PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ALIENS.

In re Johnson's Estate, 73 Pac. 424, the Supreme Court of California holds that an alien has no right to raise the question whether a statute is violative of the provision of the United States Constitution which declares that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states. Such provision, it is said, affords no protection to aliens or citizens of the United States who are citizens of a territory. One judge dissents. See *Sprague* v. *Fletcher*, 69 Vt. 69.

Constitutionality of Statute

ASSAULT.

The Supreme Court of Nebraska holds in *Hoy* v. *State*, 96 N. W. 228, that a person attacked or formidably threatened by three persons acting in concert may avail himself of the right of self-defense by using commensurate force against the nearest assailant, although it is not from him, but from the others, that great bodily harm is apprehended. Further, it is decided that the right of self-defense does not belong alone to persons engaged in the pursuit of their lawful business. It is available to every person, regardless of the nature of his business, who is assaulted, or who, upon just grounds, apprehends an immediate unlawful attack.

Self-Defense

BANKRUPTCY.

The Supreme Court of Minnesota in *International Harvester Co. of America* v. *Lyman*, 96 N. W. 87, adhering to the general rule that to revive a debt which has been discharged in bankruptcy a conditional promise thereafter to pay the original obligation in installments must be accepted by the creditor, holds that where, after such discharge, in response to an offer by the debtor

Revival of Debt

BANKRUPTCY (Continued).

to pay the original obligation in installments, the creditor expressly declines to assent to the conditions, and insists upon payment of the whole amount, the debt is not revived. See *Smith* v. *Stanchfield*, 84 Minn. 343.

BANKS.

With one judge dissenting, the New York Supreme Court (App. Div., First Dept.) holds in *T. B. Clark Co.* v. *Mt. Morris Bank*, 83 N. Y. Supp. 447, that in an action against a bank for damages caused by its refusal to pay a check and note of the plaintiff where there was a sufficient deposit to the plaintiff's credit, and it appeared that the refusal was the result of a clerk's mistake, and there was no allegation of special damage, only nominal damages could be recovered. See *Davis* v. *Standard Bank*, 50 App. Div. 210.

Refusal to Pay Check

BENEFICIAL ASSOCIATIONS.

A contract between a beneficial association and a member was made with reference to the by-laws and regulations of the association. One of the by-laws provided that any beneficiary considering himself aggrieved by the decision of the grand executive committee in respect to a claim for benefits must appeal to the grand council. In *Weigand* v. *Fraternities Accident Order*, 55 Atlantic, 530, the Court of Appeals of Maryland holds that a beneficiary who fails to appeal, as provided for in the by-laws, could not maintain an action at law on her claim. See *Vandyke's Case*, 2 Whart. 312.

Rights Under By-Laws

BURDEN OF PROOF.

In a civil action to recover damages for an assault committed with a loaded firearm, the presumption of defendant's innocence until he is proven guilty beyond a reasonable doubt, applicable in criminal cases, does not apply; the plaintiff being required only to prove his cause by a preponderance of the evidence: New York Supreme Court (App. Div., Second Dep.) in *Kurz* v. *Doerr*, 83 N. Y. Supp. 736. As to the general question involved, the court says that the English rule is otherwise, but that the one adopted is approved by the great weight of Ameri-

Civil Action: Assault

BURDEN OF PROOF (Continued).

can authority. It is said, however, that in New York there is a lack of harmony and no really authoritative decision upon the subject. See *Johnson* v. *Agricultural Insurance Co.*, 25 Hun. 251.

CARRIERS.

It is the duty of a carrier of passengers to exercise reasonable and ordinary care in looking after and protecting one who becomes sick or unconscious while a passenger. Whether such care has been exercised is ordinarily a question of fact for the jury. See *A., T. & S. F. R. Co.* v. *Weber*, 33 Kan. 543.

Passengers: Care Required

The Supreme Court of Kansas holds in *Missouri, K. & T. Ry. Co.* v. *Orton*, 73 Pac. 63, that a carrier is not liable for injury to a passenger from a cinder from the locomotive coming through an open door of a car, the locomotive being in good repair and equipped with the best spark arrester, and being properly and skillfully managed and operated, and the proof not warranting a finding of culpable negligence in the carrier's having the door open. This case differs from the Pennsylvania case of *Pennsylvania R. Co.* v. *MacKinney*, 124 Pa. 462, in the fact that in that case it did not appear from where the object came that hit the passenger.

