PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ATTORNEYS-AT-LAW.

Counseling Disobedience of an Order of Court

The United States Circuit Court of Appeals (Ninth Circuit), in the case of *Anderson* v. *Comptors,* 109 Fed. 971, considers the question of what advice an attorney is justified in giving where the court has made an order upon his client, and it is held that an attorney has the right to advise his client as to the validity of an order of court, or of a writ issued under its authority which affects the client's interests; and his advice to the effect that such order or writ is illegal and void, if given in good faith, will not render him liable for contempt because of an error in judgment. But he is guilty of contempt if he goes beyond the right to *advise in matter* of law, and actuated by a spirit of resistance, counsels or conspires with his client or others to disobey an order of court and obstruct its enforcement.

BANKRUPTCY.

Exemptions

The statute law of Arkansas permits a debtor, who is married or the head of a family, to select and hold as exempt "specific articles" not exceeding in value the sum of five hundred dollars. *In re Falconer,* 110 Fed. 111, the United States Circuit Court of Appeals (Eighth Circuit), holds that under this statute a bankrupt who is a married man may claim his exemption in money as well as in property; and where, at the time of filing his schedule, he claims articles of property of less value than five hundred dollars, he may amend such schedule, so as to include a sum of money subsequently surrendered to the trustee by a creditor, as the proceeds of property transferred to him by the bankrupt and constituting a preference, and may at the same time claim the remainder of his exemption therefrom. Sanborn, Circuit Judge, writes a strong dissenting opinion.

BUILDING AND LOAN ASSOCIATIONS.

In *Coltrane* v. *Baltimore Building and Loan Ass'n,* 110 Fed. 281, the United States Circuit Court (District of Maryland), holds that holders of full-paid stock issued by a building association as authorized by its by-laws, who have received interest on the same at a fixed rate as provided by its terms, and had the right to withdraw upon giving a stated notice, and the right, equally with holders of installment stock, to vote and to participate in the management of the association, are stockholders and not creditors, and, on the winding up of the association in insolvency were entitled to no preference in payment over the holders of the installment stock.

Full Paid Stock

CARRIERS.

A provision in a ticket, issued by an English steamship company to a passenger in the United States, for passage from an American to an English port, that the contract shall be governed by the English law, is ineffectual to render valid a stipulation exempting the company from liability for the negligence of its servants in respect to the pasenger's luggage, since this is held to be contrary to the public policy of the United States: United States District Court (District of Massachusetts) in *The New England,* 110 Fed. 415.

Law Governing Contract

CONTRACTS.

The Court of Appeals of Kentucky holds in *Southern Ry. Co.* v. *Marshall,* 64 S. W. 418, that where a funeral party was delayed in returning home by a carrier's failure to comply with its contract to hold a train for them, any one of the party, without joining the others, may maintain an action to recover damages for the delay, though the contract was made with them jointly. The court refers to *Baughman* v. *Railroad,* 94 Ky. 150, where several persons made a contract shipping them in one car. The car was wrecked, and it was held that a several action lay by each owner to recover the damages done to his stock, for the reason that one was not interested in the stock of another. This principle is held to be applicable in this case. The damages for delay in transportation furnished a distinct cause of action in favor of each passenger delayed, since one might suffer considerable loss, and another but little, and one would have no interest in the recovery of the other.

Joint Contract, Parties

CORPORATIONS.

If capital stock in a corporation is purchased for it by its own officers without any special authority so to do, the transaction cannot be impeached by stockholders who knew of and consented to the transaction, or by the corporation or any representative thereof, if all the stockholders acquiesced in its purchase, nor by subsequent creditors: Supreme Court of Wisconsin in *Marvin* v. *Anderson,* 87 N. W. 226.

Purchase of their own Stock

The Court of Appeals of New York holds in *Shayne* v. *Evening Post Pub. Co.,* 61 N. E. 115, that if the Constitution of 1777 adopting such parts of the common law as was then the law of the colony, made the common law rule that liabilities of a corporation are extinguished by its dissolution obtain in the state, the changed conditions surrounding the creation and dissolution of corporations, and the distribution of its assets after dissolution have abrogated such rule, just as they would have rendered it inapplicable, had they existed at the time of the adoption of the Constitution. The rule of law seems undoubtedly sound as a doctrine of corporation law: its application to constitutional construction is open to greater difficulties.

