PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

BANK CHECKS.

The much-vexed question of how far the depositor of negotiable paper may hold the bank of deposit for the proceeds, meets with a new decision in *Wilson* v. *Carlinville*, 58 N. E. 250. In that case the customer of the bank had deposited a check of a third person with the bank, had received credit therefor and had drawn against such credit. The bank sent to another bank for collection. By the negligence of this latter bank the amount of the check was lost. The Supreme Court of Illinois holds that the second bank is the agent of the depositor, and that therefore the bank of deposit is not liable to him, but may recover from him the amount of such check, since he has drawn against the credit secured on it. The decisions of numerous courts are referred to, and appear about equally divided. In accord with this decision are (*inter alia*) Connecticut, Massachusetts, Maryland and Louisiana, and opposed are (*inter alia*) Michigan, New York, Ohio and the courts of the United States.

Liability of Collecting Bank for Subagent's Negligence

BILLS AND NOTES.

The question whether one who sells property to another for the purpose of defrauding his creditors can maintain an action on a note given by the vendee for the purchase money, is one which has divided the opinions of the courts of this country. Some hold the action not maintainable; among these are New York and New Jersey. Others regard them valid and binding contracts; Massachusetts, Vermont, Pennsylvania, etc. See *Winton* v. *Freeman*, 102 Pa. 366.

Consideration, Settlement of Fraudulent Partnership

This question was recently presented to the Supreme Court of Arkansas in a somewhat modified form. A. and B. formed a partnership to be conducted in A.'s name for the purpose of deceiving B.'s creditors. Later a settlement is had between the partners, and B. transfers his interest to A. and receives from A. the note in suit. Held, B. may recover against A. The illegality is in the prior agreement, and the settlement was held not to be so tainted by this as to prevent a recovery on the note in suit: *Harcrow* v. *Harcrow*, 58 S. W. 553.

CARRIERS.

In *Proctor* v. *Southern California Railway Co.*, 62 Pac. 306, the elements of damages that may enter into the award of the jury for a wrongful ejectment from a passenger train is discussed by the Supreme Court of California. On the one hand it is decided that injury to plaintiff's good name from such a cause may not be an element of damage; but that the fact that her trunk was carried on several thousand miles while she was left without a change of clothing, by reason of which she was compelled to buy, gave her the right to have the inconvenience and discomfort thus caused her taken into consideration in the estimate of damages.

Ejectment of Passenger, Measure of Damages

In *Chattanooga Rapid Transit Co.* v. *Vendle*, 58 S. W. 861, it appeared that it was the custom of the railroad to carry an employe to his work without payment of fare. Under these circumstances the Supreme Court of Tennessee holds that the employe, not being on the train in the line of his duty, is a passenger, and on proof of injuries having been received while so riding, negligence will be inferred from the collision which occasioned them. *O'Donnell* v. *Railroad*, 59 Pa. 246, is cited as in accord.

Injury to Employe, Free Passenger

The rightfulness of his presence on the train, so far as the liability of the company is concerned, the court makes depend on the conductor's treatment of him. "His presence on the train by the permission of the conductor to be implied from his knowledge that the party was there, and his neglect to enforce the company's rule by requiring fare or a pass made such person a passenger."

CONSTITUTIONAL LAW.

An Act of the Legislature of Michigan required merchants selling farm produce upon commission to execute a bond in the penal sum of $5,000, conditioned for the faithful performance of their contracts, and to pay a license fee. In *Valentine* v. *Berrien Circuit Judge*, 83 N.W., 594, the Supreme Court of the State, in a very brief opinion, holds the act unconstitutional, first, because it is class legislation, and second, because it is an unjustifiable interference with the right of citizens to carry on legitimate business. The court regards the act as finding no justification whatever in the police power, and says: "The legislature of this state is not empowered by the Constitution to regulate contracts between its citizens who are engaged in legitimate commercial business, or to require any class of persons to pay a fee for the right to carry on business, or to give a bond to perform their

Requirement of Bond from Commission Merchant

CONSTITUTIONAL LAW (*Continued*).

contracts which other parties may choose to make with them." Apart from its decision, the case is very interesting in respect to the tenor of its language, illustrated by the sentence just quoted. "The legislature," says the court, "is not empowered," etc. Are we to understand by this that in the view of the Michigan Supreme Court a State Legislature should be limited to such powers as are conferred? Doubtless this position has its advocates, but it is surprising to find from this court even this much countenance to such a view.