Injury to Passenger

In *Memphis News Pub. Co.* v. *Southern Ry. Co.*, 75 S. W. 941, it appeared that a railroad company contracted with a newspaper publisher, agreeing to run a special early morning train carrying only the newspapers of the publisher, in consideration of the publishing company guaranteeing to it a certain revenue from the operation of the train This train became one of its scheduled trains, and was advertised as such. It was controlled exclusively by the company, and all the revenue derived from its operation in the carrying of passengers and freight was its property. Under the circumstances, the Supreme Court of Tennessee holds that the railroad could not, relying on its contract, refuse to carry on such trains newspapers tendered it by a rival publishing house, which offered to comply with all the conditions as to guaranty, indemnity, etc., complied with by the house making the contract. Such refusal, it is held, constitutes an illegal discrimination between persons of the same class. The

Unlawful Discrimination

CARRIERS (Continued).

fact that the publishing company solicited the institution of the train service and supported it by a large outlay of money during its early days did not change the rule, nor make the train a special one, chartered for a special purpose. The case presents a very satisfactory review of the questions involved. See in connection with it *Audenried* v. *Philadelphia & Reading R. R.*, 68 Pa. 370.

Tickets: Description of Holder

The Court of Appeals of Maryland holds in *Western Maryland R. Co.* v. *Schaun*, 55 Atlantic, 701, that where a passenger was ejected from a railroad train by reason of a defect in her return ticket, in failing to properly describe her personal characteristics, which resulted from the conductor's negligence in punching said return on the going trip, such passenger was only entitled to recover damages in an action for breach of contract, and could not recover in an action *ex delicto*. See *Hufford* v. *Grand Rapids & I. Ry.Co.*, 53 Mich. 118.

CONSTITUTIONAL LAW.

Sale of Liquor

The law of Tennessee prohibits the sale of intoxicating liquors within four miles of institutions of learning, but excepts from its operation sales by manufacturers in wholesale packages or quantities. In *Webster* v. *State*, 75 S. W. 1020, the Supreme Court of Tennessee holds this act constitutional, refusing to regard it either as class legislation or as denying to all citizens the equal protection of the law. Compare *Reymann Brewing Co.* v. *Brister*, 179 U. S. 445.

CORPORATIONS.

Christian Science

In re First Church of Christ, Scientist, 55 Atlantic, 536, the petitioners applied for a charter to establish a place of public worship to preach the doctrine as found in the Bible and the Christian Science textbook of Mary B. G. Eddy. The evidence showed that the purpose was not merely to establish a form of worship, but to educate persons for treatment of disease by inaudible prayer, and that nothing was necessary to qualify as such a teacher except to study the system taught in the book of Mrs. Eddy, without any knowledge of anatomy, physi-

CORPORATIONS (Continued).

ology or hygiene; the theory of the system being that all diseases, even of a contagious character, were mere beliefs, and not real facts. The Supreme Court of Pennsylvania holds that the application for the charter was properly denied by the lower court, as opposed to the general policy of the state in reference to the treatment and existence of diseases.

Rights of Stockholders

A stockholder who has acquired stock in a corporation by purchase cannot complain of illegal salaries paid directors prior to his becoming such stockholder, but can complain of such grievance thereafter occurring without his knowledge: Supreme Court of New Mexico in *Rankin* v. *Southwestern Brewery & Ice Co.*, 73 Pacific, 614.

Reorganization

In *Armour* v. *E. Bement's Sons*, 123 Fed. 56, the United States Circuit Court of Appeals, Sixth Circuit, holds that a new corporation regularly organized by the officers and stockholders of an existing corporation for the purpose of acquiring its property and assets, and which does acquire the same by purchase at judicial sales, cannot be treated as a continuance of the old corporation, and liable at law for its debts, whatever may be its liability in equity to creditors of the old corporation in respect to the property, if fraud is shown in the transfers.

COURTS.

Jurisdiction

Any court having in its possession a fund about which there is a controversy has inherent jurisdiction and power to determine such controversy, to the exclusion of every other court: United States Circuit Court of Appeals, Seventh Circuit, *In re Antigo Screen Door Co.*, 123 Fed. 249.

DEATH BY WRONGFUL ACT.

