle that "*Res ipsa loquitur*," the escape of electricity from a street railway, resulting in the fright and injury of a horse being driven on a public street, creates a presumption of negligence in the operation of the railway: *Trenton Pass. Ry. Co.* v. *Cooper*, (Court of Errors and Appeals of New Jersey,) 37 Atl. Rep. 730.

Equity, Pleading, Multifariousness

The Supreme Court of Rhode Island has lately decided that a bill in which all the complainants seek as taxpayers to enjoin the defendant municipality from purchasing the plant of a waterworks company joined as a defendant, and in which one complainant further seeks as a stockholder of the company to enjoin the sale on the ground of inadequacy of price, is multifarious: *Peabody* v. *Westerly Water Works*, 37 Atl. Rep. 807.

Estoppel, Deed from Grantor without Title, Acquisition of Title by Grantee

The Court of Appeal of England has recently held, affirming the decision of Stirling, J., ([1897] 1 Q. B. 440,) that when a grantor who has no title purports by deed to convey to A. a piece of land for life, with remainders over, and A. enters upon the land under the deed, and afterwards acquires a good title by possession against the true owner, A. and his privies are estopped, as against the remainderman, from disputing the validity of the deed: *Dalton* v. *Fitzgerald*, [1897] 2 Ch. 86.

Evidence, Expectation of Life

The Flatchcraft Insurance Manual, with the mortuary tables therein contained, is admissible to prove the expectancy of life of one deceased, it being shown that it is a standard authority among insurers: *Missouri, K. & T. Ry. Co. of Texas* v. *Ransom*, (Court of Civil Appeals of Texas,) 41 S. W. Rep. 826.

False Pretenses, Pension Agent

The Supreme Court of Alabama holds, that the federal courts do not have exclusive jurisdiction of the offense of obtaining money under the false pretense of being a pension agent, but that one who falsely pretends to be such is punishable under § 3811 of the Code of 1886, defining the offense of obtaining money under false pretenses: *Pearce* v. *State*, 22 So. Rep. 502.

Fishing, Grant of Fishery, Action by Grantee

The Court of Appeal of England has recently decided that a right to fish, created by a deed conveying "the exclusive right of fishing" in a certain river, with a proviso that "the right of fishing hereby granted shall only extend to fair rod and line angling, and to netting for the sole purpose of procuring fish-baits," was not a mere license to fish, but a right to catch fish and carry them away; that it was therefore a *profit à prendre* and an incorporeal hereditament; that the grantee had a right of action against any one who wrongfully did any act by which the enjoyment of the rights given to

him by the deed was prejudicially affected; and that therefore he could maintain an action against one who wrongfully discharged certain sediment into the stream, thus driving away the fish and injuring the breeding: *Fitzgerald* v. *Firbank*, [1897] 2 Q. B. 96.

Fishing

A common fishing line, fastened to an object on the bank and extending into the water, with one hook thereon, is not a "set line:" *State* v. *Stevens*, (Supreme Court of Vermont,) 38 Atl. Rep. 80.

Forgery

Under Penal Code Wash. § 63, which provides that every person who shall falsely make . . . "any record, deed, will, codicil, bond, writing obligatory, promissory note for money or property, receipt for property, power of attorney, certificate of a justice of the peace or other public officer, auditor's warrant, treasury note, county order, acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note for money or property, or any other instrument in writing, . . . shall be deemed guilty of forgery;" a mere account, which creates no obligation, and is of itself neither an evidence of debt nor of title, is not the subject of forgery: *State* v. *Heaton*, (Supreme Court of Washington,) 49 Pac. Rep. 493.

Garnishment, Exemption, Wages

Under a statute (Rev. Stat. Tex. 1895, Art. 252,) which provides that no "current wages for personal services shall ever be subject to garnishment," past-due wages left in the employer's hands because of inability to collect them are exempt, but not past-due wages voluntarily left with the employer. These cease to be current wages: *Davidson* v. *F. H. Logeman Chair Co.*, (Court of Civil Appeals of Texas,) 41 S. W. Rep. 824.

