Our courts are now invested with chancery powers. The plaintiff might have sought redress there, and if entitled to recover what he claims, he may obtain a surrender of the policy for cancellation. Equity proceedings are better suited to the nature of such an investigation, than an action at common law.

Motion dismissed.

ABSTRACTS OF RECENT AMERICAN CASES.

In the Supreme Court of the United States, January, 1853.

Navigable Stream—License.—By the law of Pennsylvania, the river Delaware is a public navigable river, held by its joint sovereigns in trust for the public.

Riparian owners in that State have no title to the river or any right to divert its waters unless by license from the States.

That such license is revocable, and in subjection to the superior right of the State to divert the water for public improvements, either by the State directly or by a corporation created for that purpose.

The proviso to the provincial acts of Pennsylvania and New Jersey of 1771 does not operate as a grant of the usufruct of the waters of the river to Adam Hoops and his assigns, but only as a license or toleration of his dam.

As by the laws of his own State the plaintiff could have no remedy against a corporation authorized to take the whole waters of the river for the purpose of canals or improving the navigation, so neither can he sustain a suit against a corporation created by New Jersey for the same purpose, who have taken part of the waters.

The plaintiffs being but tenants at sufferance in the usufruct of the water to the two States who own the river as tenants in common, are not in a condition to question the relative rights of either to use its waters without consent of the other.

This case is not intended to decide whether a first licensee for private emolument can support an action against a later licensee of either sovereign or both, who, for private purposes, diverts the water to the injury of the first.—*Geo. Rundle et al* vs. *Delaware and Raritan Canal Co.* Opinion per GRIER, J.

Habeas Corpus—Fugitive under treaty.—The provisions of the treaty between the United States and Great Britain, concluded 9th of August, 1842, and the Act of Congress passed August 12, 1848, in respect to fugitives from justice are of themselves a law which the judges and magistrates of the Union may execute without other authorization. *In the matter of Thomas Kaine, an alleged fugitive from justice from Great Britain.* Opinion per CATRON, J.—TANEY, Ch. J., NELSON, J. and DANIELS, J. *dissented.*

The Commissioner who issued the warrant of arrest and commitment was at the time, by nature of his appointment and the acts of Congress in force, a magistrate within the meaning of the treaty. *Ibid.*

The judges or magistrates act under the treaty upon complaint on oath, and the treaty does not require any requisition upon them by a minister or officer of the British Government, in order to give them jurisdiction of the subject. The requisition is to be by one government on the other, for the extradition of the criminal after his commitment by a judicial officer. *Ibid.*

The Act of Congress, Aug. 12, 1848, is auxiliary to the treaty. It no way curtails or limits the operation and effect of the treaty, nor are any of its enactments repugnant to the treaty stipulations. *Ibid.*

The Act of Congress is valid and must be carried into effect by the judiciary. *Ibid.*

The Commissioner of the United States was authorized, by virtue of his appointment, to take cognizance of this case, under the Act of Congress referred to. *Ibid.*

The return of the Marshal, connected with the documents thereto annexed, shows upon its face that the subject-matter was brought before the Commissioner by a complaint on oath, and legal proof that the prisoner was a fugitive from justice from Great Britain. *Ibid.*

During vacation, Mr. Justice Nelson had allowed a writ of *habeas corpus*, and on its return had made an order directing the matter to be argued in this court; *Held*, that this court has not jurisdiction upon the case as certified by Mr. Justice Nelson. TANEY, Ch. J., NELSON, J. and DANIELS, J. *dissenting.*

Held, that a *certiorari* could issue to bring up the proceedings in case a *habeas corpus* was issued by this court. *Ibid.*

Held, assuming the court to have jurisdiction, and without passing on that question, that the prisoner was not entitled to be discharged.

ERRATA.—The reader is requested on page 247, line seven from bottom, after "Held," to insert "by the whole court;" and in lines five and six, strike out "Taney, Ch. J., Nelson, J., and Daniels, J., dissenting;" same page, line three from bottom, after "Held," insert "per M'Lean, Wayne, Catron and Grier, JJ., that." On page 248, line one, strike out the words "per M'Lean, J., Wayne J., Catron, J. and Grier, J."

Per McLEAN, J., WAYNE, J., CATRON, J. and GRIER, J.—CURTIS, J. concurred in refusing to discharge the prisoner on the ground that this court had no jurisdiction to issue a *habeas corpus* in this case.

Held, by the minority of the court, that the commissioner had no authority to act—that a requisition should first have been made by the minister or other representative of the British Government, or by an officer specially authorized for that purpose, and that the authority of the magistrate to issue the warrant and take the information was not sufficiently proved. Opinion per NELSON, J.—TANEY, Ch. J. and DANIELS, J. *concurring.*

Patent—Novelty—A principle is not patentable because a principle is a fundamental truth, an original cause, a motive, and in this no one can claim an exclusive right. *Leroy* v. *Tatham* Opinion per McLEAN, J.

Hence, where the court instructed the jury that the invention in dispute did not consist in the novelty of the machinery, but in bringing a newly-discovered principle into practical application, by which a useful article of manufacture is produced, and wrought pipe made as distinguished from cast pipe, and that although this was specifically claimed by the patentees as their invention, it was not a material fact for the jury, such instruction was error and judgment will be reversed on that ground. *Ibid.*

Supreme Court of Pennsylvania, at Philadelphia.—December Term, 1852.