Recovery by Widow

In *Daubert* v. *Western Meat Co.*, 73 Pac. 244, the Supreme Court of California holds that where a child is unborn, and its existence is unknown to the defendant in an action by its mother to recover for the wrongful death of her husband, the father of the child, at the time the judgment is rendered in favor of the widow or other heirs, such judgment is a bar to a subsequent action by such child after its birth to recover for its

DEATH BY WRONGFUL ACT (Continued).

father's wrongful death. Two judges dissent. See *L. & N. R. Co.* v. *Sanders*, 86 Ky. 260.

DEED.

Delivery: Bona Fide Purchaser

The Supreme Court of Georgia holds in *Mays* v. *Shields*, 45 S. E. 68, that a lawful delivery being essential to the validity of a deed where such an instrument is left in escrow and is improperly delivered by the depositary without compliance with the conditions on which it was to be surrendered, no title passes to the grantee, nor will a bona fide purchaser for value from him acquire any right as against the original grantor, unless such grantor, having learned of such delivery, fails to take active measures to recover possession of the deed or to have the record of the deed expunged. Compare with this case *Dixon* v. *Bristol Bank*, 102 Ga. 461.

EVIDENCE.

Pedigree

In *Grand Lodge A. O. U. W.* v. *Bartes*, 96 N. W. 186, the Supreme Court of Nebraska holds that a member of the family, living therein, is presumptively qualified as witness to prove the age and pedigree of the other members; but when it is shown on cross-examination that the knowledge of such witness is derived, not from family tradition and repute, but from statements made by a stranger, the testimony should be excluded.

Dogs

In *Davis* v. *State*, 35 Southern, 76, the Supreme Court of Florida, Division B, holds that testimony as to the action of dogs in following the trail of a supposed criminal from the scene of a crime is admissible in evidence, provided such preliminary proof be given of the qualities and training of the dogs as to show that reliance may reasonably be placed upon their accuracy in following the trail of a human being. See *Pedigo* v. *Commonwealth*, 103 Ky. 41.

FIXTURES.

Mortgage of Real Estate

In *Duntz* v. *Granger Brewing Co.*, 83 N. Y. Supp. 957, the New York Supreme Court (Special Term, Columbia County) holds that where an owner of realty, on a corporation furnishing chattels to him, agreed that the title to the chattels should not pass until paid for, such agreement operated to prevent

FIXTURES (Continued).

such chattels from becoming fixtures, unless their removal should seriously injure them or the realty, and that where, after an owner of land had purchased chattels under such agreement, he executed a mortgage of the real estate and the chattels as fixtures to a third person, such mortgage was subsequent to, and did not prejudice, the lien of the vendor of the chattels for the unpaid balance of the purchase price thereof. See *Tifft* v. *Horton*, 53 N. Y. 377.

GIFTS.

A man had buried sums of money in various places about his estate, and being ill, and barely able to walk, took his daughter to the whereabouts of the money, and told her definitely the several places where it was concealed, with a positive declaration that he gave it to her, cautioning her not to let any one else know where it was, and advising her to leave it there until the place was rented or she needed it. She did not remove it until after his death. Under these circumstances, the Supreme Court of Oregon holds in *Waite* v. *Grubbe*, 73 Pac. 206, that there was a sufficient delivery, though in answer to the father's question whether, if he should get well and should want some of it, his daughter would give it to him, she had answered, "Yes, if you get well you can have all of it." The court compares the case with the symbolic delivery effected by the delivery of the key to a treasure box. See *Liebe* v. *Battmann*, 33 Ore. 241.

Delivery

HABEAS CORPUS.

The United States Circuit Court (S. D., New York) holds *In re Reeves*, 123 Fed. 343, that a federal court will not discharge a prisoner confined under a conviction by a state court on a writ of habeas corpus, on the ground that the statutes under which the trial was held is in violation of the Constitution of the United States, where the state statute provides for an appeal and for the acceptance of bail or a stay of proceedings pending such appeal. See, in connection with this case, note on the jurisdiction of federal courts in habeas corpus proceedings to *In re Huse*, 25 C. C. A. 4.

Federal Courts

ILLEGAL COMBINATIONS.

Restriction of Competition: Copyright

The New York Supreme Court (Appellate Division, First Department) considers in *Straus* v. *American Publishers' Ass'n*, N. Y. Supp. 271, the application of a law prohibiting contracts creating monopoly to a combination between 95 per cent. of the book publishers in the United States and Canada, the object of which was to compel all retailers to sell their books at a certain price fixed by the combination. It is held that the agreement relating only to copyrighted books which each publisher had the sole right to sell did not take it out of the statute; the monopoly given by the copyright law extending only to the publication of books, and not affecting the property right of the purchaser thereof. Two judges dissent, one of them saying, "I do not see why a seller of property in respect to which he has a monopoly cannot impose any conditions as to its resale that he sees fit." See *Park & Sons Co.* v. *Nat. Druggists' Ass'n*, 54 App. Div. 223.

