PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADOPTION.

The statute law of Illinois, similar to that of most states, allows an illegitimate child to inherit from the mother, and with respect to adoptive parents provides that they shall inherit from an adopted child such property with the accumulations and profits as shall have been taken by the adopted child through its adoptive parents. In *Swick* v. *Coleman,* 75 N. E. 807, the Supreme Court of that state, contruing these statutes with reference to the facts there presented, holds that where an adoptive illegitimate child receives by devise from an adoptive parent a farm, and sells the same and has the proceeds on hand at the time of her death, leaving an illegitimate child which survives only a few months the heirs of the adoptive parent and not the natural mother of the adoptive child, will inherit. The decision presents an interesting review of the question involved and is apparently a case of first impression. Compare *Humphreys* v. *Davis,* 100 Ind. 274.

Inheritance by Adopted Parent

ADVANCEMENTS.

In *Appeal of Malony,* 62 Atl. 151, the Supreme Court of Errors of Connecticut decides that a loan made by a father to his son may not be converted by the father into an advancement without the consent and against the will of the son; but in order to effect such a change there must be a meeting of the minds between the father and the son such as to create a new contractual status. Compare *Sherwood* v. *Smith,* 23 Conn. 516.

Loans

ANIMALS.

Vicious Dogs

The Court of Civil Appeals of Texas holds in *Barklow* v. *Avery*, 89 S. W. 417, that the owner of premises, who allows his porter to keep a vicious dog on the premises knowing of its viciousness, is liable for damages caused by it. Compare *Harris* v. *Fisher*, 20 S. E. 461.

ASSIGNMENTS.

Rights as Against Purchasers

In *Ray* v. *Nally et al.*, 89 S. W. 486, the Court of Appeals of Kentucky holds that a purchaser of land, over which a passage way used by another runs, is charged with notice of that other's right to the passage way.

BANKRUPTCY.

Levy of Execution

The United States District Court (E. D. Pennsylvania) holds in *In re Thackara Mfg. Co.*, 140 Fed. 126, that a judgment creditor of an insolvent corporation, who, after the issuance and levy of an execution, had the same held by the sheriff for several months to obtain the advantages of the security, while payments were being made from time to time by the debtor, lost the lien of the levy as against other creditors under the law of Pennsylvania, and on the bankruptcy of the corporation, more than four months after the levy, such creditor is not entitled to priority of payment from the proceeds of the property levied on.

Priority: Claim for Rent

In re Wynfield Mfg. Co., 140 Fed. 185, the United States District Court, (E. D. Pennsylvania) decides that the time of filing a petition in bankruptcy fixes the status of persons entitled to priority under the Bankruptcy Act of 1898, and a provision of a lease to a bankrupt that, in case of his insolvency or the filing of a petition in bankruptcy by or against

BANKRUPTCY (Continued).

him the rent for the entire term shall become at once due and payable, and that the landlord may proceed as in case of breach, does not entitle the landlord to priority for the rent for the unexpired portion of the term, although under the state law he would be entitled to such priority in the distribution of the proceeds of the lessee's property when sold in insolvency proceedings. Compare *Wilson* v. *Trust Co.*, 114 Fed. 742.

CARRIERS.

The Court of Appeals of Kentucky decides in *Illinois Cent. Ry. Co.* v. *Allen*, 89 S. W. 150, that the duty of a carrier of passengers is to attend to the comforts and safety of all its passengers alike, but not to furnish especial attention to any one in particular, unless under exceptional circumstances, such as sickness en route; but, if a carrier voluntarily accepts a helpless passenger without an attendant, it will assume the additional care commensurate with his needs. The railroad, it is held, is justified in refusing to sell a ticket to a blind man unless he secures an attendant where his trip would have involved a change of cars, and he would have had to rely for assistance on the employees in charge of the train. Compare *Illinois Cent. Ry. Co.* v. *Smith*, 37 S. 643.

