PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ATTORNEY AND CLIENT.

In New Jersey it would seem that an attorney has a lien on the money collected for his client, to the extent of his compensation for services. In deciding that such a lien cannot be destroyed by the employment of a new attorney, Vice-Chancellor Pitney, in *Trust Co.* v. *Paper Mill Co.*, 44 Atl. 638, gives some interesting information as regards the question of costs between the attorney and client and between the parties, under the English and American rules.

Attorneys' Charges.

BANKS AND BANKING.

De Weese v. *Smith*, 97 Fed. 309, is a decision by Judge Phillips of the Circuit Court (W. D. Mo.) which, if affirmed by the Circuit Court of Appeals, may impose a serious limitation upon the power of the comptroller of the currency and may prove a blow to creditors of insolvent national banks. The comptroller had directed the receiver of the bank, in this case, to collect 75 per cent. from the stockholders, which was done, but finding that the sum collected was insufficient to meet the liabilities, he made a second assessment of 25 per cent. In an action by the receiver against a stockholder to collect the amount of the second assessment, it was held, (1) that the comptroller had exhausted his power when he had levied the first assessment, and (2) even if the second assessment was valid, the amount could not be recovered, since the liability of the stockholder was a single one, which must be enforced in a single action by the receiver or not at all, according to the common law rule that an entire cause of action may not be split up in separate suits.

National Bank, Action by Receiver, Two Assessments by Comptroller

Where a bank has paid money on a check, to which a material indorsement has been forged, the bank is liable, unless the depositor is guilty of such negligence as would estop him from claiming against the bank. The Court of Appeals of New Jersey has decided that where an indorsement has been forged, the mere fact that the

Forged Check, Duty of Depositor

BANKS AND BANKING (Continued).

depositor keeps the returned check in his possession without informing the bank of the forgery is not negligence, in the absence of proof that he is acquainted with handwriting of the indorser: *Mech. Nat. Bank* v. *Harter*, 44 Atl. 715.

Power of National Bank to Assume Control of Another Bank

Rev. St. (U. S.), § 5136, empowers national banks "to exercise . . . . all such incidental powers as shall be necessary to carry on the business of banking," etc. Under this section, it was held by the Circuit Court of Appeals, Eighth Circuit, that a national bank possessed the power to buy out another bank and to assume its liabilities in consideration of the transfer to the former of all the property, real and personal, and outstanding accounts of the latter: *Schofield* v. *State Nat. Bank of Denver*, 97 Fed. 283.

CARRIERS.

Contract Exempting Carrier from Liability for Negligence to Express Messenger

The Supreme Court of Illinois, following the Supreme Court of the United States in the *Express Cases*, 117 U. S. 1, has decided that a railroad may make a valid contract with an express company, and the employes thereof, exempting itself from liability for negligence to such employes: *Blank* v. *Ill. Cent. R. Co.*, 55 N. E. 332. The ground of the decision is that the railroad is under no public duty to furnish facilities to express companies, and the doctrine of non-exemption from liability for negligence applies only to cases where the railroad is under such a public duty. Magruder, J., dissented.

CONSTITUTIONAL LAW.

Eight Hour Law for Miners

In 1899 the Legislature of Colorado passed a law limiting the time of work of employes in underground mines to eight hours. This law was attacked as a violation of the provisions of the constitution of Colorado, which guarantee its citizens freedom of life, liberty and property, to the same effect as the Fourteenth Amendment to the Constitution of the United States. The Supreme Court of Colorado declared the law unconstitutional, as being within the above prohibition and not within the reserved police powers: *In re Morgan*, 58 Pac. 1071.

It will be remembered that a couple of years ago a precisely similar law of Utah was upheld by the Supreme Court of the United States, as being a valid exercise of the State police power and not opposed to the Fourteenth Amendment: *Holden* v. *Hardy*, 169 U. S. 366. In the opinion of Justice

CONSTITUTIONAL LAW (Continued).

