to leave the service at Milwaukee, and having received the full wages up to that time as promised him at his shipment, he could not maintain this libel for a larger amount, if he had proven himself entitled to it, which he did not. If the master was put to inconvenience by libellant's leaving the service, it was his own fault in not complying with the law. It is the duty of every master navigating the lakes to have his seamen sign shipping articles, specifying the ports or places to which his vessel trades, and the trip or season for which they are shipped, and the wages to be paid. In cases of such neglect every legal intendment will be taken against the master and owners. It is not the fault of the seaman that shipping articles are not signed, but of the master.

It does not appear that libellant is legally entitled to any larger amount of wages than he received before leaving the service; and this libel must be dismissed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

COURT OF CHANCERY OF NEW JERSEY.[1]

SUPREME COURT OF NEW YORK.[2]

SUPREME COURT OF PENNSYLVANIA.[3]

ACTION.

Where Money paid may be recovered back.—Money was paid by the plaintiff's assignors to S., in order that such assignors might become members of an association of which S. was president; but there was no evidence or finding that they ever did become such members. Subsequently the association was dissolved. *Held*, that the money having been paid for an object that was never accomplished, and which it had become impossible to accomplish, S. or his administrator was bound to refund the same: *Churchill* v. *Stone*, 58 Barb.

AGREEMENT.

Construction, what is a Warranty.—The defendants agreed to send to the plaintiffs at San Francisco "all the balance of the iron for said railroad, now lying in Boston or New York, amounting to about fifteen hundred tons, which said iron was originally purchased by C. L. W. from W. F. W. & Co. of Boston." *Held*, that this language was simply descriptive and did not constitute a warranty that the particular

[1] From C. E. Green, Esq., Reporter; to appear in vol. 6 of his reports.

[2] From Hon. O. L. Barbour, Reporter; to appear in vol. 58 of his reports.

[3] From P. F. Smith, Esq., Reporter; to appear in 64 Penn. Rep.

article existed, and that if the article was not at the place from which the defendants were to transport it, the omission to send it would be no breach on their part: *Robinson et al.* v. *Flint et al.*, 58 Barb.

AMENDMENT.

Omission in complaint, when cured.—Amending or conforming Complaint to Facts proved.—The omission to allege in a complaint a demand of the property sued for before suit brought, is cured by proof of the fact, by the report of the referee, finding the fact of a demand, and by the judgment: *Fullerton* v. *Dalton*, 58 Barb.

Where the parties go down to trial, and a cause of action is proved, though the complaint may be defective, tested merely as a pleading, upon demurrer, it is the duty of a referee or the court to conform the pleading to the facts proved, in furtherance of justice; and after judgment if it be entered according to a case clearly proved, it is the duty of the court to amend or to regard the pleading as duly amended: *Id.*

ARBITRATION AND AWARD.

Review of by Court of Equity.—The question whether an award is excessive or unjust, cannot be considered in a court of equity, nor its merits reviewed. But where the alleged errors are of a sort sufficient to set aside the award, this court will regard them so that a determination apparently excessive may be set aside: *West Jersey R. Co.* v. *Thomas*, 6 C. E. Green.

This court has jurisdiction over awards. But it will not exercise it in case of awards, which by agreement are made rules of court. The court in which the rule is entered has that power and must exercise it: *Id.*

No court will review and correct an award. The only power is to set it aside for corruption or misconduct in the arbitrators, or a plain mistake in law or fact. And if arbitrators decide against law, not by mistake, but of purpose, with the intention of making a just award, when the strict principles of law seem to them to work injustice, their award will not be disturbed: *Id.*

If the arbitrators proceed without the knowledge of either party, and without giving him an opportunity to be heard, or if they decide without any evidence, it is such misconduct as will set aside the award: *Id.*

When a new arbitrator is chosen by the original arbitrators, either party has the right to adduce additional testimony and additional arguments. And where either party has not only not waived such right, but before the award is made, presents his protest to the arbitrators, as soon as could reasonably be done, and serves an injunction upon them to restrain them from proceeding, and the arbitrators shut him out from this right, and make their award in the face of the protest and injunction, it is such misconduct as will set aside the award: *Id.*

An injunction will not be dissolved for new matter in avoidance alleged in the answer and not responsive to the bill: *Id.*

ATTACHMENT.

