PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ARBITRATION.

Award: Conclusiveness

The Supreme Court of Illinois decides in *White Star Min. Co.* v. *Hultberg,* 77 N. E. 327, that an award made without fraud or mistake apparent upon its face, in conformity with a general submission, will not be interfered with or set aside for errors of law or fact committed by the arbitrators. Two judges dissent, and the opinions rendered in the case are elaborate and exhaustive.

ATTORNEY.

Disbarment

The Supreme Court of Illinois decides in *People &c.* v. *Proper,* 77 N. E. 208, that concealment and failure by an applicant for admission to the bar to disclose crimes and disreputable acts such as would have prevented his admission, committed recently before his application, are as much a fraud on the court, warranting disbarment, as crimes committed after his admission. Compare *People* v. *Gilmore,* 214 Ill. 569, 69 L. R. A. 701.

BANKRUPTCY.

Contempt

The United States Circuit Court of Appeals, Fourth Circuit, decides in *Bank of Ravenswood* v. *Johnson,* 143 Fed. 463, that a referee has no power to punish a witness for contempt in refusing to answer questions or to produce documents, that power being expressly vested in the District Court. Compare *Smith* v. *Belfold,* 106 Fed. 658.

BANKRUPTCY (Continued).

Suit by Trustee

The United States Supreme Court holds in *Thomas G. Bush &c.* v. *J. M. Elliott, Jr.*, 26 S. C. R. 668, that diversity of citizenship between the trustees in bankruptcy and the defendant is not necessary to the exercise by a federal circuit court of its jurisdiction of a suit brought by such trustees upon an alleged cause of action for moneys due the bankrupt at and prior to the adjudication in bankruptcy, where the citizenship of the bankrupt and the defendant is such that the former might have sued in the Federal Court but for the bankruptcy proceedings. Compare *Bardes* v. *First Nat. Bank*, 178 U. S. 524.

Right to Discharge

The United States District Court, W. D. Texas, decides *In re A. F. Hardie & Co.*, 143 Fed. 607 that a materially false statement in writing made by a partner in the ordinary course of business of the partnership in buying merchandise, for the purpose of obtaining goods on credit and upon which they were obtained by the firm, affects all the partners and debars another partner from the right to a discharge in bankruptcy. Compare *Strang* v. *Bradner*, 114 U. S. 561.

BANKS AND BANKING.

Deposit of Check: Ownership

The Supreme Court of the United States holds in *Noble v. Doughten*, 83 Pac. 1048, that if the payee of a check drawn on a bank in a city other than that of his residence indorse and deposit it in his home bank in the usual and ordinary manner, and without any agreement or understanding in reference to the transaction other than such as the law implies, the check becomes the property of the indorsee. The fact that the indorsee may have the right to charge the check to the depositor's account, if it should be dishonored after due diligence has been exercised to collect it, does not effect the character of the transfer or render the bank any the less the owner of the check. Compare *Burton* v. *United States*, 25 S. C. R. 243

BILLS AND NOTES.

In re A. F. Hardie & Co., 143 Fed. 553, the United States District Court, W. D. Texas, decides that promissory notes signed by a corporation first and by a partnership second as a joint maker, impart notice on their face that the transaction was not one in the usual and ordinary course of borrowing money for partnership purposes, and to bind the firm it is incumbent on a purchaser, although for value and before maturity, to prove either that the proceeds were used by the firm, or that all of the partners either assented to the execution of the notes or subsequently ratified the same.

Partnership. As Joint Maker

CARRIERS.

The Supreme Court of Mississippi holds in *Southern Express Co.* v. *Marks, Rothenberg & Co.*, 40 S. 65, that a stipulation in the contract of an express company for carriage of a package that the negligence of the railroad company over whose road the package shall be carried shall not be imputed to the express company is in violation of public policy. Compare *Telegraph Co.* v. *Wells*, 82 Miss. 733.

