SHEE, J.—I am of the same opinion. It seems to me that this claim cannot be brought within the rule in *Hadley* v. *Baxendale*, where it was laid down that the recoverable damages are such only as naturally, and in the ordinary course of things, arise from the breach of duty complained of, or such as may fairly be taken to have been in the contemplation of the parties at the time when the contract was entered into. Taking the first branch of this proposition, it is clear the loss is not within it, unless it is to be taken for granted that, in the ordinary course, the plaintiff would sell for profit; but this is not to be assumed, for he might sell at a loss as well as at a profit; the loss of profit, therefore, is not the natural result of the defendants' breach of contract. Then, secondly, can it be said that the consequences which have followed were in the contemplation of the parties at the time of the making of the contract? I think not. Even if both parties had communicated all that they knew of the circumstances in which they then stood, it would clearly have been impossible to say whether the purchaser would be able to realize a profit in the mean time. The extra damages, therefore, appear to me to come within neither branch of the rule, and the verdict must be reduced accordingly.

Rule absolute.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MASSACHUSETTS.[1]

SUPREME COURT OF NEW YORK.[2]

SUPREME COURT OF PENNSYLVANIA.[3]

ACCORD AND SATISFACTION.

As between Corporation and Stockholder.—Where a stockholder in a building association, under resolution of the association permitting borrowers to withdraw on the payment of a stipulated amount, the stock to be then "withdrawn and cancelled," withdrew, paid off his loans and stock which was then marked on the books as "cancelled" and "withdrawn:" *Held*, that the company could not afterwards recover for

[1] From Charles Allen, Esq., Reporter, to appear in vol. 10 of his Reports.

[2] From Hon. O. L. Barbour, Reporter; to appear in vol. 44 of his Reports.

[3] From R. E. Wright, Esq., late Reporter; to appear in vol. 14 of his Reports.

dues which subsequently accrued thereon: *Miller* v. *Second Jefferson Building Association*, 14 Wr.

The position of the parties was that of debtor and creditor: and after an acceptance of the terms of the resolution, payment by the debtor of the sums found thereby to be due, the new contract was executed, and a case of accord and satisfaction made out: *Id.*

Criminal Law

Who is a Bailee under the Criminal Code—Right of Jury to return a Special Verdict in Criminal Prosecutions.—Under the new Criminal Code of Pennsylvania (Act 30th March 1860, § 105), a bailee is any one intrusted with the possession of property for a time: and the section is not confined to the case of a carrier.

Thus where the personal property of a defendant in an execution was purchased by a friend, who permitted him to retain and use it until demanded; and being so intrusted, he appropriated it to his own use, he was guilty of larceny, under the 108th section of the act: *Commonwealth* v. *Chathams*, 14 Wr.

A jury has a right in all cases whatever, whether capital or otherwise, to find a special verdict by which the facts are put on record, and the law is submitted to the judges. It is sufficient if the jury find all the substantial requisites of the charge without following the technical language used in the indictment; and it is not necessary that the jury, after stating the facts, should draw any legal conclusion: *Id.*

Debtor and Creditor.

Life Insurance—Policy taken out by insolvent Debtor and assigned to Wife, fraudulent as to Creditors.—The assignment of policies of life insurance by a debtor who was insolvent when insured, in trust for the benefit of his wife, is fraudulent and void as against creditors: *Appeal of Elliott's Executors*, 14 Wr.

But policies of insurance effected without fraud directly and on their face for the benefit of the wife, and payable to her, are not to be held fraudulent as to creditors: *Id.*

Separate Assignments.—Where three assignments of property and accounts were executed at different dates, by debtors to a creditor, to secure the payment of separate debts, incurred at different times: it was *held*, that they were not to be construed as one transaction, and as amounting to a general assignment for the benefit of creditors, and as such, void because they did not provide for paying all the debts of the assignors: *Wynkoop, Receiver, &c.*, v. *Shardlow et al.*, 44 Barb.

Conveyance of Real Estate to Children, when not fraudulent and void as to subsequent creditors.—A conveyance of real estate by a father to his sons in consideration of their agreement to pay his debts, is not fraudulent and void as to his future creditors: and where the debts amounted to the full value of the property purchased, the deed is not voluntary but for a valuable consideration: *Preston* v. *Jones*, 14 Wr.

