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ABATEMENT.

1. A plea in abatement should not be allowed to be filed on the trial of the cause. If, however, the plaintiff is not thereby injured, the court will not reverse for such cause. *Murphy v. Times Printing Association et al.*, 365.

AFFIDAVIT OF DEFENSE.

1. An averment in an affidavit of defense that the defendant is informed and believes the check sued on was sent for the purpose of collection, and that he expects to be able to prove the same, is sufficiently certain. *Lewisburg National Bank v. Broadhead*, 68.

2. An affidavit of defense must state clearly and fully the exact grounds and extent of the defense. *Herrod & Co. v. Frauenthal Bros.*, 154.

ALIMONY. See DIVORCE.

AMENDMENT. See CERTIORARI.

1. Our statutes of amendment are broad and liberal, but they are not boundless. A party cannot introduce as an amendment a new and different cause of action, when, by reason of the statute of limitations, this would work an injury to the opposite party. *Whitaker et al. v. Thompson et al.*, 21.

2. The return of service of a summons may be amended, notwithstanding the sheriff who made it has gone out of office. *Mangan v. McMonagal*, 102.

3. The court below may amend its record after a *certiorari* has issued to remove it to the Supreme Court. *Church's Appeal*, 284.

ANNUITY. See WILL.

APPEAL. See JUSTICE OF THE PEACE.

TATACHMENT AND ATTACHMENT EXECUTION. See CERTIORARI. COSTS.

1. An affidavit in the words of the act is sufficient to warrant the issuing of the writ of attachment under the act of March 17, 1869. *Miller v. Paine*, 92.

2. Where the defendant's affidavit denies the allegations of the plaintiff, the plaintiff is required, on hearing of the motion to dissolve, to produce depositions to sustain the allegations denied. *Id.*

3. The attachment will not be dissolved, on the defendant's motion, upon the ground that goods under attachment do not belong to him. *Id.*

4. If the purpose of a change of residence is an honest one, the intent to defraud is not to be legally presumed from the mere fact that the debtor is about to remove his goods from the jurisdiction. *Id.*

5. The measure and kind of proof of the intent which the statute requires are such only as the fact in issue is susceptible of. *Id.*

6. The intent may be inferred from circumstances. *Id.*

7. It is the intent of the removal of goods, and not its effect, which must determine whether it is lawful. *Id.*

8. Where a garnishee in his answer denies any indebtedness to the defendant as an individual or principal, but admits that he has had dealings with him as agent, the answer will prevent judgment against the garnishee. *Haupt, Garnishee, v. Lewis*, 151.

9. Where the answer denies indebtedness to the defendant as principal, a claim by the defendant to have the fund set apart to him under the exemption law will not conclude the garnishee, nor alone warrant the entering of judgment against him. *Id.*

10. It is competent for the plaintiff, notwithstanding the answers of the garnishee, to require the issue to be tried before the justice; and if the record shows a trial, the court cannot, on *certiorari*, review the correctness of the justice's conclusions from the evidence. *Id.*

11. It is possible, also, that upon the day of the hearing the plaintiff might cause additional interrogatories to be served upon the garnishee, and require him to answer them. *Id.*

ATTACHMENT AND ATTACHMENT EXECUTION (Continued).

12. The verbal statements of the garnishee, made in the presence of the justice, after his answers have been delivered, and when not under oath, and which are not irreconcilable with his former answers, will not authorize the justice to disregard his former answers, and to enter judgment against him. *Id.*

13. Practice before justices of the peace in cases of attachment execution, considered. *Id.*

14. The giving bond under section 3 of the act of March 17, 1869 (attachment), dissolves the attachment in so far as it binds the goods. A subsequent motion to dissolve, under section 6, ought not to be entertained, and, if entertained and allowed, it cannot have the effect of satisfying the condition of the bond. *Butcher et al. v. Fernau et al.*, 239.

15. Suit was brought on a bond given by defendant under section 3 of the act of March 17, 1869 (attachment), dated March 10, 1881. It was endorsed, "Approved, Thos. Munroe, Prot.," without date, and was filed June 10, 1881: *Held*, first, filing was not required to give the bond validity; second, there is a *prima facie* presumption of approval and delivery of the bond on the day it bears date, which is not rebutted by the fact that it was filed on a much later date. *Id.*

16. On a judgment in favor of the defendant in an attachment execution issued by a justice, the defendant is entitled to execution for costs. *McKinney & Simons v. Tingley*, 289.

AUDITOR.

1. The duties and powers of an auditor appointed to investigate the facts, and make report thereon, are co-extensive with those of an examiner and master combined. *Mott's Estate*, 71.

2. The duties of an auditor in the taking of testimony are as much separated from his duty to report thereon as those of an examiner are from his duties as master in equity. So far as the taking of testimony is concerned, his duties are more like those of a "commissioner to take depositions," but are not nearly so limited, being specially appointed to investigate all the facts of the case, to develop the true points, and bring before the court only the real matters at issue. In his report, which follows the taking of the testimony, he is to decide upon the admissibility, relevancy, and weight of the testimony, and the competency of the witnesses. *Id.*

3. If there be sufficient competent evidence to support his report, it will not be set aside because incompetent testimony has been admitted by him, unless it is shown that he was led into some specific error by that which is incompetent. *Id.*

4. The parties have no right to appeal to the court on the rulings of the auditor or examiner during the taking of the testimony, as this would be to pass upon the case piece meal. *Id.*

BAIL. See JUSTICE OF THE PEACE.

BANKRUPTCY.

1. Notwithstanding a defendant's discharge in bankruptcy, the plaintiff has a right to issue execution in enforcement of the lien of a judgment on real estate. *Alexander & Son v. Smart*, 216.

BILLS, NOTES, AND CHECKS. See EVIDENCE.

1. Any defense which would be good against the payee of a check is good against his agent to whom it had been indorsed merely for the purpose of collection. *The Lewisburg National Bank v. Broadhead*, 68.

2. Writing his name across the back of a promissory note by the payee is an indorsement, notwithstanding the signature is preceded by a detailed statement of the payee's financial condition, and of the consideration of the note. *Dunning v. Heller*, 175.

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BOND. See ATTACHMENT AND ATTACHMENT EXECUTION.

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BOROUGHES. See ROADS.

1. If the corporate officers have levied a tax up to the legal limit, the residue only, after appropriation of the necessary amount for the necessary expenses of a borough, is applicable to payment of other indebtedness. *Earley v. Pleasant Valley Borough*, 249.

BUILDING ASSOCIATION.

1. A defendant in a building association judgment cannot off-set against the judgment the stock of another assigned to him after the maturity of the loan. *Plymouth Building Association v. Root*, 9.

2. When a borrowing stockholder elects to apply his stock in payment of his loan, the proper course is to deduct from the ascertained value of the stock all arrearages chargeable thereon, and to credit the balance on the judgment. *Building Association v. Mangan* (2 Kulp, 280) followed. *Id.*

3. This computation is to be made as of the date when the stock matured. *Id.*

4. Where, by the charter of a building association, the right to collect otherwise usurious interest, premiums, and fines was qualified by a *proviso*, "that such stockholder shall have signed an agreement containing the following words," etc., the association can only recover the actual amount loaned, with simple interest, if the borrowing stockholder has not signed the agreement referred to. *Anthracite Building and Loan Association v. Lyons*, 241.

CAMP MEETING. See CRIMINAL LAW.

1. The act of May 8, 1878, which, subject to certain exceptions, makes it a misdemeanor for any person "to erect, place, or have any booth, stall, tent, shed, carriage, boat or vessel, or any other place or vehicle whatever, for the purpose or use of selling, giving, or otherwise disposing of all or any kinds of articles of traffic or merchandise (except as hereinafter excepted), within one mile of any camp meeting held for religious worship in this Commonwealth," is not unconstitutional. *Commonwealth v. Seward*, 81.

2. Police power of the State defined. *Id.*

3. The above act in its purpose, and in its provisions to carry out that purpose, may be fairly considered as within the police power of the State. *Id.*

4. The purpose of the act being lawful and constitutional, a large discretion as to the means necessary to accomplish it must be left to the Legislature, and the courts cannot interfere with the exercise of that discretion, except in a very clear case, without usurping legislative functions. *Id.*

CERTIORARI. See ATTACHMENT AND ATTACHMENT EXECUTION. SUMMARY CONVICTION.