Limitation of Liability

In *Westcott* v. *Seattle,, R. & S. Ry. Co.*, 84 Pac. 588, the Supreme Court of Washington lays down the general rule that a carrier was liable for injuries inflicted upon a passenger by a dog brought into a street car by another passenger and permitted to remain there. "A street car company," it says, "has no right to carry dogs upon a coach that is set apart for passengers, and if it does so and damage is caused by said dog, it must respond to the same." The rule is interesting in view of the fact that the court does not consider whether any carelessness on the part of the carrier was shown, but makes the liability depend on the mere fact of having permitted the dog on the vehicle.

Dog in Car

CARRIERS (Continued).

Wrongful Delivery: Conversion

The Supreme Court of Appeals of West Virginia decides in *Dudley* v. *Chicago, M. & St. P. Ry. Co.*, 52 S. E. 718, that an inspection of property shipped by a common carrier in sealed cars, unauthorizedly permitted by such carrier at the point of destination, in consequence of which the consigner, who was also the consignee, was prevented from consummating a contemplated sale thereof, does not amount to a wrongful delivery by the common carrier, so as to make it liable for the value of the property as for a conversion thereof.

Limitation of Liability

The Supreme Court of Georgia decides in *Merchants' & Miners' Transps. Co.* v. *Moore & Co.*, 52 S. E. 802, that when a carrier is guilty of conversion resulting from a wrong delivery, he cannot take advantage of a stipulation in a bill of lading which provides that "claims for loss or damage must be made in writing to the agent at the point of delivery promptly after the arrival of the property, and if delayed more than thirty days after delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event." Compare *Savannah Ry. Co.* v. *Sloat*, 93 Ga. 803.

Loss of Package

In *Holmes* v. *North German Lloyd S. S. Co.*, 77 N E. 21, it appeared that a steamship company issued a passage ticket limiting its liability for loss of personal effects of passengers to $100, unless the value of the same, in excess of that sum, be declared before the issue of the contract or delivery of the effects to the ship and payment of freight at current rates thereon. Hand baggage was delivered to the Company's baggemaster at his direction, and on his statment that it would be sent to the passenger's room, but it was never delivered. Under these facts the Court of Appeals of New York holds, against the dissent of three judges, that the loss, if unexplained, established a prima facie case of negligence for which the company was liable, notwithstanding the failure of the passenger at the

CARRIERS (Continued).

time of delivery to declare the value thereof or pay excess freight thereon; such requirement not applying to hand baggage. Compare *Steers* v. *Liverpool &c. Co.*, 57 N. Y. 1.

The Court of Errors and Appeals of New Jersey decides in *Lembeck* v. *Jarvis Terminal &c. Co.*, 63 Atl. 257, that

Lien

where freight charges were due from a consignor to a carrier and the carrier delivered the goods to a consignee on its promise to retain them until the freight charges were paid, if the consignee be regarded as the agent of the carrier the lien for the charges was terminated on their payment to the consignee, though by reason of its insolvency the amount was never received by the carrier.

In *Brigham* v. *Southern Pac. Co.*, 84 Pac. 306, The Court of Appeals, Second District, California, decides that

dentification of Passenger

where the purchaser of a railroad ticket agreed to identify himself as the original purchaser required by the carrier's conductor or agent, he was only required to produce such reasonable evidence of his identity within his reach as ought to satisfy a reasonable man, honestly seeking to do justice between the carrier and the passenger, and hence instructions that he was bound to identify himself "to the the satisfaction of the train agent" were properly refused.

CONTRACTS.

In *P. J. Bowlin Liquor Co.* v. *Brandenburg*, 106 N. W. 497, the Supreme Court of Iowa decides that where an order

Sunday

for the purchase of Liquor was taken on Sunday, but the delivery and acceptance thereof by the buyer occurred on a subsequent secular day, the fact that the order was taken on Sunday was no defence to an action for the price. Compare *McKinnis* v. *Estae*, 81 Ia. 749

CONTRACTS (Continued).

