# PROGRESS OF THE LAW.

## As Marked by Decisions Selected from the Advance Reports.

### CARRIERS.

Hand-cars are "Cars"

The word "cars" in a Wisconsin Statute, giving a right of action to railway employes injured by fellow-servant's negligence (L. 1893, c. 220), was held to include hand-cars: *Benson* v. *Chicago, St. P., M. & O. R.* (Sup. Ct. of Minnesota), 77 N. W. 798.

Forfeiture of Mileage Book for Unlawful Use

A bought a mileage book, containing a clause of forfeiture for use by any other than the purchaser, with money furnished by a ticket "scalper," paid him for the part she had used, and delivered to him the unused portion. She afterwards attempted to take a second trip on the same book, but in the meantime another person had used it, and on evidence of this the railroad company had listed the ticket as forfeited. A was accordingly compelled to surrender the book and pay fare under pain of being put off the train. On action by A against the railroad, A and the scalper agreed, in testifying, that no authority to permit others to use the ticket had been given by A. Held, that the ownership of the mileage was for the jury, and that if the title to it remained in A, and she gave no license to others to use it, the ticket was not forfeited. Judgment for A affirmed. *Mueller* v. *Chicago, B. & N. R.* (Sup. Ct. of Minnesota), 77 N. W. 566.

### CONSTITUTIONAL LAW.

Federal Court, Jurisdiction, Receiver of National Bank

An injunction against a criminal prosecution, in a state court under a valid state law, of a bank officer for embezzlement, cannot be granted by a Federal court because the latter had previously obtained jurisdiction in equity cases in which a receiver of the bank had been appointed and the civil liability of such officer was in litigation: *Harkrader* v. *Wadley*, 19 Sup. Ct. 140.

In *Howell* v. *Miller et al*, 91 Fed. 129, the Circuit Court of

Appeals decides (1) A compiler and publisher of an annotated edition of the statutes of a state may copyright his work, and such copyright will cover and protect such part of the contents as is the product of his own labor. (2) A suit to enjoin the publication, distribution and sale of a similar work, on the ground that it infringes such copyright, is not a suit against the state within the purview of the Eleventh Amendment, U. S. Const., because the matter for such publication was prepared under direction of a state statute, and is owned by the state and in its possession, and the defendants are officers and agents of the state, and proceeding in accordance with such statute.

**Suit to Protect Copyright, Infringement by State Authority, Eleventh Amendment**

*Board of Commissioners of Wilkes County* v. *Call* (Supreme Court of North Carolina), 31 S. E. 481, is a late case of bond repudiation. The bonds were declared void, against the dissent of two justices, on various technical grounds, among which was the fact that the vote on the second reading of the act authorizing the loan was not recorded in the journal of the legislature. "There can be no *bona fide* holders of unconstitutional obligations," says the court, "nor can ignorance of public statutes and legislative journals be deemed otherwise than wilful or negligent."

**Impairment of the Obligation of Contracts**

A decision precisely similar to this (*Union Bank* v. *Board of Comr's*, 119 N. C. 214, 25 S. E. 966) was held by District Judge Purnell (*Bank* v. *Board*, 90 Fed. 7, E. D. of N. C.) *to govern only for the future.* Its application to contracts entered into previously was considered by the learned judge unconstitutional, as being *legislation* impairing the obligation of contracts. Former decisions had established the law in North Carolina that "the copy of an act, attested according to law by the presiding officers of the two houses of the legislature and filed in the office of the Secretary of State," constituted "conclusive proof of the enactment and contents of the statute of the state," not to be attacked "by the legislative journals or in any other manner." This "law" of the state could not be "repealed" by judicial decision so as to invalidate contracts already formed.