Mortgage — Misnomer — Interest.—Rushton gave a mortgage to

George. Rowe issued a foreign attachment against George, and on scire facias recovered judgment against Rushton as garnishee. *Held*, that Rowe could maintain a scire facias on the mortgage in the name of George to Rowe's use: *Rushton* v. *Rowe*, 64 Pa.

The attachment was a seizure of the mortgage as belonging to George, and the law regarded it as an assignment to Rowe: *Id.*

The mortgage was to Lyman and John George, trading as "L. A. George & Co.;" the attachment was against Lyman George and William George, trading as L. A. George & Co." *Held*, that the misnomer of one of the partners was unimportant, the name of the *firm* being accurate: *Id.*

Interest, *after* the service of the attachment, could under the circumstances, be recovered against the mortgagor. The rule that interest ceases from the service of the attachment, does not apply where the delay is produced by the litigiousness or unreasonable conduct of the garnishee: *Id.*

When the garnishee has been ready and willing to pay debt and interest he is within the rule. A sure way for the garnishee to avoid liability for interest would be to pay the money into court: *Id.*

Bankruptcy.

Date when Assignment takes effect—Payments to Bankrupt—Subsequent Earnings.—An assignment in bankruptcy, no matter when made, takes effect as if it had been made at the commencement of the proceeding: *Mays* v. *Manufacturers' Nat. Bank*, 64 Pa.

Of such assignment by operation of law, the whole world is bound to take notice; and payment to a bankrupt after filing the petition although made *bonâ fide* and without actual notice is not valid: *Id.*

B., *after* the filing of a petition against him, deposited money in a bank which was afterwards paid on his checks. *Held* that the payments were valid. The assignment transfers only the property which the bankrupt owned at the filing of the petition. His earnings and acquisitions after the commencement of the proceedings are his own, subject to his eventual discharge; and if he does not succeed in obtaining his discharge, his subsequent acquisitions remain liable to his creditors: *Id.*

The onus is upon the assignees to prove that the property was the bankrupt's at the commencement of the proceedings: *Id.*

Bills and Notes.

Consideration.—An agreement between partners for the dissolution of the firm, and for a transfer from one partner to the other of the assets of the firm, is a good consideration for a promissory note, given by the latter for the purchase-money: *Springer* v. *Dwyer*, 58 Barb.

The fact that the purchaser of the assets was induced to enter into the agreement by false and fraudulent representations of the other partner respecting the partnership assets, is no defence to an action upon the note by a *bonâ fide* holder, so long as the agreement stands, and the defendant retains the property transferred without offering to reassign the same or demanding a return of the note: *Id.*

Under such circumstances, however, the maker of the note may maintain an action against the payee for the fraud; or in an action upon

the note, may set up the fraud as a counter claim. Per INGRAHAM, P J.: *Id.*

Where the endorsee of a note produces it on the trial, it is to be presumed he is the holder in good faith, and that he received it before maturity. If the defendant alleges the contrary, the burden of proof is upon him. A mere denial of ownership by the plaintiff, a few days after the note matures, will not conclude him or rebut the presumption of ownership before maturity. Per BARNARD, J.: *Id.*

Compensation for Endorsements.—In the case of endorsements of commercial paper by accommodation endorsers, the law does not presume an agreement between the maker and endorser that the latter shall be compensated for the favor of his endorsement. If compensation is claimed, the endorser must show that there was a special agreement that he should be compensated for such use of his credit: *Perrine* v. *Hotchkiss*, 58 Barb.

