PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ALTERATIONS.

The Supreme Court of Alabama decides in *Nance et al.* v. *Gray*, 38 Southern, 916, that an alteration of a vendor's lien note after delivery by writing the word "west" after the word "south," in the description of the land for which the note was given, is not a material alteration. Compare *Lazier* v. *Wescott*, 26 N. Y. 145.

Material Character

ATTORNEY AND CLIENT.

In *Weller et al.* v. *Jersey City, H. and P. St. Ry. Co.*, 61 Atl. 459, the Court of Errors and Appeals of New Jersey decides that a contract between attorney and client, stipulating that the former in consideration of his services to be rendered in prosecuting an action for the client, shall receive a part of the recovery, is executory merely, the cause of action remaining in the client, and the attorney obtaining no interest therein, either by way of assignment thereof or lien thereon.

Contract of Employment

It is further held that a right of action for personal injuries negligently inflicted by another is not assignable before judgment, in the absence of a statute authorizing it. With this decision compare the Pennsylvania case of *Patten* v. *Wilson*, 34 Pa. 299.

BANKRUPTCY.

The Supreme Court of Pennsylvania in *Christ, Appellant*, v. *Zehner*, 212 Pa. 188, lays down the very important rule that where a bill of sale of a stock of goods is given for money loaned and to be advanced without possession of the goods being taken, but more than four months afterward and within four months

Pledge: Delivery of Possession

from the institution of bankruptcy proceedings against the vendor, there is indorsed on the bill of sale a statement to the effect that the loan is still due, and that possession is hereby given, the title to the goods will be deemed to have passed by the original bill of sale without any unlawful preference. Compare with this decision *In re Clifford,* 136 Fed. 475; and *Bernhisel* v. *Firman,* 89 U. S. 170.

In re Perley and Hays, 138 Fed. 927, the United States District Court (E. D. Missouri, N. D.) decides that a part-

Partnership: Insolvency

nership is not insolvent, within the meaning of the Bankruptcy Act of 1898, when the property of the partnership, together with that of the individual members, exceeds in value the indebtedness of the firm and members. Compare *Vaccaro et al.* v. *Security Bank of Memphis et al.,* 103 Fed. 436.

CARRIERS.

The Supreme Court of Louisiana decides in *Vincent and Hayne* v. *Yazoo and M. V. R. Co.,* 38 S. 816, that a railroad

Freight in Sealed Cars

company which receives, as a connecting carrier, outside of the state, cotton in bales, shipped in sealed cars which were in good condition, under through contracts to which it was no party, and which hauled such cars unopened, and in like good condition, to their place of destination, and there delivered the cotton to the consignee, cannot be held liable for the wet and dirty condition of such cotton outside and inside the bales when so delivered. See in connection with this case *Beede* v. *Wis. Cent. Ry. Co.,* 95 N. W. 454.

The Supreme Court of Michigan decides in *Remey* v. *Detroit United Ry.,* 104 N. W. 420, that where, in an action

Injuries to Passengers: Damages

for injuries to a passenger, there was evidence that before plaintiff's injury the day for her marriage had been set, and preparations were then being made therefor, and that after the injury the marriage was indefinitely postponed because of her injuries

CARRIERS (Continued).

which were permanent, such proof was sufficiently definite to warrant a recovery for the postponement of plaintiff's marriage.

CHINESE EXCLUSION.

Illegal Entry of Women

In *United States* v. *Ah Sou,* 138 Fed. 775, the United States Circuit Court of Appeals (Ninth Circuit) decides that where a Chinese slave girl was brought to the United States, and her entry secured by fraud in violation of the exclusion laws, her subsequent marriage in this country to a Chinese inhabitant registered as a Chinese laborer and not entitled to have a wife in this country, is not a defense to proceedings for her deportation; and especially where the marriage was at her solicitation, for her protection, and was not followed by co-habitation, nor apparently regarded by the parties as more than a formality.

CONSPIRACY.