**Line of State Decisions Held a "Law"**

This decision of the Federal court goes very far, but not farther than *Pease* v. *Peck*, 18 How. 599 (1855). In the latter case the act in question was never passed by the legislature, but was engrossed by a clerk's mistake. For a number of

CONSTITUTIONAL LAW (Continued).

years the state courts treated the statute as valid, but later discovered the error, and declared the law void *ab initio*. This decision, in its application to contracts entered into on the faith of the original construction, was reversed by the United States Supreme Court.

**Impairment of Obligation by Change in Judicial Construction, Writ of Error to State Court**

In this connection especial interest attaches to the last Virginia coupon case, *McCullough* v. *State of Virginia*, 19 Sup. Ct. 134. The Supreme Court of Virginia declared unconstitutional *in toto* the Act of 1871, which made bond coupons receivable for state taxes and gave rise to the whole brood of cases of which this is the latest, and accordingly denied remedy to a bondholder, McCullough. The court, in taking this action, made no mention of the Act of 1887, under the authority of which the state officers refused to receive the coupons in payment of taxes. Neverthless, the United States Supreme Court granted a writ of error to the Supreme Court of Virginia, on the ground that the latter's action impaired the obligation of McCullough's contract. As Mr. Justice Peckham points out, in his dissenting opinion, this furnishes the first instance of the granting of such a writ under the contract clause, where the state court had not *upheld a state statute*, which was alleged to impair the obligation of a contract. To be sure, the majority asserts this case to be *practically giving effect* to the Act of 1887, while not nominally doing so. But the view in the dissenting opinion seems the more rational, and it is hard to avoid the conclusion that the rule of *Gelpke* v. *Dubuque* has in this case been extended, and that settled judicial construction of a state law is here considered part of the statute for the purpose of giving jurisdiction by the subject-matter, just as before it had been considered part of the statute for the decision of a case, after the Federal jurisdiction had been conferred by citizenship.

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CONTRACTS.

**Mistake, Rescission**

In *Moffett, Hodgkins & Clark Co.* v. *Rochester* (Circuit Court of Appeals), 91 Fed. 28, the plaintiffs filed a bill for a rescission of a contract awarded to him for public work, on the ground of mistake, in that they had made an erroneous estimate of the cost of a certain tunnel excavation by omitting to take into consideration certain features of the work, thereby making his bid $27,000 less than it should have been. The court dismissed the bill on the

CONTRACTS (Continued).

ground that the alleged mistake lacked two elements essential to render it one for which rescission would be granted; first, it was not mutual, and, second, plaintiff was not free from negligence.

Usury, Loan

A and B entered into a written agreement to embark in a joint venture in the purchase of stocks, B to furnish the capital to carry on the business, to share equally in the profits, and in case of loss to be reimbursed not only to the extent of the full amount of his investment, but to receive a sum in excess of legal interest thereon. Held, it not being shown that the agreement was a device to conceal a loan of money, that the contract was not usurious: *Orviss* v. *Curtiss* (Court of Appeals of New York), 52 N. E. 690.

Bail-bond, Consideration

On appeal from a judgment against B on a bail bond, B contended that there was no consideration for the bond, inasmuch as C, for whose appearance the bond was given, was at the time of his escape under arrest for another offence. Held, affirming the judgment, that the discharge from custody for the offence for which the bail was given was sufficient consideration for the bond, though the offender was in custody for another offence until his escape: *Dunlap* v. *State* (Supreme Court of Arkansas), 49 S. W. 349.

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CORPORATIONS.

Stock Issued in Exchange for Property

*National Bank* v. *Illinois & W. Lumber Co.*, 77 N. W. 185 (Supreme Court of Wisconsin), is to be added to the list of decisions which recognize that it is only on the ground of fraudulent overvaluation of the property that the stock issued in exchange for it can be treated by creditors as not fully paid. The court cites, with approval, the well-known decision of the Supreme Court of the United States in *Coit* v. *Amalgamating Co.*, 119 U. S. 343.

