# PROGRESS OF THE LAW.

## As Marked by Decisions Selected from the Advance Reports.

### ATTORNEY AND CLIENT.

In *Herman* v. *Metropolitan St. Ry Co.*, 121 Fed. 184, the United States Circuit Court (S. D., New York) holds that where, in an action for injuries the plaintiff's attorney served notice of a lien for his compensation, and the plaintiff settled the case with the defendant before trial, without the attorney's consent, whereupon the attorney continued the prosecution for his fees, and a verdict was rendered assessing the plaintiff's damages at $500, the attorney was entitled to recover from such amount the reasonable value of his services actually rendered, whereupon the balance of the recovery would be remitted. But a contract between the plaintiff and his attorney by which the plaintiff agreed to pay the attorney 50 per cent of any recovery for injuries to the plaintiff, and in addition to pay all the disbursements, was, it is held, unconscionable and void. See *Matter of Fitzsimons*, 79 N. Y. Supp. 194.

**Lien of Attorney, Contingent Fees**

### BANKRUPTCY.

A creditor holding a check given by his debtor, who transfers the same to a bank by indorsement, remains a creditor, within the meaning of the bankruptcy act, and the payment of the check to the bank after the debtor's insolvency, and within four months prior to his bankruptcy, constitutes a preferential transfer of property to the indorser, under section 60a of the Bankruptcy Act of 1898: United States Circuit Court of Appeals (Second Circuit) *In re Lyon*, 121 Fed. 723. The court further holds that where at the time a bankrupt became insolvent he owed a creditor a balance of account accruing prior to November, for which he had given a post dated check, and also an account accruing in December, the payment of the check thereafter constituted a preference, which affected the entire indebtedness, and not the payment

**Preferences, Independent Debts**

BANKRUPTCY (Continued).

of an independent debt, and that it must be surrendered to entitle the creditor to prove his account. See *Swarts* v. *Siegel,* 117 Fed. 13.

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BENEFICIAL ASSOCIATIONS.

Provision in the application and certificate of a member of a beneficial association that he accepts the certificate subject to all future laws of the association, renders binding on him only after-adopted laws for the conduct of the association, duties of members, and the like, and not such as impair his contract of insurance: *Campbell* v. *American Ben. Club Fraternity* (Mo.) 73 S. W. 342. See *Morton* v. *Supreme Council of the Royal League* (Mo.) 73 S. W. 259.

Subsequent By-Laws

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CARRIERS.

In *Herf & Frerichs Chemical Co.* v. *Lackawanna Line* (Mo.), 73 S. W. 346, it is held that though under the law of the state a carrier may not be required to notify the consignee of the arrival of goods, yet where the uniformly observed usage of the place to which goods are shipped requires the carrier to notify the consignee of the arrival of the shipment, such usage will be binding on the carrier unless its observance is dispensed with by an express stipulation to that effect in the contract of shipment; and further such local usage is not dispensed with by a stipulation in the contract of shipment that the goods are to be called for on the day of their arrival. See *Chemical Co.* v. *Lackawanna Line,* 70 Mo. App. 282.

Duty to Notify Consignee

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CONTEMPT OF COURT.

In *Chisolm* v. *Caines,* 121 Fed. 397, the United States Circuit Court (D. South Carolina) holds that a person may be guilty of a contempt of court in doing an act which he knows the court has prohibited by injunction—as by wilfully trespassing on lands, with knowledge that the court had adjudged them to be private property, and had enjoined the defendants in the suit, and "all persons whomsoever," from trespassing thereon—although he was not a party to the suit, and is neither the

Acts Constituting

CONTEMPT OF COURT (Continued).

agent or servant of, nor in privity with, any of the parties. In such case he is not technically guilty of a violation of the injunction, but of an independent act of disrespect to the court, and disregard of its decree, which constitutes a contempt of the court, and may be punished as such without reference to its effect upon the rights of the suitors. See *In re Lennon,* 166 U. S. 554.

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CONTRACTS.

Employment, Alteration, Consideration

The Supreme Court of Georgia holds in *Davis & Co.* v. *Morgan,* 43 S. E. 732, that where a contract of employment is made for one year at a stipulated salary per month, an agreement during the term to receive less or to pay more than the contract price is void, unless supported by some change in place, hours, character of employment or other consideration. See in connection with this case *Goebel* v. *Linn,* 47 Mich. 489.

