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THE ALLISON SOCIETY.

During the last month the regular weekly meetings of the Allison Society have been well attended. The members have shown marked interest in the proceedings and a determination to keep the work up to the usual high standard is general.

On March 23, the regular programme was profitably varied by Prof. Woodward's instructive lecture on Lord Mansfield.

The inter-society debate aroused no little enthusiasm, and it is safe to say that it has given an impetus to society work which will long be felt.

THE DICKINSON SOCIETY.

The interest aroused by the inter-society debate has caused an increased attendance and loyalty to the Dickinson Society. Such increased loyalty and attendance during the genial spring evenings bodes well for the future interests of this society.

Since the issuing of the last FORUM, no less than three meetings have been devoted to work not strictly society work. By the courtesy of the Allison Society the members attended a lecture by Prof. F. C. Woodward on Friday evening, March 23, on "Lord Mansfield." Friday evening, April 20, was devoted to a lecture by Senator Weakley on "Processes of State Legislation," under the auspices of the Dickinson Society, and the inter-society debate filled Friday evening, April 6.

At the meeting on March 30, the election of officers was held. Mr. Shellenberger also delivered a declamation entitled "Prairie Belle." Just at this point the society received an invitation to visit the Allison Society to hear the farewell address of William A. Wanner, of Reading, who was about to leave the school. The society accordingly adjourned to visit the Allison Society.

April 13, coming during the Easter vacation, the regular program was dispensed with. According to the requirements of the constitution, however, the officers were installed on this evening.

Messrs. McConnell and Talbot became members of the organization during the month.

The following are the present officers of the society:

President—W. S. Clark.
Vice-President—H. J. Shellenberger.
Secretary—H. L. Henderson.
Executive Committee—W. T. Stauffer, H. L. Henderson, F. H. Rhodes.
Treasurer—H. S. Winlack.
Dist. Atty.—E. T. Daugherty.
Sergeant at Arms—A. Light.
Prothonotary—C. S. Davis.
Warden—M. J. Ryan.
Clerk of Court—W. H. Points.
Constable—W. H. Trude.
Register of Wills—J. N. Minnich.

WEORCAN CLUB.

Spring has done nothing to diminish the ardor and zeal of the members of this organization. On the contrary it seems that each succeeding meeting is better than the preceding, both because of the increased interest and because of the novelty of the features of the programmes.

The greatest benefits derived by the members of the club from the meetings, excluding the reading of Shakespeare, which still continues, are probably parliamentary drill and extemporaneous discussions.

The following features appeared on the programmes of the last month:

Impromptu discussion of the question, "Resolved, That examinations should be abolished in colleges where the daily recitation system is in use," affirmatively by L. F. Hess and W. H. Taylor, and negatively by W. T. Stauffer and W. A. Valentine; an extemporaneous speech by A. Light on "Duties of an Attorney to His Client;" a declamation by L. F. Hess, and responses to mock toasts on subjects assigned by the president.

MAJOR PILCHER'S ENTERTAINMENT TO THE SENIORS.

On Wednesday evening, April 18, Major Pilcher gave a reception and dinner to his Senior class in Medical Jurisprudence at his residence on W. Pomfret St.

Dean Trickett and Registrar Ames, of the college, were special guests.

ALUMNI NOTES.

Charles C. Greer, '93, was re-elected city solicitor of Johnstown without opposition.

Edwin S. Comrey, formerly of the class of 1901, has been admitted to practice in the supreme and superior courts of Tennessee.

Joseph Jeffreys, '96, Charles McMeans, '99, Charles E. Daniels, '98, Garrett B. Stevens, '99, Wm. M. Flannigan, '99, and D. Edward Long, '99, have visited Carlisle during the past week.

William A. Jordan, '99, has been admitted to the Allegheny county bar.

LECTURE BY PROF. WOODWARD.

On the evening of March 23rd, Prof. F. C. Woodward lectured before the Law School, at the request of the Allison Society. The subject which he had chosen for the lecture was "Lord Mansfield." After giving a short review of the life of this able jurist, he began to criticise his life. Lord Mansfield gained his fame when he appeared for the City of Edinburgh in the famous disfranchisement bill because of the Porteous mob, and his defense of several English nobles on the charge of treason.

In politics he was a Tory, and opposed the colonies defending a weak government against the assaults of Pitt, each contestant being at his best, as Mansfield was stronger in defense and Pitt in attack. From a standpoint of cold logic, Mansfield was probably superior to Pitt, but in vehemence of assault Pitt was Mansfield's superior. His fame, however, depends upon his reputation as a jurist, and it is here where he best served mankind.

In his career as a judge he effected a number of reforms. Among them he simplified practice and procedure, and rid both of many technicalities; he created the law of insurance; he found the English mercantile law in a chaotic state, and left it in a form almost equivalent to a code; he fixed the rights of colonies under the English law; struck a fatal blow at slavery; was the first to allow Quakers to affirm; and always strongly favored religious toleration in politics.

The principal charges brought against Lord Mansfield are dishonesty and a lack of moral courage. To substantiate the latter charge, it has been contended that he reversed the outlawry of Wilkes when the case was clearly against the outlawed, simply because of the strong and threatening public sentiment in his favor, on the ground of a mere technicality, when Mansfield's usual course was to disregard mere technicalities.

Mr. Woodward contended, however, that Mansfield's unbending devotion to the cause of freedom of conscience during the Gordon riots, in which his house was burned and he narrowly escaped personal injury, shows a high degree of moral courage.

LECTURE BY SENATOR WEAKLEY.

The Dickinson Society was very fortunate in securing Senator Weakley to lecture before the School on Friday evening, April 20th, on the subject, "Processes of State Legislation." A large and enthusiastic audience, composed of the members of both the Allison and Dickinson societies, greeted the ex-legislator on his appearance.

Having been introduced by Mr. Shipman, the President of the Allison Society, Mr. Weakley proceeded to describe the General Assembly, and its machinery for legislation. He then showed that a bill presented to the Legislature for passage must contain only one subject, clearly expressed in the title; must contain an enacting clause; that to secure its passage it must be read at length on three separate days in each house; it must be passed by a majority of all the members of each house, and the yeas and nays must be called and recorded on the passage of each bill.

He supposed a bill, and traced it through the varying processes until it becomes an act. The bill is offered to the House by an Assemblyman standing at his desk, is carried to the Speaker by the page, and is by him referred to a committee, which recommends its passage or rejection. After having been printed, and a copy having been placed on the desk of each member, the bill is placed on the order for first reading. It then comes up for first reading, is read section by section, and usually agreed to. When the bill comes up for second reading the House goes into committee of the whole, reads the bill section by section, and amends it or agrees to it. The determination of the committee of the whole is reported to the House, when the bill is again read, section by section. The bill is usually debated on second reading, and, being agreed to on second reading, comes up for third reading, when it is again read, section by section, and finally passed or rejected. The vote on third reading is by yeas and nays.

The bill is then sent to the Senate for concurrence, where it is treated just as in the House, except that it is not read in place. The presiding officer of each house having signed the bill before the house itself, the bill is handed to the Secretary of the Commonwealth, who marks on it the date of reception and any objection he may see to it, and hands it to the Governor. The Governor signs the bill, when it becomes a law; or vetoes it, when it is lost, if not carried by both houses over his veto.

THE INTER-SOCIETY DEBATE.

The first annual inter-society debate of the Dickinson and Allison Societies was held in Library Hall on Friday evening, April 6. The members of the two societies were all present and each side cheered enthusiastically for its standard bearers. Never before has such enthusiasm been shown in any event which has taken place in the Law School.

After several rounds of cheering and applause, the presiding officer, Prof. Frederic C. Woodward, opened the meeting. The question for discussion was, "Resolved, That those combinations among manufacturers which are commonly known as trusts are detrimental to the public welfare." Two members of the Dickinson Society, Messrs. H. L. Henderson and H. J. Shellenberger, upheld the affirmative, while Messrs. W. S. Rothermel and W. A. Valentine, of the Allison Society, supported the negative of the proposition. The societies were honored in having as their judges on this occasion Hon. Filmore Maust, John R. Miller, Esq., and Dr. S. S. Bishop.

Mr. Henderson, who opened the debate, showed that the results of the formations of trusts are four, viz: To smother competition, to control prices, to lower wages and to manufacture a poorer article at the same or a greater price. Taking the great trusts of the country as examples, he showed that wages had usually fallen under the trusts, and where they had risen the rise was due to general prosperity and not due to the trusts; that generally the price of the manufactured article had risen, and where that price had fallen the fall had not been proportionate to the fall in the price of raw material; how competition is smothered by crushing out smaller concerns and by giving a reduction to those who buy exclusively from

the trust; and how, as a result of paying for the work done by the job, the article manufactured is of a poorer quality under the trust.

Mr. Rothermel, the second speaker, proved that modern enterprises must needs be conducted on so large a scale that a large command of capital is necessary and, as no one man has sufficient means to carry on such enterprises, several persons must unite their capital in one organization; that by uniting a number of persons in the same business, a trust tends to distribute profits among a larger number of people and enlists the intelligence and skill of many instead of few and thereby reduces the price of production and increases the grade of the product; that by concentrating a business to one point and uniting small plants into large ones, trusts effect an economizing in business impracticable under the old ways of manufacturing, and that by extending the limits of the business trusts serve the public more generally and tend to reduce the price of the manufactured article.

The third speaker, Mr. Shellenberger, argued that the trust, after having driven middlemen and small producers out of the business by underselling them, gains a supreme control over the market price, and raises it to suit its own private and selfish ends; that, as it is a principle of trusts not to allow their profits to decrease, and as natural causes would sometimes cause such a decrease, trusts lower wages at such times, and do not raise them afterward; that, as they pay for the work which is done for them by the job, or require a certain amount of work to be done within a certain time, the tendency is to cause hurried work, and produce a poorer article; and that, as the tendency of the trust is to estrange the employer from the employee, and to make machines of the latter, the trust destroys the young man's chance for future intellectual development.

