PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

AGENCY.

An interesting question in regard to the apparent power of an agent has been decided by the Supreme Judicial Court of Maine. Plaintiff, who was anxious to sell a piano to defendant, delivered it to one S, a dealer in pianos, with instructions to leave it at defendant's house, plaintiff to see defendant subsequently in regard to the terms of the sale. Instead of doing this, S sold the piano to defendant, saying that it belonged to himself, and plaintiff brought replevin.

Power of Agent, Real and Apparent Authority

The trial judge held that these facts were not sufficient to give defendant title, that S was plaintiff's agent only for a special purpose, namely, that of delivering the piano, and that the acts of S without the scope of his authority could not bind plaintiff. The court compared this case to the common one of the sale of a bailed article by the bailee.

On appeal this ruling was held to be error, the fact that S was a dealer in pianos being sufficient to estop plaintiff from denying his authority to sell to defendant. "Whether or not a principal is bound by the acts of his agent when dealing with a third person who does not know the extent of his authority depends, not so much on the actual authority given or intended to be given by the principal, as upon the question, what did such third person, dealing with the agent, believe, and have a right to believe, as to the agent's authority from the acts of the principal?" *Heath* v. *Stoddard*, 40 Atl. 547.

CARRIERS.

The Supreme Court of North Carolina has lately decided, by what would seem to be a piece of judicial legislation, that a railroad, even in the absence of statutory command, is bound to provide its freight cars with automatic couplers, and a failure to do this will be negligence *per se* and subject the company to damages for the injury to an employe engaged in operating the old style couplers. The Act of Congress in regard to the

Failure to Furnish Automatic Couplers, Negligence

CARRIERS (Continued).

new couplers will not go into effect until January 1, 1900, but the court here thinks that the providing of automatic couplers is necessary for the public good, and, therefore, since the railroads can well afford it, congressional action should be forestalled: *Greenlee* v. *Southern Rwy.*, 30 S. E. 115.

Goods, Seizure Under Legal Process

Goods shipped by appellee over appellant's line, were seized by a constable by virtue of a writ of attachment issued in a suit by a third person against plaintiff's husband. While stored in the freight building, under the control of the constable, the goods were stolen.

The Appellate Court of Indiana, in an action against the carrier, held that, in accordance with the leading cases of *Stiles* v. *Davis*, 1 Black, 101 (1861), and *R. R.* v. *Yohe*, 51 Ind. 181 (1876), the carrier could set up the seizure under legal process and prompt notice of the same rendered to the consignor as a complete defence: *Indiana, I. & I. R. R.* v. *Doremeyer*, 50 N. E. 497.

Maximum Rates, Rates on Specific Articles

The decree of the Supreme Court of the United States in the Nebraska Maximum Rate case, *Symth* v. *Ames*, 169 U. S. 466 (1898), has been modified, upon motion, so as to allow the State of Nebraska to impose maximum rates upon specific articles carried by the railroads. The effect of the decision was only to prevent the state from imposing upon the railroads unreasonably low rates as an entirety, and it did not refer to rates upon specific goods. However, "if the state should . . . prescribe a new schedule of rates, covering substantially all articles, and which would materially reduce those charged by the companies, respectively, or should by a reduction of rates on a limited number of articles make its schedule of rates, as a whole, produce the same result, the question will arise whether such rates . . . are consistent with the principles announced by this court in the opinion heretofore delivered:" *Smyth et al.* v. *Ames et al.*, 18 Sup. Ct. 888. [illegible]

Passengers, Discrimination, Free Passes

A statute of North Carolina, 1891, c. 320, § 4, provides that "if any common carrier . . . . shall directly or indirectly collect or receive from any person or persons a greater or less compensation for any services . . . . than it . . . . receives from any other person for doing him a like and contemporaneous service, ... such carrier shall be deemed guilty of unjust discrimination,

CARRIERS (Continued).

etc." The defendant railroad granted a free pass to a member of the legislature, for which it was indicted.

