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A GREAT DECADE.

In June next, the first decade of the administration of Dr. Reed, as president of Dickinson College, comes to an end. In no similar period has the college made such marked progress. Ten years ago, there were but 250 students in Carlisle under the auspices of the institution. There are now 450. The campus has been much beautified; Chapel Hall remodelled, the Preparatory School enlarged, Denny Hall erected, an athletic field secured. The curricula of the college have been developed, and several new professors added. Important additions to the endowment have been obtained. The Law School is a wholly new creation, and, since 1890, when it opened with but a dozen students, has grown until to-day it has over one hundred students devoted exclusively to the study of law. The college is more widely known than ever before, and holds a larger place in the thoughts of the citizens of Pennsylvania, than at any time since its foundation. An eloquent speaker and an indefatigable worker, Dr. Reed has made a deeper impress on the mind of the state, than perhaps any of his predecessors. His kindness and courtesy towards students, his grace and dignity, his ability as a man of affairs and administration, have secured for him their esteem and affection. We think it safe to predict that under Dr. Reed's management, the college, during the coming years, will not only maintain the proud position which it now holds, but will exceed all its precedents in the rate of its growth in wealth, in the numbers of its students, and in influence. And we may add that in no department of the Institution is there a more cordial appreciation of the fruitfulness of his labors, than among the students of the Law School with whose origin his name will for all time be inseparably associated.

But a few weeks yet remain in the school year, and almost before it is realized, commencement will be upon us, and the class of '99 will be ushered from its struggles in mastering the principles of the law, in law school, into the broader sphere of action which awaits all those who have successfully passed through the preparatory stages. Just how many future supreme court justices, governors, presidents, and leading legal lights in general, the present class of '99 of the Dickinson School of Law contains, we are unable at present, with any degree of certainty, to ascertain. That there are many, among this illustrious class, is evident, and it is to be hoped that the luster and power which will emanate from their successes, will redound to the fame of our alma mater, so that each may ever be mutually proud of the other.

Commencement time is always an interesting and attractive part of the year, at Dickinson. The town is filled with visitors, proud fathers and mothers are on hand to witness the graduation of favored sons and daughters, and entertainments and amusements are in evidence constantly. This year the exercises will be particularly interesting to the Law School. A large class graduates, and arrangements have been made for attractive graduating exercises. Sunday, June 4, is baccalaureate Sunday. The President of the College on this day addresses the assembled graduating classes of the College and Law School. In the afternoon are interesting exercises on the campus. Tuesday afternoon is class day for the College, and Tuesday night will be held the graduating exercises proper of the Law School. On this evening, F. B. Sellers, will deliver the oration as class representative, and Hon. St. Clair McKelway, the distinguished editor of the *Brooklyn Daily Eagle*, will deliver the commencement oration. After the addresses have been delivered, the presentation of diplomas and awarding of prizes, follow. Taken in all the exercises will be very interesting and will furnish sources of pleasure to all who witness them.

At a meeting of the Junior Class held on April the eighteenth, Mr. Rothermel was elected captain of the prospective baseball team, which is to be composed of members of that class.

The lecture on Chief Justice Taney, delivered here recently, by Hon. George Walter Smith, of the Philadelphia bar, appeared in the April issue of the *American Law Register*, published under the auspices of the University of Pennsylvania.

Keyser, '97, is taking a prominent part in politics in Bucks County. He was recently candidate for chairman of the county committee and but for his retirement before the election, would probably have been successful in his candidacy.

General Horatio C. King, of New York City, will be toastmaster at the commencement dinner at Dickinson.

A. S. Heck, of Coudersport, Potter county, a member of the first class which graduated from the law school, after its reorganization, recently visited his Alma Mater, on his return from the Supreme Court.

Dr. Reed has presented to the library, a beautifully bound set of the Statutes at Large of Pennsylvania. The set consists of three handsome volumes.

Herman Berg, Jr., '96, chairman of the democratic county committee, has been elected district chairman for the district composed of Adams, Cumberland, Dauphin, Franklin, Juniata, Lebanon, Mifflin, Perry and York.

Jno. B. T. Caldwell, '98, of Altoona, was to be seen on the streets of Carlisle recently.

The following is an interesting extract from a letter received from Chas. E. Daniels, '98: "I have recently been elected president of the West Side Board of Trade, of Scranton, an influential body of the city."

Philip E. Radle, '98, is interested in a very important test case in the Northumberland county courts—May term.

Carey, '96, of Scranton, was in Carlisle a few days last week.

The subject of the address which will be delivered by Hon. St. Clair McKelway, on June 6th, is "Modern American Leadership."

DELTA CHI FRATERNITY.

The national convention of the Delta Chi Fraternity met in annual session at Carlisle with the Dickinson Chapter on Wednesday, Thursday and Friday, May 3rd, 4th, and 5th.

Immediately upon the arrival of the delegates on Wednesday a session of the board of governors was called and the order of business for the convention formulated. At eleven o'clock the convention was called to order in Assembly Hall which was very artistically decorated in

the colors of the fraternity. At this meeting credentials were presented, committees were appointed and other preliminary business disposed of. In the afternoon, the visiting "fratres" with the Dickinson Chapter in a body witnessed the baseball game between Dickinson and Susquehanna. In the evening another business session was held after which the local chapter of Delta Chi tendered an informal reception to their guests at their cozy parlors in the Stuart building.

On Thursday the Dickinson Chapter brought forth encomiums of deepest gratitude when they transported the boys via P. & R. Ry. to Gettysburg where the genial aggregation of "Greeks" were met and welcomed by Mayor McCammon. Carriages were in waiting and the party was immediately driven over a part of the historic battlefield, after which dinner was served at the Eagle Hotel. In the afternoon another excursion to that part of the field not covered in the morning was made. Capt. Minnich, the well-known battlefield guide, than whom there are none better, from all of the points of especial interest gave very eloquent and graphic portrayals of the events of awful bloodshed and devastation which occured there more than three decades since. The sight was a most impressive one and the visitors were profuse in the expression that it was the most magnificent scene of its kind to be witnessed in all our fair land. The return to Carlisle was made in the evening when a most enjoyable smoker was given at the fraternity rooms.

All of Friday was consumed in important and interesting executive sessions.

Following is the list of representatives in attendance:—A. Dix. Bissell, Rochester, N. Y.; Mark H. Irish, and Geo. F. McDonnell, Toronto, Can.; E. G. Lorenzen, Cornell; Louis R. Frankel, St. Paul, Minn.; W. E. Chapman and H. L. Steward, Ann Arbor, Mich.; A. J. Hyatt and R. S. Lansing, New York City; H. J. Westwood, Buffalo, N. Y.; A. Frank John and Herman M. Sypherd, of the Dickinson Chapter. There were also present from among the alumni members of the local chapter: W. Harrison Walker, Bellefonte; W. H. LeGoullon, Pittsburg; Gabriel H. Moyer, Lebanon; Chas. E. Daniels, Scranton; W. K. Shissler, Minersville; G. Fred. Vowinckel, Clarion; J. S. Omwake, Shippensburg; Caleb S. Brinton, C. C. Bashore, A. J. Feight, of Carlisle.

The grand finale of the convention was the banquet of Friday night. Assembly Hall, elegantly decorated and brilliantly illumined presented a most beautiful spectacle. The tables were uniquely arranged in the form of the greek letters of the fraternity. The dinner was a most elaborate affair, the sumptuous viands being partaken by fifty Delta Chis, Achri, Honorary and Alumni. The post-prandial addresses were highly enjoyable. Herman M. Sypherd was toastmaster, and following is the toast list:

Welcome—Hon. E. W. Biddle.

The Supreme Court—A. Dix. Bissel.

The Mother Chapter—E. G. Lorenzen.

The Opportunities of the Modern Lawyer—Hon. D. H. Hastings.

Fratres in Facultate—F. C. Woodward, LL. M.

The Modern Law Student, Theoretical and Practical—J. W. Wetzel, Esq.

The Legal Profession, Why did I Choose It?—H. Silas Stuart, Esq.

Sir Edward Coke—D. Edward Long.

The Wooly West—Louis R. Frankel.

The Ladies—Garrett B. Stevens.

Fees—Hon. James M. Weakley.

The visitors departed on Saturday leaving kindliest wishes for the continued prosperity of the Dickinson Chapter and the unanimous verdict that they had enjoyed, in every way, the most successful convention in the history of the Delta Chi Fraternity. The three and twenty members of the Dickinson Chapter are to be congratulated for their enterprise in undertaking so large a task and having carried it to so successful a consummation.

The next convention meets with the New York University Chapter.

DICKINSON SOCIETY.

It is gratifying to note that the interest which has beeen shown in the literary work of the Dickinson Society, during the winter, has not been distracted by the warm weather.

This, to a great extent, is due to the fidelity of the executive committee, consisting of Messrs. Coles, Clarke and Russel, in

arranging excellent programs. On April 14th, there was an interesting debate on the question: Resolved, "That under the form of government now existing in the United States there are afforded more privileges to its citizens than under that form of government now existing in England."

Messrs. Frantz and Shreve argued for the affirmative and Messrs. Stauffer and Hess for the negative. The judges, Messrs. Clark, Shaffer and McCabe, gave the decision to the negative.

The meeting of April 28th, was one of exceptional interest. The program, consisting of a jury trial in the case of Craig vs. Shippensburg Water Co., was a new departure in the history of the Society.

Messrs. Sheeline and Gery appeared as attorneys for the plaintiff and Messrs. MacEwen and Collins for the defendant. The attorneys exhibited exceptional skill in the cross examination of the witnesses and in their addresses to the jury.

Professor Woodward sat as President Judge with Mr. Geo. Aubrey as associate. The jury having been charged by the associate Judge, retired and brought in a verdict for the plaintiff.

The trial afforded an excellent drill for the participants and a source of knowledge to Society, and having met with such approbation, the executive committee has arranged a similar program for next meeting.

GLEE CLUB TRIP.

Inasmuch as the Law School has eight representatives on the Dickinson College Glee Club and Orchestra, it was thought that a brief account of the recent trip taken by that organization would be of some interest to the readers of the FORUM.

The club left Carlisle on Monday, April 2nd, and visited in the order named the following places: Wilmington, Dover, Milford, Denton, Md., Easton, Md.

Speaking generally of the trip it may be said that the weather was favorable, our receptions cordial, the attendance at our concerts good, and the success of the trip gratifying to the members of the club.

Speaking of some features of the trip we mention with pleasure our reception at Wilmington by that loyal alumnus of Dickinson College and firm friend of the Law School, Mr. Chief Justice Lore, of Delaware. Judge Lore made our stay in Wilmington most enjoyable and one to be remembered. (We bespeak for him a hearty welcome should he again honor our institution with a visit.)