The last speaker, Mr. Valentine, contended that, as trusts gather a number of persons, and concentrate their minds on a single object for the common benefit, any improvements or economies which anyone of these persons discovers or practices will be instantly reported, and thus the entire company will secure the benefit from such improvements or economies; that, as trusts concentrate the manufacture of articles at fewer places, and sell a larger quantity, they are able to give the public an improved product at a less price, and still make a profit for the stockholder; that, as trusts are able by their large capitalization to tide over times of depression, they will give the laborer a boon in the shape of permanent employment; and that, as trusts tend to reduce the hours of labor, they give the laborer a greater chance for intellectual improvement.

Each speaker was allotted a short time in which to sum up. Hon. Fillmore Maust announced the decision of the judges to be in the affirmative by a vote of two to one. The result of this debate is to have aroused a great deal of enthusiasm among the members of the two organizations, and it is hoped that hereafter these societies will meet yearly in friendly contests of this kind.

MOOT COURT.

MARY SMITH, BY HER NEXT FRIEND, vs. CUMBERLAND VALLEY RAILROAD COMPANY.

Agency—Revocation—Attorney's right to compromise.

STATEMENT OF THE CASE.

On January 1, 1895, Mary Smith was injured by the defendant, and sustained injury to the extent of $5,000. She employed William Jones as attorney, who brought suit and became the attorney of record. On May 1, 1895, Jones was discharged as attorney, and William Biddle employed, though he did not enter an appearance until September 1, 1895. On July 1, 1895, Jones agreed with the company to settle, and entered into an agreement to do so for $1,000. This was accepted, and the money paid to Jones, and entered on the record. Jones absconded with the money.

On November 1, 1895, William Biddle appears in court and moves to have the settlement stricken off.

KATZ and ROBITAILLE for the plaintiff.

1. An attorney cannot settle or compromise a suit without the client's consent. Maxfield v. Carr, 10 Pa. Co. Ct. 209; Ely v. Lamb, 34 Pa. 315; Housewick v. Miller,

93 Pa. 514; Phila. & Reading R. R. v. Penny., 4 Pa. 271; Mackus' Heirs v. Adam, 99 Pa. 143.

2. If the purchaser pay the money to a person not authorized to receive it he is liable to pay it over again. Lord Chancellor Chumford, in Jones v. Chaplin.

LIGHT and DOUGHERTY for the defendant.

1. Jones had a right to compromise the claim. Township of Whitehall v. Keller, 12 W. N. C. 178; Miller v. Preston, 154 Pa. 63; Kissick v. Heiseter, 185 Pa. 184; Scott v. Seiler, 5 Watts 246.

2. A revocation is effectual and binding only as against those who have notice that it has been made. Morgan v. Steel, 5 Binney, 305; Johnson v. Christian, 3 Wheaton 101; Com. v. Barstable Savings Bank, 126 Mass. 526; Edwards v. Schaffer, 22 N. Y. 183; Chaflin v. Lenheim, 66 N. Y. 23.

3. A principal who neglects to disavow an act of his agent makes the act his own. Miller v. Preston, 154 Pa. 63; Kelsey v. Nat. Bank, 69 Pa. 427; Bredin v. Dubarry, 14 S. & R. 26.

OPINION OF THE COURT.

The case at bar presents three important points: First, has an attorney the power to compromise his client's case without the client's consent? Second, has the R. R. Co. a right to set-off the $1,000 paid under such compromise against any subsequent verdict which may be rendered? Third, was William Biddle, the second attorney employed to conduct the plaintiff's cause, negligent in not entering his appearance more promptly?

As to the first point, we will say that an attorney cannot compromise his client's case without the client's consent or sanction, for if an attorney should be allowed to compromise without his client's consent, it would lead to many abuses and difficulties between counsel and client, whose relations should be very harmonious and confidential.

In Stokely vs. Robinson, 34 Pa. 315, which was an action of ejectment, the attorneys compromised and the court entered judgment, whereupon the defendant sued out a writ, and assigned the compromise for error.

Woodward, J., in his opinion said: "An attorney is allowed to submit his client's cause to arbitration under the arbitration Act of 1806, but an attorney is not allowed, and has no authority to compromise a suit without the authority or sanction of his client." This is just what has been done in this case at bar; the attorney has compromised with the R. R. Co. without the consent of his client, for a very much less sum than that sued for.

In Houseneck v. Miller, 93 Pa. 514, Mr. Justice Gordon said that an attorney, by virtue of his professional relation, has no power to compromise his client's case, without the client's authority or sanction. Houston v. Mitchell, 14 S. & R. 307; Sackhouse v. O'Hara's Ex'rs., 14 Pa. 88; Mackey v. Adair, 99 Pa. 143.

Jones was to bring suit to recover $5,000, and not to compromise. As he had no authority to do so, we must come to the conclusion that the agreement entered into by the attorney and the R. R. Co. is void.

The next point to be taken in consideration is whether Biddle was negligent in not making a more prompt appearance. We think not, as an attorney has a reasonable time within which to bring a suit, and we do not think five months is an unreasonable time.

Another point is whether the R. R. Co. should be allowed to set-off the $1,000 already paid against any subsequent verdict which may be rendered. We think not, as that was paid as a full satisfaction of the claim, and not as a part payment, and as the compromise was void, the payment of the money is void, and should not be allowed to be set off.

But it is contended that the R. R. Co. had no notice of the revocation or dismissal. This is true, but at the same time the attorney was acting outside his employment, which the R. R. Co. should have known, and is bound to know, and, therefore, it cannot be excused on that ground. The motion to strike off the settlement is, therefore, granted.

J. N. LIGHTNER, J.

William Jones was employed by Mary Smith to bring action against the Cumberland Valley R. R. Co. for $5,000 damages which she sustained on January 1, 1895. He brought suit and became the attorney of record, and was discharged on May 1, 1895, yet Jones compromised the claim for $1,000 on July 1st, and had satisfaction entered on the record, and then absconded with the money. On May 1st

Mary Smith employed Wm. Biddle to prosecute suit, who entered his appearance on September 1st, and on November 1, 1895, files this motion, asking that settlement be stricken off. It has been ably contended by the counsel for the defendant that Mary Smith was negligent in not informing the defendant of her having discharged Wm. Jones, and that because of this, and her not being prompt in disavowing the action, that the settlement should not be stricken off. While it is true that a principal must promptly disavow the acts of his agent, when they transcend the authority given him, on pain of making the agent's acts his own, it is so only because this silence is an implied ratification of the agent's acts, thus estopping him from afterward denying the agent's authority. But a ratification can only take place where an act is voidable in its nature, while our Supreme Court has repeatedly held that a compromise is absolutely void. Township of Whitehall v. Keller, 12 W. N. 177. To a like effect are the cases of Huston v. Mitchell, 14 S. &. R. 307, and Stokely v. Robinson, 34 Pa. 315, both holding that attorneys cannot compromise without the *express* consent of their respective clients. In the case of Holker v. Parker, cited by defendant, the court held that while compromises were looked upon with disfavor, yet they would not be disturbed if they were reasonable and fair. We think, however, that this compromise is obviously not reasonable and fair; and further, since he was not Mary Smith's attorney at time of making it, it cannot stand on this ground.

The power to compromise is contrary to our sense of justice. If the client sees fit to take the chances of litigation, it should not be for the attorney to say him nay. When a claim is put in the hands of an attorney for prosecution, it is generally supposed that he will continue it to a decision, which will be reached through the ordinary channels of adjudication; and to this end general authority is given him. But it would be derogatory to the best interests of the legal profession, and apt to bring it into ill repute, by the inadvertent use of such a power, which permits a client's right of action to be destroyed or his claim diminished by the faulty judgment or caprice of his attorney. It was said in 99 Pa. 318 that a compromise of a client's claim by two attorneys was absolutely void.

The question presents itself, even though it cannot be ratified—being void—will the plaintiff be estopped because of not notifying the defendant of her discharge of Jones? The plaintiff has met this argument by the statement that since he was a special agent, it put the defendant upon his guard, and made him look to the authority of the agent; and further, that since he could not make this compromise, it being void, as against public policy, without express consent of client, that the defendant company was bound to see that the agent had the express consent.

We are of the opinion that Jones was not such a special agent, as the judges referred to in the several cases which held that the party dealing with him must beware, for they dealt with him at their peril. But we look with more favor on his second contention, and think that the defendant company was bound to inquire concerning the express consent given by the principal.

Had this been done, or had the defendant company exercised even ordinary diligence, the true fact of Jones' discharge must have become plain. It is true there is a presumption that where an attorney of record appears and performs some act within the *apparent scope* of his authority, that he has implied authority, such as will protect those dealing with him. But our cases hold that a compromise is not within the "apparent scope" of the agent's authority.

There is nothing to show when Mary Smith had notice; but the fact that her attorney, Wm. Biddle, entered an appearance on September 1st, is sufficient to warrant an inference that he then became cognizant of the satisfaction entered by Jones. The knowledge of the agent so affects the principal that she will be deemed to have received notice at that time. There is no evidence to show whether she gave notice to defendant company or not of her refusal to be bound, but we think that her delay of two months in bringing suit is not such an unreasonable delay as will preclude her, unless the

rights of third parties have intervened, which does not appear.

For these reasons we think the rule should be granted, and the satisfaction stricken from the record. So ordered.

L. FLOYD HESS, J.

IN THE SUPREME COURT.

The compromise between William Jones, attorney for Mary Smith, and the defendant, resulted in the payment of $1,000 by the defendant, and the entry of a settlement of the suit upon the record. This settlement the court has struck off, and the result of a trial has been to find a verdict for the plaintiff for $4,000. The error assigned here is, that the settlement should have been regarded by the court as conclusive. The learned court declined thus to regard it. Were they in error?

Two reasons for disregarding it were alleged in the court below. It was alleged (1) that the authority of the attorney who made it, had at the time of making it been withdrawn, and (2) that had it not been withdrawn it never was wide enough to embrace the making of such a settlement. The last of these reasons we shall consider first.