The Supreme Court of North Carolina held that the granting of the free pass was a violation of the statute: *State* v. *Southern Rwy. Co.*, 30 S. E. 133. Douglas, J., dissented on the curious ground that since the defendant corporation, under the advice of counsel, honestly believed that it was doing no wrong, and since the number of free passes issued by it since the passage of the statute would render it liable in statutory penalties to the amount of some $300,000,000, the conviction should not be sustained.

Street Railway, Injury to Passenger, Care Required

The well-known obligation upon the owners of a steam railroad to exercise the highest degree of care which human prudence and foresight can suggest with reference to the condition of roadbeds, machinery, cars, etc., applies with equal force to the case of street railways. However, this degree of care is not demanded from the driver of a street car, who is required only to use that skill and care which would be required of an ordinarily careful and prudent man: *Stirle* v. *Union Rwy. Co.* (Ct. of App., N. Y), 50 N. E. 419.

O'Brien and Vann, JJ., dissent on the ground that the rule which requires the exercise of the highest care with reference to the selection of roadbed and machinery applies with equal force to their use. "There should not be a higher degree of care required in providing appliances than in using them."

CONSTITUTIONAL LAW.

Interstate Commerce, Transportation of Liquors, Regulation by States

A statute of Iowa (Code, § 1535, McClain's Code, § 2410) provided that no railroad, express company, etc., should transport intoxicating liquors within the State of Iowa without first having obtained certain certificates from state officers, etc., and providing a punishment for violation of the statute.

The Supreme Court of the United States held that this statute encroached upon the Federal power to regulate commerce between the states, since, although the statute purported to affect only shipments within the state, yet it would be extra-territorial in effect: *Rhodes* v. *Iowa*, 18 Sup. Ct. 664.

Gray, Harlan and Brown, JJ., dissented, on the ground that it was merely an exercise of the state's police power.

CONSTITUTIONAL LAW (Continued).

It has recently been decided by the Appellate Division of the Supreme Court of New York that, where the legislature has a right reserved to alter or repeal the general corporation laws, a statute imposing a liability on stockholders in banks for debts of the bank and relating to banks already formed as well as those to be formed, comes within the right to alter or repeal, and is therefore constitutional: *Hershfeld* v. *Bopp*, 50 N.Y. Suppl. 676.

Liability of Stockholders, Obligation of Contracts

Oleomargarine is now a recognized article of trade and commerce and states may not pass prohibitive laws against it merely because it might possibly be used to deceive purchasers into believing that it is butter. Thus the Supreme Court of the United States has decided that the Pennsylvania Act of Assembly, May 21, 1885, P. L. 22, providing that no substance of that nature shall be sold within the state, and the statute of New Hampshire, 1891, c. 127, §§ 19, 20, providing that all oleomargarine sold shall be colored pink, are void as regulations of interstate commerce: *Schollenberger* v. *Pennsylvania*, 18 Sup. Ct. 757; *Collins* v. *New Hampshire*, 18 Sup. Ct. 768. It will be remembered that the Supreme Court had previously decided that the Pennsylvania statute did not violate the Fourteenth Amendment to the Federal Constitution: *Powell* v. *Pennsylvania*, 127 U. S. 678 (1887). Gray and Harlan, JJ., dissented in both the above cases.

Oleomargarine, Regulation of Sale by States, Interstate Commerce

In *Thompson* v. *Utah*, 18 Sup. Ct. 620, the accused had been convicted of felony in the territory of Utah by a jury of twelve men. He obtained a new trial, but before it took place, Utah was admitted as a state and a statute was passed providing that certain felonies should be tried by a jury of eight. The new trial took place in accordance with this statute and accused was again convicted, the Supreme Court of Utah affirming the constitutionality of the statute, 50 Pac. 409.

