PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADOPTION.

A very interesting discussion with respect to adoption occurs in *Hockaday* v. *Lynn et al.*, 98 S. W. 585, where the Supreme Court of Missouri, Division No. 1, after reviewing the legal history of the act of adoption decides that such act does not bring the adopted child into relationship with anyone but the adoptive parent and such child cannot inherit from the brother of her deceased adoptive father the share which the adoptive father would have taken had he survived his brother. Compare *Barnhizel* v. *Ferrell*, 47 Ind. 338.

Common Law

BANKRUPTCY.

In *Hausman* v. *Sessinghaus*, 97 S. W. 991, the St. Louis Court of Appeals of Missouri decides that under the Bankruptcy Act of 1898, section 62, providing for the payment of expenses incurred by officers in the administration of bankrupt estates, and section 64, stating the priorities of payment of claims against a bankrupt, where a trustee in bankruptcy sells property subject to the debts of the estate, the holder of claims is not entitled to recover thereon in the state courts from the purchaser; the whole matter being within the jurisdiction of the federal court. See in this connection *More* v. *Sanford*, 1 Gif. 288.

Jurisdiction

The Court of Civil Appeals of Texas decides in *Hooker* v. *Blount et al.*, 97 S. W. 1083, that where a bank, to which a note was sent for collection nearly a year before maturity, had knowledge that the maker was notoriously insolvent, and payment of a note was made by one of the sureties from the proceeds

Preferences

BANKRUPTCY (Continued).

of a sale of the debtor's stock of goods less than four months before he was adjudged a bankrupt, the holder of the note was charged with the knowledge of the bank, so that the payment constituted a voidable preference. Compare *Babbitt* v. *Kelly*, 70 S. W. 384.

CARRIERS.

Who are Common Carriers

The Supreme Court of Kansas decides in *Larabee Flour Mills Co.* v. *Missouri Pac. Ry. Co.*, 88 Pac. 72, that a railway company holding itself out to the public as ready, and as undertaking, to do switching which requires it to have its own rails and right of way, and go upon the rails and right of way of another company with which it has no express contract relating either to compensation for switching or to track rights, is a common carrier, and as such must switch cars without discrimination against a disfavored shipper.

Claim for Damages

The Supreme Court of Texas decides in *Pecos & N. T. Ry. Co. et. al.* v. *Evans-Snyder-Buel Co.*, 97 S. W. 466, that a provision of a shipping contract, requiring a certain notice of any claim for damages for loss or injury to the stock shipped during the transportation, was not applicable to a claim for depreciation in the market value on account of a decline in the market during the time lost in delay in transportation.

Minimizing Damages

The Supreme Court of South Carolina decides in *Carter* v. *Southern Ry. Co.*, 55 S. E. 771, that where a passenger has been indavertently informed by the ticket agent that a through train stopped at a small station to which he sold her a ticket, she must use all reasonable means suggested by the conductor, on discovering the mistake, to minimize her damages, and should get off at a station preceding her destination and take

CARRIERS (Continued).

the next local train following, and cannot recover for injury caused by going to the station next beyond her destination and walking back nine miles through the heat and rain. Compare with this decision *Willis* v. *Telegraph Co.*, 69 S. C. 539.

Opportunity to Procure Food

The Court of Civil Appeals of Texas decides in *Texas & N. O. R. Co.* v. *Harrington*, 98 S. W. 653, that the duty of a carrier, when its train is on time, to give opportunity to its passengers to procure food at regular eating stations is discharged when it exercises care to furnish an opportunity to those in ordinary physical condition to procure food for themselves, and it is not ordinarily its duty to convey food to infirm passengers. On the other hand the Court holds that where a train is delayed owing to the fault of the carrier its obligation to give opportunity to procure food depends upon the condition and environment of the passengers.

CONSTITUTIONAL LAW.

