PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADVERSE POSSESSION.

In *Flewellen* v. *Randall,* 74 S. W. 49, the Court of Civil Appeals of Texas holds that the naked possession of land, to give the occupant title by adverse possession, must be adverse to the entire world, including the supposed owner; and, if it be not adverse as to him, title will not be acquired, though it afterward appear that the supposed owner had no title. Compare *Converse* v. *Ringer,* 24 S. W. 705.

Sufficiency

ATTORNEY AND CLIENT.

In *Shuck* v. *Pfenninghausen,* 74 S. W. 381, the Court of Appeals, at St. Louis, Mo., holds that an attorney, in the absence of his client, when necessary, can advance legal costs and look to his client for reimbursement. The principle upon which the court so decides is that this is within the implied authority of an attorney, since "it is every-day practice for an attorney in the absence of his client, when it is necessary for the prosecution of the suit in hand, to advance legal costs for his client."

Action for Services

BANKS.

In *Little's Administrator* v. *City National Bank of Fulton,* 74 S. W. 699, the Court of Appeals of Kentucky holds that where a decedent had money on deposit in a bank at the time of his death, and the bank held a note against him for a less amount, which matured the day after his death, it was entitled to set off the amount of the note against the deposit, and to pay the decedent's administrator the difference. See also *Matthewson* v. *Strafford,* 45 N. H. 108.

Deposits: Set off

BIGAMY.

A perfectly logical holding, and yet one which on its face seems somewhat anomalous, appears in *Lane* v. *State,* 34 So. 353, where the Supreme Court of Mississippi holds that it is a defence to an indictment for bigamy that there was a prior lawful marriage still existing previous to the first one alleged in the indictment, rendering it void. Apparently, therefore, it is safer to be married three times than only twice.

Defence

CARRIERS.

The twofold aspect of the bill of lading appears in a somewhat new phase in *Texas & P. R. Co.* v. *Kelly,* 74 S. W. 343, where the Court of Civil Appeals of Texas holds that a final carrier, having accepted a shipment for transportation from an initial carrier under a bill of lading issued by the initial carrier, is bound by such bill in so far as the same is a contract for carriage, but is not bound by the admissions contained therein in so far as such bill is a receipt for the goods shipped. See *Evans* v. *Ry.,* 56 Ga. 498.

Bill of Lading

Although the responsibility of a railroad for safe transportation of the passengers on a freight train is not restricted or lessened and the same degree of care is required in the management of such a train when carrying passengers as in the operation of a train exclusively for passenger service, yet a passenger on a freight train is charged with knowledge of and assumes the risks inherent in that mode of travel. Court of Appeals at St. Louis, Mo., in *Portucheck* v. *Wabash R. R. Co.,* 74 S. W. 368. See, in connection with this case, however, *Indianapolis Railroad Co.* v. *Horst,* 93 U. S. 296.

Passengers on Freight Trains

The recurring question as to which of two causes operative in bringing about a loss shall be deemed the proximate cause, is considered in the case of *Hunt Bros.* v. *Mo. K. & T. Ry. Co. of Texas,* 74 S. W. 69. In that case it appeared that wheat shipped by complainant through the defendant railroad was damaged and a part of it totally destroyed in an unprecedented storm, which occurred while the wheat was still in the possession of the railroad company. The railroad had been guilty of negligence in failing to place the wheat on the proper

Negligence: Concurring Cause

CARRIERS (Continued).

elevator tracks promptly, so that it could be unloaded, and in other ways, and but for its negligence the cars would probably have been unloaded when the storm occurred. Under these facts the Court of Civil Appeals of Texas holds that the storm was the proximate and the company's negligence the remote, cause of the injury to the wheat and the company was not liable.

CHECKS.

The well-settled rule that a check payable to the order of a fictitious person is payable to bearer is held by the Supreme Court of Michigan not to apply to the case where a check was executed by drawing a line through the blank for the insertion of the name of the payee. The court decides that such a check is not payable to bearer or to an impersonal payee, but is void for want of a payee. Two judges dissent. *Gordon* v. *Lansing State Savings Bank,* 94 N. W. 741. Compare *McIntosh* v. *Lytle,* 26 Minn. 336.