Injury to Business

A decision of interest as bearing upon the law with relation to organized labor occurs in *Loewe et al.* v. *California State Federation of Labor et al.,* 139 Fed. 71. It is there held by the United States Circuit Court (N. D., California) that the fact that the ultimate object of a combination is to benefit the parties thereto in their business or property, which is in itself lawful, will not prevent such combination from being an unlawful conspiracy, where its immediate object and purpose is to injure or destroy the business of another by means of a boycott; nor is such combination rendered lawful because the acts contemplated and done pursuant thereto might lawfully be done by an individual acting for himself alone. The court further decides that the concerted action of labor organizations, state and local, in declaring a boycott against the business and goods of a manufacturer of another state, to compel him to unionize his business, as demanded by an affiliated organization, followed by the sending out of circulars and agents

CONSPIRACY (Continued).

announcing such action, and that dealers buying or selling the goods of the manufacturer will also be treated as "unfair," and by attempts by other means to interfere with and destroy his business, constitutes an unlawful conspiracy, which the courts will enjoin. The case is very thoroughly considered and presents a valuable review of the matters involved. Compare *Casey* v. *Cincinnati Typographical Union No.* 3, 45 Fed. 135, 12 L. R. A. 193.

CONSTITUTIONAL LAW.

In *Bryan* v. *City of Chester, Appellant,* 212 Pa. 259, the Supreme Court of Pennsylvania decides that a municipality has no power to enact an ordinance forbidding citizens to erect bill boards on their own property merely because such boards are unsightly, or may create a nuisance. Any citizen against whom such an ordinance is sought to be enforced is entitled to the protection of a court of equity. It is held, however, that under the police powers of a municipality it may prohibit the erection of insecure bill boards within its limits, prevent the exhibition from secure ones of immoral or indecent advertisements or pictures, and protect the community from any actual nuisance resulting from the use of them, but it can go no further. In view of the extent to which advertising is being carried in modern business this decision is of special interest.

Municipal Ordinance: Forbidding Bill Boards

The United States Circuit Court (E. D. Kentucky) decides in *Commonwealth of Kentucky* v. *Powers,* 139 Fed. 452, that a person charged with crime in a state court has the right to be tried by a jury selected from persons possessing the statutory qualifications of jurors, without discrimination against those who belong to the same political class as himself because they belong to such class; and such right is one secured to him by the clause of the Fourteenth Amendment of the Federal Constitution prohibiting a state from denying to any person

Discrimination in Selection of Jury

CONSTITUTIONAL LAW (Continued).

within its jurisdiction the equal protection of the laws. The case is a decision with reference to an indictment against one of the persons accused of the assassination of Governor Goebel of Kentucky, and presents a very thorough and exhaustive review of the questions involved.

Contract Obligations

The Supreme Court of California holds in *Welsh* v. *Cross,* 81 Pac. 229, that a law reducing the interest rate on a redemption of land from execution sale is not unconstitutional since it is held that it does not impair the security of the creditor or affect injuriously the interest of the debtor. Compare *Hooker* v. *Burr,* 194 U. S. 415.

Eleventh Amendment: Commerce

The United States Circuit Court of Appeals (Fifth Circuit) holds in *Illinois Cent. R. Co.* v. *Mississippi Railroad Commission,* 138 Fed. 327, that the Eleventh Amendment to the Federal Constitution, prohibiting the bringing of a suit against a state by a citizen of another state, cannot be construed to nullify the power conferred on Congress to regulate the commerce among the several states, nor prevent an action to restrain a state railroad commission from enforcing an order injuriously affecting interstate commerce.

It is therefore decided that where complainant railroad company supplied a county seat with three south-bound trains per day, and the only objection thereto was that the equipment and time thereof was unsatisfactory, the State Railroad Commission had no power to order complainant to cause two of its fast south-bound trains, operated mainly for the transportation of interstate through business on a fast schedule in order to comply with the United States mail contract and to make close connections at the destination with other roads, to stop at such station under the State Code, empowering such commission to require all passenger trains to stop for passengers at all county seats, etc. Compare *Cleveland, etc., Ry.* v. *Illinois,* 177 U. S. 514.

