PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ACCORD AND SATISFACTION.

Acceptance of Part of Debt in Satisfaction of Whole

The Court of Appeals of Kentucky holds in *Mannakee* v. *McCloskey*, 63 S. W. 482, that the acceptance by a creditor of a part of his debt in satisfaction of the whole was without consideration, and therefore does not preclude him from recovering the residue, though he accepted as part payment of the amount agreed to be paid by the settlement the note of a third person. The court admits the rule that the acceptance of the note of a third person for a less amount than is due to be a good accord, but draws a distinction because in this case the note is given not for the whole amount compromised on, but for part thereof only—a somewhat questionable distinction.

ANIMALS.

Killing Dog

Notwithstanding certain cases apparently leaning the other way, the Supreme Court of Alabama holds in *Louisville & N. R. Co.* v. *Fitzpatrick*, 29 Southern, 859, that a dog is a species of property for the injury of which an action at law may be maintained; and the owner of a dog can maintain an action against a railroad company and recover damages for the negligent killing of such dog. Decisions protecting the rights of individuals in pet animals are welcome, and we believe it is not too much to hope that the old common law rule that a dog is not the subject of larceny will soon be universally abandoned. The tendency is undoubtedly in this direction, though some states still hold out for the artificial rule of the common law. See note to *Hamby* v. *Samson* (Iowa) 67 Am. St. Rep. 285.

ATTORNEY AND CLIENT.

In *Fenwick* v. *Mitchell*, 70 N. Y. Supp. 667, the New York Supreme Court (Special Term, Kings County) holds that where the parties to an action settle it out of court in good faith, but without the consent of the attorney of the plaintiff, the lien of the attorney on the cause of action (in New York a statutory lien) is transferred to the amount agreed on in settlement and may be enforced by a suit in equity. In such suit the defendant is held not to be entitled to a jury trial, it being purely a matter of equitable cognizance.

Attorney's Lien, Settlement by Parties

BILLS AND NOTES.

In *Bank of Forsyth* v. *Davis*, 38 S. E. 836, the Supreme Court of Georgia holds that the payee of a negotiable promissory note who receives other notes from the maker as collateral security, may lawfully transfer such collaterals to one to whom the former assigns the principal note, and, if the assignee wrongfully converts the collaterals to his own use, the payee in the principal note will not be liable in trover for such conversion. The only method the court intimates by which the maker can guard against such transfer by the payee is by letting his debt be evidenced by non-negotiable paper.

Collateral Security, Conversion by Assignee

A pledgee of a negotiable promissory note received the proceeds of a collateral note and applied the same upon the debt secured by such collateral note, in ignorance that the sum so received and applied was the proceeds of such note. He in no way altered his position by reason of such ignorance, but later sought to enforce the payment of the collateral note. The Supreme Court of North Dakota in *Second Nat Bank of Winona* v. *Spottiswood*, 86 N. W. 359, holds that he cannot do so. The question, the court says, is an anomalous one, and but one case is found throwing light upon it: *Coleman* v. *Jenkins*, 78 Ga. 605.

Collateral Note, Payment

BUILDINGS.

Projecting Walls

Ordinarily where a man's land is overhung by a building of his neighbor's, the foundations of which building are entirely on the neighbor's land, the former has an adequate remedy in a mandatory injunction for the removal. But in *Crocker* v. *Manhattan Life Insurance Co.*, 70 N. Y. Supp. 492, the New York Supreme Court (Appellate Division, First Department), admitting this, holds that where the cornice and upper wall of the defendant's sixteen-story building projected a few inches over the plaintiff's building, doing little damage, while the removal of the wall would cause great damage to the defendant and to defendant's tenants, a judgment refusing an injunction requring the removal of the wall and awarding plaintiff full compensation in damages, with protection to plaintiff against defendant's requiring a permanent right to encroach, is proper. The encroachment was accidental and not intentional.

CARRIERS.