Payee

CONFESSIONS.

The general rule that a confession is, by itself, not sufficient to establish the guilt of a prisoner seems well settled. The Supreme Court of Missouri recognizing this rule holds, in *State* v. *Coats,* 74 S. W. 864, that to warrant a conviction, the body of the crime need not be absolutely proven independent of the confession, but if with the extrajudicial confession such other facts and circumstances are given in evidence fully corroborating the confession as to the *corpus delicti,* this is enough.

Corpus Delicti

CONSTITUTIONAL LAW.

A statute of Mississippi, passed in 1898, provided that every employee of any corporation should have the same rights and remedies for an injury suffered by him from an act or omission of the corporation or its employees as are allowed by law to other persons not employees, where the injury results from the negligence of a superior agent or officer or of a person having a right to control or direct the services of the party injured, and also when the injury results from the negligence of a fellow-

Employers' Liability Act

CONSTITUTIONAL LAW (Continued).

servant and that knowledge of defective appliances and so on shall constitute no defence. The Supreme Court of the state, dealing with this statute, holds in *Ballard* v. *Miss. Cotton Oil Company,* 34 So. 533, that the act is unconstitutional, since it imposes restrictions on all corporations without reference to any differences arising out of the nature of their business not imposed on natural persons, and, therefore, denies corporations the equal protection of the law. This case presents a thorough discussion of the authorities and principles involved.

CONTRACTS.

Acceptance by Mail: Right of Recall

The question has frequently been mooted, whether the rule of law that a contract is closed when a letter accepting an offer is deposited in the mail box, is based upon the general course of business, or the implied permission to accept in that manner when the offer is made by mail. This question is at issue in *Scottish-American Mortgage Company* v. *Davis,* 74 S. W. 17, where the following facts appear: The defendant submitted a proposition in writing for a sale of land to the plaintiff as its agent to be submitted by him to a proposed purchaser, who rejected the same and returned it in a modified form to the defendant. The defendant, in turn, added other terms and returned it to the plaintiff to be again submitted to the purchaser. Sometime later, the purchaser informed a friend that he would accept the proposition and authorized him to so advise the plaintiff, who immediately wired and wrote his acceptance to the defendant. The purchaser at the same time deposited a letter in the mails addressed to the defendant, notifying it of his acceptance, but intercepted the same by wire before delivery. The Supreme Court of Texas holds that since the defendant's proposition had not been submitted to the purchaser through the mails, *he had not implied authority* to accept by mail except by actual delivery of his acceptance, and the letter deposited in the mails by the purchaser did not constitute a binding acceptance on him, but he was at liberty to withdraw the same at any time before its delivery to the defendant. See, on the general questions involved, *Dunlop* v. *Higgins,* 1 H. L. C. 397.

CONTRACTS (Continued).

In *Hubbard* v. *Freiburger,* 94 N. W. 727, the facts were as follows. A paper read: "Return this coupon to —— dealer in buggies," etc., "with $15, for which he will deliver to you a book with four of these coupons. Sell these for $3.75 each, thereby getting your money back. Each of those to whom you sell a coupon sends to me, purchasing a book for themselves. When your four coupons have been sent in . . . I have received $60 and you will be entitled to $60 worth of merchandise at my store and it costs you but $3.75 and a few hours' work selling the coupons. The right to redeem all coupons at any time is hereby reserved and . . . parties holding them shall be allowed the full value on the purchase price of any article in my establishment. . . . Coupons will not be redeemable in any other manner than as above specified." This contract, which finds its counterpart in many so-called business transactions of the day, is held to be invalid as against public policy, the Supreme Court of Michigan regarding it as on its face a contract impossible of performance ultimately. See *McNamara* v. *Gargett,* 68 Mich. 454.

Public Policy

DEAD BODIES.