BROKER.

Amount of Fees—Opinions of Witnesses as to Value of Services.—The compensation for brokerage in soliciting or procuring the loan or forbearance of money being fixed by statute, it cannot be enlarged or changed in a particular case by any testimony: *Perrine* v. *Hotchkiss*, 58 Barb.

The opinion of a witness as to the value of services rendered by the plaintiff to the defendant in procuring the defendant's paper to be discounted, and obtaining loans for him in that way in endorsing such paper, and thus aiding him with his credit, either by way of sale or loan of credit; and for time, travel, and expenses in going to different banks and places to get the defendant's paper discounted and renewed, is inadmissible: *Id.*

But if time, travel and expense are expended or incurred by an endorser for his principal, independently of the brokerage, he may recover therefor upon the general promise to pay whatever sum he can prove the services to be worth, not to the defendant in the particular circumstances in which he was placed, but according to the general price and value of such services. This may be proved by the opinions of witnesses who are qualified to judge of the value of the services: *Id.*

Opinions of witnesses are not competent to fix a price for the use of credit, where no price was agreed upon; for the reason that credit cannot be said to have any regular and current market-value: *Id.*

CONTRACT.

Meeting of Minds—Part Performance.—Where the minds of the parties to a contract do not meet upon the whole and exact terms of such contract, the same is void: *Fullerton* v. *Dalton*, 58 Barb.

Whatever is done between the parties, under a supposed agreement, where there is a mutual misunderstanding as to its terms, is not binding; and though both parties consent at the time to the delivery of a portion of the property agreed to be sold, each supposing that the delivery and acceptance is to be a part performance of the contract, and that the purchaser will only become the absolute owner when the whole contract shall have been performed, the law will not imply that either of the parties intended that the property delivered was to be absolutely

the purchaser's in case he failed to comply with the whole agreement: *Id.*

COVENANT.

Running with Land.—A covenant in a deed: "It being expressly understood and agreed that the houses which may be erected on Gilbert street shall be set back ten feet from the southerly line of said street," is a covenant running with the land, and binds not only those who derive title from the covenantors, but also their grantees: *Winfield* v. *Henning*, 6 C. E. Green.

At law the purchaser of one of these lots from the grantee could not enforce this covenant against the purchaser of another of them. But in equity observance will be enforced in his favor: *Id.*

DEBTOR AND CREDITOR.

Mortgage given by failing Debtor—Preference.—A mortgage given by a partner after the failure of the firm, to secure a debt justly due to an individual creditor, is not necessarily tainted with fraud, by the fact that no charge was ever made or bill presented until the mortgagor was alarmed by prospective embarrassments, and that the account was made out and charges agreed upon for this very mortgage: *Stillman* v. *Stillman*, 6 C. E. Green.

A subsequent or even contemporaneous attempt to convey or encumber property, so as to delay creditors, cannot affect a mortgage fairly given to secure a *bonâ fide* creditor: *Id.*

Execution against Choses in Action—Assignment in Fraud of Creditors.—Under the statutes of this state, a judgment-creditor who has exhausted his remedy by execution, may proceed against the choses in action of his debtor, and a court of equity will set aside a fraudulent assignment by the debtor of such choses in action to enable the creditor to proceed against them: *Tantum* v. *Green*, 6 C. E. Green.

Such creditor is entitled to have the mortgage-debts due the judgment-debtor collected by a receiver and applied to the payment of the judgment: *Id.*

But it is not sufficient for the creditor simply to prove that the debtor made the assignment for the purpose of hindering, delaying, and defeating the collection of the judgment. He must show that the assignee participated in such fraudulent intent, or, at the time he took the assignment, had notice of facts and circumstances from which the fraudulent intent of the assignor was a natural and legal inference: *Id.*

If a purchaser has before him facts which should put him on inquiry, it is equivalent to notice of the fact in question, and when such fact constitutes a fraud on a third party, it will not protect the purchaser, that he purchased for value: *Id.*

DECEIT.

