PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports,

BANKRUPTCY.

The Supreme Court of Wisconsin in *Custard* v. *Wigderson et al.*, 110 N. W. 263, holds that where a bankrupt scheduled the name of a creditor as "Castard," when in fact his name was "Custard it was insufficiently scheduled under the Bankruptcy Act of 1898 providing that a debt is not discharged, if not duly scheduled. Compare *Haack* v. *Theise*, 99 N. Y. Supp. 905.

Sufficiency of Schedule

BANKS AND BANKING.

In *First Nat. Bank of Richmond* v. *Richmond Electric Co.*, 56 S. E. 152, the Supreme Court of Appeals of Virginia decides that a bank depositor is bound to examine within a reasonable time and with ordinary care the account rendered in the pass book and vouchers returned to him by the bank and to report any errors discovered without unreasonable delay. Compare *Bank* v. *Morgan* 117 U. S. 96.

Duty of Depositor

COMMERCE.

An important decision with reference to State control over interstate commerce appears in *Jay Delamater, Plff. in Err.* v. *State of South Dakota*, 27 S. C. R. 447, where the United States Supreme Court decides that the annual license charge imposed by a state law, upon the business of selling or offering for sale intoxicating liquors within the State, by any traveling salesman who solicits orders in quantities of less than five gallons cannot be regarded, when applied to interstate transactions, repugnant to the commerce clause of the Federal Constitution, in view of the provisions

Intoxicating Liquors

COMMERCE (Continued).

of the Wilson Act of August 8, 1890 (26 Stat. at L. 313, chap. 728, U. S. Comp. Stat. 1901, p. 3177), that intoxicating liquors coming into the state shall be as completely under its control as if manufactured therein. See in this connection *Pabst Brewing Company* v. *Crenshaw*, 198 U. S. 17, and *Mayor & Board of Trustees of the City of New Iberia* v. *Erath*, 42 Southern 945.

CONFLICT OF LAWS.

Nullity of Marriage

In *Ogden* v. *Ogden*, L. R. (1907) Pro. Div. 107, it appeared that a ceremony of marriage according to English form was celebrated in England between a domiciled Englishwoman and a domiciled Frenchman. The marriage was annulled in France at the suit of the man or of his father, whose consent to the English marriage had not been obtained and was necessary according to the law of the man's domicil. At a later date the woman married a domiciled Englishman in England. Under these facts it is held that this later marriage was bigamous and must be annulled at the suit of the man who was a party to it. See in connection herewith *Simonin* v. *Mallac*, 2 Sw. & Tr. 67.

CONSTITUTIONAL LAW.

Deprivation of Remedy for Injuries

In *MacMullen* v. *City of Middletown*, 79 N. E. 863, the Court of Appeals of New York decides that a City Charter providing that no action shall be maintained for injuries to a person from snow or ice on a sidewalk or street unless written notice shall have been actually given to the City Council and there shall have been a failure to remove the snow and ice within a reasonable time, was a valid exercise of legislative power regulating the government of municipalities, and was not unconstitutional as depriving a person injured of a legal remedy for a wrong. Compare *Allen* v. *Cook*, 21 R. I. 525.

CONSTITUTIONAL LAW (Continued).

Interstate Commerce

In *Spain* v. *St. Louis & S. F. R. Co.*, 151 Fed. 522, the United States Circuit Court (E. D. Arkansas, E. D.) laying down the general rule that it is within the power of Congress, under the Commerce clause, to regulate the liability of a common carrier to its employees for personal injuries received while engaged in interstate transportation, decides that the Act of Congress of June 11, 1906, c. 3073, 34 Stat. 232, relating to the liability of common carriers engaged in commerce between the states to their employees, as stated in its title, commonly called the "Federal Employers' Liability Act," is a regulation of interstate commerce, and is within the Constitutional power of Congress to regulate commerce. Compare *Smith* v. *Alabama*, 124 U. S. 465.

National Flag

It is decided by the Supreme Court of the United States in *Nicholas V. Halter* v. *State of Nebraska*, 27 S. C. R. 419 that the protection of the national flag against illegitimate uses is not so exclusively intrusted to the Federal government as to prevent a state from making it a misdemeanor, by statute to use representations of such flag upon articles of merchandise for advertising purposes. Compare *Ruhstrat* v. *People*, 185 Ill. 133, 49 L. R. A. 181.