Duty to Passengers

In *Gilman* v. *Postal Telegraph Co.*, 95 N. Y. Supp. 564, the New York Supreme Court (Appellate Term) decides that where a messenger company had installed call boxes in houses, and was engaged in the carriage of small hand packages by means of messenger boys sent in response to calls, for hire, it was not liable as a common carrier for the safe transportation of a package containing money intrusted to a messenger sent in response to a call, without notice that the package to be carried contained money. Compare *Sewall* v. *Allen*, 6 Wend. 335.

Who Are: Messenger Companies

CEMETERIES.

In *Weiss et al.* v. *Taylor et al.*, 39 S. 519, the Supreme Court of Alabama holds that the heirs at law of the owner of a burying lot in a cemetery adjoining a public thoroughfare therein, members of the family being buried in the lot, had such a special interest as to entitle them to maintain a bill to remove obstructions in the thoroughfare adjoining the lot.

Rights in Burial Lots

CONSTITUTIONAL LAW.

An attempted extension of the "Jim Crow" car legislation appears in *State* v. *Patterson*, 39 S. 398, where the Supreme Court of Florida holds that an act requiring street car companies to provide separate compartments in their cars for the Caucasian and African races, and that under penalties prohibits persons of either of said races from occupying the compartment of a car set apart for the other race, but with the proviso "that the provisions of this act shall not apply to colored nurses having the care of white children or sick white persons," violates section one of the Fourteenth Amendment to the Federal Constitution, and is void. The proviso is the ground of distinction between this case and those which have permitted the requirement to separate accommodations for the two races. Compare *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540.

Race Discrimination

The United States Supreme Court decides in *Tampa Waterworks Co.* v. *City of Tampa*, 26 S. C. R. 23, that a provision of a state constitution giving the legislature full power to correct abuses, and prevent unjust discrimination and excessive charges, is self-executing to the extent that contracts made after it went into effect are subject to the possibility of the exercise of such power. Compare *Bienville Water Supply Co.* v. *Mobile*, 186 U. S. 212. Two judges dissent.

Self Executing Provision: Contracts

CONSTITUTIONAL LAW (Continued).

Insurance Companies

The Supreme Court of the United States decides in *Beryl F. Carroll* v. *Greenwich Insurance Company of New York et al.*, 26 S. C. R. 66, that insurance companies doing business in Iowa cannot claim to be deprived of their rights under the Fourteenth Amendment to the United States Contitution by the statutory law, making it unlawful for them or their officers, agents, or employees to make or enter into any combination or agreement relating to the rates to be charged, the amount of commission to be allowed agents, or the manner of transacting their business within the state, in the absence of any judicial construction of such statute as having any other than the single object to insure competition. See in connection herewith *Fidelity Mutual Life Ass'n.* v. *Mettler,* 185 U. S. 308.

Federal License Tax

An important decision is handed down by the Supreme Court of the United States involving the conflicting powers of the Federal and State governments in *State of South Carolina* v. *United States,* 26 S. C. R. 110. It is there held that the United States may, under the Federal Constitution, exact the license taxes prescribed by the internal revenue laws for dealers in intoxicating liquors from the dispensing and selling agents of a state which, in the exercise of its sovereign power, has taken charge of the business of selling such liquors. Three judges dissent.

Trial by Jury

The Supreme Court of Rhode Island decides in *Gunn* v. *Union R. Co.,* 62 Atl. 118, that the provisions of the Federal Constitution prohibiting a state from depriving any person of life, liberty, or property without due process of law, or denying to any person within its jurisdiction the equal protection of the law, do not require a trial by jury in suits at common law in a state court. Compare the decision of the Supreme Court of the United States in *Maxwell* v. *Dow,* 176 U. S. 581.

CONSTITUTIONAL LAW (Continued).

Against the dissent of two judges the Supreme Court of Iowa decides in *Shaw* v. *City Council of Marshalltown et al,* 104 N. W. 1121, that the statute of the state providing for preference of honorably discharged soldiers and sailors of the Civil War, residents of the state, in appointment, employment, and promotion in public service over others of equal qualifications, is not violative of the Fourteenth Amendment to the Federal Constitution, declaring that no state shall make or enforce any law abridging the priviliges or immunities of the citizens of the United States; such privileges and immunities being those of citizens of the United States as distinguished from citizens of a state. Compare however *Brown* v. *Russell,* 166 Mass. 14.