1. The principle is very well established that the mere relation of attorney and client does not confer on the former the power to surrender any portion of what is claimed by the latter, by way of compromise. Isaacs v. Zugsmith, 103 Pa. 77; Brockley v. Brockley, 122 Pa. 1; Mackey v. Adair, 99 Pa. 143. Says Trunkey, J., "Persons dealing with an attorney-at-law respecting his client's business may justly infer that he has all the power implied by the relation, but not that he has the powers of a general agent to compromise and release debts or transfer and convey the goods or lands of his client." 103 Pa. 77. The doctrine is correctly stated in P. & L. Dig. of Decisions thus, "An attorney-at-law has no power to compromise the claim of his client without special authority from the client for that purpose, and a compromise effected without such authority is void." 2 P. &. L. Dig. 1,783. *Cf.* Houseneck v. Miller, 93 Pa. 514; North Whitehall Township v. Keller, 100 Pa. 105; Phila. & R. R. R. v. Christman, 4 Penny 271.

The plaintiff, so far as it appears, was in the neighborhood and could easily have been consulted. There was no cause for haste. Jones was employed to bring the suit. It was no part of his employment to agree on a sum, payment of which should discharge the Railroad Company. The learned judges of the Common Pleas rightly concluded that the compromise was void, and could be repudiated by Mary Smith, even had Jones' authority not been revoked.

2 Had it been one of the ordinary powers of an attorney-at-law to compromise the suit, we think the defendant would have been justified in effecting the compromise with Jones. He had been employed as attorney, and as such, had appeared in the suit of record. How many steps in the action had been taken when, on May 1st, he was discharged by the plaintiff does not appear. The discharge was not noted on the record, and the succeeding attorney, Wm. Biddle, did not mark his name to the record until Sept. 1st; four months after Jones' discharge. The compromise was made midway between these two dates. The defendant would then reasonably assume, as he in fact did assume, the continuance of Jones' authority, and, had the power to compromise been one of the powers of an attorney, could reasonably suppose the compromise he was making was binding on the plaintiff and himself. It fails to be thus binding, not because of the revocation of Jones' authority, but because his original appointment did not confer on him the power to make it.

A subordinate question is, concerning the right of the defendant to set-off the $1,000 already paid by it to Jones, against the damages found by the jury. This right has been denied by the learned court below. The reason assigned by Judge Lightner is, we think, satisfactory. Jones was, when the payment was made, agent to prosecute the action to verdict and judgment, but not to receive any money in anticipating payment, in part or in whole, of such judgment as might be recovered. Still less was he agent to receive a sum of money as a consideration for discontinuing or settling the suit. Had it been within the actual or even the apparent scope of

Jones' power to receive the $1,000 for the client, the payment of that sum would be a good payment, despite his secret supersedure. But it never was in his power to receive such a payment. The payment cannot, therefore, affect Mary Smith. The defendant must look to Jones for the money.

It is suggested by the learned counsel for the appellant, that the long delay in moving the court to strike off the settlement, should preclude a repudiation of it. The settlement was made on July 1st, 1895. Wm. Biddle, Esq., appeared to the record Sept. 1st, and on Nov. 1st, four months after it was made, moved the court to strike off the settlement. It does not appear that during these four months, the defendant has taken any steps which it would not have taken, had it not relied on the finalty of the settlement. We cannot see that the lapse of so short a time should of itself estop or prevent the plaintiff from proceeding with the action to verdict and judgment.

Judgment affirmed.

HENRY APPLETON vs. JOHN JONES.

Ante-nuptial contract impairing status of parties under marriage compact—Desertion—Husband's liability for wife's expenses after desertion.

STATEMENT OF THE CASE.

Prior to the contract of John Jones with Susanna Appleton to marry her, a minor, he agrees with her and her parents that he and she, if married, shall reside with the latter, and the survivor of them, so long as he or she, the survivor, shall live, and that he will not take up any other abode, and insist on his wife forsaking her parents, and living there with him, during either parent's life. She relying on this agreement, the contract to marry was made, and in due time the marriage was accomplished. John Jones and Susanna, his wife, continued to live with her parents for about one year, during which a son was born to them.

John Jones not having lived harmoniously with the parents of the wife, then withdraws from their residence and takes up another, to which he invites his wife to come with the child. She declines to follow him, insisting on her right under the agreement to abide with her parents, and retains the child. During the residence with the wife's parents John Jones had, while she was in infirm health, neglected to provide a servant, though financially able to do so, and insisted that his wife should attend to the cooking and other household duties in person. He was also at times irascible, addressing her with harshness and asperity. He also at times behaved towards her parents with indignity and insult, but did not put hands on them or use violence of any sort, nor threaten violence.

The wife refusing to follow him, John Jones not being asked to supply her, in fact supplies her neither with money nor goods for the support of herself or child, but they are fed, clothed and furnished with medical attendance and board by her parents for the space of two years after his withdrawal from their house, with no other request from him than such as the law would imply, if any, from the circumstances stated.

During this time they expend $40 for clothing (a reasonable amount), and $20 for the child's clothing (a reasonable amount), $5 for medical attendance to wife, $3 medical attendance to child, and $3 per week for food of wife and $1.50 per week for the support of the child (these amounts being reasonable). A fair compensation for lodging the wife would be $150 and an equal sum for the child. Assumpsit by the father for the money so expended for his daughter and grandson, and for compensation for their lodging against John Jones.

SHAFFER and WARNER for the plaintiff.

1. A husband living separate from his wife is bound to provide her and his children with necessaries. Kimball v. Keyes, 11 Wend. 34; Snover v. Blair, 25 N. J. L. 94; Fitler v. Fitler, 33 Pa. 50.

2. The articles furnished were necessaries. Lamson v. Varnum, 171 Mass. 237; Mohney v. Evans, 51 Pa. 80.

LAVENS and LEE for the defendant.

1. It is against the policy of the law that the status of the parties under a marriage contract should be impaired by ante-nuptial contract. Powell v. Powell, 29 Vt. 148; Barnett v. Kimmel, 35 Pa. 13; Franklin v. Franklin, 154 Mass. 515; Am. & Eng. Encyc., Vol. 14, p. 539.

2. The acts of wife in refusing to follow husband constitute desertion, and she is liable for her own expenses, as well as those of the child she retained.

OPINION OF THE COURT.

I. Although it has been conceded that a husband cannot compel his wife to reside in a place where her health would be in danger (for that would be cruelty), or to follow him to a foreign land—Bishop v. Bishop, 30 Pa. 412, or to live with his relatives—Powell v. Powell, 29 Vt. 148, the general rule is well settled that the husband has the right to decide where the family residence shall be, and to change it as often as pleasure, business or health dictates, and that the wife must follow him or be chargeable with desertion. Cutler v. Cutler, 2 Brewst. 511; Colvin v. Reed, 55 Pa. 380; Boyce v. Boyce, 23 N. J. Eq. 337. This rule has its foundation in sound public policy, and we are of the opinion that an ante-nuptial agreement by which the husband surrenders his right to fix and to change the domicile, should not be enforced. The precise question does not appear to have arisen in this State, but in the South Carolina case of Hair v. Hair, 10 Pick. Eq. 163, the court says: "Such a promise is a nullity. The contract of matrimony has its well understood and its well defined legal duties, and it is not competent for the parties to interpolate into the marriage compact any condition in abridgment of the husband's lawful authority over her person or his claim to her obedience."

II. Without regard to the ante-nuptial agreement, was the wife justified by her husband's treatment of her in refusing to follow him to his new abode? It has been determined that the "reasonable cause" which justifies a wife's desertion and abandonment of her husband must be such as would entitle her to a divorce. Eshbach v. Eshbach, 23 Pa. 343. By the provisions of our statute a wife is entitled to a divorce when her husband "shall have by cruel and barbarous treatment endangered the wife's life, or offered such indignities to her person as to render her condition intolerable and life burdensome, and thereby forces her to withdraw from his house and family." Act of 1815, March 13, P. & L. Dig., Vol. 1, c. 1633. And in the interprepation of this clause of the statute, it has been declared that there must be actual personal violence or the reasonable apprehension of it, or such a course of treatment as endangers her life or health, and renders cohabitation unsafe—Detrick's Appeal, 117 Pa. 452; May v. May, 62 Pa. 206; Gordon v. Gordon, 48 Pa. 226; and moreover, that a single act of cruelty is not sufficient. Richards v. Richards, 37 Pa. 225.

In the case at bar it appears that the husband was sometimes harsh to his wife, and that he likewise behaved in an insulting manner toward her parents, and that though the wife was in infirm health, he neglected and refused to employ a servant. Clearly, these facts alone do not show cruel and barbarous treatment as defined in the statute and cases cited. He never so far as threatened violence to his wife's person, and the most serious of the charges against him is that of neglecting to employ a servant, though able to do so. There is no evidence, however, as to the nature of the wife's infirmity of health, or the extent of the household duties she was compelled to perform, and we are therefore unable to say, as a matter of law that compelling her to do her own housework endangered her health to such a degree as to render cohabitation under the circumstances unsafe. That such at least was not the cause of her refusal to cohabit is indicated by her apparent willingness to live with him in her parents' house.

For the reasons stated, the wife's refusal to follow her husband must be regarded as a desertion, and it follows that the husband is not liable for necessaries subsequently furnished her by her parents. Cunningham v. Irwin, 7 S. & R. 247, 250; Walter v. Simpson, 7 W. &. S. 83; Breinig v. Meitzler, 23 Pa. 156. The same is true of necessaries for the infant child retained by the wife. Fitler v. Fitler, 33 Pa. 50.

Judgment for defendant.

ARTHUR MANUFACTURING CO. vs. BOROUGH OF CARLISLE.

Attachment—Municipal corporations—Garnishee.

STATEMENT OF THE CASE.

On February 1st, 1898, Samuel Smiley received the contract for the building of a sewer system from the borough of Carlisle. The sum to be paid was $10,000. The work was finished on December 1st, 1899, and accepted by the borough. But $8,000 has been paid to Smiley, and $2,000 is still due. Smiley purchased certain pipe from the plaintiff for $1,000. This bill he refuses to pay, though judgment has been obtained against him. The Arthur Manufacturing Company has attached the money in the hands of the borough due Smiley.

BASEHORE and HEIST for the plaintiff.