On appeal, the Supreme Court of the United States, in a learned and exhaustive opinion by Harlan, J., decided that the statute was an *ex post facto* law and therefore unconstitutional and void. Brewer and Peckham, JJ., dissented.

Trial by Jury, Ex Post Facto Law, Number of Jurors

The Constitution of North Carolina, Art. I, § 7, provides that "no man or set of men are entitled to exclusive or sep-

CONSTITUTIONAL LAW (Continued).

Warehouse Corporation, Charter, Exemption from Liability, Constitutionality

arate emoluments or privileges from the community, but in consideration of public services." The legislature granted a charter to a warehousing corporation which relieved the latter from any liability for loss of goods, unless there was a provision for the same in the receipt or contract, the corporation to have full power to make such stipulations regarding loss as it should deem proper.

The Supreme Court of North Carolina held the provision in the charter repugnant to the section of the constitution *supra*, and therefore void: *Motley et al.* v. *Southern Finishing and Warehouse Co.*, 30 S. E. 3.

CONTRACTS.

"Arrest and Conviction," Reward, Interpretation

The familiar offer of a reward for the "arrest and conviction" of a person or persons has received a just and reasonable interpretation by the Supreme Court of Maine. Defendant was one of a number of citizens who agreed to pay $10 each for the "arrest and conviction of certain persons, etc." Plaintiff conducted an examination which resulted in the person sought for by the advertisement confessing the crime and pleading guilty to the indictment. The actual arrest, however, was made by a deputy sheriff. Held, that plaintiff had earned the reward, which he could recover from defendant, even though the terms of the offer had not been complied with literally: *Haskell et al.* v. *Davidson*, 40 Atl. 330.

Contract in Restraint of Trade, Validity

An excellent discussion of the subject of contracts in restraint of trade and review of the English and American authorities thereon, is to be found in the opinion of Knowlton, J., of the Supreme Judicial Court of Massachusetts, in *Anchor Electric Co.* v. *Hawkes*, 50 N. E. 509. There it was held that a mutual agreement by three persons, who had just formed a corporation, not to engage in a business of like character for the period of five years without withdrawing from the corporation, is not such a contract in restraint of trade as will be held void by the courts.

Defendants entered into a contract with C & Co., whereby the latter agreed to manufacture exclusively for defendants

CONTRACTS (Continued).

Interpretation, "Full Term"

for five years, with option on part of defendant to employ them for five years more, in which case defendants were to formally notify them before the expiration of the first five years; but in case the notice was not given, then the contract was to terminate at the end of the first five years. No notice to terminate the contract was ever given.

Defendant subsequently employed plaintiff under a contract whereby it was provided that if plaintiff was discharged before the end of his contract defendant was to pay him a certain royalty "to the full end of the term of the agreement" made between defendant and C & Co.

The Supreme Judicial Court of Massachusetts held that the words "full end of the term of agreement" meant until the ten years mentioned in the first contract had expired, and not the five years contract: *Poole* v. *Massachusetts Plush Co.*, 50 N. E. 451.

Promise to Pay Debt of Another, Consideration

It has been held by the Appellate Term, New York Supreme Court, that where there is a mere oral promise to pay the debt of another, it is not enough to show consideration, but it must be shown that the consideration moved to the promissor—a mere harm to the promissee is not enough: *Perry* v. *Erb*, 50 N. Y. Suppl. 714.

CORPORATIONS.

Dissolution, Suit Against Stockholders

In the case of *Hirshfeld* v. *Bopp*, 50 N. Y. Suppl. 676, there was raised the question whether, when judgment of dissolution enjoins creditors from suing the corporation, the necessity of issuing execution against the corporation before suing the stockholders is dispensed with. It was decided in the affirmative.

