PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ATTORNEYS.

The general employment of an attorney to defend a case is an entire contract, and if he withdraws without cause, or is discharged for justifiable reasons, before the contract is completed, he cannot maintain an action for the value of his services: Supreme Court of California in *Cahill* v. *Baird,* 70 Pac. 1061. See also *Holmes* v. *Evans,* 129 N. Y. 140. In *Walsh* v. *Shumway,* 65 Ills. 471, the court suggests the modification that the case is different "where an attorney has been retained without a specific contract," but no such restriction is made in this case or in *Moyers* v. *Graham,* 15 Lea, 60.

Right to Compensation

CARRIERS.

In *Illinois Cent. R. Co.* v. *Harris,* 32 Southern, 309, the Supreme Court of Mississippi holds that where a round-trip ticket is sold, good only for one day, it is good for a return trip on the only train returning that day, though such train is not scheduled to stop at the station of purchase. See *Head* v. *Railway Co.,* 79 Ga. 358.

Through Trains

A railroad company sold a ticket for itself and as agent of a connecting line, limiting its liability for any injury to a passenger to its own line. The Supreme Court of South Carolina holds in *Oliver* v. *Columbia, etc., R. Co.,* 43 S. E. 307, that it was, nevertheless, responsible to a passenger for an injury caused by negligence on a track of a connecting line, over which it was accustomed to run its cars for a short distance before turning them over to the connecting line, and this though the conductor moves his train under orders from the connecting line.

Limitation of Liability

CONFESSIONS.

Inducement

A promise that, if one charged with a crime will confess, he will be protected by those having him in charge against the wrath of others implicated in the crime, does not render the confession inadmissible, if otherwise voluntary: Supreme Court of Alabama in *Hunt* v. *State,* 33 Southern, 329. "The promise which will render a confession involuntary, in the eyes of the law, must have relation to the legal consequences of the offence itself. . . . The mere collateral benefit of protection from the personal violence of those who acted with him in the commission of the crime will not suffice."

CONSTITUTIONAL LAW.

Delegation of Legislative Power

In *Kennedy* v. *Mayor of Pawtucket,* 53 Atl. 317, the Supreme Court of Rhode Island holds that a statute, providing for the appointment of commissioners to divide a city into not more than seven wards, in such manner as to secure, as nearly as may be, an equal number of electors in each ward, having regard to the number of inhabitants, and to divide the wards into a convenient number of voting districts, is not unconstitutional as a delegation of legislative power; the acts to be done by the commissioners being only administrative and ministerial. See *City of Jacksonville* v. *L'Engle,* 20 Fla. 344.

Assignment of Future Wages

In Indiana the statute law prohibits the assignment of wages to become due to employes, and declares invalid any agreement whereby an employer is relieved from weekly paying to his employe his full wages. In *International Text-Book Co.* v. *Weissinger,* 65 N. E. 521, the Supreme Court of Indiana holds that in view of the importance to the state of the well-being of the wage-earners and in view of the temptations to sacrifice future earnings, the disability imposed by the act constitutes a lawful exercise of the police power, and is not in violation of the Constitution, either as an unreasonable restraint upon the liberty of the citizen, or as a deprivation of property without due process of law. See *Railroad Co.* v. *Matthews,* 174 U. S. 96.

CONSTITUTIONAL LAW (CONTINUED).

Pensions

A law granting a pension to the widow of a policeman who had died several years before its enactment is unconstitutional as an appropriation of money to private purposes: *People* v. *Partridge,* 65 N. E. 164. See also the recent case of *Mahon* v. *Board,* 171 N. Y. 263, 63 N. E. 1107.