1. Money owing under every description of contractual obligation is subject to attachment. *In re.* Glen Iron Works, 13 W. N. C. 388; 1 P. & L. Dig. 403.
2. A borough may be garnishee. Heeber v. Chave, 5 Pa. 115.

SEBRING and ALEXANDER for the defendant.

1. A municipal corporation cannot be made a garnishee. Grier v. Rawley, 1 Pitts. 1; Phila. Granite and Blue Stone Co. v. Douglass, 14 C. C. 244; Pettebone v. Bardslee, 1 Kulp 180, (a county); Van Volkenburgh v. Earley, 1 Kulp 216, (a borough); Morrell v. Bank of Penna., 2 Phila. 61, (a state officer); Fairbanks Co. v. Kirk, 22 C. C. 57 (1899).

OPINION OF THE COURT.

The plaintiff has obtained a judgment against Samuel Smiley for $1,000, and has issued an attachment execution thereon against the borough of Carlisle, which owes Smiley $2,000. The borough of Carlisle has filed a motion to quash the attachment, on the ground that being a municipal corporation it cannot be garnisheed.

Such a corporation cannot be made a garnishee in execution attachment. 1 Trickett, Liens 433.

For this reason, we think, the attachment should be quashed. 1 Br. Practice 696.

Attachment quashed.

COMMONWEALTH vs. BURT & PACKARD.

Constitutionality of semi-monthly pay law, Act of May 20, 1891, P. L. 96.

STATEMENT OF THE CASE.

The defendants are the owners of a shoe factory located in the borough of Shippensburg. It has been their custom to pay all employes on the last Saturday of each calendar month. The district-attorney brings this indictment for a violation of the "Semi-monthly Pay Law," of May 20, 1891, P. L. 96.

The defendants allege the Act to be a violation of Art. 1, Sec. 17, and Art. 3, Sec. 7, of the State Constitution.

Motion to quash bill.

STAUFFER and LIGHTNER for the Commonwealth.

1. Art. 1, Sec. 17, of the Constitution, does not apply for this Act does not impair the obligation of contract.
2. Art. 3, Sec. 7, of the Constitution, does not apply, for there is no class legislation in the Act under consideration. Besides, this article is to be liberally construed. Seabold v. Commissioners, 187 Pa. 318; Lloyd v. Smith, 176 Pa. 213; Chalfant v. Edwards, 173 Pa. 246.

MITCHELL and BOWERS for the defendant.

1. The Act is a violation of Art. 1, Sec. 17, and Art. 3, Sec. 7, of the Constitution of Pennsylvania, and the bill of indictment should be quashed. *Cf.* Godcharles v. Wigeman, 112 Pa. 431; Showalter v. Ehlan, 5 Sup. 242.

OPINION OF THE COURT.

On the motion to quash the indictment against Burt & Packard, the only cause assigned for quashing it is the unconstitutionality of the Act of May 20th, 1891, 2 P. & L. 4,801, which, it is alleged, that the defendants have violated. The first section of that Act enacts that "every individual firm, association or corporation employing wage-workers, skilled or ordinary, laborers engaged at manual or clerical work in the business of mining or manufacturing, or any other employes, shall make payment in lawful money of the United States to the said employes, laborers and wage-workers, or to their authorized representatives, the first payment to be made between the first and the fifteenth, and the second between the fifteenth and thirtieth of each month, the

full net amount of wages or earnings due said employes, laborers and wage-workers upon the first and fifteenth instant of each and every month wherein such payments are made." Refusal to make payments when demanded upon the dates thus set forth is declared to be a misdemeanor, on conviction of which a fine not exceeding $200 may be imposed.

The defendants are indicted for refusing to pay wages of certain employes, on their demand, on the days mentioned in the Act.

The Act is alleged to conflict with Art. 1, Sec. 17, and with Art. 3, Sec. 7, of the Constitution of this State. The seventeenth section of Art. 1 declares that no "law impairing the obligation of contracts" shall be passed. But a law forbidding a contract does not impair the obligation of a contract made in violation of it. No law can be censurable, under this clause of the Constitution, unless there is, before its adoption, a contract which gives rise to an obligation, and unless it impairs this pre-existing obligation. It does not appear that any contract between the defendants and the employes, whose wages they have refused to pay, existed before the passage of the Act of 1891.

The first section of Art. 1 of the Constitution declares that "all men are born equally free and independent, and have certain indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness." It may be that by this section, a right to make contracts, within limits, is secured as a portion of "liberty" and as a means of "acquiring, possessing, and protecting property," or of "pursuing * * happiness." If this is so, there are two answers to the suggestion that the first section of the Act of 1891, so far as invoked by this indictment, violates this right.

1. No contract is alleged to have been made between the defendants and their employes, by which the payment of wages was deferred beyond two weeks. The defendants are indicted for having refused to pay every two weeks. Whether they have the excuse that by their contract, they were not required thus to pay, we do not know. To inquire whether they have, upon their motion to quash, would be improper. Now, the same section of an Act might be unconstitutional, so far as its operation would interfere with the making and enforcing of contracts, and constitutional, in other respects. We are unable to see that the Legislature cannot require employers to pay wages every two weeks, in the absence of contracts, although the terms employed by them are wide enough to cover cases in which there are such contracts as well as those in which there are none. Bolton v. Johns, 5 Pa. 145; Bunn v. Gorgas, 41 Pa. 441.

2. But, even had it appeared that the defendants had made a contract with their employes, for less frequent than bi-weekly payments, and that, consequently, to punish them for not making bi-weekly payments, would be to impugn their power effectually to make such contracts, we are not able to say that the Act would be unconstitutional. The power of the Legislature to prohibit or restrict the making of contracts has been largely exercised and conceded by the courts. Two adult men contract, one to borrow, the other to lend $1,000 at eight per cent. interest. The Legislature has said that as respects the two per cent. in excess of six, the contract shall be void. What court has denounced the law as unconstitutional? or said that such a law "is an insulting attempt to put the borrower under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States." See Godcharles v. Wigeman, 113 Pa. 431.

The Act of May 21st, 1855, 2 P. & L. 3,264, makes it criminal to sell oleomargarine. Why? To prevent persons buying and consuming it. But the courts have not found in such law any obnoxious legislative tutelage over consumer or buyer. Powell v. Commonwealth, 114 Pa. 265. It might be supposed that a man *sui juris* would prefer to decide for himself whether he should buy and eat oleomargarine. But the Legislature has kindly supplied him with a wisdom he lacks, and made purchase of the obnoxious fat impossible, and consumption of it difficult, and its assumption of guardianship has not been condemned.

Men *sui juris* contract occasionally with employers to exempt the latter from liability for the negligence of their servants, but such contracts have been pronounced invalid by the courts. Burnett v. Pa. R. R., 176 Pa. 45. It is difficult to see how a court can put adult men under tutelage, and the Legislature not.

Indeed, it is the business of the State to exercise a tutelage over its citizens, to preserve them from fraud, violence and oppression, and the oppression that may be wrought through contracts it is as much its duty to prevent, as any other oppression. He surely is blind to the most manifest facts of society, who does not see that in many contracts the parties are not equally free, and that for the State to abandon the weaker to the rapacity of the stronger, is to abdicate its most solemn and imperious duty. Consider the regulation of the sale of bread by weights, 3 W. N. 273; of notes given for patent rights, Hunter v. Henninger, 93 Pa. 373; Shires v. Commonwealth, 120 Pa. 368; of the hours per day a conductor on a passenger car may be required to work; Act March 24, 1887, 1 P. & L, 1,316; of the making of contracts concerning land, etc.

The distinction between those *sui juris* and those *non sui juris*, is itself a legislative one. Married women have been recently transposed from one class to the other. And it is idle to assume that all persons of the class roughly denominated *sui juris* are so provident, intelligent and independent, that they can adequately safeguard their interests when dealing with any other members of that class.

It is well known that the wage earners, as a class, have little property, and depend for their daily subsistence on the wages that they earn. Important moral and economic reasons require the punctual payment, at short intervals, of these wages, and these reasons are so strong as to override any consideration of the desirability of allowing absolute freedom of the weak to contract under coercion with the strong.

As to the seventh section of Art. 3, which the Act of 1891 is supposed to infringe, it will not be possible for us to say much. *Vide*, Leonard v. Pierce, 1 Forum 79. Though the Act of 1891 regulates "labor, trade, mining or manufacturing," we do not think it "special" in the prohibited sense. This Act applies to all employes without distinction. It applies to wage-workers, skilled or ordinary, laborers at manual or clerical work, in the business of mining or manufacturing, or any other employes. We are of opinion that the Constitution does not prohibit separate classification of manufacturing and mining business, and the making of regulations that their special peculiarities seem to require. The needs with respect to payment of wages, etc., of the dependent workers in mills, foundries, factories, may be different from those of workers in other lines, and it would be regrettable if the Constitution should be so construed as to prevent legislation contrived to meet these needs.

The motion to quash is dismissed, and the defendant is ordered to plead.

MARINE INS. CO. vs. WM. CODY.

Lunatic—Negligence—Damages—Subrogation.

STATEMENT OF THE CASE.

James Throop owned a vessel, which Cody chartered for a voyage from Boston to Philadelphia. A violent storm arose, and for two days and nights Cody, captain of the vessel, remained on deck, not sleeping, and eating but little. Meantime he felt himself becoming exhausted, and resorted to large doses of quinine. His mind was affected, and his orders to the crew resulted in the vessel running ashore and being totally wrecked. Throop sued the insurance company, and recovered $12,000. Thereupon the company sued Cody, as the cause, by his unskillful and negligent commands, of the accident and loss. Defendant asked the court to say to the jury: (1) No cause of action against him arose to the plaintiff. (2) If the unskillful orders were the result of the exhaustion and temporary mental aberration caused by excessive watching, labors and the quinine, the taking of which was made necessary, he was not responsible. The court told the jury that insanity was no excuse for negligence or the want of skill required by the occasion; and that the insurance com-

pany could recover, if they found the facts according to the testimony of the plaintiff.

SLOAN and GRAUL for the plaintiff.