Due Process of Law

The Court of Appeals of New York holds in *Frank L. Fisher Co.* v. *Woods*, 79 N. E. 836, that a statute making it a misdemeanor for any person in a city of the first and second class to offer for sale any real estate without the written authority of the owner or his attorney or of a person who has made a written contract for the purchase of the property with the owner is void as violative of the State Constitution and of the Federal Constitution and the fourteenth amendment, as a deprivation of liberty or property without due process of law, and as a denial of the equal protection of its laws. See in this connection *People* v. *Gillson*, 109 N. Y. 389.

CONTRACTS.

The Supreme Court of Alabama decides in *Allen et al.* v. *Caldwell, Ward & Co.*, 42 Southern 855, that though a contract for the sale of cotton on margins, where neither party expects or agrees to receive or deliver actual cotton, be a wager under the common law, a broker who has no interest in the transaction and does not share in the profit or loss is entitled to reimbursement for advances made for his principal. Compare *Hawley* v. *Bibb*, 69 Ala. 52.

Illegal Sale

CONVERSION.

The Court of Appeals of New York holds in *Valentine* v. *Long Island R. Co.*, 79 N. E. 849, that where a carrier received railroad iron for transportation in good faith, without knowledge that it was the carrier's own property, and thereafter discovered the fact, the carrier could avail itself thereof as a defense to an action for conversion. Compare *Mullins* v. *Chickering*, 110 N. Y. 513, 1 L. R. A. 463.

Defenses: Ownership

COPYRIGHT.

The United States Circuit Court (N. D. Ill. E. D.) decides in *Bracken* v. *Rosenthal et al.*, 151 Fed. 136 that a photograph of a copyrighted piece of sculpture is a "copy" thereof, within the meaning of Rev. St. §4952 [U. S. Comp. St. 1901, p. 3406], and, if made without authority from the proprietor of the copyright, is an infringement thereof. Compare *Falk* v. *Howell* 37 Fed. 202.

Photographs of Sculpture

CORPORATION.

The Supreme Court of Pennsylvania decides in *Boggs* v. *Boggs & Buhl*, 217 Pa. 10 that an agreement among stockholders of a corporation providing that the holders of a majority of the common stock may declare that a stockholder has ceased to be a desirable associate either on account of

Stock Holders' Agreement

CORPORATION (Continued).

incompetency, or personal conduct, and thereupon appraise and take his stock at its cash value, is a valid contract and binding upon all the parties to it; and if a majority after proper consideration and in good faith find that a particular member has ceased to be a desirable associate, and have also in good faith appraised such member's stock, the majority may by a bill in equity enforce the specific performance of the agreement, and compel a transfer of the member's stock at the appraisement fixed by the majority without any addition for good will.

COURTS.

In *City of Definace* v. *McGonigale*, 150 Fed. 689, the United States Circuit Court of Appeals of the Sixth Circuit decides that a state statute prohibiting the appointment of nonresidents of the state as receivers applies only to its own courts, and cannot control the action of a federal court.

Receivers

DEATH.

In *Darlington* v. *Roscoe & Sons*, L. R. (1907) 219, the English Court of Appeals decides that where the sole dependant of a deceased workman, whose death was caused by an accident arising out of and in the course of his employment, made a claim against his employers for compensation under the English Workmen's Compensation Act, 1897, but died before any award was made in respect of that claim the right to compensation survived and passed to the legal personal representative of the deceased dependant. The importance of the case with respect to the assignability and survival of the right of action for death is obvious. Compare *In re O'Donovan*, (1901) 2 L. R. 633.

Action for Death

DIVORCE.

In *Cushman* v. *Cushman*, 79 N. E. 809 the Supreme Judicial Court of Massachusetts decides that where, in a suit for divorce by a wife on the ground of adultery, the husband, by way of recrimination set up desertion, it was error for the court, in finding against desertion, to dismiss the wife's libel on the ground that there was on her part such unmindfulness of marital obligations as to preclude divorce; for, while the recrimination need not be of the same nature as that relied on in the libel, it must be such as in the law would be sufficient ground for divorce. Compare *Watts* v. *Watts*, 160 Mass. 464, 23 L. R. A. 187.

Grounds: Recrimination

EVIDENCE.

In *Kohl* v. *Bradley, Clark & Co.* 110 N. W. 265 the Supreme Court of Wisconsin holds that plaintiff may introduce a copy of a telegram sent by him to defendant, without notice to produce the original; defendant's counsel stating that it did not have the original and never received the telegram.