Regulation of Sales

In *Neas* v. *Borches,* 71 S. W. 50, the Supreme Court of Tennessee holds that an act of the state providing special terms for sales in bulk of stocks of merchandise, otherwise than in the ordinary course of trade, and declaring that such sales shall be deemed fraudulent unless the parties make an inventory five days before the sale, and the purchaser makes diligent inquiry as to creditors of the seller, and gives them five days' notice of the sale, stating the cost price and the price to be paid, is a valid regulation of such business and not unconstitutional as class legislation or as depriving persons of the freedom of contract guaranteed under the interpretation of the Fourteenth Amendment to the Constitution. One judge dissents. See *Third Nat. Bank* v. *Divine Grocery Co.,* 97 Tenn. 611.

Due Process of Law, State Agencies

Trespasses on the property rights of an individual, committed by public officers or agents professedly acting under authority of a state law, but which are not only not authorized by such law, but by a fair construction of it are prohibited, cannot be imputed to the state so as to bring them within the constitutional inhibition to deprive persons of property without due process of law, and on that ground to confer jurisdiction on a federal court to grant relief: U. S. Circuit Court (S. D. New York) in *Huntington* v. *City of New York,* 118 Fed. 683. See *Chicago B. & Q. R. Co.* v. *City of Chicago,* 166 U. S. 226.

Service of Order

With two judges dissenting, the New York Supreme Court (Appellate Division, Fourth Department) holds in *Goldie* v. *Goldie,* 79 N. Y. Supp. 268, that an order to show why one should not be punished for contempt for failure to pay alimony, served on the attorney of the defendant, is void, and in violation of the provisions of the Constitution of the United States declaring that no one shall be deprived of liberty or property without due process of law. See *McComb* v. *Weaver,* 11 Hun. 271.

CONSTITUTIONAL LAW (Continued).

Compulsory Giving of Information

The Georgia Code provides in general that where goods are shipped over the lines of connecting carriers under contracts whereby the first carrier is liable only as a forwarder, and are lost, it shall be the duty of the initial or connecting carrier, upon application by the shipper, "to trace said freight and inform said applicant in writing, when, where, how and by which carrier said freight was lost, damaged or destroyed, and the names of the parties and their official positions, if any, by whom the truth of the fact set out in said information can be established. If the carrier to which application is made shall fail to trace said freight, and give said information in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged or destroyed, in the same manner, and to the same extent as if said loss, damage, or destruction occurred on its line." In *Central Ry. Co. of Georgia* v. *Murphey,* 43 S. E. 265, the Supreme Court of Georgia holds this very important statute constitutional.

CORPORATIONS.

Insolvency, Preferences, Interest

The Court of Appeals of New York holds in *People* v. *American Loan and Trust Co.,* 65 N. E. 200, that while interest is allowed, as against an insolvent corporation or it stockholders, if the assets are sufficient for that purpose, on the settlement of an insolvent corporation, where a receiver has been appointed, no interest is allowed after such appointment, as between preferred and unpreferred creditors. See also *Thomas* v. *Car Co.,* 149 N. S. 116.

COURTS.

Jurisdiction

In *Jersey City, etc., Ry. Co.* v. *New York, etc., Ry. Co.,* 53 Atl. 709, the Court of Chancery of New Jersey holds that when two railways cross each other at grade, and, being unable to agree upon proper provisions for protection against collision, submit that question to the determination of the court, it has jurisdiction to determine it.

CRIMINAL LAW.

In an indictment for larceny by a bailee, it is necessary to allege the name of the bailor, and in concise terms the pur-

Larceny by Bailee

pose or use for which the property was intrusted to the defendant; for this is an essential ultimate fact, which must be proven in order to sustain the indictment: Supreme Court of Minnesota in *State* v. *Holton,* 92 N. W. 541. See *People* v. *Poggi,* 19 Cal. 600.

DEATH BY WRONGFUL ACT.