General Average, Short Coal Supply, Liability of Ship, Port of Refuge, Expenses

The Circuit Court of Appeals for the Second Circuit, in *Hurlbut* v. *Turnure*, 81 Fed. Rep. 208, affirming 76 Fed. Rep. 587, has held that a mere deficiency of five or even ten tons below the customary and probably adequate supply of coal for a contemplated voyage does not make the ship an insurer against damages, so as to exempt the cargo from a general average charge in respect of damages not due to the deficiency; but that a steamship which fails to take the customary supply of coal for a voyage must be presumed to voluntarily assume the risk of putting into a port of refuge to complete her supply; and

she will therefore be chargeable with the expenses of the port of refuge, even if, as it turns out, she would have been obliged, because of delays from adverse storms, to seek such port for a further supply had she started with the usual quantity.

Accident Insurance, Drowning

The Supreme Court of Ohio has adopted the prevalent rule that death caused by accidental drowning is death "through external, violent, and accidental means," within the meaning of the stipulation of an accident policy which insures against death by such means: *United States Mut. Acc. Assn.* v. *Hubbell*, 47 N. E. Rep. 544.

Fire Insurance, Total Loss

There is "a total loss" of an insured building when the only portions of it left unimpaired are the foundations and a part of a wall which cannot be utilized at a less expense than if built anew: *O'Keefe* v. *Liverpool, L. & G. Ins. Co.*, (Supreme Court of Missouri, Division No. 2,) 41 S. W. Rep. 922.

Lloyd's Policy, Suits

The Supreme Court of New York, Appellate Division, Fourth Department, affirming *Lawrence* v. *Schaefer*, 42 N. Y. Suppl. 992, 1897, (36 AM. L. REG. N. S. 202,) holds that a stipulation in a Lloyd's insurance policy executed by one of the underwriters for himself, and as attorney in fact for the others, that no action to enforce the provisions of the policy shall be brought except against said attorney who is designated to represent all the underwriters, and that each will abide the result of that action, is valid, and precludes separate actions against the several underwriters until their liability has been fixed on the action against the attorney: *Lawrence* v. *Schaefer*, 46 N. Y. Suppl. 719.

Marine Insurance, Capture, Return of Vessel, Total Loss

In a case recently heard by Collins, J., of the Queen's Bench Division, a ship, insured under a policy covering war risks, was captured by a cruiser belonging to one of two belligerent governments, while carrying contraband of war destined for the other. The shipowners thereupon gave the underwriters notice of abandonment, which was refused; and shortly afterwards they began an action on the policy. The prize court decreed the vessel to be lawful prize, but the war being then at an end, did not confiscate her, but ordered that she be returned to her owners. At the trial of the action on the policy, the court reserved for further consideration the point as to the effect of the restoration; but came finally to the conclusion that as it was after the bringing of the action, it did

not disentitle the owners to recover as for a total loss: *Ruys* v. *London Assurance Corporation*, [1897] 2 Q. B. 135.

Interstate Rendition, Revoking Warrant

The governor of a state has the power to revoke his warrant for the surrender of an alleged fugitive from justice at any time before he is taken out of the state; and if, in a *habeas corpus* proceeding in behalf of the alleged fugitive, it appears that the warrant has been revoked, he must be discharged. The grounds of the revocation cannot be inquired into: *State* v. *Toole*, (Supreme Court of Minnesota,) 72 N. W. Rep. 53.

Jurisdiction, Tort Committed in Foreign Country, Libel

An action may be brought in respect of an act committed without the jurisdiction of the forum, if the act is wrongful both there and in the country where it is committed; but the act need not be the subject of civil proceedings in the foreign country; a libel which would ground a criminal prosecution there may be the subject of an action for damages in the forum: *Machado* v. *Fontes*, (Court of Appeal of England,) [1897] 2 Q. B. 231.

Landlord and Tenant, Distress

A mere unexecuted intent to remove, without any attempt to carry it into effect, is not an attempt to remove in any sense of the term, and will not justify the landlord in distraining under a covenant in a lease authorizing immediate distress for the balance of rent for the term upon either removal or attempted removal: *Klein* v. *McFarland*, (Superior Court of Pennsylvania,) 5 Pa. Super. Ct. 110.

Libel, Inspection of Documents

The Court of Appeal of England has recently held, that when the publication of a libel is admitted, the plaintiff should not be allowed to inspect a document which the defendant admits is in his possession, but claims to be merely the original contribution, as published by him. The plaintiff has no right to thus compel disclosure of the author of the libel: *Hope* v. *Brash*, [1897] 2 Q. B. 188.