Secondary Evidence

FEDERAL COURTS.

In *Brun et al.* v. *Mann*, 151 Fed. 145, the United States Circuit Court of Appeals of the Eighth Circuit decides that a suit in equity dependent upon a former action of which the national court had jurisdiction may be maintained without diversity or citizenship or a federal question (1) to aid, enjoin, or regulate the original suit; (2) to restrain, avoid, explain, or enforce the judgment or decree therein; or (3) to enforce, or obtain an adjudication of liens upon or claims to property in the custody of the court in the original case. Compare *Campbell* v. *Golden Cyc. Min. Co.*, 141 Fed. 610.

Jurisdiction

FEDERAL COURTS (Continued).

Jurisdiction

A very important decision of the United States Supreme Court appears in *Catherine Schlemmer, Plff. in Err.* v. *Buffalo, Rochester, & Pittsburg Railway Company*, 27 S. C. R. 407 where it is held that a state court, by deciding that a railway employee who was killed while attempting to make a coupling with a car not equipped with an automatic coupler, as required by the Act of Congress of March 2, 1893 (27 Stat. at L. 531 chap. 196, U. S. Comp. Stat. 1901, p. 3174) §2, was, as a matter of law, guilty of contributory negligence in lifting his head a little too high after he had been warned of the danger, cannot defeat the appellate jurisdiction of the Federal Supreme Court, where §8 of that statute was specially invoked as excluding the defence of assumption of risk. Four Judges dissent. Compare *Chrisman* v. *Miller* 197 U. S. 313.

FORGERY.

Recovery of Payment

In *National Exchange Bank of Providence* v. *United States*, 151 Fed. 402 the United States Circuit Court of Appeals of the First Circuit laying down the general principle that the ordinary rule, to entitle one who through mistake has paid out money on a forged indorsement of a check or other commercial paper to recover the same back, is that notice of the forgery must be given to the party receiving such payment within a reasonable time after its discovery, decides that pension checks, or warrants, issued by a pension agent of the United States or an Assistant Treasurer, are commercial paper, and the right of the United States to recover from one to whom such a check was paid on a forged indorsement of the name of the payee is governed by the ordinary rules applicable to such paper. One Judge dissents. Compare *Cooke* v. *United States*, 91 U. S. 389.

HOSPITALS.

The Supreme Court of Utah holds in *Gitzhoffen* v. *Sisters of Holy Cross Hospital Assn'*, 88 Pac. 691 that where a corporation conducting a hospital received plaintiff into the hospital for treatment under a contract for hire with the county, though the relation between plaintiff and the county was a charitable one, plaintiff was entitled to recover for injuries sustained through the negligence of the corporation's nurses.

Liability for Negligence

HUSBAND AND WIFE.

In *Multer* v. *Knibbs et ux.* 79 N. E. 762 the Supreme Judicial Court of Massachusetts decides that the father of a wife is not liable to the husband for her desertion, resulting from conduct on the part of the father, unless he was actuated by malice or ill will; it being proper for a father to bring such motives of persuasion or inducement to bear upon the daughter as should fairly and honestly be called for by her best interests. See in this connection *Hutcheson* v. *Peck*, 5 Johns. 196.

Enticing Away Wife

INSURANCE.

The St. Louis Court of Appeals decides in *Lewine et al.* v. *Supreme Lodge Knights of Pythias of the World*, 99 S. W. 821 that where, when one made application for, and obtained of a beneficial association, a certificate of life insurance, there was no provision in the constitution or by-laws of the association in regard to suicide, and no reference was made thereto in the application or certificate, the provisions in the application and certificate that such member shall "be governed" and his contract shall "be controlled" by all laws, rules, and regulations of the association then in force or that might be thereafter enacted did not authorize a subsequent by-law reducing the amount of recovery in case of suicide; forfeiture of a vested right not being authorized unless it clearly appears

Beneficial Life Insurance: Suicide

INSURANCE (Continued).

that such was the result that the party against whom the forfeiture is sought to be invoked had in contemplation and intended when entering into the contract. See in connection herewith *Pain* v. *Society of St. Jean*, 52 N. E. 502.