The Ohio statutes provide that an action for injuries by wrongful death shall be brought for the exclusive benefit

Right of Action, Parties

of certain relatives of the deceased person, "and it shall be brought in the name of the personal representative of the deceased person." The father of one wrongfully killed in Ohio, being a resident of Indiana, brought suit in his own name in Indiana, claiming under the Ohio statute. In *Fabel* v. *Cleveland, etc., Ry. Co.,* 65 N. E. 929, the Appellate Court of Indiana (Division No. 2) holds that, the right of recovery being in derogation of the common law, the only party who could bring the action, whatever might be the provisions of the Indiana statute in regard to similar cases, was the personal representative, as designated in the Ohio statute. See *Usher* v. *R. R. Co.,* 126 Pa. 206.

The Supreme Court of Pennsylvania holds in *Marsh* v. *Western New York & P. Ry. Co.,* 53 Atl., 1001, that the

Assignment of Claim

right of action of a widow to recover damages for the wrongful death of her husband is one for unliquidated damages in an action sounding in tort, and may not be assigned. Since in such action, the measure of damages is strictly the pecuniary loss sustained the soundness of this decision may well be questioned. See *Quin* v. *Moore,* 15 N. Y. 432.

DOWER.

The New York Supreme Court (Appellate Division, First Department) holds in *Nichols* v. *Park,* 79 N. Y.

Equitable Interests

Supp. 547, that a husband who paid for land, but who had the title conveyed to his brother to prevent his wife's dower right attaching, had neither seisin in fact nor in law of the land, but at most a mere

DOWER (Continued).

equitable right to a conveyance which was not such seisin as would give rise to inchoate right of dower; and the mere fact that the husband went into immediate possession of the land, and continued therein until his death, did not give him the necessary seisin. It is further held, in line with these principles that where a husband contracts to take the title to land in his own name, but afterwards takes it in the name of another, his wife will have no dower right in the land, for the equitable interest which he has in the land while it is thus under contract to him is terminated by the conveyance, and it is only in such equitable interests as he has at his death that she can claim dower. See *Clybourn* v. *Railway Co.*, 4 Ills. App. 463, and *Douglas* v. *Douglas,* 11 Hun. 406.

EMINENT DOMAIN.

Right of Way, Railroads

The Supreme Court of Kansas holds in *Atchison, etc., Ry. Co.* v. *Kansas City, etc., Ry. Co.*, 70 Pac. 939, that one railway corporation may, under the general statutes of eminent domain, condemn for its right of way real estate belonging to another railway corporation not in actual and necessary use for railway purposes. "The mere fact that land is owned by one railroad company does not forbid its acquisition by another. Exclusiveness of right must depend upon reasonable requisiteness."

EVIDENCE.

Declarations of Person Since Deceased

The New York Supreme Court (Appellate Division, Fourth Department) holds in *Johnson* v. *Cole,* 78 N. Y. Supp. 489, that detached declarations of a parent subsequent to transfers of property to his children are not admissible after his death to show that the transfers were gifts, and not advancements; he having no such interest in the question as to make his declarations against interest. But see in opposition to this view *Gunn* v. *Thurston,* 130 Mo. 654.

Similar Facts

How far evidence may be given of occurrences similar to the occurrence in question is frequently somewhat difficult to decide. If it is relevant evidence it is so, it seems, for some other purpose than to show the *happening* of the occurrence in question. Thus

EVIDENCE (Continued).

in *DuBois* v. *People,* 65 N. E. 658, the Supreme Court of Illinois holds that where A. is alleged to have been a party to a certain "confidence game," evidence may be given of other like transactions in which he took the part of the principal actor, in order to show *guilty knowledge* on his part. See *Cook* v. *Moore,* 11 Cush. 213.

EXCAVATIONS.

Injury to Neighboring Land

The Court of Chancery of New Jersey holds in *Murray* v. *Pannaci,* 53 Atl. 595, that where it appears that the excavation of sand from a portion of the seashore by the owner thereof will, by the law of gravitation, and by wave motion, result in the removal of adjoining soil of another, and that such latter removal will expose the land of a third party to the action of the waves, the third party is entitled to an injunction restraining the excavation. See *Attorney-General* v. *Tomline,* 12 Ch. Div. 214, and *Com.* v. *Alger,* 7 Cush. 53.

