PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADVERSE POSSESSION.

Where the grantors of the plaintiffs in ejectment occupied, cleared, fenced and cultivated land for over ten years (the stat-

Railroad, Right of Way

utory period in Washington), which land was subject to a railroad right of way, such occupation, the Supreme Court of Washington holds, was not adverse, but permissive, since it was not, in the view of that court, inconsistent with such right of way. Hence the railroad's easement was not extinguished by the plaintiff's possession: *Northern Counties Inv. Trust* v. *Enyard*, 64 Pac. 516.

In *Jordan* v. *Riley*, 60 N. E. 7, the Supreme Judicial Court of Massachusetts holds that occupants of a strip of land hold-

Occupancy by Mistake

ing adversely to the owner, have full title where the owner was continuously disseised for twenty years, though they claimed such strip only because mistaken as to the location of the boundary line according to the deeds.

AGENCY.

The Supreme Court of Minnesota holds in *National Citizens' Bank* v. *Ertz*, 85 N. W. 821, that where an agreement is

Mortgagor of Chattels

entered into between a mortgagor of chattels and the mortgagee, that the former may sell the property for the purpose of applying the proceeds in payment of the mortgage debt, the mortgagor is constituted the agent of the mortgagee; and if, in a proper case, he represents or warrants the quality or condition of the property sold, the mortgagee is bound by such representations and warranty.

BANKRUPTCY.

In *Chicago Title and Trust Co.* v. *Roebling*, 107 Fed. 71, the United States Circuit Court (N. D. Ills.), holds that where a

Preference of Judgment Creditor

bankrupt's property before insolvency consists chiefly of a manufacturing plant and raw materials for use therein, the fair valuation of which depends largely upon the fact that the plant is a going concern, and such valuation as a going concern brings the entire fair value

BANKRUPTCY (Continued).

of the bankrupt's assets to a total in excess of his liabilities, the fact that a judgment creditor caused a levy to be made on such plant, and a sale under such levy, thus destroying the value of the plant as a going concern and bringing the total value of his assets to a figure below his liabilities, does not create a preference in favor of the judgment creditor which could be recovered by the bankrupt's trustee, though the creditor had reasonable cause to believe that such levy and sale would cause the insolvency. For though the subsequent bankrupt gave the judgment note upon which judgment was entered, he was not insolvent at the time he gave it, but was only rendered so by the execution issued thereon. The court reaches the conclusion reluctantly, but proceeds on the ground that the act provides that a bankrupt shall be deemed to have given a preference if, "being insolvent," he procures or suffers judgment against himself.

Assets, Seat in Stock Exchange

The Philadelphia Stock Exchange rules provide that any member wishing to sell his membership shall have the right to do so provided he has no unsettled contracts with, or claims against, him by any member of the stock exchange, etc., subject, however, to the approval of the proper authorities of the exchange. In *In re Page*, 107 Fed. 89, the Circuit Court of Appeals holds that a seat in the stock exchange under the conditions set out in the rule is a valuable right, and that the right to transfer it passes to the member's trustee in bankruptcy, who is entitled to sell the same as part of the bankrupt's assets.

BANKS.

Collections, Trust Fund, Payment

In *Kansas State Bank* v. *First State Bank of Marion*, 64 Pac. 634, the Supreme Court of Kansas holds that where a check is sent to a bank for collection and such bank, after collection, retains and uses the proceeds of the check in its general business, it will be deemed to be an agent and trustee of the owner of the check, and the money so wrongfully retained and used will be deemed to be a trust fund, which the owner may follow and reclaim if it can be identified, provided the rights of no innocent third parties have intervened. Further, it is held that the plan of exchanging checks and making a settlement of the day's business, such as was adopted by the banks in the present case, is not to be regarded as a mere payment of indebtedness, but as a collection of the amount of the check, the same as though cash had been received.

BILLS AND NOTES.

