PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADMIRALTY JURISDICTION.

The United States District Court, W. D. Washington, N. D., decides in *The Neck*, 138 Fed. 144, that a citizen of the United States cannot be deprived by treaty of his constitutional right to invoke the jurisdiction of the national courts of admiralty to determine a cause within the admiralty and maritime jurisdiction to which he is a party, and which is cognizable within the United States.

Effect of Treaty

ASSAULT.

The Supreme Court of Minnesota decides in *Mohr* v. *Williams*, 104 N. W. 12, that a surgical operation by a physician upon the body of his patient is wrongful and unlawful where performed without the express or implied consent of the patient. In the absence of such consent the physician has no authority, implied or otherwise, to perform the same. Consent may be implied from circumstances. This rule is applied to a case where, after a patient was placed under the influence of anæsthetics, the physician, intending to operate on her right ear, discovered that the left ear was in more serious condition than the right, it being left to the jury to say whether consent had been shown. Compare *Pratt* v. *Davis*, Chicago Leg. News, 213.

Operation by Physician

ASSIGNMENT.

The Supreme Court of Minnesota holds in *Leitch* v. *Northern Pac. Ry. Co.*, 103 N. W. 704, that an assignment of wages to be earned in the future under an existing contract of employment to secure a present debt or future advances is valid as an agreement, and takes effect as an assignment as the wages are earned, but an assignment of wages to

Future Wages: Bankruptcy

ASSIGNMENT (Continued).

be earned without limit as to amount or time, is void. And such an assignment, it is said, cannot be enforced against a debtor, after his discharge in bankruptcy, as to wages thereafter earned by him. Compare *Minnesota Linseed Co.* v. *Maginis*, 32 Minn. 193.

ATTACHMENT.

The Supreme Court of North Dakota decides in *Jewett Brothers* v. *Huffman*, 103 N. W. 408, that the lien of an attachment is not dissolved by the bankruptcy of the attachment debtor where the property attached is exempt as against the trustee in bankruptcy, but is not exempt from seizure for the debt upon which the attachment is based. Compare *Dry Goods Co.* v. *Nelson*, 10 N. D. 580, 58 L. R. A. 770.

Dissolution of Lien

The Supreme Court of Nebraska holds in *Burleigh* v. *Palmer*, 103 N. W. 1068, that an attorney has a lien for his compensation for professional services and for his disbursements upon moneys received by him on his client's behalf in the course of his employment, and this right of lien is not affected by the fact that the client is an executor or trustee and the services were rendered and money received on behalf of the estate. Compare *Harrison* v. *Perea*, 168 U. S. 311.

Lien for Services

The Court of Civil Appeals of Texas decides in *Hortsman* v. *Little*, 88 S. W. 286, that a surety is a creditor, within the meaning of the provision of a Bankrupt Act condemning preferential transfers to creditors. See *Swarts* v. *Siegel*, 117 Fed. 13.

Preferential Transfers: Sureties

The Supreme Court of Minnesota decides in *Seager* v. *Lamm*, 104 N. W. 1, that whether a given transaction in the form of a recordable instrument constitutes a preference within the meaning of the Federal Bankruptcy Act must be determined by the facts existing at its inception, and not at the time of its record, and if in fact it was a preference

Preferences: Avoidance

ATTACHMENT (Continued).

when it was executed, it may be avoided by filing a petition in bankruptcy by or against the maker thereof within four months after its record, but if it was not originally a preference a failure to record it until the maker became insolvent does not make it one. See also *Bradley Clark & Co. v. Benson*, 100 N. W. 670. With the above case, however, should be compared the recent decision of the United States District Court, E. D. Pennsylvania, *In re Lukens*, 138 Fed. 188, where it is held that under the Pennsylvania law declaring that a mortgage on real estate creates a mere lien to secure the debt, and does not convey an estate in the land remaining in the mortgagor, where the mortgagee failed to record his mortgage, given for the purchase price of real estate, until after the mortgagor became bankrupt, he was not entitled to payment in full from the proceeds of the mortgaged property as against general creditors.

Trustees: Legacies

The United States District Court, N. D. New York, decides *In re McKenna*, 137 Fed. 611, that where a bankrupt became the owner of a legacy by the death of his testator prior to the filing of his petition and adjudication, but on the same day, such legacy vested in the bankrupt's trustee for administration in bankruptcy.

Time for Filing Claims

The United States Circuit Court of Appeals, Second Circuit, decides *In re Ingalls Bros.*, 137 Fed. 517, that under the Bankruptcy Act of 1898, which provides that claims shall not be proved against the bankrupt estate subsequent to one year after the adjudication, a claim is not proved until it has been filed, and neither the court nor a referee has any discretionary power to permit the filing of proofs of claim after the expiration of such year either nunc pro tunc or otherwise, nor is their power in that respect enlarged by the fact that the proofs were delivered to the trustee within said year. Compare *Wait v. Van Allen*, 22 N. Y. 319.

