his claim be a carrier, a warehouse keeper, a wharfinger, packer, or other depositary, or an agent for the purpose of forwarding, nor by which of the parties to the sale he was employed." And the learned judge, in the leading opinion, says: "A vendee purchasing goods abroad may receive them into his actual possession at the place of purchase, and the right of stoppage will not thereafter exist. So he may take actual possession of them at some point intermediate to the place of purchase and the place where he designs to use or dispose of them, or employ an agent so to do, and thereby terminate the transit, and with it the right of stoppage."

(*Concluded in September number.*)

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF PENNSYLVANIA.[1]

AGENT.

Offer of Judgment by Defendant's Agent.—An offer of judgment in a suit before a justice of the peace may be made by an agent of the defendant in his absence; and on appeal, judgment will be entered without costs, where the verdict was for the same sum as that for which judgment had been tendered before the justice: *Randall* vs. *Wait*, 12 Wright.

CERTIORARI

In Criminal Case—Special Allocatur.—A defendant in a criminal case cannot have a writ of error on *certiorari*, except by special allowance of the Supreme Court, or a judge thereof, or by consent of the attorney-general: *The Commonwealth* vs. *Capp*, 12 Wright.

But the Commonwealth is not subject to this disability: and her representative, the district attorney of the proper county, may take out a writ of error or *certiorari* without such allowance or consent: *Id.*

DECEDENT.

Distribution of Estate of Insolvent Decedent—Debt due to Decedent at time of his death not set off against debt owing by him but not due.—In the distribution of the estate of an insolvent debtor, a debt due at the time of his death to him, cannot be set off against a debt owing by him, not then due: *Appeal of the Farmers' and Mechanics' Bank*, 12 Wright.

Thus, where the decedent was indorsee on notes discounted for his benefit at bank, but due and protested after his death, the bank is not entitled to retain a deposit of money then standing on the books to his credit, as a set-off against his liability on the notes: *Id.*

Beaver vs. *Beaver*, 11 Harris 167, does not overrule *Bosler* vs. *The*

[1] From R. E. Wright, Esq., Reporter; to appear in vol. 12 of his Reports.

Exchange Bank, 4 Barr 32: and the statement of reporter to that effect, is incorrect: *Id.*

ERROR.

Opinion of Court as to amount of Damages—Proper Course where evidence has been improperly received.—It is not error, in an action for false imprisonment, for the court to express an opinion that more than nominal damages should be given, where the question as to what amount should be given is fully left to the jury: *Oswald et al.* vs. *Kennedy*, 12 Wright.

A bill of exceptions will not lie to a refusal to strike out evidence which was received without objection. The proper course in such case is to ask the court below to charge that it be disregarded: *Id.*

Refusal of Court below to open Judgment.—The refusal of a court to open a judgment on the trial of a *scire facias* thereon to revive it, is not the subject of a writ of error, which can bring up for review only the proceedings upon the *scire facias: Henry* vs. *Brothers*, 12 Wright.

As the original judgment is not, on the trial of the *scire facias*, assailable for fraud or irregularity, the record of proceedings in lunacy had after the entry of the judgment is inadmissible, either under the plea of *nul tiel record*, or as evidence of the defendant's incompetency to execute the note on which the judgment was entered: *Id.*

An assignment of a judgment on record is not constructive notice thereof to the debtor: hence payment by him to the obligee before notice of the assignment, is good: *Id.*

EVIDENCE.

Account Book of Attorney—Proper Subjects of Book Charge—Book not Evidence of collateral matters—Statute of Limitations, what Evidence will rebut—When it commences—Costs in assumpsit.—How far the book of accounts of an attorney at law, containing charges for professional services, are evidence of indebtedness to him by the persons charged, *dubitatur: Hale's Executors* vs. *Ard's Executors*, 12 Wright.

An item of commission for collecting a sum of money is not a proper subject for a book charge; and a charge for visiting the house of the client at the request of a third person is no evidence of indebtedness; nor is a charge for a fee in an equity case, where it did not appear that the plaintiff was concerned in it as attorney; a party is liable only for services rendered therein upon his request, but books of original entry of the attorney are not evidence of a request, made by a third person: *Id.*

The record of a suit which had been brought against the defendant and others, is not admissible on behalf of the plaintiff to take out of the Statute of Limitations his book charge for going to defendant's house, and counselling in regard to it, where the suit was not brought at the time of the entry, and the plaintiff was not employed to attend to it, and did not appear as attorney on the record; nor was it evidence of a continuing relation as counsel and client: *Id.*

In an action upon a book account of an attorney against defendant's executors, it is not competent for the plaintiff to prove by a witness that he was the general legal adviser of the defendant, either for the purpose

of establishing a continuing relation as counsel, or for the purpose of avoiding the Statute of Limitations; nor is the will of the defendant admissible for such a purpose.