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CORPORATIONS.

Payment for Stock in Property

Where, on the organization of a corporation by mutual agreement, full-paid stock was issued to the incorporators in payment for property transferred by them to the corporation, one of the incorporators who participated in such agreement, and who afterward became a creditor of the corporation, cannot assert its invalidity for the purpose of holding the other stockholders liable on the ground that the property was not in fact equal in value to the par value of the stock: U. S. Circuit Court of Appeals in *Cunningham v. Holley, Mason, Marks & Co.,* 121 Fed. 720.

Receivers, Suit against Promoters

A court which has appointed receivers for a corporation as an insolvent will not direct them to bring suits to ascertain and enforce the liability of promoters, officers and directors of the corporation for the benefit of creditors, until its visible assets have been liquidated and the fact and amount of deficiency is ascertained: United States Circuit Court (D. New Jersey) in *Land Title & Trust Co.* v. *Asphalt Co. of America,* 121 Fed. 587.

CRIMINAL LAW.

The Court of Criminal Appeals of Texas holds in *Doulton* v. *State,* 73 S. W. 395, that where affidavits show that, after the jury in a criminal prosecution had retired, and before they had agreed on a verdict, they discussed the failure of the defendant to testify, their verdict of guilty will be set aside, notwithstanding affidavits of the jurors stating that the discussion did not influence their conclusion. See *Buessing* v. *State* (Tex. Cr. App.), 63 S. W. 318.

Misconduct of Jury

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DANGEROUS PREMISES.

In *O'Connor* v. *Bencker,* 43 S. E. 731, the Supreme Court of Georgia holds that the principle of the turntable cases will not be extended, and where the door of a vacant house is left open, and a young child playing therein is injured by the fall of a window which was being raised by his companion, the owner will not be liable therefor. See *S. F. & W. Ry. Co.* v. *Beavers,* 113 Ga. 398.

Children

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DEATH BY WRONGFUL ACT.

The Florida statute authorizes actions for death by wrongful act, and provides that such an action may be brought by the widow, surviving husband, minor child, person dependent for support, or the executor or administrator. In applying this statute the United States Circuit Court of Appeals holds that an administratrix, appointed in Alabama of a deceased resident of that state may sue in Florida for negligence causing the death of her intestate, though the statutes of the two states relative to the distribution of damages in such cases are dissimilar. The Florida statute, it is held, governs distribution in Alabama: *Florida Cent. & P. R. Co.* v. *Sullivan,* 120 Fed. 799. Compare *Dennick* v. *Railroad Co.,* 103 U. S. 11-21, and *Stewart* v. *Baltimore,* 168 U. S. 445.

Conflict of Laws

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DEED.

In *Letson* v. *Letson,* 80 N. Y. Supp. 1032, the New York Supreme Court (Appellate Division, Fourth Department) holds that where a father, during his life-time, executed a deed on his land to one of his sons, which deed the son obtained possession of in an unlawful

Action to Set Aside

DEED (Continued).

manner after the father's death, and placed on record, and thereupon a brother, claiming a one-fourth interest in the land as heir of the deceased, brought an action to have the deed set aside and the record thereof cancelled, a court of equity has jurisdiction to grant the relief asked, even though the one bringing the action is not in possession of the premises. See *Howarth* v. *Howarth,* 73 N. Y. Supp. 785, and *Moores* v. *Townshend,* 102 N. Y. 387.

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EQUITY PRACTICE.

The United States Circuit Court (D. Rhode Island) holds in *Tillinghast* v. *Chace,* 121 Fed. 435, that upon a bill in equity which waives an oath to the answer, the complainant cannot have discovery. "The complainant contends that the waiver of an oath does not deprive the complainant of his right to a full answer and a full discovery from the defendants. This contention finds some slight support in *Bates on Federal Equity Procedure,* Vol I, § 355, and cases cited. . . . But there is presented no decision of the Supreme Court or of any circuit court of appeals, for this position; and it seems contrary to principle."

Waiver of Oath, Discovery

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EVIDENCE.