Ultra Vires Note, Consideration, Benefit to Corporation

Although it is well established that a corporation cannot render itself responsible for the individual debts of its officers and that securities given for that purpose are voidable, if not wholly void, yet if, by reason of the transaction, the corporation secures some benefit, the mere fact that it is of advantage to the officers will not render it *ultra vires.*

Plaintiff had attached land of A and B, who afterwards formed a corporation to which plaintiff conveyed the land, receiving in return a note and deed of trust executed in the

CORPORATIONS (Continued).

name of the corporation. In a suit on the trust deed it was held that the note and trust deed were not *ultra vires*, since the corporation had received a consideration in that the lien on its land was discharged: *L. & M. Real Estate, Etc., Co.* v. *Bank of America* (C. C. App., Eighth Cir.), 86 Fed. 502.

DECEDENT'S ESTATES.

Trustee under Will, Compensation

The amount which may be charged by a trustee under a will for his services rests largely in the discretion of the court, who take into account the amount and character of the work to be performed. Thus a trustee, whose sole duty it was to receive about $2000 per month from another trustee and to distribute it among five beneficiaries, was held to deserve only one per cent., and not the three per cent. which he claimed: *Dorrance's Estate*, 40 Atl. (Pa.) 149.

Several earlier Pennsylvania cases, where three per cent. had been allowed, were examined by the court—*Stevenson's Estate*, 4 Whart. 104 (1838); *Pusey* v. *Clemson*, 9 S. & R. 204 (1822); *Walker's Estate*, 9 S. & R. 223 (1822); *Whelen's Appeal*, 70 Pa. 410 (1872)—and were distinguished on the ground that the services rendered by the trustees in these cases were of a laborious nature.

EQUITY.

Contract to Purchase Land, Specific Performance, Defective Title

A bill in equity was brought to compel defendant to purchase land according to the terms of a contract. The defence was that the title was not clear. It appeared that one of the deeds forming part of plaintiff's chain of title was not acknowledged or recorded until after the death of the grantee. However, it appeared by parol evidence that the grantee had maintained a continuous and adverse possession of the land for over twenty years.

Held, that since the title by adverse possession was clearly proved, the court would decree specific performance: *Conley et ux.* v. *Finn*, 50 N. E. (Mass.) 460.

Although in this country courts of equity are not disposed to grant mandatory injunctions, the effects of which are to

EQUITY (Continued).

Mandatory Injunction, Ouster from Possession of Real Property, Disobedience, Excuse

disturb persons in the possession of real property, yet when the title of the complainant to the property is clearly shown, and the court is satisfied that respondent is a mere trespasser, a mandatory injunction will issue, even though its effect is to force respondent to relinquish his possession of the property, and though complainant has not as yet established his title by an action at law. Such were the facts in *Pokegama Lumber Co.* v. *Klamath River Lumber Co.* (C. C., N. D. Cal.), 86 Fed. 528, where a motion to modify a preliminary mandatory injunction was denied.

In this case respondents, when summoned for disobeying the order of court, pleaded that they were acting upon the honest belief that their course was justified, and upon the advice of counsel. Held, that this was no excuse for disobeying the injunction, but that the court would consider it when determining the punishment for contempt: *Ibid*, 86 Fed. 538.

EVIDENCE.

In *Calcraft* v. *Guest* [1898], 1 Q. B. 759, an action was brought to try the title to a fishery. After judgment had been rendered for the plaintiff, the defendant discovered that an attorney had possession of certain papers consisting of notes of evidence, etc., which had been used in a former action against the present plaintiff, in relation to the same fishery. Defendant obtained possession of these documents and copied them, but plaintiff forced him to surrender them under threat of legal proceedings.

Documents, Privilege, Secondary Evidence

The Court of Appeal of England held that the documents remained privileged and plaintiff could not be forced to produce them, but that the copies made by defendant were admissible as secondary evidence.

In a case involving the title to land defendant offered to prove that he and his predecessors had been in possession of the property for more than twenty years. A witness was asked, "Since your mother's death, who has been in possession of this farm that was cultivated by your grandfather?"