Light and Air, Photographer, Interference, Injunction

Kekewich, J., of the Chancery Division of the Supreme Court of Judicature of England, has laid down the principle that any one who is in the present enjoyment of an access of light to his premises for a special or extraordinary purpose, such as taking photographs, may have an injunction against interference with that access of light, irrespective of the length of

time he has enjoyed it, provided that his enjoyment be prior to the interference: *Lazarus* v. *Artistic Photographic Co.*, [1897] 2 Ch. 214.

This case overrules *Lanfranchi* v. *Mackenzie*, 4 L. R. Eq. 421, 1867, where an injunction was refused a firm of silk merchants against the erection of a building which would interfere with the light coming to their windows, causing a glare which was wholly unsuited for the purpose of sampling raw silk. In the present case the interference was also by producing a glaring light unfitted for photographic purposes. The principle here announced seems also founded on better reason than that in *Lindsey* v. *First Natl. Bk.*, 115 N. C. 553, 1894, where it was held that the lessees of the second story of a building for the purpose of taking photographs had no right of action against one who erected a building upon the adjoining lot and obstructed their windows, though their lessor owned the adjoining strip of land upon which the wall was erected.

Lotteries

When, by contract, the parties buy lots of different values, each paying one hundred dollars, and the lot each purchaser is to receive is determined by drawing from a box a card with the description of the lot upon it, the transaction is a lottery: *Paulk* v. *Jasper Land Co.*, (Supreme Court of Alabama,) 22 So. Rep. 495.

Mails, Fraud Orders, Powers of Post-Office Authorities

Barr, District Judge of the Circuit Court for the District of Kentucky, has rendered a very important decision in reference to the right of the postoffice authorities to seize mail matter under what is known as a fraud order. He holds, (1) That the act of Congress of March 2, 1895, authorizing the postmaster general, on a determination upon evidence satisfactory to him that a person or company is using the mails for the purpose of conducting a lottery or other fraudulent scheme, to order a postmaster to return to the senders all mail received at his office directed to such person or company, or his or its agents or representatives, is within the powers of Congress to prescribe what matter shall be excluded from the mails; but that the postmaster general has no power to order such mail matter to be sent to the dead-letter office, without regard to whether such matter is or is not non-mailable; (2) That the refusal of the postmaster to deliver mail matter addressed to a private

person, a citizen of the United States, and the return of such mail to the senders, or to the dead-letter office, without regard to whether it is non-mailable, though done in pursuance of an executive order of the postmaster general, on a determination by him that the person to whom such mail is addressed is using the mails for unlawful purposes, is a violation of the fourth amendment to the constitution, securing the people against unreasonable seizures of their papers and effects; and (3) That the circuit court has jurisdiction to grant an injunction restraining a postmaster from withholding mail matter from a citizen to whom it is directed, under an order of the postmaster general which was beyond the scope of his constitutional authority: *Hoover* v. *McChesney*, 81 Fed. Rep. 472.

Master and Servant, Pastor of Church, Liability for Acts of Servant

The Court of Appeals of Maryland has recently decided that a pastor rightfully instructing a doorkeeper of a church to admit only such as have tickets is liable for injuries resulting from the use of unnecessary force by the doorkeeper in preventing one who had no ticket from entering; but he will not be liable for the act of the doorkeeper in directing a police officer to arrest one who seeks to enter without a ticket, on the ground of a false arrest, since the doorkeeper in so doing does not act within the apparent scope of his authority: *Barabasz* v. *Kabat*, 37 Atl. Rep. 720.

Wages, Summary Remedy to Enforce Payment

The Supreme Court of the Northwest Territories has declared valid an ordinance of the Legislative Assembly providing that "it shall be lawful for any justice of the peace, on complaint on oath by any employe or other servant, of ill-usage, non-payment of wages, the same having been first demanded, or improper dismissal by his master or employer, to cause such master or employer to be brought before him, and upon proof to his satisfaction of the complaint being well founded, to order such complainant to be discharged from his employment, and to order such master or employer to pay such complainant one month's wages in addition to the amount of wages then actually due him, not exceeding two months' wages, as aforesaid, together with the costs of prosecution, the same to be levied by distress and sale of the offender's goods and chattels, and, in default of sufficient distress, to be imprisoned for any term not exceeding one month, unless the said moneys and costs be sooner paid: *In re Gower*, 17 Can. L. T. 298.