Fourteenth Amendment:

The Supreme Court of California decides in *Greenberg* v. *Western Turf Association,* 82 Pac. 684, that a statute making it unlawful to refuse admission to any opera house, theatre, race course, or other place of public amusement to any person over twenty-one years of age who presents a ticket of admission, and providing a penalty therefore, was a valid exercise of the State's police power, and was not unconstitutional, as a deprivation of civil rights conferred by the Fourteenth Amendment to the United States Constitution. Compare the recent Pennsylvania decision, referred to in the February issue of the LAW REGISTER, *Horney* v. *Nixon,* 213 Pa. 20.

Public Amusements

DAMAGES.

The Supreme Court of South Carolina decides in *Milhouse* v. *Southern* 52 S. E. 41, that where an engineer wilfully passes a flag station, seeing a passenger standing there, the latter can recover punitive damages. It is further held that in estimating damages for failure of a train to stop for a passenger at a flag station, inconvenience, the direct cause of the negligence, may be considered in estimating the damages.

Failure to Stop at Station

DOMICILE.

Citizenship of Wife

In *Gordon* v. *Yost,* 140 Fed., 79, the United States Circuit Court (N. D. West Virginia) decides that the rule that the domicile of the husband is that of the wife does not apply in cases of desertion by the husband, and in such case the wife may be a resident and citizen of a different state from her husband for the purposes of a suit by her in a federal court to recover for the alienation of his affections and causing his desertion. Compare *Cheever* v. *Wilson,* 9 Wall. 108.

DUE PROCESS OF LAW.

Municipal Disposal of Garbage

The United States Supreme Court holds in *California Reduction Company et al.* v. *Sanitary Reduction Works of San Francisco,* 26 S. C. R. 100, that municipal ordinances requiring all garbage and other refuse matter to be delivered at a specified crematory or reduction plant, there to be cremated or destroyed at the expense of the person, company, or corporation conveying the same, are not wanting in the due process of the law required by the Fourteenth Amendment to the United States Constitution, as taking private property for public use without compensation, even if some of the substances so destroyed may have had some elements of value. Justices Brewer and Peckman dissent. Compare with this decision the case immediately following with reference to a similar matter, *Gardner* v. *Michigan,* 26 S. C. R. 106.

EMINENT DOMAIN.

Public Use

The Supreme Court of Appeals of Virginia decides in *Great Falls Power Co.* v. *Great Falls & O. D. R. Co.,* 52 S. E. 172, that a taking of land belonging to a corporation possessing the power of eminent domain by a railway company for a park at its terminal, attractive to pleasure seekers because of its scenic features,

EMINENT DOMAIN (Continued).

is not taking of land for a public use. Compare *In re Niagara Falls & W. Ry. Co.*, 108 N. Y. 375.

EVIDENCE.

Declarations: Title to Property

The Supreme Court of Montana decides *in Chan* v. *Slater*, 82 Pac. 657, that on the issue of whether a wife's title to property was merely colorable, and was held by her solely to shield such property from her husband's creditors, declarations of the husband, made by him while in exclusive possession and control of the property, that he was the owner thereof, although not made in the wife's presence, were admissible against her, not as absolutely binding upon her but as substantive evidence reflecting upon the bona fides of her claim. Compare *Gallick* v. *Bordeaux, et al.*, 22 Mont. 470.

Res Gestæ

It is always difficult to decide how far the statements of bystanders, made at or near the time of an occurrence, who take no part in a transaction are admissible under the res gestæ rule, and a new decision on this point is always welcome. In *Baysinger* v. *Territory*, 82 Pac. 728, the Supreme Court of Oklahoma decides that where a declaration or statement is made by a bystander during the progress of an altercation, which results in one of the parties shooting and killing the other, and which remark gives character to an act of the accused, which act is a proper subject of proof on the trial, such statement may be introduced in evidence as part of the res gestæ.

EXECUTORS AND ADMINISTRATORS.