Where, after the conveyance, the father retired from business, went to Europe, returned, and two years after the date of the deed, again commenced as a partner in another firm which subsequently failed; in an action of ejectment by a creditor to recover the real estate thus pre-

viously conveyed, which he had purchased at sheriff's sale as the property of the father: *Held*, that the mortgages given by the father, after the date of the deed, upon the property, were not admissible in evidence on the part of the plaintiff as proof of ownership in the grantor, where there was no evidence of fraud or collusion: *Id.*

Evidence.

Parol Proof of Written Contracts for Loan of Money.—Where loans are made, and securities for repayment are taken, such cases are in equity made exceptions to the general rule that where written contracts are made, the rights of the parties must be determined by the writing, unaffected by parol proof: *Tibbs* v. *Morris*, 44 Barb.

In that class of cases, whatever the form of the instrument may be, it may be shown by parol evidence that the nature of the transaction was a loan of money, and that the writings, whatever might be their form, were intended as security for repayment: *Id.*

In all cases where the real transaction between the parties was a loan, and the writings were executed as a security therefor, parol evidence is admissible; and when such fact satisfactorily appears, equity will give effect to the writings according to the intent of the parties: *Id.*

Execution.

Decree, making Distribution of Money in Court, conclusive as to all Matters involved therein—Effect of Recital in Bond of Indemnity.—A decree awarding money paid into court to one of several contesting execution-creditors is, if unreversed and unappealed from, conclusive that the party to whom the fund is awarded is, and that the contestants are not, entitled thereto: and all matters that could have been properly litigated cannot again be examined in a collateral action, such as an action brought by the sheriff on a bond of indemnity taken from one of the contestants, on payment to him of the amount of his execution before the return day, but which sum was paid, with the balance of the fund, according to the decree: *Noble* v. *Cope's Administrators*, 14 Wr.

A recital in an indemnity bond that the money was made at the suit of the obligor, *inter alia*, will not estop the sheriff from enforcing it, after he has been compelled to pay the amount received by the obligor on his writ, to the successful execution-creditor: *Id.*

Attachment-execution issued on Transcript of Judgment of Justice, not void for want of Certificate of no Goods—Garnishee not bound to defend after Notice to Defendant and Judgment in Attachment Suit.—An attachment in execution issued out of the Common Pleas on a transcript of the judgment of a justice of the peace, is not void for want of a certificate of "no goods:" at most the proceeding by attachment was irregular: but, *semble*, that it was not: *Swanger* v. *Snyder*, 14 Wr.

But if the attachment was void, the defendant, who, after notice from the garnishee to appear and defend, suffered judgment in the attachment to go against him, could not afterwards object that it was erroneously issued: nor, after such notice and judgment, was the garnishee bound to interpose the want of the certificate of no goods in objection to the attachment: nor was it sufficient to convict the garnishee of fraudulent collusion, that he employed the attorney of the attaching

creditor to draw up his answers, where the judgment of the justice was sound, the debt honestly due, and notice of attachment proceedings given to the debtor: *Id.*

Answer of Garnishee, the sole Foundation of Judgment—Right of Third Parties not to be decided upon Answers.—In attachment execution, the answer of the garnishees to the interrogatories are the exclusive foundation of the judgment to be entered thereon: and if the facts stated in the answer are insufficient to entitle the plaintiff to judgment, it is the duty of the Court to refuse judgment and discharge the rule to show cause: *Lancaster County Bank* v. *Gross et al.*, 14 Wr.

Thus where the answers of executors admitted a sum of money in hand as the share of the defendant, an heir of the decedent's estate, but averred an assignment to a third person, without giving the assignment itself or any facts relating thereto, the court should have refused judgment, discharged the rule, and ordered the cause to be proceeded in, to issue and trial in due course of law, and it was error to decide that the legacy attached was the property of the assignee: *Id.*

Money coming to Hands of Garnishee after Service of the Writ.—Money coming into the hands of a garnishee after the service of an attachment-execution, and before it is dissolved, is bound thereby; *Mahon et al.* v. *Kunkle et al.*, 14 Wr.

Foreign Attachment.

Assignment of Property in Pennsylvania, in trust for Creditors in another State, must be recorded in County where it is situated—Debt due and so assigned, attachable, if Assignment not recorded, and no Notice given to attaching Creditor.—A debt due to a non-resident debtor is bound by a foreign attachment issued in this state, notwithstanding a previous assignment by him in trust, of all his estate and effects, where the assignment was not recorded within the county in which the debt attached was due, as required by the Act of 3d of May 1855, and no notice of the assignment was given to the attaching creditor: *Philson et al.* v. *Barnes*, 14 Wr.