1. *A. f. fa.* and attachment cannot issue on the same day. A return of *nulla bona* must precede attachment. *Sampson v. Bloss*, 25.

2. Where the proceedings of a justice of the peace have been brought up on *certiorari*, the court has no authority to permit the constable to amend his return to the summons. *Hildreth v. Reilly*, 44.

3. Where judgment is entered by a magistrate in favor of the plaintiff by default, the defendant not appearing, it is necessary that the record show the hour as well as the day of entering judgment. *Culver v. Bekoe*, 50.

4. The court will reverse proceedings where the demand of the plaintiff was in existence, and might have been set-off in a previous action by the defendant against him. *Stewart v. Norris*, 110.

5. Where the transcript is in other respects regular, and there has been a trial on the merits, and the judgment is less than one hundred dollars, and the process shows that the damages claimed were less than one hundred dollars, the court will not reverse because the amount of the claim is not set out on the transcript. *Mulligan v. Knickerbocker Ice Co.*, 114.

CERTIORARI (Continued).

6. Where the justice had jurisdiction of the subject-matter of the action, and the return shows that the service of summons, though irregular, and not in strict conformity to the statute, was personal, and more than six years have elapsed from the date of the entry of judgment, and the parties are living, it is incumbent on the plaintiff in error to show affirmatively want of knowledge of the judgment and action. *Moors v. Baker*, 126.

7. The act of May 8, 1876 (P. L. 139), relating to attachment of wages for board, does not authorize the issuing of an attachment until after a judgment has been obtained. *Carden v. Scott* (1 Kulp, 196) followed. *Steinhauer v. Hill*, 150.

8. As to form of judgment against garnishee, *Masters v. Turner* (2 Luz. Leg. Reg. 185) followed. *Id.*

9. Proceedings before a justice will be reversed where the record shows a total change, not only in the form, but also in the cause of action. *Gibbons v. Wandell*, 162.

10. In a suit for a penalty under a special act of Assembly, the record should set forth the act, the violation of the act, and a demand and refusal. *Id.*

11. The record of the justice is defective in not stating the hour at which the judgment was rendered, the judgment being by default. *Keely v. Wentzel*, 178.

12. In an action before a justice, the plaintiff's demand was for "five dollars and twenty-five cents damages, by reason of defendant's not repairing plaintiff's gun as by him agreed to do, and receiving pay for it." Held, that the justice had jurisdiction. *Klinetob v. Roth*, 225.

13. Upon recovery in a second suit plaintiff is entitled to recover the costs of a former *certiorari*, as well as the sum of four dollars paid to his attorney. *Lathrop v. White*, 274.

14. The record of an action before a justice which omits to show the nature of the plaintiff's demand is defective, and the judgment will be reversed on *certiorari* duly issued. *Duffy, Executrix, v. O'Neill*, 255.

15. If it appears from an inspection of the record that the justice did not have jurisdiction, his judgment will not be validated by mere lapse of time. *Id.*

16. But where a defendant was summoned and appeared to the action, and not only acquiesced and participated in the proceedings, and permitted the judgment to be entered in the Common Pleas, and subsequently revived without objection, but also took benefits under the same, it was held that after a long lapse of time (several years) he was estopped from demanding the reversal of the same on *certiorari*, although the record did not show the nature of the plaintiff's demand. *Id.*

17. Though the record does not show that an action before a justice was within the act of 1870, and therefore possibly not within the twenty-day limitation, the right to *certiorari* is, nevertheless, after the lapse of seven years, barred by the act of April 13th, 1791 (errors and appeals), 3 Sm. Laws, 34. *Id.*

18. If the language used, though technically and verbally inaccurate, does, by every reasonable intendment, show a cause of action for which suit may be brought before a justice of the peace, the jurisdiction should be sustained. *Youngblood v. Folkner*, 261.

19. Where there is no remedy by appeal, the court will, in an extreme case, consider parol testimony on *certiorari* to show that the justice had no jurisdiction. *Id.*

20. The plaintiff sued in trespass before a justice of the peace, but it appeared that the cause of action was the alleged negligence of the defendant in not preventing surface water from flowing from his own land upon that of the plaintiff: Held, that the plaintiff's remedy was in case, and that the justice did not have jurisdiction. *Id.*

21. In an action of trespass against husband and wife, the docket entry was as follows: "Plaintiff claims forty dollars damages for wilful trespass for injury done or committed by defendants on plaintiff's real estate:" Held, first, a statement of the cause of action in the language of the act of Assembly is sufficient to show the justice's jurisdiction; second, where the trespass was committed by the wife, the joinder of the husband as defendant is proper, and even if the trespass was joint, the joinder of the husband and wife is not fatal after verdict, or judgment by the justice. *Winters et ux. v. Menig*, 260.

22. The error of a justice in the admission of evidence, or in the measure of damages, cannot be corrected on *certiorari*. *Grosky v. Wright*, 247.

23. It is the nature of the plaintiff's demand, and not merely the form of action in which the summons is issued, which gives the justice jurisdiction. *Id.*

24. The damages for which a plaintiff may sue before a justice in an action of trespass are such as arise where the injury is immediate, and would be recoverable in the common law action

CERTIORARI (Continued).

of trespass *vi et armis*, and not such as are consequential, and would be recoverable only in an action of trespass on the case. *Id.*

25. Where a plaintiff has an election of actions, and chooses to proceed for consequential damages, his remedy is in the Common Pleas, and not before a justice. *Id.*

26. Plaintiff sued in trespass. Part of his demand was "for loss of buggy while awaiting repairs, and trouble:" *Held*, that the justice did not have jurisdiction. *Id.*

27. A writ of *certiorari* will not be quashed where it appears to have been issued within twenty days after execution. In such case we cannot say that the writ was improvidently issued. *Edwards et ux. v. Jeremy*, 338.

28. In an action of trespass for injury to the separate personal property of a *feme covert*, she should be joined as plaintiff with her husband. *McClosky v. Fistner*, 383.

29. If the fact that the defendant in such action before a justice was a married woman does not appear of record, and the non-joinder of her husband is not pleaded in abatement, the court will not, for that reason alone, reverse on *certiorari*. *Id.*

30. Where a warrant of arrest issues against a defendant "to answer the Commonwealth" upon a charge of having emptied a vessel containing filth upon the complainant's wife, doing considerable damage to her clothes, etc., the proceedings thus begun cannot, upon the hearing, be converted into an action for damages. *Id.*

31. A summons issued on the 23d, returnable on the 27th of the month, and was returned served on the 23d by leaving a copy at the dwelling house of the defendant in presence of another: *Held*, that upon this state of the record the issuing of a short summons was irregular. *Smythe v. Morgan*, 392.

32. In a suit before a justice of the peace against a husband and wife upon a contract for necessaries, it must appear affirmatively that the claim and the proof show that the debt was contracted for articles necessary for the support of the family of the said husband and wife. *Hoover et ux. v. Van Loon*, 399.

33. A claim simply for "family necessaries" does not give jurisdiction against the wife, for the articles may have been for some other family. *Id.*

34. Such a record may be *certiorated* after twenty days for want of jurisdiction. *Id.*

35. The court will not presume that a justice acted fraudulently from the mere fact that he admitted incompetent testimony, or did not decide according to the weight of the testimony. *Harris et ux. v. Burke et al.*, 393.

36. Whether goods sold to a married woman were necessaries, or were contracted for by her, are questions to be decided by the justice before whom suit is brought, and the court will not review the testimony on *certiorari* on a vague and unsustained allegation of fraud. *Id.*

37. An irregularity in an adjournment of a suit may be cured by appearance. *Id.*

COMMON PLEAS. See ORPHANS' COURT.

COMMON SCHOOLS.

1. Land was conveyed to certain persons as trustees "for all German and English societies, Methodist only excepted, for the only proper use and benefit for said societies for school and worship for every religion and denomination, Methodists only excepted." The school directors of the township having appropriated a part of the lot for a school house site, the trustees filed a bill and asked for an injunction to restrain them from occupying it: *Held*,—

(1.) The necessity for the erection of the new school house, and eligibility of the site selected, rest in the discretion of the directors.