After the concert, the home of Mr. Jos. E. Holland, a trustee of Dickinson College, was the scene of a brilliant reception given in our honor. Mr. Holland was a genial host, and his hospitality was much appreciated. From Milford we drove ten miles to Ellendale, where we took train for Denton. Although the drive was a novelty in Glee Club travel it was thoroughly enjoyed by all.

At Easton we encountered the first rain on our trip, but despite this fact a goodly number heard the concert. We left Easton by steamer for Baltimore immediately after the concert, and arrived there at 6 A.M. From Baltimore we took train for Carlisle and arrived home at 12:27 well satisfied with the results of the trip. A word of praise should be spoken for Manager Hare, of the Law School for the efficient manner in which the trip was conducted. The law men on the club are Katz, Mearkle, Holcomb, Winlack, Devall, Mitchell Hare and Weeks.

MOOT COURT.

WILSON vs. ERIE R. R. CO.

COBLENTZ and CLARK for plaintiff.
SEBRING and SHIPMAN for defendant.

The Erie Railroad is a corporation of the State of New York. The act of April 27th, 1898, of that state requires every railroad corporation operating a railroad in New York more than 100 miles long, etc., to issue mileage books, with coupons. On presentation of such book to a conductor "on any train or any line of railroad" of the issuing corporation, the holder "shall be entitled to travel for a number of miles equal to the number of coupons detached" by the conductor. "Such mileage book shall entitle the holder thereof to the same rights and privileges * * to which the highest class ticket * * would entitle him." For refusal to issue such book, the corporation shall forfeit $50 "to be re-

covered by the party to whom such refusal is made."

The act of April 2d, 1850, of New York, enacts that "if any passenger shall refuse to pay his fare, it shall be lawful for the conductor * * * * to put him * * out of the cars * * at any usual stopping place, or near any dwelling house, as the conductor shall elect, on stopping the train."

The Erie Railroad sold a 500 mile book to John S. Wilson, for $10. Printed in the book, is "New York State Book. Good only for one continuous journey wholly within the state of New York, and will not be accepted for passage when any portion of the journey passes through any other state." Wilson boarded a train at Owega, N. Y., and rode to Susquehanna, Pa., using his coupons, without objection from the conductor. At Susquehanna he took another of defendant's trains for Hancock, N. Y., paying fare to Deposit, the first station in New York, and then using his coupons for the fare from Deposit to Hancock. Returning on the same line to Susquehanna, he did the same. At Susquehanna he took a train for Binghampton, N. Y. The conductor—different from the conductors on the other trains—denied the right to use the coupons. Wilson then paid his fare to Kirkwood, the first station in New York, the conductor giving him a receipt, and telling him he could not use coupons for the distance between Kirkwood and Binghampton. At Kirkwood, Wilson got off, obtained the rate at the ticket office on showing his receipt, and in two or three minutes, remounted the train for Binghampton. The conductor refused to receive coupons, and Wilson not paying fare, forcibly ejected him from the car about one-fourth of a mile from Kirkwood station, and not near a dwelling house. Wilson was compelled to hire a team to take him to Binghampton, nine miles off. A resident of Pennsylvania, he begins trespass on the case in Delaware, under a statute of Delaware permitting actions *ex delicto* against foreign corporations, by foreign attachment.

OPINION OF THE COURT.

SYPHERD J. Defendant is a corporation of the State of New York. Plaintiff is a resident of the State of Pennsylvania. The question arises can a personal action be brought in this court by a non-resident of the State of Deleware against a foreign corporation. It has been frequently decided, both in the State courts and in the courts of the United States, that personal actions may be maintained in whatever State service can be obtained upon the defendant.

At common law personal actions whether *ex contractu* or *ex delicto* are transitory, may be brought anywhere and are governed by the *lex fari*. In Leonard v. Columbia Steam Navigation Co., 84 N. Y. 48, an action was brought in that State to recover damages for death caused by an explosion which occurred in the State of Connecticut. A recovery was permitted.

In the case before us the plaintiff has a right, the foundation of which rests upon a statute of New York, but as the action is transitory in its nature, the defendant can be held liable in any court to whose jurisdiction he may be subjected by proper service or by voluntary appearance. Dennick v. Railroad Co., 103 U. S. 17, 18.

The counsel for the defendant has urged upon the court as an objection to its jurisdiction that the statute of New York, imposing a penalty of $50 to be recovered against the corporation by the party aggrieved, is penal in its nature and in obedience to the maxim of international law laid down by Chief Justice Marshall in *The Antelope*, 10 Wheat. 66, 123, that this court should refuse to enforce the law in question.

Upon an examination of the adjudicated cases it is clear that the statute referred to is not penal in the meaning which would forbid another State from enforcing it. Huntington v. Attrill, 146 U. S. 673.

The statute of New York in question comes under the class affording a private remedy to the party aggrieved and although penal in its nature, (a penalty being imposed upon the corporation for its violation), will not come within the rule that "No country will enforce the penal laws of another."

By a statute of the State of Delaware actions *ex delicto* may be brought against foreign corporations by foreign attachment process. Accordingly to the agreed statement of facts the plaintiff has complied with the terms of this statute and

has obtained service on the defendant. It is therefore the conclusion of the court upon the question of jurisdiction, that the action can be maintained in the State of Delaware and is properly brought.

The next question is the interpretation of the contract upon the milage book.

The defendant claims that the entire journey contemplated must be within the State of New York. This is manifestly unreasonable. Suppose A boards a train at Albany with the intention of going to Chicago, will it be contended that he could not use one of these books as long as he traveled in New York?

In principle the case before us does not differ. Wilson, the plaintiff offered his mileage book for passage from Susquehanna, Pa., to Binghampton, N. Y. The conductor refused to accept the ticket and told Wilson that he could not use it for any part of the journey to Binghampton. Thereupon he paid his fare to Kirkwood, the first stopping place in New York. He left the train, transacted some business with the ticket agent, boarded the train and again presented his mileage book for transportation to Binghampton which the conductor refused and ejected him in the manner set forth in the statement.

This was the beginning of a new journey wholly within the State of New York. Wilson had paid his fare to Kirkwood and then his relation with the railroad company ceased until he should again board one of their trains, or should place himself in such a position that he should be regarded as a passenger.

The true meaning of the words quoted from the mileage book is that the ticket would not be good for the entire journey if the passenger desired to make a trip, part of which would pass through another State. For the part of the journey within the State of New York, the ticket would be valid.

The fact that the conductor knew the plaintiff intended to go to Binghampton is immaterial. He was rightfully upon the defendant's train, and had the proper evidence of the right to ride to Binghampton. The conductor therefore violated a right of the plaintiff in ejecting him from the train, damages for which he seeks to recover in this court.

The case therefore, is a proper one for submission to the jury and the motion for a non-suit is denied.

OPINION OF THE SUPREME COURT.

At the trial, the New York statutes were put in evidence. They might have been proved, by the production of a book purporting to be published by the authority of the State, and to contain its statutes.—Kean v. Rice, 12 S. & R. 203; Mullen v. Morris, 2 Pa. 85: Bock v. Lauman, 24 Pa. 435; 1 Wharton, Evid. 281. A copy duly authenticated, in the mode prescribed by the Act of Congress, was sufficient. Bollinger v. Gallagher, 170 Pa. 84; Chamberlayne's Best, Evid. 456. There was no error in the proof of the statutes.

The right of a railroad corporation to eject a passenger who refuses to produce a proper ticket, or to pay his fare, is recognized to exist independently of statute. If Wilson by offering his coupons, entitled himself to the contemplated carriage, a wrong would have been committed upon him, by his ejection; even had there been no statute. Deitrich v. Pa. R. R. 71 Pa. 432; Vankirk v. Pa. R. R. 76 Pa. 66. In the absence of proof of such statute, the courts of Delaware would presume that its own common law principle obtained in New York.

But, the Act of April 2, 1850, regulates the right of ejection of a passenger. He may be put off, for refusal to pay his fare, "at any usual stopping place or near any dwelling house." By implication, the railroad company cannot eject at any other point. Phettiplace v. N. P. R. R. 20 L. R. A. 483 (Wis).; Chicago, Etc., R. R. v. Parks, 18 Ill. 460; Terre Haute, Etc., R. R. v. Vanatta, 21 Ill. 186; Stephen v. Smith, 29 Vt. 160. The place at which Wilson was put off was not near a dwelling house. Was it "at any usual stopping place?" It was "about one-fourth of a mile" from Kirkwood, a station. We think the court below properly allowed the jury to say that a point one-quarter of a mile from the station was not at the station. A meeting of supervisors in an office a quarter of a mile from the court-house, was not *at* the courthouse; Harris v. State, 72 Miss. 960; 3 Am. & Eng. Encyc. 167. Authority to erect a bridge "at the Old Town Falls," was not an authority to erect it one-half mile below the falls. State v.

Old Town Bridge Co., 85 Me. 17. A statute requiring service of a writ by leaving it with a white person "at the dwelling house," is not complied with, by leaving it with such person at a corner of the yard of the house, one hundred and twenty-five feet from it. Kibbe v. Benson, 17 Wall. 624. A water tank one quarter mile from the station was not "at" the station; Chicago, etc., R. R. v. Flagg, 43 Ill. 364; nor was a point from 40 rods to one-half a mile from the station; Chicago, etc., R. R. v. Parks, 18 Ill. 460; nor one a half mile from the station, though in the same town, I. C. R. R. v. Latimer, 128 Ill. 163. What degree of proximateness is expressed by the word "at" will depend on the subject matter. The object of the statute is not difficult to discover. A passenger, in the dark, in excessive heat or cold, in a violent snow or rain storm, might be seriously incommoded or imperiled, if he had to transport himself and his baggage, a quarter of a mile. Perhaps circumstances might have been shown, that would have justified the decision that a point a fourth mile from the station was "at" the station. They have not been shown. Inasmuch then, as Wilson was ejected in violation of law, an actionable tort was committed against him.

The tort however was committed in New York. The action is in Delaware. If the tort is to be regarded as made such, by common law, the action for it can be brought in any jurisdiction. So, it can, we think, even if the tort is made such by the New York statute. Knight v. W. Jersey R. R. Co. 108 Pa. 250; Usher v. W. Jersey R. R Co. 126 Pa. 206; Derr v. Lehigh Valley R. R. Co., 158 Pa. 365; Phillips v. Library Co., 141 Pa. 462; Demmick v. R. R. Co. 103 U. S. 11; Herrick v. Minn., etc., R. R., 11 Am. & Eng. R. R. cases, 256; Leonard v. Columbia Steam Nav. Co., 84 N. Y. 48. The act of April 2d, 1850, which impliedly forbids the ejection of the passenger elsewhere than "at" a usual stopping place, and gives to a passenger whom the company refuses to transport to his proper destination, an action for damages, is, in no such sense penal as to preclude the substantial enforcement of it, by treating it as the basis of a right in another state.