A. signed a promissory note in the name of another by himself as attorney in fact, but he, to the knowledge of the payee and a subsequent indorsee, had no authority to use that other's name; and he had refused, at their request, to sign his own name and bind himself personally. Under these circumstances the Supreme Court of Kansas holds that he is not liable upon the note personally, notwithstanding the fact that it was given in a transaction of his own and that he was generally using the name signed to the note as a trade name: *Kansas National Bank* v. *Bay*, 64 Pac. 596. The case is regarded by the court as one of first impression: "No cases precisely in point have been cited to us, nor in considerable research ourselves among the authorities have we been able to find one entirely similar in its facts."

Liability, Attorney in Fact

In *Brey* v. *Hagan*, 62 S. W. 1, the Court of Appeals of Kentucky decided that a surety in a note is not released by the addition of the name of another surety without his consent before the delivery of the note to the payee. The reasons assigned are that the addition of another surety does not increase the liability of the first one, and the principal in such obligation may be presumed to have had implied authority from such first security to secure another.

Alteration, Signing by Additional Surety

It not infrequently happens that courts depart from a rule of law requiring delivery, consent, etc., by a doctrine that the facts in the case will be regarded as showing *constructive* delivery or consent, etc. This appears in the case of *Rowan* v. *Chenoneth*, 38 S. E. 544, where the Supreme Court of Appeals of West Virginia first admits that delivery of a promissory note is indispensable to its efficacy, and if not delivered in the lifetime of its maker it cannot be delivered after his death, and then says that this delivery may be actual or constructive, and if it is clear that the maker of the note *intended* it to be a finished note and binding on him, without further act on his part, it will so operate, though not actually delivered in his lifetime. In this case the notes were to pay children a debt owed them by their father out of their deceased mother's estate. The court regards the fact of their living in the same house with him, and his being a proper custodian of such notes, as important grounds for dispensing with actual delivery. The holding of the court is no doubt in line with abstract justice, but it is undoubtedly a straining of legal rules, as the decision indirectly admits.

Delivery

BUILDING AND LOAN ASSOCIATIONS.

Representations, Maturity of Stock

The Supreme Court of South Carolina holds in *Williamson* v. *Eastern Building and Loan Association*, 38 S. E. 616, that representations made by a building and loan association in its advertising literature and certificates of stock, that stock matured in a certain number of payments, and that the holder would then be entitled to payment of the face value of such shares, are not representations of a future fact or probability, but that estoppel may be predicated thereon.

CARRIERS.

Damages for Non-Admission

The Appellate Court of Indiana holds in *Cleveland C. C. & St. L. Ry. Co.* v. *Kinsley*, 60 N. E. 169, that a passenger who is wrongfully denied admission to the train may recover for humiliation, though he yields to such denial without requiring the exercise of force by the employes of the railroad.

CONTRACTS.

Inducement to Break

The Supreme Court of Pennsylvania holds in *Flaccus* v. *Smith*, 48 Atl. 894, that where an employer adopts a system in his business of employing only non-union workmen, and of stipulating in his contracts with them that they shall join no union, the court will enjoin interference therewith by outsiders, enticing and endeavoring to entice them to join a union, when it appears that such interference is injurious to the employer, and if allowed to continue will ruin his business.

Equal Bids by Contractors, Collusion

Three responsible contractors, without fraud or collusion, submitted bids to make an improvement for the same sum of money, and after the opening of the bids agreed among themselves that each should submit a written proposition to pay a certain sum to each of the others and secure the contract, and whichever offered the most should have it. Under these circumstances the Supreme Court of Illinois holds in *Conway* v. *Garden City Paving and Post Co.*, 60 N. E. 82, that the agreement is contrary to public policy and void, and that the amount which the party receiving the contract agreed to pay the others could not be recovered by them. The basis of the decision is that the agreement presents an effort to stifle competition.

CORPORATIONS.