In an action for personal injuries it is error to allow counsel to read from a medical book a statement as to the symptoms of a certain disease, and to ask the plaintiff's physician if he subscribes thereto: New York Supreme Court (Appellate Division, Third Department) in *Pahl* v. *Troy City Ry. Co.,* 81 N. Y. Supp. 46. See also *City of Bloomington* v. *Shrock,* 110 Ills. 219.

Medical Works

The Supreme Court of South Carolina holds in *State* v. *Milam,* 43 S. E. 677, that where, at a second trial of two defendants for crime, a witness for one of the defendants, who had formerly been tried alone, is dead, his former evidence is competent at the second trial in behalf of such defendant, although his co-defendant, then on trial, objects to the same. See *State* v. *Dodson,* 10 S. C. 453.

Evidence at Former Trial

FALSE IMPRISONMENT.

Arrest without Warrant

In *Van* v. *Pacific Coast Co.*, 120 Fed. 699, the United States Circuit Court (D. Washington, N. D.) holds that it is not unlawful for a police officer to arrest and detain a person at the request of one on whom the officer has a right to rely, and while the person arrested was in the commission of an act supposed to be criminal, although it was technically not so, and such an arrest will not support an action for false imprisonment against the person causing it. "Any innocent person is liable to be subjected to detention while circumstances of an apparently criminating character are being investigated." See in connection herewith, *Filer* v. *Smith*, 96 Mich. 351.

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FOREIGN CORPORATION.

Prohibition to Maintain Actions

The United States Circuit Court of Appeals (Eighth Circuit) holds in *Blodgett* v. *Lanyon Zinc Co.*, 120 Fed. 893, that the prohibition by a state of the maintenance of actions in its courts by a foreign corporation does not prohibit or limit the right of that corporation to maintain such actions in the national courts, nor does it forbid the corporation from defending actions in the state courts. "The jurisdiction of the federal courts was not conferred, and it cannot be withdrawn or limited by the legislation of the states. It was granted by the people through the Constitution and the acts of Congress, and an amendment of the Constitution, or an act of Congress, is requisite to destroy or diminish it." See *National Surety Co.* v. *State Bank of Humboldt*, 120 Fed. 593.

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HUSBAND AND WIFE.

Necessaries, Attorney's Fees

An attorney who has rendered services to a wife seeking a separation and support from her husband may, on the death of the husband, maintain an action against the executors to recover on the ground that the services were a "necessary" to the wife: New York Supreme Court (Special Term, Jefferson County) in *Kellogg* v. *Stoddard*, 81 N. Y. Supp. 271. See *Naumer* v. *Gray*, 51 N. Y. Supp. 222.

INJUNCTION.

Labor Unions, Strikes

Where a labor organization maliciously induced persons contracting with the plaintiff to violate their contracts, and threatened to continue to do the same in the future, and caused a strike of all plaintiff's workmen engaged on two different pieces of work which plaintiff had contracted to do, merely because the plaintiff refused to recognize the walking delegate of the union or to recognize "the union in any way," the plaintiff was entitled to an injunction to restrain the continuance of such acts: New York Supreme Court (Appellate Division, First Department) in *Beattie v. Callanan,* 81 N. Y. Supp. 413. Compare *National Protective Association* v. *Cumming,* 170 N. Y. 315.

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INNKEEPERS.

Care Required: Negligence

The New York Supreme Court (Appellate Term) holds in *Hoffman* v. *Roessle,* 81 N. Y. Supp. 291, that where a hotel proprietor, who was liable only as a gratuitous bailee for the care of plaintiff's baggage, during plaintiff's absence, delivered the plaintiff's valise to a person presenting a forged order therefor, which person was known to the clerk in the hotel office and had dined with the plaintiff on a number of occasions, and had been frequently seen with him about the hotel, such proprietor was not guilty of such gross negligence as rendered him liable for the loss of the baggage, though he had not seen the plaintiff's signature, and did not obtain it from the register. One judge dissents. Compare *Hays* v. *Turner,* 23 Iowa, 214.

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INSURANCE.