(2.) An implication that they deemed the site eligible, and the selection thereof expedient, as against all others, would arise from their action on the subject. They need not record their motives when they have jurisdiction to act.

(3.) An averment that the district was already the owner of a lot in the vicinity ample for the purpose required would not sustain a bill by the trustees. Whether it would sustain a taxpayers' bill, not decided. In either case, if the fact were in doubt, the court would refuse a preliminary injunction.

(4.) The discretion having been vested in the directors, the question for the court is, whether they have proceeded contrary to law, or transcended their powers.

(5.) This is a use for which land may be taken compulsory under the right of eminent domain.

(6.) Land held in trust as this was is private property, and may be taken in the exercise of this right.

COMMON SCHOOLS (Continued).

(7.) It is not made a condition to the exercise of this right by the directors that they have been unable to obtain any other site by agreement with the owners of the land. *Rittenhouse et al. v. Cressy et al.*, 14.

CONSTITUTIONAL LAW. See CAMP MEETING. JUSTICE OF THE PEACE.

1. The act of Assembly of the 8th of June, 1881, entitled "An act to provide for the registration of all practitioners of medicine and surgery," is a constitutional and valid statute, and not within the prohibition as to laws *ex post facto*. *Commonwealth v. Taylor*, 182.

2. A vested right or property in a business calling or profession can only exist when the pursuit or practice of it is in conformity with the law of the land. *Id.*

3. The distinction between laws which are retrospective merely and those *ex post facto*. *Id.*

CONTRACT. See SHERIFF AND SHERIFF'S SALE.

CORPORATION. See PLEADING AND PRACTICE.

1. As a general rule, nothing earned by a corporation can be regarded as profits until it shall have been declared to be so by the corporation itself, acting by its board of managers. The fact that a dollar has been earned gives no stockholder the right to claim it until the corporation decides to distribute it as profit. *Morris' Appeal* (2 Nor. 269) followed. *Ross' Estate*, 330.

COSTS. See CRIMINAL LAW.

1. A successful party may include in his bill of costs, incurred in taking depositions, the mileage fees of a non-resident witness to and from the State line. *Clafin & Co. v. Stern*, 111.

2. A resident of the Commonwealth in confinement for costs alone, under sentence of a criminal court, is entitled to be set at liberty forthwith upon making application for the benefit of the insolvent law, and presenting a bond in accordance therewith. *Commonwealth v. Trout*, 196.

3. When an attachment would lie against a party for non-performance of a decree in equity, it is also the proper remedy to enforce the payment of the costs. In such a case it is not in contravention of the act of July 12, 1842. *Church's Appeal*, 284.

COUNTY AUDITORS.

1. On an appeal from the report of the board of county auditors, provided for Luzerne county by the act of July 16th, 1842 (P. L. 391), no new matters of account can be introduced which were not presented before the board. It is error for the Common Pleas to allow such matters to be introduced by amendment. *Luzerne County v. Whitaker, Sheriff*, 361.

2. *Semble*, that where it is desired to have such matters considered, the proper course is to move to have the report referred back to the board of auditors. *Id.*

COVENANT. See INSURANCE.

CRIMINAL LAW. See CAMP MEETING. CONSTITUTIONAL LAW. COSTS. WAREHOUSEMEN.

1. It is a general rule that where the enacting clause of a statute describes the offense, with certain exceptions, it is necessary to state all the circumstances which constitute the offense, and to negative the exceptions; but where the exceptions are contained in separate clauses or provisions of the statute, they may be omitted in the indictment, and may be shown by the defendant as matters of defense. *Commonwealth v. Shelly*, 87.

2. Where by the terms, "except as hereinafter excepted," the exception is introduced into the enacting clause as a part of the definition of the offense, and not as a proviso, it should be negatived. *Id.*

3. The enacting clause of the act of May 8th, 1878 (P. L. 46), relating to the regulation of traffic near camp meeting, contains the words, "except as hereinafter excepted." The third section states the exceptions: *Held*, that in an indictment the exceptions should be negatived. *Id.*

4. If a prosecution is not withdrawn, it is the duty of the magistrate to send up the recognizance on or before the next meeting of the grand jury. *Commonwealth v. Kohle*, 139.

5. If such recognizance is not sent up for several terms after it is entered into, and no explanation is made for the delay, the prosecution on that information is at an end, and an indictment not based on a fresh information and hearing will be quashed, unless it appears that the course of procedure taken was required by some pressing necessity. *Id.*

6. Authority to institute a prosecution by indictment without preliminary information and hearing, considered. *Id.*

CRIMINAL LAW (Continued).

7. In an extreme case of a crime affecting the public justice, and where there would otherwise be a failure of justice, and the escape of a public offender, an indictment may be found without a previous binding over, although in general an indictment must be preceded by information and hearing. *Commonwealth v. Reynolds*, 163.

8. Murder under the Pennsylvania statute, and the degrees thereof, considered and illustrated. *Commonwealth v. Gotofski*, 200.

9. In a case of assault and battery, where the defendant died after the grand jury had returned a true bill against him, and before the trial was had, the county cannot be compelled to pay the costs of prosecution. *Commonwealth v. Gallagher*, 222.

CROPS. See EXECUTORS AND ADMINISTRATORS.

DAMAGES. See SHERIFF AND SHERIFF'S SALE.

DECEDENTS' ESTATES. See INCOME. TAXES. WILL.

1. The real estate of an intestate descends to his heirs at the instant of his death, and remains there until sold by order of the court; and whether the estate be solvent or insolvent, the heirs have the same right to draw the rents that he would have had if living. *Gilbin's Estate*, 75.

DEED. See HUSBAND AND WIFE.

1. The certificate of a justice to the acknowledgment of a deed by a married woman of her separate estate is a judicial act, and as to a *bona fide* vendee or mortgagee for value, without notice of fraud or imposition in the procurement of the execution of the instrument, is conclusive of every material fact expressed therein. *Richart et ux. v. Wisner et al.*, 227.

2. But as against a vendee or mortgagee with notice, it may be shown by parol, not only that the certificate itself is false, but also that, although all the forms of the statute were observed, the execution and acknowledgment were procured by fraud and imposition, or were made under compulsion. *Id.*

DIVIDEND. See CORPORATION. INCOME.

DIVORCE.

1. The wife petitioned for divorce on the ground of desertion; the husband's answer simply denied the allegations of the petition: *Held*, that she was entitled to a reasonable allowance for counsel fees, etc. *Miller v. Miller*, 103.

2. A woman who is living in a state of adultery has no claim upon her husband for support, and where this is shown clearly the court will refuse an application for alimony *pendente lite*. *Id.*

3. Neither the husband nor the wife is a competent witness against the other in divorce proceedings, except "where personal service of the subpoena is made on the opposite party, or said party appears and defends." *Ferguson v. Ferguson*, 314.

EJECTMENT. See EVIDENCE. ORPHANS' COURT. VENDOR AND VENDEE.

1. A disclaimer under the act of March 27, 1867 (P. L. 47), relating to actions of ejectment, may be filed on the trial of the case. If the opposite party is surprised, the court will prevent injustice by continuing the case. *Myers et al. v. Devens et al.*, 105.

ELECTION DISTRICTS.

1. Under the act of May 18th, 1896 (P. L. 178), relating to the erection of election districts, the court may, upon petition, and in the exercise of their discretion, grant a review, although no exceptions have been filed to the report of viewers. *In Re Division of Jackson Township into Election Districts*, 147.

2. Such review is not demandable of right, nor can the court award it of their own motion. *Id.*

3. The allowance of a petition for review will prevent the confirmation absolute of the original report until the report of reviewers is made, when, upon consideration of both reports and the evidence, the court may adopt either. *Id.*

4. If, however, no exceptions be filed to the original report, enough should appear on the face of the petition for review, or it should be accompanied by such proofs as will be sufficient to inform the court that a review is necessary. *Id.*

EMINENT DOMAIN. See COMMON SCHOOLS. MANDAMUS.

