PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

·ADJOINING LAND OWNERS.

Boundaries

In *Adams* v. *Betz*, 78 N. E., 649, the Supreme Court of Indiana decides tht where owners of adj oining premises establish by agreement a boundary line, and take and hold possession of their respective lands and improve the same in accordance with such boundary, each owner in the absence of fraud is estopped from asserting that the boundary so agreed upon is not the true boundary though the period of time which has elapsed since the line was established and possession taken is less than the statutory period of limitation. Compare *St. Bede College* v. *Weber*, 168 Illinois, 324.

BILLS AND NOTES.

Forged Endorsement: "Fictitious Person."

An interesting decision by the English King's Bench Division appears in *Macbeth* v. *North and South Wales Bank*, L. R. (1906) 2 K. B., 718, where it appeared that W. by falsely reprèsenting to the plaintiff that he had agreed to purchase from K. certain shares then held by K.- in a company, and that he had arranged to resell the shares at a profit, induced the plaintiff to agree to assist him in financing the transaction. For this purpose the plaintiff drew a check on the C. bank payable to K. or order for the amount of the purchase-money, which check was delivered to W. in order that he might hand it to K. in payment for the shares. W. forged K's indorsement to the check and paid it into his own account with the de-

BILLS AND NOTES (Continued.)

fendant bank, who credited him with the amount, and collected the money from the C. bank. W. had not agreed to buy any shares from K., and K. had at the time no shares in the company. In an action by the plaintiff against the defendant bank for the conversion of the check, it is held that as K. was an existing person designated by the plaintiff and intended by him to be the payee of the check, the payee was not a "fictitious person" within the meaning of the Bills of Exchange Act and that the defendant bank was liable to pay to the plaintiff the amount of the check as damages for the conversion. Compare *Vinden* v. *Hughes*, L. R. (1905) 1 K. B., 795.

CARRIERS

Who Are Passengers

In *St. Louis Southwestern Ry. Co. of Texas* v. *Fussell*, 67 S. W., 332, the Court of Civil Appeals of Texas decides that while one who has a ticket and wilfully refuses to pay fare is not a passenger, yet, if he intends to pay fare and has the ability to do so, he is entitled to a reasonable time to get the money after demand, and does not become a trespasser on the very instant of failure or refusal. See also *Railway Co.* v. *Bond*, 62 Tex., 442.

Burden of Proof

In *Illinois Cent. R. Co.* v. *Stevens*, 96 S. W., 888, the Court of Appeals of Kentucky holds that an initial carrier limiting its liability to its own line, when sued for injuries to a shipment, has the burden of showing that it carried the shipment with proper care to the end of its line and there turned it over to the connecting carrier. Compare *Railroad Co.* v. *Bourne*, 29 S. W., 975.

Lien for Freight

The Supreme Court of Kansas holds in *Missouri Pac. Ry. Co.* v. *Peru-Van Zandt Implement Co.*, 87 Pac., 80, that when a common carrier becomes liable to the consignee of goods for damages to the property received in transit, and the amount of such

CARRIERS (Continued.)

damages equals or exceeds the freight bill on the damaged goods, the lien of the carrier is thereby extinguished, and the consignee is entitled to the possession of such goods without payment of freight; and in such a case refusal of the carrier to deliver the goods to the consignee upon demand constitutes a conversion. See also *Dyer* v. *Grand Trunk R. R.*, 42 Vt., 441.

CONSPIRACY.

The Supreme Judicial Court of Massachusetts decides in *Pickett et al.* v. *Walsh et al.*, 78 N. E., 753, that bricklayers' and masons' unions may lawfully compete for the additional work of pointing the buildings they construct in the exercise of their right of competition, and may refuse to lay brick unless they are given the work of pointing them when laid, though the contractors may prefer to give the work to regular pointers, and though the effect of complying with the union demands apparently will destroy the pointers' business. Herewith compare *March* v. *Bricklayers' &c. Union*, 63 Atl., 291.

Trade Unions

CONSTITUTIONAL LAW.

The United States Supreme Court decides in *Reuben Hodges &c.* v. *United States*, 27 S. C. R., 6, that Congress was not empowered by the Thirteenth Amendment to the United States Constitution to make it an offense against the United States, cognizable in the federal courts, for private individuals to compel negro citizens, by intimidation and force, to desist from performing their contracts of employment, but the remedy must be sought through state action and in state tribunals, subject to the supervision of the Supreme Court of the United States by writ of error in proper cases. Compare *Logan* v. *United States*, 144 U. S., 263.

