PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADMINISTRATORS.

Appointment

The Supreme Court of Pennsylvania decides *In re Warner's Estate,* 57 Atl. 35, that where a widow and the sons of the decedent by a former marriage are bitterly antagonistic, the register should appoint a disinterested person as administrator on the failure of the parties to agree. See *Ellmaker's Estate,* 4 Watts, 34.

ANTI-TRUST ACT.

Combination in Restraint of Trade

The Supreme Court of the United States decides in *W. W. Montague & Co.* v. *Edward S. Lowry,* 24 S. C. R. 307, that an association of wholesale dealers in tiles, mantels, and grates in San Francisco and vicinity, and non-resident manufacturers of tiles and fire-place fixtures, in which the dealers agree not to purchase from manufacturers not members of the association, and not to sell unset tile to non-members for less than list prices, which are more than fifty per cent. higher than prices to members, while the manufacturers agree not to sell their products or wares to non-members at any price, under penalty of forfeiture of membership, is an agreement or combination in restraint of trade within the meaning of the Anti-trust Act of July 2, 1890. This decision is of special interest because it is referred to several times in the Northern Securities Decision. It cites briefly the former adjudications upon the Sherman Act.

APPEALS.

Judgment of Circuit Court of Appeals

It is decided by the Supreme Court of the United States in *Bankers' Mutual Casualty Company* v. *Minneapolis, St. Paul and Sault Ste. Marie Railway Company,* 24 S. C. R. 325, that a suit against a railway company engaged in carrying the United States mails under the Federal laws and postal regulations to recover the value of a registered package, alleged to have been lost through its negligence, does not arise under the Federal Constitution and laws so as to deprive the judgment of the Circuit Court of Appeals therein of the finality which exists when the jurisdiction of the Circuit Court depends entirely on diverse citizenship, where plaintiff relied on principles of general law, and nowhere asserted a right which might be defeated or sustained by one or another construction of the Constitution or of any law of the United States. Compare *Little York Gold Washing and Water Company* v. *Keyes,* 96 U. S. 199.

ATTORNEY AND CLIENT.

Assignment of Claim

In *Powell* v. *Galveston, etc., Railway Company,* 78 S. W. 975, the Court of Civil Appeals of Texas holds that where a person having a claim for personal injuries assigned an undivided one-half interest in the cause of action, after suit brought, to his attorney in consideration of legal services, and thereafter the defendant in the action settled with the claimant with notice of the assignment, the attorney was entitled to prosecute the original suit to judgment in his own interest and to recover to the extent thereof. In a case somewhat analogous to this, viz., *McCurdy* v. *Dillon,* 98 N. W. 746, a recent decision by the Supreme Court of Michigan, it is decided that a contract between attorney and client providing for a fee based on a percentage of the alimony to be recovered in a divorce case, the basis of compensation in case of settlement to be a minimum amount of $2000, and a similar contract in an assault and battery case between the husband and wife, pending at the same time as the divorce case, were against public policy, as tending to prevent a reconciliation between the parties.

BANKRUPTCY.

In *Wilsey* v. *Jewett Bros. & Co.*, 98 N. W. 114, the Supreme Court of Iowa holds that the fact that a plaintiff, after commencement of an action, made oath in bankruptcy proceedings that he had no property, claims, or causes of action which he could transfer to his creditors does not estop him from maintaining the action.

Maintenance of Action

BENEFICIAL ASSOCIATIONS.

The by-laws of a beneficial association provided that the beneficiary might be either a member of the family of the insured, or one related to him by blood, or one dependent upon him, but did not require that such beneficiary at the time of the death of the insured should belong to one of such classes. A member designated his wife as beneficiary, and she retained the certificate until his death, twenty-four years thereafter, and eight years after his divorce from her. Under these facts the Supreme Court of Pennsylvania, with Mr. Chief Justice Mitchell dissenting, holds in *Brown* v. *Grand Lodge A. O. U. W.*, 57 Atl. 176, that she was entitled to the benefits, though her husband subsequently remarried, where he continued to support his first wife and her children until his death. See *McCarthy* v. *Supreme Lodge*, 26 N. E. 866.

Vested Rights: Divorced Wife

BILLS AND NOTES.