Illegality: In Pari Delicto

The Court of Appeals of Maryland decides in *Maryland Trust Co.* v. *National Mechanics' Bank,* 63 Atl. 70, that where a corporation which had no right to purchase its own stock arranged with a bank to furnish money for the purchase of a large amount of stock by brokers for the benefit of the corporation, and in order to deceive the public as to the value and desirability of the stock, the contract was illegal and contrary to public policy, and the bank, having knowledge of the illegal purpose, was not entitled to recover the money. Compare *Scott* v. *Brown,* 2 Q. B. (1892) 724.

CRIMINAL LAW.

Accomplice: Corroboration

In *People* v. *Bunkers,* 84 Pac. 364, the Court of Appeals, Third District, California, decides that the evidence essential to corroborate the testimony of an accomplice must create more than a mere suspicion, but need not be absolutely convincing, nor need it extend to every fact covered by the statements of the accomplice, and is sufficient, if standing alone it tends to connect defendant with the crime charged. Compare *People* v. *Barker,* 114 Cal. 620.

DEEDS.

Delivery Escrow.

The Supreme Court of Idaho decides in *Whitmer* v. *Schenk,* 83 Pac. 775, that upon fulfilment of the conditions of an escrow agreement and the delivery of the deed to the grantee, the deed will relate back to the date of making the escrow agreement for the purpose of cutting off any intervening rights or equities acquired by a third party, who had notice of the terms and conditions of the escrow. See in connection herewith *Macdonald* v. *Huff,* 77 Cal. 279.

DIVORCE.

The Court of Chancery of New Jersey decides in *McAllister* v. *McAllister,* 62 Atl. 1131, that where parties intermarry clandestinely, without any intention of establishing a matrimonial domicile and on an agreement to live separately for the present, the separate living of the husband will not be a desertion of the wife until she repudiates the agreement for separate living by offering to live with him and demanding that he should provide for their living together. A demand by the wife that the husband should support her will not be sufficient, unless accompanied by a bona fide offer to live with him. Compare *Currier* v. *Currier,* 59 Atl. 4.

Desertion: Evidence

EMINENT DOMAIN.

With two judges dissenting, the Supreme Court of Kansas decides in *Dethample* v. *Lake Koen Navigation &c. Co.,* 84 Pac. 544, that in a condemnation proceeding for a perpetual easement of an entire tract of land, which has only a surface value, the basis of the owner's right of recovery is the value of the land, the same as if the fee had also been appropriated. See also *K. C. W. &c. Railroad Co.* v. *Fisher,* 49 Kan. 17.

Damages

EVIDENCE.

The difficult question of how far the exclamations of bystanders can be regarded as part of the res gestae of a transaction renders welcome any new decision upon the matter. In *Johnson* v. *St. Paul & W. Coal Co.,* 105 N. W. 1048, the Supreme Court of Wisconsin dealing with this question holds that an exclamation by one present at the time of an accident, made almost immediately after the accident and at the scene of the accident, to the effect that " the book hit him," was res gestae of the accident.

Res Gestæ

EVIDENCE (Continued).

Opinions: Experts

The Supreme Court of Kansas holds in *Federal Betterment Co.* v. *Reeves,* 84 Pac. 560, that a physician, while testifying as an expert, is not permitted to testify to his conclusions of the permanency of an injury to his patient, based partially upon the history of the injury detailed to him by the patient or other person, and partially upon his own examination. From this principle one judge dissents. Compare *Stewart* v. *Everts,* 76 Wis. 35.

HOMICIDE.

Verdict: Sentence

In *Avent* v. *State,* 40 Southern 483, the Supreme Court of Mississippi decides that a verdict of guilty of murder, with an addition that the jury "beg the mercy of the court," the court remaining silent, is insufficient to sustain a sentence of death. See also *Smith* v. *State,* 75 Mass. 558.

INJUNCTIONS.