Strikes, Intimidation of Employes, Liability to Employer

The Supreme Court of Pennsylvania has lately ruled, (1) That it is an unlawful intimidation of employes for a large number of persons to surround them, and follow them for a considerable distance, urging them in a hostile manner not to go to work, and calling them opprobrious names, though no actual physical violence is used; (2) That when laborers are going to a place of employment, whether under contract or in search of work, others have no right to stop them and occupy their time without their consent, (or that of their employer, if actually employed,) in order to peacefully urge them not to go to work; and (3) That those who commit such unlawful acts are liable to the employer in damages: *O'Neil* v. *Behannar*, 37 Atl. Rep. 843.

So, whenever a person by means of fraud or intimidation procures either the breach of a contract or the discharge of a plaintiff from an employment, which, but for such wrongful interference, would have continued, he is liable in damages for such injuries as naturally result therefrom; and the rule is the same whether by these wrongful means a contract of employment, definite as to time, is broken, or an employer is induced, solely by reason of such procurement, to discharge an employe whom he would otherwise have retained, even if the terms of the contract of service are such that the employer may do this at his pleasure, without violating any legal right of the employe. It is not, however, necessarily unlawful merely to induce another to leave an employment or discharge an employe, by persuasion or argument, however whimsical, unreasonable, or absurd: *Perkins* v. *Pendleton*, (Supreme Judicial Court of Maine,) 38 Atl. Rep. 96. (See note in this issue.)

Mines and Mining, Subsidence, Liability of Lessee

The lessee of a mine is not liable in damages to the owner of the surface, who has acquired a right to have the buildings thereon uninjured by underground workings, for injury occasioned to the buildings by reason of subsidence happening during the currency of the lease, caused not by any act of commission on the part of the lessee, but due to an excavation underground, made by the lessee's predecessor in title prior to the date of the lease: *Greenwell* v. *Low Beechburn Coal Co.*, (Bruce, J., of the Queen's Bench Division,) [1897] 2 Q. B. 165.

Maxey, District Judge, of the District Court for the Western District of Texas, has lately rendered a decision involving two very interesting questions in regard to the naturalization of aliens, holding (1) that native citizens of Mexico, whatever may be their status from an ethnological point of view, are eligible to American citizenship, and may be naturalized on complying with the provisions of the naturalization laws; and (2) that an alien who is ignorant and unable to read and write, and who cannot explain the principles of our constitution, is nevertheless entitled to be naturalized, when it is clearly shown that he is a thoroughly law-abiding and industrious man, of good moral character: *In re Rodriguez*, 81 Fed. Rep. 337.

Naturalization, Nationality

The practice in respect of the point involved in the second ruling is different in most other courts.

A corporation which has received from public authority a franchise which also provide for the accomodation of the general public, owe a duty to serve all persons who make proper application for such service and who comply with such reasonable rules as may be fixed and make such reasonable compensation as may be required; and a refusal or neglect to render such service when asked or contracted for may give a cause of action *ex delicto*. Accordingly, when a natural gas company negligently fails to supply fuel gas, and cuts it off suddenly and without notice, to the injury of the health of its customers, a cause of action arises which is neither dependent upon a contractual relation between the parties nor liable to be defeated by proof of such a contractual relation: *Hochle* v. *Allegheny Heating Co.*, (Superior Court of Pennsylvania,) 5 Pa. Super. Ct. 21.

Negligence, Breach of Duty, Damages

In a case recently decided by the Supreme Court of New York, Appellate Division, Second Department, two policemen were sent out with a police ambulance to bring in a prisoner, one of them being detailed by their superior officer to drive, and the other to remain inside the ambulance. While crossing a railroad track, the ambulance was struck by an engine, and the policeman inside was killed. Under the circumstances; it was held that the negligence of the driver, if any, was not imputable to the deceased, since the former had the exclusive management of the vehicle: *Bailey* v. *Jourdan*, 46 N. Y. Suppl. 399.