Death in Self-Defense

It is held by the Court of Appeals of Kentucky in *Woodmen of the World* v. *Walters*, 99 S. W. 930, that where insured shot and killed S. in self-defense, and was also shot and killed by S., insured did not die in consequence of a violation or attempted violation of the laws of the state or of the United States, within a benefit certificate precluding a recovery under such circumstances.

Life Insurance

The Supreme Court of Nebraska in *Merriman* v. *Grand Lodge Degree of Honor*, 110 N. W. 302, decides that where a married woman is the holder of a policy of life insurance, it is not a false representation for her to sign a certificate, when she is pregnant, stating that she is in sound bodily health, if the certificate is otherwise true. Compare *American Order of Protection* v. *Stanley*, 5 Neb. 132.

INTOXICATING LIQUORS.

Sale or Loan

With one judge dissenting the Court of Criminal Appeals of Texas holds in *Tombeaugh* v. *State* 98 S. W. 1054, that a loan of a pint of whiskey, the same amount to be returned by the borrower, constitutes a sale, regardless of whether the person loaning it is a member of a club engaged in taking orders for whiskey. Compare *Ray* v. *State* 79 S. W. 535.

LANDLORD AND TENANT.

Office Buildings

An important decision with reference to the relation between the owner of an office building and the occupants thereof appears in *Walsh* v. *Philadelphia Bourse, Appelant*, 32 Pa. Super. Ct. 348, where it is decided that the stairways, elevators and

LANDLORD AND TENANT (Continued).

halls of an office building are not parcel of the demised premises so far as bailors of the tenants are concerned, and that therefore when property bailed to a tenant has been removed from the room demised to some other part of the building it is not subject to distraint for the rent due by the tenant.

NEGLIGENCE.

The Supreme Court of Pennsylvania decides in *Harding, Appelant*, v. *Phila. Rapid Transit Company*, 217 Pa. 69 that one who undertakes to ride on the running board of a summer street car, outside of a lowered bar is guilty of negligence *per se*, and cannot recover for injuries incident to his position, whether he could have got a safer position or not. See also *Bumbear* v. *Traction Co.* 198 Pa. 198.

Negligence per se

The Supreme Court of Mississippi holds in *Temple* v. *McComb City Electric Light & Power Co.*, 42 Southern 874 that where a small boy, climbing in an oak tree having abundant branches, is injured by coming in contact with an electric light wire passing through the tree and negligently permitted by the company to remain uninsulated, the company is liable, since it is bound to take notice of the immemorial habit of small boys to climb such trees.

Places Attractive to Children

In *Shultz* v. *Old Colony St. Ry.* 79 N. E. 873, the Supreme Judicial Court of Massachusetts decides that where a person was injured through the negligence of a third person and the concurring negligence of one with whom she was riding as guest, the driver's negligence would not be imputed to her, where in entering and continuing in a conveyance she acted with reasonable caution, and had no ground to suspect incompetency and no cause to anticipate negligence on the part of the driver, and if the impending danger, although in part produced by the driver, was so

"Imputed" Negligence

NECLIGENCE (Continued).

sudden or of such a character as not to permit or require her to act for her protection. Compare *Murray* v. *Boston Ice Co.* 180 Mass. 165.

PATENTS.

Suit for Infringement

The United States Circuit Court of Appeals of the First Circuit decides in *Continental Paper Bag Co.* v. *Eastern Paper Bag Co.*, 150 Fed. 741 that the fact that the machine of a patent has never been put into commercial use does not preclude the owner of the patent from maintaining a suit in equity to enjoin its infringement. One Judge dissents. See in connection herewith *Bement* v. *Nat. Harrow Co.* 186 U.S 70.

PLEADING.

Amendment

The Supreme Court of Georgia holds in *Shumate* v. *Ryan*, 56 S. E. 103, that when an action is brought upon a debt, and the defendant pleads a discharge in bankruptcy, the plaintiff may amend his petition by alleging a new promise to pay, made after the adjudication in bankruptcy and before the suit on the debt was brought. Compare *Beart* v. *Simmons*, 9 Ga. 4.

RAILROADS.

Eminent Domain: Dower

In *Arnold, Appellant*, v. *Buffalo, etc., Ry. Co.*, 32 Pa. Super. Ct. 452 it is decided that the inchoate dower of a wife is defeated by the survey, location, and adoption of the right of way of a railroad over the land of her husband, an agreement by the owner, her husband, and the railroad company upon the amount of damages to be paid for the taking of the right of way, the payment of such damages by the company to the owner, a grant by the owner of the right to construct and operate the road upon the location adopted and a release of damages therefor, and the construction and operation of a public railroad upon the location agreed upon. See in this connection *Thurber* v. *Townsend*, 22 N. Y. 517.