Where the debt attached was claimed against two, and suit brought against them by the non-resident, and on trial the record and pleadings were amended and judgment taken against one: the other defendant was a competent witness on the trial of the *scire facias*, between the attaching creditor and the garnishee, to show that nothing was due: *Id.*

Frauds, Statute of.

Contract within the Statute.—Where a majority of the directors of a corporation transferred part of their stock and resigned as directors that their transferees might be elected in their stead, and have control of the affairs of the company in consideration, as was alleged, of their verbal promise to pay all the debts; and after such transfer and election, but a small portion of the debts was paid, in consequence whereof the corporate property was sold by the sheriff, and a large part of the indebtedness left unpaid and lost, including a debt due by the company to one of the original directors and an alleged promissee: in an action by him to recover therefor, against the promissors, it was *Held*, that the promise of the defendants was within the Statute of Frauds, and that the plaintiff could not recover: *Maule* v. *Bucknell et al.*, 14 Wr

Equity—Rescission of Contracts void by the Statute.—A court of equity will not rescind an executed contract made to hinder and delay creditors, and void by the Statute of Frauds, on the application of one of the parties to the fraud: *Hershey* v. *Wieting*, 14 Wr.

Part Payment.—The defendant, by an oral agreement, promised to deliver to the plaintiff a quantity of butter, of the value of over $100. The defendant being at the time indebted to the plaintiff in the sum of $6.50 for a barrel of flour, charged to him in account. It was argued that that sum should apply as a partial payment towards the butter. The plaintiff made an entry of the sale, in a memorandum book; the entry also stating that the defendant accepted the barrel of flour on the butter. But no entry was made on the plaintiff's account book, to show that the flour was paid for by the butter, or otherwise. *Held*, not a sufficient part payment to take the case out of the Statute of Frauds: *Teed* v. *Teed*, 44 Barb.

Habeas Corpus.

Act of Congress of 1863.—The Act of Congress of March 3d 1863, authorizing a suspension of the writ of *habeas corpus*, was obviously aimed at state or political prisoners, and was designed to enable the President to arrest and detain as prisoners, persons charged with, or suspected of, some offence against the government—persons deemed dangerous to the government—and to suspend the privilege of the writ of *habeas corpus* as to all such persons. But the statute had no reference to enlisted soldiers of our army not accused of any crime; and was not designed to prevent their discharge on *habeas corpus*, if illegally held as soldiers: *The People, ex rel. Starkweather*, v. *Gaul*, 44 Barb.

Insolvency.

Provisions of Insolvent Laws must be strictly complied with.—Under the provisions of the insolvent laws, the debtor seeking relief, and he only, is bound to keep in motion the proceedings which are to result in his discharge: and if he fail to do so, or to surrender himself to prison, the condition of his bond is forfeited: *Bartholomew's Administrator* v. *Bartholomew et al.*, 14 Wr.

So where, after bond given by an insolvent debtor, conditioned that he should appear at the next Court of Common Pleas and present his petition for the benefit of the insolvent laws, the petition was duly presented, but by mistake no hearing was fixed, it was the duty of the debtor to have appeared at the next term thereafter, and to have had a day for a hearing appointed: and where no further proceedings after the presentment of the petition were had, the condition of the bond was forfeited and his creditor became entitled to payment therefrom: *Id.*

Justices' Courts.

Practice—Evidence.—Notwithstanding the defendant, in a suit before a justice of the peace, fails to appear at the trial, the plaintiff must establish his cause of action by legal evidence: *Armstrong* v. *Smith*, 44 Barb.

Where, in an action before a justice of the peace, for trespass done

upon the plaintiff's land by the defendant's cattle and horses, the only evidence to show the amount of the plaintiff's damages, or from which the justice could properly determine the amount, was the *opinion* of a witness: *Held*, that there was not sufficient legal evidence in the case to maintain the judgment: *Id.*

Municipal Corporation.

City Assessment.—An assessment under a city ordinance, not made in conformity with the directions of the ordinance, is illegal and void; and a subsequent confirmation of it by the common council will not cure the illegality: *In the matter of the petition of Geo. C. Turfler*, 44 Barb.

