with it. Certainly no one can occupy for his individual purposes the water front of such riparian proprietor, and the attempt of any person to do so would be a trespass. When, therefore, Ruddiman erected the structure in controversy in the shallow water of the lake, and upon his water front, it was substantially an erection upon his own land, and its use and ownership was dependent upon his ownership of the land to which it was appurtenant. He made it a part of his real estate as much as if it had been an additional story erected upon a building situated upon the soil not covered with water. It was a part of the land; appurtenant to it, and to be enjoyed with it. This *he* cannot deny; nor can any one question it whose soil or possession was not thereby invaded. As between individuals, a wharf and the structures upon it attached to the soil of a riparian proprietor, are as much a part of the real estate as is a building erected upon the land over which the water does not flow; and by a sale of the land they are conveyed. There is no analogy between such title and the right of fishery, and no argument can be drawn from the one to support the other. Each depends upon separate principles of the law.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF PENNSYLVANIA.[1]

Legacies, Vested and Contingent.—If it be doubtful whether a legacy bequeathed by will is vested or contingent, the law inclines to treat it as vested; and where it is evident from the will, that the testator intended to make an entire disposition of his estate, which intention would be defeated if a legacy given were not vested, it is an influential consideration that the legacy be construed as vested: *Burd's Executor* vs. *Burd's Administrator.*

A legacy is to be deemed vested or contingent, as the time appears to have been annexed to the gift or to the payment of it; if there be a

[1] From Robert E. Wright, Esq., State Reporter, to be reported in the 4th volume of his Reports.

separate and antecedent gift, which is independent of the direction and time of payment, the legacy is vested: if not, it is contingent: *Id.*

A testator gave to his brother a life interest in the residue of his personal estate, and provided, that "at the death of my brother J., I hereby give and bequeath to my nephew E., son of the said J., two thousand dollars," &c. E., the nephew and legatee, died before his father J., and after the death of both, the legacy was claimed by the representatives of each from the executor, and no provision was made against the lapse of the legacy, in case the legatee died before the testator. *Held*, that the bequest must be construed as reading "It is my will, and I hereby give to my nephew E., at the death of my brother," &c., and that this, taken in connection with the antecedent life interest granted by the testator to his brother, would make the legacy vested, which as such, the administrator of E., the legatee, was entitled to recover: *Id.*

Bills of Exchange—Rights of Drawee who discounts Bill before Maturity.—The acceptor of a bill being the principal debtor, while the drawer and indorser are but sureties, *payment* by the former extinguishes the debt, leaving no right of action against the latter except when the acceptance was *supra protest: Swope et al.* vs. *Ross et al.*

The acceptance of a bill is an engagement to pay it according to tenor and effect at maturity, and not before; and a bill is only "paid" when it is done in due course and with an intention to discharge it: *Id.*

The drawee of a bill may accept or pay it *supra protest* for the honor of the drawer or indorser, but if he discount it before maturity he stands in the position of an indorsee as against all prior parties: *Id.*

The discounting of a bill by the drawee, who has not accepted it, is neither "payment" nor a promise to pay according to tenor and effect, but puts him in the position of an indorsee for value, with right of action against drawer and endorser: *Id.*

Assignment by a Bank for Benefit of Creditors—Right of Indorser to pay Note discounted by it, in its own depreciated Paper, after a bonâ fide Transfer to Assignee.—The indorser of a negotiable note, discounted by a bank and by it transferred to assignees before maturity, for full value, has no right, when payment is demanded by the holders, to pay the note in the depreciated paper of the bank after it has failed: *Housum* vs. *Rogers et al.*

The Bank of Pennsylvania, through a branch office, discounted a note

upon the credit of an accommodation indorser, which before it came due, was with other notes transferred by the bank to certain trustees of other banks, in consideration of a sum of money advanced by them to sustain its credit: before maturity, the bank failed, but the note was renewed in the hands of the trustees by the parties to it; when due, payment was tendered in the notes of the bank by the indorser to the agent of the trustees, which was refused and suit brought against him upon the note. *Held,* that the plaintiffs were holders for value, and could not be required to receive in payment the depreciated notes of the bank: *Id.*

Though the transfer of the note by the bank was not in the usual course of business, it is not for that reason invalid; and where the transaction was honest, for the benefit of the public and the protection of the stockholders, the legal and equitable title in the note would pass to the trustees, who were entitled to demand payment in constitutional currency or its equivalent: *Id.*