Action for: Proof of Fraudulent Intent.—The very gist of the action for deceit is the fraudulent intent with which the representation was made; and that intent is not established by proof merely of the falsity of the representation; but knowledge when it was made by the party making it that it was false, must be shown: *Robinson et al.* v. *Flint et al.*, 58 Barb.

Where all the information possessed by the party making a represen-

tation was obtained from others, and there was nothing to show that he did not believe or had not the right to believe in the truthfulness of the information he had received; *Held*, that no action would lie against him to recover damages for false representations: *Id.*

DONATIO CAUSA MORTIS.

Nature of Evidence as to.—In an action to recover the proceeds of a check alleged by defendant to have been given to him by a decedent, evidence of declarations of defendant, and circumstances at the time of taking the inventory, not relating to the gift, was *held* to be inadmissible: *Rhodes* v. *Childs*, 64 Pa.

Evidence for the defendant for the purpose of showing the affection and regard of the decedent for him, *held* to be proper: *Id.*

Donationes causa mortis have the similitude of legacies, i. e. they are revocable by the donor, and are ambulatory during life; the gift must be with a view to the donor's death, and to take effect only on the donor's death by his existing disorder or illness; but the condition may be *implied* from the circumstances at the time. *Id.*

EQUITY. See *Arbitration—Covenant—Insurance.*

EVIDENCE. See *Broker.*

Books of a Bank.—The books of a bank, not kept by either of the parties to an action, nor relating to transactions between them, but referring solely to transactions between the defendant and the bank, are not competent evidence between the parties to show the amount of paper which has been discounted by the bank for the defendant, and the number of notes so discounted and renewed. And a statement made from such books is equally incompetent: *Perrine* v. *Hotchkiss*, 58 Barb.

FRAUD. See *Deceit—Debtor and Creditor*

False Representations—Recovering back Purchase-money.—The defendant, representing to the plaintiff that he had the agency for the sale of a sewing-machine for a particular county, and the right to sell and transfer the same, sold and transferred such agency to the plaintiff, who, relying upon the truth of such representations, gave his note for the price, and subsequently paid the same. In an action by the plaintiff to recover back the money so paid, the referee found that the defendant had not in fact any agency for said county, or right to sell the same, and that his representations were false. *Held*, that this finding warranted the conclusion that the plaintiff was entitled to recover back the purchase-money paid by him with interest: *Baker* v. *Spencer*, 58 Barb.

HUSBAND AND WIFE.

Tenancy by Entireties—Execution against Husband's Estate.—A purchaser at sheriff's sale, under a judgment against a husband, of his interest in an estate held with his wife by entireties, cannot recover possession during the wife's life: *McCurdy and Stevenson* v. *Canning*. 64 Pa.

If an estate be made to husband and wife during coverture, they are not properly joint tenants or tenants in common, but both are seised of the entirety: *Id.*

Neither can dispose of any part without the assent of the other, but the whole must remain to the survivor: *Id.*

The same words which would make two other persons joint tenants will make husband and wife tenants by the entirety. The Act of March 31st 1812 (Joint Tenants) does not apply to entireties of husband and wife: *Id.*

INFANT.

Jurisdiction of Equity as to Custody of.—When an issue is made by the pleadings and proofs on the question of the right to the permanent custody of infants, the case addresses itself to the general authority of equity, as the public guardian of infants: *The State, Baird prosecutor*, v. *Baird*, 6 C. E. Green.

In such a proceeding it is not the technical right of either parent which will control the decision, but the primary motive of judicial action will be the well being of the infants: *Id.*

INTEREST. See *Attachment.*

INSURANCE.

Damages to Insured by act of third Party—Payment by such Party enures to benefit of Insurer.—Where an insurance company pays the insured for a loss by fire occasioned by the fault of a railroad company, and the insured afterwards receives the amount from the railroad company, in satisfaction of his damages, he holds it in trust for the insurers, and they may recover it from him by suit in equity: *Monmouth County* v. *Hutchinson et al.*, 6 C. E. Green.