Assignment.—A subsequent assignment by a debtor, cannot divest the lien of a prior levy upon goods. *Guthries' Appeal*, LEWIS, J.—Affirming *Hutchinson* v. *McClure*, 1 Am. Law Reg., 170.

Assignment of Errors.—A party cannot assign for error the admission or rejection of evidence, or complain in this Court, of an instruction below, unless he tenders or seals a bill at the trial, so that the matter may appear of record. *Quellman* v. *Jacobs.*—WOODWARD, J.

Bail in Misdemeanor.—A sheriff cannot bail a prisoner when arrested for any misdemeanor. Where a sheriff arrested one charged with fornication, and took a bond from him for his appearance to answer the offence, such bond is void. *Keller* v. *The Com.*—WOODWARD, J.

Injunction.—By the Act of May 6, 1844, it is provided that no injunction shall be issued by any court, until the party applying for the same shall have given bond conditioned to indemnify the other party, which

Act was intended to apply to all cases, including the Commonwealth herself. The Commonwealth can give no bond, there being no person authorized to make it; and if given, no suit could be maintained on it. Hence, the Commonwealth cannot have a preliminary injunction. *The Com.* v. *The Franklin Canal Co.*, BLACK, CH. J., delivering the opinion of the Court.—LEWIS, J., dissenting.

Judges' Comments on Points Presented.—A judge acts within the line of his duty, when he accompanies his answers to points made by counsel, with such observations as are necessary to guard the jury from falling into error, where a simple affirmative or negative answer, although strictly correct, as far as it went, might lead the jury astray. *Leech* v. *Leech*,—LEWIS, J.

Levy on Land.—It is no valid objection to a levy on land, that it embraces too much property, or that that is named as several parcels which ought to be sold together. If several parcels are improperly united in one sale, the Court whence the execution issues may set aside the sale, and give the sheriff proper instructions. *Donaldson* v. *The Bank of Danville.* LOWRIE, J.

Amendment, with leave of the Court, is the proper remedy for any vagueness, uncertainty, or other defect of description. *Ibid.*

When the defendant suffers injustice by reason of an improper description, it is within the discretion of the Court whence the writ issues to correct it. *Ibid.*

Mistake.—Interest on Purchase Money.—Where a grantor, by mistake, included in his deed ten acres, which had been sold many years before to another, and which were in possession of his grantee at the time of the contract, the grantee cannot demand a deduction from the consideration money, by reason of such mistake, especially where it appears that the party complaining gets thirty-two acres more than was estimated in the contract. *Shearer* v. *Gilty.* LOWRIE, J.

Where a vendee enters into possession, and enjoys his purchase by reaping the rents and profits, he must pay interest upon his purchase money, according to his contract, although the heirs of the vendor brought ejectment and failed to recover. *Ibid.*

Partnership Property.—Levy on.—Trespass.—A sheriff acting under an execution, at the suit of a judgment creditor of one partner in a firm, can sell and deliver no part of the partnership goods, but only the contingent

interest of the debtor partner in the stock and profits, after settlement of partnership accounts, and payment of partnership creditors. *Deal* v. *Bogue.* WOODWARD, J.

The only levy that can be made on such an execution, consistently with the principles of the partnership relation, is of the debtor's interest in the whole stock, and that is to be measured by final account. *Ibid.*

Where one partner sued the sheriff, his deputy, and the execution creditor, in trespass for seizing and selling the partnership goods on an execution against his copartner, and the defendants pleaded not guilty; *held*, that the nonjoinder of all the owners as plaintiffs could only be taken advantage of by plea in abatement, and that such plea was too late after the general issue pleaded. *Ibid.*

The sheriff and his deputy were liable as trespassers in such case, in virtue of their office. The plaintiff in the execution would not be a trespasser, unless he did something more than merely issue his writ; but if he attended the sale, and bought part of the property, he is liable as a trespasser. *Ibid.*

Rail Road Charter—Construction of.—Under the provisions of the charter in question, the Court will not set aside an assessment of damages, upon the sole ground that the Court differed from the jury in an estimation of the amount. *Philadelphia, Baltimore and Wilmington Railroad* vs. *Gessner.* LEWIS, J.

Interest should be allowed on the amount assessed as compensation from the time when the Company took possession of the land. The duty of ascertaining the amount is an incident to the obligation to pay, and must fall upon the Corporation. *Ibid.*

Sheriff—Practice—Payment of Money into Court.—In this State, since the foundation of the province, the practice has been for the Sheriff to sell on all the executions in his hands, leaving the distribution of the money to the Court. But if the Sheriff chooses, even to prevent delay and save expense, to pay the money raised upon the execution to the creditor supposed to be entitled to it, the payment is unofficial and informal, and should the payment be wrongful, he is not protected. *M'Donald* vs. *Todd.* GIBSON, J.

Statute of Limitations.—An admission of a debt made to one who is not the plaintiff, or any agent of his, but is a stranger, will not take a case out of the statute of limitations. *Anderson* vs. *Allison.* LEWIS, J. Affirming *Kyle* vs. *Wells*, 17 Penn. St. Rep. 287.