Due Process of Law, Just Compensation

In *Newburyport Water Co.* v. *City of Newburyport*, 103 Fed. 584, the U. S. Circuit Court (D. Mass.) holds that where a municipal corporation takes for the use of the municipality a system of water-works of a private corporation, an estimate which fixes such value "without enhancement on account of future earning capacity, or good-will, or on account of the franchise of said company," is a taking without just compensation, and hence is in conflict with the Fourteenth Amendment of the National Constitution.

Game Laws, Regulation of Commerce

Against the dissent of three judges, the Court of Appeals of New York holds that a law making it a misdemeanor to catch, kill or have the possession of certain kinds of fish during certain periods of the year, and imposing a penalty for the violation thereof, in as far as it affects the possession and right of sale by citizens of New York of fish imported from a foreign country, is in conflict with the power of Congress to regulate commerce, and to such extent is void: *People* v. *Buffalo Fish Co.*, 58 N. E. 34.

Equal Protection of the Laws

An act of the Legislature of Maine forbade peddling by any other than one who had regularly obtained a license, and excluded from the right to a license all except citizens of the United States. The Supreme Judicial Court of that state in *State* v. *Montgomery*, 47 Atl. 165, holds the act unconstitutional, on the ground that it violates the fourteenth amendment to the Federal Constitution, which secures to all persons within the jurisdiction of a state the equal protection of the laws, in that it refused a license to aliens. They are necessarily persons within the jurisdiction of the state, and it is held that to refuse them a license merely because they are not citizens and to subject them to penalties for selling without license deprives them of the equal protection to which they are entitled. This leads to a queer result in the case in hand. The man indicted for a

CONSTITUTIONAL LAW (*Continued*).

violation of the statute was *not* an alien; but it was held that the defect invalidated the whole act, since to hold it constitutional in the part requiring a license from citizens and unconstitutional in the part punishing aliens (who, under the act, could not get a license) for sales without a license, was in effect a discrimination against citizens.

CONTRACTS.

In Alabama the code provides that usurious contracts cannot be enforced either at law or in equity, except as to the principal sum due. But in *Lindsay* v. *U. S. Savings and Loan Co.*, 28 Southern, 716, the Supreme Court of the state holds that this does not prohibit a court of equity, in a suit by a borrower for relief against a usurious contract, from granting such relief, on condition that the complainant repay the borrowed money, with legal interest thereon. The court proceeds on the ground that this was the procedure before the enactment of the code, and rests on the equitable maxim that "he who seeks equity must do equity"; and that the language of the code is not clear enough to show an intent to change the rule. One judge dissents on the ground that the statute is broad enough to cover this, as well as the admitted case where the lender seeks to enforce.

Action to Set Aside on Ground of Usury

With all the present-day agitation against trusts, monopolies, contracts in restraint of trade, etc., the paucity of decisions actually occurring is rather surprising. In *Tuscaloosa Ice Mfg. Co.* v. *Williams*, 28 Southern, 669, a contract is attacked on this ground, not in view of any legislation on the subject, but as violative of the general principles of the common law. Plaintiff and defendant each owned an ice plant in Tuscaloosa, Ala. There were no other ice factories there, and plaintiff, in consideration that defendant should pay him $175 annually, agreed not to run his ice plant nor suffer it to be run for five years, unless he should sell it, in which case he released defendant from all subsequent payments. There was the further stipulation that if a rival company began business, then defendant should pay plaintiff the difference between $500 and the amount already paid. This happened, and defendant refusing to pay this difference, plaintiff sued. Recovery was refused, on the ground that the contract was void as against public policy, stifling competition and promoting monopoly. The court meets the argument that the restraint is reasonable both as to time and place by saying that that rule applies primarily to the case where a business is sold and with it the good-will of

In Restraint of Trade

CONTRACTS (*Continued*).

the business, in which case such restraints are not injurious to the public, since their primary object is not to stifle competition; but that if they should be used as a c oak for this purpose, the fact that such covenant accompanied a sale would not be a protection to the parties. This contract, it is said, is clearly for the one purpose of suppressing competition. Of course many of the old authorities may be cited in support of such a position, but under modern business theories a contract of this kind, leaving the one party so wide a field for his operations, and the other open to competition from every source except this one—which competition he very soon felt—can hardly be regarded as a serious menace to public interests.