It is decided by the Court of Appeals of Kentucky in *Wm. Deering & Co.* v. *Veal*, 78 S. W. 886, that where a wife signed a note, at her husband's request, as his surety, and gave it to him, she made him her agent to deliver it, and is bound by his representation that she signed it as principal, so that she is liable, though the time has passed in which limitations run as to a surety. It is held, further, that the fact that a wife signed a note on the second line for signatures was not sufficient to give notice to the payee, who accepted it in settlement of notes previously given by her husband, that she signed it as surety, and not as principal. Compare *Smith* v. *Moberly*, 49 Ky. 268.

Surety: Notice to Pay

CARRIERS.

Passengers' Luggage

The Supreme Court of Tennessee holds in *Nashville, C. & St. L. R. Co.* v. *Lillie,* 78 S. W. 1055, that where a passenger carried a valise into a sleeping-car and deposited it on his seat, and afterwards, on retiring, placed it under his berth, the valise was in effect placed in charge of the railroad company, and hence it was an insurer thereof. This decision is of special interest in its relation to the cases where the passenger retains a partial control over his baggage. In connection with it should be noticed the case of *Lewis* v. *N. Y. Sleeping-Car Company,* 143 Mass. 267, and *Pullman Palace Car Company* v. *Lowe,* 28 Nebr. 239.

Passes: Limitation of Liability

The vexed question as to whether a common carrier may relieve itself from liability for negligence to a person travelling on a pass is involved in a case before the United States Supreme Court decided in January of this year, it being there held that a stipulation in a railway pass that the railway company shall not be liable to the user "under any circumstances, whether of negligence of agents or otherwise, for any injury to the person," violates no rule of public policy, and relieves the company from liability for personal injuries resulting from the ordinary negligence of its employees to one riding on the pass who has accepted it with knowledge of its conditions: *Northern Pacific Railway Company* v. *Adams,* 24 S. C. R. 408.

CITIES.

Ultra-vires Contracts

The Court of Appeals of Maryland decides in *Westminster Water Company* v. *Mayor, etc., of City of Westminster,* 56 Atl. 990, that a contract of a city to annually levy taxes, and pay the proceeds to a water company, for water furnished to the city for all time to come, is, in the absence of prior express legislative sanction, ultra-vires. Such contract will not be treated as one for a definite period of years—viz., the number of years for which the company is chartered. An ultra-vires contract, it is said, is not protected by the contract clause of the Federal Constitution.

CONSTITUTIONAL LAW.

A statute of Vermont provided that no person should, in a sale of property, without being subject to a fine of not less than twenty dollars nor more than five hundred dollars for each offence, give or deliver in connection therewith any stamp or coupon entitling the purchaser to receive from any person or company, other than the person making the sale, any other property than that actually sold. The Supreme Court of that state decides in *State* v. *Dodge,* 56 Atl. 983, that the statute violates the fourteenth amendment to the United States Constitution, which provides that no state shall pass any law abridging the privileges or immunities of citizens of the United States, nor deprive any person of property without due process of law. The scheme of giving trading-stamps, it is said, it not unlawful, as demoralizing to legitimate business, it differing from ordinary business only in the method of advertising. Compare *State* v. *Dalton, 22* R. *77.*

Anti Trading-Stamp Act

CONTRACTS.

The Supreme Court of Michigan decides in *Sullivan* v. *Detroit, Y. & A. A. Ry. Co.,* 98 N. W. 759, that a contract whereby a corporation agreed to give an attorney "permanent employment" as counsel if he would render certain services and the scheme involved should prove a success was satisfied by his employment thereafter for the period of a year at a fixed salary.

"Permanent Employment:" Construction

CORPORATIONS.

It is decided by the Court of Appeals of Kentucky in *Scottish Security Co.'s Receiver* v. *Starks,* 78 S. W. 455, that where one subscribed for stock merely to enable the other subscribers to incorporate, and after such incorporation he was released from the subscription by the unanimous consent of the other subscribers, and while the corporation had no outstanding debts, the release is valid, and subsequent creditors cannot complain. It is further held that the validity of the cancellation of a subscription to the stock of a corporation whose

Subscription to Stock

CORPORATIONS (Continued).

chief office is in state X. is governed by the law of that state, though the incorporation was under the laws of another state.