Equal Protection of Laws

A very interesting decision appears in *Grainger et al.* v. *Douglas Park Jockey Club*, 148 Fed. 513, where it is held by the United States Circuit Court of Appeals, Sixth Circuit, that a statute of Kentucky, creating a state racing commission, and regulating the racing of running horses, which, while excepting from its provisions trotting meetings or races and races conducted by fair associations, prohibits the conducting of any running race in the state except by a corporation or association licensed by the commission, which is empowered to grant and revoke such licenses, to adopt regulations for racing which must be observed by its licensees, and to fix the time in each year during which the association may conduct racing, which must be between the 1st of April and the 1st of December, its

CONSTITUTIONAL LAW (Continued).

action in certain matters being subject to review by the courts, while it may operate to deprive persons or corporations of their liberty or property, and to create discriminations, cannot be held to have no real and substantial relation to the public welfare, nor to be in violation of the fourteenth amendment of the Constitution, as denying to any person the equal protection of the laws. The case is very thoroughly considered and presents an excellent review of the authorities. The importance of the question involved is obvious. Compare *Yick Wo.* v. *Hopkins*, 118 U. S. 356.

Impairing Contract Obligations

The Supreme Court of the United States decides in *American Smelting & Refining Company* v. *People of the State of Colorado ex rel. Henry A. Lindsley*, 27 S. C. R. 198, that a contract right to do business in the state during the corporate lifetime of domestic corporations without being subject to any greater liabilities than then were or might be imposed upon domestic corporations was acquired by a foreign corporation by virtue of its admission into the state of Colorado with the right to do business therein under the then-existing laws of that state, which, *inter alia*, subjected foreign corporations coming into the state to the liabilities, restrictions, and duties which then were or might thereafter be imposed upon domestic corporations of like character, and such right was unconstitutionally impaired by a later statute of Colorado, exacting from such corporation an annual tax or license fee in double the amount of that imposed upon domestic corporations. Four judges dissent. Compare *New York &c. R. Co.* v. *Pennsylvania*, 153 U. S. 628.

Fellow Servant Rule

A very important decision and one already given considerable attention in the newspapers appears in *Brooks* v. *Southern Pac. Co.*, 148 Fed. 986, where the United States Circuit Court, W. D. Kentucky, decides that the Act of Congress of June 11, 1906, c. 3073,

CONSTITUTIONAL LAW (Continued).

34 Stat. 232, "relating to the liability of common carriers . . . engaged in commerce between the states . . . to their employees" as stated in its title, and which makes every such carrier liable to any employe or his personal representative for all damages which may result from the negligence of any of its officers, agents, or employes, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways or works, is not a regulation of interstate commerce, but establishes new rules of liability, growing out of the relation of master and servant, which, if valid, are binding on all courts, both state and federal, but which have no such relation to interstate commerce as to bring them within the constitutional power of Congress to regulate such commerce, and the act is, for that reason, void. See in connection herewith another very recent case *Howard* v. *Illinois Central R. Co.*, 148 Fed. 997, where the same result is reached by the United States Circuit Court for the Western District of Tennessee, and note also the decision of the Supreme Court of the United States in *Reuben L. Martin* v. *Pittsburg & Lake Erie R. R. Co.* referred to infra.

Venue of Criminal Trial

The Supreme Court of North Carolina decides in *State* v. *Lewis*, 55 S. E. 600, that the statute authorizing an indictment for lynching to be brought by the grand jury of the county adjoining the one where the crime was committed is constitutional. Compare *Swart* v. *Kimball*, 43 Mich. 443.

Panama Canal

In *Warren B. Wilson* v. *Leslie M. Shaw*, 27 S. C. R. 233, the United States Supreme Court upholds the title of the United States to the Panama Canal zone, acquired by treaty with the Republic of Panama, and holds that Congress has power to construct the Panama canal in the territory acquired by the treaty of November 18, 1903, with the Republic of Panama. Compare *Indiana* v. *United States*, 148 U. S. 148.

CONTEMPT.

Murder of Prisoner Pending Appeal

A very important decision of the United States Supreme Court and one which has already received considerable public notice appears in *United States of America* v. *John F. Shipp et al.*, 27 S. C. R. 165, where it is held that participation in the murder of a prisoner under sentence of death in a state court, with intent to prevent the delay attendant upon an appeal to the Federal Supreme Court from an order of the circuit court denying relief by habeas corpus, and to prevent the hearing of such appeal, is a contempt of the Supreme Court, where such murder was committed after the appeal had been allowed and that court had ordered that "all proceedings against the appellant be stayed, and the custody of said appellant be retained pending this appeal." Compare *Huntingdon* v. *McMahon*, 48 Conn. 174.

CORPORATIONS.