Imputed Negligence

When, by the use of an infringing device, in connection with a city's fire engine, the number of men required with each

Patents, Infringement, Profits

engine was reduced, the amount of their wages should be included in the computation of savings or profits, though the city did not in fact reduce the number of men employed, but either used them for other purposes or allowed them to remain idle: *Campbell* v. *Mayor, etc., of City of New York*, (Circuit Court, S. D. New York,) 81 Fed Rep. 182.

Principal and Agent, Insurance Brokers, Liability

The Supreme Court of New York, Appellate Division, Second Department, has recently ruled that persons who hold themselves out as insurance brokers assume to have the requisite knowledge, information, ability and skill to transact such business for their patrons, and to use reasonable care, skill and diligence in so doing; and consequently, if such brokers, when employed to procure insurance, place it in a company which has never been authorized to do business in the state, and from which they are not licensed to procure policies, they are chargeable with negligence, since the policy is void, and are liable for its consequences, if injurious to their employer: *Burges* v. *Jackson*, 46 N. Y. Suppl. 326.

Public Officers, Officers de facto, Appointment, Compensation

The Court of Errors and Appeals of New Jersey has lately held, that one who, by the appointment of one who has apparent authority to appoint, and apparently exercises that authority, becomes a public officer *de facto*, without dishonesty or fraud on his part, and renders the services required of the incumbent of the office to which he has so been appointed, may recover the compensation provided for such services during the period of their rendition: *Erwin* v. *City of Jersey City*, 37 Atl. Rep. 732.

This decision is authority only where there is no officer *de jure*. If there is such an officer, he is entitled to the emoluments of the office, whether he performs the services or not, provided his failure is not due to his own fault; and the *de facto* officer cannot recover them, as the state would then have to pay them twice.

Specific Performance, Continuous Acts, Railroad Lease

The Court of Appeals of Kentucky has ruled that equity will decree specific performance of a contract to operate a railroad for a term of thirty years, for the benefit of mortgage bondholders, when there is no other adequate remedy, though the contract calls for continuous service, involving skill and judgment, and will require continuous supervision on the

part of the court: *Schmidt* v. *Louisville & N. R. R. Co.*, 41 S. W. Rep. 1015.

As a general rule, a contract for the performance of continuous services will not be enforced, since a court of equity cannot give its personal supervision to the enforcement of such a decree: *Grape Creek Coal Co.* v. *Spellman*, 39 Ill. App. 630, 1891; *Roberts* v. *Kelsey*, 38 Mich. 602, 1878, and consequently, the courts have refused to enforce a contract for the operation of a railroad, or a street railway: *Johnson* v. *Shrewsbury & Birmingham Ry. Co.*, 3 DeG., M. & G. 914, 1853; *City of Kingston* v. *Kingston El. Ry. Co.*, 33 Can. L. J. 395, (1897); *Shackley* v. *Eastern R. R. Co*, 98 Mass. 93, 1867; *Port Clinton R. R. Co.* v. *Cleveland & Toledo R. R. Co.*, 13 Ohio St. 544, 1862; *McCann* v. *South Nashville St. R. R. Co.*, 2 Tenn. Ch. 773, 1877; a contract that one party should use his skill and machinery in the manufacture of a certain article, while the other party agreed to purchase the manufactured article from him, to the extent of the market demand, on condition that the manufacturer should sell exclusively to him: *Bickford* v. *Davis*, 11 Fed. Rep. 549, 1882; and a contract by which the complainant agreed to furnish steam power delivered to the pulley of an electric dynamo of the power of one hundred kilowatts, and to furnish the power "constant" for eighteen hours per day, from six o'clock A. M. to 12 o'clock P. M., and to furnish all oil and waste and attendance for the running of the generator and other apparatus, taking reasonable care of them, without responsibility for ordinary wear and tear and for accidents, while the defendant agreed to furnish generators and other electrical apparatus, to be placed in the station or power house of the complainant, and to keep them in good repair, connected by belt, ready for the pulley of the engine to be attached to the pulley of the generator, and to pay a daily sum for a specified number of cars: *Electric Lighting Co. of Mobile* v. *Mobile & S. H. Ry. Co.*, 109 Ala. 190, 1896.