Stock Sold at a Discount, Stockholder's Right to rescind for Fraud

Ignoring for a moment the "corporate entity," we cannot but regard stockholders as partners with limited liability. Hence, we conclude (1) that a stockholder who has been induced by fraud to subscribe to stock, has an equity of rescission against his associates; (2) that his equity will not, however, avail against the legal right of a corporate creditor, who is in substance the creditor of all who are stockholders when his

CORPORATIONS (Continued).

debt accrues; (3) that the liability of a stockholder to respond up to the par value of his stock is the same thing (within limits) as the liability of the partner to respond for firm debts to the full extent of his resources; (4) that as a private agreement of indemnity is enforceable between partners, so an agreement that a stockholder shall not be liable for the par of his stock is valid, except as against corporate creditors; and, therefore, is not of such a character as to deprive him of his equity of rescission under the circumstances above stated. This is all that there is (except a point of equity pleading) in such a case as *Barcus* v. *Gates*, 89 Fed. 783 (Circ. Ct. of App. 4th Circ.). The court, however, being sadly hampered by the artificial reasoning to which long familiarity with the "entity" has accustomed us, labors hard to reach the proper result, and does so only after a toilsome journey.

**Insolvency, Preference of a Director**

In *Rowe* v. *Leuthold*, 77 N. W. 153, the Supreme Court of Wisconsin deals another blow at the obsolescent "trust fund theory" by remarking that "it is true that the mere fact of the insolvency of a corporation does not convert its property into a trust fund for the benefit of all its creditors, so as to prevent one of them, without fraud, from obtaining a preference by ordinary adversary proceedings." This must involve the concession that a corporation may prefer a creditor. The court, however, refuses to recognize the right to prefer a director who is a creditor. The case before the court was a case of trickery and sharp practice upon the part of the favored director. It is to be regretted that the court did not rest its decision on the ground of fraud. It seems impossible to sustain the principle as broadly as the court undertook to state it.

**Contribution for Payment of Corporate Debt**

Although the stock of his corporation was fully paid, a stockholder, who voluntarily discharged a corporate debt, asserted an equity of contribution against his fellow-stockholders. The court denied his right. *Gorder* v. *Connor*, 77 N. W. 383.

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CRIMINAL LAW.

**Jurisdiction, False Pretences**

In *Queen* v. *Ellis*, [1899] 1 Q. B. 231, false representations had been made in Glasgow, but the goods were obtained in England. Held, that the offence consists in obtaining the goods, and not in making false pretences whereby they might be obtained, and,

CRIMINAL LAW (Continued).

therefore, the English court had jurisdiction to try the charge of obtaining goods by false pretences.

**Fugitives from Justice, Extradition, Convicted Persons in Another State**

Who is a fugitive from justice was the question involved in *In re Maney*, 55 Pac. 930, which was before the Supreme Court of Washington. The petitioners were convicted of murder in Idaho, and sentenced to imprisonment in the penitentiary of that state. In going from the place of trial to the penitentiary, in custody of an officer, they were compelled, by the topographical condition of the country, to pass through a portion of another state. When in this portion they applied for their release on *habeas corpus*, on the ground that the officer had no authority to detain them in that state. Held, they were not fugitives from justice, but convicted persons under a judgment of a court of a sister state to which full faith must be given. Remanded to the custody of the officer.

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EQUITY.

