PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADMIRALTY.

Maritime Liens, Supplies, Authority

The rule that where supplies are ordered for a vessel by the charterer, the materialman is put on inquiry as to the charterer's authority to pledge the ship's credit, and will obtain no lien where he knows, actually or constructively, that the charterer has no such authority, is recognized in the recent case of *The Del Norte*, 90 Fed. 506. In that case, however, it was held that the materialman was relieved from the duty of inquiry by a statute of the state (Washington), which made "Masters, agents, consignees, contractors, sub-contractors, or other person or persons having charge in whole or in part of the construction, alteration, repair or equipment of any vessel . . . the agent of the owner." As the materialman had no *actual* knowledge of the facts, he was allowed to recover, and the owner was said not to be injured by this result, as he had protected himself by a "Contract of Guaranty" with the charterer.

ASSIGNMENTS FOR CREDITORS.

Assignment to Creditor Firm

Following the dictum in *Chaffees* v. *Risk*, 24 Ga. 432, and the decision in *Vallance* v. *Trust Co.*, 42 Pa. 441, it was held in *Penn Plate Glass Co.* v. *Jones*, 42 Atl. (Pa.) 189, that an assignment by a debtor to a member of the creditor firm, in trust, to pay the firm debt, was an assignment directly to the creditor which, under the Act of 1843 of Pennsylvania, does not have to be recorded.

BANKRUPTCY.

Admission of Insolvency by Directors

In re Bates Machine Co., 91 Fed. 625, involved the question of the right of the directors of a corporation to admit in writing its inability to pay its debts, as a basis of an involuntary petition. It was held that such an act was beyond the authority of the directors and, therefore, not binding on the company, the court intimating a doubt as to the parallel rule permitting the directors to make an assignment for the benefit of creditors.

BANKRUPTCY (Continued).

Another question of first importance under the new act is whether the act of bankruptcy described under § 3 as "permitting while insolvent any creditor to obtain a preference through legal proceedings," requires any participation on the part of the debtor. Adams, D. J., *In re Reichman*, 91 Fed. 624, thought not. For an elaborate discussion of the question see Collier on Bankruptcy, notes to § 3.

Act of Bankruptcy

Bray v. *Cobb*, 91 Fed. 102, decides a number of minor points under the new law: (1) That a referee is not disqualified under § 43 by being a debtor of the bankrupt, the interest therein mentioned means an interest in the estate, and a debtor has none; (2) That an assignment for the benefit of creditors is an act of bankruptcy without regard to the debtor's assets at the time; (3) That a mere denial of insolvency in the answer does not sustain the burden of proof on the defendant and (4) that if defendant desires a jury trial he must claim it by the date fixed for his answer.

Construction of New Act

CONSTITUTIONAL LAW.

In *Dewey* v. *Des Moines*, 19 Sup. Ct. 379, it was alleged that the amount of a special assessment on city lots was "greater than the reasonable market value of said lots," and that defendants were seeking "to compel plaintiff to pay the full amount of said tax," without regard to the value of the lots. This allegation was considered not to raise a Federal question, because the point had not been called to the attention of the state court. But on a further question, which had been brought up in the state court, the opinion declares: "The state may provide for the sale of the property upon which the assessment is laid, but it cannot, under any guise or pretence, proceed further and impose a personal liability upon a non-resident to pay the assessment or any part of it." Such imposition is a "taking" of property "without due process," and so unconstitutional.

Special Assessments, Personal Liability of Non-Resident Under State Statute, Due Process

This case calls to mind another recent instance of special assessment—*Norwood* v. *Baker*, 172 U. S. 269, S. C., 19 Sup. Ct. 187. (Notice how the unofficial reports have secured promptness in the issue of those bearing the official imprint. The case was decided December 12, 1898.) Here an assessment

Eminent Domain, "Front-foot" Assessment, In Excess of Benefit

CONSTITUTIONAL LAW (Continued).

by the front foot was held a taking of private property for public use without compensation. Mr. Justice Brewer's dissent, in which concurred Shiras and White, JJ., employs some language which seems rather remarkable, in view of the learned justice's distrust of legislatures, as expressed in the grain elevator cases. Says he (p. 297), "A public improvement having been made, it is, beyond question, a legislative function . . . to determine the area benefitted by such improvements, and *the legislative determination is conclusive.*" (Our italics.)