The law with relation to rights in connection with dead bodies presents a number of important phases. One of these is dealt with in *Hockenhammer* v. *Lexington & Eastern Railroad Co.,* 74 S. W. 222. The Court of Appeals of Kentucky there holds that while there is a legal right in the bodies of the dead which the courts will recognize and protect, there can be no recovery for mental anguish caused by the dead body of a relative being thrown from a wagon by the negligent operation of a railroad train in the absence of any injury to the body. The opinion presents a careful discussion of the case and a valuable collection of authorities.

Collision with Train: Damages

EQUITY.

The Supreme Court of Appeals of West Virginia, in *Haskell* v. *Sutton,* 44 S. E. 533, holds that where a person enters upon land without authority under a void lease and drills thereon, and takes petroleum oil therefrom and removes the same from the premises and threatens to drill other wells and to take the oil produced

Jurisdiction

EQUITY (Continued).

therefrom, a court of equity will perpetually enjoin him from all operations under said void lease, will cancel said lease and retain the cause for all purposes and proceed to a final determination of all the matters at issue therein, although the plaintiffs may have a remedy at law against the wrongdoer for the trespass. One judge dissents, and the opinion of the dissenting judge and of the majority of the court present an excellent discussion of the question at issue.

EVIDENCE.

Similar Facts

In a prosecution for aggravated assault, the defence was that if the prosecutor when he fired the shot was wantonly firing at the defendant's mother's dog, or if the defendant believed that he and his mother were in danger of their lives or bodily injury, he had a right to shoot. Evidence was offered that the prosecutor had previously shot a dog belonging to the defendant's mother and had been forbidden to come on the premises. The Court of Criminal Appeals of Texas holds in *Coleman* v. *State*, 74 S. W. 24, that this evidence should have been admitted as tending to shed light on the defendant's conduct from his standpoint.

EXECUTORS AND ADMINISTRATORS.

Limitations

With two judges dissenting, the Supreme Court of Appeals of West Virginia, holds in *Findley* v. *Cunningham*, 44 S. E. 472, that an executor or administrator cannot make a new promise to pay a debt of his decedent either before or after the debt has been barred by the Statute of Limitations. See *Thompson* v. *Peter*, 12 Wheat. 565.

Funds in Bank

The Supreme Court of Iowa holds in *Officer* v. *Officer*, 94 N. W. 947, that where an executor makes a general deposit of money belonging to the estate in an apparently solvent bank, neither he nor his *cestui que trust* is entitled to any preference over other creditors of the bank merely because the deposit was a trust fund to the knowledge of the bank.

FRAUDULENT CONVEYANCE.

The voluntary conveyance by one against whom there is a pending suit, of all his property to his wife and children, is fraudulent and void as to the plaintiff in the suit, no matter what may have been the intent of the grantor: Court of Appeals of St. Louis, Mo., in *McCollum* v. *Crain*, 74 S. W. 650. Nor does it make any difference that the suit is an action in tort. Compare with this case, however, the English case of *Ex parte Mercer*, 17 Q. B. D. 290, where a man made a conveyance immediately upon the beginning against himself of an action for breach of promise of marriage, and the court held that the conveyance was not fraudulent. It will be remembered that in many aspects the action for breach of promise of marriage closely resembles a tort action.

Intent of Grantor: Tort Action

INSANITY.

The Supreme Court of Appeals of West Virginia holds in *Ward* v. *Brown*, 44 S. E. 488, that evidence of physicians as to testamentary capacity is entitled to greater weight than that of non-professional persons, provided they have had personal observation and knowledge of the person whose mental capacity is in question; otherwise it is not. Compare *Jarrett* v. *Jarrett*, 11 W. Va. 584. The case is a valuable case upon this question.

Expert Witnesses

INSURANCE.