**Injunctions, Restraint on Trade Unions**

The case of *Coons* v. *Christie*, 53 N. Y. Suppl. 668, carries the use of the injunction in labor disputes further than any case which has come to our notice. The court would seem to hold that one may be restrained by injunction from asking another to break his contract with the plaintiff, thus not only following the doctrine of *Lumley* v. *Guy*, 2 E. & B. 216, but preventing the breach of duty recognized in that case, by an injunction. The court, however, put their decision on another ground. The defendant had, as an officer of a union, ordered the employes of the plaintiff to stop work. The decision granting the injunction is apparently placed on the ground of an organized interference with the plaintiff's business. This idea underlies Mr. Justice Harlan's opinion in *Arthur* v. *Oakes*, 62 Fed. 321, where he held a strike in itself illegal as a combination to injure another. Compare, also, *Farmers' Loan and Trust Co.* v. *North Pacific R. R. Co.*, 60 Fed. 803. The principle of law would seem to be that all combinations which injure the business or property of another are unlawful. It need hardly be pointed out that if actors and the injured party are competitors in trade, this principle is not law. Where the actors are workmen, and the injured employers, it is in this country rapidly tending to become law. Compare *Allen* v. *Flood*, [1898] A. C. 1; *Davis* v. *Engineers*, 51 N. Y. Suppl. 180; and the opinion of Holmes, J., in *Vegblahan* v. *Gunter*, 44 N. E.

EQUITY (Continued).

(Mass.) 1077. The second case deals with the principle of *Lumley* v. *Guy*, the third with harm which one may do to another with impunity, and *Allen* v. *Flood*, more or less with both questions.

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GUARANTY.

Ordinarily an agreement with a bank to be responsible for the payment of notes of a third person which it may endorse, is a continuing offer, which may be withdrawn as to any subsequent notes by notice. *Home Savings Bank* v. *Hosie*, 77 N. W. (Mich.) 625, was a case of this kind, where the directors of a company had executed their bond to the bank for indorsements to be made during the ensuing year. It was held, under all the circumstances, and especially because the bond was only a substitute for another, the consideration for which had been executed, that it was not revocable by notice, and, therefore, not by the death of one of the obligors.

**Withdrawal**

*Lehigh Coal and Navigation Co.* v. *Blakeslee*, 41 Atl. (Pa.) 992, decides that a guarantee of the validity of a signature to a power on a stock certificate is a contract from the date thereof, and an action cannot be maintained upon it on proof of its forgery after seven years.

**Statute of Limitations**

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HUSBAND AND WIFE.

Iowa is one of those states where cruel and inhuman conduct must endanger life in order to constitute a ground for divorce. *Blair* v. *Blair*, 76 N. W. (Ia.) 700, is a good illustration of how far such conduct may go without authorizing the court to separate the parties—even to hiring a man to compromise his wife's chastity. The existence of such a case is a strong argument in favor of moderately liberal divorce laws.

**Divorce, Cruel and Inhuman Treatment**

*Driver* v. *Driver*, 52 N. E. (Ind.) 407, holds that, for a married man falsely to deny the paternity of his wife's child, is such cruelty as will entitle her to divorce.

**Cruelty**

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INNKEEPERS.

In the case of *Turner* v. *Stafford*, 9 Pa. Super. Ct. 83, it was decided that the absence of a guest all night from a room engaged by him at a hotel is not such negligence on his part as will bar his right to recover the value of property stolen.

**Guest, Absence from Room, Negligence**

MASTER AND SERVANT.

*Wabash R. Co.* v. *Kelley*, 52 N. E. (Ill.) 152, was a case in which a railroad company had deducted a certain monthly sum from the wages of an employe for the purpose of maintaining a hospital for the care of injured employes. It was held that, so far as the management of the hospital was concerned, the company was like any other principal, liable for the acts of its agents, and hence liable to one who suffered an unnecessary amputation by a surgeon, employed by the company, who was under the influence of narcotics.

**Hospital for Railway Employes, Management**

The general principle of the duty of a master to furnish his servants with a safe place to work and proper tools, etc., is well settled. The difficulty in applying it is seen in *Lake Erie & W. R. Co.* v. *Morrissey*, 52 N. E. (Ill.) 299. The plaintiff's ground of complaint was that the company had neglected its duty of leveling the track at switching points, and that plaintiff had been injured thereby. A judgment for plaintiff was affirmed on the ground that there was evidence to go to the jury. Plaintiff escaped the ordinary defence of having voluntarily undertaken the risk in question by proving that it was his first trip as conductor to that place.