Dissolution

CRIMINAL LAW.

In *State* v. *Cotts,* 39 S. E. 605, the Supreme Court of Appeals of Virginia holds that a mere business or other conversation by a juror with another person, entirely foreign to the case on trial, in the presence and hearing of the sheriff and other jurors, is reprehensible conduct, since it shows a lack of respect for the law on the part of both officer and juror participating in it, and is unseeming and reproachful in the administration of justice; but does not render a verdict, even in a case of felony, void. The court enters into a historical discussion of the required conduct of jurymen, which furnishes an interesting setting to the decision.

Misconduct of Juror

On a trial for murder, the commonwealth's attorney, in the course of his argument to the jury, had a man stand before the jury for the purpose of illustrating with an empty pistol that the shots could not have been fired as claimed by the accused. The Court of Appeals of Kentucky holds in *Herron* v. *Common-*

Illustrations before Jury

CRIMINAL LAW—Continued.

wealth, 64 S. W. 432, that it was within the discretion of the trial court to allow this, inasmuch as it did not exceed what was proper nor amount to an introduction of new evidence, but was merely an attempt to apply that already introduced.

DEED.

In *Gulf Red Cedar Co.* v. *O'Neal,* 30 Southern, 466, the Supreme Court of Alabama holds that when a deed has been fully executed and delivered, it passes the title to the grantee therein, and that this title cannot be thereafter diverted by a mere change in the deed itself, whether such change be made with or without the consent of the grantee.

Alteration

DEFECTIVE BUILDING.

Lessors of a building, not having known of a defect therein, whereby the ceiling fell, are not liable to persons present therein by license of the lessees, nor to the lessees themselves, if injured thereby: United States Circuit Court (S. D. Ohio, W. D.) in *Dyer* v. *Robinson,* 110 Fed. 99. Nor are the lessors liable therefor, it is held, by the falling of the roof from the giving way of a truss rotted at the end by water from the roof leaking about a spout passing down the wall, where the only thing giving notice thereof was the leaky condition of the roof and the stains and appearance of dampness on the outside wall, this condition having commenced long before the lease.

Liability of Lessors

EVIDENCE.

Where, on a prosecution for statutory rape on a child six years old, the child was decided to be too young to testify, the Supreme Court of California holds that it was not error to permit other witnesses to testify that immediately after the commission of the crime the child complained of what had happened: *People* v. *Figueroa,* 66 Pac. 202. The complaint is held admissible, "just as groans or other evidences of pain and suffering are received in evidence to illustrate the condition when that condition is the subject of inquiry. Of course," says the court, "any narrative of the child as to what the defendant did would not be admissible."

Complaint of Child

FRAUDULENT CONVEYANCES.

In *McLaggan* v. *Smith,* 71 N. Y. Supp. 1121, a creditor brought an action against the father of his debtor to set aside a conveyance made by the debtor to the father, as in fraud of creditors. Pending the trial, the father conveyed a small piece of property to his wife to avoid payment of any judgment which might be rendered against him. A decree was rendered for the creditor, and after sale of the property conveyed by the debtor a deficiency judgment for costs was rendered against the father. The New York Supreme Court (Special Term, Onondaga county) holds that an action is maintainable by the creditor against the father to set aside the transfer made by the father to his wife to recover the costs in the original action, though the debt had not ripened into a liability at the time of the transfer of the property.

Creditor's Suit, when maintainable

The Supreme Court of Nebraska holds in *Berry* v. *Berk,* 87 N. W. 309, that where a mortgage on real estate is given in good faith to secure an actual and bonafide indebtedness due from the mortgagor to the mortgagee, the mortgage is not rendered fraudulent *per se,* as to other creditors of the mortgagor, because there is included in the transaction a debt due another creditor, which the mortgagee, verbally or in writing, agrees to pay from the proceeds of the mortgaged property. The true inquiry, it is said, is whether the mortgage was given in good faith to secure an actual and bonafide indebtedness owing by the mortgagor.

Bona Fide Debt

GUARANTY INSURANCE.