COPYRIGHT.

In *White-Smith Music Pub. Co.* v. *Apollo Co.*, 139 Fed. 427, the United States Circuit Court (S. D. New York) holds that a musical composition, as an idea or intellectual conception, is not subject to copyright, but only its material embodiment in the form of a writing or print may be copyrighted; and a copyright of such a printed composition is not infringed by a perforated record or sheet designed for use with a mechanism to play the composition on a musical instrument. See in connection with this, note to *Clealand* v. *Thayer*, 58 C. C. A. 273.

Musical Composition

CORPORATIONS.

The United States Circuit Court of Appeals (Eighth Circuit) decides in *Ward* v. *Board of Regents of Kansas State Agricultural College*, 138 Fed. 372, that where a statute incorporating the board of regents of the Kansas Agricultural College authorized such board to remove any professor whenever the interests of the college required, such provision became a condition of a contract for the employment of a professor for a specified time; and hence, in the absence of fraud or bad faith, regents in discharging a professor before the termination of such contract were not liable in their corporate capacity for damages for a breach of such contract. Compare *Board of Regents* v. *Mudge*, 21 Kansas 223.

Colleges: Discharge of Professor

It is decided by the Supreme Court of Pennsylvania in *Cook* v. *Carpenter* (No. 2), *McCord's Appeal*, 212 Pa. 177, that where an act under which a corporation is chartered provides that shares shall be transferable on the books of the company "subject to such regulations as the by-laws may prescribe," and the by-laws provide that no transfer shall be made while the books are closed, a stockholder who sells his stock at public auction while the books are closed, and by reason of the closing of the books does not get the stock transferred to the purchaser, the insolvency of the company happening in the meantime, is not

Transfer of Stock

CORPORATIONS (Continued).

relieved from liability for the unpaid amount due on the original subscription to the stock. The principle of the decision is that the transfer must be complete and in accordance with the by-laws of the corporation to fix the liability of the transferee and release the transferror. See and compare *Allibone* v. *Hager,* 46 Pa. 48.

In *American Alkali Co.* v. *Kurtz,* 138 Fed. 392, the United States Circuit Court of Appeals (Third Circuit) decides that one, who, acting as agent for the owners of stock of a corporation in which he himself had no interest, caused the same to be transferred on the books of the company to a third person, who was an employee of the company, and without interest in the stock, the actual ownership of which remained as before, did not thereby render himself liable for an assessment thereafter made by the directors, where no fraud or deception was practiced on the company.

Stockholders: Assessment

CRIMINAL LAW.

In *Bardin et al.* v. *State,* 38 S. 833, the Supreme Court of Alabama decides that a requested instruction that, unless each of the jury was convinced of defendants' guilt from the evidence, they should be acquitted, was properly refused. Compare *Andrew* v. *State,* 134 Ala. 47.

Jury

DEATH BY WRONGFUL ACT.

The Supreme Court of Kansas decides in *Hartley* v. *Hartley,* 81 Pac. 505, that damages recovered on account of a wrongful act committed in the state of Iowa resulting in the death of a resident of Kansas are to be disposed of according to the statute of the state of Iowa relating to that subject. See 2 Wharton, Conflict of Laws, Sec. 480, d. 19.

Damages: Distribution

FELLOW SERVANTS.

A decision of practical interest, applying the fellow servant rule, occurs in *Zilver* v. *Robert Graves Co.*, 94 N. Y. Supp. 714, where the New York Supreme Court (Appellate Division, First Department) holds that an elevator operator is a fellow servant of one employed by the same master to address and stamp envelopes. It is further held that where plaintiff alleged that his falling down an elevator shaft was caused by insufficient light, and it appeared that sufficient lights were furnished by the master, but that a fellow servant had failed to light them, the negligence, if any, was that of the fellow servant.

Who Are

GIFTS.

