its jurisdiction, can the court, by indirection, adjudicate upon their rights, and thus do indirectly what it could not rightfully directly do? I think not.

The present motion is, therefore, denied, and it is ordered accordingly.

SHORT NOTES OF RECENT AMERICAN DECISIONS.

Supreme Court of Ohio, Adjourned Term, 1856.

The State of Ohio on the relation of the Prosecuting Attorney of Sandusky County vs. *Ralph P. Buckland, Ebenezer Lane and others.* Information. BARTLEY, J., Held—

1. That a judge of the Common Pleas has the authority, in the exercise of chamber powers, as a member of the District Court of any county of the proper district, to grant leave to file an information in the nature of quo warranto, in the District Court.

2. That the authority of the prosecuting attorney of any county to file an information in the nature of a quo warranto, given by the statute relating to informations in the nature of quo warranto, passed March 17, 1838, is not repealed or superceded by any provisions of the act prescribing the duties of the Attorney General, passed May 1, 1852.

3. That where such information charges the defendants, as an association of persons, with usurping or illegally exercising a franchise, and assuming to act as a corporation, without sufficient authority of law, for the fraudulent purpose of enabling another or a legally constituted corporation to evade an injunction of the Supreme Court, restraining it from doing an act unwarranted by law, and in violation of its corporate powers, the District Court may have jurisdiction of the case, if it appears that the principal office of the association, or the office of the president thereof, be within the county.

Motion to quash the information overruled, and cause remanded.

William H. Raymond et al. vs. *James M. Whitney et al.*, BRINKERHOOF, J., Held—

1. Where water craft is seized by virtue of a warrant regularly issued under the act of February 26, 1840, "to provide for the collection of claims

against steamboats and other watercrafts," &c., and the same is discharged from the custody of the sheriff, and delivered to the owner on board, being given, as authorized by the fifth section of said act, the officer making such seizure retains a lien on the water-craft for the benefit of the plaintiff and sureties, and a right to reclaim the same, as against all prior creditors of the craft making subsequent seizures thereof, in order that the craft may be forthcoming, to answer the judgment to be rendered under the prior seizure.

2. Such judgment may, in a proceeding in chancery, instituted by the plaintiff in the first seizure, for the assertion and protection of his own priority of lien, be impeached for fraud and collusion between the plaintiff and the owner of the craft, in the obtaining of said judgment.

3. The fact that counsel for creditors making subsequent seizures appeared on the trial, and defended against the claim of the plaintiff in the first seizure, may be competent evidence on the question of fraud and collusion in obtaining the judgment, but is not, in law, conclusive of such question.

John Boose vs. *The State of Ohio.* Writ of error to the Common Pleas of Butler county, BARTLEY, J., Held—

1. The record of a judgment in a criminal case, which shows that the jury upon being "*empanneled and sworn the truth to speak upon the issue joined between the parties,*" and after having heard the evidence and charge of the court, upon their oaths did say, that the defendant is guilty as charged, &c., is sufficient, without the addition of the words "*according to the law and the evidence,*" in connection with the oath to render a verdict on the issue joined.

2. A count of an indictment for the crime of robbery, under the 15th section of the statute for the punishment of crimes, charging the taking of the personal property by the words "feloniously and violently did seize, take and carry away," without any allegation of the intent to steal or rob, is defective.

3. Where an indictment in a count charging a burglary under the 14th section of the statute, avers the intent to steal the "personal property" of a person named, without an express allegation that the property is of any value, the term property, *ex vi termini*, imports value.

4. A judgment on a general verdict of guilty on an indictment containing some good and some bad counts, is not erroneous, because not rendered with express reference to the good counts. Judgment of the Common Pleas affirmed.

L. Howlett vs. *J. P. Bruck et al., Directors of the Ohio Penitentiary.* J. R. SWAN, J., Held—

The Directors of the Ohio Penitentiary gave notice that they would receive proposals for the labor of fifty convicts, to be worked at the manufacture of wood type, rules, try squares, &c., &c., *and that bids would be considered for the manufacture of any other articles or other kinds of business.* Howlett made the highest bid (63 cents) for convicts, to work at the coopering business. The Directors refused to enter into a contract with Howlett, but closed a contract with Day Brothers for the manufacture of wood types, at a bid less than Howlett's. Held that under the notice and statute, the Directors were authorized to exercise a discretion in regard to Howlett's bid, and to reject it. Mandamus refused.

James N. Dickson et al. vs. *L. and S. Rawson et al.* Chancery. Reserved in Stark county. RANNEY, C. J., delivered the opinion of the court. Held—

1. An assignment of property by an insolvent debtor to certain creditors of his, for the purpose of paying debts due to them, and also other preferred creditors, is within the provisions of the third section of the act of March 14, 1838, (Swan's Stat. 717,) and enure to the benefit of all the creditors of the assignor.

2. It is immaterial whether such assignment is made for the benefit of the preferred creditor, not being an assignee, or to indemnify the surety of the assignor to such creditor.

3. In either case the assignment secures the debt, and entitles the creditor to compel an application of the fund to its payment.

4. The character and legal effect of such an assignment is determined at the time it is made; and is not changed by the fact that the property assigned turns out to be no more than sufficient to pay the assignees.

5. If, at the time it is made and accepted, it subjects the assignee to account to any other creditor of the assignor, the assignment is in trust, and the assignee a trustee within the meaning of that act.

Decree accordingly.

Joseph Howard, Executor of Mary Ann Wagg vs. *Lydia Gibbens.* Error to the District Court of Washington county. RANNEY, C. J., delivered the opinion of the court. Held—A married woman, abandoned by her husband in a foreign country, coming to this State to reside, is competent to contract in respect to necessaries for her support and maintenance, and to sue and be sued, in the same manner as a *feme sole.* Judgment affirmed.

In the Court of Chancery of New Jersey.

STOUTENBURG *vs.* TOMPKINS, 1 Stock. N. J. Ch. Rep. 332.

Specific performance, when enforced.—A court will not decree a specific performance where it would be inequitable under all the circumstances of the case. Where a contract is hard and destitute of all equity, the court will leave parties to their remedy at law.

A defendant cannot resist a specific performance on the ground that the argument entered into differs from that which was reduced to writing, without showing that the difference was the result of fraud, mistake, accident, or surprise.

It is well settled that specific performance is discretionary with courts of equity, and a defendant will generally succeed in procuring a dismissal of the bill if he convinces the court that the exercise of the jurisdiction will be inequitable under the circumstances.

One who has been in the enjoyment of property under an agreement, and has surrendered and abandoned it; who has betrayed the confidence existing between the parties, and has, by his conduct and dealings with the defendant and his treatment of the property, beguiled the defendant into the belief that he intended to give up all his rights and interest in the contract, comes into court with a case wholly void of equity when he demands a specific performance.

A want of mutuality is an objection to a decree for a specific performance.

The court will not enforce a contract where the parties are not mutually bound to fulfil it.

So where the interest of a party in a contract passed into the hands of his assignee in bankruptcy, all reciprocity as to the remedy was destroyed; and if the assignee, or a person holding under him, seeks a specific performance, he must affirm the contract, and make it mutual at least within a reasonable time.

ATTORNEY GENERAL *vs.* HUDSON RIVER RAILROAD, 1 Stock. N. J. Ch. Rep. 526.

Unavoidable obstruction of public river.—The slight but unavoidable obstruction of public rivers by a railroad company under the authority of their charter, is a necessary evil which must be borne for the sake of the public good which demands it. That which would otherwise be a nuisane, if done under the authority of law for the public good, is justifiable.