EQUITY. See **DEED. HUSBAND AND WIFE.**

1. The rec commitment of a master's report to the master for a specific purpose does not open the whole case, or permit the introduction by the defendant of an entirely new defense, such as the statute of limitations. *Everhart v. Everhart*, 167.
2. Where the answer is responsive to the bill, the latter must be sustained by the testimony of two witnesses, or of one witness and strongly corroborative circumstances. *Hodges v. Laurel Run Lodge, No. 344, Knights of Pythias*, 190.
3. A defendant in an equity proceeding may plead another suit pending, either in the same court, or in another court having concurrent jurisdiction. *Streater v. Ricketts*, 417.
4. To render such a plea valid, the second suit must be for the whole, and not a portion merely, of the same matter embraced in the bill, and each suit must have the same object in view. *Id.*

ERROR AND APPEAL. See **PLEADING AND PRACTICE.****ESTOPPEL.** See **INQUISITION.**

1. To raise an estoppel it must be shown by the evidence that the parties claiming it had, by reason of the acts of the other, been led to do something which they would not otherwise have done. *Hallstead's Estate*, 394.

EVIDENCE. See **ATTACHMENT AND ATTACHMENT EXECUTION. COUNTY AUDITORS. DIVORCE. EQUITY. HABEAS CORPUS. LUNACY. POOR. TAXES.**

1. The presumption of death from an absence of seven years, held not to apply to a case where the person's absence is accounted for by the fact of his having fled to escape the consequences of appropriating trust moneys, and hence had a strong motive for silence and concealment of his whereabouts. *Wolff's Estate*, 48.
2. If the disclaimant pays the costs, and follows his disclaimer by an assignment or release, he is made a competent witness by the act of 1867. *Myers et al. v. Devens et al.*, 105.
3. It seems that after the disclaimant had complied with the provisions of the act of 1867, he would be a competent witness without the execution of the subsequent assignment. *Id.*
4. Competency of parties as witnesses, as affected by the statutes, discussed. *Id.*
5. To estop privies by a recital in a deed, such recital must be distinct, not general. *McLean v. Palmer*, 169.
6. The act of April 15, 1869, does not require that the evidence of a party in interest, though the only evidence on his side, should be corroborated to make it effective. *Anthracite Building and Loan Association v. Lyons*, 241.
7. The admissions of a married woman made after the debt was incurred are not, alone, sufficient proof of the essentials required to authorize a judgment to bind her separate estate. *Jeremy v. Edwards et ux.*, 270.
8. An admission by defendant that a bill upon which suit is brought is "all right," is evidence of his liability. *Lathrop v. White*, 274.
9. Issue awarded where there is a conflict of testimony which the court is unable to decide. *Skultz v. Hendershot et al.*, 322.
10. Where the execution of a note is denied, the note itself does not go in the balance against the defendant, as it would in case of a mere allegation of fraud. *Id.*
11. The presumption that preliminary steps taken by a public officer in doing an act have been regular must be limited to his acts as an officer; it does not apply to his precedent acts done as an agent, and it is incumbent upon the party asserting them to prove they were done. *Murphy v. Times Printing Association et al.*, 365.

EXECUTORS AND ADMINISTRATORS. See **TRUSTEES.**

1. The court will permit an account to be corrected on proof that the inventory and account were prepared under a mistake. *Hallstead's Estate*, 394.
2. The heirs may authorize the administrator to collect the rents and apply them on the debts of the decedent, yet such payment will not enure to the benefit of any creditor not paid, unless it be clearly proven that the payment was to be a pure gift to all the creditors, or that those who are not so paid had suffered some loss by the arrangement. *Giblin's Estate*, 75.
3. No administrator is liable for any assets, except those within the Commonwealth at the time of the decedent's death, unless he has actually received them from some other state or country. *Id.*

EXECUTORS AND ADMINISTRATORS (Continued).

4. As a general rule, an administrator should sell immature crops on the ground, and not involve the estate and himself in a transaction which may, and most likely will, lead to dissatisfaction and loss; and if he continues the farming, the burden is upon him to show that the estate was benefited by his management. *Casner's Estate*, 332.

FEME SOLE TRADER. See HUSBAND AND WIFE.

FIXTURES.

1. The question of fixture or not depends on the nature and character of the act by which the structure is put in place, the policy of the law connected with its purpose, and the intentions of those concerned in the act. *McLean v. Palmer*, 169.

2. The question of intention is one of fact to be left to a jury, and the findings of a referee has the effect of a verdict, unless clearly unwarranted by the testimony. *Id.*

3. The true criterion of an irremovable fixture consists in the united application of three tests, viz.: 1st. Real or constructive annexation of the article in question to the realty. 2d. Appropriation or adaptation to the use or purpose of that part of the realty with which it is connected. 3d. The intention of the party making the annexation to make the article a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation, and the policy of the law in relation thereto, the structure and mode of annexation, and the purpose or use for which the annexation has been made. Of these three tests the clear tendency of modern authority seems to be to give preeminence to the question of intention to make the article a permanent accession to the freehold, and the others seem to derive their chief value as evidence of such intention. *Id.*

4. Actual physical annexation is of itself of but little importance in determining the question of fixtures. *Id.*

5. Lamps, chandeliers, candlesticks, candleabra, and the various contrivances for lighting houses by oil or other fluids, have never been considered as fixtures, and as forming part of the freehold. *Id.*

FORMER RECOVERY. See SHERIFF AND SHERIFF'S SALE.

FRAUD. See ATTACHMENT AND ATTACHMENT EXECUTION. DEED. HUSBAND AND WIFE. JUDGMENT.

1. If a party who can read will not read a deed put before him for execution, or if being unable to read will not demand to have it read or explained to him, he is guilty of supine negligence, which is not the subject of protection, either at law or equity. *Anthracite Building and Loan Association v. Lyons*, 241.

GAS AND WATER COMPANY. See MANDAMUS.

GIFT.

1. A valid gift of a chose in action may be made *inter vivos* without writing and by mere delivery. *Hallstead's Estate*, 394.

GUARDIAN. See TRUSTEES

1. In the absence of any proof that a guardian has made proper use of a fund on an account of his administrator, his estate will be charged with interest from the date of its receipt until the date of his death. *Aten's Estate*, 321.

2. In such case a guardian must be at least treated as a borrower of the fund from the date of its receipt. *Id.*

HABEAS CORPUS.

1. Where a witness in a criminal case is committed to prison, it must appear from the commitment that he had been under subpoena or other legal process, or that he had failed to appear as required by subpoena or other legal process, or he will be discharged from custody on *habeas corpus*. *In Re McFadden*, 27.

2. The act of Assembly of 24th February, 1870, construed. *Id.*

HIGH CONSTABLE. See TRESPASS.

HUSBAND AND WIFE. See CERTIORARI. DEED. JUDGMENT.

1. A feme sole trader has power to bind herself by agreement for the sale of her real estate, without acknowledgment of said agreement, or the joining of her husband therein, and although she was living with her husband at the time of making the agreement. *Ewing's Appeal*, 47.

HUSBAND AND WIFE (Continued).

2. Equity will specifically enforce such agreement against her. *Id.*
3. Where a married woman conveys her separate estate to creditors of her husband in payment of his debts under threats by the former that they would proceed by actions at law to recover it from her, her deed is not voidable on the ground of duress *per minas*. *Richart et ux. v. Wiener et al.*, 227.
4. A married woman conveyed her separate estate to creditors of her husband in payment of the latter's debts. She subsequently filed a bill to set aside the deed upon the ground "that she was unduly influenced thereto by the repeated and urgent requests, entreaties, importunities, and persuasion of her husband," and that the grantees took with notice of the fact: *Held*, that the decision of the case must depend on the proof as to the degree of undue influence exerted by the husband, and that the demurrer must be overruled. *Id.*
5. Mere persuasion by a husband will not suffice to avoid the deed of a wife to a third person, if her will be not coerced. *Id.*
6. Whether articles bought by a married woman are necessary is a question of fact. *Jeremy v. Edwards et ux.*, 270.

INCOME. See WILL.

1. The income or dividend from bank stock was bequeathed to the testator's widow for life. She died June 23, and a dividend was declared on the 29th day of the same month: *Held*, that her estate was not entitled to any portion of the same. *Ross' Estate*, 330.

