PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

AGENCY.

In *Buckingham* v. *Vincent*, 48 N. Y. Suppl. 747, the defendant furnished the plaintiff's husband with men and teams for removing goods, and directed his men to remove such goods as the husband should point out. They removed a piano in accordance with these instructions, and against the protest of the wife, who owned it. The court held the master liable for conversion, as the men had not removed it for any purpose of their own, but in accordance with his instruction to remove such goods as the plaintiffs husband should point out.

Instructions, Liability, Master

BANKS AND BANKING.

Pepperday v. *Citizens' Nat. Bank*, 38 Atl. (Pa.) 1030, presents an interesting question, rendered more interesting by an able dissenting opinion of Judge Mitchell. A bank had received from its depositor railroad stock to be sold: it was sold by a broker and the bank received in payment the broker's check, which it credited to the depositor's account. The check was sent on for collection, but payment was refused because of the failure of the broker. Meanwhile the depositor had checked out the amount and the question was whether the bank could charge it back against the depositor's account. The majority of the court thought not, basing their opinion on the duty of the bank to receive nothing but cash in payment of the stock. Mitchell, J., dissented, holding that the case was simply the ordinary one of a depositor's check not being paid. It is not quite clear, though, how he gets away from the principle and authorities cited by the majority.

Check for Collection, Failure of Maker, Depositor, Liability

CARRIERS.

The Court of Civil Appeals of Texas, applying the rule that it is the duty of a sleeping-car company to use only reasonable care in guarding the property of passengers from thieves, has reached a conclusion in the case of *Belden* v. *Pullman Palace-Car Co.*, 43 S. W. 22, which was as follows:

Sleeping-Car Companies, Property of Passengers, Liability

CARRIERS (Continued).

A, a passenger, brought an action against the company for the value of a valise left by him when he retired, by the side of his berth, in the aisle. The evidence showed that the car had two servants whose duty it was to sit by turns at the end of the aisle to wait on passengers and see that nothing was stolen; that during the first part of the night one of these servants kept watch, and that when he left the car to awaken the other, the valise was in its place; that during the latter part of the night, while the second servant was on duty several persons came into the car; that the servant woke the passengers for Austin, at which place several got off taking their valises with them; that the servant could not identify particular valises where there were a number of passengers each having one; that no passengers left the car that night except at Austin. Held, that a finding that the valise was taken at Austin, and that its loss was not due to the negligence of the company's servants, was sustained by the evidence.

Street Car, Right of Way

The Supreme Court of New York, in *Huber* v. *Nassau Electric R. Co.*, 48 N. Y. Suppl. 38, decided that the car of a surface railway has no paramount right of way at the intersection of a cross street.

Tickets, Representations of Agent

A carrier is bound to accept a ticket which contains a provision that it must be signed by the person intending to use it, though tendered by a wife whose husband signed it in his own name, where it was sold to the husband for the use of the wife by an agent of the carrier, who informed the husband that the wife's signature was unnecessary, and that he might sign it: *Mexican Cent. Ry. Co.* v. *Goodman* (Court of Civil Appeals of Texas), 43 S. W. 580.

CONSTITUTIONAL LAW.

Service of Civil Process, Privilege of Congressman

Whether or not a member of Congress is privileged from service of civil process issued out of a State court while he is in attendance at a session of Congress (said process being returnable during the session), by virtue of Art. I., § 6, of the Constitution of the United States, exempting senators and representatives from arrest, except for treason, felony and breach of the peace, during their attendance at a session of Congress, is a federal question; and in the absence of a decision of the Supreme Court of the United States extending the privilege to civil suits, a motion to quash such writ thus served on a

CONSTITUTIONAL LAW (Continued).

member of Congress will be denied: *Bartlett* v. *Blair* (New Hampshire), 38 Atl. 1004.

