PROGRESS OF THE LAW,

As Marked by Decisions Selected from the Advance Reports.

ADMIRALTY.

Harter Act, Application

Judge Brown, of the Southern District of New York, has held in two recent cases that the exemptions of the third section of the Harter Act (Feb. 13, 1893), do not apply to injuries to passengers or to claims for loss or damage to their personal baggage; *The Rosedale*, 88 Fed. 324; *Moses* v. *Packet Co.*, 88 Fed. 329. He based his opinion upon the reasoning in the case of *The Delaware*, 161 U. S. 459, where it was said that the only object of the act is "to modify the relations previously existing between the vessel and her cargo," and also upon the fact that section three of the act is expressly limited in its application to vessels "transporting merchandise or property." "The *Persia*," said the learned judge, "carried merchandise as well as passengers; but there are many vessels that carry passengers only, and to those vessels the act cannot apply. But it is not conceivable that Congress intended by this act to discriminate between these two classes of vessels in respect to their liability for negligent injuries to passengers, and to provide that the one class should be exempt from liability and the other class not exempt, simply because the former carries merchandise and the latter does not:" 88 Fed. 330.

Mortgage

That mortgages have never received much consideration in the admiralty courts when in conflict with maritime liens is well known, and consequently the postponement of one to a lien for supplies, though conferred by a state statute, is not surprising, although no reasons are given: *The Crescent*, 88 Fed. 298.

Swells near Piers

Anyone who, while in a small boat, has been passed by a large steamer, has realized how tremendous are the waves caused by the latter's motion, and has seen that they may be a source of danger to vessels moored at the piers of a port. He will, therefore, feel that the decision in the case of *The New Hampshire*, 88 Fed. 306, holding her liable for damage done to *The Yarrowdale* at Pier 1, North

ADMIRALTY (Continued).

River, New York, was correct. The following language of Brown, D. J., is clear and sensible:

"In passing the slips a steamer is bound to go at such moderate speed and at such a distance away that her waves will not do damage to ships properly moored in the slips that she passes. The size of each steamer's waves when they reach the slips depends upon her model, the speed of her propeller, and her distance from the docks; and every steamer must take the risk of regulating her speed and distance accordingly."

ATTORNEY AND CLIENT.

An attorney's implied powers on behalf of his client are large, but have their limitations. *Chicago Gen. Rwy. Co.* v. *Murray*, 51 N. E. (Ill.) 245, holds that in condemnation proceedings an attorney, unless specifically authorized thereto, has no power to stipulate on behalf of the company how land taken by the right of eminent domain shall be used.

Stipulations at Trial

ASSIGNMENTS.

In *Bennett* v. *Sweet et al.*, 51 N. E. 183, the Supreme Court of Massachusetts held, in accordance with the prevailing rule, that a verdict for personal injuries is not assignable, and therefore it could not be reached, before judgment, by a creditor of the plaintiff. (See note in this issue.)

Verdict for Personal Injuries

ASSIGNMENTS FOR CREDITORS.

Wilson v. *Sax*, 54 Pac. (Mon.) 46, a long case chiefly concerned with the proper form of attachments under the Montana statute, is of general importance only in so far as it reiterates the familiar rules (1) that, in the absence of statutes, preferences by failing debtors are lawful even in favor of their own relatives, whether in the form of a judgment or a payment in cash or property; and (2) that the burden is heavy on creditors of a man who has assigned for creditors, to prove fraud in the assignment. A large number of apparently suspicious circumstances were held not sufficient for the purpose.

Preferences

CARRIERS.

Injury to Passenger's Escort

A passenger, a feeble old lady, encumbered with a heavy valise, was assisted on the train by her husband, the plaintiff. No assistance was afforded or offered by the carrier. The stop at the station was not long enough to allow the plaintiff to alight, and after the train had started, the conductor told him to "get off." In so doing he was injured. Verdict for plaintiff was affirmed: *Johnson* v. *Southern Ry. Co.* (Supreme Court of South Carolina), 31 S. E. 212.

Hackmen Soliciting on Railway Grounds, Exclusive Privilege

The weight of authority favors the right of a railway company to grant out the exclusive privilege of "plying" the trade of carrier of passengers or baggage on the company's grounds. The Supreme Court of Connecticut is in accord: *New York, N. H. & H. R. R.* v. *Scovill*, 41 Atl. 246. The railroad company was here held a competent party to sue for an injunction to prevent the violation of this privilege. But the court expressly declared that the rule could not operate "to prevent the driver of any vehicle from entering the station grounds of the plaintiff to fulfill a contract of employment with a passenger . . . ."