INTERSTATE COMMERCE.

What Constitutes

The United States District Court (District of Nevada) holds in *United States* v. *Slater*, 123 Fed. 115, that the act of Congress making it a misdemeanor for one to drive live stock on foot from one state to another, knowing them to have a contagious disease, is within the power given to Congress to regulate interstate commerce.

LABOR UNIONS.

Illegal Acts

In *Martin* v. *McFall*, 55 Atlantic, 465, the Court of Chancery of New Jersey holds that attempts by members of a labor union to compel an employer to accede to the demands of the union as to the mode of doing his business by persuading or inducing others not to deal with him is unlawful, and will be enjoined.

LANDLORD AND TENANT.

Notice to Quit: Waiver

Pursuant to the action of its board of directors, a railroad company by its president and secretary served notice on a telegraph company of the termination of a lease under which the latter company had maintained its lines on the right of way of the railroad for twenty years, and requiring it to remove its

LANDLORD AND TENANT (Continued).

poles and wires from such right of way. By the terms of the lease the telegraph company had six months within which to make the removal, and during that time the payment of rent by it was expressly waived. Under the circumstances the United States Circuit Court of Appeals, Third Circuit, holds in *Western Union Telegraph Co.* v. *Pennsylvania R. Co.*, 123 Fed. 33, that a payment of rent voluntarily made after the notice by the treasurer of the telegraph company in the usual course, and accepted by the comptroller of the railroad company, did not constitute a waiver by such company of the notice; it not appearing that such was the intention, or that the comptroller had authority to make such waiver if he had so intended.

LIMITATIONS.

In re Cook, 83 N. Y. Supp. 1009, the New York Supreme Court (Appellate Division, Third Department) holds that a certificate of deposit, payable on demand on the order of the payee, and bearing interest provided the amount deposited was left in the bank six months, does not mature, so as to start the statute of limitations running against the holder's right to recover thereon, until presentation for payment. See *Cottle* v. *Marine Bank*, 166 N. Y. 58.

Certificate of Deposit

MASTER AND SERVANT.

Against the dissent of one judge, it is decided in *Mountain Copper Co.* v. *Van Buren*, 123 Fed. 61, that in an action to recover for the death of an employee killed by the caving in of a mine, in which there is no question of contributory negligence or the negligence of a fellow-servant, but the right to recover depends solely on the negligence of the defendant, the burden of proof on such issue rests on the plaintiff, and the fact of the cave-in itself carries no presumption of negligence.

Injury to Servant

MUTUAL BENEFIT ASSOCIATION.

With three judges dissenting, the Supreme Court of Kansas holds in *Miller* v. *Tuttle*, 73 Pac. 88, that neither a stipulation in the application that "I further agree, if accepted as a member of the order, to faithfully abide by its rules and regulations," nor a state-

Amendment of By-Laws

MUTUAL BENEFIT ASSOCIATION (Continued).

ment in the certificate that "this certificate is issued upon the condition that said insured shall in every particular, while a member of the order, comply with all the laws, rules and regulations thereof," confers authority upon a mutual benefit association to amend its constitution or adopt by-laws which will modify or change the insurance contract. Before such association can do this, it is held it must have expressly reserved such right or have secured the express consent of the insured. See, however, *Fugure* v. *Mutual Society of St. Joseph*, 46 Vt. 362.

NEGLIGENCE.

Matter of Law

In *Zimmer* v. *Fox River Valley Electric Ry. Co.*, 95 N. W. 957, the Supreme Court of Wisconsin holds that a passenger on a street car, required to ride on the platform because of its crowded condition, cannot be said as a matter of law to have assumed any increased risk.

Defect in Manufactured Articles

The Supreme Court of Rhode Island holds in *Slattery* v. *Colgate*, 55 Atlantic, 639, that the manufacturer of soap is not liable for injury caused by an excess of alkali therein unless he know of the excess. See in connection with this case *McCaffrey* v. *Mossberg & Granville Manufacturing Co.*, 23 R. I. 381.