Taxation, Uniformity, Validity

The Court of Criminal Appeals of Texas has declared that a law requiring peddlers to pay specified taxes, and, in provisos, exempting ex-Confederate and ex-Federal soldiers, and certain other classes of persons from payment of such tax for peddling is in violation of the constitutional provision that "taxation shall be equal and uniform:" *Ex parte Jones*, 43 S. W. 513.

CONTRACTS.

Agreement to make Will, Specific Performance

An agreement supported by an executed consideration, to give by will one's property to a certain person, is effectual so far as relates to the estate which he may have at his death, and the execution of such agreement may be enforced by way of specific performance, or otherwise, if he fail to have a will to that effect: *Johannes* v. *Martian* (Supreme Court), 48 N. Y. Suppl. 102.

Assignment of Invention, Consideration

The Supreme Court, Appellate Division, of New York, has decided that where an inventor grants an exclusive license to use the invention, the fact that it is not patented does not invalidate the license on the ground of lack of consideration, as the intent which the invention gives him to obtain a patent is sufficient upon which to found a consideration for a promise to pay for such exclusive use, made before the patent is issued: *Bezer* v. *Hall Signal Co.*, 48 N. Y. Suppl. 203.

Margins, Gambling Transactions, Advances, Recovery, Quasi-Contract

In *Cunningham* v. *Fairchild*, 43 S. W. 32, the plaintiff deposited with A sums of money as margins for gambling operations on the cotton market, A being engaged in soliciting business of this character. And A in turn deposited the money as margins with the defendants, cotton brokers. A having absconded the defendant closed out the plaintiff's contracts for lack of sufficient margin, without giving the defendant an opportunity to advance further margins to protect himself. The Court of Appeals of Texas held that even if A and the defendants could be said to be partners yet there could be no recovery, as the contract was illegal and the money paid, and such a contract would not be enforced *nor any relief be granted for any violation of the same.*

Whatever criticism may be made as to the sweeping char-

CONTRACTS (Continued).

acter of the dicta the correctness of the decision is unquestioned, the parties being in *pari delicto* and the defendant, if he and A were partners, being in default under his contract with the plaintiff.

CRIMINAL LAW.

In *Queen* v. *Jones* [1898], 1 Q. B. 119, the defendant ordered a meal at a restaurant. He made no verbal representation at the time as to his ability to pay, nor was any question asked him with regard to it. After the meal he stated that he had (as was the fact) only one halfpenny in his possession. The court held this did not amount to the offense of obtaining goods by false pretences.

False Pretences, Act Amounting to

A defendant in a Texas court had published an article alleging that the conductors of a certain street railway, as a class, were of a low class and of foul character; that they were descendants of Oscar Wilde, etc. The Court of Criminal Appeals, of Texas, held that this was not only libelous, but that it affected the reputation of every conductor on the line, although no names were mentioned: *Jones* v. *State*, 43 S. W. 78.

Libel, Defamation of a Class

HUSBAND AND WIFE.

In New York the modern and better rule prevails that an action lies for the wife against the person who has alienated her husband's affections. It was held, however, in *Buchanan* v. *Foster*, 48 N. Y. Suppl. 732, that proof that the husband has abandoned his wife and maintained improper relations with defendant is not sufficient, it being necessary for the plaintiff to go a step further and show that the defendant was the active cause of his actions, "the pursuer and not the pursued."

Alienation of Husband's Affections, Action, Proof, Sufficiency

A sensible rule prevails in New York with regard to alimony pending a divorce: Plaintiff must furnish some evidence tending to show a reasonable ground for commencing the action. Mere information and belief without setting forth the grounds thereof will not answer: *Downing* v. *Downing*, 48 N. Y. Suppl. 727.

Alimony, Action for, Cause

HUSBAND AND WIFE (Continued).