CONFLICT OF LAWS.

Torts, Injury in Another State on Sunday

The principle that the right of recovery in tort must be recognized by the *lex loci delicti*, as well as by the *lex fori*, has been applied by the Supreme Court of New Hampshire to the case of suit for an injury received while travelling for pleasure on Sunday, contrary to the *lex loci: Beacham* v. *Portsmouth Bridge*, 40 Atl. 1066. Suit was brought against the proprietors of Portsmouth Bridge for an injury, due to defendants' negligence, received on that portion of the bridge within the State of Maine. After the injury in question, the law of March 21, 1895 (Laws 1895, c. 129), was passed by the Maine Legislature, providing that c. 124, Rev. Stat. of Maine, relating to the observance of the Lord's Day, shall not affect the right or remedy of a party growing out of an injury received on that day. The rights of plaintiff, however, were, of course, governed by the law as it existed prior to the enactment of this Act, and so recovery was denied, though the *lex fori* would have allowed it.

CONSTITUTIONAL LAW.

Impairment of Contracts, Foreign Insurance Companies

In an action to recover the statutory penalty assessed upon foreign insurance companies failing to comply with requirements of the South Carolina law of March 2, 1897 (22 St. at Large, p. 461), the policy which was offered as evidence of "doing business" was originally issued three years before the passage of the Act, in 1894. The only "business" alleged was in connection with this one policy, and the defendant contended that to assess the penalty on this evidence would violate the contract clause of the United States Constitution. This defence was construed by the court as an argument that "the defendant having been permitted by this state to do business within its borders at the time the policy was issued, in 1894, the state could not afterwards, by the Act of 1897, impose any new conditions." The answer the court makes is very short: " . . . . this state may either grant or refuse a license to a foreign corporation . . . . and the grant may be either absolute or conditional . . . . ," citing *Bank* v. *Earle*, 13 Pet. 519, and the usual authorities. It seems doubtful whether the court has met the real point of the defendant: *Sandall* v. *Atlanta M. L. I. Co.* (Supreme Court of South Carolina), 31 S. E. 230.

Police Power, Sunday Laws

The Kansas Court of Appeals, Northern Department, follows the universal rule in upholding the Sunday laws: *Nesbit* v. *State*, 54 Pac. 326. The conviction of Nesbit for shaving a customer on Sunday was affirmed. The court refers to *Peo.* v. *Havnor*, 149 N. Y. 195 (1896), which decided the New York Sunday Barbering Act to be constitutional. That Act (Laws of 1895, Chap. 823) makes it a misdemeanor for any person to carry on or engage in the business or work of a barber on the first day of the week, except that, in the city of New York and in the village of Saratoga Springs, such business may be carried on until one o'clock of the afternoon of that day. The New York Court of Appeals, Gray, Bartlett and Haight, JJ., dissenting, held, that this law is a valid exercise of the police power, works no deprivation of liberty or property within the meaning of the constitution, and does not violate the Fourteenth Amendment by denying the equal protection of the laws. The dissenting judges considered the work of a barber "a work of necessity."

CONTRACTS.

Confidential Relation, Undue Influence

A and B had sustained a relation of trust and confidence toward each other. Twenty months after such relation had been terminated, A, on advice of counsel, and on a thorough understanding of the facts, agreed to convey certain property to B. Held, that A could not avoid the agreement on the ground that he reposed great confidence in B and that B's influence due to the former relations between them still remained: *Banner* v. *Rosser et al.* (Supreme Court of Appeals of Virginia), 31 S. E. 67.

Rescission, Fraud

The Supreme Court of Georgia has decided that, where a vendee has the right to rescind a contract of sale on the ground of fraud of the vendor, the mere fact that the vendee attempted, after a delivery of the goods to him, to sell the same, will not deprive him of this right: *Hoyle* v. *Southern Saw Works* (Supreme Court of Georgia), 31 S. E. 137.

Stock Gambling, What Constitutes

The Supreme Court of Pennsylvania has reiterated the rule that while a purchase of stock on margin, for speculation, is not a gambling transaction if it is the intention of the parties that a real purchase shall be made by the broker, although the delivery may be postponed or made to depend upon future conditions, yet if it is the intention that there is not to be a delivery, but that the account is to be settled on the basis of a rise or fall in prices, it is a mere wager, and the contract cannot be enforced by either party: *Wagner* v. *Hildebrand*, 41 Atl. 34.