Insolvency, Modification of Decree

A trial court, on appointing a receiver for the defendant, an insolvent corporation, enjoined all creditors from further prosecuting pending suits, but on application modified the decree by allowing a bank to prosecute a pending action to final judgment without prejudice. On these facts the Supreme Court of South Carolina holds in *First National Bank of Charlotte* v. *Iredell Land Co.*, that the bank was entitled, under the order, to have the judgment so obtained declared a first lien on the defendant's land, though the judgment was not obtained until after the appointment of the receiver. One judge dissents on the general principle that the order appointing a receiver of the property of the insolvent corporation operated to place the property in the custody of the court, and no judgment thereafter rendered could acquire any lien or priority over said property. He regards the modification of the decree insufficient to overturn this general principle, herein differing from the majority of the court.

Admissions, Attempt to Bribe

In *Nowack* v. *Metropolitan Street Railway Co.*, 60 N. E. 32, the Court of Appeals of New York holds, against the dissent of three judges, that where an investigator is employed by a corporation "to see the witnesses and take statements and to interview witnesses,"—those who "expect and those who are witnesses,"—on the trial of actions against it, he is the agent of the corporation in whatever he does in relation to that part of the corporate business; and if he attempts to bribe witnesses to testify falsely in favor of the corporation evidence of such act is admissible against the corporation, though there is no proof that it expressly authorized the act. The dissent proceeds on the ground that the attempt by the investigator did harm to no one, and the principal is only liable where harm is done, when an *implied* authorization is relied on.

CONSTITUTIONAL LAW.

Vaccination, Admission to Public School

In a short *per curiam* opinion the Supreme Court of Pennsylvania holds in *Feild* v. *Robinson*, 48 Atl. 873, that the act requiring that admission to schools be refused except on a certificate that the child has been vaccinated or has had smallpox, is constitutional. School directors, in the exercise of a sound discretion, may exclude from the public schools pupils who have not been vaccinated, and "the courts will not say that such a resolution [*i. e.*, excluding such pupils] is an abuse of official discretion."

CONSTITUTIONAL LAW (Continued).

This practically allows the directors unlimited authority in excluding pupils for this cause, since this language clearly shows that such resolution will in no instance be regarded an abuse of discretion.

Veto Power, Partial Veto

The Constitution of Pennsylvania gives the governor "power to disapprove of any item or items of any bill making appropriations of money embracing distinct items." The Supreme Court of the State holds in *Commonwealth* v. *Barnett*, 47 Atl. 976, that under this provision it is competent for the governor to veto in part an appropriation of a lump sum for school purposes in a general appropriation bill, that is he has power to diminish the amount appropriated. Judge Mestrezat dissents.

Voting Machines

In certifying their opinion to the House of Representatives of Massachusetts the Supreme Judicial Court of that State holds that the constitutional provision that representatives shall be chosen by a written vote does not prohibit the use of voting machines, dispensing with the use of a separate piece of paper for each vote, and registering the successive votes, by successive punches by revolution of cog-wheels or other similar device, the total number being shown by an index: *In re House Bill No. 1291*, 60 N. E. 129. Three judges dissent.

CRIMINAL LAW.

Accessory Before the Fact

In *State* v. *Ellison*, 38 S. E. 574, the Supreme Court of Appeals of West Virginia holds that, though the crime of an accessory before the fact is inchoate in the act of counseling, advising, aiding, etc., it is not consummated until the deed is actually done, and that it is for the deed the result of the counseling or procuring, and not for the counseling or procuring itself, that the accessory is indicted. It follows from this that the *locus in quo* of the offence of an accessory before the fact to a felony is the county in which the felony is done, and the offence is properly, in the absence of statute, triable in that county.