Benefit Associations

The United States Circuit Court (E. D., Pennsylvania) holds in *Black* v. *Supreme Council American Legion of Honor,* 120 Fed. 580, that where a fraternal benefit association or order is incorporated, and empowered to make insurance contracts with its members, such contracts are made by it as a legal entity; and in an action for breach of such a contract the internal affairs of the corporation and the equities of its members *inter sese* are matters which are immaterial and which cannot affect its liability.

INTOXICATING LIQUOR.

Place of Sale

In *United States* v. *Lackey*, 120 Fed. 577, it appeared that a licensed liquor dealer received orders from customers living in a place where he was not authorized to sell. He filled such orders by separating the liquor from the stock in his place of business, and delivering the packages, marked with the customers' names, to a private carrier, to be carried to the customers, and to be delivered at their place of residence, on payment of the price. Under these facts the United States District Court (W. D., Virginia) holds that the sales were completed in the seller's place of business, where he was licensed to sell, and hence the carrier was not liable for retailing liquor without a license. "An order for goods to be shipped 'collect on delivery' makes payment a condition precedent or concurrent with the delivery to the purchaser, but it does not necessarily make payment a condition precedent to the transfer of title." See 21 Am. and Eng. Ency. (1st Ed.), 511-512.

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LICENSEE.

Injunction against Trespasser

*Lytle* v. *James* (Mo.), 73 S. W. 287, decides that one having a right as licensee by contract to remove ore from land for a certain time, revocable only for failure to comply with certain rules and regulations, having no remedy at law against a trespasser, may have an injunction against him. Compare *Rochester* v. *Gate City Mining Co.*, 86 Mo. App. 447, and *Arnold* v. *Bennett*, 92 Mo. App. 156. This latter case held that in such case the plaintiff has no right to bring trespass.

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NEGLIGENCE.

Liability of Vendor, etc., to Third Parties

In *Huset* v. *J. I. Case Threshing Mach. Co.*, 120 Fed. 865, the United States Circuit Court of Appeals (Eighth Circuit) makes an excellent review of the law bearing upon the question of the liability of a manufacturer, vendor or contractor for injuries to a third person, and it is held that the general rule is that such manufacturer, etc., is not liable to third parties who have no contractual relations with him for negligence in the construction, manufacture or sale of the articles he handles. But as an exception to this rule the court holds that a manufacturer or vendor, who, without giving notice of its character or qualities, supplies or delivers to another a machine or article, which, at the time of

NEGLIGENCE (Continued).

delivery, he knows to be imminently dangerous to the life or limbs of any one who may use it for the purpose for which it is intended, is liable to *any one* who sustains injury from its dangerous condition, whether he has any contractual relations with him or not. The case contains a valuable collection of authorities. See *Winterbottom* v. *Wright,* 10 M. & W. 109.

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NONSUIT.

Reorganization Committee

The Court of Civil Appeals of Texas holds in *Bangs* v. *Sullivan,* 73 S. W. 74, that the fact that one of the members of a reorganization committee refused to join with the rest in taking a nonsuit could not deprive the committee of their right to take it, where the agreement between the stockholders and the committee expressly provided that the power conferred on the committee, which included authority to institute, prosecute, compromise and dismiss suits, might at any time be exercised by a majority of its members.

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PARTIES.

Suit to Enjoin Tax

To a suit by a taxpayer against a city to enjoin it from creating a debt beyond the constitutional limit, by carrying out a contract made with a person or corporation, such person or corporation is not an indispensable party defendant: United States Circuit Court (S. D., Iowa) in *City Water Supply Co.* v. *City of Ottumwa,* 120 Fed. 309. As to cases cited in opposition to this holding, among others the case of *Minnesota* v. *Northern Securities Co.,* 184 U. S. 199, the court says: "They are not in point for the reason that those were cases wherein contracts and relations between the named defendants were the principal thing sought to be canceled or controlled by decree. In the case at bar the principal thing to be corrected and enjoined by decree is the creation of the alleged invalid indebtedness."

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PARTNERSHIP.

Dissolution, Assets

With two judges dissenting the New York Supreme Court (Appellate Division, First Department) holds in *Smith* v. *Proskey,* 81 N. Y. Supp. 424, that where an agreement between partners provided for the dissolution of the partnership, appointed one of the

PARTNERSHIP (Continued).

partners liquidator, and provided that all assets of the firm should "vest" in the liquidating partner, the agreement did *not* give the liquidator absolute title, and hence on his death they did not descend to his administratrix. See *Gilmore* v. *Ham,* 142 N. Y. 1.