Brown, in the latter case, the decision was based partly on a provision of the Utah constitution, giving the Legislature special supervisory power over the work of miners, but there was a strong dictum to the effect that such a law would come, independently of this special power, within the implied police powers of the State. However, in *In re Morgan, supra*, the Supreme Court of Colorado refused to follow this dictum, and intimated that Justice Brown was wrong. The attitude assumed by the Colorado court is certainly novel. There have been innumerable instances of cases where State courts have persisted in declaring State laws to be within the police power, until called sharply to task by the Supreme Court of the United States, but this is the first one brought to our attention where the Federal Supreme Court has intimated that a law would fall within the police powers, and the State court has thereupon decided that it would not. The opinion of Campbell, C. J., of the Supreme Court of Colorado, includes a long tirade on the inalienable right of the American workman to be forced to work in a mine as long as his employer chooses, very much on the style of the latter part of the opinion in *Goodcharles* v. *Wigeman*, 113 Pa. 431, which is cited with approval.

CONTRACTS.

Pledge with Bank, To what Debts Applicable

The plaintiff deposited collateral with a bank, of which he was a customer, under an agreement whereby it was provided that the plaintiff authorized the bank at its option at any time to apply the collateral to the payment of any liability of the plaintiff to the bank, whether said liability existed at the time or should be created afterwards. Subsequently the bank bought a dishonored promissory note, made by the plaintiff, from the payee, and endeavored to apply the above collateral to its payment. The Court of Appeals of New York, in an elaborate opinion, decided that the agreement contemplated only those debts which would arise in the ordinary course of business between the plaintiff and the bank, and it did not include the purchase by the bank of a matured liability against the plaintiff: *Gillet* v. *Bank of America*, 55 N. E. 292.

Brokers' Commissions, When Payable

A shrewd broker should not allow the payment of his commission to depend upon the completion of the sale. In *Owen* v. *Ramsey*, 55 N. E. 247, the broker, by allowing such a stipulation in his contract, lost his commission. The contract, under which he was to sell bonds, provided that his commission should

CONTRACTS—(Continued).

be deducted from the payment for the bonds. He found a purchaser who was able and willing to take the bonds, but before the transaction was completed, the bonds were declared illegal and void and their delivery enjoined. The broker strenuously contended for the application of the principle that in real estate transactions the right of the broker becomes fixed when he produces a purchaser, no matter whether the conveyance is made or not, but the Supreme Court of Indiana decided that the above provision in the contract made a sale and payment conditions precedent to the recovery of the commission.

Contract of Subscription to Stock, Variance by Parol

Unlike the lax rule adopted in Pennsylvania, the Supreme Court of New Hampshire holds that evidence of parol stipulations of the agent of a corporation, made previous to, or contemporaneous with, the execution of a written contract of subscription to stock, is inadmissible to vary the terms of the contract: *Shattuck* v. *Robbins*, 44 Atl. 694. In the latter case it was scarcely necessary for the court to go this far, because the representations of the agent were not as to the existence of a fact, but were merely the expressions of the agent's opinion that the corporation would act in a certain manner.

Extra Allowance, Unforeseen Difficulties

Plaintiff made a contract with the City of New York to reline the basin of one of the city ponds, one of the provisions of the contract being, "All loss or damage arising out of the nature of the work to be done under this agreement, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from incumbrances on the line of the work . . . shall be sustained by the contractor." It was also provided that the plaintiff should remove the water from the pond. There was a drain pipe to the pond, by which most of the water could be drawn off, leaving but a few feet for the contractor to pump off; but when the work was commenced, it was discovered that the drain pipe was completely blocked up. The plaintiff was therefore obliged to pump out the whole of the water, and he brought suit against the city for the extra work which he had done, at the request of the city engineer, in pumping off the water.