Quitting Employment: Bribery

In *Everett Waddey Co.* v. *Richmond Typographical Union &c.,* 53 S. E. 273, the Supreme Court of Appeals of Virginia, laying down the general rule that though members of a typographical union may lawfully combine, and, except as they are bound by contract, quit their employment on refusal to grant their demands, and may by persuasion and argument induce others to join them, they may be restrained by injunction from molesting their former employer by bribery, intimidation, and coercion of its employes, but, it is held, the payment by a typographical union of weekly benefits and transportation to employes leaving their employer and joining the union is not bribery, which may be restrained by injunction. Compare *Gray* v. *Trades Council,* 97 N. W. 663, 63 L. R. A. 753.

INSURANCE.

Breach of Warranty

Against the dissent of five judges, the Court of Errors and Appeals of New Jersey decides in *Hanrahan* v. *Metropolitan Life Ins. Co.*, 63 Atl. 280, that where a statement in an application for life insurance, warranted to be true, is false as far as it goes but fails to answer the whole inquiry, there is a breach of warranty which avoids the policy. The insurer waives an answer to that part of the inquiry only which is left unanswered. Compare *Dimmick* v. *Met. Life Ins. Co.*, 69 N J. Law 384, 62 L. R. A. 774.

JUDGMENT.

Merger and Bar

Against the dissent of one judge, the Court of Appeals of New York decides in *Pakas* v. *Hollingshead*, 77 N. E. 40, that where goods are sold to be delivered and paid for in installments, and the vendor refuses to deliver an installment, it is a breach of the entire contract for which the vendee may immediately recover his damages, or he may wait until the time for the delivery of the goods has expired and then recover, but he cannot maintain successive actions to recover for breach on delivery of each installment so that a judgment for damages for non-delivery of a part of the goods is a bar to an action for failure to deliver the balance. Compare *Nichols* v. *Scranton Steel Co.*, 137 N. Y. 471.

JURY.

Criminal Cases: Challenges

The Supreme Court of Louisiana decides in *State* v. *Stephens*, 40 S. 523, that in a criminal prosecution, the state has a right to demand jurors who are willing to convict the accused of crime with which he is charged upon legal evidence, whether direct or circumstantial, and its challenge, for cause, of jurors who are unwilling to convict on circumstantial evidence alone should be sustained, and does not authorize the assumption that such evidence alone will be offered on the trial, nor does it bind the state to offer only evidence of that character.

JURY (Continued).

In *Brown* v. *State,* 106 N. W. 536, it appeared that after submission of a prosecution for rape to the jury, two of the jurors who were against a conviction were made ill by the fumes of tobacco emitted by their fellow jurors in the jury-room. About 10.30 P. M. the officer in charge of the jury informed them that the judge was about to go to his hotel for the night, and the jury would be locked up, unless they agreed very soon upon a verdict. The jurymen, believing that they would be locked in the jury-room, in order to escape therefrom announced their willingness to agree to a verdict of conviction, which was thereupon returned. Under these facts the Supreme Court of Wisconsin decides that the verdict was the result of coercion and could not be sustained. Compare *Coman* v. *State,* 41 Wis. 312.

Misconduct

LIBEL.

In *State* v. *O'Hagan,* 63 Atl. 95, the Supreme Court of New Jersey, laying down the general rule that to publish of a man that he has done that which is lawful and proper, without ironical innuendo, does not under ordinary circumstances, tend to injure his reputation, applies it to a case where the facts were as follows: An indictment for libel set forth that defendant maliciously published of and concerning a certain baker a writing containing the false statement that he refused to recognize the bakers' union (innuendo, that he in his business refused to recognize and employ members of the bakers' union, and that all such members, together with all other persons, should refuse to deal with him). This indictment is held bad; the words attributed to defendant not being in themselves defamatory, and the indictment containing no averment of facts to show that they bore a defamatory sense. Compare *Horner* v. *Engelhardt,* 117 Mass. 539.

What Constitutes

LITERARY PROPERTY.