Proof of Title, Conclusion of Law, "Possession"

The Court of Appeals of New York held this question to be improper, since the question whether a person is in "possession" is a conclusion of law to be drawn from the

EVIDENCE (Continued).

facts. Cultivation of the land, fencing and general use are relevant facts from which possession may be inferred: *Arents* v. *L. I. R. Co.*, 60 N. E. 422.

Value of User, Offer of Compromise

In a suit for the value of the use of plaintiff's trucks, the sum offered by the defendant to compromise the matter is not evidence of the value of the user. The value is a question of fact, but the use of such an offer is an improper way of determining the fact: *Lipp* v. *Siegel-Cooper Co.*, 50 N. Y. Suppl. 658.

GUARDIAN AND WARD.

Investment in Confederate Bonds, Liability of Guardian

The Supreme Court of the United States has held in *Baldy* v. *Hunter*, 18 Sup. Ct. 890, that a guardian is not liable who, being a resident of Georgia at the time of the civil war, invested the funds of his ward in bonds of the Confederate government, agreeably to the provisions of the Georgia statute (Laws Ga. 1861, p. 32), which authorized such investments. The leading case of *Lamar* v. *Micou*, 112 U. S. 452 (1884), was distinguished on the ground that in *Lamar* v. *Micou* the guardian was a resident of New York, was appointed by a New York court and went South with his ward's money, presumably for the purpose of aiding the Confederacy, while in *Baldy* v. *Hunter* the guardian was merely obeying the law of the jurisdiction in which he resided.

HUSBAND AND WIFE.

Marriage on Sunday, Validity

The now familiar doctrine that a marriage contract executed on Sunday is valid, has been reaffirmed by the Supreme Court of Georgia, where the question arose for the first time: *Hayden* v. *Mitchell*, 30 S. E. 287. The Georgia statute, Cobb's Dig. 853, provides that "no tradesman . . . . or other person whatsoever, shall do or exercise any worldly work, labor or business of their ordinary calling upon the Lord's Day." The court very properly held that while this statute would invalidate business contracts made on Sunday, yet it has no reference to a marriage contract.

INSURANCE.

Statute, "Life" Insurance Policy, Construction

The Pennsylvania Act of Assembly, May 11, 1881, P. L. 20, provides that all life and fire insurance policies which contain references to the application for the policy or to the constitution, by-laws or rules of the company as forming part of the contract between the parties must contain a copy of the application, by-laws, etc., failing which, no evidence may be given of the latter in a suit between the parties.

The Circuit Court of Appeals, Third Circuit, decided that this act has no reference to accident insurance policies, but that the "life" policies are only those relating to loss of life: *Standard Life, Etc., Ins. Co.* v. *Carroll*, 86 Fed. 567. The case of *Pickett* v. *Ins. Co.*, 144 Pa. 79 (1891), was examined and held to contain nothing contrary to doctrine, since it was decided upon another point.

LANDLORD AND TENANT.

Lease, Lessor's Power to Sell, Termination of Lease

In a lease of land the lessor reserved the right to sell the property at any time during the term of the lease, and the lessee agreed, in case of such sale, "to surrender and deliver possession of said premises at once, and to release any further claim on said demised premises."

Held, that a sale by the lessor, according to the provision in the lease, of itself terminated the right of lessee to remain on the premises, and that no re-entry by the lessor was required such as would have been necessary had the lease been construed as containing a mere agreement by the lessee to surrender: *Baxter* v. *City of Providence*, 40 Atl. (R. I.) 423.

Lease of Natural Gas, Conveyance of Land, Rents

The question has arisen for the first time in Indiana whether a lease of the natural gas in land is in the nature of a lease of the land, or whether it amounts to a sale of the gas during the term of the lease.