But, even if the ejection of Wilson was not improper, as to its mode, was it justified by the facts? The Erie Railroad Co. had sold him a 500 mile book, containing 500 coupons, each entitling to a mile's ride, at the rate of two cents per mile. This book entitles itself "New York State Book." It contains the statement, "Good only for one continuous journey wholly within the state of New York, and will not be accepted for passage when any portion of the journey passes through any other state." "Continuous passage" or "continuous journey" has a well defined meaning. On an ordinary ticket; O. C. etc., R. R. v. Clark, 72 Pa. 231; 3 Wood Railway Law 1637; 25 Am. & Eng. Encyc. 1109, or on one which expressly stipulates for a "continuous passage," the entire trip must be made on the same train. The passenger cannot stop off at intermediate points, and resume the trip on a later train. Barker & Caflin, 31 Barb. 556; Hamilton v. N. Y. C. R. R., 51 N. Y. 100. When the passenger purchases a ticket, he of course, names the *terminus*, and he attempts to use the ticket, in order to secure passage to that terminus.

The coupons bought by Wilson named no termini. Each represented *a* mile of travel. But the company intended to put a restriction on their use by saying that they should buy a mile's ride, only when that mile was a part of "one continuous journey wholly within the state," and that they should "not be accepted for passage when any portion of the journey passes through any other state." What did it mean? What must Wilson have understood it to mean? It plainly did not mean, that the coupons would not be accepted, when any portion of the journey passes through any other state, *for such portion as passes through any other state.* Were this the meaning, how easy to have said so. It meant that, in that case, the coupons should not be received for any portion of the journey, even for that portion which did pass through the state. The coupons are declared to be good for what? Good for a journey; a continuous journey, a continuous journey wholly within New York, and *only* for such continuous journey. The continuous passage or journey is the whole of a journey on the same train. If Wilson had not descended from the car at Kirkwood, could it be doubted that his

journey was continuous from Susquehanna to Binghampton? Suppose he had descended to get a cup of coffee or a sandwich, or to talk to a friend whom he saw on the platform, and had then remounted the same train, would his journey have been any the less continuous? And does his intention to evade the prohibition upon the use of his coupons, make his descent from the car the terminus of one journey, and his reascent on the same car in two minutes, the commencement of another? Had Wilson waited for another train, probably the journey would have been discontinued at Kirkwood, and, when the other train was boarded by him, another journey would have begun. We think it clear that the company intended to make the coupons as little useful as possible consistently with the statute, and purposed that they should be usable only when the passenger began a trip not beyond, but in New York by boarding a train which he had not previously boarded, and which he did not intend to leave until he reached another point in New York.

The act of April 27th, 1893, however, required the defendant "to issue mileage books entitling the holder thereof," on the presentation of the coupons thereof, "to travel for a number of miles equal to the number of coupons detached" by the conductor. The conductor may not by refusing to detach the coupons make them useless. The object of the law was to require the company to convey *any* passenger a mile in New York for a coupon. It no more had the right to say that the coupon should be received only when the mile was part of a journey wholly in New York, than to say it should be received only if the traveller resided in New York or was travelling without baggage, or was a minister or a lawyer. The statute has declared that a coupon should entitle to a mile's ride. The imposition by the company of limitations which the law does not impose, is *pro tanto* a violation of it.

Perhaps Wilson might have declined to accept the book with the attempted restrictions, and sued the company for the penalty of $50 for refusing to issue the proper mileage book. His acceptance of it with the restrictions does not estop him from insisting on the use of the coupons as if the restrictions had not been expressed. The courts frequently refuse to enforce illegal qualifications of a contract, though giving effect to its principal stipulation. The coupon is valid, in so far as it represents a contract to convey a mile; although the declaration that the mile must be one of a continuous journey begun and ended in New York, is unenforceable.

The statute imposes the penalty of $50, not only for refusing to issue the mileage book, but also for refusing to accept such a book, when issued, for transportation. We do not understand that the object of Wilson's action is to recover this penalty. If it was we should have difficulty in concluding that he could appeal to the Delaware courts to assist him. His action, rather, is brought to recover damages for the unlawful ejection from the train, and this ejection he alleges to be unlawful because (1) it occurred at a place at which it was forbidden to be made by the New York statute of April 2d, 1850, and because (2) there was no justification for an ejection at any place, inasmuch as the coupon tendered ought to have been received.

Had the defendant had the right to restrict the coupons as it did, its ejection of the plaintiff would have been defensible, had it occurred at the proper place. He had been allowed by other conductors to use the coupons, not only for miles in New York, but for miles outside of New York, when the continuous journey was not in New York. This did not make the refusal of a more intelligent or alert conductor to accept coupons under similar circumstances improper. Beebe v. Ayres, 28 Barb. 278; Dietrich v. Pa. R. R., 71 Pa. 432. The plaintiff was not misled to his hurt, by the conduct of the other conductors. That they permitted him to obtain a ride to which he had no right, surely did not give him a right to obtain another.

Although we do not pursue the path adopted by the learned trial court, we are satisfied that the result reached by it, is correct.

Judgment affirmed.

JAMES ANDERSON vs. JACOB DAVIS.

Right to alien dower—When it may be aliened.

Bill in equity for assignment of dower.

MEARKLE & SHELENBERGER for plaintiff

1. Married women can dispose of property, real, personal or mixed, either in possession or expectancy. Penna. Statute June 3 1893, McConnell v. Linsey, 131 Pa. 489; Hays v. Leonard, 155 Pa. 474.
2. Married women may assign dower right. Pope v. Meade, 99 N. Y. 201; Thompson v. London, 4 Paige (N. Y.) 444.
3. The slightest interest in land may be sold. Humphrey v. Humphrey, 1 Yeates 429.

WALLACE & COLLINS for defendant.

1. During coverture dower is a mere contingent expectancy and not a vested estate. Thompson v. Morron, 5 S. & K. 289; Kennedy v. Wedson, 1 Dallas 415.
2. Statute of June 1893, does not give a married woman a right to release widow's dower to a stranger even though husband joins with her in release, unless it is coupled with husband's interest and released to his grantee. Such a transaction would defeat the very purpose of this provision and would be contrary to policy of the law. Boyer v. Commonwealth 40 Pa. 37: White v. Wages 25 N. Y. 333; McConnell v. Lindsay, 131 Pa. 476.
3. Conveyance by a married woman during husband's life of her dower right is void and does not estop her from maintaining a writ of dower against the grantee after husband's death. If such conveyance is void at law it cannot operate in equity. Mason v. Mason, 140 Mass. 63; Gibson v. Gibson, 15 Mass. 106.

STATEMENT OF THE CASE.

John Kendall conveyed a farm to Davis, his wife not joining in the deed, nor otherwise releasing to Davis her dower. A year afterwards, Kendall being very ill, and about to die, he and his wife made a deed for her interests in his land as dowress, to James Anderson, who paid her $2000. Six weeks afterwards, Kendall died. Anderson now files this bill in equity to have the dower assigned to him.

OPINION OF LANDIS, J.

The question arising in this case, is whether a dower interest accruing to a married woman prior to her husband's death, in the real estate of her husband, by virtue of the marriage, is assignable, and we think it is not.

The doctrine seems to be well and almost universally settled, that until assignment, the dower right is merely inchoate. Although she may release the right to the owner of the fee, she can make no other disposition of it until set apart to, or admeasured to her. It is a personal right which lies only in action, and not in grant, before it is assigned to her. It is said that the position of the dowress before the assignment is very peculiar. During this period, from the date of marriage till the date of assignment, her situation is an anomalous case, standing on its own peculiar circumstances, and neither borrowing nor offering any analogies. It is probably the only existing case in which a title, the complete and unopposed by any adverse right of possession, does not confer on the person in whom it is vested, the right of reducing it to possession by entry. The situation of a dowress has no resemblance to that of a person who has become entitled to a particular estate by way of remainder or springing use; she has no seizin in law, nor can she exercise any act of ownership before assignment. Park on Dower, p. 334.

In forming an opinion on this question we are compelled to consider dower right as a right separate from and not controlled by the rules usually applicable to those rights of the nature of which dower seems to smack.

Some peculiarities need to be pointed out to lead us to a determination in this case.

1. The right of dower may be defeated, modified or changed by the Legislature. Barbour v. Barbour, 46 Me. 9; Melitez Appl. 17 Pa. 449.
2. The inchoate right of dower before the husband's death is wholly divested when land is taken for public uses and the owner paid. It is not such a vested interest in his wife as to remain outstanding, and to ripen into an estate in default of compensation to her. Moore v. New York, 8 N. Y. 110.
3. A sale under an act "to provide for the partition of real estate" of an estate held in common, divests the wife of a cotenant in fee of the estate of her inchoate right of dower therein, and passes the entire estate to the purchaser. Weaver v. Gregg, 6 Ohio 547.

4. A married woman cannot protect her dower interest from waste or deterioration by her husband or his alienee. Washburn-on Real Property, Vol. I. 3 Ed. p. 301.

An estate whose existence is so precarious as that of dower right seems to be, we do not deem to be such an estate as lies within the power of alienation.

The interest of the wife in her dower cannot be sold on execution for her debts nor can it in any way be attached. Gooch v. Atkins, 14 Mass. 378. This at once displays an unusual and unique circumstances for has the wife not something of value and then not of value just as the whim to convey or to retain is entertained?

A case in 32 Maine 427 holds that a conveyance by a married woman, before the death of her husband, of her dower right, except to a party in possession or in privity of the estate, from which it accrued, is without effect. In this case the point involved in the case at bar is squarely met and as squarely decided.

Some claim to the right of a married woman to convey her dower interest might be obtained from the fact that the law allows the wife to join in the husband's deed of conveyance. But this is only for the purpose of estopping her from claiming her dower after her husband's death, and not for the purpose of conveying any supposed interest that she might possess in the property. 21 Me. 156; 8 Pick. 532; 18 Pick. 9.

The law has looked with disfavor upon conveyances of the exemption and homestead interests both of which approximate in character and object to the right of dower. 4 District Rep. Pa. 550; Odenwelder's Estate; Gummison v. Twitchel, 38 N. H. 68.

To further support our holding in this case we need but to consider the position of Jacob Davis, the tenant in possession at the time of the husband's death, in case the widow demanded of him an assignment of her dower. A release of dower to a stranger cannot be set up as a bar to her claim against the tenant of the estate. Washburn on Real Property, Vol. I, p. 247, Harrinman v. Gray, 49 Maine 537; Pixley v. Bennet, 11 Mass. 298. Would he then not be compelled to assign to her the dower in spite of what disposition she had made of it prior to her husband's death? After he had assigned to the widow should he then be compelled to make a second assignment to James Anderson, the party holding the widow's conveyance for her dower right? We do not hold him so liable. To do this would be an affront to the spirit of our laws and an insult to the principles of justice.

If Anderson has any remedy, and we think he has, it must be against the widow, on the covenants contained in the deed of conveyance of the dower right, which conveyance we deem a mere executory contract calling for the future transfer of this right of dower, i. e. after it has been assigned to the widow.