Franchises: Nonuser

The Supreme Court of Missouri holds in *State ex inf. Hadley, Atty. Gen.* v. *Delmar Jockey Club*, 98 S. W. 539, that where a corporation was authorized to promote agriculture, establish and maintain suitable fair grounds, and give and conduct races and public exhibitions of agricultural products and stocks, but for a long period of time wilfully failed to conduct any agricultural fairs or to use its property except for the maintenance and operation of a race track, there was such a willful nonuser of its corporate franchise as justified a forfeiture of its charter. Compare *State* v. *Armour Packing Co.*, 173 Mo. 392, 61 L. R. A. 464.

Leases: Time: Validity

In *Hill et al.* v. *Atlantic & N. C. R. Co.*, 55 S. E. 854, the Supreme Court of North Carolina holds that where the term of a lease of a corporation's assets extended beyond the time of the lessor's corporate existence as fixed by its charter, the lease was valid for the period of the lessor's corporate life, and to the extent that the lessor's charter might be extended,

CORPORATIONS (Continued).

not exceeding the term of the lease. The case is also important with respect to the question of acquiescence by stockholders in the action of a corporate meeting irregularly organized. The discussion is very thorough and exhaustive. Compare *Clegg* v. *Edmondsom*, 8 De Gex M. & G. 787.

The Supreme Court of Illinois holds in *George E. Lloyd & Co.* v. *Matthews & Rice*, 79 N. E. 172, that where a contract, properly executed for a corporation by its president, is such as the corporation might lawfully make, proof of the execution by the president is sufficient, in the absence of evidence that the contract was not made by the authority of the corporation. Compare *Atwater* v. *American Exchange Nat. Bank*, 152 Ill. 605.

Officers: Authority

An important case in relation to the responsibility of corporations for the acts of their agents appears in *Merchants' Nat. Bank of Peoria* v. *Nichols & Shepard Co.*, 79 N. E. 38, where it appears that an agent of a foreign corporation was a defaulter. He overdrew the bank account opened by him in the name of the corporation. The checks creating the overdraft were given by the agent for expenses, but were in fact used to replace money which he had misappropriated. Under these facts the Supreme Court of Illinois holds that the foreign corporation was not liable to the bank on the theory that the checks which created the overdraft were given in the business of the corporation.

Wrongful Acts of Agent

CRIMINAL LAW.

The Supreme Court of Pennsylvania decides in *Commonwealth* v. *Renzo*, 216 Pa. 147, that the law of Pennsylvania does not tolerate the doctrine of "transitory frenzy" as a defense to murder. In the eye of the law it is nothing but vindictive and reckless temper.

Murder: Lunacy

EJECTMENT.

The Court of Appeals of New York holds in *Butler* v. *Frontier Telephone Co.*, 79 N. E. 716, that ejectment will lie where a telephone wire is stretched across plaintiff's premises about thirty feet above the surface of the ground, which is not supported by any structure standing on the premises; plaintiff being the owner of the space above his premises and entitled to its exclusive possession. The precise question arising in this case, says the Court, does not appear to have been passed upon in any other State and on the cognate question relating to projecting cornices and the like authorities are divided. See *Murphy* v. *Bolger*, 60 Vt. 723, 1 L. R. A. 309 and *Rasch* v. *Noth*, 99 Wis. 285, 40 L. R. A. 577.

Overhead Wire

HIGHWAYS.

The Supreme Court of Appeals of West Virginia decides in *Hardman* v. *Cabot*, 55 S. E. 756, that a pipe line, laid in a public rural highway, under proper authority, and used for supplying the public with natural gas for heating and illuminating purposes, though imposing an additional public service upon the road, is not a use in excess of the right of the public in such road, and does not impose an additional burden upon the estate in fee in the land. Compare *Bishop* v. *North Adams Fire District*, 157 Mass. 364.

Public Use: Additional Burden

HUSBAND AND WIFE.

In *Mullins* v. *Shrewsbury*, 55 S. E. 736, the Supreme Court of Appeals of West Virginia decides that a conveyance of land by a wife to a husband, he not executing it, they living together, is void. It was attempted to uphold the conveyance on the ground that the wife had estopped herself by her conduct from asserting its invalidity, but the court decides that estoppel in pais will not bar the assertion of title to land, where the representation comes only from

Conveyances Between: Estoppel

HUSBAND AND WIFE (Continued).

one's ignorance of his title arising from ignorance of law, and without intent to mislead. See in this connection *Rico* v. *Brandenstein*, 98 Cal. 465, 20 L. R. A. 702.