The Court of Chancery of New Jersey holds in *Nicklas* v. *Parker*, 61 Atlantic 267, that a mere savings bank deposit made by an intestate in her own name as trustee for another, who was a mere friend, over which deposit intestate exercised complete control during her life, was insufficient to establish a gift of the deposit *inter vivos*, or to create a trust entitling the alleged beneficiary to the deposit as against intestate's administrator. It is further decided, applying this rule, that where intestate deposited money in a savings bank in her own name as trustee for certain persons who were dead at the time the accounts were opened, the deposits passed to her administrator after her death. Compare with this decision the case of *Matter of Totten*, 179 N. Y. 112, 71 N. E. 748, and the article on "Judicial Legislation in New York," 14 Yale Law Journal, No. 6, p. 315.

Savings Bank Deposit

HABEAS CORPUS.

The United States Circuit Court (N. D. West Virginia) decides in *Ex parte Caldwell*, 138 Fed. 487, that Section 9 of the Federal Constitution providing that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion,

Federal Courts

HABEAS CORPUS (Continued).

the public safety may require it, is not a grant of power to the federal courts, but a prohibition against its suspension by Congress or the executive.

INDICTMENT.

The Supreme Court of Alabama decides in *State ex rel. Attorney General* v. *Judge of Eighth Judicial Circuit,* 38 S. 835, that where a statute creating a judicial circuit and the office of Judge thereof was unconstitutional and void, but independently of the statute there existed in a certain county the office of circuit judge and a circuit court for that county, and the judge commissioned by the Governor under the void statute attempted to exercise the duties of the office of circuit judge in the county in question, an indictment preferred by a grand jury organized by him was valid. *Norton* v. *Shelby County,* 118 U. S. 441.

Validity: Judge de facto

INJUNCTIONS.

The Supreme Court of Washington holds in *Dempsie* v. *Darling,* 81 Pac. 152, that where plaintiff owned a vacant lot adjoining a building in which defendant maintained a house of prostitution and wished to improve the lot, but could not possibly do so, because any building he might erect would be unavailable for any lawful purpose, because of the use to which the adjoining premises were put, he was entitled to an injunction restraining defendant from continuing to maintain the house of prostitution. Compare *Dana* v. *Valentine,* 5 Metc. 8.

Rights of Adjoining Owner

INSANE PERSONS.

The Supreme Court of Alabama decides in *Walker* v. *Winn,* 39 S. 12, that the transfer of a note by an insane payee, as it involves the making of a contract, is absolutely void, and may be impeached by the payor on the ground of the payee's insanity at the time of the transfer. Compare *Carrier* v. *Sears,* 4 Allen 336.

Contracts: Validity

INSURANCE.

"Occupation"

The United States Circuit Court of Appeals (Eighth Circuit) holds in *Aetna Life Ins. Co.* v. *Dunn*, 138 Fed. 629, that the term "occupation" as employed in an accident policy, implies simply that which at the time of the accident constitutes the assured's principal busi-

ness or pursuit; that which engages his attention and time, as distinguished from that which is incidentally connected with the life of men in any or all occupations. Compare *Stone* v. *U. S. Cas. Co.*, 34 N. J. Law, 371.

METEORITES.

Real or Personal Property

An interesting decision distinguishing between real and personal property occurs in *Oregon Iron Co.* v. *Hughes*, 81 Pac. 572, where it is held that a meteorite or aerolite, though not buried in the earth, is nevertheless real estate, belonging to the owner of the land, and not personal property, in the absence of proof of severance. The Court further decides that mere evidence of a tradition that Indians reverenced a meteorite, washed their faces in the water contained therein, and treated it as a kind of magic or medicine rock belonging to the medicine men of the tribe, and that there were fantastic pot-holes therein, thought to have been made by the Indians, was insufficient to justify an inference that they had severed the meteorite from the realty, and thereafter abandoned it, and did not entitle defendant thereto, as the next finder. Compare *Goodard* v. *Winchell*, 86 Iowa 71, 17 L. R. A. 788.

MORTGAGES.