Crime by Wife in Husband's Presence

The old rule as to the presumption that the wife committing a crime in the presence of her husband is presumed to act under his compulsion in the absence of evidence to the contrary, is applied to a somewhat singular case in *State* v. *Miller*, 62 S. W. 692. There a wife, whose husband was imprisoned after conviction for murder, at his instigation procured a revolver, which she carried

CRIMINAL LAW (Continued).

and delivered to him at the jail. The Supreme Court of Missouri holds that such crime was committed in the husband's presence, though he was not present when she procured and conveyed the revolver to the jail. She was therefore relieved from liability, the court regarding the evidence in the case insufficient to go to the jury to overthrow the legal presumption.

DIVORCE.

In *Fisher* v. *Fisher*, 48 Atl. 833, the Court of Appeals of Maryland holds that where a wife had condoned the adultery of her husband his subsequent cruelty to her, though not in itself sufficient cause for divorce, nullified the effect of the condonation and rendered the original act of adultery good cause for divorce. Condonation, the court holds, is upon the implied condition not only that there be no renewal of the act which is condoned, but also upon condition that there be no conduct of any such kind as would furnish cause for divorce. So, just as it is not necessary that where improper relations are shown, it appears that they went as far as adultery, it is here held that it is not necessary that these acts of cruelty be sufficiently serious to ground an action for divorce, though not sufficient for this they nullify the former condonation.

Condonation, Recrimination

EVIDENCE.

In a trial for murder a stenographer who took the testimony on a former trial was sworn for the purpose of impeaching witnesses, but could not recollect what their testimony on the former trial was. He was willing to swear that he took the testimony correctly and that his notes showed exactly what the witness testified. The Court of Criminal Appeals of Texas holds, in *Stringfellow* v. *State*, 61 S. W. 719, that such notes are admissible in evidence to contradict the witnesses. One judge dissents on the ground that the cases have not gone further than allowing a witness to refresh his memory from such notes.

Stenographer's Notes

FRAUD.

In *Dean* v. *Ross*, 60 N. E. 119, the facts showed that the plaintiff in the case, after the death of her first husband, had consulted a spiritualistic medium, and had transferred to the medium certain property by the alleged direction of the spirit of her deceased husband. "Her eyes," says the court (Supreme Judicial Court of Massachu-

Concealment, Spiritualism

FRAUD (Continued).

setts), "seem to have been opened at or about the time she was married to her second husband," but this was more than six years after the transfer of the property. The court holds, however, that there was such a concealment as to allow the action more than six years after the transfer, when the plaintiff did not discover the deception until within six years of the effort to recover the property. The defendant contended that either no one could say that spirits do not speak through mediums or else the deception was so obvious that the plaintiff could not rely on it. The court meets this dilemma by refusing to sustain the second contention, and by claiming that the first very interesting point is not raised by the pleadings. No doubt a discussion of this occult question by the Massachusetts court would be very interesting.

HUSBAND AND WIFE.

Joint Bank Deposit

In *Brewer* v. *Bowersox*, 48 Atl. 1060, it appeared that A. had made a deposit in a certain bank, which he subsequently changed to the joint account of himself and his wife, so that either could draw it on indorsing the certificates. Subsequently, during A.'s life, his wife indorsed the certificates to another bank for collection, and took a certificate of deposit reading, "Received of A. and B. [A.'s wife] $1,981, which sum will be paid to them on their order." The husband subsequently died, and the Court of Appeals of Maryland holds that the certificate created an estate by the entirety, and hence on the death of the husband the wife was entitled to the whole amount by survivorship.

INSURANCE.

Provision Against Assignment

The Supreme Judicial Court of Massachusetts holds in *Whiting* v. *Burkhart*, 60 N. E. 1, that a provision in a fire policy that it shall be void if assigned without the consent of the insurer, does not apply to the assignment of the interest of a mortgagee, to whom the policy is made payable as his interest may appear. What is effected by the assignor by assigning his right and interest in the policy, says the court, is "not to transfer the policy, but to assign to another his right to receive the proceeds, if any, under it." This, it is held, is not opposed to the reason for requiring the stipulation against assignment, which is intended to protect the company from having thrust upon it an insured whose character would make the so-called "moral risk" greater.