CORPORATIONS.

Irregular Incorporation, Rights Against Creditors

A general law authorizes the formation of corporations by groups of persons who comply with the requirements which the law specifies. One of the requirements is that the associates shall have an authorized stock subscription. In default of it the associates are prohibited by the statute from doing business. In *Carroll* v. *Pacific National Bank*, 54 Pac. 32, it appears that those who united to form "The New West Liquor Company" failed to comply with this important statutory requirement. When the organization went into the hands

CORPORATIONS (Continued).

of a receiver, the receiver sued a third person to recover property alleged to have been received by him during the insolvency of the organization by way of fraudulent preference. Shall the defendant be permitted to set up in his own defence the irregularity in the incorporation? The Supreme Court of Washington, following the well-nigh universal rule, answers this question in the negative. But what reason shall be assigned for the decision? "Having done business, the question cannot be raised, either by the corporation or one dealing with it, to the injury or loss of other parties." Suppose, however, the corporation were solvent: would a debtor be allowed to make such a defence? Clearly not, although the rights of "other parties" would not in such a case be involved. The fact is that such decisions proceed upon an economic rather than a legal basis. They are obviously just—and an appropriate legal principle upon which to explain them will doubtless be formulated in due time. See 36 AM. LAW REG. & REV. (N. S.), 18, 161, "The Incidents of Irregular Incorporation."

Right to Vote an Incident of Legal Title to Stock

In *Haines* v. *Kinderbrook & H. Ry. Co.*, 53 N. Y. Suppl. 368, it appears that a plan of railroad reorganization provided for the vesting of the title to 60 per cent. of new stock in the reorganization committee with power to hold it and vote thereon for a period not exceeding five years. The plan having become operative, two out of nine members died within the five years and a minority stockholder undertook to restrain the survivors from voting upon the committee stock. The plaintiff seems to have supposed, and his attorney must have encouraged the view, that because some of the members of the committee had died and some had sold their private holdings the survivors ceased to hold the legal title to the trust stock. The court found no difficulty in disposing of this view and decided that the right to vote followed the legal title and that the legal title was in the members of the committee as trustees.

CRIMINAL LAW.

Felony, Arraignment

In *State* v. *McMichael*, 23 So. 992, the Supreme Court of Louisiana reiterates the rule that where the crime with which a person stands charged is a felony, his attorney is without authority to waive his arraignment in his absence.

CRIMINAL LAW (Continued).

In *State* v. *Hull*, 54 Pac. (Ore.) 159. It was held that where the owner of property employs a person to catch thieves, and he, with the owner's consent, co-operates with the thieves in planning and carrying out the scheme, for the purpose of having them arrested, the property is taken with his consent and the suspected thieves are not guilty of larceny.

Larceny, Taking Property with Owner's Consent

DEEDS.

A deed, delivered in escrow, and fraudulently abstracted from the depository by the grantee without performing the conditions on which it was to be delivered to him, is void even in the hands of a *bona fide* purchaser; *Dixon* v. *Bristol Savings Bank* (Supreme Court of Georgia), 31 S. E. Rep. 96.

Escrow, Unauthorized Delivery

The delivery to the solicitor of the grantee of an instrument executed by the grantor will not convert the instrument from an escrow into a deed, provided the delivery is of such a character as to negative its being a delivery to the grantee; *Ibid.*

Delivery to Agent of Grantee

EVIDENCE.

The distinction between statements of opinion and those of the impression produced as the result of observation is clearly drawn in *People* v. *Arrigheni*, 54 Pac. (Cal.) 591, where on a trial for murder, notwithstanding that the Code excluded the opinion of other than intimate acquaintances where the issue is sanity, witnesses were allowed to testify as to the appearance and manner of the defendant shortly after the homicide—as to whether they saw anything strange or peculiar in his manner. The defence was that the prisoner was temporarily insane by reason of illness and an overdose of quinine. It was held that this was not a statement of opinion as to sanity, but of a matter of observation and was so distinguished from the case of *Carpenter's Estate*, 102 Cal. 636, 36 Pac. 930, where a witness not intimately acquainted with decedent being asked how he appeared mentally, the question was rejected as being an inquiry as to the witness' opinion as to decedent's sanity,

Statements as to Matters of Observation and Impression, Opinion

EVIDENCE (Continued).

and not merely calling for a description of his manner or conduct, or for a statement that he had acted rationally or irrationally at a given time.