INFANT. See PLEADING AND PRACTICE.**INJUNCTION. See LANDLORD AND TENANT.**

1. The general rule of law is, that when a defendant, pending an action for injunction, and after notice thereof, proceeds to do the things complained of in the bill, he does so at his peril. *Streater's Estate*, 77.
2. The writ becomes operative from the time of its order, and is effectual from that date on all parties who have had actual notice (written or verbal) of the existence of the order. *Id.*
3. Great negligence in serving the writ is no ground for disregarding its existence. *Id.*
4. But it seems that where the writ has been ordered only on condition that complainant give bond, the giving of the bond is a condition precedent to its validity. *Id.*

INQUISITION.

1. A sheriff's inquisition and extension of real estate will not be set aside because the jury did not take into view all the incumbrances upon the land, in fixing the annual sum to be paid, where the party complaining appeared before the inquest, and gave the usual notice of election to retain, and has received payments under the extension until his judgment is nearly paid off. He will be held estopped. *Heller v. Leach*, 177.

INSURANCE. See JUSTICE OF THE PEACE. PLEADING AND PRACTICE.

1. A covenant in an insurance policy that it shall be void if the property becomes incumbered by a judgment is violated by the entry of a warrant of attorney annexed to a bond in which the insured is an obligor, although the condition of the bond was never broken, and there was no time at which execution could have issued on the judgment. The question is simply whether the property was incumbered, without regard to whether it might be taken in execution. *Hill et al. v. Pennsylvania Mutual Fire Insurance Co.*, 323.
2. A man deeply indebted may take insurance on his life payable to his wife, and creditors can acquire no right to the same. *Hallstead's Estate*, 394.

ISSUE. See EVIDENCE. JUDGMENT.**JOINT CONTRACT. See PRINCIPAL AND SURETY.****JUDGMENT. See BANKRUPTCY. LUNACY. LACKAWANNA COUNTY.**

1. On a motion to open a judgment, where, upon all the testimony, the court would not be justified, in the exercise of a sound discretion, in sustaining a verdict for the defendant, the issue ought to be refused. *Plymouth Building Association, assigned, v. Rood*, 9.
2. When a defendant alleges that his signature to an amicable revival of a judgment was a forgery, or was obtained by false and fraudulent representations as to the nature of the instrument, and obtains a rule to strike off the judgment, the proper practice is to frame a special issue to try the disputed questions of fact, and in the meantime to allow the rule to stand over. *Enterprise Building and Loan Association v. Griffith*, 13.

JUDGMENT (Continued).

3. A *scire facias* had issued against, and been served on, a defendant to revive a judgment containing a waiver of exemption. The defendant, not wishing to proceed further in his defense, confessed a judgment, in which he waived the benefit of the exemption law. He swore that he could not read English, and did not know that the paper contained such waiver. There was not sufficient evidence of fraud or misrepresentation to submit to a jury. Upon these facts it was held, on a motion to strike off the judgment, that his ignorance of the language was not a sufficient cause for such action. *Empire Building and Loan Association v. Morris*, 123.

4. If a person who cannot read does not ask to have a paper, presented for his signature, read or explained to him, he is guilty of supine negligence, and unless fraud or misrepresentation be clearly shown, the paper will not be set aside. *Id.*

5. If parties concoct a scheme to hinder, delay, and defraud creditors, and resort to a judgment to effect their object, both having in view the same thing, there is no fraud between them of which either can complain, or call on a court for relief against. *Becker v. Hammes*, 236.

6. The question as to the burden of proof in opening a judgment, considered. *Anthracite Building and Loan Association v. Lyons*, 241.

7. Judgment was entered on a transcript from a justice containing the following entry: "Parties appear. Claim, \$59.07, with interest, for goods sold and delivered, being for articles necessary for support of family of said defendants, and contracted for by said wife. Defendants acknowledge justice of claim; whereupon, it appearing that these goods were articles necessary for support of family of said defendants, and contracted for by the said wife, judgment is publicly entered," etc. To a *scire facias* on this judgment defendants pleaded *nil tul* record: *Held*, that the judgment was not void. *Jeremy v. Edwards et ux.*, 270.

8. The finding of an inquest is *prima facie* evidence only of incapacity to confess a judgment. *Koons v. Benscoter*, 287.

9. On a rule to open a judgment the defendant put in evidence the finding of an inquest in lunacy, but the record showed the discharge of a former rule taken by the committee: *Held*, that the matter was *res adjudicata*. *Id.*

10. Where a judgment is entered without authority of law, the court may strike it off. *Luzerne County v. Miller*, 112.

JUROR. See NEW TRIAL.

JURY. See PAYMENT.

JURY TRIAL. See JUSTICE OF THE PEACE.

JUSTICE OF THE PEACE. See ATTACHMENT AND ATTACHMENT EXECUTION. CERTIORARI. CRIMINAL LAW. LANDLORD AND TENANT. PLEADING AND PRACTICE. WAGES.

1. The act of May 1st, 1861, which provides that upon the arrest of a defendant for certain crimes therein defined, upon demand of the defendant, the justice shall call a jury of six and try the offense, is constitutional. *Lavery v. Commonwealth*, 51.

2. It is misconduct on the part of a magistrate to omit to inform a party who has given bail for an appeal, and paid the costs, that an affidavit is also required to perfect the appeal. *Swallow v. Red Ash Coal Co.*, 187.

3. The act of April 4, 1873, in regard to foreign insurance companies, does not enlarge the jurisdiction of justices of the peace so as to permit them to direct process to a constable of another county. *Fidelity and Casualty Co. v. Hesty*, 188.

4. The acts of April 24, 1857, and of April 8, 1868, refer to actions commenced in courts of record only. *Id.*

5. The authority of a justice of the peace to pass upon exceptions to bail for appeal, which has once been accepted, and to strike off the same upon its being adjudged insufficient, is not expressly given by any statute, but is well recognized in practice, and his action, if based on an adjudication of its insufficiency, is conclusive and binding on the parties in any collateral proceeding. *Case v. Myers*, 252.

6. Where the record does not show actual personal notice to the appellant of the striking off of the bail, the court may, in its discretion, permit him to perfect his appeal by entering new bail. *Id.*

7. In an action before a justice, it is the amount in controversy, and not the amount of judgment, which determines the right of appeal, and this may be shown by evidence *aliunde* the record. *Klinetob v. Road*, 251.

JUSTICE OF THE PEACE (Continued).

8. Whether a justice can be compelled by a rule to show cause to allow an appeal, questioned. *Id.*
9. Where a party has not been misled in any way, his mere ignorance of the law is not sufficient cause for allowing an appeal out of time. *Mundy v. Soult*, 250.
10. A judgment in favor of defendant for fifty cents and costs by a justice of one county may be certified by transcript for purposes of execution to a justice of another county. *McKinney & Simons v. Tingley*, 289.

LACKAWANNA COUNTY.

1. The original judgment, of which this was a revival, was entered in the Mayor's Court of Scranton: *Held*, that any defense to that judgment must be made in the Common Pleas of Lackawanna. *Enterprise Building and Loan Association v. Griffith*, 13.
2. An action against the city of Scranton (now in Lackawanna county) cannot be tried in the courts of Luzerne county since the division of the county, though the same was pending and at issue at the time of the division. *Church, assigned, v. City of Scranton*, 400.

LANDLORD AND TENANT. See PRINCIPAL AND SURETY. SHERIFF AND SHERIFF'S SALE.

1. The act of December 14, 1863 (landlord and tenant), is a complete system for obtaining possession by a landlord. *Kruuger v. Rutledge et al.*, 189.
2. The plaintiff, a tenant, claimed that before the expiration of the term he had acquired the rights of a vendee under an agreement accompanying the lease: *Held*, that this was a defense which he could make before the justice, and that the court had no jurisdiction in equity to restrain the landlord from proceeding under the statute to try his right to repossess himself of the leased premises. *Id.*
3. Where a party claims title to goods under a sale upon a distraint for rent, he must prove affirmatively that the necessary legal notice of the distress was given to the tenant, and that the sale was duly advertised. *Murphy v. Times Printing Association et al.*, 365.
4. A landlord, under a claim for rent, can hold possession of personal property previously sold by the tenant, demanded by the purchaser, but not delivered, and remaining on the premises, even though an actual formal distress had not been made. *Furbush v. Fisher*, 367.