Dissenting Opinion by Mr. Justice Brewer

In *Gross* v. *Kentucky Board of Managers of World's Columbian Exposition*, the Court of Appeals of Kentucky, with two judges dissenting, have declared that the Kentucky Board of Managers for the Columbian Exposition of 1893, at Chicago, which was endowed with the power to make contracts by the act creating it, may be sued on any such contract. The dissenting judges contended that the members of the board were "agents of the state," and that it was the state's property alone which was to be affected by the suit. Accordingly, they considered the action as brought virtually against the State of Kentucky. The majority proceeded on the theory that the board, though not named a corporation, and apparently not intended as such by the legislature, really was a *quasi*-corporate entity, which could sue and be sued, citing Mr. Justice Brewer's opinion in *Hancock* v. *Railroad*, 145 U. S. 409, 12 Sup. Ct. 969 (1892).

Eleventh Amendment, Action of Contract Against a "State Board"

The Court of Appeals of New York has decided that a statute (Laws 1889, c. 385) providing that every trade union adopting a label to designate the products of the labor of its members may, by filing a copy of such label, obtain the right to enjoin the use, counterfeit or imitation of same, is not unconstitutional in discriminating in favor of members of unions as against non-union workmen: *Perkins* v. *Heert*, 53 N. E. 18.

Unlawful Discrimination, Trade Labels

CONTRACTS.

In *Hall* v. *Alford*, 49 S. W. 444, the Court of Appeals of Kentucky reaffirms the rule that in that state a third person may sue on a contract made for his benefit between others, to the consideration of which he is a stranger.

Right of Stranger to Consideration to Sue

CONTRACTS (Continued).

In *Olds et al.* v. *East Tennessee Stone and Marble Co.* (Court of Chancery Appeals of Tenn.), 48 S. W. 333, the plaintiff wrote the defendant, a dealer in marble, asking if he could furnish a certain kind of marble at a certain price; defendant answered by telegraph "Will meet . . . price . . . Letter to-day's mail." The letter referred to, stated that the defendant did not care for the contract for the marble specified in the offer, and offered a different marble at a less price, which was refused. In an action on the contract alleged to have been consummated by the plaintiff's letter and the defendant's telegram, the court held, that the letter sent by defendant and referred to in his telegram must be considered, and, taken with the telegram, did not consummate a contract.

Offer and Acceptance

CORPORATIONS.

Forrester v. *Boston, Etc., Mining Co.* (Supreme Court of Montana), 55 Pac. 229, recognizes the right of minority stockholders to restrain the directors of a solvent and prosperous corporation and the holders of a majority of its stock from transferring the corporate property to another corporation, in consideration of an exchange of stock or of a certain cash payment to stockholders unwilling to exchange. So far so good; but, on examination, it appears that the complainants purchased their stock pending the consummation of the transfer, and with notice of the nature of the proposed transaction. It should seem, under such circumstances, that they were without equity. Moreover, one complainant was the solicitor and the other the vice-president of a rival concern. It is true that the trial judge found that they were acting in "good faith;" but they seem to have been perilously near the position of the plaintiff, who was rebuked by Lord Wesbury, in *Forrest* v. *Ry. Co.*, 4 DeG. F. & J. 125, as distinguished from the facts of *Colman* v. *Eastern Co.'s Ry. Co.*, 10 Beav. 1, where Lord Langdale made a more lenient ruling.

Rights of Minority Stockholders

COUNTY BONDS.

In an opinion containing an exhaustive review of authorities, the Supreme Court of the United States, following *Chaffee County* v. *Potter*, 142 U. S. 355, decides that as against a *bona fide* purchaser of county bonds, a recital in the bonds that the total amount of the issue does not exceed the constitutional limit of indebtedness, taken in

Recitals, Estoppel

COUNTY BONDS (Continued).

connection with the fact that the bonds do not show upon their face the amount of the issue, estops the county from disputing the truth of the recital: *Board of Commissioners of Gunnison County* v. *Rollins*, 19 Sup. Ct. 390.