Where the note was transferred for value, and, with knowledge of the transfer and the failure of the bank, the indorser joined the drawers in renewing the note in the hands of the assignees, he cannot call in question the power of the bank to transfer the note under the charter, for he was a debtor and not a creditor interested in the assets of the bank, and, as such, entitled to interfere: *Id.*

Injunction to restrain Creditor of Husband from selling Wife's Real Estate on Execution.—Under the Act of 11th April 1848 and 12th April 1850, the levy and sale of a wife's real estate by a creditor of her husband's, on execution against him, is contrary to law and may be restrained by injunction: *Hunter's Appeal.*

In order to authorize the interference of a court of equity, a clear case of title in the wife under the Acts of 1848 and 1850, must be made out; otherwise the court will not interfere, but leave the parties to their remedy at law: *Id.*

Where the real estate of a wife was levied on by a creditor of her husband's, and was about to be sold, it was error in the court to dismiss a bill filed by her, for a preliminary injunction to restrain the execution-creditor from selling it: *Id.*

Parol Title to Land, Evidence in support of—Possession, when Notice to Lien-Creditors and subsequent Purchasers.—The owner of a lot of land, sold a part of it by parol to a borough corporation in 1841, received the

purchase-money, delivered possession, and the same year the borough erected a fire-engine house thereon; no deed was executed by the grantor and his wife until December 1842; before this, on the 6th September 1842, a judgment was entered against the grantor, upon which execution issued, and the whole lot, including the portion bought by the borough, was sold by the sheriff to the plaintiff in the judgment, who brought ejectment and sought upon the trial to restrict the corporation from giving evidence of title prior to their deed. *Held*, that the defendants could show the commencement of their title under the parol purchase, from the date of their possession, which was in itself notice of their title, when brought to the knowledge of the plaintiff: *Patton* vs. *The Borough of Hollidaysburg*.

Though the deed of record is of later date than the purchase, it is not an inconsistent title with that shown by the parol contract accompanied with possession in the grantees; it was evidence of the consummation of the sale, and, as though it were the perfecting act of a written agreement of sale, the grantee can show the commencement of his title from the date of his possession: *Id.*

The corporation defendant was not estopped as against the plaintiff from showing an earlier inceptive title than the deed, for the plaintiff had undisputed notice of possession in the borough from the time it was taken; therefore he was not misled by the deed, and hence is not in the position to claim the exclusion of the truth, which is the effect of an estoppel, lest it might injure him. Having notice or the means of notice, that the defendant's title was complete in equity before the entry of his judgment against the grantor, he cannot claim to have been misled by the deed: *Id.*

Mortgage in Trust for Married Woman's Separate Estate, not extinguished by Conveyance to her of the Property mortgaged without Consent of her Trustee; nor by a Transfer as Collateral Security for Precedent Debt of Husband without her Consent.—A. being largely indebted to his wife for moneys received out of her separate estate, gave a mortgage on his own real estate for the balance then due, to a trustee in trust for her. Three days after, he gave a judgment to his partner B. to secure him. Afterwards A. and wife conveyed the mortgaged premises for a certain sum, subject to the mortgage in express terms to C., who soon after reconveyed to the wife on the same terms. The wife then joined with her husband in a mortgage to H., to secure him for money loaned to the husband. At the same time H. procured an assignment of the wife's mortgage from her trustee as collateral, and also a release from B. of the

priority of his lien. The real estate was then sold under the trustee's mortgage, and the proceeds were ruled into court and claimed by the wife, on the ground that the mortgage in trust for her still subsisted. *Held*,

That the conveyance of the mortgaged premises to the wife did not extinguish the mortgage held in trust for her, because her trustee was not a party to it, the intent to keep the mortgage alive appeared upon the face of the conveyance, it was for her interest in order to prevent subsequent liens from coming in before her, and because all parties acted upon the idea, and treated the mortgage as if it was subsisting: *Hatz's Appeal*

That the mortgage to H. executed by A. and wife was of their estate, subject to the trust mortgage in her favor, and that the assignment by the trustee to H., as collateral security for a precedent debt of the husband's, without the assent of the *cestui que trust*, did not pass any interest in that mortgage to the assignee: *Id.*