BANKS.

The Supreme Judicial Court of Massachusetts decides in *Symonds* v. *Riley*, 74 N. E. 925, that where cheques, post dated, were deposited in a bank, which took them in good faith, paying full value, with no notice of any equities between the drawer and the one to whose credit they were deposited, such equities were no defense in an action by the bank against the drawer. Compare *Wiley* v. *Bunker Hill National Bank*, 183 Mass. 495.

Dishonoring Cheques

BILLS AND NOTES.

The Supreme Court of Colorado decides in *Wittman* v. *Pickens*, 81 Pac. 299, that the fact that a payee of a note writes on the face thereof the word "Paid" does not, without delivery to the maker, discharge the note and release the maker from liability thereon.

Discharge

Against the dissent of one judge, the New York Supreme Court, Appellate Term, decides in *Warshawsky* v. *Grand Theater Co.*, 94 N. Y. Supp. 522, that an agreement between a corporation and a retiring stockholder compromising the stockholder's demand for special services rendered as an officer of the corporation is a good consideration for a note given by the corporation to the stockholder for the amount of the demand as compromised. Compare *Wilson* v. *Metropolitan Electric Railway Co.*, 120 N. Y. 125.

Consideration

CARRIERS.

In *Pecos River R. Co.* v. *Latham*, 88 S. W. 392, the Court of Civil Appeals of Texas decides that where a carrier failed to perform a contract to furnish cars to transport certain cattle as agreed, the shipper was not bound to arrange with another railroad company to transport the cattle over defendant's route for a part of the distance in order to reduce the shipper's damages. Compare *Sun Manufacturing Co.* v. *Egbert & Guthrie*, 84 S. W. 667.

Damages

In *Chicago R. I. and P. Ry. Co.* v. *Hamler*, 74 N. E. 705, the Supreme Court of Illinois decides that a railroad company is not a common carrier of sleeping-cars belonging to another, and is therefore entitled to impose such terms as a condition to their operation as it may elect. It is accordingly held that where a sleeping-car porter was injured by the blowing up of the locomotive of a train to which his car was attached, his contract with the sleeping-car company, by which he released the railroad company from liability for injuries, was a complete defence, without regard to whether the latter's negligence was gross or slight. One judge dissents.

Sleeping-Cars

CONSTITUTIONAL LAW.

A statute of Arkansas provided that any person, either as owner, manufacturer, or agent, who, without a license, should travel in any county and peddle certain specified articles should be deemed guilty of a misdemeanor, but that the section should not apply to any resident merchant in such county. In *Ex parte Deeds*, 87 S. W. 1030, the Supreme Court of Arkansas decides that the act was in violation of the Fourteenth Amendment to the Federal Constitution prohibiting a state from denying to any person within its jurisdiction the equal protection of the laws. Compare *Sayle Borough* v. *Phillips*, 148 Pa. 482.

Equal Protection of Laws

In *State ex rel. Consolidated Stone Co. et al.* v. *Houser*, 104 N. W. 77, the Supreme Court of Wisconsin decides that a law appropriating money for persons who furnished materials for a contractor for a public building, who was paid by the state, but became bankrupt without paying them, is not within the power of the Legislature, the appropriation being for a private purpose. See, however, the decision of the Supreme Court of the United States upon an analogous question in *United States* v. *Realty Co.*, 163 U. S. 427.

Appropriations Private: Purpose

CONTEMPTS.

In *Globe Newspaper Co.* v. *Commonwealth*, 74 N. E. 682, the Supreme Judicial Court of Massachusetts decides that a publication of newspaper articles relating to a murder case, setting forth facsimiles of a specimen of the handwriting of the person indicted for the crime and of a paper found by the side of the body of the person murdered, followed by an analysis of the likeness and unlikeness in the handwriting, including interviews with experts employed by the Commonwealth, stating the methods of the prosecuting officer in connection therewith, and discussing the interests of the reading public in the specimens of the handwriting, constitutes contempt of court, because interfering with the administration of justice. It is further held that a publisher of a newspaper charged with contempt of court in publishing an article relating to a cause pending in court cannot justify by showing that the article was true and that it was published without an express intent to injure the parties or to interfere with the administration of justice, though the same may be material in considering the punishment. This important decision may well be accepted with favor. Compare *Hunt* v. *Clarke*, 58 L. J. Q. B. 490.

Newspaper Publication

CORPORATIONS.