FEDERAL COURTS.

Removal of Causes

In *Berry* v. *St. Louis & S. F. R. Co.,* 118 Fed. 911, it appeared that the plaintiff had sued two defendants on a joint and several liability, one residing in the same state, and the other a non-resident. No process was served on the resident defendant, and, the cause being called for trial, the non-resident defendant appeared, and moved that the plaintiff be required to elect whether she would dismiss as to the resident defendant or continue the cause for service. She declined to do either, but requested that the cause proceed to trial as to the non-resident defendant; whereupon such defendant presented its petition for removal to the federal court. Under these facts the U. S. Circuit Court (D. Kansas, First Division) holds that the plaintiff's election to proceed to trial against the non-resident defendant alone operated as a severance of the controversy, and entitled the non-resident defendant to remove the cause. See notes to *Robbins* v. *Ellenbogen,* 18 C. C. A. 86, and *Mecke* v. *Mineral Co.,* 35 C. C. A. 155.

FRAUDULENT CONVEYANCE.

In an action to set aside a deed as in fraud of creditors of the grantee's husband, it appeared that a third party, holding the land as security for a debt from the husband, and wishing to make a gift to the wife, conveyed it, with the husband's consent, to the wife, and afterwards, and as a part of the same transaction, cancelled the indebtedness of the husband. Under these circumstances the Supreme Judicial Court of Massachusetts holds in *Blossom* v. *Negus,* 65 N. E. 846, that the conveyance was not subject to be set aside as a voluntary conveyance from a trustee of the husband, to the wife. See *Lynde* v. *McGregor,* 13 Allen, 182.

Husband and Wife

GIFTS.

In *Ranney* v. *Bowery Sav. Bank,* 79 N. Y. Supp. 487, the New York Supreme Court (Appellate Term) holds that a rule of a savings bank forbidding any gift of a deposit, except by an assignment in writing, duly acknowledged, does not bind one who became a depositor after the rule was made, though she had agreed that notices as to deposits should be deemed and taken as personal notices, and though the rule had been posted in the bank for many years before her death.

Savings-Bank Deposit

GIFTS MORTIS CAUSA.

In *Blazo* v. *Cochrane,* 53 Atl. 1026, the Supreme Court of New Hampshire holds that where one who had taken poison with the intent of committing suicide, after antidotes had been administered, stated to the physician that if the poison did not kill him, he had something which would, and that he was not going to live any longer, and gave the physician a package containing an unindorsed note and money, telling him to deliver it to the claimant, and after the physician had gone, such person took nitric acid, which killed him, a finding that the gift *mortis causa* was conditional on his dying of the peril then existing, and therefore ineffectual, was justified. "While it is not a legal requisite that he should die of the disease or peril from which he apprehends death, he must not recover from it, and his death must result from a disease or peril existing at the time the gift was made." See also *Cutting* v. *Gilman,* 41 N. H. 147.

Ensuing Death

HUSBAND AND WIFE.

With two judges dissenting the Court of Appeals of New York holds in *Servis* v. *Servis,* 65 N. E. 270, that in an action by a wife against her husband's parents for alienating his affections and inducing him to abandon her, where there was evidence from which it appeared that his affections were alienated before the acts of the defendants which were charged to have caused the alienation, it was error to refuse to instruct that if at the time the plaintiff's husband abandoned her he had no affection for her, or if it had been previously alienated, she could not recover.