Record: Test of Priority

In *Eckels* v. *Stuart*, 212 Pa. 161, the Supreme Court of Pennsylvania holds that in determining the priority of liens against a property sold at a judicial sale, the only test of priority is the record as it stands at the time of the sale. This furnishes the only safe guide to the bidder at the sale. In this case the facts were as follows: The liens against the property sold at a Master's sale in par-

tition were (1) a mortgage given by a person who was then sole owner, with nothing on its face to indicate that it was an advance money mortgage; (2) mechanics' liens and (3) a second mortgage. The last record date of the mechanics' lien was long after the date of the recording of the first mortgage. The owner of the first mortgage claimed to show by evidence outside the record that no money was paid to the mortgagor until after the date of the commencement of the work on the ground, and that the mechanics' lien was therefore prior to the mortgage, and that the mortgage was divested by the sale. The owner of the first mortgage bought in the property at the sale and claimed to share in the fund. The Court holds, however, that the evidence *dehors* the record was inadmissible and that the mortgage was prior in lien to the mechanics' lien, and therefore not divested.

Contemporaneous Records

It is decided by the Supreme Court of Pennsylvania in *Bonstein* v. *Schweyer, Appellant,* 212 Pa. 19, that where two mortgages on the same land are left on the same day and at the same moment in the recorder's office, a sale under one of the mortgages will discharge the other; and it is immaterial that the mortgage under which the sale was made followed the other in the mortgage book. In such a case priority in the mortgage book gives no priority of lien.

MUNICIPAL CORPORATIONS.

Use of Streets

In *Friedman* v. *Snare and Triest Co.,* 61 Atl. 401, the Court of Errors and Appeals of New Jersey holds that landowners have the right to deposit in the street building materials required for the improvement of the abutting property. The right is to be reasonably exercised in view of the rights of the public, and is subject to regulation in the public interest. It is further decided that the fact that building materials lying in the street may be so arranged as to be attractive to children as a place for play,

MUNICIPAL CORPORATIONS (Continued).

or as a resting place during or after play, does not impose upon the land-owner or his agent a duty to so arrange and maintain the materials as to render them safe for such uses. In such cases attraction or temptation is not legally equivalent to invitation. Two judges, however, dissent.

NEGLIGENCE.

The Supreme Court of Missouri decides in *Sluder* v. *St. Louis Transit Co.*, 88 S. W. 648, that where plaintiff con-

Imputation of Negligence

tracted with a livery stable keeper for a carriage to convey him to a certain place, and, when the carriage and driver called for plaintiff, he merely told the driver where he was going, and gave no other directions, any negligence of the driver was not imputable to plaintiff on the theory that the relation of master and servant existed. Compare *Randolph* v. *O'Riordon*, 155 Mass. 331.

PRACTICE.

In *Felty* v. *National Accident Soc.*, 139 Fed. 57, the United States Circuit Court (E. D. Pennsylvania) decides

Affidavit of Defence

that under the Pennsylvania practice the filing of an affidavit of defense to the merits is a waiver of any objection to formal defects or imperfections in the statement of claim. Compare *Heller* v. *Insurance Co.*, 151 Pa. 101.

RAILROADS.

The Court of Civil Appeals of Texas holds in *St. Louis S. F. and T. Ry. Co.* v. *Shaw*, 88 S. W. 817, that a property

Noise and Smoke

owner may recover damages for personal annoyance and inconvenience suffered by her and her family on account of the noise, smoke, and vibration caused by the operation of a railway near her residence, though her property was not damaged, and no negligence was shown in the operation of the defendant's trains or in the use of its property. With this compare the Pennsylvania decisions of *Penna. Railroad Co.* v. *Lippincott*, 116 Pa. 472, and *Penna. Railroad Co.* v. *Marchant*, 119 Pa. 541.

RAILROADS (Continued).

In *Deemer* v. *Bells Run Railroad Co., Appellant,* 212 Pa. 491, the Supreme Court of Pennsylvania decides that on a bill in equity filed under the Act of June 19, 1871, P. L. 1360, to restrain a railroad company regularly incorporated under the Act of April 4, 1868, P. L. 62, from exercising the right of eminent domain, on the ground that its charter had been obtained solely for a private use, the burden is upon the plaintiff to show clearly that the railroad is being constructed for a private and not a public use. The mere fact that the railroad is being constructed through an undeveloped country where there are no communities or settlements and no mineral developments is no reason for denying to the company the right to exercise its corporate franchises. See and compare *Edgewood Ry. Co.'s Appeal,* 79 Pa. 257.