The Court of Appeals of New York decided that even under the clause above quoted the city was liable for the extra work, since both parties had entered into the contract presum-

CONTRACTS (Continued).

ably on the understanding that the drain pipe would work; therefore the difficulty did not arise "under the agreement," but entirely outside of the agreement, and therefore without the scope of the provision making the plaintiff responsible: *Horgan* v. *Mayor, etc., of New York*, 55 N. E. 204 (Gray and O'Brien, JJ., dissenting).

CORPORATIONS.

Liability of Stockholder when Sued by a Corporation Creditor

Fidelity Ins., etc., Co. v. *Mechanics' Sav. Bank*, 97 Fed. 297, a case which has been attracting some attention, has been lately decided by the Circuit Court of Appeals, Third Circuit. It appears that a statute of Kansas provides that after a corporation creditor has recovered a judgment against the corporation, which he is unable to satisfy, he may bring an action at law, for his own benefit, against any stockholder, and may recover against the latter for an amount equal to the value of his stock. In the above action, which was brought against a Pennsylvania stockholder in the Circuit Court (W. D. Penna.), the defendant pleaded, *inter alia*, that the corporation was indebted to him in an amount equal to that for which the plaintiff sued. It was held, (1) that the liability of the defendant was to be determined by the law of Kansas, since the obligation had accrued in that jurisdiction, and (2) that since this was an action by a separate creditor against the stockholder, the set-off was allowable, although if it had been an action by the receiver of the corporation for the benefit of all the creditors, such a defence would not have been available. While basing his decision upon the law of Kansas, Judge Acheson, in his opinion, approves of the above rule.

Lien of Corporation on Stock for Indebtedness of Stockholder

The Supreme Court of Ohio has affirmed the now familiar rule that a corporation may, in issuing stock, reserve a valid lien thereon for future debts of the stockholder to the corporation, provided notice of the lien appears on the certificate. In *Stafford* v. *Produce Banking Co.*, 55 N. E. 162, the principle was applied to the extent of holding the lien valid, even though the indebtedness did not arise until after the stockholder had transferred his certificate to a *bona fide* purchaser, but before the latter had perfected the transfer on the books of the corporation. Counsel for the transferee strongly urged the special capacities doctrine of corporations, contending that the charter did not expressly authorize the corporation to reserve a lien of this character. To this the Court replied, "Since the

CORPORATIONS (Continued).

right to enter into contracts is general, and denied only when prohibited by statute, or some consideration of public policy recognized by the courts, it would be more helpful, perhaps, to inquire for the statutory provision or the consideration of public policy by which this contract is forbidden. It is quite true that with respect to the franchises which corporations exercise, and in their dealings with the public, the statute is to be regarded as the source of their authority. But it would be difficult to maintain the proposition that in their transactions with their stockholders, or in the transactions of the stockholders among themselves, general rules do not apply, if consistent with the statute." Several cases denying this power to national banks were distinguished on the ground that the National Banking Act prohibits such contracts.

Following the Supreme Court of the United States in *Hawkins* v. *Glenn*, 131 U. S. 319, and *Scovill* v. *Thayer*, 105 U. S. 143, the Supreme Court of Maine has decided that no action may be brought by the assignee of an insolvent corporation against a stockholder to recover the amount due on his stock, until the amount of the stockholder's liability has been fixed by the insolvency court: *Gillin* v. *Sawyer*, 44 Atl. 677. In this case the assignee attempted to prove the exact state of the corporation's assets and liabilities on the trial of the action against the stockholder, but the court disregarded such proof.

Insolvent Corporation, Liability of Stockholders.]

To the same effect is *DeWeese* v. *Smith*, 97 Fed. (Circ. Ct., W. D. Mo.) 309, which holds that the statute of limitations does not begin to run in favor of a stockholder in an insolvent national bank until an assessment has been made by the comptroller of the currency, determining the amount of the stockholder's liability.

In modern times an information in the nature of a *quo warranto* is regarded as a remedy of a civil nature rather than criminal. Therefore the information need not state the offence with such particularity and certainty as is required in an indictment: *Ind. Med. Coll.* v. *People, ex. rel. Att'y Gen.*, 55 N. E. (Ill.) 345.