An interesting case with respect to literary property appears in *State* v. *State Journal Co.,* 104 N. W. 434, where it is held that the unauthorized use of the literary production of another furnishes no grounds for the recovery of damages, except through the federal copyright laws. All persons are at liberty to print, publish, and sell the literary productions of others, unless they are protected by a compliance with the Act of Congress for that purpose. The case is with reference to the publication of the reports of the Supreme Court of the State and it is said that if the defendant printed and manufactured, to sell for its own benefit, volumes of the reports of the Supreme Court of the state, containing matter prepared by the state and not protected by copyright, and in so doing unlawfully used manuscripts and other property entrusted to the care of the defendant to enable it to perform its contracts to manufacture specified volumes for the state, this would not give the state title to books so unlawfully produced, so as to enable it by injunction to prevent the defendant from disposing of the books, or entitle the state to an accounting of the proceeds of such sales. Compare *Banks* v. *Manchester,* 128 U. S. 244.

Unauthorized Use

MASTER AND SERVANT.

In *Vulcan Detinning Co.* v. *American Can Co.,* 62 Atl. 881, the Court of Chancery of New Jersey holds that the employment of persons by a company using a secret process for separating tin from scrap, with their knowledge that the company was trying to keep the secret, was sufficient to raise an implied agreement on their part not to divulge it.

Trade Secrets

In *Grim* v. *Olympia Light & Power Co.,* 84 Pac. 635, the Supreme Court of Washington decides that where plaintiff and another for several years had been in defendant's employ as motormen, operating two freight motor-cars, which defendant maintained and operated for the purpose of hauling beer for a brewery, and

Fellow Servants

MASTER AND SERVANT (Continued).

plaintiff and such other operated such cars without any fixed schedule under arrangements made between themselves, plaintiff and such other were fellow servants. Two judges dissent.

MUNICIPAL CORPORATIONS.

In *Murray et al.* v. *Mayor etc.*, 63 Atl. 81, the Supreme Court of New Jersey decides that where there is no require-

Improvements: Contracts

ment in the charter of a city, or in any general law, requiring improvement contracts to be let to the lowest bidder, the municipal body has large discretion in the premises, the exercise of which will not be reviewed in the absence of proof of bad faith or fraud. Compare *Ryan* v. *Paterson*, 66 N. J. Law 533.

In *O'Donnell* v. *City of Syracuse*, 76 N. E. 738, it appeared that a city for many years used a stream running

Injuries from Freshets

through it for drainage in connection with its sewer system under statutory authority, but there was no absolute duty with respect to it enjoined on the city by statute. Under these circumstances the Court of Appeals of New York decides that it was not liable to a property-owner where, because of an extraordinary freshet, the waters of the creek rose to an unusual height, causing much damage to his premises, on the ground that the city had made no effort to protect the inhabitants of the city and their property against such freshets, and contributed to it by the use of the creek for its sewerage. Two judges, however, dissent. Compare *Rochester W. L. Co.* v. *City of Rochester*, 3 N. Y. 463.

The Court of Errors and Appeals of New Jersey decides in *Doughten* v. *City of Camden*, 63 Atl. 170, that the impo-

Assessments

sition upon lands adjoining a public street, in which is laid a pipe for the distribution of water for the use of a city and of its inhabitants, of a fixed definite sum per front foot, to be paid by the owner, for the expense

MUNICIPAL CORPORATIONS (Continued).

taxation, nor under the power to tax property benefited by a local public improvement because of, and not in excess of, benefits. Compare *Van Wagoner* v. *Paterson,* 67 N. J. 455.

SUBROGATION.

The Court of Chancery of New Jersey holds in *Avon-by-the-Sea Land & Imp. Co.* v. *McDowell,* 62 Atl. 865, that

Prior Incumbrances

where the owner or purchaser of property subject to several incumbrances pays off a prior incumbrance with his own money, the payment inures to the benefit of the subsequent incumbrances, against which the prior incumbrances cannot be kept alive for the owner's benefit, even by express agreement, and on such payment by the owner, without any agreement for subrogation or keeping the security alive, a court will not revive the prior incumbrances by application of the equitable doctrine of subrogation in favor of the owner. Compare *Bolles* v. *Wade,* 4 N. J. Eq. 458.

