PROGRESS OF THE LAW.

AS MARKED BY DECISIONS SELECTED FROM THE ADVANCE REPORTS.

AGENCY.

Authority

In *Ludlow-Saylor Wire Co.* v. *Fribley Hardware & Implement Co.*, 74 Pac. 237, the Supreme Court of Kansas holds that the travelling salesman of a wholesale house will be held to have the authority to bind his principals by conditions attached to the sale made by him when the sale is made, and if the conditions attached thereto are reasonable and within the apparent scope of the salesman's authority, and notwithstanding his house was ignorant of the conditions attached to the sale, and the agent, in fact, did not have authority to sell on the conditions named. Compare *Babcock* v. *Deford*, 14 Kan. 411.

ANTI-TRUST ACT.

Restriction of Sales of Goods

A manufacturing corporation and its employee restricted the sales of its products to those who refrained from dealing in the commodities of its competitors by fixing the prices of its goods to those who did not thus refrain so high that their purchase was unprofitable, while it reduced the prices to those who declined to deal in the wares of the competitors so that the purchase of the goods was profitable to them. The plaintiff applied to purchase, but refused to refrain from handling the goods of the corporation's competitors and sued it for damages caused by the refusal of the defendants to sell their commodities to him at prices which would make it profitable for him to buy and sell them again. Under these facts the U. S. Circuit Court of Appeals (Eighth Circuit) holds in *Whitwell* v. *Continental Tobacco Co.*, 125 Fed. 455, that the restriction of their own trade by the defendants to those purchasers who

ANTI-TRUST ACT (Continued).

declined to deal in the goods of their competitors was not violative of the Sherman Anti-trust Act of 1890. See *United States* v. *Joint Traffic Association*, 171 U. S. 579.

BAILMENTS.

The Supreme Court of Georgia, laying down the general principle that in order to create a bailment the bailee must have an independent and exclusive possession of the property, decides in *Atlantic Coast Line R. Co.* v. *Baker*, 45 S. E. 673, that where the owner of land contracts with another to convert the standing timber into cross-ties, and agrees to pay the workman twelve cents per tie, the latter has no such independent possession as to create a common-law lien on the ties for his labor expended, and cannot maintain an action against one alleged to have negligently destroyed the same by fire.

Labor Lien

BANKRUPTCY.

The Supreme Court of South Dakota holds in *Shipley* v. *Platts*, 97 N. W. 1, that a laundry agent in a country town whose duties are to collect articles, forward them to the laundry in the city, receive them back and distribute them, make collections and remit to his principal, after deducting his commissions, the agency having continued for more than a year, occupies a fiduciary relation towards his principal. It is therefore decided that under the Bankruptcy Act of 1898, Sec. 17, providing that a discharge shall not affect debts created by the bankrupt's misappropriation or defalcation while acting in a fiduciary capacity, a discharge will not avail him against his principal's claim for moneys not turned over. One judge dissents.

Discharge: Debt of a Fiduciary

The U. S. District Court (S. D. New York) holds *In re Filer*, 125 Fed. 261, that where a bankrupt caused a firm of brokers to purchase stocks for his benefit, which they held as collateral security for the money advanced in making the purchases, the sale of such stocks by them within four months prior to the bankruptcy for the

Preferences

BANKRUPTCY (Continued).

purpose of liquidating his account did not create a preference, requiring the firm to surrender the sums received for the stocks before proving their debt in bankruptcy.

BANKS.

In *Interstate Nat. Bank* v. *Claxton,* 77 S. W. 44, the Court of Civil Appeals of Texas decides that where a bank accepts a deposit from a patron known by it to be insolvent at the time, with knowledge sufficient to put it on inquiry whether the fund belonged to the depositors, it is liable to the true owner of the fund for the amount of loss sustained by him where the bank permits the fund to be diverted to other uses than the payment of the owner. See *Bank* v. *Moore,* 79 Fed. 705.

Deposit: Trust Fund

BENEFICIAL ASSOCIATIONS.