In *Ingle* v. *Ingle*, 38 Atl. (N. J.) 953, the complainant in a bill to annul a marriage on the ground of fraud set forth that complainant had, while under arrest upon the charge of seduction under promise of marriage, married defendant, and that one of the essentials of the crime, to wit: The promise of marriage did not exist and could not be proved. It was held, however, that complainant must further show that the charge was known by defendant to be false and made without probable cause, and the bill was therefore dismissed.

Annulment of Marriage, Cause, Proof

A wife's legal residence is usually that of her husband; but when she lives apart from him with good cause, she may, especially for the purpose of divorce proceedings, acquire a legal residence in another State. We may therefore quite agree with *Hall* v. *Hall*, 43 S. W. (Ky.) 429—a case of an admitted *bona fide* residence, without in any wise giving our approval to the laws of certain Western States which seem to the unenlightened to invite non-residents to enter the divorce courts.

Divorce, Jurisdiction, Domicile

Cahn v. *Cahn*, 48 N. Y. Suppl. 173, is an interesting case. Prior to a recent statute the New York courts had uniformly refused to allow examination of the plaintiff's person by defendant's surgeon in an action for personal injuries. In this case, however, which was a proceeding for annulment of the marriage by the wife on the ground of the impotency of the husband, it was held that the husband must submit to an examination, the court resting its order upon the necessity of the case, as the plaintiff would otherwise be utterly unable to prove her case where, as here, the defendant refused to appear.

Marriage, Annulment, Physical Incapacity

Stull's Estate, 39 Atl. (Pa.) 16, raises the old question whether a State will recognize the validity of a marriage between its own citizens who had gone to another jurisdiction in order to escape the operation of its laws. The Pennsylvania Statute forbids the marriage of a divorced person with her paramour during the life of the injured husband. The Supreme Court by a vote of 4 to 3 only decided that they could not recognize the legality of a marriage performed in Maryland where no such law exists. The opinion of Green, J., contains a full citation of authorities, but one regrets that the opposing view is not represented by a dissenting opinion.

Marriage, Conflict of Laws

HUSBAND AND WIFE (Continued).

If a husband can waive his ordinary legal interest in his prospective wife's estate by means of an anti-nuptial agreement, it is quite obvious that he can do the same thing by a post-nuptial agreement, at least in those States where a wife is now allowed to make contracts with her husband, and to convey her property: *Leach* v. *Rains*, 48 N. E. (Ind.) 858.

Post-Nuptial Agreements

Gloster v. *Gloster*, 48 N. Y. Suppl. 160, is the most recent illustration of the effort of an abused wife to obtain redress. The Supreme Court, by a vote of 3 to 2, held that plaintiff was entitled to separate maintenance both on the ground of cruelty (the facts are too numerous to recite) and on the ground of abandonment, the proof of which was that the husband had turned her out of doors upon her refusing to promise not to go near her parents.

Separate Maintenance, Cruelty, Abandonment

Grey, V. C., took a sensible view of the duty of a husband to support his wife in the recent case of *Furth* v. *Furth*, 39 Atl. (N. J.) 128. As he puts it: "The mere fact that the husband presently has no money, does not discharge him of the duty to support his wife, though it may be some excuse for a present failure." The defendant being an able-bodied man was, therefore, ordered to pay his wife two dollars a week, the court reserving to itself the right to either increase the amount or to refuse the usual remedy for non-compliance, as circumstances might require.

Support, Duty of Husband

INFANCY.

The strong tendency of the decisions is in favor of making the infant responsible for fraudulent misrepresentations as to his age, by which he induces a third party to contract with him: but his liability must be enforced by an action of deceit, and the contract thus induced is not rendered any more enforceable by reason of the fraud. So decided in *N. Y. Building Loan & Banking Co.* v. *Fisher*, 48 N. Y. Suppl. 152, where it was also held that the defendant infant could not be compelled to return the money secured by plaintiff's mortgage, even though it had been spent in buildings on the mortgaged property.

Fraud, Responsibility, Rescission of Contract

INSOLVENCY.