HUSBAND AND WIFE.

Drummer v. *Drummer*, 41 Atl. (N. J.) 149, is of some value, both as a reminder that in New Jersey, as in some Southern States, a bill for alimony will lie apart from any divorce proceedings, and more particularly as a very good example of what does not constitute desertion on the part of a husband. Many petty housekeeping annoyances were recited by the wife, but the court refused her a decree, relying on the familiar principles that nothing can justify a wife's leaving her home except such a cause as will entitle her to a divorce, and that the marriage promise to take for better or worse must mean that minor offences shall be borne in silence.

Alimony, Desertion, Divorce

It is well settled in some jurisdictions (as New York) that even though the parties go to another state to be married, for the purpose of escaping a prohibitory statute of the state of their residence, the marriage will yet be recognized as lawful in their own state, unless the prohibition is based upon some deep principle of morality. *Norman* v. *Norman*, 54 Pac. (Cal.) 143, is apparently a case of first impression in this line. The parties had here left the state where a public celebration was required by statute, and going a few miles out on the ocean in a steamer, had married each other by what they called the common law form. It was decided, however, that there was no "common law of the ocean," and that the marriage was therefore null and void.

Marriage, Evasion of Laws

A surprising number of cases have arisen with respect to the meaning of deeds containing marriage settlements—the inference being that they are difficult to draw accurately. In *Coling* v. *Haden* [1898], 2 Ch. 220, the deed contained a covenant by the husband alone that all the real and personal estate acquired during coverture by the wife should be settled in accordance with the trusts of the settlement. It was held by Stirling, J.,

Marriage Settlement, Interpretation

HUSBAND AND WIFE (Continued).

after a review of the authorities, upon common-sense grounds, that the parties could not have intended that the husband's interest in his wife's property alone should be bound, and the wife was held to have given her assent to the more liberal construction by joining in the deed.

MASTER AND SERVANT.

Allen v. *Flood* [1898], A. C. 1, is likely to be the beginning, instead of the end, of litigation upon the matter of interfering between employer and employe. *May* v. *Wood*, 51 N. E (Mass.) 191, is one of its first fruits. The majority of the court, holding that this form of action was quite different from an action for enticing servants away (see *Walker* v. *Cronin*, 107 Mass. 555), were of opinion that, in an action for inducing a master to discharge a servant, if false and malicious statements are relied upon, they must be set out in the declaration, "that the court may see whether any such effect as is alleged could reasonably be attributed to the statements." Evidently the form of a declaration in slander is in the mind of the court. Holmes, J. (with him Knowlton and Morton JJ.), in an emphatic dissent, holds that, contrary to *Allen* v. *Flood*, such action will lie "as well when the result is effected by persuasion as when it is accomplished by fraud or force, if the harm is inflicted simply from malevolence and without some justifiable cause, such as competition in trade;" further, the doctrine applies to possible, as well as actual, contracts. It follows that the slander is not the gist of the action in this case, and, therefore, need not be set out in the declaration.

Inducing Master to Discharge, Cause of Action, Sufficiency

MUNICIPAL CORPORATIONS.

The Supreme Court of Wisconsin, in an action to enjoin a municipal corporation from issuing corporate bonds on the ground that such issue would increase the debt of the municipality beyond the amount allowed by law, has decided that money to be derived by the municipality during the year from the sale of licenses cannot be considered as offsets to the existing indebtedness: *Rice* v. *City of Milwaukee*, 76 N. W. 341.

Debt, Limit

MUNICIPAL CORPORATIONS (Continued).

Improvements, Local Assessments

In an elaborate opinion containing an exhaustive review of the authorities, Corliss, C. J., of the Supreme Court of North Dakota, upholds the right of the legislature to direct that all the expense of paving a city street shall be assessed against the abutting property, even though the property is not benefited to the extent of the assessment: *Ralph* v. *City of Fargo et al.*, 76 N. W. 242.

Unconstitutional Charter, Officers De Facto

A municipal government, organized under an act of the legislature, subsequently adjudged to be unconstitutional, is a government *de facto*, and its officers are officers *de facto*, until ousted through proper legal proceedings: *State ex rel. Attorney-General* v. *Mayor, Etc., of Town of Dover* (Supreme Court of New Jersey), 41 Atl. 98.