Personal Injuries, Free Pass

The exemption from liability for personal injury printed on the back of railroad passes is familiar to travelers. In *Payne* v. *Terre Haute & I. R. Co.*, 60 N. E. 362, the Appellate Court of Indiana holds that where a passenger riding on such a pass was injured through the negligence of a railroad company's enployes, an answer in a suit for such injuries that by an express stipulation indorsed on the pass, the acceptance and use thereof was a release of any injuries which might be sustained by the person to whom it was issued, will not bar an action brought by such passenger against the company for negligence.

Stoppage In Transitu

The consignee of a car load of lumber failed to pay the freight and remove it from the car within the time required by the rules of the road. The railroad company, in consequence, stored the same in their sheds, where it was held for two months for freight and storage charges. At the end of that time the consignor notified the railroad not to deliver the lumber. The Supreme Judicial Court of Massachusetts holds that he had a right so to do since under the circumstances the transit, as a matter of law,

CARRIERS (Continued).

had not ended, since there was no delivery, actual or constructive, to the consignee; that therefore the consignor was still entitled to exercise his right of stoppage *in transit* v. *Brewer Lumber Co.* v. *Boston & A. R. Co.,* 60 N. E. 548.

CONFUSION OF GOODS.

Where A. purchased logs of B. who had wrongfully cut the same from C.'s land, and intentionally mixed them with other logs also sold to A., C., the Supreme Court of Mississippi holds, is entitled to select from all the logs so sold logs equal to those from the trees wrongfully cut from his land and to maintain replevin therefor: *Blodgett* v. *Seals,* 29 Southern, 852. It matters not that A. is an innocent purchaser for value.

Innocent Purchaser

CONSTITUTIONAL LAW.

In *Bettman* v. *Warwick,* 108 Fed. 46, the United States Supreme Court of Appeals (Sixth Circuit) holds unconstitutional the stamp tax imposed by the War Revenue Act of 1898 upon a bond required by a state from an officer as a prerequisite to the exercise of the duties of his office. Such tax, it is said, is in necessary legal effect, a tax upon the officer's right to qualify, and upon the exercise by the state of its governmental functions. The fact that the officer is required to pay it before he has qualified is immaterial.

Tax on Functions of State Government

CORPORATIONS.

Against the dissent of three judges the Supreme Court of California holds in *Bassett* v. *Fairchild,* 64 Pac. 1082, that where a director of a corporation performed services as its manager, not pertaining to his duties as director, he is entitled to recover the reasonable value of such services, though no rate of compensation was fixed by the board of directors prior to the performance of the services. The rule is also laid down that no legal quorum of directors of a corporation is present

Right to Compensation, Quorum

CORPORATIONS (Continued).

when action is attempted to be taken on a matter as to which one of the directors necessary to make the quorum is interested. As to this second proposition there is no dissent.

Foreign Receivers

The receiver of a foreign corporation appointed by the courts of a foreign jurisdiction, is entitled to maintain an action for the recovery of realty in the possession of a resident of the state, where no rights of resident creditors intervene: *Small* v. *Smith* (S. Dak.) 86 N. W. 649. One judge dissents.

CONTEMPT.

Bribing Witnesses

The Supreme Court of Wyoming holds in *Fisher* v. *McDaniel,* 64 Pac. 1056, that the attempt to bribe witnesses while attending a trial in which they are to testify, which attempt occurs in the hallway of the court house or adjoining the building on the outside, is punishable as a contempt occurring in the presence of the court. Hence no jury is necessary, and it matters not that such act is also an indictable offense.

CONTRACTS.

Sunday

Where a church voted that the pastor be employed for a certain term, the vote was not objectionable because passed on Sunday, since an ecclesiastical corporation can properly transact such business on that day: Supreme Court of Errors of Connecticut in *Arthur* v. *Norfield Parish Congregational Church Soc.,* 49 Atl. 241.