CRIMINAL LAW.

Homicide, Insanity

What degree of proof is necessary in order to make out a defence of insanity was before the Supreme Court of Pennsylvania, in *Com.* v. *Wireback*, 42 Atl. 542. The defendant had shot and killed a man, and his defence was insanity. It was held, first, that a man is presumed to be sane until he is proved to be insane, and this can only be proved by fairly preponderating evidence. Doubt as to his sanity is not sufficient to overcome the presumption. Second, a murder, which is otherwise in the first degree, is not reduced to murder in the second degree by a doubt as to the sanity of the murderer, as insanity is either a complete defence or none at all.

Manslaughter, Parent Refusing to Procure Medical Aid

The question as to whether a parent who refuses to provide a physician or medicine for a sick child is guilty of manslaughter, where the child dies as a consequence of such refusal, was before the English Court for Crown Cases Reserved, *Queen* v. *Senior*, [1899] 1 Q. B. 283. The parent belonged to a religious sect who did not believe in medical aid or drugs, but who annointed with oil and prayed for a recovery. A child of the defendant's was taken sick, and, although the illness was a grave one, and from which it afterwards died, he refused to call in a physician or secure medicine. Every other attention was paid to the child, and the defendant was a kind and loving father. The court decided that as a statute made it incumbent upon parents to provide such aid and made it a misdemeanor for those who "wilfully neglect" so to do, the father was guilty of the crime of manslaughter. The case is a valuable one on account of what falls from Lord Russell at the end of his opinion: "I wish to add that I dissent entirely from the view attributed to Piggott, B., in *Reg* v. *Hines*, and am not satisfied that in the present case there was not sufficient evidence at common law to justify a conviction." This shows a rational development in this branch of criminal jurisprudence, and is valuable in those states where no statutes exist on this subject. The view attributed to Piggott, B., was that in such a case as this there could be no conviction at common law. (See note in this issue.)

EVIDENCE.

Two Texas cases, *M. K. & T. R. R.* v. *Johnson* (S. C. Tex.), 48 S. W. 568, and *G. H. & N. R. R.* v. *Davis* (S. C. Tex.), Dec. 22, 1898, 48 S. W. 570, indicate when, in negligence cases, acts of prior negligence on the part of the alleged delinquent may be admitted. In the former case evidence offered that the plaintiff had often slept on duty, to prove that on this occasion he had been asleep, was rejected, as the question of negligence was to be determined by the character of the act in question and not by the character for care and caution of the person performing the act.

Res Inter Alios Acta

In the second case, the competency or incompetency of the person whose act caused the injury, and his employer's knowledge thereof being in issue, the action being by one servant to recover for an injury caused by the negligence of another, evidence of prior acts of similar negligence was admitted, they being frequent enough to show an habitual course of careless conduct; but evidence that the delinquent was a drinking man, the rules positively forbidding drinking, was excluded in the absence of evidence that he was drunk at the time of the accident. Mere general bad habits in no way contributing to the accident can, of course, not be shown.

In *Hughes* v. *L. & N. R. R.*, 48 S. W. 671, an accident having occurred to a brakeman on the defendant's train, the statement made by the conductor at the time of the occurence as to the cause of the accident was excluded, it appearing that he had not seen the accident nor had any personal knowledge of its cause, his statement expressing merely his opinion thereof.

Opinion, Res Gestæ

In *Pioneer Savings Bank* v. *Peck* (Ct. Civil Ap. Tex.), 49 S. W. 160, the court sustained the exclusion of evidence of the witness' understanding of the law upon the subject of the insolvency of loan and building associations, saying that it was for the court to decide the case upon its understanding of the law, and that they could dispense with the witness' generosity in stating his legal opinion on the subject.

Conclusions of Law

HUSBAND AND WIFE.

The Pennsylvania Act of May 4, 1855, P. L. 430, was the subject of discussion in *Seltzer's Estate*, 42 Atl. (Pa.) 289. The court easily held that the purpose of that act was to give the husband the same rights in his wife's estate that she would have had in his if she survived him; but that the question whether this

Husband's Rights in the Estate of his Deceased Wife

HUSBAND AND WIFE (Continued).

proportion shall be one-third or one-half depends on whether the decedent left any children, and is not affected by the question whether the survivor has children or not.