That though the wife, one of the mortgagors, was in equity the owner of the first mortgage, the subsequent mortgage by herself and husband to H., after she became the owner of the land, would not postpone in his favor the lien of the trustee's mortgage, nor estop her from claiming the money in satisfaction of that lien; else more force would be given to her acts by indirection than the law would give, if done directly to that end, for without the assent and co-operation of the trustee, she could not transfer nor release it; nor if there were no trustee, could she do this, without the joinder of her husband: *Id.*

Though equity will sometimes give effect to acts not in themselves binding obligations at law, yet it does so only to reach those who ought to be made responsible, or who are liable in person or estate to pay a debt. It will not give relief to a creditor out of the separate estate of the wife, where the debt was not hers, but that of the husband; and where her estate only, subject to the lien of the mortgage held by her trustee, was pledged, the pledgee cannot require her to make good his mortgage out of the proceeds of the sale of the property, belonging to her trustee under the mortgage in her favor: *Id.*

Where the wife was not the debtor, nor personally bound as surety in the mortgage executed by herself and husband to his creditor, her interest in the trust mortgage could not be postponed to his claim against them on the second mortgage; and since she had not parted in law or equity with the mortgage held in trust for her, it was entitled as the first mortgage to be paid in preference to any subsequent liens: *Id.*

SUPREME COURT OF NEW YORK.[1]

Municipal Corporations—Power over Streets and Sidewalks—Liability for injuries caused by defects in Sidewalks.—There is a distinction between the power of municipal corporations over the carriage ways of their streets, and that which they possess over sidewalks: *Hart and Wife* vs. *City of Brooklyn.*

The absolute authority over the roadway, conferred upon the Common Council by the charter of the city of Brooklyn, is not possessed by them over the sidewalks; and the same responsibility cannot be imposed, for the condition of the sidewalks, as for that of the roadway: *Id.*

A municipal corporation is not liable in damages, to an individual, for injuries caused by an opening in a sidewalk, made by an owner of the soil or the adjacent land, without proof of notice of the insufficiency or defect, and neglect to cause it to be remedied: *Id.*

The public authorities are not to be presumed to have notice of a latent defect in the covering of an opening in the sidewalk, which was not made by them or under their direction: *Id.*

Notice to the public authorities of defects or obstructions in the streets, not occasioned by their own acts, must be express, or the defects must be so notorious as to be evident to all who have occasion to pass the place or to observe the premises: *Id.*

Action for Personal Injuries—Negligence of the Plaintiff.—No matter how gross or evident may be the negligence of the driver of a vehicle, if another by his own negligence exposes himself to injury from the vehicle, he has no remedy: *Mangam* vs. *Brooklyn City Railroad Company.*

Knowingly to allow a child of less than four years of age to go at large in a public street without a protector, is such negligence in his parents or guardians as will, if unexplained, prevent a recovery by him for a personal injury: *Id.*

Although want of care cannot be imputed to a child, for not avoiding a passing vehicle, it may be charged upon those who have the care of the child, if they suffer him to go unprotected where vehicles are passing, and where care and forethought must be required, beyond what he is capable of exercising: *Id.*

If the child has parents living, and he is under their charge and

[1] From the Hon. O. L. Barbour, Reporter of the Court.

protection, he is responsible for their acts and omissions, as if they were his own; and for the purposes of an action by him for personal injuries, their negligence must be regarded as his negligence: *Id.*

Jurisdiction—Costs.—A court possesses power and jurisdiction to determine whether it has authority to entertain a particular controversy, although its decision and the law be, that it has no such authority, and it therefore dismisses the writ. Such a question may be presented by demurrer, and its decision must be a judgment: *King* vs. *Poole.*

Accordingly, where A. brought an action against B. in the county court, and B. demurred on the ground that the court had no jurisdiction of the subject-matter, and the court rendered a decision sustaining the demurrer: *Held*, that the court had power to enter a judgment dismissing the complaint or writ, and awarding costs to the defendant: *Id.*

Costs are a proper and necessary incident of such a judgment, and the court can no more deny them to a defendant who succeeds in establishing upon an issue of law, that the court has not jurisdiction, than to a plaintiff who has shown that it has: *Id.*

Assignability of Cause of Action—Principal and Agent.—A cause of action for the conversion by the defendant of funds intrusted to him as an agent, for which he has not accounted to his principal, is assignable: *Gould* vs. *Gould.*