Contracts of insurance against loss by dishonesty and incapacity of employes are coming more and more to have a recognized place in the insurance world. Of interest in this connection is the recent Canadian decision in the case of *The Western Loan and Trust Co., Ltd.* v. *The Dominion of Canada Guarantee and Accident Insurance Co.* (not yet reported) in the Superior Court of the District of Montreal, Province of Quebec. His Lordship, Justice Curran, held that misstatements by the insured as to the existing indebtedness of the employe and as to how he received and disposed of moneys entrusted to him were material breaches of warranty and voided the contract.

Warranties and Representations

GUARANTY INSURANCE (Continued).

There seems to be no doubt that the same rules in regard to warranties apply generally as in other kinds of insurance.

The decision is in line with *The Supreme Council K. of A.* v. *The Fidelity and Guaranty Co.*, 63 Fed. Rep. 59. In *Benham* v. *The United Guarantee Co.*, 7 Exch. 744 and in *Guarantee Co. of North America* v. *The Mechanics' Savings Bank*, 80 Fed. Rep. 766, the facts were construed more liberally in favor of the insured. But see also the latter case as finally decided to the contrary in the Supreme Court (January 6, 1902, not yet officially reported).

INSURANCE.

Law Governing

The United States Circuit Court of Appeals (Third Circuit) holds in *McClain* v. *Provident Sav. Life Assur. Soc, of New York*, 110, Fed. 80, that a federal court in exercising jurisdiction concurrent with the courts of a state in an action on a policy of insurance, is administering the law of the state, and is as much bound by its statute and common law and by its declared public policies as would be the state courts in a like case. The doctrine of *Swift* v. *Tyson*, is apparently not applicable: See note to *Corley* v. *Travelers' Protective Assn.*, 46 C. C. A. 287.

JUDGMENT.

Partial Assignment, Supersedeas

The Supreme Court of Washington holds in *Lewis* v. *Third St. & S. Ry. Co.*, 66 Pac. 150, that a judgment creditor, without the debtor's consent, cannot assign his interest in the judgment pending appeal, and by reserving all rights arising out of the supersedeas bond, sue thereon, since such a reservation cannot take the assignment out of the rule that the assignee alone may realize on the judgment and collateral securities.

Satisfaction, Consideration

Where the assignee of a judgment against two debtors issued execution against one of them, whom he knew could not satisfy it, but before levying thereon agreed with a third party that if one-half the judgment was paid, it would be deemed a satisfaction of the whole, and the money was paid by such third party, the agreement will be upheld, the furnishing of the money by a third person being a sufficient consideration: Supreme Court of Iowa in *Marshall* v. *Bullard*, 87 N. W. 427.

MASTER AND SERVANT.

The tendency of the courts to work out more and more definitely the duties of a master to his servants, appears again in the case of *Tracy* v. *Western Union Tel. Co.*, 110 Fed. 103, where the United States Circuit Court (W. D. Pennsylvania) holds that under the rule that it is the positive duty of a master to provide a servant with a reasonably safe place in which to work, having regard to the nature of the employment, it is the duty of a telegraph company to see that proper inspection is made of poles which its linemen are required to climb in the course of their duty; and the negligence of a foreman to whom such duty is delegated is the negligence of the company, which renders it liable for an injury to a lineman by the breaking of a decayed pole on which he was at work, the unsafe condition of which would have been discovered by efficient inspection.

Master's Duty of Inspection

RELIGIOUS SOCIETIES.

Where the trustees of a church purchased property, giving a mortgage to secure the price, the congregation, the Supreme Court of North Carolina holds, by taking possession under the purchase, ratify it, and cannot contest the validity of the mortgage on the ground of ultra vires: *Rountree* v. *Blount*, 39 S. E. 631.

Mortgages, Ultra Vires

WATERS AND WATER COURSES.

The Supreme Court of North Carolina holds in *Mizell* v. *McGowan*, 39 S. E. 729, that though a party may not direct the waters of a stream to the damage of another, he may accelerate and increase such waters, though by so doing another is damaged. This rule seems to be based on a theory of public policy. "Any other rule," says the court, "would prevent the drainage of large bodies of swamp lands of great natural fertility and capable of the highest degree of improvement, but now worse than useless. They will eventually be needed to support an ever-increasing population, and to shut them up indefinitely as the mere homes of disease is repugnant to the highest principles of public policy and of private right." A similarity to the case of *Sanderson* v. *Coal Co.* (cit.) at once suggests itself.

Change in Flow