CRIMES.

Carrying Concealed Weapons

In *Barker* v. *State*, 28 Southern, 589, the Supreme Court of Alabama holds that in a prosecution for carrying concealed weapons, evidence that at the time the offence was charged the weapon was not intentionally concealed is inadmissible, since intentional concealment is not necessary to constitute guilt.

Homicide, Murder and Manslaughter

The same court holds in *Thomas* v. *State*, 28 Southern, 591, that "words, however insulting or abusive, will not serve to reduce a homicide from murder to manslaughter." The lack of justification of an assault in such words at once suggests itself, and an analogy to the rule here declared.

Burglary, Degrees of Offences

In *Commonwealth* v. *Hurd*, 58 S. W. 369, the Court of Appeals of Kentucky holds that under an indictment for burglary there may be a conviction of the offence of housebreaking; that being a degree of the offence charged.

Robbery, Elements of Crime

A decision from the same court, *Blanton* v. *Commonwealth*, 58 S. W. 422, holds that to constitute robbery the taking must be by violence or by putting in fear; but both these circumstances need not concur. It is sufficient to charge the taking as done "unlawfully, wilfully, feloniously and forcibly," and against the will and consent of the person from whom the property was taken.

Reasonable Doubt

"The proper charge to a jury in a criminal case is that the jury, and not that each juror should be convinced beyond reasonable doubt of the guilt of the accused before finding him guilty:" *Davis* v. *State*, 57 N. E. 1098 (Ohio).

CRIMES (*Continued*).

It is held in *State* v. *Chauvet*, 83 N. W. 717, by the Supreme Court of Iowa that an indictment for keeping a house of ill fame is sustained by showing that defendant kept a covered wagon, drawn from place to place, and used for the purposes of his illegal traffic.

House of Ill Fame

In *Woodham* v. *Allen*, 62 Pac. 398, the defendant had extorted money and goods from the plaintiff by menaces and threats to prosecute her husband for a felony, of which he was innocent, unless she paid a certain sum of money. The Supreme Court of California holds that this is not a compounding of a felony, since no felony had been committed. It was also held that there could be a recovery by the wife for the property so obtained, that "the stifling of a prosecution against an innocent man cannot be wrong in an equal degree to the prosecution itself," and, quoting Lord Ellenborough: "'This is not a case of *par delictum*. It is oppression on one side and submission on the other. It never can be predicated as *par delictum* when one holds the rod and the other bows to it.'"

Compounding a Felony

DEEDS.

In *Munro* v. *Bowles*, 58 N. E. 331, the Supreme Court of Illinois is met by the old question of the sufficiency of the delivery of a deed when it practically remains in the control of the grantor, and the grantee is not a party to the delivery. In this case the grantor desired to convey land to his son, and made a deed, which he delivered to his housekeeper with instructions to deliver to the son after his (the father's) death. The housekeeper placed the deed in the grantor's trunk, with a receipt of hers which she kept there. The grantor carried the key to the trunk, but never attempted to regain possession of the deed. The court held the evidence sufficient to sustain a finding that there was a delivery in escrow. One judge dissents on the ground that practically the deed never left either the possession or the control of the grantor.

Delivery in Escrow

DOWER.

The general rule of law that a widow has no dower in land of which her husband is trustee is applied in *Gardner* v. *Gardner*, 36 S. E. 985, to the case where the husband is not an express, but a constructive trustee; the Supreme Court of Virginia holding that a widow has no dower where lands were bought and paid for

Husband Constructive Trustee

DOWER (*Continued*).

by another, and conveyed to the husband by inadvertence. However, the court, in this case, did not regard the title of the husband sufficiently impeached and allowed dower.