Where an agent has duties to perform towards his principal, in the nature of a trust, he falls within the suspected relation, and the law indulges the presumption of fraud against a release procured by him from his principal, although no fraud is visible to the eye of the court: *Id.*

One cannot act for himself as vendor, and as agent for another as purchaser, in transferring securities: *Id.*

Vendor and Purchaser of Chattels; Rescinding Sale.—A vendor who has sold goods and drawn bills upon the purchaser for the price, can rescind the sale and sue for the value of the goods, if he has good cause for doing so, notwithstanding the bills, at the time of commencing the action, are out of his possession, so that he cannot then surrender them. If he produces the paper at the trial, and then offers to surrender it or cancel the acceptances, that is sufficient: *Fraschieris* vs. *Henriques.*

Partnership; Note by Firm to a Partner—Action thereon by Indorsee.—Where a promissory note, made by a partnership firm to one of its

members, for money advanced by him to the firm, is indorsed by the payee to another after maturity, the holder may maintain an action thereon against the makers: *Sherwood* vs. *Barton.*

Bonds issued by Railroad Companies payable in Blank; Action by Assignee.—Where a bond for the payment of money is issued by a railroad company, payable to ——— or assigns, any lawful holder by delivery or transfer may insert his own name in the blank as the payee, and maintain an action thereon: *Hubbard* vs. *New York and Harlem Railroad Company.*

Principal and Agent.—The plaintiff and defendant being owners of adjoining lots, the latter built a wall upon his lot along the boundary-line between them, the same being constructed for him by D. & C., under a written contract. The defendant furnished the materials only, but employed no workmen and exercised no control over them: *Held*, that he was not liable to the plaintiff for damages caused by the blowing down of the wall before it was completed; the relation of master and servant, or principal and agent, not existing between the defendant and those by whom the wall was constructed: *Benedict* vs. *Martin.*

Assignment for the Benefit of Creditors—Estoppel.—A provision in an assignment for the benefit of creditors, directing the payment of a fictitious demand to the assignor's wife, renders the assignment void, as intended to hinder and delay creditors: *American Exchange Bank* vs. *Webb.*

Where a wife, thus provided for in an assignment executed by her husband, delivered a release of her dower in his real estate, upon condition that if the assignment should be held valid, she should receive the amount directed to be paid to her by the assignment, and if held invalid, that she should have her dower out of the proceeds, and the plaintiff, a creditor, assented to these terms, and to a sale of the property in accordance therewith: *Held*, that this did not amount to a ratification of the assignment by him, or estop him from attacking it as fraudulent and void, and having the same set aside: *Id.*

Discharge of Indorser; New Security; Extending Time of Payment.—The receipt of a bill or note having time to run, from the party primarily liable on a bill or note then overdue, will not operate to discharge an indorser on the bill or note so overdue, unless there is an agreement,

express or implied, that the new bill or draft shall be in payment of the former, or extending the time of payment in favor of some party who is liable thereon, prior to such indorser: *Taylor* vs. *Allen.*

If a new draft is taken by the holder of a protested note, as collateral to such note, this will not prevent him from enforcing payment of the note: *Id.*

And if there is some evidence that a draft was thus taken, the question should be submitted to the jury whether there was an agreement to extend the time of payment on the protested note, or whether the new was given and received as collateral to the old security: *Id.*

Assignment for the Benefit of Creditors.—A trust in an assignment to pay the legal and necessary expenses of the assignees, with a salary of $2000 a year to each, if that did not exceed the allowance made by law to executors; and if it should exceed that amount, then at the rate so prescribed for executors, will not render the assignment illegal: *Ketelters* vs. *Wilson et al.*

A trust, requiring the assignees to pay all persons who had become bail or surety for the assignors, the amount of their payments or liabilities as such, is not illegal: *Id.*

Yet where the assignors gave a preference in favor of bail and sureties, for the declared object of effecting a delay of several years, by the operation of this clause, knowing that the clause would produce that effect, and with the intent of putting off creditors, and gaining time to compromise with them: *Held,* that the assignment was void as against such creditors. *Id.*