Dissolution: Assumption of Liabilities

By the terms of a dissolution contract, B., a member of a mercantile firm, was to continue the business, collect outstanding indebtedness, and assume and pay all indebtedness owing by it. Prior to the dissolution, the firm sold certain logs to a lumber company warranting title thereto. Subsequent to the dissolution, on failure of title to part of the logs, the lumber company recovered judgment on account thereof against the members of the firm. No claim was made by the company at the time the firm dissolved. The Supreme Court of Wisconsin holds in *Dorwin* v. *Laughlin,* 94 N. W. 641, that this was not one of the liabilities assumed by B.

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PERSONAL INJURIES.

Compulsory Examination

In an action for injuries the trial court has no authority to compel the plaintiff to submit to an examination by physicians to be appointed by the court: Court of Civil Appeals of Texas in *Austin & N. W. R. Co.* v. *Cluck,* 73 S. W. 569. See *Railway Co.* v. *Botsford,* 141 U. S. 253.

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PENAL STATUTE.

Construction

A penal act of Congress cannot be sustained, as an exercise of the power given by a constitutional provision to enact appropriate legislation for its enforcement, where the act is broader in its terms than the constitutional provision, and the language used covers wrongful acts without as well as within the same. In such case the courts cannot limit the act by construction, and bring it within the constitutional grant of power: United States Circuit Court of Appeals (Sixth Circuit) in *Karem* v. *United States,* 121 Fed. 250. The case deals with the permissibility of Congressional legislation to secure to negroes the right of suffrage and contains a very good review of the subject. See *U. S.* v. *Reese,* 92 U. S. 214.

PLEADING.

In *Thompson* v. *New South Coal Co.,* 34 Southern, 31, the Supreme Court of Alabama holds that when a contract for the sale of land is shown by the bill for a specific performance to be obnoxious to the statute of frauds, the more appropriate mode of taking advantage of this is by demurrer. See *Bolling* v. *Munchus,* 65 Ala. 558. In such case a cheque given for part of the price and containing the words, "part payment on coal lands," is, it is held, not a sufficient memorandum, since the description of the land is not adequate. Compare *Nelson* v. *Shelly Mfg. & Imp. Co.,* 96 Ala. 515.

Oral Land Contracts

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POSSESSION.

In *Reed* v. *Hackney,* 54 Atl. 229, the Supreme Court of New Jersey, adopting the rule that when a widow after the death of her husband remains in possession of lands of which he died seised, or to which she has not released her right of dower, it is in law presumed to be her possession, in right of her dower until dower is assigned, holds that if the husband in his lifetime has conveyed the land by a deed, in which his wife did not join, and she, after the first husband's death, marries the grantee, who lives with her upon the premises, the possession is the possession of the wife until her dower is assigned, and not the possession of the husband.

Dower Interest

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PROXIMATE CAUSE.

The Supreme Court of Iowa holds in *Glanz* v. *Chicago, M. & St. P. Ry. Co.,* 93 N. W. 575, that negligence of a railroad company in starting fire on the plaintiff's premises would be the proximate cause of injury to his health by overexertion in putting it out. The general principle is adopted that "one who, acting with reasonable prudence, voluntarily exposes himself to danger for the purpose of protecting his property, may recover for the consequent injuries he receives from the person whose wrong caused the injury to himself, and the danger to the property he sought to protect."

Injury Sustained in Extinguishing Fire

PUBLIC OFFICER.

Reimbursement for Expense

The Supreme Court of Missouri holds in *State ex rel. Crow* v. *City of St. Louis,* 73 S. W. 623, that where a policeman, pursuant to orders, and in discharge of his duty to prevent and remove nuisances in the streets, shoots at a mad steer in the street, but, though using due care, hits a child, for which judgment is recovered against him, the city may reimburse him, in the absence of provisions to the contrary. Compare *Cullen* v. *Carthage,* 103 Ind. 196.

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RAILROADS.

