PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

BAGGAGE.

The Supreme Court of Mississippi decides in *Yazoo and M. V. R. Co.* v. *Georgia Home Ins. Co.*, 37 S. 500, that

What Constitutes

memoranda and papers in the possession of an agent, but relating exclusively to the business of his principal, and carried by the agent solely for business purposes, are not baggage when put by the agent in his trunk, and, in the absence of a consent or custom of the railroad to accept such papers as baggage, no damages can be recovered, either for the loss of the papers or for delay in their shipment and delivery. Compare *Staub* v. *Kendrick*, 23 N. E. 79, 6 L. R. A. 619.

BILLS OF LADING.

The Court of Appeals of Maryland, laying down the general rule that a bill of lading, though made non-negotiable

Negotiability: Rights of Assignee

by its terms, may, like any other non-negotiable instrument or chose in action, be transferred by assignment, the assignee taking subject to the equities between the original parties, holds in *National Bank of Bristol* v. *Baltimore and O. R. Co.*, 59 Atl. 134, that an assignee of a non-negotiable bill of lading takes title to the goods represented by the bill subject only to the equities of those whose names appear upon or are in some way connected with the bill, and is not affected by equities existing in favor of strangers whose interests in no way appear upon it.

BUILDING CONTRACTS.

In *Norcross* v. *Wyman*, 72 N. E. 347, the Supreme Judicial Court of Massachusetts decides that under a building

Power of Architects

contract providing that the decision of the architects as to the specifications shall be final and binding, no notice was necessary before making a decision as to the meaning of the specifications, but the architects

BUILDING CONTRACTS (Continued).

were at liberty to decide on such legal principles as they deemed applicable and on such evidence as they chose to receive.

CARRIERS.

Presumptions

It seems settled by the majority of decisions that where goods shipped over several connecting lines are injured, and where it appears that they were delivered in good condition to the first carrier, injury is presumed to have occurred on the last carrier's line. On the other hand, where the goods are entirely lost the burden is in the first carrier to explain such loss. An interesting set of facts is presented in *Bullock* v. *Boston and H. Dispatch Co.*, 72 N. E. 256, where a case containing goods was delivered in good order to an initial carrier. When the connecting carrier delivered it to the owner it was found that some of the goods had been removed and were lost. The Supreme Judicial Court of Massachusetts holds that the loss is presumed to have occurred on the line of the connecting carrier. Compare *Moore* v. *Railroad*, 173 Mass. 335.

Railroad Ticket: Consideration

The Supreme Court of Kansas decides in *Jevons* v. *Union Pac. R. Co.*, 78 Pac. 817, that where a railroad ticket correctly recites the date of its issuance, but is marked with a punch in a manner that, according to its printed statements, indicates that it had expired prior to that date, it cannot be said as a matter of law that it is for this reason void, and that its holder may not recover damages for being expelled from a train when he presents it for passage. It is also held that a round-trip railroad ticket, containing provisions that it shall be used only by the original holder whose signature it bears, but not in fact signed by anyone, which is sold with the express understanding that it shall be used by A in going to, and by B in returning from, the place of destination, is not void when presented by B upon such return passage after having been used by A for the first part of the journey. The case is an interesting authority upon a question upon which there are not many decisions. Compare *Trice* v. *Chesapeake and O. Ry. Co.*, 40 W. Va. 271.

CONSTITUTIONAL LAW.

The Supreme Court of Washington decides *In re Aubry*, 78 Pac. 900, that the trade of a horseshoer is not a subject of regulation under the police power of the state as a business concerning and directly affecting the health, welfare, and comfort of its inhabitants, and hence that a statute providing for the examination and registration of horseshoers in certain cities is unconstitutional as an illegitimate exercise of such power. It is further held that the act also deprives citizens of their liberty and property without due process of law, and denies to them the equal protection of the laws. Compare the recent decision of *Bessette* v. *People*, 193 Ill. 334, 56 L. R. A. 558.

Regulation of Occupation

CONTRACTS.

In *Board of School Com'rs of City of Indianapolis* v. *Bender*, 72 N. E. 154, the Appellate Court of Indiana holds that where a bidder for a public building, having very little time after notice of the letting of the contract, and before the filing of the bids, in making up his bid from his estimate book, in which he had estimated the different parts of the work separately, by mistake turned two leaves and omitted an estimate on one part of the work, in consequence of which his bid as submitted was several thousand dollars lower than he intended, or for which the work could be done, the acceptance of such bid did not create a contract for want of the meeting of the minds of the parties; and the mistake being an excusable one, a complaint setting up such fact, and that he promptly notified the board having charge of the work of the mistake, and the contract was let to the next higher bidder, states a cause of action in equity for the rescission of his bid and the recovery of a deposit made as a guarantee that he would enter into a contract if his bid was accepted. See in connection with this case *Harran* v. *Foley*, 62 Wis. 584.