EVIDENCE.

The extent to which a defendant waives his privilege not to be compelled to testify against himself when indicted for a crime, by voluntarily taking the stand, appears in the case of *People* v. *Ecarius*, 83 N. W. 628, in which the Supreme Court of Michigan held that where the defendant was charged with a murder which had been committed with an iron bar, and testified on his own behalf, on cross-examination he might be compelled to put such bar in his pocket to show the manner in which it might have been concealed before the commission of the crime.

Privilege of Witness

Galveston, &c. Ry. Co. v. *Johnson*, 58 S. W. 622, was a case where suit was brought for the death of the engineer of a railway company's train through the company's negligence, and the usual question arose as to the value of the life. The Court of Civil Appeals of Texas held that notwithstanding the occupation of deceased was extra hazardous the "American Experience Tables of Mortality" were admissible in evidence as a relevant fact bearing on the expectancy of deceased's life. The court says the question has not often been presented, and where it has been attempted to be raised, the courts have refrained from deciding it. But it is regarded as relevant for jury to consider what the expectancy of a man of deceased's age and health was, as ascertained generally in ordinary walks of life; and then to have regard to any circumstances in the case tending to modify this figure.

Tables of Mortality, Extra Hazardous Occupation

EXECUTORS.

That the powers conferred in a will, over and above those given executors by the law, cannot be legally exercised by persons named as executors until they have qualified as such, appears in the Kentucky case of *Andrews* v. *Muir*, 58 S. W. 443. In that case the persons named in the will as executors with power to sell and convey real estate, and make such provision for the payment of debts as they deemed best, were held, since they had not qualified as executors, to have no power to mortgage testator's real estate, their duties till they qualified being purely executorial.

Power to Execute Mortgage

FRAUDULENT CONVEYANCE.

In *Ward* v. *Ward*, 57 N. E. 1095, the Supreme Court of Ohio holds that a conveyance by a man who has entered into a contract of marriage, which later takes place, granting a portion of his land to his sons by a former marriage, on the sole consideration of natural love and affection, and without the knowledge and consent of his contemplated wife, is fraudulent as to her and she is entitled to dower therein. There is one dissenting opinion regarding such a transfer as working no injustice, but as being based on a "legal, as well as a moral, right to convey a fair proportion of his real estate to his children by the deceased wife."

Anticipation of Marriage

FEDERAL COURTS.

It is held in *Ex parte Glenn*, 103 Fed. 947 (D., W. Va.), that where a person has been regularly indicted for violation of the criminal statutes of a state, and is in the custody of the state authorities, he will not be discharged *before* trial by the Federal Court, on *habeas corpus*, on the ground that he was forcibly and illegally brought within the jurisdiction, but he will be required to submit his rights under the Federal laws for adjudication, in the first instance, to the courts of the state. "If upon the trial any rights of the petitioner protected by the Federal law are violated, then an application for a writ of *habeas corpus* will be proper, and her rights as fully protected *after* the trial as before."

Jurisdiction Where Prisoner Wrongfully Brought from Another State

In *American Sugar Refining Co.* v. *City of New Orleans*, 104 Fed. 2, the Circuit Court of Appeals refuses to take jurisdiction, since the controlling question involved the construction and application of the Constitution of the United States. The writ of error was dismissed, but, of course, without prejudice to any right of appeal to the Supreme Court. One judge (McCormick, J.) dissents on the ground that this question was not raised by the plaintiff's pleading and the jurisdiction of the Circuit Court was not dependent upon it, but the majority held otherwise, notwithstanding these considerations to the contrary.

Jurisdiction of C. C. A. Where Federal Question

HUSBAND AND WIFE.

The question which has several times of late arisen, as to the wife's right to sue for the alienation of her husband's affections, was in issue in the Illinois case of *Betser* v. *Betser*,

HUSBAND AND WIFE. (*Continued*).