INTERNAL REVENUE.

War Tax, Express Companies

The recent case of *American Express Co.* v. *Michigan*, 177 U. S. 404, deciding that the express company could increase its rates by the amount of tax required on its receipts, is generally known. The *People* v. *Wells, Fargo & Co.*, 64 Pac. 702, the Supreme Court of California attempts to distinguish that case, and refuses to apply it where the facts, in the view of the court, show that the express company did not increase their rates, but sought to collect the amount of the tax, not as a part of the rate, but as tax. So they hold that where a package is offered to an express company for transportation, accompanied by a tender of the full amount of the company's regular charges for the service, such company could not refuse to accept the package unless further payment of one cent or of a one-cent documentary internal revenue stamp was made, and mandamus would lie to compel its acceptance. Two judges dissent regarding the case as controlled by *American Express Company* v. *Michigan*, and the distinction attempted as not substantial.

LANDLORD AND TENANT.

Distress After Death of Tenant

A distress for rent may lawfully be made after the death of the tenant, provided the term continues, and the tenant has appointed an executor, or administration has been granted upon his estate: *Brown* v. *Howell*, 48 Atl. 1020. But the Supreme Court of New Jersey further holds in that case that if a distress be made after tenant has died intestate, even before administration granted the administrator subsequently appointed, whose title runs back by relation to the death of the intestate, cannot treat as a test a distraint which would have been lawful if he had actually been administrator.

Improvements, Voluntary Abandonment

The Court of Chancery Appeals of Tennessee holds in *Forbus* v. *Watkins*, 62 S. W. 36, that where a lessee for a term of years, under an oral contract requiring him to construct a building on the property, but authorizing him to remain on the premises and retain the land without paying rent till the rent at an agreed rate shall equal the value of the building, voluntarily abandons the property he cannot recover the value of such building. But, on the other hand, he is entitled to set off the improvements against the landlord's claim for use and occupation. One judge dissents, assigning, however, no reasons.

LANDLORD AND TENANT (Continued).

In *Village of Penankee* v. *Wisconsin Lakes Ice & Cartage Co.*, 85 N. W. 660, the Supreme Court of Wisconsin holds that where the defendant has leased premises for a term of years, and his lessee began the erection of buildings thereon, the defendant cannot be enjoined from erecting such buildings, since he has no power to direct or control his lessee's occupation or control of the premises.

Erections by Sublessee

NEGLIGENCE.

A., an employe of B., was holding a horse while B. applied some medicine to its neck. The horse jumped, whereupon B. began beating it with a heavy stick with a nail drawn through it, and, by reason of B.'s foot slipping, he unintentionally hit A. on the nose, causing injury. A. sues B., and the Supreme Court of Iowa holds in *Osborne* v. *Van Dyke*, 85 N. W. 784, that on instruction the defendant would not be liable if in beating the horse he exercised reasonable care to avoid striking A., and the blow which inflicted the injury was caused by an accidental slip, was erroneous, since the slipping of defendant's foot, being the consequence of his own wrongful act, was not an excuse for the injury. Cases were cited in behalf of the defendant where the act which resulted in injury [*e. g.*, running a train] was unlawful because done on Sunday. These are distinguished on the ground that the wrongful act was a condition, not a cause, of the ultimate injury.

Unlawful Act, Intervening Cause

In *Illinois Cent. R. Co.* v. *Arnold*, 29 Southern, 768, the Supreme Court of Mississippi holds that where a path across a railroad company's lot was used indiscriminately by all the citizens of a town, but without any inducement held out by such company for them to use it, one going along such path for her own convenience was a licensee and could not recover for injury sustained through the negligence of a servant of the railroad company which did not amount to a wilful or wanton wrong. The court says: "A master is not responsible to a servant for the negligence of a fellow servant; *a fortiori*, he is not responsible to a stranger for such negligence. But the ground of the fellow servant rule is frequently said to be that the risks of employment, including the negligence of fellow servants, are included and contemplated in the terms of the hiring, and this language of the court implies a doubt of this as the proper ground of that rule.