Preference, Validity

It is hardly worth while to cite authorities at the present day for the proposition that in Pennsylvania a debtor may lawfully prefer his creditor by confessing a judgment. It is worth noting, though, that in *Braden* v. *First National Bank of Clarion*, 38 Atl. (Pa.) 1023, such a judgment was held valid, though it covered the debtor's contingent liability as endorser, as well as his direct and existing indebtedness.

INSURANCE.

Insured's Intention to Place Other Insurance

The Circuit Court of Appeals for the Seventh Circuit has shown in a well-reasoned opinion that a supposed agreement to permit other insurance, and *a fortiori* mere knowledge on the part of the company's agent of the insured's intention to effect additional insurance, cannot in an action at law avail to defeat the express stipulations of the written instrument subsequently delivered. The antecedent agreement is merged in the written contract, and there is no waiver of any right by the company to be implied from the mere fact of knowledge of the insured's intention. But in a proper case a contract may, of course, be reformed in equity: *United Fireman's Insurance Co.* v. *Thomas*, 82 Fed. 406.

MASTER AND SERVANT.

Discharge, Customs

The old common law rule that an employment of a servant in the absence of any agreement to the contrary is in law an employment for one year, has been much restricted, and in England (and generally) in the case of household servants at least, such a contract is in law from month to month only. In *Moult* v. *Holliday* [1898], 1 Q. B. 125, the plaintiff tried to go a step further and prove a custom that either master or servant might determine the service at the end of the first calendar month by notice given at or before the expiration of the first fortnight. While the custom was not proved, the Court on Appeal stated plainly that such custom, if proved, was reasonable, and would be respected.

Fellow Servant

Chicago & A. R. Co. v. *Scanlan*, 48 N. E. (Ill.) 826, is a recent exposition of familiar law. The company was held liable to a mason who fell from a defective scaffold because its foreman in charge of the construction of the scaffolding "knew, or was bound to know, its defects and imperfect construction."

MASTER AND SERVANT (Continued).

Liability of Master for Negligence

Huda v. *American Glucose Co.*, 48 N. E. (N. Y.) 897, is an illustration of how the Legislature may enlarge the duty of a master to his servant, the New York statute compelling the owners of factories to erect certain fire escapes for the benefit of their employes. The administratrix of the decedent (who was burned to death) failed to recover, however, both because the fire escapes provided were held to be a sufficient compliance with the statute, and because decedent was quite aware of the danger of the situation.

Fellow Servant, Question for Jury

The question whether the person whose negligence caused the injury is a fellow-servant or not is a question for the jury, if there is evidence that his principal, though not his sole duty, was that of superintendence: *Gardner* v. *New England Telegraph & Telephone Co.*, 48 N. E. (Mass.) 937.

NEGLIGENCE.

Owner of Premises, Independent Contractor

In *Downey* v. *Low*, 48 N. Y. Suppl. 207, the plaintiff had fallen down an open coal chute in a sidewalk in front of premises owned and occupied by defendant. The chute had been left open by the servants of an independent contractor, who was removing ashes, and this fact was relied on to excuse the defendant; but the court said: "In general, where the owner of property has an agreement with an independent contractor for the performance of work, the owner of the property is not liable for the independent contractor's negligence; but, if the work itself creates the danger, the proprietor is liable to persons injured by a failure to properly guard or protect the work." The present case was held to be within the latter class.

Statute, Benefit, City Ordinance

It is familiar law that one who claims the benefit of a statute must show that he belongs to the class of persons intended to be benefited by the statute. *In East St. Louis Connecting Ry. Co.* v. *Eggman*, 48 N. E. (Ill.) 981, it was strongly urged that an employe of a railroad did not come within the protection of a city ordinance forbidding trains to be run through the city streets without ringing a bell or faster than six miles an hour. The court, however, took the opposite and more sensible view.

NEGOTIABLE INSTRUMENTS.