Alienation of Husband's Affections

58 N. E. 249, where the Supreme Court of that state held she could maintain such action. The common law objection, the court says, arises out of the necessity for joining the husband in any action brought by the wife, and this is obviated by the Illinois statute allowing her to sue and be sued without joining her husband, to the same extent as if sole. The court admits that "the weight of authority, at least in a number of cases decided, holds that the wife cannot maintain" such action for the loss of the affections or society of her husband.

Common Law Marriage

The common law mode of marriage is recognized as valid in Alabama, and it is held in *Tartt* v. *Negus*, 28 Southern, 713, that to constitute it, it is only necessary that there shall exist a mutual consent or agreement between the parties to be husband and wife, followed by cohabitation and living together as husband and wife. If this occurs, the law establishes the status of marriage without regard to what the parties *considered* the legal effect to be. So it is held that several requests of the defendant to charge that there was no marriage unless A. *considered* B. his wife were properly refused.

INJUNCTION.

Restraining Trespasses Where Title Disputed

"The Chancery Court is without jurisdiction to determine a question of disputed title on a bill to restrain trespasses upon land." In *Hamilton* v. *Brent Lumber Co.*, 28 Southern, 698, the Supreme Court of Alabama holds that this rule prevents the court from determining a question of disputed title, not only for the purpose of adjudicating such title, but for any other purpose in the case, such as referring the possession to one party or the other, when neither is in actual possession. In the case before the court the effort was made by the complainant to restrain the defendant from cutting down trees, and, title being disputed, the Supreme Court held that the proper procedure would have been to require complainant to establish his right at law, but that an injunction might have been allowed to give him reasonable time to do this.

INSURANCE.

The well-established rule that a beneficiary who murders the insured cannot profit by his own wrong and receive the proceeds of the policy from the insurance company is reiter-

INSURANCE (*Continued*).

Murder of Insured, Liability of Company

ated in *Schmidt* v. *Northern Life Association*, 83 N. W. 800. The Supreme Court of Iowa notes the exception which seems to be found to this rule "in cases relating to the descent of property where the statutes make no exceptions, as in . . . *In re Carpenter's Estate*, 170 Pa. 203." But it finds a more difficult point as to the proper disposition to be made of the funds arising from the policy. Clearly, they hold, the company's liability is not terminated, and they liken the case to the one in which the insured designates one outside of those allowed by statute to whom the proceeds shall be paid, in which case it becomes payable to those who would have been entitled to it, if there had been no designation. These are held to be the proper persons to receive their proportionate shares in this case, and a right of action is held to exist in the administrator to recover it for them. The underlying principle apparently is that the beneficiary becomes constructive trustee, since it would be inequitable to allow him to retain funds so acquired.

MASTER AND SERVANT.

In *Deitrick* v. *Cashie & Chowan R. and Lumber Co.*, 37 S. E. 64, a servant sued his employer on the ground of wrongful discharge. He showed the contract of employment for a specified time, and the discharge within that time. The court charged that the jury must be satisfied by the greater weight of evidence that the discharge was wrongful. The Supreme Court of North Carolina holds this error: that the burden of showing cause for such discharge is on the master.

Wrongful Discharge, Burden of Proof

The boundaries of the duty of the master to his servants in regard to the tools with which he furnishes them, are carefully drawn in the case of *Clements* v. *Alabama Great Southern R. Co.*, 28 Southern, 643 (Ala.). The Court says: "The employer, while under the duty to use due and reasonable care and diligence in selecting and providing safe and suitable appliances for the employe, does not guarantee that they shall be free from defects or the best in use, and is not the insurer of their safety. The test in all cases involving the question is whether or not the employer failed to use ordinary care and prudence in the selection of the appliances. Without negligence there can be no liability." On this ground, the allegation having merely been that master had not provided good, proper and suitable tools, the court held the statement insufficient; that it should have added that the master knew or ought to have known the defects.

Duty of Master to Furnish Safe Tools, etc.

MUNICIPAL CORPORATIONS.