Mistake: Right to Rescind

The New York Supreme Court (Appellate Division, Fourth Department) decides in *Johnson* v. *Fargo*, 90 N. Y. 725, that a contract made between employer and employee at the time of the employment of the latter, whereby he agreed to assume all risks of accident or injury which he would sustain in the course of his employ-

Validity

CONTRACTS (Continued).

ment, whether occasioned by the negligence of the employer or any of its agents or employees, or otherwise, and further providing that in case he should at any time suffer injury he would at once execute and deliver to the employer a release of all claims, demands, and causes of action arising out of or connected with such injury, is contrary to public policy and void. One judge dissents. Compare *Purdy* v. *Railroad Co.*, 125 N. Y. 209.

Restraint of Trade

An interesting decision by the New York Supreme Court (Appellate Division, Second Department) appears in *Jacobs* v. *Cohen*, 90 N. Y. Supp. 854, where it is held that a contract between an employer and a labor union, providing that the employer shall not employ any help other than those who are members of the union, and who conform to the rules of the union, and providing that the employer shall cease to employ employees who are not in good standing on being notified to that effect by the representatives of the union, and providing that the employer shall abide by the rules of the union, is an attempt to restrict the freedom of employment and is void as against public policy. Two judges dissent. Compare *Curran* v. *Galen*, 152 N. Y. 33.

DAMAGES.

Impairment of Memory

The Supreme Court of Utah decides in *Nichols* v. *Oregon Short Line R. Co.*, 78 Pac. 866, that in an action for injuries to a passenger resulting from a collision, a loss of memory and an impairment of plaintiff's mental power are proper elements of damage. Compare with this decision the very recent holding of the Supreme Court of Oregon in *Maynard* v. *Oregon R. and Nav. Co.*, 78 Pac. 983, that mental distress or anguish resulting from the realization of physical inability, because of the injury, to properly care for those dependent on plaintiff for support and education is not an element of consequential damages to be recovered in an action for personal injuries.

FIRE INSURANCE.

In *Fuller* v. *Jameson*, 90 N. Y. 456, the New York Supreme Court (Appellate Division, First Department) decides that a bankruptcy adjudication against insured, and a note by the referee in bankruptcy in his record of the name of the person whom he had selected as receiver to take charge of his property pending the appointment of a trustee, and an order appointing the receiver and his qualification two days after the destruction of the property covered by the policy, did not constitute such a change of interest as to invalidate the policy under a provision that it should be void if any change other than by the death of the insured should take place in the interest, title, or possession of the subject of insurance, etc., during the life of the policy. Compare *Rand* v. *Iowa Central Railroad Co.*, 89 N. Y. Supp. 212, a very recent decision referring to a similar question.

Change of Interest

FOREIGN CORPORATIONS.

Just what constitutes the doing of business in a state by a foreign corporation is frequently a matter of difficulty to decide. The United States Circuit Court (E. D. New York), dealing with this question, holds in *Honeyman* v. *Colorado Fuel and Iron Co.*, 133 Fed. 96, that where a corporation incorporated in another state, where the business for which it was organized is carried on, has no office in New York, except for the registration of transfers of stock, the fact that its directors have met there, as permitted by a by-law, at the office of one of their number, and that it keeps a bank account there, do not constitute a doing of business in the state which renders it subject to suit therein, it not being shown what business was transacted at the New York meetings, nor how long since any such meeting was held. Compare with this decision note to *Wagner* v. *J. & G. Meakin, Limited*, 33 C. C. A. 585.

Doing Business in State

GIFTS.

In *Phinney* v. *State ex rel. Stratton*, 78 Pac. 927, the Supreme Court of Washington holds that where a man suffering from a disease which made him believe that death was impending, having no wife or children or next of kin or creditors, had a check drawn on a bank in which he had a deposit in favor of one who had

Mortis Causa

GIFTS (Continued).

for some time been his friend, nurse in sickness, and companion, and handed the check to the payee with the statement: "If I don't get over this, I want (the payee) to get my money. I don't want it to go" to the county, and died within a few days thereafter, the delivery of the check was a valid gift causa mortis and enforceable, though the check did not reach the bank until after the donor's death and did not include all of the donor's deposit. Compare *Bank* v. *Chilberg*, 14 Wash. 247. The case presents a very interesting and satisfactory discussion of the principles involved.