CRIMINAL PROCEDURE.

Failure of Defendant to Testify

The relaxation of the rule of the common law which forbade a defendant to testify leads to more or less frequent difficulty, notwithstanding the rule that no comments are to be made upon his failure to testify. Thus in *Hoff* v. *State,* 35 Southern, 950, the Supreme Court of Mississippi, dealing with such a suit, holds that remarks of the district attorney in closing to the jury that "nobody on earth denies" that defendant had written a certain letter, and that "no living soul has denied that defendant seduced this little girl," were comments on defendant's failure to testify and constituted reversible error. With this case compare *Reddick* v. *State,* 72 Miss. 1008.

EVIDENCE.

Unreasonable Searches

The admissibility of documentary evidence tending to establish the guilt of an accused of the offence charged is not affected because it was secured in violation of the constitutional prohibition against unreasonable searches and seizures: Supreme Court of the United States in *Adams* v. *People of the State of New York,* 24 S. C. R. 372. See also the leading case of *Commonwealth* v. *Dana,* 2 Metc. 329.

Declarations against Interest

In an action to recover for wrongful death of a relative the Court of Civil Appeals of Texas holds in *Smith* v. *International and G. N. R. Co.,* 78 S. W. 556, that declarations of a person a few hours after he was struck by a train, and a short time before he died, to the effect that he was asleep at the time are admissible as against interest, irrespective of their admissibility as a part of the *res gestæ,* and may be shown even as against the parties who sue for their death.

FIRE INSURANCE.

The Supreme Court of Minnesota holds in *Hartley* v. *Pennsylvania Fire Ins. Co.*, 98 N. W. 198, that where the agent of a fire insurance company has knowledge of the true conditions surrounding insured property, and the company issues a policy in which such conditions are restricted or prohibited, the same are presumed to have been waived. This rule is applied in the present case, where the policy prohibited the use of gasoline upon the premises insured, but the agent had knowledge of the fact that gasoline had been used, and that it was the intention to continue its use for cooking purposes, yet issued a policy without a special permit attached thereto. Compare *Brandup* v. *St. Paul Fire and Marine Ins. Co.*, 27 Minn. 393.

Conditions of Property: Waiver

FRAUDULENT CONVEYANCES.

The Supreme Court of Missouri, Division No. 1, decides in *Davidson* v. *Dockery*, 78 S. W. 624, that a devisee under a will has no standing in equity to have set aside a fraudulent conveyance of his testator, as he takes under the testator and is in no better position in that regard than he.

Rights of Vendee

In *Wolfsberger* v. *Mort*, 78 S. W. 817, the Court of Appeals at St. Louis, Missouri, holds that an insolvent debtor cannot systematically give practically all his earnings to his wife, and thereby allow her to accumulate property in her own name, which, if acquired by him, would be subject to levy. It is further decided that in proportion as a husband's money is used for the purchase of property by his wife in her own name she holds the same in trust for him, and it may be subjected to a judgment against him.

Transactions between Husband and Wife

HUSBAND AND WIFE.

In *Louisville & N. R. R. Co.* v. *Dick*, 78 S. W. 914, the Court of Appeals of Kentucky holds that in an action by a married woman for personal injuries plaintiff may recover for any impairment of her power to earn money, though there is no proof that she had ever earned any money. See also *South Covington and Cincinnati Street Railway Company* v. *Bolt*, 59 S. W. 26.

Injury to Wife: Damages

INSANITY.

Contracts: Return of Consideration

In *Coburn* v. *Raymond,* 57 Atl. 116, the Supreme Court of Errors of Connecticut holds that an incompetent suing to avoid a conveyance made while not under guardianship to one acting in good faith, and without knowledge of the incompetency, must, as a condition precedent to relief, return the consideration; but the court decides that where a mother was present when an incompetent daughter executed a deed, and did not inform the innocent ultimate grantee of the incompetency, she was estopped from afterwards, as heir of the daughter, suing to avoid the deed for incompetency. See on the former of these holdings *Eaton* v. *Eaton,* 37 N. J. Law, 108, and *Young* v. *Stevens,* 48 N. H. 133.

INTERSTATE COMMERCE.