Dower; Provision by Will, when in Lieu of.—A testator, by his will, gave to his wife certain articles of personal property and one-third of the net income of all his real estate, after payment of all taxes, assessments, and interest due thereon, during her natural life. Upon her death the payments were to cease, and the said one-third of the net income was to go to the heirs. The provisions were not stated to be in lieu of dower: *Held,* that the widow was not put to her election: *Tobias* vs. *Ketchum.*

What is a Promissory Note?—An instrument by which the maker promises to pay to the order of another a specified sum, at the store of the former—or in goods, on demand, for value received, is a negotiable promissory note: *Hosstatter* vs. *Wilson.*

Assignment for Benefit of Creditors—Agreements between Debtor and Creditor.—Where creditors of an insolvent firm entered into an agreement with the latter, by which they covenanted that in case the debtors would execute an assignment of their property to S., preferring therein, as first class creditors, an amount not exceeding $60,000, and preferring the covenantors to the amount of fifty cents on the dollar on their several claims, they would discharge the debtors from all liability for the balance of such claims; and such assignment was accordingly executed; *Held*, that the agreement and assignment were to be construed as constituting parts of one and the same transaction; and that the assignment was on its face fraudulent and void: *Spaulding* vs. *Strang et al.*

An insolvent debtor cannot do, by concealment, what he may not do openly. Hence, he cannot, by a secret bargain with a portion of his creditors, compel them to agree to his release on condition of his executing an assignment giving them preferences: *Id.*

Lex loci and Lex fori—Statute of Limitations.—The rule as to contracts is that the *lex loci contractus* governs, as to the nature, validity, construction, and effect of the contract, and the *lex fori* as to the remedy: *Gans et al.* vs. *Frank et al.*

The application of this rule will dispose of any defence arising upon a statute of limitations of a foreign state, where such statute only prohibits the bringing of an action after the time limited in such state. The statute has no effect out of the state, and is not violated by bringing an action in another state or country: *Id.*

Where the defendant passed through this state more than six years before the commencement of the action, but was only here temporarily, and all the defendants had resided in Pennsylvania since the cause of action accrued; *Held*, that the action was not barred by our statute of limitations: *Id.*

If a debtor comes into this state before process is served on him, and he then leaves the state to reside elsewhere, the statute is not a bar until, after deducting all the time of residing abroad, the debtor has been in this state for six years: *Id.*

Whether the absence is repeated, or is one continued absence, is immaterial. There must be full six years spent in this state to make our statute of limitations a bar: *Id.*

Principal and Agent.—Under ordinary circumstances, an authority

given by a partnership firm to its agent, to advance moneys for the purchase of notes or bills to be remitted to the firm, will not justify the agent in continuing to make such advances, after being notified of a change in the firm by the admission of new members. There must be a renewed authorization by the new firm: *Callanan* vs. *Van Vleck.*

But if the bills so purchased by the agent, after notice of the change in the firm, have been remitted to the firm, received and retained by the new members, and used and applied in their business, this will justify the agent in inferring that the authority previously given by the old firm was continued by the consent of the new one; and is sufficient to render the new firm liable for the amount of such advances: *Id.*

Banks; power and authority of Cashiers.—The cashier of a bank has no power to make a contract for the bank in his own name, unless the corporation has authorized him to do so on its behalf, and with the intention that it should be bound: *Bank of the State of New York* vs. *The Farmers' Branch of the State Bank of Ohio.*

Accordingly, where a cashier, though authorized to indorse, for the purpose of transmitting to other banks for collection, bills and notes deposited with his bank or discounted by it, had no special authority to affix his name, or that of the bank, for the purpose of making the corporation liable on a contract of indorsement, but in order to facilitate the collection of a bill he indorsed the same as follows: "Pay E. Ludlow, Cas., or order, P. S. Campbell, Cas.:" *Held*, that the bank was not made liable as indorser of the bill: *Id.*

Life Insurance.—One having an interest in the continuance of the life of another, as his creditor, may insure the life of the debtor, and the contract for that purpose will be valid: *Rawls* vs. *The American Life Insurance Company.*

The fact that the debt is due to the creditor as a member of a partnership, and from another firm of which the person whose life is insured is a member, does not alter the rule: *Id.*

If such a policy of insurance is valid in its inception, the circumstance that the statute of limitations had run against the debt, before the occurrence of the death, will not affect it: *Id.*

It is not necessary that the party holding a policy on the life of another should have an insurable interest in such life, at the time of the death, to make the policy valid, if it was valid in its inception: *Id.*