Action by Wife for Alienating Affections of Husband

In spite of the strong disposition of the courts to put the wife on the same footing as her husband, we still find occasional conservative decisions denying her equal privileges: such is *Morgan* v. *Martin*, 42 Atl. (Me.) 354, where the court sustained a demurrer to a declaration setting forth an alienation of a husband's affections.

Abandonment

Parker v. *Parker*, 42 Atl. (N. J.) 160, is a skilful treatment of an old subject. In New Jersey a wife is entitled to alimony if her husband has both abandoned and refused to support her. It was held that his cruel treatment of her, justifying a departure from his house, was equivalent to an abandonment by him, and that his altered attitude of reconciliation upon the filing of this bill for alimony, was no defence, being obviously insincere.

MORTGAGES.

First Mortgagee, Subsequent Advances, Right as Against Second Mortgagee

West v. *Williams*, [1899] 1 Ch. 132, is an important case. *Hopkinson* v. *Rolt*, 9 H. L. C. 514, has settled that a first mortgagee, whose mortgage is taken to cover also subsequent voluntary advances, cannot claim priority of second mortgage, of which he had notice before he made the advances. It was, perhaps, generally supposed, however, that if the first mortgagee had covenanted to make the subsequent advances, he would be protected as to them; and it was so held by Kekewich, J., in the lower court, [1898] 1 Ch. 488. His decision is, however, now reversed by the Court of Appeal, on the ground that the tacit agreement of every such mortgage is that the advances are to be made only if the security has not been impaired; and, if it has been impaired by a second mortgage, the first mortgagee should not make the additional advances.

MUNICIPAL CORPORATIONS.

Officers, Law, Reduction of Compensation

The constitutional provision that "The compensation of any city, county, town, or municipal officer, shall not be changed after his election or appointment, or during his Term of office," was held by the Court of Appeals of Kentucky to apply only to the salary of officers having a fixed term, and not to the salary of a

MUNICIPAL CORPORATIONS (Continued).

policeman who, under the statutes, was removable at pleasure, with or without cause. *City of Lexington* v. *Rennick*, 49 S. W. 787.

In *People ex. rel. Labaugh* v. *Board of Education*, 52 N. E. 850, the Supreme Court of Illinois declares that, where small-pox does not exist and there is no reasonable cause to apprehend its appearance, a rule adopted by the State Board of Health compelling the vaccination of children as a pre-requisite to attendance in the public schools, is unreasonable and void.

Schools, Compulsory Vaccination of Pupils

NEGLIGENCE.

In *Aslen* v. *Village of Charlotte* (Supreme Court, App. Div.) 54 N. Y. Suppl. 754, which was an action against the municipality to recover for injuries received from a defective sidewalk, it appeared that the stringers holding the boards on the sidewalk were so badly decayed as not to securely hold nails driven into them through the planks. Witnesses for the plaintiff testified that for some time previous to the accident they had observed the defects in the walk, while defendant's witnesses, who had been over the walk, testified that they had not discovered its defective condition. Held (1), that the evidence warranted a finding that the defect had existed for such a length of time as to attract the attention of the municipality, and that its omission to repair same was negligence; (2) that the defect was not so inconsiderable as not to be discovered by the exercise of such reasonable care as the municipality was bound to maintain.

Repair of Sidewalk, Negligence

In *Williams* v. *Hays*, 52 N. E. 589, the Court of Appeals of New York had this state of facts before them. The captain of a brig, after working hard to save it from a storm, became exhausted. Tugs passing offered him assistance, which he declined, and he seemed dazed and made irresponsive answers to questions. The brig was unmanageable and drifted upon the beach. This action was against the master for the negligent destruction of the vessel. Held, that if the master was suffering from temporary insanity, resulting from exhaustion caused by his efforts to save the brig, he was not liable.

Loss of Vessel, Negligence of Officers, Insanity

The Supreme Court of Wisconsin, in *Green* v. *Ashland Water Co.*, 77 N. W. 722, decided that where a water com-

NEGLIGENCE (Continued).