Procuring Legislation, Public Policy

In *Veazey* v. *Allen,* 70 N. Y. Supp. 457, it appeared that the plaintiff had undertaken to procure the passage of a resolution which would result in congressional investigation of a certain corporation, so as to cause a depreciation in the value of its corporate securities. In consideration of this the defendants, certain stock brokers, were to speculate on their own account in the shares of the investigated corporation for the mutual profit of themselves and the plaintiff. This contract the New York Supreme Court (Appellate Division, First Department) holds void as against public policy.

CRIMINAL LAW.

A private detective falsely represented to a merchant that he (the merchant) was being systematically robbed, and offered to detect the thief for a certain reward, which the merchant agreed to pay for the detection and conviction of the thief. Thereupon the detective through an agent, for the purpose of obtaining the reward, induced an employe of the merchant to steal certain articles of value. These were brought to the detective and by him surrendered to the merchant. The value of the articles stolen was such as to make the offence a misdemeanor under the Georgia Code. Upon these facts the Supreme Court of that state holds in *Slaughter* v. *States,* 38 S. E. 854, that the detcetive and his agent are guilty of larceny equally with the employe, all being principals, since the offence was a misdemeanor. While, it is said, a detective when he has ascertained that a conspiracy has been formed may join the conspirators and go to the place where the crime is to be committed for the sake of obtaining evidence, he may not originate such conspiracy. Further in reply to the argument that the detective intended from the start to return the goods to the merchant, it is answered that "it is sufficient to constitute larceny] the property be taken and carried away with the intent to appropriate any pecuniary right or interest therein." Here the expectation of obtaining a reward rendered the intent to return the goods of no avail as a defence.

Illegitimate Method of Detective

DEATH BY WRONGFUL ACT.

In *Stahler* v. *Philadelphia & R. Ry. Co.,* 49 Atl. 273, the Supreme Court of Pennsylvania holds that the right of adult children to recover damages for the negligent killing of their father who made them a yearly allowance, is not affected by the fact of their inheriting his estate.

Damages

FELLOW-SERVANTS.

In *Williams* v. *Southern Ry. Co.,* 38 S. E., 893, the Supreme Court of North Carolina holds that the doctrine that a master is not liable for injuries to a servant caused by the negligence of a fellow servant, was not a part of the common law existing at the date of our separation from England, and hence the

Presumption as to Existence

FELLOW-SERVANTS (Continued).

courts of one state cannot presume that such rule exists in another state, so as to throw on a plaintiff who has been injured in such other state by the negligence of a fellow servant the burden of proving that the rule has been abrogated by statute. The court points to *Priestley* v. *Fowler,* 3 M. & W. 1 (1837) as the earliest case applying the fellow servant doctrine in England. *Farrell* v. *Railroad,* 4 Mtc. 49, decided shortly after, is probably the earliest case in which the doctrine is stated in its present form and is said to be the leading case on the subject.

FRAUDULENT CONVEYANCES.

In *Brinkley* v. *Brinkley,* 39 S. E. 38, the Supreme Court of North Carolina holds that where a man agreed to deed land to a woman if she would marry him, and after her promise to do so, but before marriage, conveyed the land without consideration to his children by a former wife, said conveyance, though recorded before the marriage, was fraudulent and void as against a deed made to the wife, to whom he had promised it, sixteen years afterwards. One judge dissents, and the prevailing and dissenting opinions present an interesting discussion of a close point in the law of fraudulent conveyances.

Promise in Consideration of Marriage

Where a husband, fearing that alimony would be decreed against him in a divorce suit, conveyed land on the understanding that the grantee would sell the land for his benefit, or reconvey it when he desired, a recovery of the land by the husband will not be denied because of the intent with which it was conveyed, it not appearing that any alminony was decreed: Supreme Court of Texas in *Rivera* v. *White,* 63 S. W. 125. The court proceeds on the theory that it has not appeared that there is a creditor, and that where there is no creditor there is no fraud. The statute, it is pointed out, applies in this respect only to *debtors.*

Reconveyance

GIFTS.

A. had notes for money due her executed in the name of certain relatives as payees, and gave them to B. who was her agent in other matters, to keep safely and to deliver to the payees named therein, but without any instruction as to the time of delivery. B. died and A.