An assignment of an expectancy may be enforced as an executory agreement to convey. Fritz Est., 160 Pa. 156; Bayler v. Com., 40 Pa. 37; Power's Appl., 63 Pa. 443.

The plaintiff's counsel claim that by virtue of the Act of June 3, 1893, providing that married women can convey any property of any kind, real, personal or mixed, and either in possession or expectancy the same as any *feme sole* has the power to do. We hold that a married woman acquires no right from this Act by which she is invested with the power to convey her dower interest. In Odenwelder's Estate, 4 Pa. District Rep. 550, this act is construed to confer on married women only the rights and powers of unmarried persons, and the exercises of these rights and powers is limited to "the same extent" by married women as by unmarried persons. Now an unmarried woman can have no inchoate right in a husband's estate and can exercise no powers over such right. In White v. Wagner, 25 N. Y. 328, the same construction was put upon an Act enabling married women to convey and devise real estate and personal property. The court holding that "No doubt there was an intention to confer upon the wife the legal capacity of a *feme sole*, in respect to conveyances of her property, but this does not prove that she can convey to her husband (the point in question in the case) for no such question could possibly arise in respect to a *feme sole*.

Demurrer sustained, and bill dismissed.

OPINION OF THE SUPREME COURT.

A wife acquires, as soon as her husband becomes owner in fee of land, an interest in it. She is not like an heir. The heir has no species of estate in, or lien upon the ancestors' land. He has no rights with respect to it which the courts recognize. The ancestor may grant it during life or devise it at death without the heir's consent. Not so with dower. The husband's grant or devise of the land, does not detach it therefrom. In England and in perhaps most of the American states, the dower avails against the husband's debts. As he cannot directly withdraw his land from the widow's claim, neither can he indirectly by contracting debts. It is anomolous perhaps, that in Pennsylvania, debts are superior to dower. A sale on a judgment, Directors of Poor v. Royer, 43 Pa. 146; or mortgage, Scott v. Crosdale, 2 Dall. 127; or, under a testamentary power, Mitchell v. Mitchell, 8 Pa. 126, or the order of the Orphans' Court, for the payment of debts, will discharge the dower. An assignment voluntary or in bankruptcy, or in insolvency, will not have this effect.

It is unimportant to classify the kind of interest which the wife has. The courts will protect it, even before the husband's death. Clifford v.Kampfe, 147 N. Y. 383; Flynn v. Flynn, 171 Mass. 312; Davis v. Wetherill, 13 Allen 60. The decisions are not uniform as to whether it is a vested or a contingent interest, most affirming that it is contingent. It is difficult to see why it should not be called vested. That a sheriff's sale on judgments will divest it, does not show that it is contingent. That the death of the wife before the husband will prevent its enjoyment, no more makes it contingent than the possibility of the death before A of B to whom a remainder for life, after the death of A, is granted, would make the remainder contingent.

Contingent interests are alienable. It is "the rule in equity that an assignment intended to be made of a possibility for a valuable consideration, should be decreed to be carried into effect." Williams Real Property 336 (17th Ed.) A conveyance of a contingent remainder operates as an estoppel, "whenever the remainder becomes vested, and the estoppel becomes an estate in interest" 2 Washb. Real Prop. 591. Were then the wife's dower contingent, it might still be alienable. Indeed, it has been alienable for centuries, by fine in England, by joinder in the husband's conveyance with separate acknowledgment in Pennsylvania.

The wife's dower is more than an expectancy, like the heir's; yet a child's conveyance of what he hopes to get by descent or devise, is in equity valid, if for a consideration. Bayler v. Commonwealth, 40 Pa. 37; Fritz's Estate, 160 Pa. 156; Lennig's Estate, 182 Pa. 485; Kuhn's Estate, 163 Pa. 438; Patterson v. Caldwell, 124 Pa. 455; East Lewisburg Lumber Co. v. Marsh, 91 Pa. 96. As Green J., remarks, "Almost every form of property or right, whether in *esse* or *posse*, is assignable." Day v. New England Life Ins. Co., 111 Pa. 507. It would follow *a fortiori* that a contingent interest, which is more than an expectancy, is assignable.

That a dower right may be aliened after the death of the husband, but before the setting apart of any portion of the premises, is well settled. Payne v. Becker, 87 N. Y. 153; Pope v. Mead, 99 N. Y. 201; Wilson v. Ott, 160 Pa. 435. The alienee may take the measures which the widow could have taken, to have the dower set apart. What change has the husband's death wrought? Only these. If the dower was contingent before, it has now become absolute; and the husband is no more. These differences ought not to affect the wife's power to aliene her interest.

It has been held, in some jurisdictions, that the wife can aliene her dower only to her husband's grantee, and by release. Marvin v. Smith, 46 N. Y. 571; Mason v. Mason, 140 Mass. 63; Johnson v. Shields, 32 Me. 424. There might possibly be some reason for forbidding the wife to convey the dower before the husband has aliened the fee. After he has aliened the fee, without the release of the dower, we are unable to realize why with the consent of the husband, manifested by his joining in the deed, she may not transfer her dower to whom she chooses. It would hardly be contended that she could not then transfer it to the previous grantee of the land. Mrs. Kendall had found a purchaser willing to pay $2000 for her dower. Had she been compelled to sell it, if she sold it at all, to Josiah Davis, she might not have been able to get $1000 for it

Davis might have declined to buy it at any price, speculating on the possibility of her death before her husband.

If Mrs. Kendall's deed to Anderson could not operate at law for any reason, it will be treated, in equity, as a covenant to convey. Such covenants by married women, are specifically enforceable. Reed's Estate, 3 District, R. 503. Whitlinger v. Jack, 16 Pa. C. C. 112; Bauck v. Swan, 146 Pa. 444. Equity in this State, will regard that as done which ought to have been done, and the right of Anderson is precisely the same as if Mrs. Kendall had, since her husband's death, conveyed the dower interest to him. The learned court below erred, we think, in postponing this hypothetical conveyance from the widow until the dower had been actually assigned.

Decree reversed, and bill reinstated.

JOHN BOGARDUS vs. SAMUEL FENIS.

Trespass for conversion.

GEO. W. AUBREY and WENCEL HARTMAN, attorneys for plaintiff.

For every invasion, violation or infringement of a legal right the law implies damage. Williams v. Esling, 4 Pa. 486; Repke v. Sergeant, 7 W. & S. 9; defendant cannot exonerate himself from liability for the sixty dollar cow by proof that it was injured without his fault. Perham v. Coney, 117 Mass. 102; Spooner v. Manchester, 133 Mass. 270; nor can he mitigate damages by offering to return the cow. Brewster v. Sillman 38 N. Y. 423; Hanner v. Wilsey, 17 Wend. 491; hence plaintiff is entitled to recover value of injured cow and damages from the time he was deprived of its possession, plus damages for detention of forty dollar cow. Ehrgott v. Mayor, 96 N. Y. 264; Griffin v. Colow, 16 N. Y. 439.

J. G. MILLER and FRED OILER for defendant.

Only nominal damages can be recovered when a *tort-feasor* has delivered converted personal property to rightful owner, and if received by rightful owner, it goes in mitigation of damages. Amer. & Eng. Enc. of Law, Vol. 4, p. 125; Sparks v. Purdy, 11 Mo. 219. If property is injured while in possession of the *tort-feasor* and no evidence to show to what extent the injury has been sustained by the plaintiff only nominal damages can be given. Suds v. Metropolitan Gaslight Co., 90 N. Y. 26. If on other hand plaintiff recovers value and interest of injured cow, he cannot recover the use of the cow while in defendant's possession. Taylor v. Morgan, 3 Watts 335; Lyon v. Gormly, 53 Pa. 261.

STATEMENT OF THE CASE.

Ferris took possession of two cows belonging to Bogardus and refused, on the demand of the latter, to return them, claiming them as his own. Six months afterwards he offered to return them, but Bogardus refused to receive one, which had been hurt while in Ferris' possession, but without his fault. The other cow Bogardus took back. The latter was worth $40 and the former $60. This action is trespass for the taking and conversion of the cows.

CHARGE OF COURT.

That Ferris has been guilty of a conversion of Bogardus' cows is not controverted. He took them, and despite the demand for their return, refused to return them. He claimed them, it is true, as his own, but the opinion that they were his, however sincere, did not make the appropriation any the less a conversion; Webb's Pollock Torts, 435; 2 Jaggard Torts, 720; 26 Am. and Eng. Ency. 737.

Six months after the taking of the cows, Ferris offered to return them. This offer even had it been accepted could not obliterate the already consummated conversion, nor the right of Bogardus to an action, 2 Jaggard 721. The act of depriving Bogardus of his possession for six months was a wrong which could not be expunged by the the restoration of the cows after that period. Whitaker v. Houghton, 86 Pa. 48.

Bogardus accepted the uninjured cow. He could not therefore fairly insist while keeping it, on recovering its value. 86 Pa. 48. He would have a right to compensation for the loss of it during the six months but for naught more. He refused to take back the injured cow. Was he bound to receive it? We think not. One who commits a conversion assumes the risk of being compelled to pay to the owner the full value in money of the chattel. The owner probably need not receive it back even though it be in the state in which it was when taken. He certainly is not bound to take it back if it has suffered deterioration. 86 Pa. 48. Ferris must pay to Bogardus the value of the injured cow at the

time of the conversion with interest from that date to the present time. 2 Sedgwick Damages 79.

The plaintiff has a right to compensation for the detention of the uninjured cow during the period of six months. He has however, furnished no standard by which the compensation could be estimated other than the value of the cow. The cow was worth $60. It is possible that during the six months of its detention, it yielded more than the interest on $60, or less Its keep would cost something. Whether it in fact yielded milk and butter, or otherwise compensated for the fodder consumed by it, and the care bestowed on it, does not appear. We think however, that the jury may assume *prima facie*, that it was worth to its possessor, the interest on its value for the time. In case of the return of a chattel after conversion says Sedgwick, "the measure of dam ages is not the whole value of the property but compensation for the injury done to the property, which would usually be interest on the value of the property while it was withheld from the plaintiff, together with the deterioration in its market value." 2 Damages, 75; Anderson v. Sloane, 72 Wis. 566. Whether the thing be animate or inanimate, it must often happen that the possession of it for a certain period of time would have been of no pecuniary advantage. If money were tortiously taken and kept for a year, and then returned, the owner could doubtless recover as damages the legal interest, although had he not been deprived of it, he would have found no profitable use for it. If the cow had not been taken from Bogardus, he might have made nothing or much from it above the cost of its keep. We think he would be entitled, at all event, to the interest on its value, in the absence of other evidence. If Ferris desired to take advantage of the fact, if fact it be, that the cow was of no profit, the burden was upon him to show it.