Sale, Promissory Note, Time of Action

In *Davis* v. *Reilly* [1898], 1 Q. B. 1, the Queen's Bench Division have held in accord with the current of authority that, if the buyer of goods accept a bill of exchange, in which the seller is the drawer, for the price thereof, an action will not lie for that price, upon the dishonor of the bill, if at the time of suit the bill is outstanding in a third party, and the plaintiff will be in no better position by obtaining possession of the bill prior to the day of trial.

If the plaintiff were permitted to recover while the bill is outstanding in the hands of a third party, the defendant might be called upon to pay again in an action by the holder of the bill: *Kearslake* v. *Morgan*, 5 Term Reports, 513 (1795); *Price* v. *Price*, 16 M. and W. 232 (1846).

PRACTICE.

Res Adjudicata, Allowance of Amendment, Limitation of Time

The Supreme Court of Pennsylvania has recently applied the principle of its former decisions in regard to the limitation of the time when substantial amendments of a statement of a plaintiff's cause of action may be allowed, a matter of vital practical importance, to the following case. In a suit on a policy of fire insurance, the right of the plaintiffs to recover was denied, because of their alleged violation of one of the conditions of the policy by keeping prohibited articles on the insured premises. Before trial the plaintiffs, by leave of court, filed an amended statement. At the trial the plaintiffs elected to proceed on this amended statement. The amendment was objected to because it introduced a new cause of action, by alleging a promise by defendant to pay, notwithstanding the violation of the conditions, and because the amendment was not made until the limitation fixed by the policy (twelve months after the fire) had expired, when the right of action had closed. The court below ruled that the amendment having been allowed was *res adjudicata*. The Supreme Court decided that if the amendment were improperly allowed, it gained no strength because of its allowance, and the question was an open one whether there could be any recovery. The opinion of Green, J., refers to the settled doctrine that a new cause of action cannot be introduced or new parties brought in, or a new subject matter presented, or a fatal or material defect in the proceedings be corrected after the statute of limitations has become a bar. The contention that the cause of action is

PRACTICE (Continued).

founded in the agreement to settle, and not upon the policy, is disposed of by showing that the policy is the foundation of the action. Without the policy, the claim of the plaintiffs could have no legal existence. The decisions in Pennsylvania are reviewed on the main question. The application of this principle as to the limitation of time is illustrated by the case of mechanics' lien, with an interesting reference to the opposite view in the New Jersey case of *Tile Co.* v. *Drinkhouse*, 36 Atl. 1034 (1896). The law, with the citations from various States in support of it, is thus stated, in conclusion: If the amendment had been applied for while the right of action was running, it might properly have been granted, but after the right of action had ceased under the contract, it could not be done. Because there could be no recovery on the policy alone, the right to recover could not be created by an amendment which was not solicited until after the right to recover for the loss was barred by the contract of the parties. *Grier* v. *Northern Assurance Co.*, 39 Atl. 10.

PROPERTY.

Landlord's Lien, Drummers' Samples

Under the Revised Statutes of Texas for 1895, Article 3318, which give the proprietors of hotels and boarding houses a specific lien on all property or baggage deposited with them for the amount of the charges against them or their owners, if guests of such hotel or boarding house, the Court of Civil Appeals has held that a hotelkeeper has no lien for the unpaid board bill of a travelling salesman upon the goods and samples of such salesman which belong to his employer, at least where the hotel proprietor knew that the baggage contained such samples when the salesman was received as a guest of the hotel: *Torrey* v. *McClellan*, 43 S. W. 64.

Unions, Trade Labels, Rights of Property

In the case of *Hetterman* v. *Powers*, 43 S. W. 180, the Court of Appeals of Kentucky had before it the interesting question whether the members of a voluntary union of cigarmakers who were not engaged in business on their own account, and were not owners of the product of their labor, but simply employes for a stipulated wage, were entitled to the protection of a court in the exclusive use of a trademark or label, setting forth that the goods so marked were the product of a workman who was a member of such voluntary union. The court held that the members of such association were entitled

PROPERTY (Continued).

to such protection, although the goods sold under such labels were not their property; and that while the label was not a trademark in the ordinary sense of the word, it did represent a valuable right, which might be the subject of legal protection on the same principles that the courts of equity have based the right to protect trademarks and good-will.