If the railroad company does not pay the insured his damages, or pays them knowing that he has received the amount insured from the insurance company, the railroad company is liable to the insurance company in a suit at law which it has the right to bring in the name of the insured, without his consent to compel repayment of the damages to the amount of the sum paid by it; and a release by the insured to the railroad company would be no defence to such suit: *Id.*

But these two remedies cannot be pursued in one suit, and neither the insured nor the railroad company is a proper or necessary party to a suit against the other; and in no way are they jointly liable so that a decree could be made, or a judgment given against both: *Id.*

Where the suit is by bill against both, if the only prayer were for a decree for the payment of the money, a demurrer would be sustained for the misjoinder. But under the general prayer for relief, the bill will be retained to give such equitable relief as the facts set out in the bill may warrant: *Id.*

A release by the insured to the railroad company, where the railroad company knew that the insured had received the amount of the insurance, would be a fraud upon the insurance company, and would be void for the fraud. And in such case the insurance company has the right to have the release declared void before commencing a suit in the name of the insured against the railroad company. In such a suit against the railroad company who holds the release, the insured would be a proper, if not a necessary party: *Id.*

Courts of equity have, peculiarly, cognisance of matters of fraud, and have jurisdiction over instruments affected by fraud, and will declare

them void on that account, even though the fraud is such as might be proved at law, so as to avoid the effect of the instrument: *Id.*

JUDGMENT. See *Lien.*

LEGACY.

Whether vested or not.—A gift of the interest of $12,000 to A. during life, and at her death, of the principal to B., is a vested legacy; and if A. survives B. the principal goes upon her death to B.'s representative: *Thomas' Ex'rs.* v. *Anderson's Adm'rs.*, 6 C. E. Green.

LIEN.

Priority of a subsequent Judgment over a previous equitable Lien for Purchase-money.—A judgment-creditor who advances his money upon the faith of an unencumbered title upon the record without notice, is entitled to the lien acquired thereby, in preference to the secret, unrecorded lien of the vendor for a part of the purchase-money: *Hulett* v. *Whipple et al.*, 58 Barb.

Such a judgment-creditor is to be regarded as a *quasi* purchaser for a valuable consideration without notice: *Id.*

LIMITATIONS, STATUTE OF.

Payment on account.—A payment on account of an existing debt is an unequivocal acknowledgment, and will take it out of the Statute of Limitations, but it must *plainly* appear that the payment was on account of the very debt; an independent account against a creditor in the books of a debtor amounts to nothing: *Barclay's Appeal*, 64 Pa.

A charge against a creditor is no admission of another and different debt alleged to be due by him, though evidence of that debt may be found in another part of the book: *Id.*

MORTGAGE. See *Attachment—Debtor and Creditor*

Satisfaction—Purchase of the Mortgage by Mortgagor.—The purchase of a mortgage by the executors of the mortgagor, where the mortgaged premises are owned by a third party, does not satisfy it: *Stillman's Ex'rs.* v. *Stillman*, 6 C. E. Green.

One may purchase his own mortgage on land that he has sold, and although such purchase may render the bond unavailing, yet where lands are conveyed subject to the mortgage as part of the consideration, the mortgage is the principal security, and even if the obligor pay the bond, he is entitled to be subrogated as to the mortgage, and to be repaid out of the land what he has paid on his own bond: *Id.*

Where mortgaged premises are conveyed subject to a mortgage, and the grantee conveys the premises in two parcels, and the parcel last conveyed is released from the mortgage, the other parcel must pay such proportion of the amount due on the mortgage as its value bore to the value of the whole tract at the time of the conveyance of such parcel: *Id.*

PARTITION.