Following the rule suggested by two Pennsylvania cases, *Wettengel* v. *Gormley*, 160 Pa. 559 (1894), and *Swint* v. *Oil Co.*, 38 Atl. 1021 (1898), the Supreme Court of Indiana held that the contract was "for the use of the land for the purpose therein named," therefore it followed that, since, after the lease, the lessor had conveyed the land to another in fee, the grantee was entitled

LANDLORD AND TENANT (Continued).

to the rents subsequently accruing: *Chandler* v. *Pittsburgh Plate Glass Co.*, 50 N. E. 400.

MASTER AND SERVANT.

A case of interest to lawyers in jurisdictions containing Employers' Liability Acts has been recently decided in England. The Factory and Workshop Act, 41 & 42 Vict. (1878), c. 16, § 82, provides that "If any person is killed or suffers any bodily injury in consequence of the occupier of a factory having neglected to fence any machinery . . . . . the occupier of the factory or workshop shall be liable to a fine not exceeding £100, the whole or any part of which may be applied for the benefit of the injured person or his family as a Secretary of State determines." A boy working an unfenced machine was injured by reason of contributory negligence, so that he would have been unable to recover in a civil action against his employer.

Employers' Liability Act, Duty to Fence Machinery, Negligence, Penalty

The Queen's Bench Division decided that since the Act was aimed at the omission of the employer to fence the machine, the mere fact that contributory negligence intervened made no difference and that the employer was liable for the penalty: *Blenkensop* v. *Ogden* [1898], 1 Q. B. 783.

MUNICIPALITIES.

In the New York Supreme Court, Special Term, a question of particular interest to municipal corporations was recently decided. The village of Le Roy, in pursuance Laws of 1894, c. 680, undertook to acquire the works belonging to the Le Roy Gaslight Company. A popular vote was had, application made to the court to condemn the property, the property turned over to the village and operated by it. After a few months this case arose through an application by the village of Le Roy to set the proceedings aside. The ground of the motion was that whereas the statute provided that the question to be submitted to the town meeting should be the direct one, whether the property should or should not be acquired, yet the question actually submitted in this case was, whether the taxes should be levied on the village which were authorized by the act relating to gas and water works. This discrepancy, it was

Acquisition of Gas Works, Popular Vote

MUNICIPALITIES (Continued).

contended, invalidated the proceedings. The court held that the submission of the question provided in the act was a condition precedent, and not having been complied with, the acquisition of the property was illegal and, furthermore, furnished no consideration for the issuance of bonds. The motion was consequently granted: *In re Village of Le Roy*, 50 N. Y. Suppl. 611.

NEGLIGENCE.

In *Y. & M. V. Rwy. Co.* v. *Foster*, 23 So. (Miss.) 581, plaintiff, who was on a journey, telegraphed to her family to meet her with a carriage when she returned to the station, which was about two miles from her house. The telegram was never delivered, through the negligence of the telegraph company, and plaintiff was forced to walk from the station to her house on a very warm day, suffering great inconvenience.

Failure to Deliver Telegram, Damages, Proximate Cause

On suit against the company, it was held that the personal injury sustained by plaintiff walking home was not the natural and proximate result of defendant's negligence, and that all that could be recovered was the statutory penalty of twenty-five dollars for failure to deliver the telegram, the cost of the telegram and the amount it would have cost plaintiff to have hired a conveyance from the station to her house.

A municipality is not bound to insure the safe condition of its side walks. Therefore it is not liable for injuries to a person who slips on a loose brick, when the brick is in its proper position and there is nothing to show that it is in any way unsafe, even though the sidewalk is depressed and there are loose bricks lying at a point near the place where the accident happens: *Bucher* v. *City of South Bend*, 50 N. E. (Ind.) 412.