Water Company's Liability for Furnishing Impure Water

pany's source of supply was contaminated by sewage for a long time, several years, and the fact that it annually caused epidemics of typhoid fever was a matter of common knowledge, the presumption is that the members of such community of ordinary intelligence have notice of the situation, and in the absence of contrary evidence, this will preclude a recovery by a person injured by the use of such water, because of his contributory fault.

The sewage of a city was drained into a bay, and it was from this bay that the company took its water. The water of the bay had been poluted for years, all of which the plaintiff knew, and as he was an intelligent, reading, workingman, taking one of the city's papers, where the dangers of taking water from the bay was discussed, he must be taken to have contributed to the injury which resulted from his having typhoid fever.

PLEADING AND PRACTICE.

Execution Against Choses in Action

Choses in action cannot ' e levied upon and sold under a *fieri facias*. Therefore an alleged sale, under such an execution, of the right, title and interest of the defendant in and to a policy of insurance, passed no title: *Building and Loan Ass'n* v. *Maher*, 9 Pa. Sup. 340.

Note that there are Exceptions in Pennsylvania

The exceptions to this are quite numerous in Pennsylvania. See the opinion of Mitchell, J., in *Farnsworth* v. *Flagg*, 12 W. N. C. 500 (though his instance of a *patent* seems to us not correct). "The common law reason for this is a technical one, *i. e.*, the incapability of manual seizure and delivery by the sheriff. In Pennsylvania the office and operation of a *fi. fa.* have been much enlarged," and examples are given—as the levy upon land, the sale of a corporate franchise under the Act of April 7, 1870. To these may be added the sale of an interest in a partnership.

Jurisdiction in Cases of Murder

The Supreme Court of Missouri has reaffirmed the rule that the courts of a state where a mortal wound was inflicted have jurisdiction, though the deceased died in another state: *State* v. *Garrison*, 49 S. W. 507. (For a discussion of this question see *United States* v. *Guiteau*, 1 Mackey, Sup. Ct. Dist. of Columbia, p. 48.)

PLEADING AND PRACTICE (Continued).

The following interesting points were decided by the Supreme Court of the United States, in February last, upon appeal from the Supreme Court of the Territory of Oklahoma: (1) Where the ground of an attachment may be alleged in the language of the statute, the authority to allow the writ need not be exercised by the judge of the court, but may be delegated by the legislature to an official, such as the clerk of the court. (This recalls the Pennsylvania "Attachment under the Act of 1869." See Amended Act of May 24, 1887, P. L. 197.)

Attachment Against Non-Resident of Territory, Authority to Issue Ministerial, not Judicial

(2) The section of the organic act of the territory requires that all civil actions shall be brought in the county where a defendant resides or can be found. It was contended that under this act the court could not acquire jurisdiction of the person of the defendant by constructive service, by foreign attachment. Held, that in a proceeding by attachment of property, which is in the nature of an action *in rem*, it is elementary that the defendant is found, to the extent of the property levied upon, where the property is attached.

Jurisdiction by Proceeding in Rem

(3) The requirement of the territorial statute that the plaintiff give bond as a pre-requisite to the issuance of an attachment against a resident, but requires no bond where the attachment is against the property of a non-resident, is not in conflict with the Fourteenth Amendment to the Constitution of the United States, or with the Civil Rights Act. The distinction between a resident and a non-resident is so broad as to authorize a classification. The power to grant the remedy in one case and to deny it in the other embraces the right to impose upon the one a condition not required in the other: *Central Co.* v. *Campbell Co.*, 19 Sup. Ct. 346.

Requirement of Bond in Case of Resident and not in Case of Non-Resident is Not a Denial of Due Process of Law, or of the Equal Protection of the Laws

When appellant dies after argument, but before decision, judgment will be entered before his death (Sup. Court of Cal.): *Ede* v. *Cuneo*, 55 Pac. 772. This practice calls to mind the rule in Pennsylvania founded upon legislation in England. In *Chase* v. *Hodges*, 2 Pa. 48, Burnside, J., said: "The statute of 17 Charles II, chap. 8, made perpetual by 1 James II, chap. 17, sect. 5, enacts that, when either party dies between verdict and judgment, the death shall not be alleged for error,

Death of Appellant before Decision

PLEADING AND PRACTICE (Continued).

so that the judgment be had within two terms after verdict." It was, therefore, decided that the death of the defendant between verdict and judgment (if not more than two terms intervened) could not be assigned for error. And in *Wood* v. *Boyle*, 177 Pa. 621, the like ruling was made in the case of the death of the plaintiff after verdict before the entry of judgment.