Interference by Court of Equity with Suit at Law—Improvements by Tenant in Common.—A court of equity will not interfere with proceeding for partition commenced at law, unless such interference becomes necessary to protect some party thereto, from fraud or wrong, or secure

to him some clear right which the law tribunal from the manner of proceeding before it, cannot secure. For such purpose courts of equity will interfere to prevent a failure of justice and loss of rights: *Hall* v. *Piddock*, 6 C. E. Green.

A tenant in common who has made improvements on the land held in common is entitled to an equitable partition. The only good faith required in such improvements is that they should be made honestly for the purpose of improving the property, and not of embarrassing his co-tenants or encumbering their estate, or hindering partition. The fact that the tenant making such improvements, knows that an undivided share in the land is held by another, is no bar to equitable partition: *Id.*

It is no bar to allowance for improvements in equalizing the partition, that the improvements were made by tenants in common in reversion during the previous life estate: *Id.*

Reference will be made to a master with specific instructions, to ascertain and report whether partition cannot be made by payment of owelty, if not, sale will be ordered, and improvements allowed for, out of proceeds: *Id.*

Costs and expenses of defendants in the proceedings at law, for partition, those proceedings being authorized by statute, and arrested by this court, in order to more complete equity, will be allowed out of proceeds of sale: *Id.*

PARTNERSHIP. See *Debtor and Creditor.*

RAILROAD.

Equity—Estoppel—Taking Lands.—If two railroad companies have the authority to build and run a railroad between the same termini, neither can take exception to any irregularity or unlawfulness in the exercise of such franchise by the other, unless it can show a particular injury to itself from such course: *Erie Railway Co.* v. *Del. Lackawanna & Western Railroad Co.*, 6 C. E. Green.

Where a party stands by and encourages another in the construction of a public work, at great cost, this court will not interfere with it at his instance. Such conduct estops him from calling in question the legality of the structure: *Id.*

Where a railroad company appropriated land under a belief that they were the owners of it, and the land appeared to be of no particular value to the real owners, this court, in the exercise of its discretion, would refuse to restrain the company from its enjoyment: *Id.*

Quære, whether this court will prevent by injunction the permanent appropriation of lands by a railroad company, acting *ultra vires*, in the absence of irreparable injury: *Id.*

Where a company have irregularly taken lands, but have the capacity to acquire title, this court will not, where the advantage to the complainant would be small, and the injury to the company incalculably great, interpose and stop the running of the cars on such road, until the statutory method of acquiring title can be executed: *Id.*

When the title to the lands, the use of which the complainant seeks to enjoin, is in dispute, this court has no jurisdiction. In such case an injunction is never granted to prevent the enjoyment of the property in dispute by either party, who happens to be in possession of it: *Id.*

A court of equity will never lend its active aid to a party, who, by a superior knowledge and artful silence, has gained an unfair advantage over another: *Id.*

SALE. See *Vendor.*

SHERIFF'S SALE.

When it will be set aside.—Mere inadequacy of price is not sufficient to set aside a sheriff's sale; nor is it, *per se*, proof of fraud. But even if there has been no fraud, if the inadequacy is gross, and the party whose property has been sold, by reason of mistake or misapprehension, did not attend the sale, and the sacrifice was caused by such mistake or misapprehension, the sale will be set aside: *Kloepping* v. *Stellmacher*, 6 C. E. Green.

Agreement to buy for Benefit of the Debtor in the Execution—Specific Performance.—A party who would seek specific performance must be prompt in asking the aid of the courts. Unreasonable delay will of itself be often a bar to a suit of this character: *Merritt* v. *Brown*, 6 C. E. Green.

