

one not a party to it, although out of the usual form, makes the indorser *prima facie* liable as such, and entitles him to the advantages of an indorser in a suit against him by the payee, we are of opinion that the plaintiff is entitled to judgment upon the reserved point.

When the note was made and executed, both the maker, Tuteur, and the indorser, Levy, lived at Macon, Georgia. At its maturity, Tuteur lived at Pittsburg, and Levy at Danville, Pa. Whether Becker knew of this at the maturity of the note, depended upon the affidavit of the defendant, which plaintiff had read, but, under the case of *Reid vs. Morrison* (2 W. & S. 401), does not appear to be material. That decides, that if the maker removes into another jurisdiction after the execution of the instrument, that circumstance will dispense with the necessity of making further inquiry after him. It recognises *McGruder vs. Bank of Washington* (9 Wheat. 601), in which a removal of only nine miles from the District of Columbia into the State of Maryland, was held sufficient to excuse presentment. "Precision and certainty," say the Court, "are often of more importance to the rules of law than their abstract justice. On this point, there is no other rule that can be laid down, which will not leave too much latitude as to place and distance."

Rule discharged, and judgment for plaintiff.

ABSTRACTS OF RECENT DECISIONS.

*Supreme Court of Pennsylvania, March, 1854.*¹

Agent—Pleading.—In an action against an agent for not collecting and paying over the amount of a draft placed in his hands for that purpose, it is not necessary to allege a previous demand in the declaration. Such demand would only be necessary where the agent had collected the

¹ We have prepared a number of abstracts of important decisions of the Supreme Court of this State, but our space will not permit, in this number, to give more than a few of them.

money, and given notice of the fact to his principal. *Drexel vs. Raimond*. KNOX, J.

Debtor and Creditor—Voluntary Assignment—Foreign Attachment.—A foreign attachment was issued against W., and the Bank of the United States summoned as garnishee. W. subsequently deposited in the bank a sum of money, which the latter afterwards repaid him, but under circumstances which furnished no defence to the *sci. fa.*, upon which judgment was accordingly given against it. The bank subsequently made an assignment for its creditors, in which a preference was given to persons to whom it "was indebted as *depositors*." *Held*, that the plaintiff in the attachment was not entitled to rank as a preferred creditor, in the place of the defendant. *Washington Jackson's Appeal*. LEWIS, J.

Foreign attachment is still merely a process to compel the appearance of the defendant; and the plaintiff is not, in all respects, entitled to be placed in his position. *Ibid*.

Debtor and Creditor—Voluntary Assignment.—A mortgage given by one in insolvent circumstances, and known by both parties to be so, is nevertheless not within the proviso of the Act of 1849, with regard to voluntary assignments, though the mortgagee receives back at the same time part of the money lent, in payment of previous debts. *McCurdy and Vandyke's Appeals*. KNOX, J.

Execution—Stay.—No stay of execution can be claimed upon a judgment in an action of debt on a judgment of another State. *Sloat vs. Prentice*. LOWRIE, J.

Executors and Administrators—Conflict of Laws.—Where administration is taken out in another State from that in which the decedent was domiciled, the assets are subservient to the rights of domestic claimants, and the local administration account must be settled before transmission of the funds to the principal or primary administrator. *Dent's Appeal*. LEWIS, J.

Domestic claimants comprehend creditors, legatees and distributees, whether resident, or not, within the jurisdiction of the ancillary administration, who seek to enforce their rights therein *Ibid*.

The transmission of the assets of the primary administrator is merely a matter of comity, within the discretion of the local *forum*, and will not be directed merely for the purpose of giving him his commissions on collection and distribution. *Ibid*.

Where administration was taken out in Pennsylvania on the goods of

one domiciled in another State, and, all the creditors having been satisfied, two-thirds of the distributees, though not residing in the jurisdiction, demanded immediate distribution here, and no others objected, the Court refused to transmit the assets to the administrator of the domicile on his application, but permitted him to claim here for services actually rendered to the fund. *Ibid.*

Interest—Conflict of Law.—Where a bond and warrant is given in one State as collateral security for a bond and mortgage in another State, the amount of interest is to be computed according to the law of the latter State. *Irvine vs. Barret.* LEWIS, J.

Where a mortgage is given to a guardian in pursuance of a decree of a court of chancery, for specific performance, the land being situated, and the guardian appointed and residing in the State where the court exercised its jurisdiction, the rate of interest, though not expressly named, is that fixed by the law of such State. *Ibid.*

Mechanic's Lien.—Where the laying of a pavement of a house is an express part of an entire contract with the bricklayer, his lien will be in time if filed within six months after the completion of the pavement, though the rest of the work be done more than six months before. *Otherwise*, if the laying of the pavement be done under a separate contract. *Yearsley vs. Flanigin.* KNOX, J.

But even where the contract is entire, if the building is finished, and the contract is treated as complete by the parties, and a considerable period of time is suffered to pass before the pavement is laid, and intervening rights have attached, a lien would not be in time if not filed within six months. *Ibid.*

Payment, Appropriation of.—Where a debtor has proved that at the time of making a payment, he directed it to be credited on one account, the books of the creditor are inadmissible to show that it was credited to another account. *Pennypacker vs. Umberger.* KNOX, J.

Practice—Arrest—Privilege.—One charged with a crime before a committing magistrate, and discharged on his recognizance for a further hearing, is not privileged from arrest by civil process, in returning from the magistrate's office. *Key vs. Jetto.* WOODWARD, J. (at Nisi Prius).

Trusts—Guardian—Investment—Commission.—Trustees and guardians are not authorized to invest in the stock of an incorporated company, whether a bank, railroad, canal, manufacturing or mining corporation,