In *McAuliffe* v. *City of Victor*, 62 Pac. 231, the Court of Appeals of Colorado draws the distinction between the liability of a city for the negligence of its agents when the acts which are being done, attempted or permitted, are "for the benefit of the individuals who are inhabitants of the municipality," and where the acts concern "the exercise by the municipality of the judicial or governmental authority which may have been the subject of the power granted." In the former case the court holds the city is liable for the negligence of its agents, but is not in the latter; and that under this rule it is exempted from liability under the circumstances of this case. A prisoner was injured by fire which broke out in the jail. The negligence of the city consisted in not having water at hand to meet such emergencies. Admitting the negligence, the court held the plaintiff not entitled to recover. The case claims to follow the prevailing rule, but admits that at least in North Carolina a different doctrine prevails.

Liability for Negligence

But the Supreme Court of New Hampshire makes a much more careful review of this question in *Rholidas* v. *City of Concord*, 47 Atl. 82, classifying the cases of liability and non-liability of municipalities. Among the various cases where liabilty does exist, the court holds that towns are liable at common law "for negligent acts (even in the discharge of imposed duties) which interfere with the rights of others, provided such rights do not depend upon the imposed duty;" and on this basis it draws a distinction between the man whose land is flooded by the negligence of a municipality and the traveler who receives injuries by reason of a defect in the highway; the former being injured in a right which exists at common law, the right of private property, the latter being injured by a "violation of the statutory highway right of a traveler, by a non-performance of the defendants' statutory duty of keeping the highway 'in good repair, suitable for the travel thereon.'" The court applies this rule to the case where a servant in the city waterworks department, had received injuries by reason of the city's officers or agents, and holds the city liable.

In the case of *Flanders* v. *City of Franklin*, 47 Atl. 88, immediately following the above case, the court follows the rule there laid down, applying it to the case where the land of A. is flooded by the faulty system of drains, etc., used by a city, and holds the city liable.

NEGLIGENCE.

Action for Death, Work on Sunday

Whether in an action by decedent's personal representative for his death, through the negligence of defendant, the defence may be set up that the decedent was violating a statute forbidding under penalty work on Sunday, is a question as to which, says the Supreme Court of Vermont, in *Hoadley* v. *International Paper Co.*, 47 Atl. 169, courts have differed. But it is held in this case, as the better view, that such facts do not constitute a defence.

Action for Death, Illegitimate Relative

The Supreme Court of Mississippi holds, in *Illinois Central R. Co.* v. *Johnson*, 28 Southern, 753, that under the act giving a right of action to a brother or sister for the death of a sister or brother caused by negligence, no right of action is given to an illegitimate sister. The court sketches the common law view of the rights of illegitimates, and holds this statute is in derogation of the common law and to be strictly construed. Even a mother, it points out, cannot recover for the death of her own illegitimate child, citing *Harkins* v. *R. R. Co.*, 15 Phila. 286, and others. The court is apparently very much moved by the argument of counsel for the illegitimate sister, to which it refers as "true eloquence—the lightning of passion playing along the links of thought. But we must content ourselves with the ice-cold law, from which no friction will excite sparks."

Master and Servant, Duty to Warn

In *Thomas* v. *Bellamy*, 28 Southern, 707, we find a rule stated somewhat the converse of the general rule that a master should inform his servants as to the general character of their work and its peculiar dangers. The Supreme Court of Alabama here holds that where a servant knows of a dangerous defect in the machine which he operates, and fails to notify the master or such agent of the master as is entrusted with the care of the machine, he cannot recover from the master, though he has sought to render the machine safe himself and has called the attention of a foreman to it, such foreman not being charged with the care of the machine.

Limitation of Action, Form of Action

The case of *Birmingham* v. *Chesapeake & Ohio Railway Co.*, 37 S. E. 16, is an illustration of the frequent effort to obtain advantages by suing in *assumpsit* when the action arises *ex delicto*, the tort being waived. The limitation of negligence actions in Virginia is one year; in actions on contracts not expressly mentioned in their code, three years. In this case the plaintiff received

NEGLIGENCE (*Continued*).

personal injuries while being carried on the defendant railway. In order to avoid the bar of the former statute he sued in *assumpsit* as on the contract to safely transport the plaintiff over its railroad, but the court held that: "The limitation is not determined by the form of the action, but by its object. If the thing complained of is an injury to the person, the limitation in *assumpsit* is the same as if the action were in form *ex delicto*," and held the action in this case barred at the expiration of one year.