Masters in Divorce

In 38 AMERICAN LAW REGISTER (N. S.) 56, there was a reference to the decision of the Supreme Court of Pennsylvania in *Middleton* v. *Middleton*, 41 Atl. 291, upon the invalidity of appointments of masters in divorce. By an Act of Assembly, approved March 10, 1899, the Courts of Common Pleas are empowered to "appoint masters in divorce proceedings, and to adopt rules to regulate the proceedings before the master and fixing his fees." This will, doubtless, have the effect of restoring the recent practice in Philadelphia.

PRINCIPAL AND AGENT.

Husband and Wife, Wife's Agency

The limitations of a wife's right to bind her husband as his agent are shown in *Detwiler* v. *Bower*, 9 Pa. Super. 473. Admitting that a husband is liable for necessaries for his family ordered by his wife, the court nevertheless held that, though medicines are necessaries, an expensive surgical operation is not—or at least that plaintiff should not have performed it without the knowledge and consent of the child's father.

QUASI-CONTRACTS.

Mistake of Law, Voluntary Payment, Right to Recover

In *Capital Gas & Electric Light Co.* v. *Gaines*, 49 S. W. 462, the Court of Appeals of Kentucky cited with approval the language of the Supreme Court of Connecticut, in *Northrop* v. *Graves*, 19 Conn. 554, where it was said: "We mean distinctly to assert that when money is paid by one under a mistake of his rights and duty, and which he was under no legal or moral obligation to pay, and which the recipient has no right in good conscience to retain, it may be recovered back, whether such mistake be one of fact or law; and this, we insist, may be done both upon the principle of Christian morals and the common law"; and decides that money paid to a gas company as meter rent under a mistake of law may be recovered, though the payment was voluntary.

REAL PROPERTY.

Fee of Land Under Highway

An interesting state of facts raised the question of the extent of the easement of the public in land taken for a highway, in *Huffman* v. *State*, 52 N. E. 713 (Ind.). It there appeared that A's land was bounded by a highway, under which the B natural gas company had laid a pipe on the side of the road next A's land. The company afterwards sent men to take up this pipe, and A ordered them to desist from digging it up, alleging that they were guilty of a trespass on his land. In a prosecution of the servants of B for trespass, the court recognized the principle that the title to the land was in A to the middle of the highway, subject to the easement of the public, but held that the easement did not extend to the laying of pipes for natural gas, and sustained a conviction for trespass. The decision followed *Consumer's Gas Co.* v. *Huntsinger*, 14 Ind. App. 156, where it was held that the building of a pipe-line for gas along a highway is an additional burden upon the fee, for which compensation must be made to the owner. By statute in Indiana, it is made unlawful for a company to lay such a line without the consent of the abutting owner. It has been held that the owner of the fee may have an action of trespass or ejectment against any one who cannot justify his right to the use of the highway under the owner of the easement: *Cooper* v. *Smith*, 9 Serg. & R. 26; *Alden* v. *Murdock; Dubuque* v. *Maloney*, 9 Ia. 450; *Locks* v. *Nashua & Lowell R. R.*, 104 Mass. 1.

SALES.

Vendor's Lien, Fraud of Vendee

A sold a tract of land to B, agreeing to accept bank stock in payment. Subsequently, the bank having gone into the hands of a receiver, A filed a bill alleging that he had been induced to accept the stock through misrepresentations as to the value thereof, and praying for a vendor's lien, for the deficiency arising from the failure of the stock, to equal its represented value. Held, that A could not affirm the contract and maintain a lien for the deficiency, but that his remedy was by rescission or at law by an action for damages for the fraud: *Graham* v. *Moffett* (Supreme Court of Michigan), 78 N. W. 132.