Stations: Use by Hackmen

The United States Circuit Court of Appeals (Seventh Circuit) holds in *Donovan et al.* v. *Pennsylvania Co.,* 120 Fed. 215, that a railroad company is under no duty as a common carrier to permit hackmen to enter its stations for the purpose of soliciting business from its passengers, and therefore its granting of such right to one person or concern does not entitle others to equal privileges on the same terms, and the railroad company has such a property right to a free and unobstructed entrance to its stations for its passengers and employes, that it is entitled to protection in such right by an injunction to restrain hackmen from continuously congregating upon the sidewalk around the doors of a station for the purpose of soliciting business, in such numbers as to interfere with ingress and egress; but such an injunction should go no further than is necessary to protect complainant's private right of property, leaving any obstruction to the use of the street or walk by the public generally to be dealt with by the municipality. See and compare *Barker* v. *Midland Ry. Co.,* 18 C. B. 46; *Old Colony R. Co.* v. *Tripp,* 147 Mass. 35.

Pledge of Stock

The Supreme Court of Pennsylvania holds in *Pennsylvania R. Co.* v. *Pennsylvania, etc., Co.,* 54 Atl. 785, that where a railroad company deposits with a trustee, under a written agreement, stock of another railroad company, reserving to itself all the rights, powers and privileges appertaining to the ownership of the stock, including the right to vote it, the railroad company can exact from the trustee a proxy in order to vote the stock for a merger of the railroad company, whose stock is deposited with another company, as authorized by law, though the trustee will be compelled to receive back, instead of stock in the original company, stock in the consolidated company.

RAILROAD RATES.

The Supreme Court of the United States holds in *Prout* v. *Starr*, 23 S. C. R. 398, that a suit against the Nebraska board of transportation for the purpose of preventing the enforcement of the Nebraska act fixing maximum railroad rates, on the ground of the invalidity of such statute under the Constitution and laws of the United States, is not a suit against the state within the meaning of the Eleventh Amendment to the Federal Constitution. Compare *Fitts* v. *McGhee*, 172 U. S. 516.

Suit Against a State

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REMOVAL OF CAUSES.

In *Hoye* v. *Great Northern Ry. Co.*, 120 Fed. 712, the United States Circuit Court (D. Montana) holds that when, by agreement between railroad companies owning connecting lines, cars are transferred from one road to the other, both companies owe the duty to employes of the receiving company to exercise reasonable care to see that such cars are in proper repair; and where such an employe is injured by reason of a defect which existed when a car was so transferred, he may join both companies as defendants in an action for the injury. Further an action to recover for a personal injury alleged to have resulted from the concurring negligence of two defendants, each of whom owed a separate duty of care to the plaintiff, is not removable by one defendant, who is a non-resident of the state, on the ground that it involves a separable controversy. See in this connection notes to *Robbins* v. *Ellenbogen*, 18 C. C. A. 86; *Mecke* v. *Valleytown Mineral Co.*, 35 C. C. A. 155.

Connecting Railroads: Separable Controversy

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RESULTING TRUSTS.

Generally, where the purchase money of land is paid by one person, and the conveyance is taken in the name of another, the party taking the title is presumed to hold the estate in trust for him who pays the purchase price. But where the conveyance runs to one for whom the purchaser is under a legal or moral obligation to provide, the presumption arises that the conveyance was intended as an advancement to the nominal purchaser: Supreme Court of Nebraska in *Bailey* v. *Dobbins*, 93 N. W. 687.

Advancements Presumptions

ROBBERY.

Where a purse, secured by a steel chain wrapped around the owner's finger, is suddenly snatched by one intending to steal the same, and the force used is sufficient to break the chain and injure the owner's finger, the offence is robbery, and not larceny from the person: Supreme Court of Georgia in *Smith* v. *State,* 43 S. E. 736. Compare *Rex* v. *Mason,* 1 Leach C. C. 418.

Evidence

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SPECIFIC PERFORMANCE.

"The early equity doctrine that, if the right to specific performance of a contract exists at all, it must be mutual, was based largely upon notions of expediency, rather than upon any principle of abstract justice, and has been materially modified. The doctrine of this court is that, if a contract for the conveyance of real estate is supported by a valid consideration, and there is no other good reason why it should not be specifically enforced, except the want of mutuality of the remedy, it will be so enforced": Supreme Court of Minnesota in *Lamprey* v. *St. Paul & C. Ry. Co.,* 94 N. W. 555. Compare *Austin* v. *Wacks,* 30 Minn. 335.