Railroad leases and traffic contracts form a marked exception to this rule, and such contracts will be enforced whenever the remedy at law is inadequate, either directly, or by enjoining acts in violation of the contract. *Wolverhampton & Walsall Ry. Co.* v. *London & N. W. Ry. Co.*, 16 L. R. Eq. 433, 1873; *Chicago & Alton R. R. Co.* v. *Chicago & N. W. Coal Co.*, 79 Ill. 121, 1875; *D., L. & W. R. R. Co.* v. *Erie Ry. Co.*, 21 N. J. Eq. 298, 1871; *Cornwall & Lebanon R. R. Co.'s Appeal*, 125 Pa. 232, 1889; *Contra*, *Blackett* v. *Bates*, 1 L. R.

Ch. 117, 1865; *Powell Duffryn Steam Coal Co.* v. *Taff Vale Ry. Co.*, 9 L. R. Ch. 331, 1874.

In *Prospect Park & Coney Island R. R. Co.* v. *Coney Island & Brooklyn R. R. Co.*, 144 N. Y. 152, 1894, reversing 66 Hun, 366, 1892, the plaintiff corporation operated a steam railroad running from Coney Island to a depot in the City of Brooklyn, and also certain horse car lines in that city. The defendant corporation was engaged in operating certain horse car lines in the city and a line in Coney Island. They entered into a contract by which the plaintiff granted to the defendant the use of certain of its tracks in the city, from a point named to the said depot, for twenty-one years, from June 1, 1882, free of charge, while the defendant covenanted to run cars to plaintiff's depot to connect with the trains of the latter, running to and from the island. Either party could terminate the contract on six months' notice. The parties acted under the contract for over seven years, when the defendant adopted the trolley method of propelling cars by electricity upon its road between the city and the island, ceased to run its cars to the depot, and informed plaintiff that it did not intend to do so. The plaintiff then brought suit to compel the specific performance of the contract, and the court held that the electrical method of propulsion adopted by the defendant could not be regarded as the use of steam as a motive power, and did not bring the case within the provision providing for the termination of the contract, and that the plaintiff was therefore entitled to the relief sought.

So, in *Seaboard Air Line Belt R. R. Co.* v. *Western & Atlantic R. R. Co.*, 97 Ga. 289, 1895, one railroad company contracted with another, upon valuable consideration, to "interchange business, both through and local," with the latter and its connecting lines for a specific term of years, "upon terms as favorable and advantageous to said road and its connecting lines as those given to any other railroad in a designated city." It was held that this contract bound the former company not only as to freight shipped from or to points on its own line, but also as to freight destined or coming from points beyond the same, and it therefore could not, so long as it pursued a different and more favorable course as to other railroads entering the city in question, lawfully do anything to deprive the other party to the contract and its connections of the benefit of "through rates and through proportions of rates, and bills of lading provided therein," as to freights of the latter class; and that though

the specific performance of such a contract could not be decreed (as to which *quære*, in view of the other decisions here cited,) the defendant would be enjoined during the life of the contract from voluntarily entering into or maintaining business relations with transportation companies beyond its own line, with the intention or purpose of depriving the plaintiff of the benefit thereof, and with such intention or purpose refusing to receive from such transportation companies shipments of freight routed over the plaintiff's line and upon bills of lading giving to it the benefit of "through rates and through proportions" upon such shipments.

Such contracts will also be enforced between the successors of the parties: *In re Application of Rome, Watertown & Ogdensburgh R. R. Co.* v. *Ontario Southern R. R. Co.*, 16 Hun, (N.Y.) 445, 1879; *Bald Eagle Valley R. R. Co.* v. *Nittany Valley R. R. Co.*, 171 Pa. 284, 1895.

In *Cumberland Valley R. R. Co.* v. *Gettysburg & Harrisburg R. R. Co.*, 177 Pa. 519, 1896, a contract was thus enforced which provided, *inter alia:*

Fourth. It is hereby covenanted and agreed by the parties hereto, that they will promote and facilitate the interchange of cars and business between their respective roads—that they will issue coupon tickets for passengers and through bills of lading for freight interchanged between the said lines, and that the earnings from joint business exchanged with the Gettysburg & Harrisburg Railroad shall be apportioned to and between the parties hereto on such a mileage basis as shall be agreed upon between the parties hereto.

Fifth. The parties of the third and fourth parts hereby respectively covenant and agree that they will, so far as they lawfully can, send to destination all traffic controlled by them, *via* the lines of the parties of the first and second parts hereto.