LEASE. See MINES AND MINERALS. WILL.

LEGACY. See WILL.

LIEN. See SUBROGATION.

LUNACY. See JUDGMENT. POOR.

1. An inquisition finding a person a lunatic is *prima facie* evidence of incompetency to make a contract at any time covered by the finding, and in the absence of evidence to overcome the presumption, or to show that it would be unconscionable to do so, a judgment confessed by him during the period will be opened. *Gresh v. Tamany*, 291.

MANDAMUS. See BOROUGH.

1. Duties of corporation springing out of contract relation cannot be enforced by mandamus. *Com. ex rel. Stern v. Wilkes-Barre Gas Co.*, 385.
2. The duty of a gas company to supply all persons in a city with gas does not arise, like the duty of common carriers, from the single fact that it is engaged in the business, however necessary gas may be to the public. Such a duty can only arise from its charter. *Id.*
3. Whether a declaration in the charter that a corporation is created for the purpose of supplying a certain community with gas is alone sufficient to impose such duty, *quare. Id.*
4. A general grant of eminent domain, *e. g.*, to enter upon the streets and on private lands to lay pipes, etc., does impose a public duty, which an individual, who is willing to comply with the reasonable rules of the company, may enforce by mandamus. *Id.*
5. An attachment cannot be issued where, upon return to a mandamus, it appears that all the money in the borough treasury is required to pay the necessary and running expenses of the borough. *Earley v. Pleasant Valley Borough*, 249.

MASTER AND SERVANT. See NEGLIGENCE.

MECHANIC'S LIEN. See PLEADING AND PRACTICE.

MINES AND MINERALS. See WILL.

1. A lease of the exclusive right to mine and sell all the minerals in or under land, without limitation as to quantity or time, is to be taken as a sale of the mineral in place, and consequently a sale of a portion of the land. *Eley's Estate*, 55.

See *Eley's Appeal*, 325.

2. The defendants were owners of a coal mine operated through a shaft, and it was alleged, and not denied, that they permitted men to work in the first and third seams (which were connected with a second opening) at the same time that other employees, not exceeding twenty in number, were at work in the fifth seam of coal "for the purpose of working a gangway to connect with a second opening not yet completed to said seam:" *Held*,

(1.) That this was not in violation of section 3 of the act of March 3, 1870 (P. L. 3).

(2.) That the phrase, "for the time being at work," is clearly used to qualify and limit the seams or strata which are embraced in the prohibition of the third section of the act, and not the period of time, daily or otherwise, when the laborers are actually employed.

(3.) That removing coal from a gangway, not for the coal, but for the purpose of driving the gangway so as to connect the same with a second opening, is not working the seam, but opening it for work. Such work does not make it a seam "for the time being at work" within the meaning of section 3 of the act. *Haddock et al. v. Commonwealth ex rel. Williams*, 351.

3. *Commonwealth v. Haddock* (1 Kulp, 320) reversed. *Id.*

MORTGAGE.

1. It is not necessary to give notice to the *terre tenant* of mortgaged premises of the suing out of the writ of *scire facias*, or to make him a party to the proceeding, in order to make a valid sale of the land to satisfy the debt or money due upon the mortgage. *Pardee et al. v. Green et ux.*, 264.

2. If the *terre tenant* does not have notice of the proceeding, he will be permitted to make any available defense against the purchaser at sheriff's sale that he might have made upon trial of the *scire facias*, in case it had been served on him. *Id.*

3. Whether served with *scire facias* or not, if the *terre tenant* applies by petition before judgment, the courts invariably permit him to defend *pro inter esse suo*. *Id.*

4. But after judgment regularly obtained by adversary proceedings, the *terre tenant* has no such right, unless he can clearly show some special equity in addition to want of notice. *Id.*

MUNICIPAL CORPORATION. See **BOROUGHS.** **MANDAMUS.** **PLEADING AND PRACTICE.****NEGLIGENCE.**

1. In the absence of evidence to the contrary, a boy between fifteen and sixteen years of age is presumed to have sufficient capacity and understanding to be sensible of danger, and to have the power to avoid it. *Devert v. Lehigh Valley Coal Co.*, 122.

2. If he knew the risks, and continued in the employment, it was his duty to exercise that judgment and discretion which the law imputed to him. *Id.*

3. If, in performing the duties of his employment, he unnecessarily puts himself in a place of known danger, and an accident results, he is chargeable with contributory negligence. *Id.*

4. In such case the father cannot recover, although notice was not given to him that the employment had been changed. *Id.*

5. Negligence of fellow-servants, the rule of law in regard thereto. *Reese v. Payne & Co.*, 179.

NEGOTIABLE INSTRUMENT. See **WAREHOUSEMEN.****NEW COUNTY.** See **LACKAWANNA COUNTY.****NEW TRIAL.**

1. Practice in granting new trials for improper statements of counsel in argument of case, discussed. *Myers et al. v. Devens et al.*, 105.

2. As a general rule, the failure of opposing counsel to object at the time will prevent the granting of a new trial. *Id.*

3. Where a verdict is rendered against the binding instructions of the court, it is the duty of the court to grant a new trial, even though it may be possible that the court erred in giving such instructions. *McDade v. Campbell*, 125.

4. As a general rule, the testimony of jurors is not admissible to impeach a verdict on the ground of their own misconduct. *Laurel Run Building Association v. Mitchell et al.*, 161.

NEW TRIAL (Continued).

5. A new trial will not be granted simply because counsel in addressing the jury referred to the action of the jury on the former trial. Objection should have been made at the time, and the court would then protect the party complaining, either by withdrawing a juror, or by a proper caution in their charge. *Reese v. Payne & Co.*, 179.

6. If no challenge be interposed, the general character for sobriety of a juror cannot be inquired into after a trial on the merits, in which he has not been guilty of misconduct affecting the trial. *Houpt v. Hendler*, 232.

7. The fact that a juror, after he has been sworn, drinks intoxicating liquors is not held to be sufficient ground for a new trial, unless it is shown that he drank at the instance or expense of the winning party, or that he was thereby unfitted to listen to and remember, and to intelligently and impartially consider and weigh, the evidence. *Id.*

8. A juror who, after being sworn in a cause, comes into court in an intoxicated condition is guilty of contempt, and may be fined. *Id.*

9. Silence as to a known irregularity, or even misconduct, not directly affecting the verdict, and with which the winning party is not connected, is generally held to be equivalent to express assent that the trial may proceed. *Id.*

10. Where it is known to a party, or his counsel, that, during an intermission in the trial of a civil case, a juror has drunk intoxicating liquor to excess, and the party does not object to proceeding when the temporary incapacity of the juror is removed, but takes the chances of a verdict in his favor, he cannot demand a new trial for that cause alone, unless the winning party is shown to have been in some way connected with the misbehavior. *Id.*

11. The authority of the court to grant a new trial for misconduct of counsel in arguing the case to the jury is well recognized. *Sweeney v. Lehigh Valley R. R. Co.*, 223.

12. It is the duty of the party prejudiced by the unwarranted statements of opposing counsel to object at once. *Id.*

13. The general rule of practice, with one or two exceptions, is, that the party complaining of the misconduct of opposing counsel in his argument to the jury will not be permitted to hold his objections in reserve to be used in the event of an unfavorable verdict. *Id.*

14. Where the amount awarded by a jury is excessive, the court may annex a condition that the excess be remitted to its refusal of a new trial. *Schmalts v. Whitley*, 281.

ORPHANS' COURT. See GUARDIAN. TRUSTEES.

1. No Orphans' Court will approve an investment in the stocks of any public or private corporation, except those authorized by some act of Assembly; and in this case the court refused to approve an investment by guardian in the first mortgage bonds of a railroad company, located in the State of New York. *Hoyt's Estate*, 73.