1. Insane persons are liable for their torts, except those in which malice is a necessary ingredient. Williams v. Hays, 143 N. Y. 442.

2. The insurance company, having paid the charterer, is subrogated to his right of action against Cody. Monticello v. Mollison, 17 How. 153; Mobile, etc., R. R. Co. v. Jurey, 111 U. S. 594.

RALSTON and BURCHENAL for the defendant.

1. Cody cannot be held liable, for there is no negligence if a man uses ordinary care.

OPINION OF THE COURT.

This is an action brought by the Marine Ins. Co. against Wm. Cody to recover damages for the wrecking of a ship, due to his alleged negligence.

Cody chartered a vessel, and took her out of Boston, as captain, intending to run her to Philadelphia. A violent storm arose, and for two days and nights Cody was constantly on duty. In the meantime he had taken large doses of quinine. His mind was affected, and his orders to the crew resulted in running the vessel ashore and completely wrecking her.

The question for us to decide is whether the insanity of the defendant furnishes a defense to the plaintiff's claim, and it is the opinion of the court that it does not. The general rule is that an insane person s just as responsible for his torts as a sane person, with the exception of those torts of which malice is an ingredient. The law looks to a person who has been damaged, and endeavors to make him whole; and the liability of a lunatic for his torts has been placed on several grounds. First, that when one of two innocent persons bears a loss, he must bear it whose acts caused it. Again, it is said that public policy requires the enforcement of the liability; that the relatives of the lunatic may be under inducement to restrain him, and that tort-feasors may not simulate or pretend insanity to defend their wrongful acts causing damage to others. In Bushwell on Insanity (§355) it is said, "Since in a civil action for tort it is not necessary to aver or prove any wrongful intent on the part of the defendant, it is a rule of common law that although a lunatic may not be punished criminally, he is liable in a civil action for any tort he may commit."

In Cooley on Torts (93) the learned author says: "A wrong is an invasion of a right to the damage of the party who suffers it. It consists in the injury done, and not commonly in the purpose or mental condition of the person or agent doing it."

The law, in giving redress, has in view the case of the party injured, and the extent of his injury, and makes what he suffers the measure of compensation.

In 143 N. Y. 442, which seems to be an analogous case, it is held that an insane person is liable for his torts the same as a sane person, except for those torts in which malice, and therefore intention, is a necessary ingredient.

The conclusion of the court, therefore, is that judgment be for the plaintiff.

WALT. TAYLOR, J.

OPINION OF THE SUPREME COURT.

The plaintiff has paid $12,000 to Throop, the owner of the vessel. Alleging that the vessel was lost by the unskillful and careless action of Cody, its captain, the company brings this action to recover from Cody the $12,000.

That the company has a right to subrogation to the position of Throop as against Cody, is incontestable. Williams v. Hays, 143 N. Y. 442; 2 May, Insurance, 1030.

But, had Throop any right to recover from Cody compensation for the loss of the vessel on the facts disclosed in this case? The defendant requested the trial court to tell the jury that there was shown no right to recover; and, more specifically, that if the unskillful orders of Cody were the result of the exhaustion and temporary mental aberration caused by excessive watching, labor and quinine, the taking of which was made necessary, Cody was not responsible. In declining these instructions, was the court in error?

Assuming that the commands of Cody, obedience to which resulted in the wreck of the vessel, were not such as a competently skillful man would have given under the circumstances, we are to ascertain the causes of the incompetence that prompted them. It is not shown that Cody had been deficient in a sailor's skill and knowledge. An unusual storm had

arisen. He was obliged to remain on deck, without sleep, for two days and nights, eating but little. There was nothing improper in this. He not only had a right, but apparently was under a duty thus to exert himself for the safety of the ship. Exhaustion supervening, Cody resorted to large doses of quinine. He was not culpably responsible for the exhaustion. There is no evidence that he was careless or reckless in the use of the quinine. He took that drug. So had millions before him. He took it in large doses. But in how large? In five-grain, ten-grain, fifteen-grain doses? How often did he repeat them? Would a prudent man, under the circumstances, have refrained from taking them? The evidence is insufficient to justify an affirmative response.

The situation, then, is this: A violent storm requires and justifies such exertions of Cody as prostrated him. Exhausted, he not imprudently takes quinine. The unforeseen and unforeseeable effect of the exhaustion and the quinine is the loss of sane judgment and skill Of this loss the shipwreck is the consequence. For which of the series of causes is Cody responsible? Not for the storm, surely. Nor for the watching which it made obligatory on him. Nor for the exhaustion that, without his prevision of it, followed. Nor for the taking of the quinine, which, so far as appears, prudence and regard for his responsibilities dictated. But the loss of consciousness of the situation of the ship, and of apprehension of the maneuvers needful to rescue it from peril, was the unexpected and, so far as appears, the unexpectable result. We are unable to say that Cody is responsible pecuniarily for the effects of this want of consciousness and of apprehension. Williams v. Hays, 157 N. Y. 541.

What the liability of an insane man is generally for his torts is perhaps not quite clear. He is assumed to be liable for torts, by Gibson, C. J., in Beale v. See, 10 Pa. 56; and, *inter alia*, for negligence—Williams v. Hays, 143 N. Y. 442. But see 16 Am. & Eng. Encyc. 410, which combats the doctrine of the possibility of a lunatic or insane person being negligent. Several Pennsylvania cases hold that a person may be so immature from youth as to be incapable of care, and that there can be no negligence on the part of those incapable of care. If this is so, the idiot, lunatic or maniac being also incapable of care, would be incapable of negligence. It is, indeed, difficult to see how Cody could be accused of negligence, in any just sense of that word, when in the condition in which he is described by the evidence to have been.

Feeling the difficulty of imputing negligence to a child, or a lunatic or insane man, some judges have attempted to find another ground of their liability for a mischief to the person or property of another, emanating from them. Says Gibson, C. J.: The insane man "is liable to bear the consequences of his infirmity as he is liable to bear his misfortunes, on the principle that where a loss must be borne by one of two innocent persons, it shall be borne by him who occasioned it." But what is it to "occasion" a hurt or injury? A child of four years runs into an old man, and throws him down. Has he "occasioned" the hurt? One in sudden peril wards off a blow from a missile, and causes it to strike another. Has he "occasioned" the blow? A throws the body of B against that of C. Is B the occasion of C's fall? Surely the fact that some act or motion of A's body is in the chain of causation of a hurt to B, does not *ipso facto* make A responsible. Beside the causal relation, we search for some other element. Was there intention? Was there malice? Was there negligence? But it is unnecessary to decide whether Cody could be actionable had his unskillful acts emanated from an insanity that existed independently of his efforts to perform his duty as captain. The evidence before the jury justified it in inferring that his insanity was the result of his strenuous endeavor to save the vessel. The court should, we think, have affirmed the defendant's second point.

Judgment reversed.

SAMUEL MAPES vs. HENRY WILE.

Equitable ejectment—Warranty—Set off—Measure of damages.

STATEMENT OF THE CASE.

Mapes, owning a flour mill, contracted in writing to sell it to Wile for $10,000, orally guaranteeing its capacity to produce 40 bbls. of flour per day. Wile paid $3,000 and possession was given to him, but no deed was delivered. After he had operated the mill a short time he discovered it would not produce more than 10 bbls. of flour per day. He undertook therefore to change its machinery and power so that it would produce 40 bbls. per day, and in doing so spent $8,000, and consequently refused to pay any more purchase money to Mapes or to yield up the possession. Mapes then brought ejectment. Mapes agreed to reduce the purchase price from $7,000 to $3,500, on claim that had the mill been only of capacity to produce 10 bbls. per day it would have been worth $7,000 at least.

SHIPMAN and LIGHTNER for the plaintiff

1. Ejectment by vendor lies against vendee when part of the purchase money has been paid and vendee has defaulted in payment of remainder. Walker v. France, 112 Pa. 203; Brown v. Dewitt, 131 Pa. 455; Daubert v. Pa. R. R., 155 Pa. 178; Moyer v. Garrett, 96 Pa. 376.

2. For breach of a warranty the purchaser's measure of damages is the difference between the actual value of the subject of sale and the value it would have had at the time of the sale, if it had corresponded with the warranty. Beaupland v. McKeer, 28 Pa. 124; Walker v. France, 112 Pa. 203; City Iron Works v. Barber, 102 Pa. 156; Himes v. Kiehl, 154 Pa. 190.

HESS and LENTZ for the defendant.

1. This is an equitable ejectment for a balance of purchase money and the defendant has the right (*a*) To set off any damages he may have suffered from breach of plaintiff's warranties. Walker v. France, 112 Pa. 203. (*b*) To have the court decree that a deed be made upon payment of balance less such damages as may be awarded. Mitchell v. De Roche, 1 Yeates 12; Brown v. Dewitt, 13 Pa. 453.

2. The measure of damages is the difference between the value of the property at the time of the sale capable of producing 10 bbls. per day and the value it would have had if capable of producing 40 bbls. Walker v. France, 112 Pa. 203; Wilkinson v. Ferris, 24 Pa. 190.

CHARGE OF COURT.

Gentlemen of the Jury:—

The case for your consideration is in substance as follows: Samuel Mapes, to be hereafter known as the plaintiff, entered into a written contract with Henry Wile, to be hereafter known as the defendant, whereby the plaintiff agreed to convey to the defendant, for a consideration of $10,000, a certain flour mill, orally guaranteeing its capacity was 40 bbls. per day. Wile paid $3,000 of the purchase money and received possession of the property. After operating it awhile he discovered that the capacity was but 10 bbls. per day. Wile therefore undertook to change its machinery and power so that it would produce 40 bbls. per day, and in so doing spent $8,000, and consequently refused to pay any more of the purchase money, nor would he give up the possession of the property. Mapes now brings this action of ejectment.

Mapes now agrees to reduce the balance of the purchase money which is $7,000 to $3,500, on the claim that had the mill been only of the capacity of 10 bbls. per day it would in the least be worth $7,000.

The counsel for the defendant allege that their client was induced to enter into this contract by fraud and that the plaintiff should bear the burden. We think that this point must be negatived. No person can be held responsible for a misrepresentation made through an honest mistake. Fisher v. Mullen, 103 Mass. 503.