Alienation of Affections

In *Potter* v. *Skiles,* 71 S. W. 627, the Court of Appeals of Kentucky holds that where, after a debtor's land was sold on execution, he conveyed his equity of redemption to one who redeemed from the sale, and, in order to obtain full title, procured from the debtor's wife a release of her inchoate dower, the creditors of the husband were not interested in the sum paid to her for such release, and could not require that it be applied in payment of their claims, though the amount paid her was greater than the court might deem her interest to be worth. "Of course, if it had been made to appear that Smith had conveyed his property, which otherwise would have been subject to his creditors, to a vendee, who paid the consideration to the debtor's wife nominally as dower, but as a matter of fact for the debtor's interest, the arrangement would be a fraud, and the subterfuge would not be allowed to stay the court's remedial process."

Inchoate Dower, Release

INJUNCTION.

An injunction will not be granted at the suit of the proprietors of a store to enjoin sympathizers with labor unions from picketing the store and circulating in its vicinity printed cards asking union men to keep away from it, and endeavoring to keep them and the public away by persuasion and peaceable means: New York Supreme Court (Special Term, Onondaga County) in *Foster* v. *Protective Association,* 78 N. Y. Supp. 860. Nor does the fact that a number of persons co-operated in the picketing of a store, and persuading the public to keep away from the same, render their acts illegal. See *Association* v. *Cumming,* 170 N. Y. 315. The court regards the ques-

"Picketing" Store

INJUNCTION (Continued).

tion as hitherto unsettled. Compare an article by Justice Holmes in 8 *Harvard Law Review,* 1.

INSURANCE.

Where a life policy provided that suit thereon should be brought within six months after the death of the insured, an action brought after such time is barred unless such provision has been waived. In an action on a life policy, commenced in due time, the service of summons and complaint were set aside as unauthorized. Thereafter the plaintiff brought suit, but after the expiration of the time limited for such an action. The plaintiff, three or four days after the death of the insured, had delivered to the defendant the proofs of death, together with the policy, and an assignment thereof to her which papers were thereafter retained by the defendant. In *Sullivan* v. *Prudential Ins. Co. of America,* 65 N. E. 268, the Court of Appeals of New York holds that these facts do not show a waiver of the limitations set forth in the policy. Three judges dissent.

Action, Limitation, Waiver

In *Brooks* v. *Erie Fire Ins. Co.,* 78 N. Y. Supp. 748, the New York Supreme Court (Appellate Division, Third Department) holds that the condition of a policy that the interest of the insured be that of an unconditional and sole owner, and that he own the land in fee simple, is waived, the insurer's agent being informed that the insured's interest is but that of a vendee in possession, though the insured makes a false representation as to who holds the property. This misrepresentation it is held does not prevent the waiver, whatever operation it may have as an independent defence or as ground for a separate action for damages. One judge dissents. See *Robbins* v. *Insurance Co.,* 149 N. Y. 477.

Condition as to Ownership, Waiver

LANDLORD AND TENANT.

In *Nason* v. *Tobey,* 65 N. E. 389, the Supreme Judicial Court of Massachusetts holds that while the landlord is entitled to manure made on the farm in the ordinary course of husbandry, where a large part of the manure made was the product of feed not grown on the farm, but purchased by the tenant, the latter was

Right to Manure

LANDLORD AND TENANT (Continued).

entitled to a proportionate part of the manure. Compare *Lewis* v. *Lyman,* 22 Pick. 437, 442.

LICENSEE.

The Supreme Court of Illinois holds in *Illinois Cent. R. Co.* v. *Hopkins,* 65 N. E. 656, that evidence that the plaintiff had for eight years carried meals to mail clerks on the defendant's railroad cars under an agreement with the clerks and with the knowledge and consent of the defendant, authorized the jury to find that the plaintiff, in carrying the meals, was on the defendant's premises on its implied invitation in a matter in which *it was interested,* and the plaintiff was not a mere licensee to whom the defendant owed no duty other than not to injure her wantonly. "To come under an implied invitation, as distinguished from a mere license, the visitor must come for a purpose connected with the business in which the occupant is engaged, or which he permits to be carried on there. There must be same mutuality of interest in the subject to which the visitor's business relates, although the particular thing which is the subject of the visit may not be for the benefit of the occupant." *Plummer* v. *Dill,* 156 Mass. 426.