Where an ordinance directs work to be done and the expense assessed in a particular manner, if the assessors make an assessment in violation of the ordinance, it will be illegal and void: *Id.*

An assessment is void which charges the owners of lots benefited with a greater proportion of the expense than that directed by the ordinance: *Id.*

Where an ordinance directs the assessors to assess an equal amount of the expense upon the city treasury and upon the owners of the lots benefited, the direction can only be satisfied by charging one half the amount to the treasury, and assessing the other half upon the owners, including the owners of the public parks: *Id.*

For the purposes of such an assessment, the corporation of the city of New York is owner of the public squares, and is to be assessed therefor in the same manner as individual owners are assessed for their property: *Id.*

It is the duty of assessors to make the assessment as provided for in the ordinance. They are not to decide whether the provisions of the ordinance are in all things in conformity to law, and if not, to amend them: *Id.*

Practice.

Exceptions.—If the judge excludes the whole defence, on the opening of the counsel, on the ground that the matters proposed to be proved do not constitute any defence, one exception to the decision is good. It is not necessary for the defendant's counsel to repeat the statements, and to take a separate ruling on each: *Sawyer et al.* v. *Chambers et al.*, 44 Barb.

Promissory Notes.

Usury not pleaded cannot be used as a Defence.—Where the defendant, in an action upon a promissory note, does not set up usury as a defence, but merely denies in his answer that the plaintiffs are *bonâ fide* holders, and avers that the note was without consideration and void, he cannot defeat a recovery on the ground of usury: *The Mechanics' Bank of Williamsburg* v. *Foster*, 44 Barb.

The fact that one of the makers of a note sold it for a less sum than the legal rate of discount, is not sufficient to impose upon the buyer, in a suit brought thereon, the burden of proving that he made inquiry as to the validity of the note: *Id.*

Where a note is made by one partner in the name of the firm, for his

own use, the firm are liable upon the note to one who discounts it where usury is not established, unless the holder had notice that the proceeds were not to be used for the benefit of the firm: *Id.*

Recognisance.

Action on—Defence that Defendant enlisted as a Soldier.—In debt on a recognisance conditioned that V. should personally appear at the next Court of Oyer and Terminer, to answer to an indictment, &c.: it was *held* a good answer to the action that intermediate the date of the recognisance and the term of the court therein mentioned, V. enlisted as a soldier in the service of the United States, and was in active service in the army during the entire session of said court, under the control and authority of the commander-in-chief of said army, and was prevented from attending said court by him until after the day of appearance, &c.: *The People* v. *Cushney et al.*, 44 Barb.

In Criminal Cases.—Where a person charged with crime is confined in a county jail, the county judge of another county is authorized to take the acknowledgment of the execution of a recognisance by the prisoner's sureties, within the latter county, in order that the recognisance may be sent to, and acknowledged by, the prisoner, and he let to bail: *The People* v. *Hurlbutt et al.*, 44 Barb.

It is only necessary that the criminal should appear before the judge, to confer jurisdiction upon such judge to let him to bail: *Id.*

The judge has authority to accept of individuals as sureties in the recognisance, though they do not personally appear before him: *Id.*

Where an acknowledgment of the recognisance is upon it at the time the recognisance is presented to the judge who lets the prisoner to bail, which acknowledgment was taken before another judge, the judge letting to bail will be deemed to have approved of such acknowledgment; and his approval of what has been done is equivalent to a precedent authority: *Id.*

Sunday.

Action for Damages—Defective Way—defence that Plaintiff was travelling on Sunday.—In an action to recover damages for an injury sustained by reason of a defective way, the defendants may prove that the plaintiff, at the time of receiving the injury, was travelling in violation of the statutes for the observance of the Lord's day, without specially averring that as a ground of defence in the answer: *Jones* v. *Inhabitants of Andover*, 10 Allen.

A person cannot legally travel on the Lord's day for the purpose of supplying fresh meat to marketmen, whom his master has agreed to supply therewith, although he could not do this, in addition to his other work, on Monday morning, and his master, by reason of illness, is unable to do himself: *Id.*

Trusts and Trustees.

Voluntary Conveyance.—A voluntary conveyance, absolute in form, even though aided by an oral agreement of the grantee to hold the premises for the benefit of the grantor, raises no trust in favor of the grantor which can be enforced in this commonwealth: *Titcomb et al.* v *Morrill et al.*, 10 Allen.

Liability for Interest, and Costs of Audit on his Account.—A trustee who invests a small trust fund with his own money on loan at four and one-half per cent., is not chargeable with a greater rate of interest, where it appears that the rate of investment was common, and all that could be safely had, in the neighborhood: *Graver's Appeal*, 14 Wr.

Where an accountant has acted faithfully and prudently as "a good trustee," the costs of the audit cannot be imposed upon him, but must be paid out of the estate: *Id.*

Taxation.