Quo Warranto, Nature.

CRIMINAL LAW.

The so-called "Osteopaths" have been attacked in Ohio under the statute making it illegal for a person not a registered physician or surgeon to "direct or recommend for the use of any person, any drug or medicine or other agency for the treatment, cure or relief of

Osteopathy, Practice of Medicine.

CRIMINAL LAW (Continued).

any wound, fracture or bodily injury, infirmity or disease" (92 Ohio Laws, p. 44, § 4403 f.). In *State* v. *Liffring*, 55 N. E. 168, the osteopath was charged with recommending "a certain agency, to wit, a system of rubbing and kneading the body" for the cure of a person. The Supreme Court of Ohio, while refusing to decide whether or not an osteopath was a surgeon or not, held that "rubbing" or "kneading" did not come within the term "agency" under the statute, but that the latter term, on the principle of *noscitur a sociis*, must be confined to that which is similar to drugs and medicines, and did not include mere manual treatment; in fact, the court strongly intimated that the addition of the word "agency" did not materially broaden the scope of the term, "any drug or medicine." An order sustaining a demurrer to the indictment was therefore affirmed.

DEEDS.

Salvage v. *Haydock*, 44 Atl. (N. H.) 697, affirms the generally prevailing rule that possession under a defectively recorded deed is constructive notice to a subsequent grantee. Some courts hold that it is not of itself constructive notice, but it merely casts upon the grantee the duty of making reasonable inquiries as to the possessor's title.

Recording, Constructive Notice.

EVIDENCE.

While it is improper to instruct the jury that the fact that a witness is interested weighs against the value of his testimony, yet the trial judge may, and it is his duty on request, to call the attention of the jury to the fact of the witness's interest, and to allow the jury to give what weight to it they choose. In *State* v. *Carey*, 55 N. E. 261, a prosecution for bastardy, the trial judge instructed the jury that in determining the credibility of the relatrix, who had testified, they might take into consideration the fact that she was interested in the result of the suit, but that this fact would not permit them to give her evidence any less or greater weight than if they were considering her evidence in a case of another kind in which she might be interested. *Held*, by the Appellate Court of Indiana, that this instruction did not invade the province of the jury.

Interested Witness, Instruction of Jury.

EXECUTIONS.

In accordance with the weight of authority, the Supreme Court of Massachusetts has decided that where a levy upon

EXECUTIONS (Continued).

Effect of Levy, Presumption

personal property has been made under an execution, to which no return has been made, no presumption that the judgment of the creditor has been satisfied in whole or in part, but the burden is on the debtor to prove such satisfaction: *Smith* v. *Condon*, 55 N. E. 324.

HUSBAND AND WIFE.

The fact that a wife refuses to attend to her husband during his illness, when his means would enable him to hire a nurse,

Divorce, Cruel Treatment

does not amount to "cruel" treatment on the part of the wife under a statute granting a divorce for such a cause: *Bonney* v. *Bonney*, 55 N. E. (Mass.) 461.

INFANCY.

The Court of Appeals of New York has properly decided that injustice may not be committed under the plea of infancy.

Recission of Infant's Contract, Return for Benefit Received

In *Rice* v. *Butler*, 55 N. E. 275, the plaintiff, being 17 years of age, purchased a bicycle from the defendant on the installment plan, used it for several years and paid a number of installments. On coming of age she disaffirmed the contract, returned the bicycle and sued to recover the installments paid. The defendant claimed that the use of the wheel and its deterioration in value exceeded the sum paid. Assuming that the latter fact was true, in the absence of evidence to the contrary, the court reversed a judgment for plaintiff, since otherwise the plaintiff "would be making use of the privilege of infancy as a sword, and not as a shield." It would seem, however, that the Massachusetts courts have adopted a contrary rule: *McCarthy* v. *Henderson*, 138 Mass. 310; *Payne* v. *Wood*, 145 Mass. 558.