The by-laws of a beneficial association provided that each member should pay certain dues, of which he should have notice, and that if he failed to pay by the first day of the next month he should stand suspended and his benefit certificate be void. It was further provided that no officer of the society should be permitted to waive any of the by-laws, and that no act or omission on the part of the officer authorized to receive payment of dues should create liability on the part of the association. It was the invariable custom of a local lodge to receive dues for nearly a month after the time when they became payable. Under these circumstances the Court of Appeals at Kansas City, Missouri, holds in *Andre* v. *Modern Woodmen of America,* 76 S. W. 710, that a member who had knowledge of such custom did not become suspended by failure to pay dues until late in the month on the first of which they became payable. See in connection with this case *James* v. *Association,* 148 Mo. 1. Note also the very recent decision of *United Moderns* v. *Pipe,* 76 S. W. (Texas) 774.

By-Laws

BILLS AND NOTES.

Accommodation Indorsement

In *Packard* v. *Windholz*, 82 N. Y. Supp. 666, the New York Supreme Court (Appellate Division, Fourth Department) holds that where the holder of a note was a bona fide holder for value it was not material to a subsequent indorser's liability that he indorsed the note merely for the maker's accommodation, and that such fact was known to the holder. See also *Lennon* v. *Grauer*, 159 N. Y. 432.

CARRIERS.

Shipments Subject to Delay

In *Parker* v. *Atlantic Coast Line R. Co.*, 45 S. E. 658, the Supreme Court of North Carolina holds that a contract with a shipper of perishable fruit containing a clause "subject to delay," if intended as an acceptance for shipment subject to delays arising from causes beyond the carrier's control, merely expresses a phase of the carrier's liability under an ordinary "owner's risk" bill of lading, and if intended to relieve the carrier from liability for delay arising from its own negligence, is unenforceable.

CONSTITUTIONAL LAW.

Due Process of Law

The Court of Appeals of Kentucky holds in *Sanders* v. *Commonwealth*, 77 S. W. 358, that an act of the state prohibiting the sale of milk from cows fed on "still slop" is a regulation within the police power of the state, and is not in conflict with the Fourteenth Amendment to the Constitution of the United States declaring that no state shall deprive any person of life, liberty, or property, though there is no evidence contradictory of the claim that still slop is a wholesome food for dairy cows. See *State* v. *Layton*, 61 S. W. (Mo.) 171.

Regulation of Interstate Commerce

In *Western Sash & Door Co.* v. *Chicago, R. I. & P. R. Co.*, 76 S. W. 998, the Supreme Court of Missouri (Division No. 2) holds that the statute of the state providing that when a railroad company issues bills of lading in Missouri it shall be liable for any loss, damage, or injury to the property caused by its negligence or the negligence of any other carrier, when construed

CONSTITUTIONAL LAW (Continued).

as depriving a carrier of the right to contract for a limitation of its liability beyond its own line, is not in conflict with Const. U. S., Art. 1, Sec. 8, authorizing Congress to regulate interstate commerce. See also *Railway Co.* v. *McCann*, 174 U. S. 580.

Due Process of Law

The Supreme Court of South Dakota decides in *Harris* v. *Stearns*, 97 N. W. 361, that a law of the state passed in 1890 providing that possession of the tax receipt shall be conclusive evidence that all prior taxes on the property have been paid and shall be a bar to their collection is repugnant to the provision of the constitution that no person shall be deprived of life, liberty, or property without due process of law; a county being, it is decided, a person, and a tax property, within the meaning of the section. It is further held that the provision is repugnant to the state constitution, declaring that all laws exempting property from taxation shall be void.

CONTEMPT OF COURT.

Information as to Juror

In *Ex parte McRae*, 77 S. W. 211, the Court of Criminal Appeals of Texas holds that a mere effort to secure the service of a party to find out how a juror stands in reference to a case then on trial does not authorize punishment for contempt where the party so employed neither makes an effort to tamper with the juror, nor holds out any inducement to the jury to decide one way or the other, nor talks with the juror about the case.