In *Galvin* v. *Union Central Life Insurance Company*, 74 S. W. 275, it appeared that the defendant insurance company issued a policy on the life of the plaintiff's mother, stipulating that the failure to pay any notes for premiums on the date they became due should void the policy. At the time the application was made the plaintiff's decedent offered to pay the first year's premium, but the defendant's agent took her husband's note instead without any conditions. The receipt was delivered with the policy, stating that the first premium had been paid and stipulating that it was subject to the conditions of note given for premiums. Under these facts the Court of Appeals of Kentucky holds that as the note was given by a third person, a failure to pay it when due did not forfeit the policy. See also the case of *Moreland* v. *Union Central Life Insurance Company*, 104 Ky. 129.

Premiums: Notes: Forfeiture

LANDLORD AND TENANT.

Destruction of Building

The Supreme Court of Wisconsin holds in *American Bicycle Company* v. *Hoyt*, 95 N. W. 92, that a lessee under a lease which provides that in case any buildings on the premises shall without any fault of the lessee be destroyed or be so injured by fire or other cause as to be untenantable, the lessee shall not be liable to pay rent "until the same are rebuilt or repaired or he may thereupon quit and surrender possession of the premises," who remains in possession of the premises after the destruction by fire, without his fault, of one of the buildings of the premises, is not bound to pay rent until the lessor replaces the destroyed building.

Dangerous Premises

The same court holds in *Atwill* v. *Blatz*, 95 N. W. 99, that where snow has been negligently allowed to collect on the roof of a building and it falls therefrom on a pedestrian on the sidewalk, the tenant of the building and not the landlord is liable.

MASTER AND SERVANT.

Assumption of Risk

In *Noe* v. *Rapid Ry. Co.*, 94 N. W. 743, the Supreme Court of Michigan holds against the dissent of two judges that an employee of an electric railway company, who was furnished with transportation on the company's cars in going to and returning from work, did not assume the risk of defective appliances in connection with the track over which he rode on the ground that his work was performed at a distance therefrom and he had no duty calling his attention thereto.

MORTGAGES.

Widow's Dower

The Court of Appeals of Kentucky holds in *Beverly* v. *Waller*, 74 S. W. 264, that where the wife's name does not appear in the body of a mortgage, her signature and acknowledgment of the instrument are ineffectual to bar her right of dower. Compare *Hatcher* v. *Andrews*, 5 Bush, 561. "The deed from X. purports no conveyance of anything from his wife, nor even that she was a party to it. Therefore it is as wholly insufficient as to her as though she had never signed it."

MUNICIPALITIES.

In *Van Auken* v. *Garfield Tp., Finney County,* 72 Pac. 211, the Supreme Court of Kansas holds that the obligation resting upon a municipality, which is the legal successor of a former one covering the same territory, and which has received the assets of such other, is neither "statutory" nor "implied," within the meaning of those terms as used in the statute of limitations, but is an obligation identical with that which rested upon the original organization, and no right which a creditor has as against the original municipality is less against its successor.

Covering same Territory

NEGLIGENCE.

The lessor of a public toboggan slide which is defective, or which fails to furnish proper protection to persons using it, is liable for injuries received by any one by reason of such defective construction. Court of Appeals of New York in *Barrett* v. *Lake Ontario Beach Imp. Co.,* 66 N. E. 968. See and compare *Sutton* v. *Temple,* 12 M. & W. 52, and *Swords* v. *Edgar,* 59 N. Y. 28.

Lessor of Structure

The Supreme Court of Louisiana holds in *Potts* v. *Shreveport Belt Ry. Co.,* 34 Southern, 103, that a company maintaining electrical wires over which a high voltage of electricity is conveyed, rendering them highly dangerous, is under the duty of using the necessary care and prudence at places where others may have the right to go to prevent injury. It must see to it that its wires are perfectly insulated, and kept so, or else it must provide adequate guard wires or other safety appliances, as means of protection against the dangerous wires. See also *Clancy* v. *New York & Q. C. Ry. Co.,* 81 N. Y. Supp. 875, where the doctrine *res ipsa loquitur* is applied to a similar case.

Electric Wires

ROBBERY.