NEGLIGENCE.

Contributory Negligence, Child

The Supreme Court of N. Y., in *Weiss* v. *Met. St. Ry. Co.*, 53 N. Y. Suppl. 449, decided that a child between eight and nine years of age, who attempts to cross a city street in the middle of a block, either without looking for an approaching street car, or in blind and heedless disregard of its rapid approach, is guilty of contributory negligence.

Office Buildings, Elevators

What duty the proprietor of an office building owes to the people using the elevators in his building was before the Supreme Court of Wisconsin, in *Oberndorfer* v. *Pabst*, 76 N. W. 338. In that case the elevator had been started upward suddenly, just as the plaintiff's intestate was about to step into it, whereby he fell down the shaft and was killed. The court held that the proprietor of such an office building is bound to have the passenger elevators operated with the highest degree of skill and care commensurate with or proportionate to the possibility of injury to passengers. This is a duty of which he cannot discharge himself by delegating it to employes however experienced or skillful. (The decision of the lower court was reversed on a question of evidence.)

PLEADING AND PRACTICE.

Peremptory Mandamus Can be Allowed only In case of clear Legal right on Undisputed Facts

In the case of an application by a street railway company for a writ of mandamus against the Commissioner of Public Works, commanding respondent to issue a permit for the opening of a public street, which was resisted, the court denied a peremptory writ, but granted an alternative mandamus: *Forty-second St. R. W. Co.* v. *Collis*, 53 N. Y. Suppl. 669. This is an adherence to the well-settled principle that, where a remedy of such a character as a peremptory mandamus is invoked, there must be a clear and unquestioned legal right. The court cites *People* v. *Wendell*, 71 N. Y. 171; *People* v. *Greene Co.*, 64 N. Y. 600.

General and Special Appearance

It appears to be the practice, under Codes of Civil Procedure, in some of the states, for attorneys to appear specially, limiting their appearance to some particular purpose. It was recently held by the Supreme Court of South Dakota, in a case where the defendant only intended to appear to take advantage of the defective service of the summons, but the motion to quash was signed by his counsel, with the addition "attorney for defendant," that this was not to be construed as a general appearance. From which it would seem that the old permission to appear, "*de bene esse*," is substantially given under new codes: *Reedy* v. *Howard*, 76 N. W. 304.

Quo Warranto, Issue, Trial by Jury

By Section 6, Article 1, of the Constitution of Nebraska, it is provided that "the right of trial by jury shall remain inviolate." Upon a *quo warranto* to test the right of the respondent to hold the office of mayor there was a trial before a referee of the issues raised by the information of the relator and the answer thereto. Exceptions were taken to the findings of the referee, but the principal question was whether or not a jury trial in that state is demandable as a matter of right. The opinion of the Supreme Court was written by Ryan, C. J., and gives a very interesting historical examination of the writ of *quo warranto* with numerous citations of authorities, and with the result stated thus: "It is clear there exists such uncertainty as to the rule at common law, that, if possible, the problem should be solved by resort to fixed principles, rather than the disputed teachings of uncertain precedents." Then, after a discussion of the State Constitution and Code of Civil Procedure, it was held that provisions of the law of Nebraska, the respondent

PLEADING AND PRACTICE (Continued).

was not entitled as a matter of right to demand a trial by jury. The dissent of Norval, J., is also of much interest. In his opinion he asserts that "the invariable practice at common law, in information in the nature of *quo warranto* and in writs of *quo warranto*, was to try disputed issues of fact by a jury." He further considers the question under the provisions of the Code; but we note the case in this column because of its extensive reference to precedents of the common law, and the different views of their authority in the two opinions of the judges above named: *State* v. *Moores*, 76 N. W. 530.

PRINCIPAL AND AGENT.

Commissions, When Allowed

The agent's right to commissions is generally said to accrue upon making a sale. *Stone* v. *Argersinger*, 53 N. Y. Suppl. 63, seems to suggest that this must be accepted with some qualifications, at least, when his contract is for commissions on "collections." Commissions were not allowed on unproductive orders, as those where the goods were returned; but were allowed on those sales which the principal was himself unable to carry out.