In *Whaley* v. *Bankers' Union of the World*, 88 S. W. 259, the Court of Civil Appeals of Texas holds that where two corporations organized under the laws of different states attempted to consolidate without any statute authorizing such consolidation, the attempt was a nullity, and did not create a de facto corporation by user. Compare *American Loan, etc., Co.* v. *Minn., etc., Ry. Co.*, 157 Ill. 641.

De Facto: Consolidation

DECEIT.

In *Kimber* v. *Young*, 137 Fed. 744, the United States Circuit Court of Appeals, Eighth Circuit, decides that in an action for deceit in the sale of corporate bonds, allegations that defendant knew the bonds to be good and that they would be paid, principal and interest, at maturity, though

False Statements

DECEIT (Continued).

stated positively as a fact, were mere matters of opinion, the falsity of which was insufficient to create a liability.

EVIDENCE.

Letters: Carbon Copies

The Supreme Court of Virginia decides in *Chesapeake and O. Ry. Co.* v. *F. W. Stock & Sons*, 51 S. E. 161, that a carbon copy, made at the same time and by the same impression of type as a letter, may be regarded as a duplicate original of the letter itself and admitted in evidence without notice to produce the letter itself. Compare *Hubbard* v. *Russel*, 24 Barb. 104.

Communications to Physician

The extent to which the states have adopted statutes protecting confidential communications to physicians makes of general interest the decision of the Supreme Court of Nebraska in *Western Travelers' Accident Assn.* v. *Munson*, 103 N. W. 688, where it is held that a stipulation in a contract of life insurance to the effect that the proofs of death shall consist in part of the affidavit of the attending physician, which shall state the cause of death and such other information as may be required by the insurer, constitutes a waiver within the meaning of said sections, and renders the attending physician a competent witness as to the confidential exposures made to him by the assured concerning his last sickness.

EXPRESS COMPANIES.

Limitation of Liability

The United States Circuit Court, E. D. Pennsylvania, decides in *Macfarlane* v. *Adams Express Co.*, 137 Fed. 982, that an express company can, by condition clearly appearing in its receipt for a package, limit its liability for loss of the package by its negligence to fifty dollars, no valuation thereof being given by the shipper, and the express charge being based on the value not exceeding that amount. This decision is based upon the rule of *Swift* v. *Tyson*. Compare *Hart* v. *Penna. R. R. Co.*, 112 U. S. 331.

FEDERAL COURTS.

The United States Circuit Court of Appeals, Eighth Circuit, decides in *Franklin* v. *Conrad-Stanford Co.*, 137 Fed. 737.

Jurisdiction: Action on Note

that a note made payable to the cashier of a bank as trustee, the consideration for which was furnished by the bank, which was the real owner, may be sued on by the bank in its own name or by its receiver, without indorsement or assignment, under the statute of Utah, and the citizenship of the cashier is immaterial to affect the jurisdiction of a Federal court in that state of an action thereon. See notes to *Shipp v. Williams*, 10 C. C. A. 249, and *Mason* v. *Dullagham*, 27 C. C. A. 298.

The United States Circuit Court of Appeals, Eighth Circuit, decides in *Diamond Coal and Coke Co.* v. *Allen*, 137 Fed. 705,

Rules of Evidence

that the act of Congress prescribing the modes of taking proof in actions at law in the courts of the United States provides a form of procedure to the exclusion of all others, and under such provisions the testimony of a witness given on a former trial of the same case cannot be read in evidence. Compare *Union Pacific Co.* v. *Botsford*, 141 U. S. 250.

FRAUD.

In *Mills* v. *Brill*, 94 N. Y. Supp. 163, the New York Supreme Court (Appellate Division, First Department) decides

Representations as to Credit

that a tradesman who knowingly makes false statements to a commercial agency to procure credit is liable to an action for rescission and for damages to one who extends credit on the faith of the statement given out by the commercial agency and who suffers injury thereby, although the representations were not made to him personally, and although there was no specific intent on the tradesman's part to defraud his creditors by the statements made by him. With this decision compare *Anonymous*, 67 N. Y. 598.

It is said "in such a case he does an act the necessary result of which will be to cheat and defraud another and the intention to cheat will be inferred."

INSURANCE.

In *Mutual Reserve Life Ins. Co. of New York* v. *Dobler*, 137 Fed. 550, it appeared that an application for life insurance requested insured to answer whether he then had any insurance on his life, which he answered, giving the name and amount of a life insurance policy and the name of the company writing the same, and contained a further question, "Have you any other insurance?" which he answered, "None." Under these facts the United States Circuit Court of Appeals, Ninth Circuit, decides that such questions did not call for an answer as to other than life insurance, so that insured's failure to disclose that he then had certain policies of accident insurance did not constitute a breach of warranty. Compare *Fidelity and Casualty Co.* v. *Dorough*, 107 Fed. 389.

Application: Other Insurance

LANDLORD AND TENANT.