Borgardus is therefore entitled to $1.20 for the detention of the cow that was returned. For the other, he is entitled to $60 plus interest from the time of the conversion. Your verdict therefore, gentlemen of the jury, will be in accordance with this instruction.

JOHN HIPPLE vs. CHARLES ATTERBURY.

Note given for abandonments of criminal proceedings—suppression of prosecutions —False pretense—Compounding of prosecution.

DEVALL and PRINCE for plaintiff.

1. A note given in settlement of a prosecution for obtaining money by false pretence is not invalid, Rothermel v. Hughes, 134 P. L. 510.

2. A note given for the abandonment of criminal proceedings, for misdemeanor which chiefly affect the individual aggrieved, is valid.

Obtaining money by false pretense is such a misdemeanor. Grier v. Shade, 109 P. S. 180.

3. The compounding of a prosecution for obtaining money by false pretense is not forbidden by law, and a note given on such a consideration is valid. Steinbaker v. Wilson, 1 Leg. Gaz. R. 76.

VALE and HUBER for defendant.

1. Talbert was guilty of a crime. The consideration is illegal, hence payment cannot be enforced on the mortgage.

2. It is to the interest of the public that the suppression of a prosecution should not be made a matter of bargain. McMahon v. Smith, 47 Com. 221; Ormerod v. Dearman, 90 Pa. 49; National bank Oxfork v. Kirk, 100 Pa. 561.

3. The statute—Purd. 1410, Sec. 1561 does not apply to this case, because its provisions have not been complied with.

STATEMENT OF THE CASE.

William Talbot, a dealer in paintings, sold a picture to Hipple, representing it to be by Titian, and obtained for it from Hipple, who was rich but ignorant of art, $1000. The picture was worth $75. Hipple, on learning of the fraud upon him, made an information against Talbot for obtaining money from him by false pretense. Talbot induced his wife's father, Charles Atterbury, to give Aug. 3, 1895, a mortgage on his house for $1000 to Hipple, payable 2 years after date, if Hipple would agree not further to press the prosecution. Hipple agreed, and induced the District Attorney to present no bill to the grand jury, and the mortgage was executed and delivered. This *sci. fa.* is sued out, Nov. 17, 1898, to compel payment.

OPINION OF THE COURT.

The law gives to Hipple a civil remedy for the fraud committed upon him by Talbot, in the sale of the picture. It was

competent for them to agree for a period of delay, and to secure by mortgage the sum ascertained to represent the damages, at the expiration of two years. The objection to a recovery on the mortgage is that Hipple having made a criminal information against Talbot, Atterbury, his father-in-law, gave the mortgage in consideration of Hipple's agreeing not further to press the prosecution.

Contracts for the compounding of crimes, are generally disapproved by the law. Brown v. McCreight, 187 Pa. 181; Geir v. Shade, 109 Pa. 180. To compound murder, manslaughter, rape, sodomy, arson or forgery, bribery, perjury, etc., is made criminal. Section 10, Act March 31st, 1860; 1 P. & L. 1149. The crime of false pretense is not in the catalogue. The 9th section of the same act, 1 P. & L. 1410, authorizes the settlement of a misdemeanor which is (1) to the damage of the party complaining, (2) not done with the intent to commit a felony, (3) not infamous, and (4) for which there is a remedy by action. Obtaining money by false pretense is a crime of this class. Geir v. Shade, 109 Pa. 180; Rothermal v. Heiges, 134 Pa. 510. By this act the public interest is so far subordinated to the private, that the magistrate may, on the request of the prosecutor, discharge the prisoner, or the court may order a *nolle prosequi* to be entered. The magistrate or the court is moved by the appearance before him or it, of the prosecutor, and by his acknowledgment "to have received satisfaction" for the injury. The satisfaction may precede the appearance and acknowledgment. It may consist in money or other property delivered, or, as in the case before us, of a note or a mortgage securing a future payment.

The defendant contends that the agreement ought to have been, on Hipple's part, to appear before the court and make the acknowledgment in order that the court might order the *nolle prosequi*. It does not appear as we think it should whether such was in fact the agreement. It is not the policy of the act of March 13th, 1860, to permit the parties by a secret agreement to prevent investigation into crime. The case must be brought to the notice of the magistrate or court. If he decides that it shall, notwithstanding the agreement, be prosecuted, it must be carried forward to trial and judgment. The prosecutor would have no right, on account of his private contract, to withhold his testimony.

It does not appear that Hipple agreed to do more than secretly to desist from pressing the prosecution. Nor did he in fact go before the court and obtain its judgment as to the propriety of abstaining from urging the case to trial. Failure to do so, was held in Massachusetts under a similar statute, to avoid the compromise. Partridge v. Hood, 120 Mass. 403.

We instruct you therefore, gentlemen of the jury, that upon the evidence before you, your verdict must be for the defendant.

WILLIAM HANLIN vs. ARTHUR BRANDON.

J. B. LAVENS and W. E. SHEAFFER attorneys for the plaintiff.

1. The agreement was made for the purpose of stifling a criminal prosecution which is in violation of the Act of Assembly of 1860. Pearce v. Wilson, 111 Pa. 24; Riddle v. Hall, 99 Pa. 116.

2. There was no consideration for the contract. National Bank of Oxford v. Kirk, 90 Pa. 49; Commonwealth v. Slatterly, 140 Mass. 423.

JAMES O'KEEFE and H. M. BROOKS attorneys for the defendant.

1. An agreement to stifle a criminal prosecution is illegal. Clark on Contracts, p. 428. If a contract has been entered into for an illegal purpose and has been executed the courts will not undo the contract and the party aggrieved must suffer the loss of his own illegal acts.—Trace v. Boyer, 6 Casey 99; Lestepics v. Ingraham, 5 Pa. 71; Shane v. Scott, 11 S. & R. 163; Peters et. al. v. Grim, 149 Pa. 163; Shannon v. Shuman, 27 Pa. 90.

STATEMENT OF THE CASE.

In 1895 John Hanlin, the son of the plaintiff, forged certain checks of the defendant, amounting to $500. The father in order to keep the matter quiet, and to prevent a prosecution against his son, agreed with the defendant that he would deed his property worth $5000, if he would not prosecute. In accordance with this agreement he transferred property to Brandon to that value in the Borough of Carlisle.

Subsequently Brandon discovered that another check had been forged and cashed. Thereupon he had John Hanlin

arrested and convicted of forgery. William Hanlin therefore demanded that the agreement be rescinded, and the property reconveyed. He brings this action to compel Brandon so to do.

OPINION OF THE COURT.

The 10th action of the Act of March 31, 1860, 1 P. & L. 1148, declares guilty of a misdemeanor any person who having knowledge of any "misprision of treason, * * * forgery * * * shall take money, goods, chattels, lands or other reward or promise thereof, to compound or conceal, or upon agreement to compound or conceal it." William Hanlin promised to convey and conveyed his land to Arthur Brandon, for the purpose of compounding and concealing the forgery of his son. Brandon was guilty therefore of a misdemeanor, in receiving the promise and the execution of it. The agreement to convey was unenforceable. Pearce v. Wilson, 111 Pa. 24; Riddle v. Hall, 99 Pa. 116; Nat. Bank v. Kirk, 90 Pa. 49; Bredin's Appeal, 92 Pa. 241. Had Hanlin refused to carry out his contract, the courts would not have aided Brandon by compelling him to do so; or by giving Brandon damages. *Ex turpi causa non oritur actio.*

But, Hanlin has himself carried out the contract. He need not have done so. No legal duty constrained him. But as he has done so, he is not now permitted, on repenting of his compliance with his promise, to recover the land. The illegality of the executed contract, is no ground for the court's annulment of its execution, and compulsion of the return of the consideration. The status of the parties, after performance of the contract is what it would have been, had the contract been innocent. A sale of mules, with delivery thereof, on Sunday, passes the ownership to the vendee; Chestnut v. Harbaugh, 78 Pa. 473; Myers v. Meinrath, 101 Mass. 366. Whatever the nature of the illegality, the executed contract is irrepealable. Lestapies v. Ingraham, 5 Pa. 71; Hipple v. Rice, 28 Pa. 406; Fox v. Cash, 11 Pa. 212; Shuman v. Shuman, 27 Pa. 90, Smith v. Hammerer, 152 Pa. 98; 6 Am. & Eng. Encyc. 415 (2d Ed.) Hence, if money be paid, or other property transferred, in order to suppress the prosecution of a felony, it cannot be recovered back; Connell v. Walton, 6 Kulp. 451; Haynes v. Rudd, 102 N. Y. 372; 83 N. Y. 253.

The plaintiff however, urges that he executed the conveyance under duress to Brandon. The presence of duress vitiates not only an executory but also an executed contract. Personalty or realty transferred under its influence, may be recovered back. Fillman v. Ryon, 168 Pa. 484. Did then, Hanlin convey the land in question under duress? William Hanlin's son forged certain checks. He thus became liable to prosecution. So far as appears, William Hanlin applied to Brandon, in order to prevent the prosecution. Brandin did not agree to refrain from prosecuting, until he obtained from Hanlin the promise to convey the land. He had a right to prosecute. It was, apparently, his social and moral duty to prosecute. The law, at least, frowns on his abstaining from prosecution in consideration of any promise. It is difficult to see how the purpose of doing that which one properly may and ought to do, until diverted from it by X, can be said to be a duress on X with respect to the act by which he effects the diversion. The decisions, however, are far from harmonious; Clark Cont. 360. In Stouffer v. Latshaw, 2. W. 165, an arrest for a proper cause was not duress as regards a note given to escape it. A bond given while in jail, by one charged with bastardy, is not though given to procure enlargement, voidable. Pflaum v. McClintock, 130 Pa. 369; nor is a bond for the support of A's wife, procured by a threat to arrest him for adultery, Hamilton v. Lockhart, 158 Pa. 452.

On the other hand, it has been held that if B. from whom A. has embezzled money, employs the power to prosecute for the purpose of extorting from A. a much larger sum than that which was embezzled, the act is one of duress, and the money paid by A. can be recovered back. Fillman v. Ryon, 168 Pa. 484. The evidence that Brandon employed his power to prosecute for this purpose is not very strong. The forged checks were for $500. The property received by Brandon, to stifle the prosecution, was worth $5000. Perhaps this would justify the jury in concluding, as it did, that Hanlin was under duress.

It is to be remembered, however, that Hanlin's object was illegal. The contract he made was illegal. Brandon committed a misdemeanor in entering into it. The question, then, is, may A who illegally induces B to refrain from prosecuting a crime, by offering him a bribe, recover the bribe, on the allegation that his inability to escape the prosecution otherwise, was a coercion? Hanlin could properly hope and wish and beseech that Brandon would not prosecute. Brandon's refusal to abstain, could in no sense be called duress. Nor would it become duress because it was capable of being subdued, and was in fact subdued only by a bribe. But, even if these last facts form duress, we think that the illegal motive of Hanlin so combines with the duress as to deprive him of all right to redress on account of the latter. In Haynes v. Rudd, 102 N. Y. 372, it is held that in such a case, duress cannot be alleged to obtain the restitution of the bribe paid. Unfortunately, the court does not consider in Fillman v. Ryon, 168 Pa. 484, the effect of the illegal conduct of the plaintiff upon his right to recover. Fillman was an embezzler. He paid to Ryon whom he had defrauded, ten times as much as he had embezzled. He was permitted to recover back what he thus paid, but the court does not advert to his payment being an illegal act.