Injury to Licensee

NUISANCE.

In *Northwood* v. *Barber Asphalt Pav. Co.*, 85 N. W. 724, it appeared that the defendant was found guilty and was enjoined from committing a nuisance, which consisted in fumes, gases, dust, etc., injurious to the inhabitants in the neighborhood. Under the decree it was commanded to do certain things for the purpose of preventing the nuisance. The decree also contained a general clause forbidding the maintenance of the nuisance. One of the complainants instituted proceedings for contempt, claiming that the nuisance had not been abated, but was in fact, worse than before. Under these circumstances the Supreme Court of Michigan holds that it was the duty of the defendant, if the methods provided for in the decree failed to abate the nuisance, to either try other means or apply to the court for leave to do so, or close its works; and further, that the defendant could not relieve itself from liability for contempt of court by showing that it had adopted the methods provided in the decree.

Abatement, Decree of Court

PHYSICIANS.

In *Hurley* v. *Eddingfield*, 59 N. E. 1058, the Supreme Court of Indiana holds that a physician duly licensed to practice is not liable for arbitrarily refusing to respond to a call, though he is the only physician available. The court regards the analogies attempted to be made by counsel, to innkeepers, common carriers, and the like, as not here applicable.

Failure to Answer Call

RAILROADS.

The Supreme Court of Appeals of Virginia holds in *White* v. *New York P. & N. R. Co.*, 38 S. E. 180, that where in an action against a railroad for damages for a fire claimed to have been caused by sparks emitted from the defendant's locomotive, it is shown that the fire was started by sparks, the defendant has the burden of proving that it has availed itself of the best contrivances to prevent the escape of sparks, but on the other hand, though the fire was shown to have so originated, there could be no recovery, since it appeared that the railroad had employed the most approved appliances in proper repair. This the court regarded conclusive evidence of due care, and hence that there was no basis for recovery.

Sparks from Locomotives, Due Care

SHERIFF.

A sheriff having an execution in his hands was notified by the attorney of the judgment debtors that the execution was void, and not to levy, and such debtors executed a bond to indemnify the sheriff against loss or damage for failure to levy. The validity of the execution depended on a new statute, which had not been construed by the court, and the sheriff was in honest doubt as to his right to levy. Under these circumstances the Supreme Court of Michigan holds in *Ray* v. *McDevitt*, 85 N. W. 1086 (one judge dissenting), that taking the bond was not against public policy, and, the sheriff's bondsmen having been compelled to pay the amount of the execution, their assignee may recover on the bond of indemnity.

Execution, Bond of Indemnity

TAXATION.

The estate of an insolvent corporation assigned for the benefit of creditors is subject to taxation in the hands of the court's commissioner or receiver until there has been an order of distribution fixing the amount to which each claimant is entitled, though the claimants be non-residents: *Youtsey* v. *Commonwealth*, 62 S.W. 262 (Kentucky). The court refuses to sustain the contention, which it intimates has prevailed in other jurisdictions, that the fund did not belong to the insolvent corporation, but to the creditors, and that especially the part owed to non-resident creditors is not subject to taxation in the hands of the receiver. A case with similar facts, but dealing with a decedent's estate, is regarded as analogous and is followed.

Property in Hands of Receiver

TELEGRAMS.

In *Western Union Telegraph Co.* v. *Ragland*, 61 S. W. 421 the Court of Civil Appeals of Texas holds that a stipulation in a telegram that the company shall not be liable for mistake unless the message is telegraphed back for comparison does not relieve the company from liability for a mistake occurring through want of reasonable care in repeating the message at a relay station. Such lack of reasonable care, the court held, might have been inferred in this case *apart* from the mere failure to repeat; such lack of care, however, it seems, does not arise from such failure to repeat.