In *Weber* v. *Lieberman*, 94 N. Y. Supp. 460, the New York Supreme Court, Appellate Term, decides that in the absence of a covenant in the lease binding the landlord to make repairs the obligation to repair is on the tenant, and the tenant is liable for the injuries to a third person caused by failure to repair, notwithstanding the landlord had been in the habit of making all repairs. See *Odell* v. *Sullivan*, 99 N. Y. 635.

Defective Premises: Liability

LEASES.

The Court of Civil Appeals of Texas holds in *San Antonio Brewing Assn.* v. *Brents*, 88 S. W. 368, that where a lease provided that it was understood that the building was leased to the lessee for the purpose of conducting a first-class saloon, etc., such provision did not prevent the lessee from conducting any legitimate business therein, and hence the fact that, by the subsequent passage of a local option law during the term, it became unlawful to longer maintain the saloon, did not authorize the lessee to abandon the lease. Compare *Houston Ice and Brewing Co.* v. *Keenan*, 88 S. W. 197.

Use of Property

MASTER AND SERVANT.

Closed Shops: Non-Union Men

In a carefully considered case the Supreme Judicial Court of Massachusetts deals with the important question of the right of labor unions to interfere with respect to the employment of non-union men, and holds that a representative of a labor union cannot lawfully procure the discharge from employment of a non-union employee on the sole ground that he is not a member of the union: *Berry* v. *Donovan*, 74 N. E. 603. It is further held that the fact that an employee's contract was terminable at will, instead of at a stated time, does not affect his right to recover damages of one who wrongfully procured his discharge from employment, but only affects the amount of damages to which he is entitled. Compare *Giblan* v. *National Amalgamated Union* (1903), 2 K. B. 600.

NATIONAL BANKS.

Assessment against Shareholders: Pledges

In *Hulitt* v. *Ohio Valley Nat. Bank*, 137 Fed. 461, it appeared that defendant bank held stock of a national bank as collateral security for a note at the time the maker of the note died leaving it unpaid. Subsequently defendant caused the stock, which was indorsed in blank by the pledgor, to be transferred on the books of the bank to one of its employees who was irresponsible, and who paid no consideration for the transfer, but, in fact, held the stock for defendant. Defendant then made an indorsement on the note of a sum as proceeds of a sale of the stock made on the day of the transfer and proved the balance due on the note against the estate of the pledgor, and was paid dividends thereon. Under these facts the United States Circuit Court of Appeals, Sixth Circuit, holds that such transaction operated to transfer the ownership of the stock from the pledgor's estate to defendant, which was liable for an assessment thereon on the subsequent failure of the issuing bank.

PRINCIPAL AND AGENT.

With one judge dissenting the New York Supreme Court, Appellate Term, decides in *Schenkberg* v. *Treadwell*, 94 N. Y. Supp. 418, that the general rule that one who professes to bind an alleged principal where there is no such principal makes himself liable on the contract applies to a case where individuals signed a lease to a fictitious corporation as president and vice-president thereof. On such lease it is held they are liable individually, although it is under seal. Compare *Henricus* v. *Engbert*, 137 N. Y. 488.

Non-existence of Principal

REAL ESTATE.

In *Lufkin et al.* v. *Jakeman*, 74 N. E. 933, the Supreme Court of Massachusetts decides that where a married man purchased real estate for which he paid his own funds, but took the title in the name of a woman to whom he was engaged to be married whenever his wife should obtain a divorce from him and leave him free to marry again, such conveyance did not constitute an advancement or gift, but created a resulting trust in favor of the purchaser in the absence of evidence of a contrary intention. Compare *Cooley* v. *Cooley*, 172 Mass. 476.

Resulting Trusts

TELEGRAPHS.

In *Elam* v. *Western Union Telegraph Co.*, 88 S. W. 115, the Kansas City Court of Appeals of Missouri holds that in an action against the telegraph company for failure to deliver a message whereby plaintiff ordered potatoes from the addressee, it was proper to permit him to testify that if he had received the message he would have complied with the order. Compare *Hauck Clothing Co.* v. *Sharpe*, 83 Mo. App. 385.

Evidence

TELEGRAPHS (Continued).

Competency: Transactions with Decedent

The Supreme Court of Pennsylvania decides *In re Crosetti's Estate,* 60 Atl. 1081, that under the Act of May 23, 1887 (P. L. 158), providing that no person whose interest shall be adverse to the rights of a decedent shall be a competent witness to any matter occurring before the death of such party, where on the death of husband and wife the husband's executors claimed on the audit of the account of the wife's administrator that a deposit in the wife's name in a bank was the property of the husband, a daughter of both deceased parties cannot testify in support of the claim of the wife's administrator. See in connection herewith *Keener* v. *Cartman* 114 Pa. 179.