Fraud, Rescission

In *McKenzie* v. *Rothschild*, 24 South. 716, the Supreme Court of Alabama reasserts the rule laid down by the same court in *Maxwell* v. *Shore Company*, 21 South. 1009, that "a sale and purchase of goods is fraudulent and open to disaffirmance by the seller when the pur-

SALES (Continued).

chaser was, at the time thereof, insolvent, or in failing circumstances, and had the design not to pay for them, or had no reasonable expectation of being able to pay for them, and either represented that he was solvent or intended to pay, or had reasonable expectation of being able to pay, or failed to disclose his financial condition, or the fact that he did not intend to pay, or expect to be able to pay, for the goods."

STATUTE OF FRAUDS.

A contractor, who had undertaken to build a house for B, became insolvent, and A, a sub-contractor, threatening to quit work, B told him to continue his work and that he would see that he was paid. In an action on this promise by A against B held, that it was not a promise to pay the debt of another within the statute of frauds: *Hall* v. *Alford*, 49 S. W. 444 (Court of Appeals of Kentucky).

Promise to Pay Debt of Another

STATUTES.

In *Henrietta Mining & Milling Co.* v. *Gardner*, 19 Sup. Ct. 327, the Supreme Court of the United States reiterates the rule that a paragraph adopted by a territorial legislature from the code of another state is presumed to be taken with the meaning it had in that state.

Adoption from Another State

SURETYSHIP.

First Nat. Bank v. *Parsons*, 32 S. E. (W. Va.) 271, is a nice example of when a surety will, or rather will not, be discharged by the creditor's conduct. It was held that he was not discharged either by the creditor's releasing an attachment against real estate because it was encumbered beyond its full value, or by the continuance of a suit against the defendant for a term. The underlying condition of the surety' right in each case is correctly stated to be that a surety cannot be discharged by any act which does not impair his rights or affect the creditor's remedy.

Surety, Discharge by Creditor's Conduct

TRADE-NAME.

An important decision on the right to the exclusive use of a geographical name as a trade-name has been made by the Supreme Judicial Court of Massachusetts, in *American Waltham Watch Co.* v. *United States Watch Co.*, 53 N. E. 141. The question raised at the hearing was whether the defendant should be enjoined against using the words "Waltham"

Appropriation of Geographical Name, Injunction

TRADE-NAME (Continued).

or "Waltham, Mass.," upon plates of its watches without some accompanying statement which should clearly distinguish its watches from those made by the plaintiff. The plaintiff was the first manufacturer of watches in Waltham, and had acquired a great reputation before the defendant began to do business in the same town, and it was found that the word "Waltham" which originally had been used by the plaintiff in a merely geographical sense had, by long use, come to have a secondary meaning as a designation of the watches which the public had become accustomed to associate with the name, and that the defendant used the name to deceitfully divert custom from the plaintiff. The defendant contended that whatever its intent, it had a right to put its name and address upon its watches, and to require it to add words which would distinguish its watches from the plaintiff's would discredit them in advance. The court, acknowledging the abstract difficulties involved in the question, made a decree for the plaintiff.

Similarity of Names, Injunction

The English House of Lords has affirmed the decision of the Court of Appeal in *Manchester Brewing Company* v. *North Cheshire and Manchester Brewing Company*, [1898], 1 Ch. 539, noted in 37 AM. LAW REG. 572. The court held that the Manchester Brewing Company—an old and well-known firm—could enjoin the use, by a new company, of the name, "North Cheshire and Manchester Brewing Company," although there might not have been intention to deceive: *North Cheshire and Manchester Brewing Company* v. *Manchester Brewing Company*, [1899] A. C. 83.

TRUSTS.

Contract to Become Trustee

The Supreme Court of Minnesota has decided, in *Dickson* v. *Barker*, 77 N.W. 820, that a promissory note given on consideration that a trustee joins the maker with him in a trust, is given on an illegal consideration and void, even though the note is made payable to the *cestui que trust*, the *cestui* being ignorant of the transaction. In this case one of the directors of a savings association agreed to elect the maker of the note a director. The note was made payable to the company. Under the laws of Minnesota a savings association has no capital stock, and is to be managed exclusively in the interest of the depositors. After the vote was given and the payee elected a director, the company made an assignment. The receiver was plaintiff on the note.