It would be against public policy to hold that one justly accused of a crime might bribe the wronged person not to p osecute him, and then get the aid of the courts to recover back the bribe. Nor would it conduce to good morals, to examine into the size of the bribe, and to allow a recovery of it when, in the court's opinion, it was exorbitant. It is bad enough for A to commit the crime. It would be worse, to allow him after, the injured person dissuading from punishing him to get back the consideration. We are not prepared to say that similar principles should not apply to interventions by friends of the accused to procure his exemption from punishment. The plaintiff having recovered under erroneous directions of the court, a new trial is allowed.

JAMES BRIOR vs. BOROUGH OF DORRANCE.

Eminent Domain—Description in deed—Growing crops—Damages—Highway's Erroneous boundary line.

MERKEL LANDIS and THOS. M. MCCACHRAN for plaintiff.

At time of sale, vendor was undisputed owner of the rectangle from which part in the controversy was taken. Although it was mistakenly laid out he was estopped from claiming title thereto and McCormick obtained a good title. Willis v. Swartz, 28 Pa. 415. Land owner who holds deed and is is in possession is to be considered owner of the property. Western avenue, Downington, 7 C. C. 233.

Damages are to be ascertained from opening or widening of the street. Losch's appeal, 109 Pa. 72; Borough of Easton, 116 Pa. 1; Whitaker v. Phoenixville, 141 Pa. 327.

Borough is a trespasser. Constitution of Pa. Art. XVI §8; Act of Apr. 22, 1856, Ph. 525 §1; Trickett on Road Law, 635.

Plaintiff entitled to value of crops. Gilmore v. R. R. Co., 104 Pa. 275.

Interest should be allowed from time of taking the land. Weiss v. So. Bethin, 136 Pa. 294.

FRANK B. SELLERS, Jr., and A. FRANK JOHN for defendant.

Brior must show his title to the land. His position as second purchaser does not alter the case. Brewer v. R. R. Co., 48 Mass. 479.

An erroneous line agreed on by mistake when the true line is not uncertain does not bind the parties. Am & Eng. Encyc. 2d End. Vol. IV, 862; Washburn v. Real Property, 4th Ed. 86; Waterman on Trespass, 114; Davis v. Russel, 142 Pa. 426.

Measure of damage is the value of the property immediately before and immediately after opening of the street. Trickett Boro. Law, Vol. I, 286.

Interest not recoverable: not within contemplation of the act of 1851 Pl. 326. Keager v. R. R. Co., 160 Pa. 386; Becker v. R. R. Co., 177 Pa. 252.

STATEMENT OF THE CASE.

In 1883, Thomas Powell owned land, rectangular in shape, (20 rods by 30 rods), situate in the township of Miles. One of the shorter sides of the rectangle being a part of the western boundary of Dorrance Borough, and perpendicular, near its middle point, to Main street of the Borough.

In 1887, Powell conveyed to James McCormick "a piece of land described as follows: Beginning at a point formerly a

stone corner (the corner of lands of N. Morton, A. Jenkins, and M. Marley); thence west 65 feet to land of Thos. Powell; thence south 150 feet, thence east 65 feet, thence north 150 feet to beginning."

The stone corner, or point, formed the the northeast corner of the rectangle. There was no monument there at the time of the conveyance. Powell took McCormick upon the land and laid out the part he intended to convey, beginning measurements at a point which he fixed as the corner of the rectangle or the Jenkins-Morton-Marley stake. McCormick built a fence around his lot and erected houses thereon; one at the north boundary and one near the southwestern corner.

In 1890, upon petition, viewers were appointed and from the western terminus of Main street of the Borough, a 30 ft. wide street or road was laid out, extending westward 400 yards to the other terminus.

The viewer's reported, at that time, "the northern boundary of the road to be in the same course as the northern boundary of Main street of the Borough, etc."

This line ran parallel to southern boundary of McCormick's land, and 10 feet north of said boundary, taking the porch off his house. McCormick, residing upon the premises had no knowledge of his property being included in the proposed road. The viewers awarded damages only to Powell. The township supervisors, in fact, so laid it out, that the southern boundary or fence inclosing the lot formed the north line of the road (20 feet wide as actually laid out).

In 1893, McCormick conveyed to John Brior what Powell had conveyed to him, McCormick, using the same description in his deed as that contained in the Powell deed. On June 3, 1898, land west of the Borough having previously been annexed thereto, the Borough Council passed a resolution directing the Street Commissioner to widen Main street along the Brior property, to conform to a recent survey made by the borough surveyor, who found the Jenkins-Morton-Marley stake to be 10 feet north from the northeast corner-post of Brior's fence, also making the northern line of the street as indicated in the viewer's report.

The Street Commissioner on July 1, 1898, took the porch off Brior's house and moved in his southern fence ten feet. The house cost Brior $3000. The porch cost $150. Land in that vicinity is worth, or selling at $25 per foot front. The south side of the house, without porch, is on the street line, exclusive of side-walk. The land taken not occupied by the house, had thereon a growing crop worth $25.

OPINION OF THE COURT.

In 1887 Powell owned a tract of land bounded by lines, two of which ended at a corner made by lands of Morton, Jenkins and Marley. From this tract he intended to sell a portion bounded by these two lines, beginning at the corner, and extending, one 150 feet and the other 65 feet. The other two lines were opposite and parallel to these, respectively. Powell went on the ground and selecting a spot on the eastern line of the lot which was in fact 10 feet from the corner intended, but which he assumed to be that corner, he marked on the ground the part of land which he intended to convey. A deed was made, which described the land as bounded by a line beginning at the Morton Jenkins and Marley corner, and thence extending west 65 feet, etc. It is evident then, that the land actually marked off, overlaps to the south a strip 10 feet wide, and excludes on the north, a strip of the same width, which had the parties made no mistake, would have been respectively excluded and included. Whose are these strips?

When land is indicated by the vendor, by objects or marks upon or near it, and he sells it thus indicated, making a deed which is accepted by the vendee as a conveyance of it, the deed will be deemed a conveyance of it, although the description therein does not apply to it. Marks on the ground prevail over adjoiners courses, and distances. Roos v. Connell, 7 Kulp, 113; Burkholder v. Markley, 98 Pa. 37; Lodge v. Barnett, 46 Pa. 477; Willis v. Swartz, 28 Pa. 413. The parties intended, the one to sell and the other to buy, the land marked. It matters not that this intention was produced by a mistake for which the vendor was responsible. The precise land marked off by Powell he would not have sold, had he known that the point assumed by him to be the Morton corner was not in fact such. Neverthe-

less he did intend to sell what he sold, and the vendor intended to buy what he bought, ignorant of Powell's mistake. Without McCormick's consent, he cannot be deprived of the land which he in fact purchased.

It appears, again, that secure in his ownership, McCormick has erected a house on the southwest corner of the lot, so near to the south line thereof, that if that line should be shifted ten feet northward, the porch of the house would be lost. The loss that would arise, from a change of the location of the boundaries, the buildings having been put up in reliance on the representations of the vendor, would estop the latter from insisting on a translation of the vendee to land with other boundaries. Willis v. Swartz, 28 Pa. 413; Roos v. Connelly, 7 Culp 113.

The plaintiff has contended that, even if McCormick had no good title to the ten feet strip on the south of his lot, the Borough of Dorrance could get no advantage from that fact. The action is trespass. The right of the plaintiff in such an action ordinarily depends on his possession. If he has possession, one who invades it is liable, however defective his title may be. If the object of this action was to recover damages arising from the trespass down to the bringing of the action, the value of the crop destroyed, the injury to the house, it is clear that the trespasser could not challenge the rights of the plaintiff. But, he is seeking also to obtain compensation for the permanent future deprivation of land, and the injury to the premises arising from such deprivation. Western Avenue, Downington, 7 Pa. C. C. 233, is not authority for the doctrine that in trespass, resorted to to obtain damages for a permanent easement, the defendant cannot contest the title of the plaintiff. We think he can.

The land in question was in a township adjacent to the borough of Dorrance. Under the road law, viewers were in 1890 appointed to make a road 30 feet wide and 400 yards long, continuous with the main street in the borough. The road was laid out, its north line coinciding with what would have been the south line of the McCormick tract, had the mistake concerning the Morton, Jenkins and Morley corner not been made. No damages were awarded to McCormick. The act of Feb. 24, 1845, applicable to Luzerne county, requires that public notice be given by the viewers, in the vicinity of the proposed route. It does not appear that this notice was not given. Nor does it seem that McCormick was ignorant of the proceeding. He resided on the premises. He had it is true no knowledge that his property was "being included in the proposed road" but that may have been the result of his negligence in making inquiries. He should, if discontented with the report of the viewers, have obtained a review. On the contrary, he seems to have acquiesced in it, and allowed it to be confirmed. *Cf.* Penn'a Road Law, 74. We think he is now estopped from disputing the legality of the appropriation of his land.

The person entitled to damages, is the owner of the land at the time when the damages are payable. The damages in this case, became payable before 1893, when McCormick conveyed to Brior. 1 Borough Law, 291; Penna. Road Law, 181.

The supervisors opened the road only to the width of 20 feet, and did not open the portion embraced within the lines of Brior. As the right to damages does not depend on the opening but upon the laying out, the actual taking of Brior's porch, etc., does not constitute a new cause of action.

The road having fallen within the borough by annexation, its council had the power to open the remaining one-third of the width of the road, without any proceedings in court for the ascertainment of damages or for any other purpose.

If any special damage arose from the opening not inseparable from it, it could doubtless be recovered in this action. The crop was planted in a public road, and the planter took the risk that it would be destroyed, if the public authorities opened the road before it had ripened. The evidence discloses nothing for which the plaintiff is entitled to recover. The verdict was therefore properly for the defendant. A new trial is refused.

COX & BROWN vs. STRONG.

Mechanics lien—Scire facias issued—Material on credit of building—Notice required under Act of 18th May, 1889.

Rule for judgment for want of sufficient affidavit of defense.

D. EDWARD LONG and B. FRANK FENTON for the plaintiff.

1. The lumber was charged to the "Strong job," which is prima facia sufficient to charge the house. 1 Trickett on Liens 17, §13; Kelley v. Brown, 20 Pa. 446; Barber v. Smith, 38 Pa. 296 Material man need not show affirmatively that the materials were furnished on the credit of the building. Hommel v. Lewis, 104 Pa. 465.