Executed parol agreements to buy in property at a sheriff's sale for the benefit of defendants in execution can be sustained only on the ground of fraud: *Id.*

Where the elements of the case are simply a purchase under a parol promise to hold for the benefit of the defendant in execution, such a transaction cannot be enforced either at law or in equity: *Id.*

The defendant agreed by parol to purchase property at a sheriff's sale for the benefit of the defendant in execution, the latter, at the time of the agreement assigning to him twenty-five shares of stock to make the purchase "more beneficial to him." It was also agreed that the defendant in execution should raise the purchase-money and take the property within sixty days after the sale:—*Held*, that the defendant in execution having failed to raise the money and redeem the property for over two years, and having permitted in the interim the purchaser to improve the property, and in some respects use it as his own, had lost his right to enforce the specific performance of the contract: *Held also*, That the stock stood as collateral security, and that the purchaser must account for its value, it having been sold by him: *Id.*

SPECIFIC PERFORMANCE. See *Sheriff's Sale.*

What Equity requires to entitle to.—Where a deed absolute on its face is given as a security for the payment of money, by or for the grantor to the grantee, it will be held in equity, that the grantee took the premises subject to redemption: *Crane* v. *Decamp and Others*, 6 C. E. Green.

Upon an application for a specific performance of a contract the court must be satisfied that the claim is fair, reasonable, just and equal in all its parts: *Id.*

To determine these qualities, the court will look not merely at the terms of the agreement, but at the relations of the parties, and the surrounding circumstances: *Id.*

A party seeking the specific performance of a contract must show that he has performed or been ready and willing to perform all the essential terms of his contract: *Id.*

Time and modes of payment attended by special circumstances of hardship and loss caused thereby, are circumstances to be weighed by the court in exercising a sound legal discretion: *Id.*

The surrender of a written contract of sale followed by acts inconsistent with the continuance of the same, such as negotiating a sale to another party by the surrenderor, for the benefit of the surrenderee:—*Held*, To be in equity, a rescission of such contract: *Id.*

Trusts and Trustees.

Releases and Family Settlements.—Releases from *cestuis que trust* to their trustees without the settlement of their account, are looked upon in law with jealousy; but overreaching, mistake or fraud must be shown to set such releases aside: *Shartel's Appeal*, 64 Pa.

All compromises and settlements by families are maintained, not only as beneficial in themselves, but as conducing to peace and harmony where it especially ought to exist: *Id.*

It is an established rule of equity that where trust and confidence are reposed by one party in another, and such other accepts the confidence or trust, equity will convert him into a trustee, whenever it is necessary to protect the interest of the party so confiding, and do justice between them: *Foote* v. *Foote et al.*, 58 Barb.

Implied and resulting trusts are, from their very nature, excepted from the provisions of the revised statutes relative to uses and trusts: *Id.*

Their existence, generally speaking, can only be established by parol evidence; and it requires the power of a court of equity to compel the performance of such implied agreements, and to protect the rights and interests of the *cestui que trust* therein. This power has in no respect been abridged or impaired by the revised statutes: *Id.*

Where one takes a conveyance of property intending in good faith to hold the same in trust, as the protector of the rights of a third person therein, and only for his benefit, a court of equity will not permit persons claiming under the grantee to insist that he held the premises absolutely, as the true and lawful owner: *Id.*

If, in such a case, the grantee attempts to dispossess the *cestui que trust* of the estate he holds nominally for the benefit of the latter, a court of equity will restrain him, upon application, and upon demand compel him to convey the title to the *cestui qui trust*: *Id.*

The section of the statute relative to fraudulent conveyances, which requires that every trust or power over or concerning lands, shall be by deed or memorandum in writing, has no application to such a case: *Id.*

Witness.

Release of Interest.—A distributee released to the administrator all his right to what might be recovered in a suit brought by the administrator. *Held*, that he was a competent witness: *Forrester* v. *Torrence*, 64 Pa.

A witness divesting himself of a mere collateral interest in the event of the suit, is not within the rule in Post *v.* Avery, 5 W. & S. 509: *Id.*

At an arbitration the plaintiff examined a defendant as a witness. *Held*, that this rendered the defendant a competent witness on her own behalf, on the trial of the same case in court: *Id.*