**Safe Place to Work, Railway Track**

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MORTGAGES.

*Webber* v. *Lawrence*, 77 N. W. (Mich.) 266, is an instructive case. Lawrence, holding title to property subject to a $15,000 mortgage in favor of Webber, deeded it to Corning, who by the deed assumed the payment of the mortgage debt. A contemporaneous written agreement disclosed, however, that the transaction was merely to secure Corning for indorsing a note of Lawrence's, who, by the agreement, was to retain possession of the premises and apply the income to the payment of the loan and mortgage. In a foreclosure suit by Webber it is now held that he is not entitled to a personal decree for deficiency against Corning; he has no contract with him, himself, and his right through Lawrence is subject to the defence that could be set up in a suit brought by Lawrence himself, to wit, that Lawrence had not performed his part of the contract. See *Garnsey* v. *Rogers*, 47 N. Y. 233; *Gaffney* v. *Hicks*, 131 Mass. 124.

**Assumption, Defence**

The familiar rule of negotiable paper, that its transfer carries with it an implied warranty that the paper is genuine, was

MORTGAGES (Continued).

**Assignment, Warranty**

applied in *Waller* v. *Staples*, 77 N. W. (Ia.) 570, to a mortgage. The second assignee of a mortgage was there held entitled to recover against the first the loss accruing, by reason of the fact that the mortgage was a forgery.

**Mortgage by Executor**

*Long* v. *Landman*, 76 N. W. (Mich.) 374, is a recent illustration of the principle that, where an executor has obtained authority from a court to mortgage his testator's estate, the mortgagee has a right to rely upon the real facts set forth in the petition; and these facts, if sufficient to confer jurisdiction on the court, cannot subsequently be denied by the heirs in a suit to foreclose the mortgage. If this were not so, it would practically be impossible for an executor to borrow any money on a mortgage.

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MUNICIPAL CORPORATIONS.

**Nuisance, Liability**

In an action against a city for maintaining a nuisance in depositing, near the premises of the plaintiff, garbage gathered from the public streets, the court affirmed a judgment for plaintiff: *City of Albany* v. *Slider*, (Appellate Court of Indiana,) 52 N. E. 626. The rule that a municipal corporation cannot escape liability for maintaining a nuisance, under the plea that the nuisance was created in the discharge of its duty to the public, is now well settled: *Haag* v. *Commissioners*, 60 Ind. 511; *Petersburgh* v. *Applegarth*, 28 Gratt. 321; *Brayton* v. *Fall River*, 113 Mass. 218; *Hannibal* v. *Richards*, 80 Mo. 530; Wood on Nuisances, sec. 742.

**Removal of Electric Wires Illegally Placed**

*Electric Power Co.* v. *Mayor of City of New York*, 55 N. Y. Suppl. 460. In this case the electric company had illegally erected wires upon housetops. The city authorities cut down and removed the wires without notifying the company to remove them. Held, that the city was liable for conversion in removing the wires, although illegally placed, without notifying the company, and without offering the company a reasonable opportunity for reclaiming them.

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NEGLIGENCE.

The rules of law applicable to the case of *Laidlaw* v. *Sage*, have at last been clearly enunciated by the New York Court

NEGLIGENCE (Continued).