Medical Bills

The Supreme Court of Indiana decides in *Indianapolis Traction & Terminal Co.* v. *Kidd*, 79 N. E. 347, that where a married woman, after being injured in a street car accident through defendant's negligence, incurred expenses for medical treatment on her own behalf, she was entitled to recover therefor as a part of her damages, though her husband was ordinarily chargeable with the payment of her medical bills. See also *Nelson* v. *Spaulding*, 11 Ind. App. 453.

INSURANCE.

Insurable Interest

The Appellate Court of Indiana, Division No. 1, decides in *American Mut. Life Ins. Co.* v. *Mead*, 79 N. E. 526, that a policy of insurance issued to plaintiff on the life of his mother-in-law is prima facie void ab initio for lack of insurable interest of plaintiff in the life insured. With this decision compare *Continental Life Insurance Company* v. *Volger*, 89 Ind. 572.

INTERSTATE COMMERCE.

Powers of Congress

In *United States* v. *Scott*, 148 Fed. 431, the United States District Court, W. D. Kentucky, decides that Section 10 of Act of Congress, June 1, 1898, 30 St. 428, entitled "An act concerning carriers engaged in interstate commerce and their employes," which section makes it a criminal offence for any employer subject to the provisions of the act or any officer, agent, or receiver of such employer to require any employe to agree as a condition of his employment not to become or remain a member of any labor organization, or to threaten his removal, or otherwise discriminate against him be-

INTERSTATE COMMERCE (Continued).

cause of such membership, or to attempt or conspire to prevent any employe who has been discharged or has quit from obtaining employment, is not in the constitutional sense a regulation of commerce or of commercial intercourse among the states, inasmuch as its essential object manifestly is only to regulate certain phases of the right of an employer to choose his own servants, whether the duties of those servants when employed shall relate to interstate commerce or not; and its provisions being thus broad and general, without limitation to transactions relating to interstate commerce, but applicable equally to matters beyond the control of Congress, it is unconstitutional and void. See in this connection the cases cited above under the head of Constitutional Law: Fellow Servant Rule.

MASTER AND SERVANT.

An important decision of the Supreme Court of Errors of Connecticut appears in *Wyeman* v. *Deady et al.*, 65 Atl. 128, where it is held that a labor union and its walking delegate, who procured plaintiff's discharge from employment by means of threats made to plaintiff's employers with the knowledge, approval, and authority of the union, were liable for plaintiff's discharge as joint tort-feasors.

Joint Liability

MONOPOLIES.

The Supreme Court of South Carolina decides in *Walter A. Wood Mowing & Reaping Co.* v. *Greenwood Hardware Co.*, 55 S. E. 973, that a contract whereby plaintiff agrees to sell exclusively to defendant and defendant to buy exclusively of the plaintiff certain farm machinery to be sold in a certain territory is not injurious to the public as tending to create a monopoly, or invalid as lessening full and free competi-

What Constitutes

MONOPOLIES (Continued).

tion to an unreasonable extent. Compare *State* v. *Chemical Co.* 71 S. C. 544.

NEGLIGENCE.

"Imputed" Negligence

The Supreme Court of Minnesota decides in *Cotton* v. *Willmar & Ry. Co.*, 109 N. W. 835, that when a person employs a livery team with a driver to carry him to a specified place, the relation of master and servant does not exist between the passenger and the driver. They are not engaged in a common employment or a joint enterprise, and the negligence of the driver, in driving upon a railway track without taking proper precautions to ascertain the approach of a train is not imputable to the passenger. The latter, however, is responsible for his own personal negligence. Compare *Howe* v. *Minneapolis &c. Ry. Co.*, 62 Minn. 71, 30 L. R. A. 684.

Signals at Crossings

The Supreme Court of Pennsylvania decides in *Black* v. *Bessemer & Lake Erie R. Co.*, 216 Pa. 173 that a railroad company is not bound by any unbending rule of law to ring a bell or blow a whistle as a train approaches an overhead crossing. Compare *Pennsylvania R. R. Co.* v. *Barnett*, 59 Pa. 259.

NUISANCE.

Injunction

With one judge dissenting the Supreme Court of North Carolina decides in *City of Hickory* v. *Southern Ry.*, 55 S. E. 840, that, though in a suit to restrain a railroad from erecting a freight warehouse in a city on the ground that it would create a public nuisance by obstructing the view along the tracks and thereby make it dangerous for persons to cross the tracks, the jury found that the structure would constitute a public nuisance, the railroad should be permitted to avoid a perpetual injunction by erecting suitable gates and providing gatemen as usual and customary at dangerous crossings. Compare *Simpson* v. *Justice*, 43 N. C. 115.