Habeas Corpus

The Supreme Court of Montana decides in *State ex rel. Morse* v. *District Court of Seventh Judicial Dist.*, 74 Pac. 412, that a chief of police and his subordinates who, with actual knowledge that a writ of habeas corpus had been issued for a certain prisoner under their control, endeavored to avoid the service and execution of the writ, and aided in delivering the prisoner into the custody of a messenger from the governor of another state, under extradition process, were guilty of contempt of court. In a proceeding for contempt of court it is held that the costs cannot be charged to the contemners. See *State* v. *District Court*, 24 Mont. 33.

CONTRACTS.

It is decided by the New York Supreme Court (Special Term, Warren County), *Glens Falls Nat. Bank* v. *Van Nostrand,* 85 N. Y. Supp. 50, that where an insolvent firm procured a third person to guarantee a debt at a bank on an indorsement of a note, thereby inducing the bank to cancel the indorsement and sign a compromise agreement for its claim without the knowledge of the other creditors of the firm, the guarantee is void, as against public policy, though the composition failed because of the refusal of some of the other creditors to sign the agreement. See *Hanover Nat. Bank* v. *Blake,* 142 N. Y. 404.

Public Policy: Unlawful Guarantee

The general nature of consideration is discussed in the case of *Dendy* v. *Russell,* 74 Pac. 248, by the Supreme Court of Kansas, which holds that a promise to do an act which one is not otherwise legally bound to perform is a sufficient consideration for a contract to forbear action, notwithstanding the act is one apparently more to the interest of the promisor than of the promisee, and notwithstanding that it may be difficult to ascribe a motive to the latter for wishing it done. Compare with this case *Barnes* v. *Grugg,* 28 Kan. 51.

Consideration: Sufficiency

CORPORATIONS.

The Supreme Court of Vermont holds in *Buck* v. *Troy Aqueduct Co.,* 56 Atl. 285, that a majority of the board of directors of a corporation has power to bind the corporation without the concurrence of, and even without notice to, the minority.

Directors: Majority

Stockholders of an insolvent corporation compromised with all but one of its creditors, receiving assignments of their claims; and subsequently the creditor not joining in the compromise sued the stockholders under the statute to enforce their double liability. The Court of Appeals of Kentucky holds that the claims which the stockholders held as assignees were entitled to come in ratably with the debt of the creditor not participating in the compromise: *Covington Stone & Sand Co.* v.

Stockholders: Double Liability

CORPORATIONS (Continued).

Rosedale Electric Light Jockey Club, 76 S. W. 506. It is further held that where the affairs of a corporation were so managed as to constitute a fraud on creditors, individual claims of the stockholders against the corporation accruing prior to the claim of a bona fide creditor of a corporation should not be allowed to participate ratably in a suit by such creditor to enforce the double liability of the stockholders under the statute.

DEDICATION.

The Court of Appeals of Kentucky lays down in *Riley* v. *Buchanan*, 76 S. W. 527, the two general principles that an owner of realty who allows the public to use it as a highway, under a notorious claim of right, for a long period of years, is estopped from denying a dedication to the public, and that a dedication of a highway may be impliedly accepted by long-continued user by the public.

Estoppel

DEEDS.

In *State v. Clark*, 76 S. W. 1007, it is decided by the Supreme Court of Missouri (Division No. 2) that it would be beyond the power of the legislature to give to an act making it a crime to give a deed to property previously sold or incumbered by the grantor therein, without reciting in the deed the former conveyances, an extraterritorial effect, as this would in a measure regulate the conveyance in another state of lands situated therein.

Statutory Requirements: Extra-territorial Effect

EVIDENCE.

The New York Supreme Court (Appellate Division, First Department) holds in *Deutschman* v. *Third Avenue R. Co.*, 84 N. Y. Supp. 887, that a statute prohibiting a physician from disclosing professional information acquired from a patient does not extend to a druggist who fills physicians' prescriptions, nor does it preclude a patient receiving a prescription from divulging its contents; and therefore a druggist filling prescriptions for a physician's patient may testify to that fact and identify the prescriptions so filled, which prescriptions may then be received in evidence.

Competency of Witnesses

EVIDENCE (Continued).