There is no evidence nor is there any allegation on the part of the defendant that the mill never was capable of producing 40 bbls. per day, and that by judicious repairing it could have been put in condition where it would have been capable of doing the same again.

Counsel for the defense claim that they have suffered $8,000 damage by reason of the mill's non-fulfillment of Mapes' guarantee. In this we cannot concur. By looking into the agreement it at once becomes apparent that Mapes did not contemplate giving a mill equal in value to one having all new machinery.

The same mill with old machinery, producing 40 bbls. per day, would be worth a good deal less than if it had new machinery of the same capacity. It therefore be-

comes necessary for you to derive the measure of damages by a different computation.

We are of the opinion that the doctrine laid down in Walker v. France, 112 Pa. 203, is admirably adapted to the settlement of this case. In the case just cited the learned court holds that in an equitable action of ejectment brought by the vendor to recover the balance of purchase money due upon a contract, the vendee will be permitted to recoup the damages sustained by reason of the vendor's inability to comply with his contract.

It is well settled that equity will decree specific performance of a contract when it has already been so far performed, that it would be inequitable to rescind the same. Such are the circumstances here; the parties cannot be placed in *statu quo* without doing an injustice to one or the other; hence the only way open for you is to find the measure of damages to which the defendant is entitled as a set-off against the $7,000 still due.

If Mr. Wile had spent the $8,000 in repairs so as to bring the mill up to the guarantee, it is clear that he would have been entitled to that amount as a set-off, but we do not think that he was justified in throwing out the old machinery and changing it for new, such as would suit his whim or fancy. If the ruling were different, praise of one's own property would be unsafe. If the property did not conform with the letter of the guarantee, the vendee could throw out the old machinery and put in new, nickel or silver-plated, of the same capacity, but which would cost more than the vendor's original price and thus the vendor would get nothing for his property.

Now, gentlemen of the jury, the question for you to decide is the difference in value of two mill properties whose location are identical, whose buildings are identical, but whose productive powers vary by 30 bbls. a day. The mill submitted to your consideration is one which was represented to produce 40 bbls. a day. There has been no evidence submitted that this was not its original capacity, which must have been some time ago, as evidenced by the fact that the defendant discarded the machinery as of no more service. However this mill was still capable of producing 10 bbls. per day.

Now it is for you to say what is the difference in value between the mill as represented and as it now is. Take then all the evidence submitted to you with these instructions, give it your careful consideration and return a verdict, such as you think does justice between the two litigants.

The decree of the court is that whatever this verdict may be, if reasonable, shall be the defendant's set-off against the $7,000 still due, and judgment will be entered thereon against Wile to remain in full force and effect until satisfied.

W. B. GERY, P. J.

OPINION OF THE COURT.

The plaintiff in this case brings ejectment to recover possession of the mill which had been the subject of a contract of sale between the defendant and himself. The plaintiff had orally guaranteed the productive capacity of the mill at 40 bbls. per day. On going into possession, however, the defendant found that the manufactory was capable of turning out but 10 bbls. per day, and in consequence of the breach of warranty by plaintiff, defendant took it upon himself to improve the mill to such an extent as to bring it up to the plaintiff's warranty. In so doing defendant expended $8,000 and since he had already paid $3,000 of the purchase money, he refuses to surrender possession on the ground that he has already expended more than the contract price of the mill, to-wit, $10,000.

Had the defendant paid the full purchase money instead of but a portion of it, he undoubtedly, as defendant claims, could have successfully defended the action of ejectment and compelled the plaintiff to deliver a deed to him. Here, however, the defendant had not paid the full purchase price, and could not therefore demand a deed or retain possession. Mitchell's lessee v. De Roche, 1 Yeates 12, was a case of ejectment by the vendor of land against the vendee who was in possession. The contract stipulated that the purchase money was to be paid in installments, and in pursuance thereof part of the purchase money (the first installment) was duly paid. The plaintiff, on the re-

fusal of the defendant to pay the balance, brought ejectment, and the court say, "Without payment of the full consideration money the defendant is not entitled to the premises on any principle of law or equity." This same principle is also laid down by the court in Marlin v. Willink, 7 S. & R. 297.

The learned counsel for the defendant contend, however, that the plaintiff here cannot recover in ejectment for the reason that in order to do so he must set up his own fraud. This point we also feel constrained to negative from the fact that nothing appears in the statement of facts sufficient to warrant us in presuming the existence of a fraud, especially as the law ever presumes against crime and fraud whenever it can possibly do so consistently with the statement of facts.

The defendant in the case at bar endeavors to use as a set-off the amount of money he has expended in bringing the mill up to the productive capacity guaranteed by the plaintiff. That a right of set-off for valuable improvements exists, there can be no doubt. Walker v. France, 112 Pa. 203. The defendant, however, is not to be allowed to set off the amount he chose to expend in bringing the productive capacity up to the warranty, but what the expense incident to improving the mill up to the guaranteed capacity actually was. This amount is made the subject of contention in this case, the defendant contending that it was $8,000, the amount he expended, and the plaintiff, on the other hand, claiming that the value of the mill at even 10 bbls. per day was $7,000, or $6,500 at least, and therefore the difference in value of the mill as guaranteed and as actually delivered was but $3,000, although he is willing, in order to settle the case, to accept but $6,500 for it. Strange to say, however, although the plaintiff claims that $3,000 was sufficient to bring the mill up to the warranty, and the defendant contends that it was necessary to expend $8,000 in so doing, yet neither party has adduced any evidence to support his contention on this point, but merely advances his own statements as to what he thinks was the necessary outlay. Although this being a court of equity, the court has power to decide questions of fact as well as of law, yet in this case we are at an utter loss to determine the difference between the pecuniary values of the mill as guaranteed and as it was actually delivered, for the reason above given, that the parties differ as to the amount, but neither adduces any evidence in substantiation of his assertions.

We think, therefore, that as the defendant wishes to make a set-off for improvements he has made, the burden of proof rests upon him to establish affirmatively the amount mentioned above before he is entitled to such set-off. Since he has failed to do this, we must consider as such difference in the value of the mill as guaranteed and as delivered the amount conceded by the plaintiff, to-wit, $3,500.

As a condition precedent to the recovery of the mill, however, the plaintiff must refund that amount of the purchase money already paid by the defendant. Walker v. France, 112 Pa. 203.

Therefore, unless the counsel for the defendant, in accordance with the rules of equity, moves for a postponement or a continuance, we will be obliged to enter judgment for the plaintiff to recover the property in question on condition, however, of his re-paying to the defendant the $3,000 purchase money already received by him and the $3,500 conceded by the plaintiff to be the difference between the value of the mill as it was guaranteed by him and its value as it actually was when delivered to the defendant. H. M. HARPEL, J.

AMOS CUMMINGS vs. RAILROAD COMPANY.

Common carrier—Passenger—Reasonable regulation.

STATEMENT OF THE CASE.

Plaintiff intending to go to Philadelphia over the defendant's railroad, went to the station at 9 P. M. in order to take the 11 P. M. train. He entered the station and purchased a ticket. In a few minutes the agent told him that he must close the station, as it was a rule of the company that it should be kept open only thirty minutes before the train left. Plaintiff protested that he had nowhere to go, but the agent threatened to eject him. He

went outside and waited. The night was bad. Plaintiff was thinly clad, and, as a result, contracted a severe illness. This action is brought to recover damages.

DEAL and ELDER for the plaintiff.

1. Plaintiff was a passenger (Dodge v. Steamship Co., 148 Mass. 207,) and therefore entitled to protection from injury and to shelter. Grimes v. Pennsylvania Co., 36 Fed. 72; Gordon v. R. R. Co., 40 Barb. 546.

2. The regulation was unreasonable, and therefore the company is liable for injury resulting from its enforcement by agents. Pa. R R. Co. v. Langdon, 92 Pa. 21; Lent v. R. R. Co., 120 N. Y. 467.

FRANTZ and DAVIS for the defendant.

1. The regulation was reasonable.

2. The plaintiff was guilty of contributory negligence, and therefore cannot recover. Aspell v. R. R. Co., 23 Pa. 147; Schofield v. Chicago R. R. Co., 8 Fed. Rep. 488; Kennard v. N. J. R. R. Co., 21 Pa. 205.

OPINION OF THE COURT.

The plaintiff, intending to go to Philadelphia over the defendant's road, went to the station at 9 o'clock in the evening in order to take the 11 o'clock train. He purchased a ticket, and was subsequently told by the agent to leave, as the rule of the company necessitated his closing the building until one-half hour before the train started. Plaintiff protested that he had nowhere to go, but the agent threatening to eject him, he went outside and waited. The night was bad. Plaintiff was thinly clad, and, as a result, contracted a severe illness. He now brings this action to recover damages.

The case, we think, involves two points: (1) Is the reasonableness of the regulation requiring the building to be closed until thirty minutes before the train started a question of law for the court, or of fact for the jury? (2) Was the regulation a reasonable one?

When the facts are undisputed, the reasonableness of the rule is a question of law for the court. If it were otherwise, there would be no uniformity as to what constituted a reasonable rule, one jury holding that a rule was reasonable, while another jury might decide the same rule to be unreasonable. Pittsburg Ry. Co. v. Lyon, 123 Pa. 140; Louisville Ry. Co. v. Fleming, 18 Am. & Eng. Ry. Cases 356; Veddor v. Fellows, 20 N. Y. 126.

The right of a railroad company to make reasonable rules and regulations for its own protection, and for the safety and convenience of its passengers, has been recognized by our courts. Pennsylvania Ry. Co. v. Langdon, 92 Pa. 27; Commonwealth v. Power, 48 Mass. 596. As the plaintiff had, by the purchase of a ticket with the intention of going on the next train for Philadelphia, established the relation of passenger and carrier—Dodge v. Boston Steamship Co., 148 Mass. 207, we have only to consider the reasonableness of rules applicable to passengers as distinguished from those relative to mere licensees.