Private or Public Use

SALES.

With five judges dissenting the Court of Errors and Appeals of New Jersey holds in *Brounfield* v. *Denton,* 61 Atl. 378, that a vendee who, by the fraudulent representations of another, has been led into a contract of purchase, cannot, upon a tender of rescission to the innocent vendor, recover the purchase price received by him, when such fraudulent representations are inadmissible in evidence because not made by the vendor or his agent.

Rescission of Contract

STATUTE OF LIMITATIONS.

The Supreme Court of Pennsylvania holds in *Cook* v. *Carpenter* (*No.* 1), *Lipper's Appeal,* 212 Pa. 165, that where a subscription to stock is not presently payable in full, but by its terms is to be payable from time to time as called for by the company, the statute of limitations does not begin to run until a call is made, and it is not necessary that such call should be made within six years from the date of the stock subscription. Compare *Swearingen* v. *Sewickly, Dairy Co.,* 198 Pa. 68.

Stock Subscriptions

TAXATION.

In *Vanuxem's Estate,* 212 Pa. 315, it appeared that a testator directed as follows: "I give unto my executors hereinafter named full power and discretion to sell any or all of my real estate whenever any such sale be necessary or expedient for any purpose of my estate, of administration, distribution or otherwise." In the administration of the estate it became necessary to sell the real estate in order to pay the pecuniary legacies. Under these circumstances the Supreme Court of Pennsylvania, with the Chief Justice dissenting, holds that the value of the lands in other states is subject to the payment of the Pennsylvania collateral inheritance tax. With this decision compare *Hunt's Appeal,* 105 Pa. 128.

Decedents' Estates

TRUSTS.

The United States Circuit Court (D. Oregon) holds in *Sternfels et al.* v. *Watson et al.,* 139 Fed. 505, that the word "trustee" following the name of the grantee in a deed is notice that he is not the owner of the property, and is sufficient to put all subsequent purchasers from him on inquiry as to the existence and nature of the trust.

Effect of Notice

The Court further decides that the legal presumption is that a trustee has no power of sale, and a mortgagee of property which was conveyed to the mortgagor as trustee and all subsequent purchasers through him are bound to exercise reasonable diligence to ascertain whether or not the equitable owners of the property had authorized the execution of the mortgage. Such diligence is not exercised where there is nothing of record, and they fail to make inquiry of the trustee himself, and make no effort to do so; and the contingency that he might have denied the trust is no excuse for such failure. Compare *Realty Co.* v. *Durant,* 95 U. S. 576.

WITNESSES.

The Supreme Court of Arkansas holds in *Arkansas Cent. R. Co.* v. *Craig,* 88 S. W. 878, that a trial judge may, in a reasonable and impartial way, so as not to indicate his opinion of the facts, propound questions to witnesses, to elicit pertinent facts, that the truth may be established. Compare *Huffman* v. *Cauble,* 86 Ind. 596.

Examination by Judge

The same Court holds in *Martin* v. *Bacon,* 88 S. W. 863, that a party cannot be lawfully served with civil process while attending on a court in a state not that of his residence, either as a party or as a witness, or while going thereto or returning therefrom. Compare *Murray* v. *Willcox,* 97 N. W. 1087.

Service of Process:

WILLS.

In re Keenan et al., 94 N. Y. Supp. 1099, it appeared that a testator bequeathed to one $5,000 "to be expended by him as I have instructed him during my lifetime." He also gave him one thousand "for his personal." The New York Supreme Court (Appellate Division, Second Department) construing these provisions decides that the $5,000 gift being designed for some other object than the legatee's personal use, was invalid, because of its insufficiency as a trust. Compare *Gross* v. *Moore,* 68 Hun, 412, 22 N. Y. Supp. 1019.

Construction: Trusts