JUDGMENTS.

Where judgment has been obtained on a coupon cut from a bond, and an action is subsequently brought on another

Res Judicata, Bonds, Judgment on Coupons

coupon from the same bond, even by the party to the first action or his privy, the former judgment does not operate as an estoppel on the ground that the causes of the two actions are the same, but it is incumbent on the party alleging the conclusiveness of the judgment to aver and prove that the precise question before the court has been considered and decided in the action on the former coupon: *Board of Commissioners* v. *Sutliff*, 97 Fed. (Circ. Ct. of App., 8th Circ.), 270.

MASTER AND SERVANT.

Assumption of Risk

In *Saunders* v. *Eastern Hydraulic Co.*, 44 Atl. 630, the defendant employed a glazier to replace a pane of glass in a skylight in roof. In performing the work, the glazier sat down on the roof and while leaning over, in order to support himself, rested his weight upon the mullion which held the glass in the skylight. The mullion broke, and the glazier brought this action for negligence, contending that defendant had not furnished him a safe place in which to work. The Court of Appeals of New Jersey, in affirming judgment for the defendant, held that the only duty resting upon defendant was to make the mullion strong enough to bear the weight of the glass, and not that of the plaintiff, and that the plaintiff, in attempting to make the mullion perform a service for which it had not been reasonably intended, had assumed the risk.

MUNICIPAL CORPORATIONS.

Sunday Ordinances, Uniformity

A municipality may pass a valid ordinance forbidding the performance of worldly labor on Sunday, but such an ordinance must be of general application and must not be directed against a particular trade or class of traders. Therefore, an ordinance of the City of Denver, prohibiting the sale on Sunday of clothing and certain other enumerated articles only, was properly held void by the Supreme Court of Colorado: *Denver* v. *Bach*, 58 Pac. 1089.

PARTNERSHIP.

Holding Special Partner as General Partner, Evidence

In an action by a firm creditor to hold a special partner in a limited partnership as a general partner, it was alleged that the capital required from the special partner had never been paid in. The Court of Appeals of New York held (1) that the rule that partnership books are evidence against the partners in favor of outside parties applies to the case of a limited partnership as well as of a general partnership; therefore the books were admissible against the special partner; and (2) that the fact that no entry appeared on the books, showing the payment by the special partner of his capital, warranted the court below in finding as a fact that the statement in the certificate, that the capital had been paid in, was false: *Hotopp* v. *Huber*, 55 N. E. 206.

PLEADING AND PRACTICE.

Except in New York, it seems doubtful whether the practice of withdrawing a juror in civil cases at the plaintiff's

PLEADING AND PRACTICE (Continued).

Withdrawal of Juror in Civil Cases

request, so that there may be a mistrial, exists in this country. In deciding that in Oregon the plaintiff had no right to such withdrawal, Justice Bean, of the Supreme Court of Oregon, gives a history of the practice as it existed in England. *Usborne* v. *Stephenson*, 58 Pac. 1103.

REAL PROPERTY.

In Indiana, when the title of a grantee has been divested by breach of a condition subsequent, the grantor must re-enter before he is entitled to bring ejectment. Thus in *Preston* v. *Bosworth*, 55 N. E. 224, a lease of a gas property provided that if the grantee should abandon the well, the title should at once revert to and vest in the grantor. In an action by the grantor against the grantee to recover the land, the plaintiff's complaint alleged a breach of condition, but not a re-entry by the plaintiff. A demurrer to the complaint was sustained by the Supreme Court of Indiana, on the ground that the breach itself was not self-operative to divest the grantee's title, since it might have been waived.

Breach of Condition, Re-Entry

A warranty of title in a deed is broken as soon as the deed is executed, where the grantor has not a perfect title. The Court of Appeals of Kansas has applied this rule to a case where the defect in the grantor's title was not apparent to the vendee. The deed was executed in 1882, but the vendee did not discover the defect until 1889. *Held*, that his lack of knowledge did not prevent the Statute of Limitations from running against him from 1882: *Jewett* v. *Fisher*, 58 Pac. 1023.