2. The abandonment of the contract does not affect the material man's lien. Burr v. Mayer, 2 Sup. C. 436; Hinchman v. Graham, 2 S. & R. 174.

3. Notice required by the Act of 18th May, 1887. 2 P. & L. 2934, §27; Swaney v. Washington, 7 Pa. C. C. 351; Strawick v. Munhall, 139 Pa. 163; Kelley v. Church, 3 Northam 413; Best v. Baumgardner, 122 Pa 17; Lucas & Co. v. Ruff, 45 Leg. Int. 154.

L. HILDRETH and B. JOHNSTON MACEWEN for the defendant.

1. Where credit is given by a material man exclusively to a contractor, and not on the credit of the building for which the material is furnished, he will not be entitled to a lien. Catanach v. Cassidy, 159 Pa. 474; Barclay v. Wainwright, 86 Pa. 191; Linden Steel Co. v. Refining Co., 146 Pa. 4; Green v. Thompson, 172 Pa. 609: Weaver v. Sheelar, 124 Pa. 443.

2. Notice was not given at the time of the furnishing the material as required by law. Kelley v. Church, 3 Northam 413; Strawick v. Munhall, 139 Pa. 163; Driebelhis v. Seayholtz, 8 Pa. C. C. 655.

STATEMENT OF THE CASE.

Mary Strong owned a lot in the town of Sussex upon which was a small dwelling. She being desirous of changing the building into a hotel, employed Henry Joyce and John Roe, contractors, to enlarge the walls upon two sides and raise the roof and make such other repairs as were necessary.

No written specifications or written contract were made between them, but an estimate of the cost was given by one of the contractors and he was instructed by Mary Strong to go ahead with the work of alteration.

The contractors ordered the lumber and building material from the lumber firm of Cox and Brown who commenced delivering lumber upon the premises May 15, 1896, and charged the same to the contractors, "Joyce and Roe" on the "Strong job" as it is their custom to do.

The building progressed but Mary Strong failing to meet the payments or installments when due according to the contract, the contractors refused to complete the job when it was nearly completed. The lumber firm of Cox & Brown had delivered lumber and material on the job amounting to $815.62, and fearing trouble in getting pay served the following notice upon Mrs. Mary Strong on July 1, 1896:—

MRS. MARY STRONG,

Madam:—Please take notice that we intend to file a lien against your property located at the corner of Main and Chenango streets, for materials furnished for and about the repairs, alterations of, or addition to said building, as provided for by Act of Assembly of May 18, 1887.

COX & BROWN

After notice was served, materials were delivered at two different dates. Notice and later deliveries took place before the contractors, Joyce and Roe, quit the job for non-payment of installments.

A mechanics' lien was filed December 13, 1896, to No. 2060, January Term, 1897, against Mrs. Mary Strong, describing her property, etc.

An affidavit of defence to the mechanics' lien was filed February 23, 1897, as follows:

First. All of the lumber and other materials set forth in the plaintiff's statement, attached to said mechanics' lien, so far as they were sold and delivered at all, were sold exclusively upon the credit of said Joyce and Roe and not upon the credit of said building and appurtenances.

Second. Said Joyce and Roe had no authority to act as my agent, as claimed in said mechanics' lien, and did not act as such in any matter relating to such materials, etc., set forth in such statement attached to said lien.

Third. The said notice set forth in said mechanics lien was not in accordance with the law controlling this case and was not

served on me at the time that the said lumber and materials were being furnished, nor until after the time within which the Act of Assembly of May 18, 1887, and other laws of the State of Pennsylvania required such notice to be served.

OPINION OF THE COURT.

Under this *scire facias*, we are to pass upon the sufficiency of the affidavit of defence of Mary Strong, the owner. The first averment is that the materials sold by the plaintiff were sold exclusively upon the credit of Joyce & Roe, the contractors. There is no lien, except in favor of one who in giving labor or material, has done so, on the credit of the building. 2 Liens 10. It is presumed, when it appears that the materials were furnished for a building, that they were furnished upon its credit. *Ibid* 11. The lumber was in this case, so plaintiff's book says, furnished "on the Strong job." It is incumbent on the defendant to repel this presumption, Green v. Thompson, 172 Pa. 609. By his *affidavit* he undertakes to assume this burden He does not indicate the evidence by means of which he expects to do so, nor is this necessary. He avers and undertakes to prove that the credit was given exclusively to the contractor. He must have the opportunity to do so.

Judgment will not be entered for want of an adequate affidavit of defence, if the case, as presented by the plaintiff's pleadings, shows that he ought not to recover. The contractors have, after going forward with the work, abandoned it. Does this detach any liens that may have attached? We think not. Burr v. Mazer, 2 Superior 436; Linden Steel Co. v. Refining Co., 146 Pa. 4. In Hinchman v. Graham, 2 S. & R. 170, lumber was furnished for a house, but was not in fact inserted into it, because the contractor, while in the midst of the construction, became insolvent. The lien of the materialman was not impaired. The arrest of the construction of the Mary Strong hotel was the result of her own refusal to make payments to the contractors according to her stipulations. She cannot gain any advantage from it.

The second defence alleged in the affidavit is evasive. The defendant denies that Joyce and Roe had "authority to act as my (her) agent," etc. She does not deny that she made the contract with these persons. She simply denies that she conferred on them the powers of an agent. The contractors are not agents in the strict sense. They may have no authority from the owner to buy lumber from X or Y. Indeed, although the owner should direct the contractor not to buy lumber from X or Y, X or Y would nevertheless have a lien, if the contractor in fact purchased from them. The making of a contract *ipso facto* clothes the contractor with a power to confer liens on his sub-contractors. The second defence is unsubstantial.

The third ground of defence is, that the notice alleged in the claim to have been given, and the giving of which is not disputed, is insufficient to support a lien.

The act of May 18th, 1887, P. L. 118, 2 P. & L. 2933, universalizes the act of May 1st, 1861, which conferred liens in Chester, Delaware and Berks counties, for work or material furnished "for or about the repair alteration of or addition to any house or other building" and makes it operative in all the counties of the state It however, in its 3d section, enacts that "to entitle any one to the benefits of this act, he shall give notice to the owner or reputed owner of the property, or his or her agent, at the time of furnishing the materials or performing the work * * * * of his intention to file a lien under the provisions of this act." Such notice is necessary, in order to maintain a lien. 2 Liens, 7.

A notice was, in fact, given by Cox & Brown to Mary Strong. It was given on July 1st, 1896. All of the ten items in the bill of particulars preceding this date, had of course already been furnished. After it, two items only were supplied. Has a lien for all the twelve items been secured or only for the last two? or for none? The statute requires that notice be given "*at the time* of furnishing the material." When the material or labor is supplied from day to day or week to week, the notice need not accompany each delivery of the material, or each day's work but it should precede the series of deliveries of labor or work. The object of the notice is to inform the owner whether he can safely pay the contractor, and to what extent from time to time, liens upon his premises are being imposed. If ma-

terial is furnished in repeated instalments over a long period of time, but little would be accomplished if the notice did not come until the last delivery. A series of deliveries of one hundred thousand dollars' worth of goods, stretching through a year or two might be ended, after an interval of weeks, by a delivery of $5 worth. It is hard to realize of what advantage notice, *at* the last delivery, of the intention to file a lien for the $100,000, would be to the owner. The notice should be given at the commencement of the series. Repetition at each delivery would be unnecessary. The information already given at the initial point, would abide in the mind of the owner.

The Act of June 17, 1887, P. L. 409; 2 P. & L. 2935, after giving a lien on leaseholds, in its 3d section, says, "When the materials were furnished or labor performed by others than the original contractors, they shall notify the owner or owners * * of his or their intention to file a mechanics' lien, and unless such notice be given, no such lien shall be filed nor be of any validity." Under this act, a notice after the cessation of work, was held to be too late. "There is no hardship," says McCollum J., "in exacting from the workmen notice of their intention to file liens for their labor when they *enter upon* their work in the service of the employer." Strawick v. Nunhall, 139 Pa. 163. The notice is the "foundation of the lien," the condition precedent, not subsequent. The not altogether happy remark is made that "when" in this statute is equivalent to "at the time of" in that under consideration, but we cannot doubt "at the time of performing work" does not mean, at the time of ending, but at the time of commencing the performance; and that "at the time of furnishing the materials" means at the time of commencing to furnish, rather than at the time of completing the furnishing. If material or labor is furnished in a series, and notice does not come to the owner until a portion of the series has passed by, notice may be given so as to validate a lien for what shall be furnished afterwards.

Allison, J's. interpretation of the Act of June 17, 1887, in Lucas, etc., v. Ruff, 45 Leg. Int. 154, is hardly consistent with that of the Supreme Court. It is not necessary to choose between notice at the *end* of a series, and notice at each delivery of the series. Notice may precede a series, and there may be no necessity of repeating it.

As we have seen, notice preceded the last two items furnished to the building of Mrs. Strong. The lien is not invalid as to them, for want of notice. It is invalid as to the preceding instalments.

As the first ground of defence applies to the entire claim, the rule for a judgment for want of a sufficient affidavit of defence is discharged.

GRANT BISHOP vs. FARMERS' BANK.

Right of Bank to demand indemnity for lost certificate of deposit.

For plaintiff, SEBRING and SHELLENBERGER.

Certificate of deposit is not negotiable in Pennsylvania. Patterson v. Poindexter, 6 W. & S. 227; Lebanon Bank v. Mangan, 28 Pa. 452.

An indorsee would take subject to prior equities; and finder would have to sue in plaintiff's name. Humboldt Safe Deposit Co's. Assigned Estate, 3 Pa. C. C. 621. London Savings Fund Society v. Hagerstown Savings Bank, 36 Pa. 498. Plaintiff can recover without giving bond. Citizens Nat'l Bank v. Brown, 4 Am. St. Rep. 526; 45 Q. 39.

Books of the bank are sufficient evidence of the payments of the debt. Union Bank v. Knapp, 20 Mass. 96.

HOLCOMB and CLARK for defendant.

A certificate of deposit is negotiable in Pa. for the purpose of transfer. Patterson v. Poindexter, 6 W. & S. 227.

When certificate is lost, the bank has a right to demand indemnity before payment. Welton v. Adams, 4 Cal. 38; Frank v. Wessels, 64 N. Y. 155; Dutton v. Bank, 12 W. N. C. 549.

STATEMENT OF THE CASE.

On June 1, 1898, the defendant issued to the plaintiff a certificate of deposit for $1000, payable to his order, interest to be paid at the rate of three per. cent. per annum provided the money be left on deposit for six months.

On January 1st, 1899, Bishop lost his certificate, and demanded the money from the bank. This they declined to give without the surrender of the lost certificate.

Bishop brings this suit to recover the sum. The bank declines to pay unless the plaintiff gives a good bond to indemnify it against possible loss for $1000, as well as a bond to protect it from any expenses and counsel fees which it may be compelled to incur in the future if again sued on the lost certificate.