In *Jones* v. *Commonwealth,* 74 S. W. 263, the Court of Appeals of Kentucky holds that on a trial for robbery, an instruction that if the defendant by stealth got possession of the money of the prosecuting witness by taking it from his person and before the defendant had secured the money the witness discovered the taking and by force attempted to regain possession of it, and defendant by physical force prevented the witness from retaking it and

Force required

ROBBERY (Continued).

either retained it himself or fraudulently transferred it to another, it was a taking by force, was error, since to constitute robbery the force or putting in fear must *precede* or *accompany* the act of taking. See and compare with this case the recent case of *Dawson* v. *Commonwealth* (Ky.), 74 S. W. 701.

SHERIFF.

The Court of Appeals at St. Louis, Mo., holds in *State* v. *Dierker,* 74 S. W. 153, that it is only such acts of a sheriff as are done under color of office, involving an *abuse* as distinguished from a usurpation of authority, that render his bondsmen liable. Consequently it is decided that sureties of a sheriff on his official bond conditioned for the faithful discharge of the duties of his office as sheriff, are not liable for an arrest by him without warrant for a misdemeanor not committed in his view, as such arrest was not under color of office, although he thought he was acting officially and was personally liable for his misconduct. One judge dissents. Compare *Warrensburg* v. *Miller,* 77 Mo. 56.

Official Acts

TAXATION.

The statute law of Mississippi provides that every person having money loaned in the state shall be taxable for it in the county in which he resides or has a place of business or is temporarily located. Construing this statute the Supreme Court of Mississippi holds in *Adams* v. *Colonial and United States Mortgage Company,* 34 So. 480, that a loan made by a non-resident who has no business, location or agent in the state, and which is obtained by applications sent to the agent out of the state, is not taxable in the state, although negotiations for it are made in the state, and although it is secured by mortgage on land in the state, it being held that such mortgage does not give the mortgagee an interest in land so as to make it taxable as such. The case presents an unusually thorough discussion of the points involved and contains an extensive citation of authorities well considered. It is a valuable contribution to the law upon this subject.

Loans by Non-residents

TENANT.

The Supreme Court of South Carolina holds in *Matthews* v. *Hipp*, 44 S. E. 577, that where payments were made under an oral lease of the premises for a year, and the tenant continued in possession after the termination in law of the lease, he was a mere tenant at will and there was no valid lease for the ensuing year, but that where remaining in possession in this manner he paid rent that accrued after the year and continued in possession of the premises, the tenancy at will was changed into a tenancy from year to year. See *Tallano* v. *Spitzmiller*, 120 N. Y., page 37.

Holding over

WILLS.

In *Meyer* v. *Weyler*, 95 N. W. 254, the Supreme Court of Iowa holds that where a testator bequeathed to his wife all his property by a clause reciting that it was his intention to make her his sole residuary heir and legatee and to provide for her for the remainder of her life, but that the devise was conditioned that whatever part of the testator's estate might remain at the death of his wife should go to their nearest relatives, that the devise to the wife created an estate in fee in her and that the conditional limitation after her death was void for repugnancy. See *Hambel* v. *Hambel*, 109 Ia. 459.

Repugnancy

The Supreme Court of South Carolina holds in *Rutledge* v. *Fishburne*, 44 S. E. 564, that where a testator devised certain real estate to A. for life with remainder to her children, share and share alike, the children of a deceased child to take the parent's share, a vested transmissible interest in remainder to the child of the life tenant is created and all her children born to her take by way of executory devise. Compare *Luddington* v. *Kime*, 9 Ld. Ray, 103.

Construction: Executory Devise

In Indiana the statute law provides that, after the making of a will by an unmarried woman, if she shall marry, such will shall be deemed revoked by such marriage. In *Hibberd* v. *Trask*, 67 N. E. 179, the Supreme Court of that state holds that this provision does not apply where a married woman makes a will, and after that she is divorced and then remarried. The similarity of statutes in other states to that in Indiana renders the decision of more than local interest.

Implied Revocation