2. In approving an investment, the courts consider that absolute safety of the principal is of more consequence than great expectations of interest. *Id.*

3. Since the act of Assembly of May 8th, 1876, extending the list of approved securities to "all bonds or certificates of debt now or hereafter to be created, and issued according to law, by any of the counties, cities, school districts, or municipal corporations of this Commonwealth," it would be safe to say that no court should authorize an investment outside of those recommended by the Legislature. *Id.*

4. It is considered that no court should authorize an investment where its collection can only be enforced by resort to the courts of another state or country. *Id.*

5. After the death of a vendor of land by contract, the title of the vendee was sold at sheriff's sale. The administrator *c. t. a.* of the decedent brought ejectment against the original vendee and the widow, who was sole devisee, without record notice to the purchaser of the vendee's title. Judgment was entered by confession, and possession delivered on *habere facias*. Afterwards the sheriff's vendee brought ejectment against the administrator, the original vendee, and the devisee, which is still pending. Neither of the parties have proved the contract. The sheriff's vendee now files his petition in the Orphans' Court for specific performance: *Held*,

(1.) That the Common Pleas had no jurisdiction in the action of ejectment by the administrator, first, because the contract had not been proved; second, because neither the act of 1849 nor any other authorizes an administrator to commence such action; third, because the Orphans' Court of this county had exclusive jurisdiction to enforce specific performance.

(2.) That the petitioner is not entitled to have the rents paid to the parties in possession under the *habere facias* set-off against the balance of purchase money due the estate, and that he is liable to the estate for interest on the purchase money from the death of the decedent, although the same was not due and payable until a deed should be tendered. *Gurl's Est.*, 419.

PAYMENT.

1. The payment of tolls exacted by a canal company, whose right to the same is disputed, but which, by the exercise of threats and other means of coercion, compels the parties to accede to its demands, or be put to considerable loss in their business, are such involuntary payments that the company will be compelled to make restitution upon suit for their recovery. *Lehigh C. & N. Co. v. Brown et al.*, 115.
2. If the jury find that a person without authority wrongfully collects money, and it is paid involuntarily, it may be recovered back. *Id.*
3. Rule laid down by Mr. Justice Field in *Brumigan v. Tillinghast* (18 Cal. 272) adopted as to what are involuntary payments. *Id.*
4. What are involuntary payments, a question of fact for the jury. *Id.*

PLEADING AND PRACTICE. See AMENDMENT. COUNTY AUDITOR. ELECTION DISTRICT. EQUITY. DIVORCE MORTGAGE. NEW TRIAL. REFEREE. ROADS.

1. A summons against an insurance company having its principal office in another county cannot be served on a soliciting agent residing in this county, who is merely authorized to receive applications and admission fees, and such assessments and annuals as may be sent to him for collection. *O'Hara v. Mutual Aid Society*, 45.
2. An infant may be arrested upon a *capias ad respondendum* for torts committed. He cannot execute a bond, and must, therefore, either submit to imprisonment, or by the aid of a next friend appear, and by interposition of that friend execute a bond. *Vincent v. Warner*, 46.
3. Where a recognizance for appeal from the judgment of a justice of the peace is defective, the proper course is to call on the appellant by a rule to perfect his bail within a specified period, or in default of it to have his appeal quashed. *Gordon v. Snyder*, 91.
4. But where the appeal is absolutely unauthorized, because the appellant has neglected to comply with some positive condition precedent, as, for example, the prepayment of costs, or the making of an affidavit under the act of 1876, he must show that the fault of the omission was not his. *Id.*
5. The rule laid down in *Gordon v. Snyder* (*ante* 91), as to the practice in cases of unauthorized appeals, followed. *Swallow v. Red Ash Coal Co.*, 121.
6. After a long lapse of time an attorney will not be allowed to withdraw his acceptance of service of writ, and appearance and plea, unless it be satisfactorily shown that the plaintiff would be in as good a position as when the writ issued. *Heller v. Waller et al.*, 138.
7. A plaintiff who has failed to recover in a *scire facias* upon a mechanic's lien may resort to an action of debt against the same defendant upon the original contract, without payment of costs allowed in the mechanic's lien proceeding. *Long v. Caffrey*, 192.
8. Where the defendant in the action upon the contract has appeared before arbitrators, and agreed to the entry of a judgment against himself for a sum certain, reserving the right to appeal, and has then entered his appeal, the application to set aside the proceedings because of non-payment of costs is too late. *Id.*
9. *Powell v. Wyoming Valley Manufacturing Co.* (9 Luz. Leg. Reg. 115; 1 Kulp, 91) presents the exact converse of the present question. *Id.*
10. Issue of *nil tiel* record is triable by the court without a jury. *Jeremy v. Edwards et ux.*, 270.
11. To a void record the plea of *nil tiel* record is sustainable. *Id.*
12. An action against a municipal corporation is local, and must be brought and tried in the court of the proper county. *Church, assigned, v. City of Scranton*, 400.

PRESUMPTION OF DEATH. See EVIDENCE.

PRINCIPAL AND SURETY.

1. Where a lease has the name of A. as lessee in the body of the paper, and is signed by A., and also by B., with the word "bail" added to his name, it is a joint undertaking by both. *Brown v. Peters*, 403.
2. As between themselves, they are principal and surety; in favor of the lessor, they are both principals. *Id.*

POOR.

1. The vacation of an order of removal on appeal is only conclusive as between the two poor districts which are parties to the appeal. *Overseers v. Overseers*, 275.
2. Service alone, without hiring, will not gain a settlement; but to constitute a hiring it is not necessary that the consideration should be paid in money; an express agreement that the

POOR (Continued).

pauper should receive his victuals and clothes for his labor constitutes a hiring by which a settlement may be gained. *Id.*

3. It seems that mere admissions or declarations by the parties after the termination of the service are not competent evidence to show a hiring in order to establish the legal settlement of a pauper. *Id.*

4. But declarations of the parties made during the continuance of the service are admitted for the purpose of illustrating the character of the service, whether gratuitous or otherwise. *Id.*

5. Up to about 1850 B. had a settlement in Huntington by payment of taxes, when he sold his land and moved to Fairmount, where he acquired a settlement by a hiring. In 1856-7 he removed to Ross, where he continued in service by hiring until 1874, thus acquiring a settlement in Ross. From the last named township he removed to Fairmount, where he continued without hiring until he was declared a pauper. The overseers of Fairmount issued an order of removal to Huntington, from which the latter appealed: *Held*, that the order must be vacated. *Id.*

6. In a settlement case, proof may be made of assessment of taxes by a witness who produces before the examiner appointed to take the testimony the books of assessment from the proper office, and in the presence of the parties states in his deposition the items of the assessment in question as therein contained, no objection being made at the time to that mode of proof. *Directors v. Directors*, 315.

7. Jerry Coats, having a settlements in Danville, resided there with his wife and family from 1855 to 1869. In the latter year his wife became insane, and was, with his knowledge, placed in a lunatic hospital by the directors of the poor of the Danville district, where she remained, at the expense of that district, until 1882, when an order was obtained for her removal to Scranton. In 1875 Coats abandoned his family and his residence in Danville, and went to Scranton, where he resided for seven years, during five of which in succession he was assessed with and paid his proportion of public taxes in the Scranton district: *Held*, that he gained a settlement in Scranton for himself and wife, notwithstanding the fact that she was during that time receiving relief from the Danville district. *Id.*

REAL ESTATE. See HUSBAND AND WIFE.

REFEREE.

1. Where there is a direct conflict in the testimony, involving the credibility of witnesses, the decision of the conflict by the referee will not be disturbed, unless it is clearly shown that he has committed gross error. *Clark v. Sullivan*, 124.

2. The court has power to recommit the report of a referee. *Kingston Building Ass'n v. McDonough*, 137.

ROADS.

1. After the filing of the report of viewers in a road case, awarding damages, exceptions to the report were filed, depositions were taken on both sides, and the case was fully argued to the court. The court overruled the exceptions and confirmed the report. The discretion of the court having been thus invoked and exercised, it is now too late for an appeal and a jury trial under the act of June 13, 1874. *In Re Private Road in Nescopeck*, 358.

2. The time when the report is filed is the time when the damages are ascertained. The thirty days allowed for the appeal must begin to run from that time. *Id.*

RULES OF COURT, 143.

SCHOOL DIRECTORS. See COMMON SCHOOLS.

SHERIFF AND SHERIFF'S SALE. See BANKRUPTCY.

1. The gist of the action against a bidder at a sheriff's sale, where the bid is not complied with, is a breach of contract. *Whitaker et al. v. Thompson et al.*, 21.