What Constitutes

RECEIVERS.

Where, pending proceedings for the appointment of a receiver, one who is largely interested in the continuance of the debtor's business, and also creditor to a large amount, agrees with the debtor that if he will recommend his appointment as receiver, and he is appointed, he will act without compensation, and the debtor and other creditors relying on such agreement, consent to such appointment, no compensation should be allowed the receiver, though claimed in his final report: Appellate Court of Indiana (Division No. 2), in *Polk* v. *Johnson,* 65 N. E. 536.

Compensation, Receiver, Consideration

RELIGIOUS SOCIETIES.

The Supreme Court of Nebraska holds in *Bonacum* v. *Harrington,* 91 N. W. 886, that the courts will not review the judgments or acts of the governing authorities of a religious organization with reference to its internal affairs for the purpose of ascertaining their regu-

Supervision of Courts

RELIGIOUS SOCIETIES (Continued).

larity or accordance with the discipline and usages of such organization. See *Pounder* v. *Ashe,* 63 N. W. 886. But when the governing body of such an organization has deprived one of its clergymen of his authority to officiate as such, he may be enjoined from making use of church property in that capacity, or under color of the functions of which he has been deprived.

SAVINGS BANKS.

Payment of Deposit, By-Law

The by-laws of a savings bank provided, as is generally the case in these institutions, that the institution would not be responsible for loss, where a depositor had not given notice that his pass-book had been lost or stolen, if the deposit should have been paid on presentation of the book. In *Kingsley* v. *Whitman Savings Bank,* 65 N. E. 161, where the bank sought to rely on this by-law to escape liability, the Supreme Judicial Court of Massachusetts holds that, where a bank paid money to one presenting the pass-book, and forged orders purporting to be signed by the depositor, the by-law afforded the bank no defence, as it authorized a payment to one falsely personating the depositor. See and compare *Levy* v. *Bank,* 117 Mass. 448.

SCHOOL TRUSTEES.

Interest in Contracts

The statutes of Idaho provide that a school trustee shall not be pecuniarily interested in any contract made by the board of which he is a member, and that any contract made in violation of this provision shall be void. This statutory enactment finds its counterpart in the legislation of most of the states, and this fact lends more than local interest to the decision of the Supreme Court of Idaho in *Nuckols* v. *Lyle,* 70 Pac. 401, where it is held that a contract made with the wife of one member of the board of trustees, employing her to teach in the school over which such board has supervision is contrary to public policy, and is void by the terms of the statute. It is further said that the administrative act of the board in entering into this contract could *not* be reviewed, but payments made under the contract, it being void, could be enjoined in an action com-

SCHOOL TRUSTEES (Continued).

menced by *any taxpayer* of the school district. See *Adleman* v. *Pierce,* 55 Pac. 658.

SURETY.

In *Sullivan* v. *McLane,* 70 S. W. 949, the Supreme Court of Texas holds that a surety liable on a note secured on land of the principal, and against whom judgment has been rendered on the note, in purchasing at the foreclosure of the lien, he paying the amount of his bid, and also the balance of the judgment, is a purchaser for value.

Purchaser for Value

TAXATION.

In *Yates* v. *Royal Ins. Co.,* 65 N. E. 726, the Supreme Court of Illinois holds that the mere fact that a statute under which taxes are paid is subsequently held unconstitutional, and for that reason that the taxes paid were illegally imposed, is not sufficient to authorize an action to recover back the amount paid. See *Elston* v. *City of Chicago,* 40 Ills. 518.

Unconstitutionality of Levy

TELEGRAPH COMPANIES.

A telegram was sent subject to the stipulation very frequently made that the company would not be liable for damages unless a written claim was presented within ninety days from the filing of the message. In *Phillips* v. *Western Union Telegraph Co.,* 69 S. W. 997, it is held that this stipulation is sufficiently complied with by a suit being brought for damages for failure to deliver the telegram, and a citation filed on the company within ninety days from the filing of the message.