Ferries

The Supreme Court of the United States holds in *County of St. Clair* v. *Interstate Sand and Car Transfer Company,* 24 S. C. R. 300, that an unconstitutional burden is imposed on interstate commerce by a state act penalizing the carrying on of a ferry without a license, when applied to the transportation of loaded or unloaded railroad cars across the Mississippi River from the Illinois to the Missouri shore, even assuming that a state may regulate a ferry upon a navigable stream forming the boundary between the two states, where such statute makes the granting of the license discretionary, with citizens of Illinois preferred, and compels the licensee to conduct a general ferry business. See *Conway* v. *Taylor,* 1 Black, 603.

LIBEL.

Blacklisting

The Supreme Court of Indiana decides in *Wabash R. Co.* v. *Young,* 69 N. E. 1003, that an allegation in a complaint to the effect that defendant, by whom plaintiff had previously been employed, had "blacklisted" plaintiff, showed no cause of action in libel in the absence of any allegation that blacklisting imputed to plaintiff the commission of a crime, or other conduct exposing him to public hatred, punishment, and disgrace.

LICENSES.

In *Maple Orchard Grove and Vineyard Co.* v. *Marshall,* 75 Pac. 369, the Supreme Court of Utah decides that a parol license to enter on the land of the owner to construct a pipe-line to carry water for purposes of irrigation operates as an irrevocable grant after entry and the construction of the pipe-line at considerable expense, and after commencing the use of the water for purposes of irrigation the rights acquired under the grant will be protected in equity. With this case compare *Huff* v. *McCauley,* 53 Penna. 206.

Revocability

MANDAMUS.

A student of a law school who has been wrongfully expelled without notice is entitled to mandamus to compel his restoration to membership whether the school is organized for profit or not: Court of Appeals of Maryland in *Baltimore University of Baltimore City* v. *Colton,* 57 Atl. 14. An action at law for damages for expulsion from a law school before graduation is not, it is held, an adequate remedy, precluding a resort to mandamus for reinstatement.

Law-School Students

MARRIED WOMEN.

A husband platted his wife's land with her knowledge and consent, and the subdivision was designated on the map as that of the husband. The map was recorded with the consent of the wife, but was never acknowledged by her. Thereafter the wife conveyed by properly acknowledged deeds according to the streets and alleys on the map. On these facts the Supreme Court of Texas decides in *City of Corsicana* v. *Zorn,* 78 S. W. 924, that this constituted a sufficient dedication of the alleys and streets in question to the public.

Dedication

In Indiana the statute law, similar to that in many of the states of the United States, forbids married women to enter into contracts of suretyship. In *Webb* v. *John Hancock Mut. Life Ins. Co.,* 69 N. E. 1006, the Supreme Court of that state decides that such statute prohibits married women from either personally obligating

Contracts: Suretyship

MARRIED WOMEN (Continued).

themselves as sureties for another or mortgaging their separate property for the debt of another. In connection with this case the decisions in *Kuhn* v. *Ogilvie,* 178 Pa. 304, and *Dusenberry* v. *Insurance Company,* 188 Pa. 460, are of interest.

MUNICIPAL CORPORATIONS.

In *Twyman's Adm'r* v. *Board of Councilmen of Frankfort,* 78 S. W. 446, the Court of Appeals of Kentucky holds that where a city was authorized to establish hospitals and make all necessary regulations for the protection of the public health, and in pursuance thereof established a pesthouse for persons suffering from contagious diseases, acts of the city's officers in maintaining such house and in removing thereto plaintiff's intestate, who had smallpox, and in caring for him there until he died, were acts performed by the city in its public, governmental capacity, and not in its corporate and private capacity, and hence it was not liable for negligence in the performance thereof. See *Taylor* v. *City of Owensboro,* 98 Ky. 271.

Governmental Functions

In *Lowe* v. *Conroy,* 97 N. W. 942, the Supreme Court of Wisconsin, holding that a municipal corporation is not liable for the value of property destroyed by mistake on the order of its health officers, decides, however, that a health officer is personally liable for the destruction of cattle which were not in fact a nuisance or cause of sickness, endangering the public health, but were mistakenly adjudged by him so to be. See in connection with this case *Hubbell* v. *Goodrick,* 37 Wis. 84.