Sidewalk, Loose Brick, Precaution

The Supreme Court of Georgia has decided that it is not negligence *per se* for a passenger on a street railway to depart from a car on the wrong side, crossing the parallel track on which the cars run in the opposite direction. Therefore where the company had not provided any guard ropes or other appliances to prevent passengers from leaving the cars on the left hand side, and plaintiff, who was deaf, stepped off and was struck by a car coming down the other track, the question of plaintiff's

Stepping from Street Car, Parallel Tracks

NEGLIGENCE (Continued).

and defendant's negligence was properly left to the jury: *Atlanta St. Rwy.* v. *Bates*, 30 S. E. 41.

PRACTICE.

Starr v. *Silverman*, 50 N. Y. Suppl. 657 (Supreme Court, Appellate Term), was an attempt to maintain an action for conversion in place of an action *ex contractu*. The defendant agreed to pay to plaintiff two dollars per thousand for tobacco delivered. The delivery was made but the defendant failed to pay. It was held that the action must be in form *ex contractu*.

Action Ex Contractu, Conversion

In *Enright* v. *Brooklyn Heights R. Co.*, 50 N. Y. Suppl. 609, an application was made for a commission to take the deposition of a physician. It was apparent from the application that his statements would probably be ruled out and the application was therefore refused. On appeal to Appellate Division, Supreme Court, the ruling was affirmed.

Depositions, Competency

QUASI-CONTRACTS.

The celebrated case of *Pullman Palace Car Co.* v. *Central Transportation Co.*, decided by the Supreme Court of the United States is reported in 18 Sup. Ct. 808. As mentioned in 37 AM. L. REG. N. S. 374, the amount which the court allowed the Central Transportation Company to recover represented merely the value of the cars, equipment, etc., and a small sum of money which was paid to the Pullman Company at the time of the lease, together with interest. Nothing was allowed for the valuable contracts and patents transferred to the Pullman Company, and the lower court's method of measuring the damages by the value of the Central Transportation Company's stock at the time of the lease was held to be error. (For a discussion of the case see note in this number.)

Ultra Vires Lease, Recovery for Benefits Conferred

REAL PROPERTY.

The curious effect of a general warranty in a conveyance of land upon the acquisition of an easement over that land, is illustrated by a late case decided by the Supreme Court of Rhode Island.

Conveyance, Estoppel, Effect on Easement

Lots X and Y were adjoining. A, the owner of X, conveyed it to the plaintiff's predecessor in

REAL PROPERTY (Continued).

title, the deed containing a covenant of general warranty. Afterwards A acquired lot Y, which, by various mesne conveyances, came into the hands of defendant, who, together with his predecessors, exercised the right of way over lot X for more tha twenty years. Held, that defendant did not gain any easement over lot X, since the covenants of warranty in the deed to plaintiff's predecessor estopped A from claiming any right of way over lot X when she became owner of lot Y, and equally estopped defendant, who claimed under her: *Hodges* v. *Goodspeed*, 40 Atl. 373.

Dower, Acquisition of Title by Husband, Outstanding Equity

A, the husband of B, being seized in fee of real estate, made a contract in writing (in which B did not join) to convey to C. On his failure to do so, C commenced a suit in equity for specific performance. While this suit was pending, A and B joined in a conveyance of the land to D, the agreement being that D should reconvey whenever called upon to do so. D having reconveyed the land to A in fee, C obtained the title by virtue of the contract, and the question was (in a suit to quiet C's title) whether B had any dower right in the land.

The Supreme Court of Indiana held that, after the reconveyance from D to A, B became possessed of an inchoate interest, but that this interest became subject to whatever infirmities attached to the new title her husband acquired by the reconveyance. This infirmity was the equitable title in favor of C, and B's dower right did not avail against it. Therefore C had a clear title: *Sharts* v. *Halloway*, 50 N. E. 386.