Power of Congress

CONTRACTS.

The Supreme Court of Arkansas holds in *Beal-Doyle Dry Goods Co. et al.* v. *Barton*, 97 S. W., 58, that though a debtor was not guilty of any offense, and a creditor did not intend to prosecute him criminally, yet, if the attorney of the creditor represented to the father of the debtor that if he signed an obligation guaranteeing the payment of the debt, the debtor would not be prosecuted, and if he did not the debtor would be prosecuted, the obligation executed by the father was void. See in this connection *Smith* v. *Steely*, 80 Iowa, 738.

Legality of Objects

CORPORATIONS.

The Supreme Judicial Court of Massachusetts decides in *Harvey-Watts Co. et al.* v. *Worcester Umbrella Co.*, 78 N. E., 886, that where, in an action to charge a director of a corporation with liability for signing a false certificate that the capital stock had been paid in cash, no vote by the directors to make a loan to one of the subscribers for the amount of his subscription was proved, such director could not be held liable merely because he acted recklessly in swearing to the certificate, if he was in fact ignorant of the loan. Compare *Nash* v. *Minnesota Title Ins. Co.*, 163 Mass., 574.

Knowledge of Officers

In *Stewart et al.* v. *Wright*, 147 Fed., 321, the United States Circuit Court of Appeals, Eighth Circuit, decides that where a banking corporation, knowing that defendant B. and his associates were engaged in a confidence game, assisted in the furtherance of the scheme, both by representing to the victims as they were brought in that B. was a man of standing entitled to credit, and by lending B. banking facilities with which alone he was enabled to conduct his scheme and collect drafts, etc., drawn by the victims, before payment could be stopped, and the other officers of the bank themselves, with knowledge that the victims were to be defrauded, drew drafts for such victims and

Torts of Officers: Liability

CORPORATIONS (Continued.)

telegraphed to other banks to ascertain the victims' responsibility, the bank as a corporation was liable as a party to the scheme. The case is a very interesting and elaborate discussion of the principles involved, and well worthy of special study. Compare *Hobbs* v. *Boatright*, 93 S. W., 934.

Inspection of Books

It is decided by the Supreme Court of Wyoming in *Wyoming Coal Mining Co. et al.* v. *State ex rel. Kennedy*, 87 Pac., 337, that where the by-laws of a corporation provided that the books and papers in the office or custody of the secretary and treasurer should be open at all times during business hours to the inspection of stockholders, such by-law was effecttive to extend the stockholders' common-law right to the examination of the corporation's books, without any allegation or proof of fraud or mismanagement on the part of the officers of the corporation. With this decision compare *Swift* v. *Richardson*, 7 Houst. (Del.), 338.

Corporate Existence

Against the dissent of one judge, the Supreme Court of Iowa holds in *Farmers' Mut. Telephone Co.* v. *Howell*, 109 N. W., 294, that where a corporation had been incorporated and doing business for several years before defendant subscribed for his stock, he could not defend an action on his subscription on the ground that the corporation was not legally incorporated. Compare *Kansas City Co.* v. *Hunt*, 57 Mo., 126.

CRIMINAL LAW.

Entrapment: Theft

The Court of Criminal Appeals of Texas decides in *Crowder* v. *State*, 96 S. W., 934, that where the owner of mules, in order to detect a thief, employed another person as detective to encourage the thief's design and led him on and the act was consummated, it was theft provided such owner or his agent did not induce the original intent on the part of the thief. See also *Alexander* v. *State*, 12 Tex., 544.

DEEDS.

Election by Grantee

The Appellate Court of Indiana, Division No. 1, decides in *Hornet* v. *Dumbeck*, 78 N. E., 691, that the rule that where there are in a deed two descriptions of the land conveyed which do not coincide, the grantee may elect that which is most favorable to him, does not apply where the grantee never made an election between the conflicting descriptions nor took possession with reference to one description to the exclusion of the other, and where it does not appear that either description was more favorable than the other. Compare *Harris* v. *Oakley*, 130 N. Y., 1.

EVIDENCE.

Forgery: Other Forgeries

In *People* v. *Dolan*, 78 N. E., 569, the Court of Appeals of New York decides that on a trial for uttering a forged note by indorsing it to a bank, evidence of the forgery and uttering of other notes by accused, made payable to him, and negotiated with other banks and individuals, was admissible as showing guilty knowledge, especially where all the notes were made at about the same time and during the time accused was endeavoring to raise funds to meet his obligations, and where in each case he used the names of persons with whom he had done business and with whose affairs he was familiar. Compare *People* v. *Molineux*, 168 N. Y., 264; 62 L. R. A., 193.