The doctrine of our courts is, that a railroad company is bound to omit no precaution that would conduce to the safety and protection of its passengers. New Jersey Ry. Co. v. Kennard, 21 Pa. 204. Applying this rule, we think the defendant is liable for refusing to use that degree of care necessary for the protection of its passengers. As was said in Harris v. Stevens, 31 Vt. 88, "Any person who desires to go upon the cars has the right in a proper manner, and at a suitable time, to go upon the premises of the company at any station where the passenger trains stop to receive passengers for the purpose of procuring a ticket and getting on board, and the company has no right to prevent or hinder his coming on their premises, or to order him to depart therefrom, before the departure of the train; and such person has the right to remain on the premises of the company at such station until the departure of the train."

The application must be made in a proper manner, and at a suitable time. What constitutes a suitable time must necessarily depend upon the circumstances of each case. The rule regarding the closing of a station, which is applicable to a city depot, is certainly not applicable to a small town in a rural district. From the statement of facts, it appears that there was no public place for accommodations in the neighborhood of the station, hence, a rule compelling a person wishing to become a passenger to remain outside of the building until thirty minutes prior to the starting of the train would certainly work many hardships upon the patrons of the road. During the Winter months it would

necessitate persons living at a distance from the station to make no allowance for mishaps when contemplating making connection with a certain scheduled train, lest in so doing they would be compelled to subject themselves to exposure should they arrive without accident.

The authorities seem to hold that a rule which arbitrarily and unnecessarily subjects the passengers to inconvenience, annoyance, loss and delay is unreasonable. Pittsburg Ry. Co. v. Lyon, *supra;* Veddor v. Fellows, *supra;* Summitt v. State, 9 Am. & Eng. Ry. Cases 302; Commonwealth v. Power, *supra;* Hall v. Power, 53 Mass. 482. Relative to stations, Campbell, J., in People v. McKay, 46 Mich. 440, says: "Passengers are entitled to remain in the station so long as they have occasion to do so and commit no offense against the good order of the place." Applying the doctrine of these cases to the facts of the present case, we are of the opinion that the regulation of the defendant company is an unreasonable one.

This being our interpretation of the law, it is your duty, gentlemen of the jury, to find for the plaintiff the amount of damages to be assessed by you in your verdict.

H. M. COLLINS, J.

This is an action to recover damages for injuries suffered by the plaintiff, Amos Cummings, against the railroad company for being expelled from its station, to which he had gone about 9 o'clock, intending to take the 11 o'clock train for Philadelphia.

After arriving at the station he bought a ticket for Philadelphia, expecting to remain in the station until the time for the departure of his train. But he was informed by the station agent that he would have to leave the station, as the company allowed its stations to remain open but thirty minutes before the departure of its trains.

The plaintiff remonstrated against this, claiming that he had no place to go, but he was nevertheless obliged to leave the station, and, being thinly clad, contracted a serious illness from being exposed to the inclement weather. For the injuries suffered he brings this action.

As soon as the plaintiff arrived at the station he purchased a ticket from the agent. By so doing did the railroad assume the duties of a carrier of passengers towards him, and did he bind himself to live up to all the reasonable rules and regulations of the company?

The purchase of a ticket by a person, entitling him to travel between two stations, creates the relation of carrier and passenger, with all the duties imposed by law upon each. Wabash R. Co. v. Rector, 9 Am. & Eng. R. Cases 264. It is not even necessary that the person should have a ticket. Going into the station, ticket office or waiting room with the bona fide intention of becoming a passenger, ordinarily places one in the position of a passenger. Donovan v. Hartford St. R. Co., 65 Conn. 201. Also, a person who has purchased a ticket, and is in the waiting room of the company intending to take a train, is a passenger. Carpenter v. Boston R. Co., 21 Am. & Eng. R. Cases 331.

After a careful consideration of the cases upon this subject we are of the opinion that the relation of passenger and carrier existed between Cummings and the railroad company; therefore, the company was bound to see that the plaintiff was not injured on account of any neglect on their part.

So, also, the plaintiff was bound to conform to all the reasonable rules and regulations of the company.

This leaves us free to determine whether the regulation of the company allowing the station to remain open but thirty minutes before the departure of trains was a reasonable one. If the rule was reasonable, then the plaintiff cannot recover for any damages suffered, while, if not, he can.

It is a well established rule of law, that railroad companies have the right to adopt such reasonable rules and regulations for the management of their business as they deem proper. Langdon v. Pa. R. R. Co., 92 Pa. 21. But at the same time they must see that no unjust methods are employed in the carrying on of their business.

After selling to the plaintiff a ticket, was it proper for the defendant to exclude Cummings from their waiting room? This all depends upon the fact whether the regulation of allowing their station to

be open but thirty minutes before the departure of trains was a reasonable one.

When the facts upon which the reasonableness or unreasonableness of a regulation of a railroad company depend are undisputed, then the determining as to whether the regulation is a reasonable one is a question of law for the court. Pittsburg, C. and St. L. R. Co. v. Lyon, 123 Pa. 140; Vedder v. Fellows, 20 N. Y. 126-131. The facts being undisputed in this case, we think it is within the province of the court to determine the reasonableness of the rule.

Two hours before the time for the arrival of the train which the plaintiff expected to take for Philadelphia, the defendant company sold him a ticket to that city. After receiving his ticket he expected to remain in the waiting room until his train arrived, but he was expelled from the station. The plaintiff claimed that he had no place to go in order to be protected from the weather, which was on that night bad.

Could the company, under such conditions, expel one of its passengers from its waiting room?

A regulation of this nature would cause great inconvenience to the passengers of any railroad company. The traveling public, as a general rule, are not residents of the town in which the station is situated, especially in a town into which several different railroads run. Passengers come into the town on one road expecting to go out on another, and not knowing the time of the departure of the trains of the other roads, are oftentimes compelled to remain in the town for hours. Under such circumstances some people, especially those of means, could go to a hotel, while others less fortunate in a financial way could not afford to do so. But carriers of passengers must provide accommodations for all classes of persons, poor as well as rich.

Therefore, after duly reflecting upon the rights of the relative parties, we are of the opinion that the regulation in this case, circumstances being such as they are, is an unreasonable one, and that the requiring of the plaintiff to expose himself to the weather, and the denying to him of the use of its station, was a breach of the duty which the carrier owed to the plaintiff. The plaintiff contracted a severe illness as a result of the exposure, and seeks to recover damages for injuries suffered.

Considering the case as we have, we are of the opinion that the plaintiff is entitled to recover damages for injuries suffered on account of the unjustifiable disregard of his rights on the part of the railroad company.

L. PHILIP COBLENTZ, J.

WALTER WILLIAMS vs. C. V. R. R. COMPANY.

Liability of common carrier.

STATEMENT OF THE CASE.

The plaintiff went to the station of the defendant in Carlisle an hour before the train started to purchase a ticket, but the office was not open. He took his valise to the baggage room and asked to have it checked. The baggage-master refused to give him a check, it being the rule of the company that he should not do so until ticket is procured. He allowed plaintiff to put his valise in the room where there were a large number of other pieces of baggage.

Five minutes before the time at which the train left Williams went to the station to get his valise. Without any fault of his, his valise had been mixed with other unchecked baggage. He was so delayed in finding the valise that he had no time to buy a ticket.

On the train the conductor demanded the regular fare and ten cents additional. He declined to pay the extra ten cents and was ejected. This action is brought to recover damages sustained.

KOSTENBANDER and HEIST for the plaintiff.

1. The defendant company is liable for the baggage, even though no check has been given, (Hickox v. R. R. Co., 31 Conn. 281; Green v. Milwaukee R. R. Co., 41 Iowa 410), or if ticket has not yet been purchased. Green v. Milwaukee R. R. Co., Supra; Hickox v. R. R. Co., Supra. Lake Shore R. R. Co. v. Foster, 104 Ind 293.

2. Baggage master's negligence is the proximate cause of plaintiff's loss.

DEEBLE and KATZ for the defendant.

1. Defendant was a "gratuitous bailee" and is liable only for gross negligence.

154 Pa. 296. The rules of the company relative to checking baggage and exacting ten cents extra in fares paid on the train are reasonable. The passenger must acquaint himself with such rules, and if he does not, a carrier is not liable. Terra Haute R. R. Co., 111 Ill., 202; 2 Wood on Railroads, Pg. 1203; Reese v. Pa. R. R. Co., 131 Pa. 422; Manchester R. R. Co., 132 Mass. 116; Ritter v. P. & R. R. R. Co., 2 W. N. C. 382; 3 Wood on Railroads, Pg. 1668; Lake Shore and Mich. Southern R. R. v. Rosenzeweig, 113 Pa. 519.

OPINION OF THE COURT.

It is the opinion of the court that it is immaterial whether or not the deposit of the baggage was a gratuitous bailment. The point of law involved here is whether, under the circumstances cited, the defendant could compel the plaintiff to pay the extra ten cents, which was customary to charge passengers who had not purchased their tickets at the ticket office.

Williams, the plaintiff, arrived one hour before train time and found the ticket office closed. He returned five minutes before train time, but by his own negligence in not allowing himself sufficient time to get his baggage which he had left in the baggage room unchecked, he was unable to get a ticket at the office and had to board the train without one.

One of the regulations of the company was that passengers, who had not purchased their tickets at the ticket office, should pay an additional ten cents to the conductor above the usual fare. This the plaintiff refused to do and was consequently ejected.

It was unreasonable for the plaintiff to expect to find the ticket office at Carlisle open one hour before train time. In fact such has never been the custom and the traffic does not warrant it. Hence the plaintiff should have returned within a reasonable time to purchase his ticket, when the ticket office was open.

It is a recognized rule of law that carriers have power to make and enforce reasonable rules and regulations concerning the conduct of their business. Passengers and other persons who avail themselves of the accommodations offered by such carriers must inform themselves of such regulations and observe them. Wood on R. R. page 1203, vol. 2.

If the defendant had not given the plaintiff an opportunity to purchase the ticket at the ticket office, another question might present itself. However, it is acknowledged that such an opportunity was offered by the defendant, and that the plaintiff did not allow himself enough time to take advantage of it.