**Proximate Cause, Dynamite Explosion, Use of a Human Being as a Shield**

of Appeals in 52 N. E. 679, and the result reached is substantially the same as when the case was first tried, and the complaint dismissed because there was no connection or, at least, not the necessary connection between the act of the defendant, Sage, and the injury of the plaintiff; in other words, that the act of the defendant was not the proximate cause of the injury to the plaintiff. The facts of this long protracted case were: In December of 1891, one Norcross entered the office of Russell Sage, carrying in his hand a carpet bag, and handed a note to Sage which, in substance, stated that there was ten pounds of dynamite in the bag, which, if dropped on the floor would blow up everything in the place. It then continued, "I demand $1,200,000, or I will drop the bag." Sage parleyed with him, and Norcross, evidently believing that Sage did not intend to comply with his demand, caused the explosion to take place. Norcross was blown to pieces, one of the clerks was killed, and everything in the office was shaken up. The plaintiff entered the office a short time after Norcross, but before the explosion, and claims that Sage caught hold of him and moved him about the width of his body, or about eighteen inches, thus bringing him between Sage and Norcross, and he was in this position when the explosion took place. The plaintiff received a severe injury and he brought this action for damages against Sage. At the first trial the case was dismissed because there was, in the opinion of the trial court, no relation of cause and effect. This was reversed by the Supreme Court, they holding that no question of proximate cause was involved. After four trials and the questions being passed upon by the Supreme Court three times, the Court of Appeals decides that there was no relation of cause and effect, and practically take the same grounds as the original trial court, so that, after all these years of litigation, the plaintiff's claim is practically dismissed. It is true that the judgment was reversed and a new trial ordered, yet the view that the court took of the evidence, puts an end, in all probability, to the case, unless some new evidence is discovered. The court did not rest its opinion upon the question of proximate cause alone, yet it is very apparent that that was the determining factor in the decision, and it was based upon the fact that plaintiff would have been injured if Sage had not moved him, because everybody in the room was injured.

PARTNERSHIP.

"Holding Out"

In order to enforce a partnership liability against one who has, in fact, ceased to be a partner, it must, on principle, appear that the plaintiff has been misled to his disadvantage by the defendant's "holding out." Whatever doubts may have been cast by the New York courts upon the soundness of this proposition by the decision in *Poillon* v. *Secor*, 61 N. Y. 456, may be regarded as set at rest by *Bank* v. *Walker*, 66 N. Y. 424, and by *Lanier* v. *Milliken*, 54 New York Suppl. 424. See the remarks of Gray, J., in *Thompson* v. *Bank*, 111 U. S. 530.

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PLEADING AND PRACTICE.

Sheriff's Return not Conclusive

The Court of Appeals of Colorado has decided that if a sheriff's return of service be false, and not the result of any misconduct of the plaintiff, its falsity may be shown by the party injured, in a proceeding to vacate the judgment. This is broadly contrary to the old rule, that as between parties and privies the return of the sheriff was conclusive, and that it could not be questioned, except in an action against the officer for a false return. The court further held that the unauthorized appearance of an attorney for a defendant, without the latter's knowledge, does not confer jurisdiction. These are definite rulings upon points of practical importance that have been debated in other forums.

Non-appearance by Attorney

Pa. Decision Under Art. 4, Sect. 1, U. S. Constitution

In this connection it is interesting to read the opinion of Judge Mitchell, of the Supreme Court of Pennsylvania, in *Price* v. *Schaeffer*, 161 Pa. 530, under the 1st Section of Art. 4, of the Constitution of the United States, where the position of the plaintiff in the judgment, both by the organic law and by many judicial interpretations, would seem to be very strong in an action upon a judgment entered in the court of another state. It was held, in this Pennsylvania case, that an affidavit of defence to such an action is sufficient which avers that the appearance recited in the record of the judgment sued on was merely constructive, and that, in fact, the defendant was not served with process, did not appear, and had no knowledge of the suit until recently, when demand was made, in Philadelphia, upon him for payment. See also *Bodurtha* v. *Goodrich*, 3 Gray, 508, in which it was held that, in the absence of personal notice or service, a mere recital that the defendant appeared by attorney was not absolutely binding, and did not

PLEADING AND PRACTICE (Continued).

preclude him from showing that the attorney was not retained or authorized. Said Shaw, C. J.: "It would be reasoning in a circle, and inconclusive, to say, that the court had jurisdiction, because it was shown by their record that the defendant appeared by attorney; and that they had authority to make such record, binding upon him, because they had jurisdiction:" *Du Bois* v. *Clark*, 55 Pac. 750.