Attorney's Fees

In *Kelly* v. *Odum, et al.*, 51 S. E. 953, the Supreme Court of North Carolina decides that an executor is always personally liable to his attorney for his fee or compensation. Compare *McKay* v. *Royal*, 52 N. C. 426.

FEDERAL COURTS.

Diverse Citizenship of Parties

The United States Supreme Court holds in *Francis B. Sweeney* v. *Carter Oil Company,* 26 S. C. R. 56, that two citizens of different states may maintain an action against a citizen of a third state in the Federal circuit court for the district of the latter's residence under the act of March 3, 1887 (24 Stat. at L. 552, Chap. 373), as corrected by the act of August 13, 1888 (25 Stat. at L. 433, Chap. 866 U. S. Comp. Stat. 1901, p. 508), conferring original jurisdiction on the circuit courts of suits in which there is a controversy between citizens of different states, to be brought in the district of the residence of either the plaintiff or the defendant. Compare *Smith* v. *Lyon,* 133 U. S. 315.

FOOD.

Regulating Sale

The Supreme Court of Missouri in *City of St. Louis* v. *Schuler,* 89 S. W. 621, that an ordinance prohibiting the sale of milk containing a preservative is within the power of a municipality to pass ordinances necessary or reasonably appearing to be necessary for the public health, even though a preservative not injurious to health might be used. Compare herewith the decision of the Court of Appeals of New York in *People* v. *Biesecker,* 161 N. Y. 53.

FORCIBLE ENTRY.

Forcible Entry: What Constitutes

The Supreme Court of Georgia decides in *Ellis* v. *State,* 52 S. E. 147 that where a tenant leaves the premises at the end of his term, the landlord, though not in actual occupancy, is to be regarded as in possession, and a third person who enters without the landlord's consent, and violently keeps possession, with menaces, force, and arms, and without authority of law, is guilty of forcible detainer. To constitute such offence it is not necessary that the person who has so taken possession should

FORCIBLE ENTRY (Continued).

actually assault the landlord; but if, when the landlord seeks to re-enter, the conduct of such person in keeping possession and the circumstances connected therewith be such as are reasonably calculated to cause the landlord to believe that, if he should persist in the attempt to re-enter he would be subjected to physical violence, the offence would be complete. Compare *Williams* v. *State,* 120 Ga. 488.

HABEAS CORPUS.

The Supreme Court of Indiana holds in *Willis* v. *Willis,* 75 N. E. 655, that where petitioner in habeas corpus proceedings for the custody of a child violated the order of court awarding her such custody by moving with the child into another county, respondent to the proceedings should have applied for relief to the court whose order was violated, and not to the court of the county to which the petitioner removed. It is further laid down that the doctrine of res judicata applies to habeas corpus proceedings to obtain the custody of a child; though with respect to this latter proposition a change in the conditions affecting the welfare of the child would probably authorize a re-opening of the case. Compare *Brooke* v. *Logan,* 112 Ind. 183.

Courts: Jurisdiction

HUSBAND AND WIFE.

The Appellate Court of Indiana (Division No. 1) decides in *Gregg* v. *Gregg,* 75 N. E. 674 that a divorced wife is entitled to maintain an action against her former mother-in-law for alienation of the affections of her husband by acts maliciously done, which were calculated to produce such result. It is further held by the court that in a suit by a wife for alienation of the affections of her husband, the law presumes generally that the husband has conjugal affection for his wife, and the burden is on the defendant to prove the contrary. Compare *Postlethwaite* v. *Postlethwaite,* 28 N. E. 99.

Affection: Alienation

LICENSES.

Revocation

The Court of Appeals of Kentucky holds in *Levy* v. *Louisville Gunning System,* 89 S. W. 528, that where the owner of a building executed a license for a term at a specified rent for the use of one of its walls for advertising purposes, such license was not revoked by the owner's execution of a lease of the building to plaintiff's assignor, which did not mention such license. Compare 7 Wait's A. &. D. 209.

MARRIAGE.