Comparison of Handwriting

The Supreme Court of South Dakota holds in *Greenwald* v. *Ford*, 109 N. W., 516, that the fact that a signature, offered in evidence as a standard for comparison, was made since the time of the signature in dispute may be considered as affecting its credibility, but it will not justify a denial of its use, unless it is shown that it was manufactured since the controversy arose, for the purpose of comparison, by one having a motive to fabricate. Compare *University of Illinois* v. *Spalding*, 71 N. H., 163.

FORGERY.

The Supreme Court of Wisconsin decides in *Norton* v. *State*, 109 N. W., 531, that since a negotiable instrument payable to the order of the payee may be transferred without his indorsement, it cannot be contended that a check falsely and fraudently executed, though payable to another than the forger, is without value in his hands so as to render its execution not a forgery. Compare *Esau* v. *Green*, 94 Wis., 8.

Essentials

In *Rose* v. *State*, 96 S. W., 996, the Supreme Court of Arkansas decided that where defendant without any authority signs his father's name to an order and with it obtained money from a bank, he was guilty of uttering and publishing a forged instrument, though he believed that his father would pay the order and not prosecute him. Compare *Commonwealth* v. *Butterick*, 100 Mass., 17.

Defences

HUSBAND AND WIFE.

In *Hawes* v. *Glover*, 55 S. E., 62, the Supreme Court of Georgia decides that when a husband signs his wife's name to a mortgage purporting to be executed by her, in her immediate presence, and by her express request and direction, the effect of such signature is the same as if she had signed the mortgage herself. The result of this decision seems to be to permit the wife's interest in the land to be divested by oral evidence, since her husband's authority is not proved by any written instrument.

Wife's Signature

INJUNCTION.

Against the dissent of two judges the Supreme Court of Georgia holds in *Downing et al.* v. *Anderson*, 55 S. E., 184, that before one claiming ownership of a tract of land can maintain an action to enjoin the cutting of timber thereon, it is incumbent upon him to show that he has title to the land or is in possession there-

Trespass

INJUNCTION (Continued.)

of; and, if he relies upon possession alone as a basis for the granting of the relief sought, it must be actual possession of that portion of the land upon which the wrong complained of is being committed. See also in this connection the very recent decision of the same Court in *Hart* v. *Lewis, Shore & Co.*, 55 S. E., 189.

INNKEEPERS.

The Supreme Court of Georgia holds in *Walpert* v. *Bohan*, 55 S. E., 181, that if an innkeeper also conducts a bathhouse on the seashore, where the general public, as well as guests at his inn, may obtain the use of bathrooms and accessories to the bath, this is not sufficient to constitute the relation of innkeeper and guest between him and persons using such bathhouse. The relation of the innkeeper in such case is that of depositary for hire and he is liable for ordinary negligence. Compare *Bird* v. *Everard*, 23 N. Y. Supp., 1088.

Conducting Bathhouse

LANDLORD AND TENANT.

In *Cavalier* v. *Pope*, L. R. (1906) A. C., 428, it appeared that the owner of a dilapidated house contracted with his tenant to repair it, but failed to do so. The tenant's wife, who lived in the house and was well aware of the danger, was injured by an accident caused by the want of repair. Under these facts the English House of Lords decides that the wife being a stranger to the contract, had no claim for damages against the owner. With this decision compare *Indermaur* v. *Dames*, L. R. 1, C. P., 274.

Defective Premises

MORTGAGES.

The Supreme Court of Illinois holds in *Moffet* v. *Farwell*, 78 N. E., 925, that whether a merger results from the uniting of the fee with a mortgage estate in the same person, depends upon the intent and interest of the parties. The presumption is that a

Release by Merger

MORTGAGES (Continued.)

merger was not intended by the grantee when the mortgage is essential to his security as against an intervening title or lien, and such presumption is not overcome by the fact that he cancelled and surrendered the notes and mortgage. Compare *Shippen* v. *Whittier*, 117 Ill., 282.

MUNICIPAL CORPORATIONS.