Eminent Domain, Effect on Inchoate Dower Right

The Supreme Judicial Court of Massachusetts has decided that a wife has no interest in the proceeds of her husband's land which has been taken under the power of eminent domain during his life: *Flynn* v. *Flynn et al.*, 50 N. E. 650. The court compares the situation to a case where a building has been burned down on the husband's land and insurance money recovered, or where the land has been washed away by reason of the negligent maintenance of a neighbor's dam, for which payment has been made. In neither of these cases will the court take into consideration the inchoate dower right of the wife, and the same principle is to be applied in a case of eminent domain. The New Jersey case of *Wheeler* v. *Kirtland*, 27 N. J. Eq. 534 (1875), is characterized as an exception to the rule.

REAL PROPERTY (Continued).

Minmo v. *Haiway*, 50 N. Y. Suppl. 686 (Supreme Court, Appellate Term). It is provided by statute that when a building becomes untenantable the lessee is released from rent "unless otherwise expressly provided." In this case the lease said that in case of fire the tenant should give notice thereof to the landlord who should repair "forthwith." A fire occurred, notice was given, and at the end of nine days the tenant removed, no repairs having been made. On suit by the tenant to recover a deposit made by him to insure performance of the lease, it was held that the provision in the lease waived the benefit of the statute, but that in view of the provision as to repairing "forthwith" nine days was an unreasonable delay and released the tenant.

Lease, Duty to Repair, Reasonable Time

In *Taylor* v. *N. Y. & H. R. Co.*, 50 N. Y. Suppl. 697, the Supreme Court decided that while a railroad company may affect a particular piece of work in the nature of a permanent improvement without liability to abutting property owners for consequential damages, it may at the same time be held liable for temporary damage rendered necessary by the main operation. The N. Y. & H. R. Co., which had its roadway in the centre of Fourth Avenue, New York City, in front of the plaintiff's premises, was directed by the legislature to raise its grade and the work was done under the direct control, not of the railroad, but of the municipal authorities. For these reasons the defendant was held not liable for the damage to plaintiff's easement of light and air, etc. But while the above work was going on it was necessary to erect a temporary structure alongside the embankment to allow the passage of trains. It being shown that some damage was thereby caused to the plaintiff, the judgment of the court below, in favor of the defendant, was reversed and the cases cited by it distinguished on the ground that the temporary structure was not necessary to the completion of a legal and authorized public improvement, but was only necessary for railway purposes.

Railroads, Abutting Property, Damage

An Indiana Statute (Burn's Rev. St. § 7255) gives all persons furnishing erecting machinery for any house, mill, etc., "or other structure," a lien. Held, that the word "structure" is broad enough to include an oil well, together with its tubing, derricks, etc.: *Haskell et al.* v. *Gallagher et al.*, 50 N. E. (Ind.) 485.

"Structure," Oil Well, Mechanics' Lien

SALES.

Conditional Sale, Mortgage, Right of Mortgagee

Plaintiff delivered a cash register to one M under a contract of conditional sale, whereby part of the purchase money was paid, the balance being represented by promissory notes. M mortgaged the register to defendant, and default being made in the payments to plaintiff, the latter obtained judgment against M on the notes and levied upon the register in defendant's hands. The Supreme Court of Ohio held (1) that M, although a vendee under a conditional sale only, had sufficient property in the chattel to mortgage it, and (2) that plaintiff, by obtaining judgment against M, had waived his right to take advantage of the terms of the conditional sale in regard to the return of the register itself, but had elected to treat M as its owner, and that, therefore, the rights of the mortgagee were superior to those of plaintiff: *Albright* v. *Meredith*, 50 N. E. 719.

WILLS.

Bequest to Religious Association

The will of X contained the following clause: "To the priest of St. Mary's Church of Lancaster, New York, of the sum of $600, for which masses shall be said for the repose of my soul." This was attacked on the ground that the sum exceeded one-half the testatrix's estate and was therefore invalid under Laws of 1860, c. 360, prohibiting a bequest of more than one-half of an estate to a religious association. It was held that this bequest was not to an association, but to the officiating pastor, and therefore did not contravene the statute: *In re Zimmerman's Will*, 50 N. Y. Suppl. 395 (Surrogate's Court).