Common Law Marriage

The Supreme Court of Tennessee, though holding that the statutory law of the state precludes the recognition by the court of the validity of a common law marriage, nevertheless holds in *Smith* v. *North Memphis Savings Bank,* 89 S. W. 392, that where plaintiff and deceased had lived together and recognized each other as man and wife and so held each other out to the world for more than twenty-five years, deceased, if living, would be estopped from asserting that they had not been legally married and hence, in a proceeding by plaintiff, to enforce her marital rights as widow against his estate, it would be presumed, as against his administrators that they were legally married. Compare herewith the case of *Johnson* v. *Johnson,* 1 Cold. 630.

MASTER AND SERVANT.

Liability of Master

In *Zambelli* v. *F. Johnson & Son Co.,* 39 S. 501, the Supreme Court of Louisiana decides that it is negligence for the driver of a team of horses to abandon his seat upon the box and his hold upon the reins, and to leave his team standing in a frequented place; and where it appears probable that they might have been controlled if he had been in the proper position to control them, his employer will be held liable in damages for injury inflicted by them upon a third person in running away. Compare *Shawhan Case,* 24 La. Ann. 390.

PARDON.

The Supreme Court of Colorado (Division B), holding in *Ex. Parte Alvarez,* 39 S. 481, that the law is settled that, where a criminal accepts a pardon he accepts its valid conditions and limitations, and will be held bound to a compliance therewith, decides further, that where conditional pardons expressly provide that upon violation of the conditions the offender shall be liable to summary arrest and recommitment for the unexpired portion of his original sentence, such stipulations, upon acceptance of the pardon, become binding upon the convict, and authorize his rearrest and recommitment upon the terms imposed, and authorize such arrest and recommitment in the manner and by or through the official authority as stipulated in the pardon.

Conditions

RAILROADS.

In *Harry Donovan* v. *Pennsylvania Company,* 26 S. C. R. 91, the Supreme Court of the United States holds that a railway company which has made an arrangement with a transfer company to furnish at its passenger station all the vehicles necessary for the accommodation of the passengers arriving there on its trains or on the trains of other railroad companies using the station may legally exclude from the station and depot grounds all other hackmen or cabmen seeking entrance for the purpose of soliciting for themselves the custom or patronage of passengers. Compare *Pennsylvania Company* v. *Chicago,* 181 Ill. 289, 53 L. R. A. 223.

Excluding Hackmen from Railway Station

SPECIFIC PERFORMANCE.

The New York Supreme Court (Appellate Division, First Department), decides in *Clements* v. *Sherwood-Dunn et al.,* 95 N. Y. Supp. 766, that an action to compel specific performance of a contract to deliver stock in a specific corporation, which plaintiff has no special interest in acquiring, except for the

Contracts to Deliver Stock

pecuniary advantage which will accrue to him from its ownership, cannot be maintained simply because it appears that there have been no sales of the stock in question, that it is not listed on any exchange, and that defendant is the owner of a large majority of the stock, so that it will be difficult, although not impossible, to ascertain its value. See in connection herewith *Butler* v. *Wright,* 93, N. Y. Supp. 128.

WILLS.

The Supreme Court of North Carolina holds in *Tussey et al.* v. *Owen,* 52 S. E. 128, that the contract of an adult child with her old and afflicted father to remain with and work for him during his lifetime, he, in consideration, to will her one-fourth of his property requires her, unless prevented by him or those acting for him, to remain with and serve him till his death. The court further decides that such contract is entire and indivisible and where she leaves him before his death it includes no implied contract to pay for the benefit conferred by her during the time she served him. Compare *Dermott* v. *Jones,* 23 How. 220.

Contracts to Devise

WITNESSES.

In *John D. Jack* v. *State of Kansas,* 20 S. C. R. 73 the United States Supreme Court holds that the danger that the testimony given in an examination under the state statutory law, might incriminate the witness as a violator of the Federal anti-trust law and of the possible use, in a Federal prosecution for a violation of such statute, of the testimony given in the state proceeding, is so unsubstantial and remote as not to make an imprisonment for refusal to testify a deprivation of liberty without due process of law, where the statute is construed by the state courts to render material only such questions as relate to transactions within the state, and grants full immunity from prosecution in the state courts. Two judges dissent. Compare *Counselman* v. *Hitchcock,* 142 U. S. 547.

Privilege of: Immunity