Delivery

GIFTS (Continued).

gave the notes to C., who was also her agent in other matters, to handle them as B. had. The payees named in the notes did not know of them until after the death of A. They then laid claim to them. But their claim was denied by the Supreme Court of Pennsylvania on the ground that the acts of A. were not sufficient to constitute a delivery so as to make the gift valid. It was also impossible to piece a trust out of the fragments of the imperfect gift: *Clapper* v. *Frederick*, 49 Atl. 218.

HOMICIDE.

In Pennsylania it is held that before the jury can acquit on the ground of insanity they must be satisfied by a preponderance of evidence that the defendant was not responsible. The rule of the United States Supreme Court requires acquittal if, from all the evidence, the jury has a reasonable doubt of defendant's sanity: *Davis* v. *U. S.*, 160 U. S. 469. In *Commonwealth* v. *Barner*, 49 Atl. 60, the Supreme Court of Pennsylvania holds that disregarding the rule of the United States Supreme Court and applying its own rule does not deprive the defendant of his life or liberty without that due process of law required by the Federal Constitution.

Insanity, Due Process of Law

HUSBAND AND WIFE.

The separate acknowledgment by the wife still required in Pennsylvania under the old Act of February 24, 1770 (1 Smith's Laws, p. 307) when she conveys her interest in real estate, is not necessary to an agreement of separation to bar her right of dower: *In re Kaiser's Estate*, 49 Atl. 79 (Pa. Supreme Court).

Separate Acknowledgement

This same court holds in *Potter* v. *Fidelity Insurance, Trust and Safe Deposit Co.*, 49 Atl. 86, that a wife whose husband, just prior to the marriage, and without her knowledge, conveyed his property to a trustee, to pay the income to him for life, and after his death to pay the property to persons named, not including her, is not entitled to have the deed of trust set

Deed of Trust In Anticipation of Marriage

HUSBAND AND WIFE (Continued).

aside so that the management of the property may be restored to the husband, though after his death she may have it annulled, so that she may take a share in the property.

Husband, Wife's Agent to Deliver Note

Where a wife makes her husband her agent to deliver a note signed by her and the husband, her name appearing first, she is bound by the husband's representation to the payee that she was the principal in the note, and cannot therefore escape liability by showing that she was surety merely: Court of Appeals of Kentucky in *Tompkins* v. *Triplett,* 62 S. W. 1021. The husband, says the court, was acting "within the apparent scope of his authority."

Tenancy by Entireties

Dodds v. *Winslow,* 60 N. E. 458, holds that a devise to a husband and wife of all the real property which the testatrix should own at the time of her death, to have and to hold, share and share alike, absolutely and in fee simple, conferred the property on the devisees as tenants in common and did not create an estate by the entireties: The court (Appellate Court of Indiana) relies on the words "share and share alike" to turn the scale. *Per contra, Stuckey* v. *Keefe,* 26 Pa. 397.

INFANTS.

Compromise and Settlement

In *Lansing* v. *Michigan Cent. R. Co.,* 86 N. W. 147, the Supreme Court of Michigan holds that where an infant injured in a railway collision executed a settlement of her suit, in which no next friend or guardian had been appointed, at the alleged solicitation and by the fraudulent representations of her attorney, while she was a minor, such settlement was voidable only. Hence she was not entitled to repudiate the same and sue for her injuries before attaining her majority. As to the cases in reference to this subject the court says: "An examination of these authorities shows a good deal of confusion in the various decisions."

Liability on Lease

A married infant contracted for the rent of a dwelling house for a certain period, but he abandoned the same before the expiration of such period. Held by the Court of Civil Appeals of Texas that he cannot be held liable for the rent for a longer time that he actually used such house: *Peck* v. *Cain,* 63 S. 177,

INFANTS (Continued).

An infant, says the court, is liable only for necessaries actually delivered to him, and the non-user of the house is regarded as equivalent to a failure of delivery. He may contract for articles which are necessaries, but he is not compellable to receive and pay for them. So as to the rent of a house.