Liability for Lands of Agents

PRINCIPAL AND AGENT.

In *Tabet* v. *Powell,* 78 S. W. 997, the Court of Civil Appeals of Texas decides that where a person injured in a collision with a railroad train gave to his brother full charge of the matter, and told the claim agent that any settlement would have to be made with the brother, such authority authorized the brother to bind the

Authority of Agent

PRINCIPAL AND AGENT (Continued).

person injured by a contract employing an attorney to prosecute the claim against the railroad company, agreeing to pay such attorney one-half of the amount recovered, and securing such payment by an assignment of one-half of the cause of action.

PUBLIC RECORDS.

Photographs of Convicts

The Court of Appeals of New York deals, *In re Molineaux*, 69 N. W. 727, with the appeal in this case from the Supreme Court, and, affirming the judgment of the court below, rendered in 84 N. Y. Supp. 1136, holds that where the photograph of a convict has been taken and measurements made and recorded in the manner provided by the statute they constitute public records, and, though he may be acquitted on a subsequent trial, he is not entitled to compel the Superintendent of City Prisons to deliver such records to him.

RAILROADS.

Bulk Freight: Rental Charges: Lien

The consignee of two carloads of coke was notified upon their arrival that a charge for rental would be made if they were not unloaded within forty-eight hours. The notification was in compliance with the rules of an association of railroads organized for the purpose of facilitating the unloading of cars, and the charges made for the rental was much less than the average earning capacity of freight cars. The railroad company had at the point of destination no warehouse for the unloading of bulk freight such as coke. Under these circumstances the Supreme Court of Illinois decides that a railroad company was entitled to charge rental for the use of the cars after the expiration of a reasonable time for unloading and to enforce a lien upon the freight for the rental charges: *Schumacher* v. *Chicago & N. W. Ry. Co.*, 69 N. E. 825. It is also held that on the issue as to what was a reasonable time evidence as to the distance of the consignee's home from the station was not admissible. The case presents an interesting review of the authorities in point. As to the important holding with regard to the lien see *Miller* v. *Mansfield*, 112 Mass. 260.

SURETIES.

Discharge: Failure to Disclose Embezzlement

One who, as agent of an insurance company, had been guilty of embezzlement, was appointed agent of a new company formed with the same stockholders and officers, and it took a bond for the faithful performance of his contract of employment without giving the sureties notice of his embezzlement, of which it had knowledge: Under these circumstances the Appellate Court of Indiana, Division No. 2, holds in *Indiana and Ohio Live Stock Ins. Co.* v. *Bender,* 69 N. W. 691, that the sureties were not bound. To withhold such information, it is decided, is bad faith and prevents a recovery on the bond. In connection with this case the decision of the New Jersey court in *Sooy* v. *State,* 39 N. J. Law, 135, is worthy of study.

TELEGRAPH.

Damages

The State of Texas furnishes many decisions on the question of the liability of telegraph companies for damages from failure or delay in delivering messages. An interesting case occurs in *Western Union Telegraph Co.* v. *Swearingin,* 78 S. W. 491, where it is held that damages from a father's failure to be present at his son's funeral on account of delay in the transmission of a telegram reading, "Come, Frank is dead," are within the contemplation of the parties to the contract of transmission and are recoverable, though a reply message from the father would have been necessary to secure a postponement of the funeral so as to admit of his reaching the place of interment in time. See also *Western Union Telegraph Co.* v. *Norris,* 68 S. W. 982.

WILLS.

Capacity of Testator: Presumption

The Supreme Court of Indiana in *Branstrator* v. *Crow,* 69 N. E. 668, discusses the general questions as to the presumptions with regard to the sanity of a testator. It is there held that it is only where mental unsoundness is of a character to appear permanent, and to forbid the reasonable expectation of recovery, that a presumption of the continuance of such

WILLS (Continued).

unsoundness will be indulged. It does not arise from intermittent temporary unsoundness, resulting from sickness, injury, intoxication, or other transitory cause, so that an instruction stating that, where it has been established that a person is of unsound mind, the presumption is that that state of unsoundness continues until the contrary is shown, is too broad. See in connection with this case *Blough* v. *Parry,* 144 Ind. 463.