Action for Death of Child

In *Toner's Administrator* v. *South Covington & C. St. Ry Co.*, 58 S. W. 439 (Kentucky), it is held that in an action by a father as administrator to recover damages for the death of his infant son, about four years old, the contributory negligence of the mother will be imputed to the plaintiff; it not being necessary that the father should also have been negligent to bar the recovery.

SALES.

Rescission of Contract of Sale for Fraud

In *Martin* v. *Martin*, 35 Ala. 560, the principle was laid down that a restoration of the property or abandonment of it is not essentially a prerequisite to the filing of a bill for the rescission of the contract of sale. This was questioned in *Eureka Co.* v. *Edwards*, 71 Ala. 248, as not being sustained by authorities. In *Perry* v. *Boyd*, 28 Southern, 711, the Supreme Court of Alabama upholds the earlier case, regarding it as supported by the decisions of the state. This is clearly consistent with the weight of authority.

Contract to Pay Debts of Vendor

In *Meyer* v. *Parsons*, 62 Pac. 216, A., as a part of the purchase price of property bought, contracted to pay certain debts of B., the vendor. The Supreme Court of California held that this was not a contract to answer for the debt or default of another, but was a "contract of sale, accompanied with a delivery of the property sold," and that it was therefore not within the Statute of Frauds. It is further laid down that on such a contract where A. fails to pay the debts, or to release B. from liability therefor within a reasonable time after maturity, he is liable to B. for the amount of such debts; and it is not essential to B.'s right of action on the contract to recover the amount that he should himself have paid such debts.

SLANDER.

In *Brooks* v. *Collier*, 58 S. W. 559, the Court of Appeals of Indian Territory held that the trial court erred in overruling

SLANDER (*Continued*).

Joinder of Two as Plaintiffs

a demurrer to an action for slander brought in the name of two plaintiffs. "There can be, from the very nature of things, no joint damage to the character of individuals. . . . A slander which would crush a weak, highly sensitive man would fall harmless at the feet of a strong, self-reliant one." After the trial, and judgment for both plaintiffs, the court, on motion of the plaintiff, struck from the record the name of one plaintiff and remitted half the damages. Held error. The estimate of damages is for the jury. And this subsequent ruling could not cure original error.

STREET RAILWAYS.

Additional Burden

A recent decision of the Supreme Court of Wisconsin, *Krueger* v. *Telephone Co.*, 81 N. W. 1041, held that the use of the streets for telephone poles and lines was an additional burden on the fee of the street, and, being such, gave a right of action to the owner of the fee. The same court now holds, in *La Crosse City Ry. Co.* v. *Higbee*, 83 N. W. 701, that this doctrine does not apply to electric street railroads, because such railroads are merely an improved method of using the street to effect its original design. So the supporting trolley-wire pole is likewise held to be no additional burden if placed with reasonable regard for the convenience of the owner of the fee of the land on which it is located, and so as not to materially interfere with access to his lot outside the street line. Under these decisions a nice question would arise if in the future trolley poles should at the same time be used for telephone wires.

When Relation of Passenger Ceases

The Supreme Court of Tennessee holds, in *Chattanooga Electric Ry. Co.* v. *Boddy*, 58 S. W. 646, that the special degree of care owed by a street railway as a common carrier to its passengers ceases at the moment when the man steps from the car upon the street; and the railway company is not responsible to him, as *carrier*, for the condition of the street, or for his safe passage from the car to the sidewalk. The rule is applied to the case where a man, having alighted, was going around the rear end of the car, and just about to cross a parallel track when he was struck by a car going in the direction opposite to that of his car. The court admits a conflict of authority, but regards the better view to place the liability of the company on the same basis with its liability to the traveler and not to the passenger, from the moment when the man has left the car. *Buzby* v. *Traction Co.*, 126 Pa. 559, is cited as in accord.