Carriers of passengers have a right to make all regulations for the proper conduct of their business which are not unreasonable.

Bennett v. R. R. Co., 7 Phila. 11; McElroy v. R. R. Co., 7 Phila. 206.

The regulation is one which exists on all railroads and is reasonable because it facilitates the collection of fares and protects the company from possible embezzlement by conductors, and it should make no difference whether a rebate is given for the additional charge or a discount is given to the parties who purchase their tickets at the ticket office.

Reese v. Penn R. R. Co., 131 Pa. 422; Ritten v. Phila. R. R. Co., 2 W. N. C 382.

Judgment for defendant.

WALT. TAYLOR, J.

In the case at bar the plaintiff, Walter Williams, went to the station of the Cumberland Valley R. R. Co. in Carlisle one hour before time and found the ticket office closed. He took his valise to the baggage room, where the baggage master refused to check it because he had no ticket. He allowed Williams to leave it in the room with a lot of other baggage. Five minutes before train time, Williams returned for his valise but found that through no fault of his it was so mixed with a lot of unchecked baggage that when found he had no time to purchase a ticket, so boarded a train without one. On the train the conductor demanded the regular fare plus ten cents. He declined to pay the excess and was ejected. He brings this action to recover.

It is a well established fact that a R. R. Company may charge persons, who by their own fault are unprovided with tickets, any amount of excess fare provided they do not exceed the rate allowed by charter or any reasonable sum with a rebate ticket. This is allowed that the company may protect itself from conductors appropriating fares. But the person must be without a ticket through his own fault.

If by negligence of some of the company's agents he is not bound to pay excess.

The decisions hold that a R. R. Company assumes the duties and liabilities of a common carrier when it receives the person's baggage whether checked or not and even if he has no ticket if there is the understanding that he is to purchase one. In 31 Conn. 281, Butler, J., quoting from "*Redfield* on *Railways*," says: "The delivery and acceptance, the abandonment of all care of the baggage by the passenger and the assumption of it by the agents of the company or carrier expressly or impliedly for the purpose of transportation, which fix the liability of the carriers as such, and that liability begins when the baggage is delivered to the agent of the company for carriage."

In Jordan v. Fall River R. R. Co., 5 Cush. 69, the court held it to be the duty of a company to keep an agent to take charge of the baggage of parties not having tickets but intending to get them.

In order to clear himself from negligence the intended passenger must allow a reasonable time in which to get his ticket, and we think that in this case five minutes was ample time for him to get a ticket, recover his valise and have it checked, and if it had not been for the negligence of the company's agent in mixing it with other baggage he would have done so. Common carriers are liable for slight negligence. The company in accepting his valise assumed the duties and obligations of a common carrier. Williams, the plaintiff, was prevented from buying a ticket by the agent's negligence, in which case he was not bound by the law allowing companies to charge excess fare to persons unprovided with tickets. In view of these facts we think plaintiff should recover damages in this action.

C. C. SLOAN, J.

OPINION OF THE SUPREME COURT.

The court below being equally divided upon the ability of the plaintiff on the facts to recover, judgment went for the defendant. The plaintiff therefore appeals to this court.

The rule of the company requires passengers not having a ticket to pay ten cents more than the ordinary fare. When the conductor demanded this additional fare, Williams refused to pay it, and was thereupon ejected from the train. That a passenger who has not paid and refuses to pay his fare may be ejected, is too well established to require citation of authority. That the company may require an additional fare from those who have boarded the car without a ticket is also well settled. Reese v. Pa. R. R., 131 Pa. 422; Lake Shore Railway Co. v. Greenwood, 79 Pa. 373; Ritter v. Phila. and Reading R. R. 2 W. N. 382. *Prima facie* therefore Williams was properly ejected by the conductor.

He justifies his refusal to pay the additional 10 cents by the allegation and evidence that he was prevented from buying a ticket before mounting the car by the improper acts of the servants of the company. What are these acts?

When he requested the baggage master to check the satchel that servant refused because of a rule forbidding him to do so until a ticket had been procured. This rule is entirely reasonable. The master should have some evidence that the satchel is entitled to carriage, and the production of the ticket by its owner is reasonable evidence. Coffee v. Louisville & Nashville R. R., (Miss.) 45 L. R. A. 112.

The baggage-master, however, while refusing to check the satchel, received it into the baggage-room, as he should have done. Up to this point no negligence is imputable to the railroad. It seems, however, that during the fifty or fifty-five minutes that followed the satchel had become "mixed with other unchecked baggage," so that when Williams came for it, the search consumed time and he was obliged to mount the car without a ticket, or wait for the next train. He preferred to mount the car.

When he decided to board the car, we think he should have also decided to pay the additional fare. The conductor was bound, as he knew, by a rule which required him to put passengers off who neither offered a ticket nor the additional fare. The conductor could know whether the ticket or this fare was produced; but he could not know the facts asserted by Williams to excuse him. It would be unreasonable to require the conductor to decide upon these facts on the mere asser-

tion of the passenger. If Williams, in fact, had a good cause for not obtaining a ticket, he might possibly recover the additional fare from the company, after paying it; but he should have paid it, and avoided expulsion from the car by the conductor under circumstances seeming to that officer to justify and require such expulsion.

It does not distinctly appear that the delay in discovering the satchel was the result of any improper act of the baggage-master, or the servant of the company. Nor is it entirely clear that a passenger may wait until five minutes before the train starts, before he goes to the station. Did he *start* for the station, or did he reach the station, five minutes before the departure of the train? At what time did he begin his search for the satchel? And how long did he search before he found it? Was the inability to get the ticket due in part to the number of passengers ahead of him at the window? The evidence furnished by the plaintiff is entirely too vague to justify the finding by a jury that the failure to get a ticket was due to an unduly long search for the satchel, occasioned by what had happened in the baggage-room.

Judgment affirmed.

OVERSEERS OF POOR vs. JOHN HALL.

Parent's liability for support of child.

STATEMENT OF THE CASE.

Adam Hall is partially blind but strong and able to do manual labor not requiring ordinary sight. A. can see well enough to walk without being led by the hand, and can go alone to any place where he has once been. He is twenty-five years old; has always lived with his father, John Hall, in the Township of R., and has refused to work.

A. has lately married. His wife lived with him and was also supported by John Hall. A. still refused to work and John Hall refused to board A. and his wife any longer. A. had no means of his own and applied to the Overseers of the Poor of the Township of R., who supplied A. and his wife with necessaries and notified A.'s father, John Hall, that they would hold him liable. The first month the overseers paid fourteen dollars ($14.00) for necessaries, and they now bring this suit against John Hall to recover the fourteen dollars.

RYAN and MACDONALD for the plaintiff.

1. The defendant is liable both under the common and statute law. Act of June 13, 1836, 2 P. & L. Dig. 3544. This is not so where the child has obtained his majority, unless he has always subsisted by the parent.

2. When the parent refuses to maintain, he is liable for necessaries provided for the child by others. Act of June 13, 1836, Sec. 29, 2 P. & L. Dig. 3545, and Sec. 4, Id. 2 P. & L. Dig. 3531, as to duty of the overseers.

YEAGER and MISS MARVEL for the defendant.

1. The legal duty of a father to support his child ceases as soon as child becomes of age. 2 Kent Com. 189–190; Boyd v. Sapington, 4 Watts 247; Clement's Appeal, 18 Co. Ct. 71; Central Poor Dist. v. Hirner, 5 Kulp 265; Mt. Pleasant Overseers v. Wilcox, 12 C. C. 447.

2. The father cannot be liable under Act of June 13, 1836, for that act does not provide for the support of the *wife*. The poor person must be "not able to work," and the father, etc., must be of "sufficient ability." Mt. Pleasant Overseers v. Wilcox, 12 C. C. 447; Com. v. Miller, 8 C. C. 526; Bradford Co. Poor Dist. v. Case, 2 C. C. 644. The action is wrongly brought. According to the Act of June 13, 1836, the overseers should petition the Court of Quarter Sessions for an order. See supplement passed April 15, 1857, 2 P. & L. Dig. 3545; Wertz v. Blair Co., 66 Pa. 18; Delaney Twp. v. Greenwich Twp. 66 Pa. 63; Darlington v. Darlington, 5 C. C. 132.

OPINION OF THE COURT.

This is an attempt to compel a father to reimburse a township for the support of his son. The 28th section of the Act of June 13, 1836, 2 P. & L. 3544, enacts that "the father * * * * * of every poor person not able to work shall, at their own charge, being of sufficient ability, relieve and maintain such poor person at such rate as the court of quarter sessions of the county where such poor person resides shall order and direct, on pain of forfeiting a sum not exceeding $20 for every month they shall fail therein, which shall be levied by the process of the said court and applied to the relief and maintenance of such poor person."

The person for whose support the father is thus made liable, is a "poor person not

able to work." Adam Hall is "partially blind, but strong and able to do manual labor not requiring ordinary sight." He has also "refused to work." It does not appear that he is "not able to work." He is 25 years old. One of the pre-conditions to the liability of John Hall is therefore non-existent. Clements' Petition, 18 Pa. C. C. 71; Poor District v. Hirner, 5 Kulp 265; Mt. Pleasant Overseers v. Wilcox, 12 Pa. C. C. 447.

The father is to relieve and maintain his child at his own charge, "being of sufficient ability." Com v. Miller, 8 Pa. C. C. 525. We have discovered no evidence of the ability of John Hall. Adam had always lived with his father until recently. But from this we might as readily infer that the father has refused to board him any longer because of inability, as that he had retained his ability but lost his disposition.

It does not appear that John Hall has any estate. He may have only the skill and force of his hands as a source of income, and this may be too meagre to be divided between himself and his son. Com. v. Miller, 8 Pa. C. C. 525.

The jurisdiction for the enforcement of the liability of the father is not in the common pleas, where the present action is brought, but in the quarter sessions. Sec. 28, Act June 13th, 1836, 2 P. & L. 3544; Sec. 1, Act April 15th, 1857; 2 P. & L. 3545; Wertz v. Blair county, 66 Pa. 18.

For the reasons stated, judgment is entered on the case stated in favor of the defendant.