Injury from Automobile

In *Johnson* v. *City of New York et al.*, 78 N. E., 715, the Court of Appeals of New York decides that a spectator voluntarily present to witness an automobile speed contest in a public highway cannot recover for an injury received by being struck by an automobile swerving from its course and leaving the highway, on the ground of the illegality of the contest, but must prove negligence. It is held, however, that the right of a spectator at an automobile speed contest in a public highway to recover for injuries received by being struck by an automobile swerving from its course and leaving the highway, is not affected by the fact that he stood on land adjacent to the highway, and was a trespasser thereon. See in this connection *Platz* v. *City of Cohoes*, 89 N. Y., 219.

NEGOTIATIONS.

Contracts for Personal Services

In *H. W. Gossard Co.* v. *Crosby*, 109 N. W., 483, it appeared that a petition for an injunction to restrain an employe from working for a rival company alleged that she was employed to sell a front-lace corset and to give lectures pertaining to physical culture. The services were alleged to be unique, requiring a cultured saleswoman of strong individuality, with good address, and ability as a lecturer, which requirements respondent was alleged to meet in an exceptional degree. It was not shown, however, that exceptional talent was required to understand the corset, nor why any other woman of intelligence and good address could not perform the service. Under these facts the Supreme

NEGOTIATIONS (Continued.)

Court of Iowa decides that the petition alleged only the failure of an experienced and competent saleswoman to carry out her contract of employment and was not sufficient to sustain an injunction. Compare *Philadelphia Ball Club* v. *Lajoie*, 202 Pa., 210.

RAILROADS.

Location of Depot

The Supreme Court of Illinois decides in *Chicago & E. I. R. Co.* v. *People*, 78 N. E., 784, that a railway company acting in good faith has the right, as against the public, uncontrolled by contracts or previous acts on its part, to change the location of its depots, provided it furnishes reasonably safe, accessible, and convenient depot accomodations for the public, having also regard to the interests of the stockholders of the company. Compare *People* v. *Chicago and Alton Railroad Co.*, 130 Ill., 175.

RECORDS.

Seal

In *Broadwell et al.* v. *Morgan*, 55 S. E., 340, the Supreme Court of North Carolina holds that the recital in the body of a grant from the state, as reported, of the affixing of the seal of the state, is sufficient evidence of its regularity, and the registry of the grant is not invalidated because it does not appear of record that a scroll or imitation of the great seal of the state was copied thereon. Compare *Aycock* v. *Railroad*, 89 N. C., 323.

SALES.

Default of Purchaser

The Supreme Court of Nebraska holds in *Trauerman et al*, v. *Nebraska Land and Feeding Co.*, 109 N. W., 379, that it is a rule generally enforced that a purchaser, who has advanced money in part performance of a contract, and who refuses to proceed, the seller being ready and willing to perform on his part,

SALES (Continued.)

cannot recover back the money so advanced; but to subject the purchaser to this penalty or forfeiture it should clearly appear that he has wholly abandoned the contract and wilfully refused to proceed thereunder. Compare *Water* v. *Reed*, 34 Neb., 544.

Umpire's Decision

The Supreme Court of Arkansas holds in *Zinc Co.* v. *Patterson*, 96 S. W., 170, that a contract for the installation of mining machinery, providing that when tested it must be satisfactory to a certain named person, was valid and binding, though an arbitrary and capricious expression of dissatisfaction would not prevent the seller from recovering for the machinery. See in this connection *Hot Springs Ry. Co.* v. *Maher* 48 Ark., 522, 3 S. W., 639.

STATUTE OF FRAUDS.

Construction

The Supreme Court of Arkansas, laying down the general rule in *Moore* v. *Camden Marble & Granite Works*, 96 S. W., 1063, that an agreement to construct an article especially for, or according to the plans of, another, and not of a kind which the producer usually has for sale in the course of his business, is a contract for work and labor, not within the statue of frauds, though the transaction is to result in a sale of the article, holds that a contract by one taking orders for completed tombstones according to catalogue designs to construct a tombstone according to a design and with an inscription selected by the patron, need not be in writing. Compare *Lee* v. *Griffin*, 1 B. & L., 272.

SUICIDE.

Attempt to Commit

In *May* v. *Pennell*, 64 Atl., 885, the Supreme Judicial Court of Maine decides that an attempt to commit suicide is not an indictable offense in the State of Maine. There is an interesting discussion of the issue, though the result reached is not in all respects

SUICIDE (Continued.)
satisfactory. See in this connection *Commonwealth* v. *Mink*, 123 Mass., 422.

TELEGRAPHS.

Conflicting Duties of Operators

In *Mott* v. *Western Union Telegraph Co.*, 55 S. E., 363, the Supreme Court of North Carolina decides that time consumed by a telegraph agent in attending to his other duties as railroad agent, or in handling the mail, does not operate as an excuse for delay in the delivery of a telegram.