This question of the right of the Cigar Makers' National Union of America to the exclusive use and protection of such a label has been before the courts a number of times, and the decisions on the subject are in conflict. Thus in *Weener* v. *Drayton* (S. C. Mass.) 25 N. E. 46 (1890); *Union* v. *Carhcirn*, 40 Minn. 243 (1889); *McVey* v. *Brendell*, 144 Pa. 235 (1891), and *Schneider* v. *Williams*, 44 N. J. Eq. 391 (1888), relief was denied on various grounds, the chief of which was that there was no property right in the plaintiffs to be protected. The converse, however, was held in *Strasser* v. *Moonelis*, 108 N. Y. 611 (1888), and *Carson* v. *Ury* (C. C. E. D. Mo.), 39 Fed. 777 (1889), in the latter of which, however, the plaintiff was a manufacturer as well as a member of the union.

REAL PROPERTY.

Gunn v. *Wynne*, 43 S. W. (Tex.) 290, illustrates one of the difficulties constantly arising in those States where by constitution or statute homesteads are exempt from execution. The defendants had left their farm, bought a house in the city, where they had resided for eight years, and yet were allowed to testify that their residence in town was purely temporary, for the purpose of educating their children, and that they had always intended to return to the country which remained their home.

Homestead, Residence, Execution

The result of a divorce upon a homestead held as community property was considered in *Southwestern Mfg. Co.* v. *Swan*, 43 S. W. (Tex.) 573, where it was held that admitting that the court granting the divorce might have at the same time disposed of the property, yet as it had not done so, the legal effect was that husband and wife became tenants in common, and the interest of each was subject to liens of judgment.

Homestead, Divorce, Effect, Tenants in Common

REAL PROPERTY (Continued).

Mineral Rights, Reservation, Petroleum

The Supreme Court of Tennessee in a recent decision, *Murray* v. *Allard*, 43 S. W. 355, after a thorough and scientific examination of the question, has held that petroleum oil is a mineral, and that the right to enter and take the same is embraced within the reservation by the grantor in a deed of mines, minerals and metals upon the premises conveyed.

Dunham v. *Short*, 101 Pa. 35 (1882), is in opposition to this position, the court holding that while petroleum is in a strict scientific sense a mineral, the parties to the contract must be presumed to have used the word mineral in its popular rather than in its strictly scientific sense. The decision in *Dunham* v. *Short*, however, seems to be somewhat shaken by *Gill* v. *Watson* (No. 2), 110 Pa. 312 (1885).

Recovery of Premises, Malicious Prosecution.

A landlord having given the requisite notice to his tenant to quit the premises at the end of the term and the tenant having refused, the landlord sued out a writ before a Justice of the Peace to obtain possession of the premises, which writ was executed by a constable and the tenant dispossessed. In an action by tenant against landlord for malicious prosecution it was held that proof of the fact that a Justice of the Peace had no authority or jurisdiction to issue writs of possession for real estate, and that the acts of the constable were illegal, was insufficient to establish a malicious prosecution. The decision of the court was based upon the ground that the gist of the action for malicious prosecution is the putting of legal process in force regularly for the mere purpose of vexation and annoyance, but that in this case the defendant having a just cause of complaint had tried to put in force process through the medium of a court having no jurisdiction. The position of the defendant was, therefore, as though he had taken possession of the land and ejected the tenant without any writ at all, for which act he would be responsible in trespass: *Vinson* v. *Flynn* (Ark.), 43 S. W. 146.

SALES.