Farms taxable at Locality of Mansion-house, where divided by Township, Borough, or City Line.—A farm divided by a township, borough, or city line, is taxable where the mansion-house is located: *Bausman* v. *The County of Lancaster*, 14 Wr.

Hence, where the whole of a farm, with the mansion-house, was situated in a township, with the exception of a small portion, lying within the line of an adjoining city, the whole farm was taxable in the township, and the assessor of the city had no power to assess that portion within its limits: *Id.*

Of United States Stock.—It must be regarded as settled by the decisions of the Supreme Court of the United States that the bonds and other securities issued by the United States are exempt from taxation by the state authorities, whether so exempted in express terms, by the Act of Congress under which they are issued, or not: *The People ex rel. Lincoln* v. *The Assessors of the Town of Barton*, 44 Barb.

Congress having the power to prohibit the taxation of the shares of stock in National Banks, altogether, it has the power to modify such taxation, and provide under what circumstances it shall be exercised: *Id.*

Usury.

Agreement to pay certain Sum at Promissor's Death, with gross Sum for Interest—Evidence.—An agreement, made for a valuable consideration, to pay a certain sum of money at the promissor's death, with a gross sum for interest thereon, is valid and binding upon his executor, and is not usurious, although at his death the legal interest would not amount to so much as the sum named for interest: *Parker* v. *Coburn*, 10 Allen.

If a person has promised to pay a certain sum of money at his death with a gross sum for interest thereon, a legacy by him to his creditor, equal in amount to the principal sum, is not to be applied in payment thereof, unless the will shows that such was the intent of the testator, and is therefore inadmissible in evidence, in an action against his executor upon the promise: *Id.*

Vendor and Vendee.

Effect of Payment in Counterfeit Money on Title to Personal Property sold—Good Faith of Vendee for the Jury.—The payment of counterfeit money for goods does not divest the title of the owner, except as against a subsequent *bonâ fide* purchaser for value: *Green* v. *Humphry*, 14 Wr.

In replevin for a horse, bought with counterfeit money, and subsequently sold on the streets of a city for a price below the value of the animal, it is for the jury to determine whether, under all the circumstances of the case, the purchase was made in good faith and for value: *Id.*

Hence, where the jury were instructed to find for the defendant, if from the facts they found that he bought the animal in good faith and was a *bonâ fide* purchaser, the instruction was not erroneous: *Id.*

Notice of Rescission of Agreement on Default of Payment.—Where a party in possession of land under a written contract to purchase the same, having made default in his payments, is served with a summons in an ejectment suit brought by the vendor, this is notice to him that the vendor will no longer acquiesce in delay of payment; and upon receiving such notice, it is the vendee's duty to act promptly by tendering payment, and asserting his claim to a performance of the contract, or his equity will be lost: *Tibbs* v. *Morris*, 44 Barb.

If he suffers the vendor to recover the possession of the premises, in the ejectment suit, he cannot maintain an action against him for a specific performance of the contract: *Id.*

Water Rights.

Improvement of Land so as to drain Surface Water coming from another Property.—The owner of land may lawfully occupy and improve it in such manner as either to prevent surface water which accumulates elsewhere from coming upon it, or altering the course of surface water which has accumulated thereon or come upon it from elsewhere; although the water is thereby made to flow upon the adjoining land of another, to his loss: *Gannon* v. *Hargadon*, 10 Allen.

Will.

Trust for charitable Purpose, the interest to accumulate for fifty Years —Bequest valid even if the Direction for Accumulation was not.—A bequest of an annual sum, out of the income from real estate, for fifty years to trustees, to be invested by them and accumulated during that time, and then applied to establish a charity, is a valid bequest; even if the accumulation cannot be allowed for so long a period: *Odell* v. *Odell*, 10 Allen.

A will contained the following bequest: "I give to the trustees of the Salem Savings Bank in trust one hundred dollars annually for fifty years, to be paid to them by my executors, to be safely invested by said trustees, the interest to be added to the principal by them semi-annually. At the expiration of fifty years the sum which shall have accumulated shall be appropriated by a society of ladies from all the Protestant religious societies in Salem to provide and sustain a home for respectable destitute, aged, native born American men and women. The above annual payment shall be made from the income of my real estate, which real estate shall be held in trust by my executors, until the last payment shall have been made to the trustees of the Salem Savings Bank; then my real estate shall be divided equally among the grandchildren of my late brother James." *Held*, that this was a valid bequest, even if the direction for accumulation was invalid: *Id.*