Ratification

The same formalities only are required in ratification that would have been required in an original authorization. It was therefore held, in *Lynch* v. *Smith*, 54 Pac. (Colo.) 634, that a verbal ratification of the act of the agent in affixing the principal's name as surety upon a bond was sufficient, inasmuch as the bond need not have been under seal.

RECEIVERS.

Appointment, Insolvent Corporation

The practice in respect to appointment of receivers varies somewhat in different jurisdictions. In New Jersey, however, as appears in the case of *Fort Wayne Electric Corp.* v. *Franklin Electric Light Co.*, 41 Atl. (N. J.) 217, the rule is that if a corporation is insolvent and there is no reasonable prospect that, if let alone, it will become solvent, a receiver should be appointed; nor does the word "resume" in the statute mean that a corporation must have completely suspended its business before such appointment may be made.

REFEREES.

Counsel for Public Corporation, High Character

It is well settled that a person appointed as a referee is incompetent to act as such, if, at the time he is counsel for one of the parties to the reference. It is immaterial that the referee appears to have been uninfluenced by his employment by one of the parties or that he is a man of high integrity; the law requires that all appearance of evil should be avoided. Whether this rule applies where the referee's employer is a public corporation, like a municipality, as well as where only private parties are concerned, was at issue in *Fortunato* v. *Mayor, etc., of New York*, 52 N. Y. Suppl. 873. In that case the person appointed as referee was acting as special counsel for the city in several cases. The court held that the public character of the party retaining the referee made no difference, and that his appointment was invalid.

SALES.

Unfair Competition, Use of Label

If the dealer in a given article adopts and uses a label so nearly identical with that of a rival as to establish, upon inspection, not only the fraudulent intention to deceive the public, but the certainty that they must be deceived thereby, a suit against such dealer, based on unfair competition, may be sustained without proof that persons have in fact been so deceived: *McLoughlin* v. *Singer* (Sup. Court, App. Div. N. Y.), 53 N. Y. Suppl. 342.

SURETYSHIP.

Release of Surety

Ordinarily an extension of time given by the creditor to the principal debtor will, of course, release the surety; but this is not so where the extension is granted by a bank whose officers were themselves the sureties. They cannot, by taking renewal notes, be allowed to exonerate themselves: *Leonhart* v. *Bank*, 76 N. W. (Neb.) 452.

TRUSTS.

Trustee, Liability for Wrong of Co-Trustee

Barroll v. *Foreman*, 40 Atl. 283. A and B, executors of an estate, sold property belonging to the estate and the sale was confirmed by the court. The money paid in accordance with the decree was received by B, who misappropriated it. A, ignorant of the fraud and believing the money to be in bank, joined B in asking to have an audit of their accounts. An audit was

TRUSTS (Continued).

filed distributing the amount. A then, for the first time, discovered B's fraud. In a bill filed by A the audit was set aside on the ground of fraud. The Court of Appeals of Indiana held that A might have discovered the money was not in bank, and that he was responsible to the amount found due by audit to *cestui que trust*.

This case would seem to go farther than *Candler* v. *Tillett*, 22 Bea. 257, and *Dix* v. *Burford*, 19 Bea. 409; see, also, *Maccabin* v. *Cromwell*, 7 G. & J. 157; *Spenser* v. *Spenser & Corning*, 11 Paige, 299; *Homer* v. *Lehman*, 2 Ired. Eq. 594, where a trustee was held liable for laches of his co-trustee; *Acheson* v. *Robertson*, 3 Rich. Eq. 132, and *Griffin* v. *Macaulley*, 7 Gratt. 476. Another interesting case on the same subject is that of *In re Westerfield*, 53 N. Y. Suppl. 25.

In this last case a trustee was, with the consent of the *cestui que trustent*, excluded by his co-trustee from the management of the estate. Matters being in this condition, the excluded trustee discovered that his co-trustee had misappropriated the property of the estate to a very large extent. Instead of informing the beneficiaries, he participated in the management of the estate with the fraudulent trustee—doing many unauthorized acts, but with no evil intent—his object being to secure the property from his fraudulent co-trustee and protect the estate from the loss. The court held that, while he would not have been liable had he informed the beneficiaries on the discovery of the fraud of his co-trustee, his subsequent participation and unauthorized acts, though with the best intention, and probably with a beneficial result to the estate, rendered him liable for any sums which his co-trustee could not make good to the estate. Of course, the fact that he had acted as he did, under advice of counsel, did not excuse him.