Notwithstanding the general principle that the consideration of a deed may be shown by parol, the Supreme Court of Arkansas holds in *Davis* v. *Jernigan*, 76 S. W. 554, that where a deed recites a pecuniary consideration parol evidence is not admissible to show that there was no such consideration. See also *Barnett* v. *Hughey*, 54 Ark. 195.

Parol Evidence Rule

The Supreme Court of Michigan holds in *Hamilton* v. *Michigan Cent. R. Co.*, 97 N. W. 392, that in a personal injury case the opinions of experts as to plaintiff's expectancy, based in part on mortality tables and in part on the hypothesis that plaintiff resembled his father and grandfather, who lived to advanced ages, are properly excluded. See, however, *Chattanooga R. Co.* v. *Clowdis*, 90 Ga. 258.

Age of Ancestors

The Supreme Court of Kansas holds in *State* v. *Snyder*, 74 Pac. 231, that on the trial of a defendant for selling intoxicating liquor contrary to law a witness for the state, who has testified to purchases of beer from the defendant, which he drank, cannot be asked on cross-examination to drink from a bottle of strange liquor proffered him and then to state if such liquor is the same as that he had previously purchased. See *Gaunt* v. *Harkness*, 53 Kan. 405.

Real Evidence

GIFTS.

The Court of Appeals of Kentucky decides in *Malone's Committee* v. *Lebus*, 77 S. W. 180, that where the donee of a gift inter vivos is of unsound mind the law will presume an acceptance.

Acceptance

HUSBAND AND WIFE.

In *Pache* v. *Oppenheim*, 84 N. Y. Supp. 926, the New York Supreme Court (Appellate Term) holds that a husband who, before administration of his wife's estate, necessarily incurred and paid the reasonable cost of his wife's sepulture is entitled to reimbursement out of her estate. See *Patterson* v. *Patterson*, 59 N. Y. 574.

Sepulture of Wife

INJUNCTION.

The New York Supreme Court (Special Term, Erie County) holds in *New York Cent. & H. R. R. Co.* v. *Reeves,* 85 N. Y. Supp. 28, that a complaint in a suit by a railroad company to restrain some sixty ticket brokers in selling return round-trip tickets issued for an exposition at Buffalo, such persons having no connection with each other, is bad for multifariousness.

Multifariousness

LARCENY.

The difficult questions that arise where an effort is made to secure convicting evidence against a suspected person are dealt with by the Supreme Court of New York (Division No. 2) in *State* v. *Waghalter,* 76 S. W. 1028. It is there decided, after a discussion of the authorities, that there was no larceny where the taking from the possession of a carrier was instigated by its agent, with its full knowledge and consent, and pursuant to previous arrangement with the agent, who was a detective, and who instigated the taking for the sole purpose of entrapping the taker and defendant, suspected of receiving stolen goods, to whom the taker was directed to carry them.

Consent of Owner

LIBEL.

The Court of Criminal Appeals of Texas in *Jackson* v. *State,* 77 S. W. 223, one judge dissenting, holds that where an article is lengthy and contains matter that is libellous with much that is not, an information setting out the article in full and charging criminal libel against the publisher is insufficient unless the libellous matter is singled out and the prosecution based thereon. See *McArthur* v. *State,* 41 Tex. Cr. R. 635.

Practice

LIFE INSURANCE.

In *Foster* v. *Preferred Accident Ins. Co.,* 125 Fed. 536, the U. S. Circuit Court (E. D. Pennsylvania) holds that a person may effect insurance on his own life in good faith, paying the premiums therefor himself, and have the policy made payable to any beneficiary he chooses, and in such case the company cannot set up the want

Validity of Contract

LIFE INSURANCE (Continued).

of insurable interest of the beneficiary to defeat the policy. Compare *Carpenter* v. *Insurance* Co., 161 Pa. 15.

MASTER AND SERVANT.

Ratification of Servant's Act

In *Cobb* v. *Simon,* 97 N. W. 276, the Supreme Court of Wisconsin lays down the general principle that retention of the servant in the employ of a master after notice to the principal of a tort committed by a servant is evidence of the ratification of the act by the principal, but the information to the principal must be full and complete.