Misrepresentations, Action of Deceit, Measure of Damages

The Supreme Court of Errors of Connecticut, in the case of *Gustafson* v. *Rustemeyer*, 39 Atl. 104, has held that misrepresentations as to the dimensions of land are within the rule laid down in Big. Frauds, p. 627, that "in actions for deceit in sales of personalty or realty, the measure of damages is the difference between the actual value of the property at

SALES (Continued).

the time of the purchase and its value if the property had been what it was represented to be."

SLANDER.

Words Actionable Per se

The Kentucky Court of Appeals, in *Lyons* v. *Stratton*, 43 S. W. 446, have decided that where the reasonable and well understood meaning of words spoken by the defendant amounts to a statement that the plaintiff, an unmarried woman, was unchaste, the words are actionable *per se*, as imputing the crime of fornication.

WILLS.

Construction, "Die without Issue"

The Supreme Court of Connecticut, in a recent case, asserts that the rule is clear in that state that where there is a devise to one, but should he die without issue, then the estate to go over to another; but should he die leaving issue, then the estate to vest in such issue absolutely. The phrase "die without issue" refers to a death in the lifetime of the testator, and, therefore, if the first beneficiary survives the testator he is entitled to a fee: *Lawlor* v. *Holshan*, 38 Atl. 903.

Construction, "Survivor"

A testator bequeathed the income of all his property to M and I for life, "and should either of them die, the survivor shall take what would belong to the deceased during her natural life, and her children, if she has any," and should both die without children, then the property to go to the testator's heirs; if either or both should have children, then "they shall inherit what I gave to their parents."

I died leaving a husband and one child surviving, M being still living. It was held that I's child took a fee in one-half and was, therefore, entitled immediately to one-half of the net income: *Trust Co.* v. *Peckham*, 38 Atl. 1001.

Debts Due Executor

A will provided, *inter alia*, that the executor should not be required to give bond, and after reciting that the testator was largely indebted to him for "means, advice and other aid," it continued: "Therefore I declare that whatever of my estate shall be taken or claimed by him as therefor due, shall be considered as due him without further proof, and shall be conclusive to my heirs."

It was held, on a bill for an accounting filed by the heirs against the executor, that this gift was not void for uncertainty,

WILLS (Continued).

and, so far as concerned the heirs, the testator had as much right to leave his property to his executor, who was also his creditor, as he had to give it to a stranger, and that the provision including the heirs was binding: *Maurar* v. *Bowman* (S. C. Ill.), 48 N. E. 823.

Devise, Vesting

A devise to executors "for the benefit of P and my son J, for them and their children, should they have any," was held to be a devise of undivided moieties to P and J respectively for life, with remainders in fee to their children, which would vest upon the birth of such children: *Barclay* v. *Platt* (S. C. Ill.), 48 N. E. 972.

Interpretation, Illegitimate Children, Conflict of Law

E, domiciled in Missouri, owned lands there, as well as in Illinois, Colorado and Kansas. He executed his will in Missouri, whereby he devised his son a life estate in all his realty, with remainder to the heirs of his (the son's) body. E's son had legitimate and illegitimate children, the latter of which, however, he had recognized as his children.

Under the law of Kansas an illegitimate has the quality of inheritance from a parent, provided he has been recognized as his child by such parent. Under the law of Missouri an illegitimate cannot inherit from his father unless his parents subsequently marry and his father recognizes him as his child.

The Kansas courts, in interpreting the will, held that the Missouri law should apply; that the testator must be presumed to have used the words "heirs of his body" according to the law of his domicil; and, therefore, a son who would have been legitimate and entitled to inherit under the Kansas rule was excluded. In other words, the court held that the intention of the testator must be ascertained according to the laws of his domicil, and that a devise of real estate must be so interpreted and upheld by the courts of another state unless such interpretation is forbidden by some positive statutory regulation of that other state: *Keith* v. *Eaton*, 50 Pac. 271.