Res Ipsa Loquitur

In *Southern Bell Telephone & Telegraph Co.* v. *McTyer*, 34 Southern, 1020, the Supreme Court of Alabama holds that where a telephone company, having previously maintained a telephone in a store, on being requested to remove the same, removed the instrument, but against the proprietor's protest neglected to remove the wires, merely twisting the ends of the wires together inside the building, and by reason thereof atmospheric electricity was conducted into the store and injured plaintiff, who was lawfully in the store on business with the proprietor, though having no interest in the building, the defendant's failure to remove the wires from the building was negligence, *per se*, entitling plaintiff to recover for the injury sustained.

PARDON.

The Court of Criminal Appeals of Texas holds in *Locklin* v. *State*, 75 S. W. 305, that a pardon reciting that it is granted because the convict's testimony is needed in a criminal case is not invalid, the motives of the executive not being subject to question by the courts.

Purposes

PARTNERSHIP.

The Supreme Court of Nebraska holds in *Hart* v. *Deitrich*, 96 N. W. 144, that a partner who, without notice to or knowledge of his copartner, takes substantially all of the ready money of the firm and absconds, remaining away eight months without disclosing his whereabouts, has no standing in equity to demand an accounting after his copartner has wound up the business and paid the partnership debts.

Accounting

PATENTS.

The United States Circuit Court (S. D., New York) holds in *Piaget Novelty Co.* v. *Headley*, 123 Fed. Rep. 897, that a manufacturer of an infringing article is liable for the entire net profits derived from a sale, where the evidence shows that its salability was primarily due to the patented feature, and in estimating the profits realized by a defendant from the manufacture and sale of an infringing ariticle, for which it is accountable, it is entitled to be allowed for office and factory rental and for labor in producing and selling the article, but not for insurance or for legal services or expenses in defending a prior suit, although successful in such defense.

Infringement: Profits Recoverable

PERJURY.

The Supreme Court of California, construing the provision of its code that it is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner, decides in *People* v. *Parent*, 73 Pac. 423, that the fact that the words, "So help you God," were omitted from the oath taken by the defendant at the time he committed the perjury alleged was immaterial. It is held that the omission was merely formal and that the oath in either form is substantially the same. See *State* v. *Owen*, 72 N. C. 607.

Sufficiency of Oath

PRISON RECORDS.

In re Molineux, 83 N. Y. Supp. 943, the New York Supreme Court, Rensselaer County, holds that where a person was convicted of murder and while incarcerated in the state prison his photographs and measurements were taken, pursuant to statute, in accordance with the Bertillon system, the superintendent of state prisons could not be compelled by mandamus, after the prisoner's conviction had been reversed and he had been subsequently acquitted, to surrender to him such photographs and measurements. See *Owen* v. *Partridge*, 82 N. Y. Supp. 248.

Photographs

RAILROADS.

In *Pennsylvania Company* v. *Fishack*, 123 Fed. 465, the United States Circuit Court of Appeals, Sixth Circuit, defining the liability of railroad companies to their employees, holds that a railroad company owes a positive duty to its employees with respect to the construction and maintenance in proper repair of its tracks, cars and other appliances, but with respect to the operation of the road its duty extends no further than to exercise ordinary care to provide a sufficient number of reasonably competent employees, make proper rules for their government, and to exercise proper supervision over them. When that has been done, it is not liable for any injury to an employee in the operation of the road, through the negligence of other employees in the operating department or their failure to observe the rules.

Duty of Company to Employees

RIPARIAN OWNERS.

In *Scheifert* v. *Briegel*, 96 N. W. 44, the court deals with the somewhat unusual situation of facts that a lake had entirely disappeared and it became necessary to apportion the land previously covered by it among the riparian proprietors. The Supreme Court of Minnesota holds with regard to the rule of division that riparian owners of a non-navigable lake, the waters of which have disappeared, own that portion of the lake bed inclosed by extending lines from the points where the side division lines of each respective tract cross the meandered line to the centre of the lake. Further, that when such

Disappearance of Lake

RIPARIAN OWNERS (Continued).

lake is of irregular shape, and originally contained no inlet or outlet, the inequalities caused by the broken shore line should be equitably adjusted between the contiguous owners by disregarding such irregularities, or by treating the lake as composed of separate bodies of water, according to the conditions.

SCHOOLS.

Dances in Schoolhouse

In *Louis* v. *Bateman*, 73 Pacific, 509, it appeared that school trustees had permitted the schoolhouse, when not occupied for school purposes, to be used for private dances. The Supreme Court of Utah holds that such trustees have no right to permit such use, inasmuch as such conduct would be a misappropriation of trust property and opposed to the principle that the sovereignty cannot tax for private purposes.