Breach of Warranty of Title, When Broken

In *Lambe* v. *Drayton*, 55 N. E. 189, land was devised to A. and her heirs, "to hold the said real estate to A., her lifetime." On A.'s death it was directed that the testator's executors should divide the land among his children. The Supreme Court of Illinois held, (1) that the rule illustrated in *Tyler* v. *Moore*, 42 Pa. 376, that where the premises of a conveyance grant a fee, the provision in the *habendum* that the grantee shall take only a life estate, is inoperative, applies to wills as well as to deeds, though of course if the premises of a will do not expressly grant a fee, the intention expressed in the *habendum* will control, and (2) since A. took a fee, the remainder over was void.

When a Fee Is Cut Down to a Life Estate, Power of Disposition

While the decision was correct, the reasoning of the Court

REAL PROPERTY (Continued).

in regard to the second proposition is peculiar. Of course it is plain that after the testator had given A. a fee, he could not turn around and give her an estate for life with a vested remainder over; but the Court treats the case as if it were one of an executory devise. It first quotes a rule from Kent's Commentaries, that "a valid executory devise cannot subsist under an absolute power of disposition in the first taker." Then it goes on to say that, "here the remainder over to the children attempted to be given by the third clause of the will was void, because by the first clause the preceding fee had been given to the widow, A.; and as the fee simple title, which had been given to her, included and involved the absolute power of disposition, the remainder in the third clause was void by way of executory devise." Now this rule of Chancellor Kent, whatever may be its logical sufficiency, is well recognized in New York and several other States, but it would seem that in the present case the court has misconstrued it in attempting to apply it to the facts at bar. The only case where the rule applies is where the limitation over is made upon the contingency that the first taker disposes, or does not dispose, of the land, for in such a case only is there an "implied power of disposition in the first taker." In the present case there was no such implied power as will be seen from a glance at the limitation, any more than there is an implied power of disposition in a limitation "to A. and his heirs, and if he dies unmarried, to B.," in which case it is admitted that Chancellor Kent's rule does not apply.

Vendor's Lien.

Perhaps the courts of the various States of the United States are almost equally divided upon the question whether or not the vendor of land by a deed absolute on its face has a lien on the land for the purchase money. In *Baker* v. *Fleming*, 59 Pac. 101, the question was presented for the first time before the Supreme Court of Arizona. Davis, J., in a lengthy opinion, reviews the authorities on the subject and comes to the conclusion that the rule of Pennsylvania, Massachusetts and other States, denying the existence of the lien, is more logical and fair, and is therefore the rule to be adopted in the territory of Arizona.

Covenant to Build Fence, Running with Land.

A. granted a strip of land to a railroad and covenanted that he (without mention of his assigns) would build a division fence, or not hold the railroad liable for injury to cattle. A. then conveyed the remainder of his land to B., who had notice of the covenant. *Held*, by the Supreme Court of Oregon, that under the second resolution in *Spencer's Case*, the covenant, pertaining as

REAL PROPERTY (Continued).

it did to a thing not *in esse*, was personal to A. and did not run with the land in the absence of mention of A.'s "assigns" in the deed: *Brown* v. *South. Pac. Railway Co.*, 58 Pac. 1105.

Discharge of Waters on Neighboring Property.

According to the Massachusetts rule, the liability of one who collects water in a trough or gutter and discharges it upon the land of another, is an absolute liability and is not based upon negligence. Therefore, in *Fitzpatrick* v. *Welsh*, 55 N. E. 178, the Supreme Court of Massachusetts affirmed the lower court in its refusal to charge that in such a case the plaintiff could not recover if the defendant had used ordinary care in the construction of the roof and gutter which accidentally threw the water upon the plaintiff's land.