SALES.

In *Paducah Packing Co.* v. *J. T. Polk Co.*, 99 S. W. 929, the Court of Appeals of Kentucky holds that where a proposition of sale, made by mail, arrived at the buyer's place of business on Saturday and was accepted on Monday, the court, in submitting the question whether this was an acceptance within a reasonable time, did not err in using the words "within such time as was reasonably in contemplation between the parties at the time the offer was made and delivered," instead of "considering the nature of the case." Compare *Hutcheson* v. *Blackeman*, 3 Metc. 80.

Acceptance of Propositions

SIDEWALKS.

The Supreme Court of Alabama decides in *Fielder* v. *Tipton*, 42 Southern 985 that though there is no law or ordinance of a city prohibiting the riding of a bicycle on a sidewalk, one riding a bicycle on a sidewalk is responsible to any pedestrian who is injured thereby while in the proper exercise of his rights; and hence, in an action for injuries to plaintiff, who was run into by defendant, riding a bicycle on a sidewalk in the city, an allegation of the complaint that defendant ran into plaintiff and injured her was sufficient, without any further allegation of negligence. Compare *Purple* v. *Greenfield*, 138 Mass. 1.

Riding Bicycle Thereon

SLANDER.

It is decided by the Supreme Court of Georgia in *Proctor* v. *Pointer*, 56 S. E. 111, that in charging upon the defense that, at the time of the alleged slander, the defendant was mentally unsound and irresponsible for his conduct, it is erroneous to instruct the jury, in effect, that, notwithstanding this defense be satisfactorily made out, the plaintiff would be entitled to recover if the jury should find that a plea of justification filed by the defendant was not sustained by the evidence, and he was of sound mind when he interposed the plea.

Insanity as Defense

STATUTE OF FRAUDS.

The Supreme Judicial Court of Massachusetts decides in *Kemensky* v. *Chapin et al.*, 79 N. E. 781 that although the delivery of goods to a railway company selected by them was a delivery to the purchasers, yet, where the company was authorized only to receive the goods for transportation, there was no express or implied authority to accept them for the purchasers, and under such conditions mere delivery does not constitute a sufficient acceptance under the statute of frauds. Compare *Stong* v. *Dodds*, 47 Vt. 348.

Sales: Delivery to Railroad

SUNDAY.

In *Commonwealth* v. *Kirshen*, 80 N. E. 2, it appeared that defendant operated a workshop, in which he employed nine men and twelve women. On the first day of the week he opened the shop to allow those who desired to do so to go in and work, and nine men and one woman of defendant's employees went in and worked during the day, when he opened the shop again to permit them to leave in the evening; the doors being kept locked in the meantime, so that no other person was allowed to enter. Under these facts the Supreme Judicial Court of Massachusetts holds that defendant was guilty of keeping open his workshop on the Lord's Day for the purpose of doing business therein.

Desecration

SURVIVAL OF ACTIONS.

In *Johnson* v. *Levy et al.* 43 Southern 46, the Supreme Court of Louisiana, laying down the general principle that the right of action for breach of marriage promises survives, holds with respect to damages that damages resulting from injury to feelings, reputation, and standing are recognized in that state as actual, or compensatory, as contradistinguished from exemplary, or vindictive, damages, and where they arise *ex contractu*, and the liability of the obligor is fixed (subject to the obligation of the obligee

Breach of Marriage Promise: Damages

SURVIVAL OF ACTIONS (Continued).

to prove his case) by his being put in default, there is no reason why they should not be recovered in the same manner, and to the same extent, as damages to person or property. See in this connection *Edwards* v. *Ricks* 30 La. Ann. 926.

TAXATION.

Warehouse Receipt

In *Commonwealth* v. *Solliger*, 98 S. W. 1040 the Court of Appeals of Kentucky decides that warehouse receipts, wherever issued, and whatever they may represent, are intangible personal property, whose *situs* for purposes of taxation is the domicile of their owner; hence the warehouse receipt owned by a person domiciled in that state for whiskey exported to a foreign country may and should be taxed here, and at such value as it may have had on the day fixed by the statute for listing property.