Damages, Written Notice

TROVER.

In *Anderson* v. *Besser,* 91 N. W. 737, the Supreme Court of Michigan holds that in trover for timber cut by a trespasser in good faith under belief of title, the measure of damages is the value at the time of conversion, *less* the amount added to its value. Compare in connection with this case, decisions bearing upon similar facts in reference to the mining of coal: *Wood* v. *Morewood,* 3 Q. B. 440, note; and *Morgan* v. *Powell,* 3 Q. B. 278.

Cutting Timber, Damages

TROVER (Continued).

In *Wilcox* v. *Morten*, 92 N. W. 777, it appeared that the defendants had been induced by means of the plaintiff's fraudulent representations to trade their hardware stock for land, and discovering the fact that they had been deceived, seized the stock for the purpose of rescinding the trade. The seizure was made on Saturday and on the following Monday they tendered to the plaintiff a deed of the land. Under these facts the Supreme Court of Michigan holds, in an action of trover, thereafter brought, that, the defendants having completed the rescission, the stock ceased to be the plaintiff's property, and, therefore, though there was a technical conversion of the stock before the tendering of the deed, the plaintiff was entitled to recover, if at all, only nominal damages, so that a judgment for the defendants would not be set aside. Compare *Johnson* v. *Stear*, 15 C. B. N. S. 330, and *Donald* v. *Suckling*, L. R. 1 Q. B. 585.

Technical Conversion, Damages

TRUSTS.

A wife opened an account in a savings bank in her own name, in trust for her husband, but before her death she drew out the whole amount. There was no evidence that she ever informed her husband of the account, or made any declaration in regard to it. The New York Supreme Court (Appellate Division, Second Department) holds that a trust for the benefit of the husband was shown: *Jenkins* v. *Baker*, 78 N. Y. Supp. 1074. The court refuses to regard it necessary that the depositor die leaving the fund existing, which has generally been the fact in cases similar to this one. Compare *Cunningham* v. *Davenport*, 147 N. Y. 43, and *Martin* v. *Funk*, 75 N. Y. 134.

Deposit in Bank

WILLS.

Under a will giving to various persons shares of stock in a corporation,—36 shares in all,—while the testator owned at the date of the will only 31 shares, and at his death 25 shares, the residuary gift being, "all the rest residue and remainder of my estate," the legacies of stock are held to be general legacies,

Bequest of Stock not Owned

WILLS (Continued).

so that the executor will be required to make up the deficit by purchase: *Slade* v. *Talbot,* 65 N. E. 374. Compare the case of *Johnson* v. *Goss,* 128 Mass. 433.

Revocation

The New York Supreme Court (Appellate Division, Fourth Department) holds *In re Dake's Will,* 78 N. Y. Supp. 29, that a declaration by testator that a later will, not produced, revoked his former wills, did not furnish sufficient evidence of its contents to comply with the rule that a former will cannot be revoked except by another will declaring such revocation, or thoroughly contradictory with the first one. "Even if it should be held that the statement of the testator as to the contents of his will was proper proof, we should hold that the declaration in this case claimed to have been made was nothing more than the expression by the testator of his opinion as to the legal effect of his later act. 1 Jarm. Wills (5th Ed.), p. 338; *In re Williams' Will,* 34 Misc. Rep. 748, 70 N. Y. Supp. 1055."

Life Estate

A method of giving a life estate and at the same time a power to use the principal is sustained by a divided court in *Podaril* v. *Clark,* 91 N. W. 1091. In that case a will conveyed to the testator's wife all his property "for her natural lifetime," and recited in an independent clause immediately following that he further gave her the privilege to sell or convey the same to whomsoever she might "see or think best" during her lifetime. The Supreme Court of Iowa holds that, since the disposition of the life estate and the power to convey were contained in independent clauses, the power did not enlarge the life estate into a fee, nor limit the widow to a conveyance of her life estate only, but that the widow was given a life estate, and, in addition, the power to convey the fee, provided she exercised the same during her lifetime. See I Jarman, Wills (4th Ed.), 362-364; *Taft* v. *Taft,* 130 Mass. 461.