INJURY TO BUSINESS.

A teacher of a high school wrote letters to the parents of his pupils "containing a threat that if said pupils visited plaintiff's store they would be suspended from said high school." It was also averred that he did this under instructions given him by the school board, that such action was malicious and resulted in damage to the plaintiff. The Appellate Court of Indiana refuses to sustain an action upon these facts, holding in *Guethler* v. *Altman*, 60 N. E. 355, that a storekeeper has no right of action against a school teacher and members of a school board because of their maliciously dissuading pupils by threats and otherwise not to trade with him; no dishonesty or anything of a reproachful nature being imputed to him. The well-known English case of *Allen* v. *Flood* [1898] App. Cas. 1, is cited with approval and its principle regarded as applicable.

Dissuading Persons Not to Trade

INSURANCE.

A member of a mutual benefit association designated his wife and sister as the beneficiaries in his certificate and on his deathbed requested by letter that his wife be made the sole beneficiary. This letter was not received by the association until after the member's death, when the letter was returned without any action thereon. The by-laws of the association prescribed the mode of changing the beneficiary of a certificate by surrender of the certificate to the so-called camp-clerk by the member, and a filling out by him of the surrender clause thereon in the clerk's presence. Upon these facts the Supreme Court of Iowa holds that the change could only be made in the mode provided by the by-laws and that hence the change attempted in this case was ineffectual: *Modern*

Beneficial Associations, Association By-Laws

INSURANCE (Continued).

Woodmen of America v. *Little,* 80 N. W. 216. The mode of change, says the court, has been made a matter of contract and can be altered only bya novation.

JOINT WRONGDOERS.

The owner of land is not a joint tort feasor, so as to be liable to the lessee for the burying of a horse thereon by a third person; he having merely given such third person permission to bury the horse there: *Fitzwater* v. *Fassett,* 49 Atl. 310. The question arose because the horse buried had an infectious disease, which in consequence of the burial, was communicated to cattle of the lessee.

Owner of Land

LIMITATIONS.

Premises conveyed by warranty deed were at the time in possession of a third party under a verbal agreement of sale with a previous holder of the title. By subsequent litigation with the vendee's grantee, a specific enforcement of this agreement was decreed. Under these circumstances the Supreme Court of Nebraska holds in *Watson* v. *Heyn,* 86 N. W. 1064, that the vendee's title failed at the time of the rendition of this decree, and that therefore the statute of limitations did not begin to run against action on the covenant of warranty till then.

Warranty Deed, Breach

Limitations against a suit for specific performance of an oral agreement for the conveyance of land, the Appellate Court of Indiana holds, do not begin to run until a demand for the deed or a repudiation of the contract is made, when the person to whom the conveyance is to be made is in possession under the contract, and has made improvements: *Horner* v. *Clark,* 60 N. E. 732.

Specific Performance

The Supreme Court of Nebraska holds in *Omaha Savings Bank* v. *Sineral,* 86 N. W. 470, that a promissory note is barred after five years (the statutory period in Nebraska) though the same is secured by a real estate mortgage. While therefore it is admitted that the

Action on Note

LIMITATIONS (Continued).

creditor still has recourse to the mortgage for the satisfaction of his debt, the statute of limitations, says the court, is a complete defence to the recovery of a personal judgment against a maker other than the mortgagor.

MANDAMUS.

Mandamus will not lie to compel a trial judge to sign a bill of exceptions which he swears contains untrue statements, unless on the clearest and most convincing showing, made to appear properly before the court, and incorporated in the record sent to the supreme court: Supreme Court of Tennessee in *State* v. *Cooper*, 64 S. W. 50. "It may be," says the court, "that cases of hardship will arise, but this is an incident to all human proceedings, and a different rule would lead to much more serious complications and difficulties."

Trial Judge Signing Bill of Exceptions

MORTGAGE.