Sixth. It being the intent of the parties hereto that their lines shall be worked as far as possible in harmony with each other, the Pennsylvania Railroad and the Cumberland Valley Railroad Companies hereby agree that they will, so far as they can consistently with their obligations to other parties, make such arrangements as will promote the development of and interchange of traffic with the other parties hereto, and that they will receive at all points controlled by them, and promptly transport the traffic originating on or to be delivered to the Gettysburg & Harrisburg Railroad and passing over their lines to or towards its destination at as favorable rates as they accord to any competing line or other parties upon like traffic.

And the said South Mountain Railway and Mining Company and the Gettysburg & Harrisburg Railroad Company agree that they will receive and transport promptly over their lines and upon as favorable terms as they give to any other parties, all traffic tendered to them by the Pennsylvania Railroad Company, or the Cumberland Valley Railroad Company, or lines controlled by them and destined to points upon their said lines."

Similarly, in *Joy* v. *St. Louis*, 138 U. S. 1, 1891, affirming 29 Fed. Rep. 546, 1886, the commissioners of Forest Park, St. Louis, of the first part, the St. Louis County Railroad Company of the second part, and the St. Louis, Kansas City and Northern Railroad Company of the third part, entered into what was known as the "tripartite agreement," by which (par. 9) the "said party of the second part shall permit, under such reasonable regulations and terms as may be agreed upon, other railroads to use its right of way through the park and up to the terminus of its road in the City of St. Louis, upon such terms and for such fair and equitable compensation to be paid to it therefor as may be agreed upon by such companies." Under this it was held that the successor of the Kansas City Company was bound to permit the St. Louis, Kansas City and Colorado Railroad Company to use the right of way to the terminus of its road, that the tripartite agreement created an easement in the property of the County Company and the Kansas City Company, for the benefit of the public, which might be availed of, with the consent of the public authorities, properly expressed, by other railroad companies which might wish to use not only the right of way through the park, but also that between the park and the terminus; and that the specific performance of the agreement could be enforced by enjoining the successor of the Kansas Company from preventing the Colorado Company from using the right of way.

Statutes, Submission to Governor, Computation of Time

Sundays are not to be included in computing the period of ten days, within which the governor is required to pass upon a statute submitted to him, under a constitutional provision, (Const. Ill., Art. 5, § 16,) providing that "any bill which shall not be returned by the governor within ten days, (Sundays excepted,) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the general assembly shall, by their adjournment, prevent its return, in which case it shall be filed, with his objections, in

the office of the secretary of state, within ten days after such adjournment, or become a law:" *People* v. *Rose*, (Supreme Court of Illinois,) 47 N. E. Rep. 547.

Time of Approval

When two irreconcilable statutes are approved upon the same day, resort may be had to the office of the secretary of state, and also to the published statutes, for information as to the order of their approval, and the one that is found to have been approved last is the prevailing law: *Davis* v. *Whidden*, (Supreme Court of California,) 49 Pac. Rep. 766.

Suit against State, Ownership of Stock in Railroad

When a state becomes the owner of stock in a corporation, it lays down its sovereign character, and puts itself on an equality with private stockholders; and consequently the corporation and its directors and controlling officers, though in part appointed by the state, and specially representing its interests, may be sued in the federal courts in respect of contracts entered into by the corporation, to the same extent as a corporation wholly owned and controlled by private individuals; and when the governor and attorney general are invested by law with the control of all suits in relation to the property of the state in such corporation, they are proper parties defendant to a suit in equity to establish the validity of a lease of the property of the corporation, and enjoin threatened attacks thereon: *Southern Ry. Co.* v. *North Carolina R. R. Co.*, (Circuit Court, N. D. North Carolina,) 81 Fed. Rep. 595.

Parties

Trade Secret, Injunction

An agreement by which one who enters the employ of a manufacturer of a medicine compounded by a secret process, not to make or sell any of the medicine, or reveal the secret of its composition, is not in restraint of trade, and will be enforced by injunction; and, further, equity will not permit one who has sold for a valuable consideration the absolute and exclusive property in a medicine compounded by a secret process to reveal that secret to a third person, either by himself or through a member of his family, and will restrain by injunction the use of such a secret, if revealed: *C. F. Simmons Medicine Co.* v. *Simmons*, (Circuit Court, E. D. Arkansas,) 81 Fed. Rep. 163.

Ardemus Stewart.