POLICE POWER.

Height of Buildings

The Supreme Judicial Court of Massachusetts decides in *Welch* v. *Swasey et al.*, 79 N. E. 745, that a statute limiting the height of buildings in the City of Boston is within the police power of the legislature and further that in such legislation the parts of the City may be divided into two classes for each of which a special rule is provided. See also *Watertown* v. *Mayo*, 109 Mass. 315.

PHYSICIANS AND SURGEONS.

Authority to Perform Operations

The Supreme Court of Illinois decides in *Pratt* v. *Davis*, 79 N.E. 562, that where a patient desires a physician to perform an operation, and unexpected conditions are discovered in the course of the operation, or where an emergency arises calling for immediate action for the preservation of the life or health of the patient, and it is impracticable to obtain his consent or the consent of anyone authorized to speak for him, it is the duty of the physician to perform such operation as good surgery demands, without such consent.

PRINCIPAL AND AGENT.

Authority of Agent

With one judge dissenting the Supreme Court of Washington decides in *Brittain* v. *Pioneer State Bank et al.*, 87 Pac. 1051, that where plaintiff sent a draft to a bank and authorized it to offer defendant a certain sum for her farm, to pay her the amount of the draft, the balance to be paid at a subsequent date, and she refused the offer, of which fact the bank notified plaintiff and plaintiff directed the bank to return the draft, stating that the transaction might be considered as closed, but it did not appear that the bank received this notice before the subsequent acceptance of the offer by defendant, plaintiff is not entitled to recover the amount of the draft.

RAILROADS.

In *Reuben L. Martin* v. *Pittsburg & Lake Erie R. R. Co.*, 27 S. C. R. 100, the Supreme Court of the United States decides that applying to interstate transportation the provisions of Pennsylvania, Act of April 4, 1868, restricting, as against a railroad company, the rights of persons injured in the course of their employment in or about the railroad to those which an employe of the railway company would have under like circumstances, does not make such statute repugnant to the commerce clause of the Federal Constitution. The act in question is attacked on several grounds but is fully sustained by the opinion of a Supreme Court. See in this connection *Pennsylvania R. Co.*, v. *Hughes*, 191 U. S. 477.

Liability to Employes

In *Chicago, I. & L. Ry. Co.* v. *Pritchard*, 79 N. E. 508, the Supreme Court of Indiana decides that though one standing near a railway track may have been a trespasser, the company was liable for injuries occasioned by the failure of an engineer to stop a train in obedience to signals, though the enigneer did not know why he was signalled to stop. Compare *Heaven* v. *Pender*, L. R. 11 Q. B. 503.

Failure to Stop Train

SEALS.

The Supreme Court of Florida, Division A, holds in *Langley* v. *Owens*, 42 Southern 457, that when the letters "L. S.," inclosed within parentheses, thus, "(L. S.)," appear opposite the signature of the maker of a promissory note in the usual place for the seal, but with no reference to it in the body of the instrument, whether written or printed, it is evidence of a purpose to make a sealed instrument. Compare *Hacker's Appeal*, 121 Pa. 192, 1 L. R. A 861.

What Constitutes

SPECIFIC PERFORMANCE.

Corporate Stock

The Supreme Court of Missouri, Division No. 1, decides in *Dennison* v. *Keasbey et al.*, 98 S. W. 546, that a contract for the transfer of corporate stock will be specifically enforced where there is none of the stock on the market and no available way of proving the value of the stock or the amount of damages from a breach of a contract, the remedy at law being inadequate. Compare *Johnson* v. *Brooks*, 93 N. Y. 337.

UNFAIR COMPETITION.

What Constitutes

An interesting decision with respect to unfair competition appears in *Rocky Mountain Bell Telephone Co.* v. *Utah Independent Telephone Co. et al.* 88 Pac. 26, where the Supreme Court of Utah decides that the adoption by a telephone company of the same number as a caller for its Trouble Department as that used by a rival company previously established for its Trouble Department enabling the newer company to learn through mistakes of subscribers of the older company of cases of trouble in the use of its telephones, was not unfair competition against which an injunction would issue. With this decision compare *Hague* v. *Wheeler*, 27 Atl. 714, 22 L. R. A. 141.