MUNICIPAL CORPORATIONS.

Enforcement of Ordinances: Liability

An action cannot be maintained against a municipality to recover damages alleged to have been sustained by reason of the enforcement of the provisions of an ordinance to prevent the spread of smallpox and other contagious diseases, unless it is made liable therefor by the statutes or by ordinance: Supreme Court of Nebraska in *Village of Verdon* v. *Bowman,* 97 N. W. 229. The officers enforcing such an act, it is decided, act at their peril, because if for any reason the ordinance is void, they will be liable for the damages caused by their unauthorized acts. See *Dodge County* v. *Diers,* 95 N. W. 602.

MUTUAL BENEFIT INSURANCE.

Amendment of By-Laws

The Court of Civil Appeals of Texas holds in *Eversberg* v. *Supreme Tent Knights of Maccabees of the World,* 77 S. W. 246, that where a member of a mutual benefit insurance association agrees in his application and certificate that the laws then in force or that may thereafter be adopted shall form the basis of his contract, and that his benefit shall not be payable unless he shall have complied with the laws then in force or that may thereafter be adopted, he is bound by a subsequent amendment of the by-laws amplifying the defence of suicide. One judge dissents. See *Supreme Lodge* v. *Trebbe,* 179 Ill. 348.

NEGLIGENCE.

The general rule that getting on or off a moving railroad train is negligence *per se* is modified by the Court of Civil Appeals of Texas in *St. Louis S. W. Ry. Co. of Texas* v. *Massay*, 76 S. W. 585, where it is held that it is not negligence as a matter of law for a passenger to attempt to alight from a train which has begun to move slowly after she has reached the lowest step of the car platform. The Court recurs to the general principle as to what an ordinarily prudent person would have done under the circumstances. See for a similar result in regard to street railways the case of *Dawson* v. *St. Louis Transit Co.*, 76 S. W. (Mo.) 689.

Alighting from Moving Train.

PHYSICIANS.

In *Wooley* v. *Bell*, 76 S. W. 797, the Court of Civil Appeals of Texas holds that a physician may not recover for professional services unless he shows compliance with the statute regulating the practice of medicine.

Recovery for Services

PLEDGES.

By an agreement a paper company was to deliver all the product of its mill to the plaintiffs, who were its selling agents, as security for advances which were made to it by plaintiffs, and such deliveries were made as fast as the goods were manufactured to a designated agent for the plaintiffs, who was also an employee of the company, and the product when so delivered was placed by itself on the premises of the company and was thereafter controlled by the agent, who shipped it from time to time for sale when ordered by plaintiffs. Under these facts the United States Circuit Court of Appeals (First Circuit) holds in *Dunn* v. *Train*, 125 Fed. 221, that under the rule that there must be both delivery and continued possession to constitute a valid pledge as to third parties there was such actual delivery and continued possession by the pledgees as to render the pledge valid as against an assignee in insolvency of the company with respect to the goods on hand in the custody of the agent when the assignee was appointed. Compare *Sumner* v. *Hamlet*, 12 Pick. 76.

Validity: Sufficiency of Delivery

PLEDGE.

In *Wilkins* v. *Redding,* 97 N. W. 238, the Supreme Court of Nebraska holds that where the amount of a debt is not in dispute a tender of the amount is not bad because coupled with a demand for the return of the property, but must be kept good, though it may still be on the same condition; but where the amount of the debt is in dispute, a tender of any sum less than that claimed by the pledgee, though equal to the amount actually due, is not good if coupled with such a condition. It is further decided that a pledgee does not forfeit his lien by unsuccessfully contending that the equity of redemption has been extinguished by contract or by a sale under his right as pledgee. Compare *Lewis* v. *Mott,* 36 N. Y. 395.

Recovery of Property: Tender of Debt

PRINCIPAL AND AGENT.