Want of Mutuality

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STATUTE OF FRAUDS.

The Court of Appeals of Kentucky holds in *Bethel* v. *A. Booth & Co.,* 72 S. W. 803, that though a contract to give employment for ten years is void under the statute of frauds, so that action will not lie for its breach, notwithstanding the employe has performed part of it, yet, in consideration thereof, the employe having sold the employer a business for less than its value, he may on an implied promise, recover the difference between the amount paid for and the value of the business. See *Montague* v. *Garnett,* 3 Bush, 298.

Implied Contract

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STOCKBROKERS.

In *Tuell* v. *Paine,* 81 N. Y. Supp. 956, the New York Supreme Court (Special Term, New York City) holds that where a stockbroker, being ordered to buy certain stocks, buys them on a margin, he cannot sell out the stocks when the margin is exhausted, unless the customer waives tender of them, demand of payment of balances due, and notice of the broker's intent to sell. See *Stenton* v. *Jerome,* 54 N. Y. 480.

Sales on Margin

STREET RAILROADS.

Where at the time of a collision between a street car and a vehicle the motorman was running the car at a rate of speed prohibited by a city ordinance. the defendant was guilty of negligence *per se: Meyers* v. *St. Louis Transit Co.* (Mo.), 73 S. W. 379.

Negligence

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TAXATION.

In *Blackstone* v. *Miller*, 23 S. C. R. 277, the Supreme Court of the United States, holds that a state may tax the transfer, under the will of a non-resident, of debts due the decedent by its citizens. It makes no difference that the whole estate is taxable in the state where the owner has died. The case is distinguished from the *State Tax on Foreign-held Bonds,* 15 Wall. 300, because: "The taxation in that case was on the interest on bonds held out of the state. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. . . . Therefore, considering only the place of the property, it was held that bonds held out of the state could not be reached. The decision has been cut down to its precise point by later cases." In the case in hand the "property" consisted of a debt due to the deceased by a firm, and of a certain sum held on a deposit account by a New York trust company. Mr. Justice White dissents from the decision rendered.

Succession Tax

The Supreme Court of the United States holds in *Louisville & Jeffersonville Ferry Co.* v. *Commonwealth of Kentucky,* 23 S. C. R. 463, that a Kentucky corporation operating a ferry across the Ohio River is deprived of its property without due process of law by the action of that state in including, for purposes of taxation, in the valuation of the franchise derived by the corporation from Kentucky, the value of an Indiana franchise for a ferry from the Indiana to the Kentucky shore, which such corporation had acquired. Two justices dissent.

Deprivation of Property

In *Swarts* v. *Hammer,* 120 Fed. 256, the United States Circuit Court of Appeals (Eighth Circuit) holds that property of a bankrupt in the hands of the trustee in bankruptcy is subject to taxation. "Exemption from taxation is never presumed. The legislative in-

Bankrupt's Property

TAXATION (Continued).

tent to exempt property from taxation must be clearly and explicitly expressed. Whether Congress could rightfully exempt from state taxation the property of a bankrupt in the hands of a trustee in bankruptcy, and otherwise subject to taxation, we need not inquire. It has not attempted to do so and it is highly probable it never will. . . . It is a grave mistake to suppose that property in the possession and custody of an officer of the federal court by that single act enjoys immunity from taxation."

Government Agencies

The Court of Appeals of Maryland holds in *Baltimore Shipbuilding & Dry Dock Co.* v. *Baltimore,* 54 Atl. 623, that where property belonging to the United States was conveyed to A. for the purpose of constructing a dry dock thereon to be subject to the use of the United States without charge, the grantee was not entitled to exemption from state taxation on its interest in the land and improvements thereon, on the ground that the grantee was an agency of the Government. See *Thomson* v. *Union Pac. R. Co.,* 9 Wall. 579.

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TICKETS.