SUPPORT.

In *Griffin* v. *Fairmount Coal Co.,* 53 S. E. 24, the Supreme Court of Appeals of West Virginia decides that the vendor

Conveyance of Mining Right

of land may sell and convey his coal and grant to the vendee the right to enter upon and under said land and to mine, excavate, and remove all the coal purchased and paid for by him, and, if the removal of the coal necessarily causes the surface to subside or break, the grantor cannot be heard to complain thereof. It further holds that where a deed conveys the coal under a tract of land, together with the right to enter upon and under said land and to mine, excavate, and remove all of it, there is no implied reservation in such an instrument that the grantee must leave enough coal to support the surface in its original position. One judge dissents and files a very elaborate dis-

SUPPORT (Continued).

senting opinion and a so-called additional opinion and these two dissenting opinions together with the opinion of the court form a most excellent and exhaustive review of the questions involved. The authorities in point are thoroughly considered and the decision is well worthy of study and will no doubt become a leading case upon this branch of the law.

TAXATION.

Difficult questions as to the situs of personal property arise in connection with the taxation of foreign corporations.

Foreign Corporations

A decision relating to this question appears in *People &c.* v. *Wells &c.*, 77 N. E. 19, where the Court of Appeals of New York decides that where a foreign corporation maintaining an office in the state for the sale of its products, which are imported into the state and sold in original packages, takes bills receivable as the proceeds of the imported goods so sold, and such bills are not in transitu, but are, in the regular course of business, held within the state until maturity for the convenience of such corporation, and the proceeds thereof, in part, remitted to the home office in a foreign country, such bills are taxable as capital employed within the state, within the meaning of the tax law. One judge dissents. Compare *New Orleans* v. *Stempel*, 175 U. S. 309.

TENANCY IN COMMON.

The Supreme Court of Michigan holds in *Walker* v. *Marion*, 106 N. W. 400, that a contract by a tenant in common, giving permission to one to erect sign- and bill-boards on the lands, was not binding on the cotenants. Compare *Moreland* v. *Strong*, 115, Mich. 211.

Authority of Cotenants

WATERS.

The tendency of the courts to depart from the old rule with respect to percolating waters appears in *Pence et al.* v. *Carney et al.*, 52 S. E. 702, where the Supreme Court of Appeals of West Virginia holds that the owner of land who explores for and produces subterranean percolating water within the boundary of his land is limited to a reasonable and beneficial use of such water, when to otherwise use it would deplete the water-supply of a valuable natural spring of another on adjoining or neighboring land, and thereby materially injure or destroy such spring. Compare *Smith* v. *Brooklyn*, 54 N. E. 787, 45 L. R. A. 664.

Percolating Waters

WILLS.

In *Wilson v. Gordon*, 53 S. E. 79, it appeared that an attorney was employed by two maiden sisters on joint request to prepare two wills, giving the property of each to the other, with the provision that, if the devisee should die in the lifetime of testator, the property should go to a niece and her children. Under these circumstances the Supreme Court of South Carolina decides that these were not mutual wills and that the surviving sister, after having accepted the benefit of the deceased sister's will, might destroy her own will. Compare *Edson* v. *Parsons*, 50 N. E. 1117; and *Cawley's Appeal*, 20 Atl. 567, 10 L. R. A. 93.

Mutual Wills

The Supreme Court of North Carolina decides in *Hoggard* v. *Jordan*, 53 S. E. 220, that where a husband devised to the wife for life certain real estate of which the wife was a part owner, with the remainder over to their children, and the widow took possession, after qualifying as executrix, and remained in possession nine years, until her death, and the children acquiesced in the will for eight years thereafter, there was an election, so that a petition to sell a portion of the lands as the property of the widow to make assets to pay her debts after her decease could not be maintained. Compare the recent case of *Tripp* v. *Nobles*, 136 N. C. 99, 67 L. R. A. 449.

Election: What Constitutes