In *Snell* v. *Goodlander,* 97 N. W. 421, the Supreme Court of Minnesota decides that an agent who is authorized by his principal to sell property upon specified terms is under legal obligation, upon learning that more advantageous terms could be obtained, the facts concerning which are unknown to the principal, to communicate the same to him before making the sale on the terms prescribed. Compare with this case *Holmes* v. *Cathcart,* 92 N. W. 656, 60 L. R. A. 734.

Duties and Liabilities

SIDEWALKS.

The New York Supreme Court (Appellate Division, Third Department) holds in *Platt* v. *Village of Oneonta,* 84 N. Y. Supp. 699, that where a village lays stones in the soil in front of a lot for the purpose of using them as a permanent sidewalk they become a part of the lot-owner's real property, and having been removed by the village merely because he would not pay an assessment therefor, it is liable to him for the damage which he sustains. Compare *Niagara Falls Suspension Bridge Co.* v. *Bachman,* 4 Lans. 523.

Right of Lot-Owners

STATUTE OF FRAUDS.

Effect of Void Contract

The Supreme Court of Wisconsin decides *In re Sheldon's Estate,* 97 N. W. 524, that a void contract to convey real estate by devise in consideration of services rendered in devisor's family cannot be resorted to for the purpose of measuring the value of the services rendered, but is ineffectual for any purpose except to rebut the presumption that the services were gratuitously rendered, and thus raise an implied contract to pay therefor. See also *Martin* v. *Estate of Martin,* 108 Wis. 284.

SUPPORT.

Adjacent Land-Owners

The Supreme Court of New York decides in *Pullan* v. *Stallman,* 56 Atl. 116, that where an owner permits the land of an adjacent owner to be deprived of its lateral support, he is not liable to such adjacent owner for injuries sustained by the giving away of the soil under his weight unless the removal of the lateral support was in a negligent manner. See *McGuire* v. *Grant,* 25 N. J. Law 356.

TAX COLLECTORS.

Liability of Sureties on Bond

The official undertaking of the tax collector which stipulates that the sureties will make good "all moneys that may or shall come into his hands as tax collector" that he does not faithfully account for, embraces all tax moneys previously received which the tax collector had on hand at the execution of the undertaking and all moneys subsequently collected in his official capaçity, but does not include prior defalcations, if any, unless the money had been restored at the time of the making of the undertaking or was subsequently restored: Supreme Court of Oregon in *Lake County* v. *Neilon,* 74 Pac. 212. It is further decided that the fact that taxes were collected by a tax collector under a defective warrant, or without a warrant, constitutes no defence to the sureties when sued for the collector's conversion of the money so collected. See, in this connection, the monographic note to *Feller* v. *Gates,* 91 Am. St. Rep. 492, 553, on "Acts for which Sureties on Official Bonds are Liable."

TOWNSHIPS.

Allowance of Claim

An allowance by a township board of health to a physician for services to a patient, for which the county is liable, is not invalid because he was a member of the board and participated in the allowance: Supreme Court of Michigan in *Cedar Creek Tp.* v. *Board of Sup'rs, &c.,* 97 N. W. 409.

TRUSTS.

Constructive Trusts

The Court of Civil Appeals of Texas holds in *Brown* v. *Hooks,* 76 S. W. 606, that where one forges a lease of land belonging to another and receives rent thereunder such conduct does not create a constructive trust in favor of the land-owner entitling him to the rents received.

VENDOR AND PURCHASER.

Instalment Contract

The Supreme Court of Washington holds in *Messenger* v. *Murphy,* 74 Pac. 480, that a purchaser of property on the instalment plan under a contract providing that the title shall remain in the seller until the purchase price is fully paid, but binding the buyer to pay absolutely, may recover from a third person converting the property its full value, though he has paid but a portion of the purchase price.

WILLS.

Interest in an Estate

In *Halde* v. *Schultz,* 97 N. W. 369, the Supreme Court of South Dakota holds that the interest of a divorced husband in the estate of his divorced wife, contingent on the death of their minor child, is not sufficient to authorize him to contest her will, the statute law of the state permitting a contest only by a person interested. Compare with this case the decisions of *McDonald* v. *White,* 130 Ill. 493, and *In re Ensign,* 103 N. Y. 284.