Limitations Thereon

In *Norman* v. *Southern Ry. Co.,* 44 S. E. 85, the Supreme Court of South Carolina holds that where a passenger pays full fare for a general ticket, he is not bound by limitations printed thereon, where his attention has not been called to them, and the posting of notices in the waiting rooms and ticket offices is not sufficient to charge him with notice thereof. "While there may be some uncertainty, and even conflict, in the authorities, we are of the opinion that the correct rule is that a person who purchases a general ticket, and pays the usual price therefor, is entitled to one passage, unlimited as to time, upon any train which, under the proper and usual schedule of the road, stops at the point of the passenger's destination. If a ticket, limited or conditional, is sold to a passenger, it can only be done upon an express agreement with him, either oral or in writing, and either based upon a consideration or with the alternative presented to the passenger of a full and unlimited ticket": *Louisville & N. R. Co.* v. *Turner,* 47 S. W. 223 (Tenn.).

TRUSTEES.

The New York Supreme Court (Appellate Division, First Department) holds *In re Maitland,* 81 N. Y. Supp. 19, that a trustee's account being surcharged with the amount of his investment in a mortgage, as being an improper investment, he should, on making the trust fund good, be permitted to transfer to himself personally all rights and rights of action in respect thereto.

Improper Investments

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TRUSTS.

The New York Supreme Court (Appellate Division, First Department) holds *In re Opening of One Hundred and Tenth Street,* 81 N. Y. Supp. 32, that where a will provides that the trustees thereunder shall hold the property, and pay the income to the testator's widow for life, and on her death divide the estate into equal parts, and hold the same for the benefit of the children, on the death of the widow a new and different trust estate comes into existence, and though the trustees in one clause of the will were given a general power to lease the property, yet they had no authority to make a lease of the property for a term longer than the first trust, where some of the children's shares were to be paid upon her death. The court further holds that the lease is valid so long as the widow lives.

Authority of Trustees

The interesting question of what are the constituent elements of a constructive trust is involved in the case of *Trice* v. *Comstock,* 121 Fed. 620, decided by the United States Circuit Court of Appeals (Eighth Circuit). It is held that wherever one person is placed in such a relation to another by the act or consent of that other, or by the act of a third person, or of the law, that he becomes interested for him, or interested with him, in any subject of property or business, he is in such fiduciary relation with him that he is prohibited from acquiring rights in that subject antagonistic to the person with whose interests he has become associated. A violation of this inhibition, and the acquisition by one of the parties by means of interest or information acquired through the fiduciary relation of any property or interest, which prevents or hinders his correlate in accomplishing the object of the agency, charges the property thus acquired with a constructive trust for the

Constructive Trust

TRUSTS (Continued).

benefit of the latter, which may be enforced or renounced by him, at his option. Neither a legal nor equitable interest by either party, during the relation, in the property subsequently acquired, nor authority in either to buy or sell it, nor damage to the party betrayed, nor the existence of the fiduciary relation at the time the confidence is abused, is indispensable to the existence and enforcement of the trust. The existence of the relation, and a subsequent abuse of the confidence bestowed under it for the purpose of acquiring the property, are alone sufficient to authorize the enforcement of the trust. See *Eoff* v. *Irvine,* 108 Mo. 378.

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WATER COURSES.

Where a stream which forms the boundary between two landowners frequently overflows and inundates portions of the land on both sides, but more easily overflows the land of one of them, equity will enjoin the latter from filling in the low places on his land, and constructing a levee along the stream on his side, so as to cause the stream unnaturally to overflow the lands of the other: Court of Civil Appeals of Texas in *Sullivan* v. *Dooley,* 73 S. W. 82. The case contains a good discussion of the authorities. See in this connection *O'Connell* v. *Railway,* 13 S. E. 489.

**Obstructions**

B. was the owner of the south half of a section of land between which and the river there was originally a strip of eight acres, forming the fractional north half, which had not been patented. The river changed its bed until it had washed away the eight-acre strip, and flowed through B.'s land, when it began to rebuild to B.'s land all that it had washed away and about two hundred acres additional. A. then received a patent for the fractional north half of the section as described by the original survey. In *Widdecombe* v. *Chiles,* 73 S. W. 444, the Supreme Court of Missouri holds, under these facts, that the accretion being to B.'s land, A. took no title by his patent. See *Naylor* v. *Cox,* 114 Mo. 232.

**Riparian Rights: Accretion**