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REAL PROPERTY.

**Easement, Open Way**

In *Boyd* v. *Bloom*, 52 N. E. 750 (Ind.), it was held that the grant of "a free and undisturbed right to the use" of a certain way does not give the grantee a right to an open way, these words not amounting to the grant of an open way. The plaintiff in this case objected to the placing by the defendant of gates at either end of the way. The general rule is that the grant of a way does not take away the right to place gates thereon which the grantee must open and close when he uses the way. The language must be express and explicit to take away this right: *Bean* v. *Coleman*, 44 N. H. 539; *Short* v. *Devine*, 146 Mass. 119; *Green* v. *Goff*, 153 Ill. 534; *Hartman* v. *Fick*, 167 Pa. 18; *Kohler* v. *Smith*, 3 Pa. Super. Ct. 176; Jones on Easements, §§ 400–1, 405, 406. In *Connery* v. *Brooke*, 73 Pa. 80, the words "free right of passageway with free ingress and egress at all times" was held not to imply that a gate across the way granted was an obstruction.

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SALES.

**Retention of Title, Judicia of Ownership**

A, a wholesale dealer, shipped goods to B, a retailer, at various times, the bills being marked, "Consigned; our property until paid for." He knew that the consignee mingled the goods with his general stock, and retailed them in his business when and as he pleased and at his own prices; nor did he require the latter to make any report of such sales, nor keep any separate inventory or account of such goods, they being paid for out of the general proceeds of the retailer's business. Held, that A retained no title as against an assignee for creditors of B: *Mayer* v. *Catron* (Court of Ch. App. of Tenn.), 48 S. W. 255.

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TELEGRAPH COMPANIES.

In an action by A against a telegraph company for damages occasioned by negligence in the transmission of a mes-

TELEGRAPH COMPANIES (Continued).

Improper Transmission of Message, Contributory Negligence

sage, it appeared that the message, when received by A, was considered by him as of doubtful meaning, and that he asked the agent of the defendant company if it was correct, and was informed that it had been repeated and was correct. Held, that A was not guilty of contributory negligence as a matter of law: *Hasbrouck* v. *Western Union Tel. Co.* (Supreme Court of Iowa), 77 N. W. 1034.

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TRUSTS.

Liability of Trustees

With two dissenting voices the Supreme Court of Missouri has held that a trustee of a private charity, who becomes trustee by virtue of holding a public office, can appoint another to fulfill the duties of trustee, and, f the appointment is carefully made, is freed from all further responsibility for the care of the trust property. Here a testator directed that $10,000 should be paid to the judges of the county court, to invest the same on good security and apply the proceeds to certain designated charitable purposes. The judges ordered that the fund be received by the county treasurer. Successive county treasurers took care of the property for twenty-five years and made periodical reports to the court. Then a treasurer was elected who misapplied the property. Before his election his reputation had been good. Suit was brought to determine if the judges in office at the time of the treasurer's misappropriation were liable for the loss to the trust property. The decision, as indicated, was in favor of the judges: *Anderson* v. *Roberts*, 48 S. W. 847.

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WAREHOUSEMEN.

Bailment, Lien

In *New York Trust Co.* v. *Lipman*, 52 N. E. 593, the Supreme Court of New York held that where a warehouse gave a depositor open, negotiable receipts for bales of goods deposited, deliverable only on the return of the receipts, and, according to their custom, held the number of bales called for against such receipts without agreeing to deliver any particular bales, and the depositor, after pledging the receipts without notice to the pledgee, withdrew the bales first deposited and replaced them with others of equal value, the lien of the pledgee was transferred to the new bales, and the release of the old bales constituted a valuable consideration for subjecting the new ones, as deposited, to the same lien.