Cancellation, Expert Evidence

In the matter of the probate of a will, the question involved was whether the testator's signature thereto was cancelled by him, for the purpose of revoking the will, by drawing fourteen nearly perpendicular marks across the letters of his signature. *In re Hopkins' Will,* 65 N. E. 175, the Court of Appeals of New York holds that an expert in handwriting could not testify

WILLS (Continued).

that such marks were not made by the same person who wrote the signature to the will, from an examination of the signature of the testator appearing on the will. The ground of the decision is that such marks do not constitute "writings" within the meaning of the statute permitting the comparison of writings by experts. The general similarity of statutes on this subject renders probable the adoption of this construction of the statute. Compare the case of *Lansing* v. *Russell,* 3 Barb. Ch. 325, where experts were allowed to testify their opinion of the genuineness of a mark, made by a person in place of a signature. This latter case is held not applicable to the case in hand.

Contract to Devise

An uncle *verbally* agreed with his nephew, a boy of fourteen, and with the boy's mother and guardian, that if the boy would accompany him, the uncle, from Ireland, to the uncle's American home, and there assist him, and accept his care and instruction, he would treat him as a son and will to him all his property. For seventeen years the boy faithfully fulfilled his agreement, but the uncle died intestate, without any rights in innocent third parties intervening. Under these facts the Supreme Court of California holds in *McCabe* v. *Healy,* 70 Pac. 1008, that the nephew was equitably entitled to the estate subject only to administration. See, however, *Maddison* v. *Alderson,* L. R. 8 App. Cas. 467, where the facts were very similar, but a different decision was reached. The principle upon which the court proceeds in the case in hand is thus stated by Pomeroy (Specific Performance, p. 268): "Courts of equity will, under special circumstances, enforce a contract to make a will, or to make a certain testamentary disposition; and this may be done even when the agreement was parol, where, in reliance upon the contract, the promisee has changed his condition and relations so that a refusal to complete the agreement would be a fraud upon him." The relief is not in the nature of ordering a will made, but of regarding the property as impressed with a trust. One judge dissents on the ground that the plaintiff can be compensated by the value of his services. "There is nothing," he says, "in the nature of such services to justify the conclusion or inference that they cannot be compensated for in money."

WITNESSES.

Competency

It is generally provided by statute in the various states that to the general rule that husband and wife are not permitted to testify against each other, there is the exception that they may so testify in the case of violence attempted, done or threatened by the one upon the other. California has legislation providing substantially as indicated. In *People* v. *Curiale,* 70 Pac. 468, the Supreme Court of that state holds that violence before marriage is not within the exception, but that they are still incompetent to testify in regard to it. See *State* v. *Evans,* 138 Mo. 116. In this latter case the court reaches the result upon a very technical basis: "A wife is only admitted to testify concerning criminal injuries to herself, a wife; not to a woman who was not, at the time of the injury, the wife of the defendant."

Transaction with Deceased Person

The Supreme Court of Florida holds in *Chapin* v. *Mitchell,* 32 Southern, 875, that the law prohibiting a party to an action or proceeding, or person interested in the event, from testifying as a witness in regard to any transaction or communication between such witness and a person at the time of such examination deceased, insane or lunatic, does not prohibit the admission in evidence in favor of either party of the shop books and books of account of either party, in which the charges and entries shall have been originally made. Nor, it is said, does it prohibit the introduction in evidence of the suppletory oath of the party in connection with such books of account, to the effect that the articles charged therein were delivered, or the items of labor and services therein charged were actually performed, and that the entries were made at or about the time of the transaction, and are the original entries, and that the charges have not been paid.