The Supreme Court of Kansas holds in *Jackson* v. *Longwell*, 64 Pac. 991, that where a husband and wife had jointly executed a note and secured the same by a mortgage on real estate belonging to the wife, and the note later became barred as to the wife by the statute of limitations, but not as to the husband (he having made payments which tolled the statute) in such case the mortgage could be foreclosed, and the wife's land sold to pay the judgment rendered against the husband. "So long," says the court, "as the statute does not bar a recovery on the note, it does not a foreclosure of the mortgage."

Foreclosure Limitations

Against the dissent of three justices, the same court holds in *Mulvane* v. *Sedgley*, 64 Pac. 1038, that when the relation of principal and surety existing between mortgagors and a purchaser of the mortgaged property, who assumed and agreed to pay the mortgage, is recognized and accepted by the mortgagee, and the cause of action against the purchaser or principal becomes barred by the statute of limitations, an action against the mortgagors or surety on the notes and to foreclose the mortgage is also barred.

Assumption, Principal and Surety

MOTION FOR DIRECTED VERDICT.

Where at the close of the evidence each party moves for the direction of a verdict, the court may discharge the jury, and either decide the case at the trial, or direct that briefs be submitted and arguments heard later, as though the trial had been without a jury: New York Supreme Court (Appellate Division, Fourth Department) in *Gitty* v. *Allen,* 71 N. Y. Supp. 88.

Effect, Discharge of Jury

MUNICIPAL CORPORATIONS.

As the rule forbidding the recovery of municipal taxes voluntarily paid applies also to street assessments, the Court of Appeals of Kentucky holds in *Brands* v. *City of Louisville,* 63 S. W. 2, that property owners who had under mistake of law paid assessments for street repairs for which the city alone was liable, cannot recover the amount from the city on the ground that it was a debt of the city paid by its order to the contractors. One judge, Judge Guffy, dissents.

Assessments Paid under Mistake of Law

NEGLIGENCE.

An interesting holding as to proximate cause appears in *Windeler* v. *Rush County Fair Assn.,* 60 N. E. 954, where the facts showed that a fair association maintaining an inclosed race track in its fair grounds negligently made an opening into the track, and a runaway horse escaped through the opening and injured the plaintiff who was in the main part of the grounds. An Appellate Court of Indiana holds that the negligent opening of the fence and not the runaway was the approximate cause of the injury. "It would be a thankless task," says the court, "to endeavor to reconcile all the artificial reasoning and expressions contained in all the cases dealing with the subject of proximate cause. A common-sense answer to the question, 'what was the efficient cause,' satisfies the requirements of the law." But this affords one little aid in making that common-sense answer. Justice Wiley dissents.

Proximate Cause

NEGLIGENCE (Continued).

Sleeping as Contributory Negligence

The Supreme Court of North Carolina holds in *Stewart* v. *Southern Ry. Co.*, 39 S. E. 51, that where the plaintiff's intestate seated himself on the end of a railroad tie while acting as a flagman and while asleep thereon was struck by defendant's engine, the whistle of which had been sounded and the bell rung, when the engineer discovered the deceased, and the brakes applied, when it was seen that the deceased did not move out of danger, a non-suit was properly granted, as deceased was guilty as a matter of law of contributory negligence. A vigorous dissent is written by Justice Douglas, regarding the conclusion as too violent a view of the possibility of the whistle and bell being sounded too late, and of other facts which might disclose under the individual facts of the case no negligence on the part of plaintiff's intestate.

PARENT AND CHILD.

Injury by Child, Father's Liability

A father who permits his infant son to handle a loaded gun, where from extreme youth or mental weakness or the use of intoxicants, the boy is incompetent to be intrusted with a deadly weapon, is liable for injury to another resulting therefrom, if he knew the danger or should have known it in the exercise of ordinary care; Court of Appeals of Kentucky in *Meers* v. *McDowell*, 62 S. W. 1013. In referring to the cases cited in support of this position the court says: "They rest upon the principle that in the use of firearms, which are necessarily dangerous, all persons are bound to take care to avoid injury to others in proportion to the probability of such an injury."