SERVITUDES.

Abutting Owners

The Supreme Court of Michigan holds in *Austin* v. *Detroit, Y. & A. A. Ry.*, 96 N. W. 35, that an abutting owner has no right to compensation because the grade of a highway is lowered for a street railroad which is built to conform thereto, though the highway is owned by a plank road company, the change of grade being with the consent of it and of the township; nor has such owner a right to compensation because a street railroad is constructed, on a lowered grade, so close to the side of the highway as to subject his fence and land to the danger of sliding into the highway. Two judges dissent. See *Detroit St. Ry.* v. *Mills*, 85 Mich. 634.

Telephones

The New York Supreme Court (Trial Term, Broome County) holds in *Gray* v. *New York State Telephone Co.*, 83 N. Y. Supp. 920, that the franchise of a telephone company, granted by the state, authorizing its construction of a telephone line, did not authorize it to construct its poles and wires along a country highway, in which an abutting owner has rights in common with the public, without such owner's consent, or compensation having been first paid, since the erection of such poles and wires constituted an additional servitude and such abutting owners would be entitled to restraint by enjoining such construction. See *Eels* v. *American Tel. & Tel. Co.*, 143 N. W. 133.

STREET RAILROADS.

In *Indianapolis St. Ry. Co.* v. *Tenner*, 67 N. E. 1044, the Appellate Court of Indiana (Division No. 2) holds that a person alighting from a street car on which he was a passenger became at once a traveler on the public street, charged with the duty of exercising due care, and therefore, where having alighted from a street car and passed back of it and upon the track on which cars traveled in the opposite direction, without looking and listening for the approach of cars, was guilty of contributory negligence as a matter of law, where he was familiar with the manner of operating the cars on the two tracks. One judge dissents. See in connection with this case *Howard* v. *Citizens' St. Ry. Co.*, 29 Ind. Ap. 426.

Relation of Passenger

WILLS.

In *Mansfield* v. *Mansfield*, 67 N. E. 497, it appeared that a will devised lands to each of the testator's children for life, and after their death to their children in fee, and recited that it was the testator's purpose to preserve the estate intact for the children and their descendants, so far as possible; and it was provided that, if circumstances should require, the persons to whom the lands were devised should have power to sell the same to any extent not in excess of one-third of the value of the same. The Supreme Court of Illinois holds that under these circumstances the will did not give a life tenant power to sell his interest in order to pay his debts voluntarily contracted by himself.

Power of Disposition

In *Trenton Trust and Safe Deposit Co.* v. *Donnelly*, 55 Atlantic, 92, money was bequeathed in trust to pay the interest to one for life, the corpus to go to others on her death. The corpus was diminished by unfortunate investments, and thereafter interest on the reduced corpus alone was paid the life tenant. At the termination of the interest of the life tenant, certain sums due him remaining unpaid, the question arose as to the distribution of the loss, and the Court of Chancery of New Jersey holds that this loss should be apportioned by paying the reduced corpus to the remaindermen and the personal representative of the life tenant in the proportion that the original corpus bears to the unpaid interest on the part of the corpus which was lost.

Distribution of Loss

WILLS (Continued).

Construction: Advancements

A testator directed that the advancements which he had made to each of his four children should be added to the corpus of his estate and that the estate so increased should be divided into four parts, one of which was to be apportioned to each of the children, after deducting the amount which had been advanced to each respectively. It appeared that the advancements made to one of the children, who was insolvent, were in excess of one-fourth of the estate. Under the circumstances the New York Supreme Court (Appellate Division, Fourth Department) holds in *In re Whitmore's Will*, 83 N. Y. Supp. 213, that the shares allotted to each of the other three children should abate pro rata to make up for the deficiency.

Construction: Bill by Executor

In *Burgess* v. *Shepherd*, 55 Atlantic, 415, the Supreme Judicial Court of Maine laying down the general principle that a bill of equity to obtain the construction of a will cannot be sustained unless the construction may affect the rights of the complainant in person or property, or unless it may affect the performance of his duties, under the will, as executor, trustee or otherwise; holds that where the complainant was executor and had no personal interest which might be affected by a construction of the will, and where the performance of his duties as executor could not be in any way affected or aided by such a construction, the court would not construe the will. Compare *Baldwin* v. *Bien*, 59 Me. 481.