HUSBAND AND WIFE.

In *Stalcup* v. *Stalcup*, 49 S. E. 210, the Supreme Court of North Carolina decides that a conveyance to husband and wife, if nothing else appears, vests in the grantees an estate in entirety, whether the consideration was furnished partly by both, or all by one of them.

Estate of Entirety

INSURANCE.

Against the dissent of two judges, the New York Supreme Court (Appellate Division, Second Department) holds in *Reilly* v. *Empire Life Ins. Co.*, 90 N. Y. 866, that an insurance solicitor who takes an application is the agent of the insurer, notwithstanding a clause in the contract of insurance providing that the solicitor shall be the agent of the insured as to all statements and answers made in the application; and it is therefore competent, in an action on the policy, to show that the insured gave truthful answers to the agent, who wrote false answers in the application.

Capacity of Agent

LANDLORD AND TENANT.

The Court of Appeals of New York holds in *Steefel* v. *Rothschild*, 72 N. E. 112, that where a lessor concealed defects in a building which the lessee could not discover by reasonable diligence, it constituted a fraud; and where the lessee was compelled to remove from the building by reason of a judgment obtained by the

Defects in Building

LANDLORD AND TENANT (Continued).

municipal authorities declaring the building unsafe, he could recover from the lessor the rent paid in advance and the loss occasioned by such removal. It is further decided that where a building constitutes a public nuisance, and the lessor has knowledge thereof before the lessee takes possession, he must abate the nuisance; and where he permits, with such knowledge, the lessee to take possession, damages resulting to the latter therefrom are the direct results of the lessor's violation of law in maintaining such nuisance and he is liable to the lessee therefor. Compare *Cesar* v. *Karoutz*, 60 N. Y. 229.

MARRIED WOMEN.

The Indiana statute law provides in a manner similar to the statute law of most states that a married woman shall not enter into any contract of suretyship. In *Field* v. *Campbell*, 72 N. E. 260, the Supreme Court of Indiana holds that whether or not a married woman is a surety or a principal on any obligation is to be determined not from the form of a contract but from whether she received in person or by benefit to her estate the consideration on which the contract depends. See, however, *Dusenberry* v. *Insurance Co.*, 188 Pa. 460, and *Kuhn* v. *Ogilvie*, 178 Pa. 304, where an apparently different doctrine was established.

Contract of Suretyship

MINING CLAIMS.

In *Stevens* v. *Grand Central Min. Co.*, 133 Fed. 28, the United States Circuit Court of Appeals (Eighth Circuit) holds that the general rule that co-tenants stand in a relation to one another of mutual trust and confidence, that one will not be permitted to act in hostility to the others in respect to the joint estate, and that a distinct title acquired by one will inure to the benefit of all, applies with full force to the joint owners of a mining claim; and a co-owner who amends the location noted, relocates the claim, or otherwise procures the issuance of a patent in his own name, will hold the title in trust for all; nor will the trust be avoided, or its enforcement defeated, merely because a stranger to the original claim joins with such joint owner in the relocation and acquires title jointly with him to the relocated claim.

Constructive Trusts

SPENDTHRIFT TRUSTS.

In *Wenzel* v. *Powder*, 59 Atl. 194, the Court of Appeals of Maryland holds that where a settler provided, in the deed creating the trust, that all the income should be applied to the support of himself and wife and children, the whole income having been given for the beneficiaries, the income was not inalienable, and hence a contention that the trust was a spendthrift one and the income not subject to claims of the creditors of the cestuis que trustent was of no merit.

What Constitutes

TAXATION.

Switches, wires, and meters of an electric lighting company, installed on property belonging to different individuals, to whom the lighting company was furnishing electricity, are not assessable as real estate to such company: New York Supreme Court (Special Term, Oneida County) in *People ex rel. New York Edison Co.* v. *Feitner*, 90 N. Y. 826.

Electric Meters

WILLS.

The Supreme Judicial Court of Massachusetts decides in *Fleming* v. *Morrison*, 72 N. E. 499, that a finding that, before testator and the person who drew his will parted when it was executed, testator told the scrivener that the instrument which had been signed as and for his last will, and declared by him to be such in the scrivener's presence, was a " fake, made for a purpose," was fatal to the validity of the will. It is further decided that parol evidence is admissible to contradict the recitals of a will that it is a will, that it has been signed as such by the person named as the testator, and attested and subscribed by persons signing as witnesses.

Animus Testandi