Stipulation against Liability, Repeating

TRUSTS.

Spendthrift Trusts, Merger

The benevolent attitude of the Supreme Court of Pennsylvania toward spendthrift trusts is well known. Incidentally illustrating this we note the case of *In re Moore's Estate*, 48 Atl. 884, where that court holds that where the testator has created spendthrift trusts in life estates for his sons, there is no merger affecting them by reason of the sons' taking an absolute estate in the remainder, because of the gift thereof to charity failing through the death of the testator within a month of the making of the will.

Application of Income

Under a testamentary trust the income of the trust fund was to be applied to the support of the beneficiary, who was in the habit of occasionally indulging in alcoholic excesses, at which time a physician rendered services to him, with the knowledge of one of the trustees. The beneficiary had become insolvent, and it did not appear that the trustees had furnished him with all that was necessary with respect to medical attendance. Under these circumstances the Court of Appeals of New York holds, in *Sherman* v. *Skuse*, 59 N. E. 990, that a claim for such services rendered on the request of the beneficiary could be enforced in equity as against the trustees.

WILLS.

Implied Condition

In Louisiana it seems the rules still survive as to the presumption of prior death in case two persons perish in the same catastrophe under circumstances which render it impossible to decide actually which died first. In *Succession of Longles*, 29 Southern, 739, the Supreme Court of that state holds that these apply where mother and daughter perished in a shipwreck, and where each had made a will in favor of the other. It was strenuously insisted that the legacies were on implied conditions that they should not take effect in case of such an event, since it was argued such could not have been the intention of either testatrix. But the court refuses to read such condition into the will and distributes the estate, giving full effect to the presumptions as to prior death dependent on age, sex, etc.

Vesting of Legacies

The Court of Appeals in New York holds in *Connelly* v. *O'Brien*, 60 N. E. 20, that where a will provided that testator's entire estate should go to his widow during her life, "and then to such of my children as may then be alive, share and share alike," the remainder to the children vests at the death of the testator and only the enjoyment is

WILLS (Continued).

postponed. The court admits that the question is doubtful, but regards the decision reached as supporting the intention of the testator.

After-born Child

The Pennsylvania rule that a will must make a substantial provision for an after-born child, or in default of such provision the testator must be regarded as having died intestate as to that child, seems well settled. As a development of the law in connection with this subject we find the case of *Owens* v. *Haines*, 48 Atl. 859, deciding that the birth of a child after the execution of a will does not revoke the will or afford any reason against its probate, and that therefore it is immaterial that a child, claiming property under such circumstances, failed to institute action until after the expiration of the time limited for appeal from the probate.

Dissent of Widow, Insanity

It seems settled in Tennessee that the right of a widow to dissent from her husband's will is under ordinary circumstances, personal to herself. This possibly is a rule without exception, for in the case of *Williamson* v. *Nelson*, 62 S. W. 53, the Court of Chancery Appeals of that state holds that after her death her administrator has no right to dissent from her husband's will, though he shows it would be for the benefit of her estate, and, in particular, though it appear that she was insane at all times after her husband's death. Whether the committee of the insane wife might have dissented is not decided, it not being in issue in the case, but under the view taken by the court it is unlikely that a different decision could be reached under such circumstances.

Construction, "Survivor-Heirs"

Against the dissent of two judges, the Supreme Court, Appellate Division (Fourth Department), holds that where the testatrix gave all her property to her two grandchildren who were sisters, providing that in case of the death of either of them without heir or heirs, such one's share should go over to the survivor, and made no provision for their mother to take in any event, on the death of one of them *after* the testatrix, leaving her sister and mother surviving, as her only heirs, the surviving sister took the entire property: *In re Cramer*, 69 N. Y. Supp. 299. The court construes the word "heirs" as "issue," and in allowing "survivor" to include survivorship after death, take into consideration facts as to the testatrix's age, etc., appearing *dehors* the will. This the dissenting judges regard as error.