The Statute of Limitations runs against a claim for professional services as soon as they are finished; and the relation of continuing attorney in a litigated case will not prevent the claim for services generally from being barred by the statute, though it may for services rendered during the progress of that particular case, and in that case: *Id.*

Where the plaintiff in *assumpsit* recovered less than $100, and there was nothing to show that the demand was reduced by *set-off*, judgment was properly entered without costs: *Id.*

LIEN.

Liens created by Agreement of Parties, who bound by—What Liens are divested by Sheriff's Sale of Land—Liens not created by Implication.—Though equitable liens are not favored by the law of Pennsylvania, yet the parties to deeds of conveyance may, *by clear and express words*, create liens upon land, either for purchase-money or for performance of collateral conditions, which will be binding between themselves and their privies: but such liens will be divested by subsequent sheriff's sales, unless they are in the nature of testamentary provisions for wives and children, or are incapable of valuation, or are expressly created to run with the land: *Hiester* vs. *Green*, 12 Wright.

But a recital on the face of the title that the purchase-money remains unpaid and is to be paid annually, does not of itself create such a lien: *Id.*

Hence, where a widow to whom was devised, during widowhood, the use of a house and lot, released to a son of testator, the devisee in remainder, all her right and interest under the will, in consideration of the payment of an annuity to her yearly, without *expressing* in the conveyance an intention to charge it as a lien on the land, the law will not imply such an intention, and hence no such lien is created thereby, as against a purchaser at sheriff's sale as the property of the son: *Id.*

LIMITATION.

Statute must be pleaded, or it is waived—Contract for extinguishment of usurious Mortgage, construed, with reference to time of pleading Statute of Limitations to action for taking Usurious Interest—Right of Court to construe written Contract—Release of Right of Action for taking Usurious Interest, not inferrable from general Expressions of a desire to settle—Remedy for taking Usurious Interest—No Title passes before delivery of Deed—What Payment is necessary to sustain Suit for taking Usurious Interest.—A defendant who seeks to avail himself of the plea of the Statute of Limitations must plead it: otherwise the plaintiff has a right to presume a waiver: *Heath* vs. *Page*, 12 Wright.

Where a mortgagee agreed to satisfy a usurious mortgage on sale of the land bound by it by the mortgagor, if other good real security for the whole amount due on the mortgage, was provided, payable in ten years, the satisfaction of the mortgage, under the agreement, was not such a payment of the debt, that the Statute of Limitations would commence to run from its date: *Id.*

Whether the satisfaction and discharge of the mortgage was a payment of the debt, is a question for the court, because deducible from the written agreement; and the refusal to submit the question of intention to the jury was not error: *Id.*

MUNICIPAL CORPORATION.

Competency of Witness—Right of Borough to collect Wharf-rates, not resisted by Allegation and Proof of inadequate Facilities.—Where suit is brought in the name of an individual for the use of a borough, for charges due to the borough alone, and on the trial in court the individual's name is stricken from the record, he is not incompetent as a witness: *Prescott* vs. *Borough of Duquesne*, 12 Wright.

Where a borough is authorized by law to establish, improve, and regulate a wharf, and to collect from boats using it a moderate wharfage to defray the expenses incurred, and has accordingly expended money in such improvement, one using the wharf cannot resist payment of wharfage on the ground that it had not been well built or that it needed further improvemens: *Id.*

A *mandamus* would perhaps lie to compel the borough to provide adequate facilities of wharfage, in case of neglect, or an injunction, at the suit of some agent of the public, to restrain them from collecting fees for inadequate performance. In either of these modes the question could be tried once for all parties interested: *Id.*

SALE.

Judicial Sale of Personal Property—Fraudulent Intent of Purchaser in deterring other Bidders by False Representations.—Where, at a judicial sale of personal property, the only bid offered was by the auctioneer who cried the sale by direction and in the presence of the officer intrusted with it, and the property was struck down at a price much below its actual value, in consequence of his alleged false representations, which deterred others from bidding; the fraudulent intent of the buyer was held a question of fact for the jury, and not one to be decided as matter of law by the court: *Brotherline* vs. *Swires et al.*, 12 Wright.

If a crier discourages and repels bidders, whereby he is enabled to strike off to himself valuable property for a small price, it is a fraud which will avoid the sale: but if he give all buyers a fair chance to purchase, only refusing to assure the title which they would obtain his purchase is not fraudulent however inadequate the price: *Id.*

VENDOR AND VENDEE.

Vendee of Real Estate bound by known Incumbrance or Easement—Right of Vendee to detain Purchase-Money.—A purchaser with a covenant of general warranty, cannot, before eviction, detain purchase-money on account of a known incumbrance or defect: *Wilson* vs. *Cochran*, 12 Wright.

Whilst a right of way successfully asserted against a vendee may be a breach of covenant of general warranty, if the purchaser have bought without notice of it, yet the law is that he shall perform his engagements whenever his knowledge and the state of facts continue to be the same they were at the date of the purchase: *Id.*