TELEPHONES.

Damages to Landowner

In *Shimzel* v. *Bell Telephone Co. of Philadelphia*, 31 Pa. Super. Court, 221, the Superior Court of Pennsylvania decides that the erection of telephone poles and wires in city or borough streets, under charter rights, with municipal consent, and in conformity to municipal regulations, is not in itself an additional burden for which the owner of the fee is entitled to compensation. It follows from this, it is held, that unsightliness of the poles, and noises which are the ordinary incident of the lawful and non-negligent maintenance of the poles and wires and the conduct of the business, do not constitute a special injury for which damages are recoverable; but appreciable interference with light, air, access or drainage is an additional burden to which the land of the abutting owner cannot be subjected without rendering to him just compensation. Compare *Martachowski* v. *Orawitz*, 14 Pa. Super. Ct., 175.

TORRENS TITLES.

Vacating Decree

In *Baart* v. *Martin et al.*, 108 N. W., 945, the Supreme Court of Minnesota decides that when the registration of the title to land is secured by fraud, and the owner of the land is not notified, as required by the statutes, the decree and the certificate of registration issued thereunder may be vacated and set aside,

TORRENS TITLES (Continued.)

unless an innocent purchaser for value has obtained rights on the faith of the record.

TRADE UNIONS.

In *Denaby and Candeby Main Collieries, Ltd.* v. *Yorkshire Miners' Association et al.*, L. R. (1906) A. C., 384, it appeared that a trade union had been sued for damages on the ground that workmen had been induced to break their contracts with their employers by officials of the union, and that the union had ratified and adopted the acts of their officials. Under these facts the English House of Lords decides that the union was not liable, those who procured the strike not having been authorized by the rules or by the action of the union. The general rule is also laid down that where workmen strike in breach of their contracts those who help to maintain the strike by money and counsel are not liable to pay damages to the employers merely because losses are thereby caused to the employers. See in connection with this important decision *Yorkshire Miners' Association* v. *Howden*, L. R. (1905) A. C., 256.

Strike

TRESPASS.

In *Wilson* v. *White et al.*, 109 N. W., 367, the Supreme Court of Nebraska decides that several owners of animals who have constituted of them a common or joint herd, are jointly liable for trespasses committed by such herd. Compare *Jack* v. *Hundell*, 25 Ohio St., 255.

Joint Liability

WATERS AND WATER COURSES.

While there are numerous cases dealing with the questions arising in consequence of the interference of an upper riparian owner with the rights of a lower riparian owner, it is seldom that a case occurs where the situation is reversed. This appears, however, in *Alex. Pirie & Sons, Ltd.* v.

Riparian Rights

WATERS AND WATER COURSES (Continued.)

Earl of Kintore et al., L. R. (1906) A. C., 478, where the facts were as follows: In 1882 mill-owners on the Don river, which is a salmon river, increased their diversion of the water from its natural channel into artificial channels serving the uses of their mill. This was done to such an extent as to leave the natural channel in the neighbourhood of the mill at times bare of water. In 1900 the proprietors of the salmon fisheries in the upper reaches of the river objected to the mill owners' diversion of the water, and asked for an interdict. The decision of the House of Lords is that they were entitled to an interdict, the principle being laid down that interference with the free passage of salmon up a river is a wrong against the proprietors of the upper fisheries, and if it materially obstructs the passage of fish can be restrained by interdict. Compare with this decision *Menzies* v. *MacDonald*, 16 D., 827.

WITNESSES.

Competency: Transaction with Decedent

In *Hawes* v. *Glover*, 55 S. E., 62, the Supreme Court of Georgia decides that where one of the joint obligors upon a promissory note gives a mortgage to secure its payment, and, after his death, the holder of the note and mortgage institutes a proceeding in the nature of a foreclosure of the mortgage, a surviving coöbligor upon the note is a competent witness, in such proceeding, to prove the execution of such mortgage, if, at the time he testifies, the note as to him has become barred by the statue of limitations. Compare *Ridley* v. *Hightower*, 112 Ga., 176.

Physician and Patient

The Supreme Court of Wisconsin decides in *Boyle et al.* v. *Robinson*, 109 N. W., 623, that a physician who signed a deed as a witness is competent to testify with respect to the mental competency of the grantor, where the answers of the physician involve no disclosure of any communications received by him while attending the grantor as a physician. Compare *Winn* v. *Itzel*, 125 Wis., 19.