PARTITION.

Claim Against Property

The Supreme Judicial Court of Massachusetts, tracing briefly the history of partition holds in *O'Brien* v. *Mahoney*, 60 N. E. 493, that when the petitioner and the respondent were the only heirs to an estate of which the respondent was administrator, and against which he had a claim greater than the total value of the property, nevertheless the petitioner was entitled to partition pending the hearing of the claim, since as between co-tenants, partition is a matter of right, and as creditor or administrator the respondent had no right to object.

PRACTICE.

Pennsylvania lawyers will be interested to note the case of *Van Sciver* v. *McPherson,* 49 Atl. 74, in which the Supreme Court of that state holds that the late rule requiring a concise statement of the question involved in no case to exceed half a page, is mandatory and its violation renders the appeal liable to dismissal. This warning, the court says, is "intended to admonish the profession that the rule will be strictly adhered to and enforced."

Statement of Question Involved

RAILROADS.

The Supreme Court of North Carolina holds in *Perry* v. *Western North Carolina R. Co.,* 39 S. E. 27, that a railroad leasing its road to another company is liable for injuries caused by the lessee's negligence in the operation of the road, in the absence of any evidence showing a release from such liability. A common carrier, it is said, chartered by the state assumes certain obligations to the public of which it cannot absolve itself by its own act. It is therefore primarily liable for all injuries caused by the negligent management of its road.

Lease

RESULTING TRUSTS.

In *Haney* v. *Legg,* 30 Southern, 34, a rather familiar state of facts appears. A husband purchased property in part with funds belonging to his wife, and took the deed in his own name. The Supreme Court of Alabama, following the well-established rule, holds that to the extent of his wife's money so invested, a resulting trust arose in her favor. The interesting point of the case arises upon the question of *laches,* upon which the court holds that the wife cannot be charged with negligence in not inspecting the records of the conveyance for the purpose of ascertaining to whom it was made.

Inspection of Record

SPECIFIC PERFORMANCE.

A contract agreed that the claimants to the waters of a certain stream should own and use them equally, one-third each, and that a party thereto violating the same should pay the party injured the sum of one thousand dollars. One of the parties sold the land to which the water right was appurtenant to B., who

Enforcement Against Assignee

SPECIFIC PERFORMANCE (Continued).

did not assume the obligations of the contract. The Supreme Court of Idaho holds that specific performance of the contract cannot be decreed: *Daly* v. *Josslyn*, 65 Pac. 442.

STREET RAILROADS.

With one judge dissenting, the Supreme Court of New Jersey holds in *Mayor, etc., of City of Newark* v. *State Board of Taxation*, 49 Atl. 525, that a street railway company in that state had such an interest in the soil of the highways over which it passes as to be taxable as real estate. The dissenting judge, Judge Garrison, thus states the difference between himself and the majority: "The position taken by the opinion is that the trustee (the municipal entity), by permitting one of the public to make a special use of the common right, parts with whatever legal estate is necessary, to support such separate easement; whereas my view is that the trustee permits such use as part of the administration of its trust, and to that end it must retain its legal estate." It is interesting to compare on this question as to the extent of a railroad's interest in the land over which its tracks are laid, the recent Pennsylvania case of *Speese* v. *Schuylkill River East Side R. R. Co.*, 48 L. I. 382, 10 Dist. R. 515.

Interest in Land

TRUSTS.

A testator devised his estate to certain trustees "to expend" in their discretion, and in such sums and at such times as might seem to them advisable the "income" thereof for the benefit of the poor in the state, and for charitable and educational purposes therein. In *Haynes* v. *Carr*, 49 Atl. 638, the Supreme Court of New Hampshire holds that under these circumstances the trustees were vested with a discretion only as to details of executing the trust, and were not given the power to expend the income or not, as they might chose. The indefiniteness of the beneficiaries, and their consequent inability to enforce the trust does not, the court decides, affect its validity. In such cases, it is said, it is the *duty of the public* to enforce it through the proper public officers.

Discretion of Trustees