OPINION OF THE COURT.

The certificate of deposit in this case while non-negotiable "for the purposes of commercial responsibility" was nevertheless payable on the order of the plaintiff.

It was in his power to transfer his title to the same to another. While the bank had his assurance that the same had been lost, it might have been endorsed in blank by Bishop and passed to a holder for value, and there is a possibility that the bank will be called upon to pay the same to one having the lawful right to demand payment. Against such a contingency the bank has a right to demand protection as also against the costs and expenses of litigation which may be incurred by it. The loss of the note was not the fault of the defendant. It was due to the negligence of the plaintiff, and the defendant must not be put to risk by reason thereof.

This position is well supported by the authorities. Dutton v. Merchants National Bank, 12 W. N. C. 549, Keyes Appeal, 65 Pa. 196.

The defendant is entitled to indemnity before the payment of the certificate of deposit.

ESTATE OF STAYMAN.

Interest on legacy begins to run one year after death of testator.

For exceptants, LENTZ and DEAL.

Where a testamentary disposition is in the nature of a charitable use, it bears interest from the death of the testator. Townsend's Appeal, 106 Pa. 269; Flickwir's Estate, 136 Pa. 374.

Statute of 1834 is one of "administrative convenience" and should give way to the intention of the testator.

Against exceptants, VALENTINE and COBLENTZ.

No time being fixed for the payment of the legacy, it will become due and interest will begin to run one year after the testator's death. Act of 1834, Feb. 24; Koon's Appeal, 113 Pa. 621; Eichelberger's Estate, 170 Pa. 242; 7 Sup. Ct. 404; Phillip's Estate, 133 Pa. 426.

STATEMENT OF THE CASE.

Exceptions to the report of the accountant.

On May 1, 1896, Thomas Stayman dies seized of a large amount of property. As his executor he appointed Mahlon Briggs. In his will he bequeathed the sum of $5000 to Dickinson College, this sum to be invested and the income to be applied to the support of a needy student. The balance of his estate he left to his wife.

Briggs filed his account in June of 1898. He awarded $5000 to the college plus interest from May 1, 1896.

The college excepts to the report claiming that interest should be allowed from May 1, 1898 Exceptions are now before an auditor appointed by the court.

OPINION OF THE COURT.

Dickinson College has excepted to the account of Mahlon Briggs the executor of Thomas Stayman, because of his failure to allow to it interest on a fund of $5000, bequeathed for the purpose of supporting a needy student.

The act of February 24, 1834, provides that "legacies, if no time be limited for the payment thereof shall in all cases be deemed due and payable at the expiration of one year from the death of the testator."

"This legislation supplies a testamentary intent, and hence where it is claimed that a money legacy shall not bear interest from the expiration of one year after the testator's death, the contention must be supported by a clear evidence of an intent to the contrary to the act to be found in the will of the testator." Eichelberger's Estate, 7 Sup. Court 404.

The facts of the case at bar are analogous to those of Koons and Wright, 113 Pa. 621, in which the Supreme Court reaches the conclusion that the interest will begin to run one year after the death of the testator.

The cases of Estate of Flickwir, 136 Pa. 74, and Yale's appeal, 170 Pa. 248, are clearly distinguished from this in Eichelberger's Estate, *supra*.

The auditor must therefore dismiss the exceptions.

By the court.

WILLIAM THOMPSON vs. RINDER BRISON.

Right to prior claim for wages under act of May 12, 1891.

For plaintiff, MYERS and FRANK.

Laborer is entitled to a preferred claim under the act of 1891. Wolf v. Tillinghast, 3 Pa. Dist. Rep. 388; Sproul v. Murray, 156 Pa. 293.

For defendant, LAVENS and LIGHT.

No notice of claim being given to the Sheriff, the wages will not have priority. Allison v. Johnson, 92 Pa. 314.

An employee in a pool-room does not come under the statute. Pfaender v. Hoffman, 4 W. N. C. 171; Fill v. Duffy, 6 W. N. C. 44; Jacobs v. Woods, 14 W. N. C. 237.

STATEMENT OF THE CASE.

Thompson was employed about the pool room of the defendant. His duties were to keep the tables, and sell cigars. Wages due him amounted to $50. The stock of the defendants was sold by the sheriff. Thompson claims to have a lien for his wages, and demands that his claim be first paid from the fund which arises from the sale of the defendant's stock. The court is asked to determine the right of Thompson in the fund.

OPINION OF THE COURT.

The right of the plaintiff to the preference he claims depends upon whether he was a laborer or clerk under the act of May 12, 1891.

The priority is given to "any minor or mechanic, servant girl at boarding houses, restaurants or in private families, or any other servant and helper in and about said houses of entertainment and private families, porter, hostler nor any other person employed in and about livery stables or hotels, laundrymen, or washerwomen, seamster or seamstress employed by merchant tailors, or by any other person, milliner, dressmaker, clothier, shirtmaker or clerk employed in stores or elsewhere, hand laborer, including farm laborer, or any other kind of laborer, printer, apprentice, and other tradesman hired for wages or salary." While the act is meant to protect the wages of certain employees, it cannot be extended to others not embraced within the legislative intent. The phraseology of the statute is plain and unambiguous. The occupation of the plaintiff is not embraced within the legislative intent. The business of keeping a pool room is not contemplated by the act. The cases of Pfaender vs. Hoffman, 4 W. N. C. 171; Fell v. Duffy, 6 W. N. C. 44; Wentworth's Appeal, 82 Pa. 469, and Jacobs vs. Woods, 14 W. N. C. 237, construing the act of 1872 and its supplement of 1883 show that the courts are disposed to confine the operation of these acts, although remedial, to the kinds of business and class of employment intended by the legislature.

This was the conclusion of Judge Bechtel after a consideration of a very similar state of facts. Holt vs. Mullahey, 7 Dist. Rep. 294.

We are of the opinion therefore that the plaintiff is not entitled to be first paid out of the fund for distribution.

By the Court.

EMMA WILSON, BY HER NEXT FRIEND NORA BILLINGS vs. MATHEW WILSON.

The evidence must correspond to the charge

BUCK and FRANCE, attorneys for the tiff.

Adultery is grounds for a divorce according to the Act of Assembly of March 13, 1815. Gosser v. Gosser, 183 Pa. 499.

What constituted drunkenness, Blaney v. Blaney, 126 Mass. 205; Mahone v. Mahone, 19 Cal. 627.

I. J. MCCABE and KATZ, attorneys for the defendant.

A pleading is irrelevant which has no substantial relation to the controversy between the parties. Realf v. Realf, 77 Pa. 31; Miller v. Miller, 6 Dist. Rep. 176; Hassett v. Hassett, 5 Pa. Dist. Rep. 604.

STATEMENT OF THE CASE.

On October 1, 1897, a libel in divorce was filed by the plaintiff against the defendant charging a wilful, malicious desertion without reasonable cause for more than ten years last past. At the hearing the wife proved drunkenness, infidelity, and adultery, but did not sustain her charge of desertion.

On the testimony given the Court is now asked to grant to the plaintiff an absolute divorce from the defendant.

OPINION OF THE COURT.

The charge made by the libellant against her husband was that he had maliciously deserted her. Because of this she insisted upon being divorced. He was called to answer this charge and no other. It has long been settled that the evidence must correspond to the pleadings in the case. A party may not make out a different case by proofs from that set forth in his complaint or statement. Realf v. Realf, 77 Pa. 31; Miller v. Miller 6 Dist. Rep. 176.

The testimony offered therefore did not sustain the libel filed and the divorce is refused.

By the Court.

BROWN GRENVILLE vs. CUMBERLAND VALLEY R. R. CO.

W. H. TAYLOR and H. S. WINLACK, attorneys for the plaintiff.

The wilful negligence of the defendant was the proximate cause of the plaintiff's injuries. Oil Creek & Allegha. R. R v. Kerghron, 74 Pa. 316; Elkins, Bly & Co. v. McKean, 79 Pa. 493.

A man is answerable for the consequences of his own acts only so far as can be foreseen, or contemplated by the mind of the ordinary man. Hoag v. Lake Shore R. R. Co., 85 Pa. 293; Pa. R. R. Co. v. Hope, 80 Pa. 373; Pa. R. R. Co. v. Kerr, 62 Pa. 353.

W. R. MYERS and RUNFFER, attorneys for the defendant.

The company is only liable to the extent that can be foreseen. Pa. R. R. v. Kerr, 62 Pa. 353; Knight v. Beenken, 30 Pa. 373.

The true rule of proximate cause is the natural and probable consequences of the defendant's acts. Hoag v. Lake Shore R. R. Co., 4 Norris. 293; R. R. Co. v. Skinner, 7 Harris. 312; Frederick v. North C. R. R. Co., 157 Pa. 116.

STATEMENT OF THE CASE.

The plaintiff in this case was standing in front of a station waiting for the arrival of a train on which he expected a friend. A through train passed rapidly through the village. It failed to whistle or ring a bell while passing across a small street running at right angles to it. Richard Alleman not perceiving the train, which negligently failed to notify pedestrians by means of whistle or bell, was struck by the train. He carried on his shoulder a box of tools. These were thrown for some distance, one striking the plaintiff in the eye, causing the loss of eyesight, and other injuries to the amount of $5000. He brings this action to recover.

OPINION OF THE COURT.

While railroad stations are intended to provide for the waiting of arriving and departing passengers, yet we do not think it can be held that those who resort thither to wait the arrival of friends are trespassers. The practice is so common and general that Railway Companies never deny but always concede, certainly acquiesce in, the custom.

Robert Grenville then was not guilty of any wrong doing in standing before the station. He had not placed himself in a dangerous place, but in one which the Company itself had provided for its passengers and their attendants.

The case concedes negligence on part of the defendant, the railroad company, in not giving notice of its approach by bell or whistle. But it was urged that Alleman was negligent and contributed to the accident. This is true, and were he the plaintiff, a recovery might be impossible. But Grenville seeks the redress, and the defendant is not in the position of the Northern Central Railway Co., in the case of Fredericks against it and reported in 157 Pa. 116, where the only negligence was that of a third party and it was held that the defendant was not responsible for his wrongful act. It was also insisted that even if the defendant was negligent yet it was not the proximate cause of the injury. We are of a different opinion. The engine struck Alleman and propelled the tool which struck the defendant and destroyed his eye. There was no intermediate agency. The injury was directly produced by an instrumentality put in operation by the engine of the defendant, negligently. It was as direct as that in case of the oft cited case of Scott v. Shepherd, 2 Wm. Black 893.

The plaintiff is entitled to recover.

3. D. Edward Long. 4. J. B. O'Keefe. 5. Julia A. Radle. 6. D. Deal. 7. A. N. Wallace.
8. A. Frank John. 1. William A. Jordan. Chairman: Ed. Board. 2. Robert P. Stewart. Chairman: Bus. Board. 9. W. S. Clark.