SET-OFF.

Claim Against Builder.

Where an action is brought against a builder under the Mechanics' Lien Law of New Jersey (2 Gen. Stat. 2067), the builder may not employ a set-off which has not arisen from the transaction upon which the suit is brought. And this notwithstanding § 19 of the same act, which provides that the defendant shall have "any defence or plea the builder might have to any action on the contract without this act": *Naylor* v. *Smith*, 44 Atl. (N. J.) 649.

STATUTE OF FRAUDS.

Parol Contract of Reinsurance from Year to Year.

The Kansas statute of frauds applies to contracts not to be performed within one year from the making thereof. In *Phœnix Ins. Co.* v. *Ireland*, 58 Pac. 1024, the Court of Appeals of Kansas decided that a parol contract between the insurance company and the insured, that the policy should be renewed from year to year, which agreement was terminable upon notice by either party, was not within the statute and was valid. The case principally relied upon was *Trustees of Baptist Church* v. *Brooklyn Ins. Co.*, 19 N. Y. 305, affirmed in 28 N. Y. 153.

SURETYSHIP.

Alteration of Instrument Under Agreement With Surety

The Supreme Court of Indiana has applied with some harshness the rule that a surety is released by reason of the alteration of the instrument without his consent. In *Moore* v. *Hinshaw*, 55 N. E. 236, an agreement was made between all the parties that a note bearing interest at eight per cent should be made, with one of them as surety. In pursuance of the agree-

SURETYSHIP (Continued).

ment a note was drawn with the interest space left blank, and, while in this condition, was signed by the principal and the surety. Afterwards the provision for eight per cent. interest was filled in by the payee in the absence of the surety. In an action against the surety, it was held that, as the note would have borne only six per cent. interest if the clause had been left blank (under a statute of Indiana), the subsequent alteration in the absence of the surety discharged him, even though the provision for eight per cent. interest was a part of his contract. This decision certainly carries to the limit the rule of suretyship upon which it is based.

SURVIVAL OF ACTIONS.

In *Cooper* v. *Shore Electric Co.*, 44 Atl. 633, an action for death by negligence was brought by the administrator of the deceased for the benefit of the father of the deceased, under the New Jersey act of March 3, 1848 (1 Gen. St. 1888, §§ 10, 11), providing that such action should be brought by the personal representative for the benefit of the next of kin. The decedent left also a mother, brothers and sisters. Pending the action, the decedent's father, the beneficiary, died. In a learned opinion, giving a résumé of the decisions on the doctrine of *actio personalis, etc.*, the Court of Appeals of New Jersey decided that the action did not abate, but might be continued for the benefit of the other parties entitled under the statute.

Action for Death by Wrongful Act, Death of Person Entitled to Sue

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WILLS.

A., whose residence is New York, went to live temporarily with her daughter, B., in Saxony, where she executed a will in favor of "B. and her lawful issue." The question was whether a child, who had been lawfully adopted by B. according to the laws of Saxony, could share as one of the "lawful issue." *Held*, (1) that in the interpretation of the will the law of New York and not that of Saxony must govern, as being that of the testator's domicile, even though the will was executed elsewhere; (2) that therefore, notwithstanding the Saxon law, the adopted child was not entitled, since under the New York decisions the expression "lawful issue" was confined to actual descendants: *N. Y. Life Ins.* v. *Viele*, 55 N. E. (N. Y.) 311.

Conflict of Laws, "Lawful Issue"

WILLS (Continued).

The testator made a bequest to his wife "in lieu of dower, and of any right which she might have in my personal estate as widow." The residue of the estate was divided among the "beneficiaries" of the will. It was contended that the widow was not a "beneficiary," since she had relinquished a valuable right for her legacy and therefore was not really "benefited," but the Supreme Court of Massachusetts thought that the testator's intention was clear to include her within the class: *Wood* v. *Packard*, 55 N. E. 315.

Widow as "Beneficiary"