2. If by a breach of contract the plaintiff has suffered injury, he may recover damages therefor. If he has suffered no injury, he can recover no damages. *Id.*

3. Where there is an outstanding lease of premises in which the defendant in an execution is the lessor, the defendant is not entitled to demand or receive any rent from the tenant subsequent to the delivery of the sheriff's deed. *Herr v. Binkley*, 39.

4. The remedies against a sheriff by personal action and by suit on his official recognizance are cumulative, and a recovery without satisfaction in the former is not a bar to the latter. *Commonwealth ex rel. Butler v. Whitaker et al.*, 405.

5. It seems that a judgment against the sheriff in a personal action is not conclusive, as to the damages at least, against the purchaser of land bound by the lien of the recognizance in a subsequent suit upon the recognizance. *Id.*

SPECIFIC PERFORMANCE. See ORPHANS' COURT.

STATUTES, CONSTRUCTION OF. See CAMP MEETING. TURNPIKE. WAREHOUSEMEN.

SUBROGATION.

1. Where it is shown that subsequent lien creditors have paid a prior judgment under a fair and legitimate effort to protect their interests, and that intervening rights will not be jeopardized, their right to subrogation will be clear. *Flick v. Weller*, 29.
2. But where the prior judgment creditor has issued execution, the court will not compel him to accept payment from subsequent lien creditors, and to assign his judgment to them. They have no standing in court until they have paid the judgment. *Id.*
3. Subrogation will not be decreed in favor of a mere volunteer, who, without any duty or compulsion, moral or otherwise, pays the debt of another. *Id.*

SUMMARY CONVICTION.

1. The record of a summary conviction will be reversed if it does not set forth a well defined act forbidden by law. *Commonwealth v. King*, 217.
2. In summary convictions a justice must set forth the charge specifically; he must, under the act of 1876 (P. L. 154), reduce the evidence of witnesses to writing as it is delivered by them before him. *Id.*

TAXATION.

1. Section 3 of the act of February 28th, 1835 (P. L. 46), does not authorize the county commissioners to file a certificate and have judgment entered thereon against the receiver of taxes of the city of Wilkes-Barre, appointed under section 29 of the city charter. *Luzerne County v. Miller*, 112.

TAXES.

1. The duplicate issued to a collector containing taxes charged against a person, when returned by the collector to the treasurer marked "paid" opposite the tax, is *prima facie* evidence that it was paid by person charged. *Directors v. Directors*, 315.
2. Taxes assessed and levied before a decedent's death become a debt against his estate. *Casner's Estate*, 332.

TERRE TENANT. See MORTGAGE.

TRESPASS. See CERTIORARI.

1. Animals lawfully confined in the city pound (Wilkes-Barre) are in the custody of the high constable, and he may maintain trespass against a defendant who unlawfully takes the same from his possession. *Sheridan v. Spare*, 43.

TRUSTEES. See EVIDENCE.

1. Where one secretly appropriates the funds of an estate placed in his trust and care, he is at least a borrower, and must be dealt with as such, and not any longer as a trustee, so far as questions of loss, interest, and compensation are concerned. *Drake's Estate*, 19.
2. An unfaithful trustee is entitled to no favor. He stands exposed to every equity and every technical legal advantage which accrues to the *cestui que trust*. *Id.*
3. An executor, administrator, guardian, or trustee who appropriates the trust funds to his own use renders himself liable to removal, to interest on the fund, to make good the principal, although lost, and to a criminal prosecution for embezzlement. *Id.*
4. After a testamentary trust has been completed, the Orphans' Court may compel a trustee to convey the estate to the beneficiaries. *Mott's Estate*, 69.
5. It matters not what may be the nominal duration of an estate given by will to a trustee, it continues no longer than the thing sought to be secured by the trust demands. *Id.*

TURNPIKE.

1. Under the act of March 19, 1804, incorporating the President, Managers, and Company of the Susquehanna and Lehigh Turnpike Road, the directors were bound to keep the road in repair and good condition; and when not in repair, as found upon the report of viewers appointed to examine the condition of the road, and notice of the same being given to the toll-keepers, they were not to exact any toll until the road was put in good repair, under a penalty for each collection, recoverable before a justice of the peace. A toll-keeper exacted toll after being notified of the condition of the road, and admitted the fact before a justice of the peace: *Held*, that a good *prima facie* case had been made out against such toll-keeper, which could not be rebutted without affirmative proof that the condemned portion of the road had been put in order. *Fetterman v. Robbins*, 79.

VAGRANTS.

1. The second section of the vagrant act of 1836 is not repealed by the tramp law of 1876. *Com. v. King*, 217.
2. Mere idleness and disorderly conduct does not make one a vagrant. To sustain a conviction under these statutes, the record and evidence must bring the case within the very terms of the law. *Id.*

VENDOR AND VENDEE.

1. Where a vendor, after having received part of the purchase money, retakes possession of the land, without the consent of the vendee, and uses it, he is chargeable with the rents, issues, and profits so long as he holds and uses the same, to be applied to satisfy any balance of purchase money that may be due and unpaid, and he will not be allowed to give evidence of the value of the improvements made by him while in possession, which were not necessary to the occupation and profitable enjoyment of the land. *Schmalz v. Whitley*, 281.

WADHAMS, CALVIN, DEATH OF, 204.

WAGES. See APPEAL. CERTIORARI.

1. The act of February 28th, 1870 (P. L. 269), applying to appeals from "wages" suits in Luzerne county, was not repealed by the general act of April 20th, 1876 (P. L. 43). *Hazen v. Albertson*, 146.
2. Watching timber at a salary of fifty dollars per annum is not the kind of "manual labor," nor the salary such "wages of labor," as are contemplated by the act of Assembly requiring an affidavit and bail absolute for appeals. *Zeigler v. Everhart*, 195.

WAREHOUSEMEN.

1. By "warehouseman, wharfinger, or other person," in the act of 24th September, 1866, making warehouse receipts negotiable, is meant one whose business is to receive goods with a view to their return in specie, whether altered in form by manufacture or not. *Bucher v. Commonwealth*, 339.
2. For a receipt to be negotiable by that act, it must be issued by one who is, in fact, a warehouseman or wharfinger, or who is, like them, engaged in the business of bailee. *Id.*
3. A warehouseman is one who receives and stores goods as a business for compensation or profit. One who receives grain on immediate purchase or for future sale on account of the owner is not a warehouseman. *Id.*
4. If A. conveys his corn to B., a dealer in grain, and leaves it with him, not intending ever to remove it, unless he should fail to sell it to B. in a subsequent negotiation, B.'s later sale of it to C. will be deemed the exercise of his option to purchase from A., and he will not be amenable to the penalties of the act of 1866. *Id.*
5. One indicted for parting with the possession of grain, for which he has issued a receipt, in form as follows: "Kingston Station, May 14, 1881. Received of J. Hettrick, per Kost, three hundred and sixty-six and 48-56 bushels corn on store. (Signed) R. A. Bucher," without return of the receipt, should, in the trial of an indictment therefor, be permitted to show that the receiptee had, for a number of years before the issue of the receipt, delivered large quantities of grain to the defendant, and always with the understanding that the grain so delivered was sold to the latter, paying such prices as might rule on the days on which a settlement should be called for, and that the corn, for which the receipt in question was issued, was received under the same arrangement. *Id.*
6. A receipt, in fact, of a warehouseman, for goods received on deposit, is within the operation of the act of 1866, whatever may be its form. But a receipt, in form, for a deposit, may, in a criminal proceeding, be shown to have been given by one not in the business of bailee, and not for articles bailed, and so excepted from the scope of that statute. *Id.*
7. The purpose of that act is to protect third persons, and not the depositor; hence consent of the latter to a violation of it by the warehouseman would not exonerate him. *Id.*

WILKES-BARRE. See MUNICIPAL CORPORATION. ORDINANCE. ROADS. STATUTES, CONSTRUCTION OF. TRESPASS.

WILL. See INCOME.

1. A devisee of the rents, issues, and profits of land for a certain period is equivalent to a devise of the land itself for the same period, and if the devise be without limitation as to time of enjoyment or other conditions, it will carry a fee. *Eley's Estate*, 55.

WILL (Continued).

2. A devise over, the intervention of a trustee, followed by a power of sale in the trustee, will be considered conclusive evidence, in the absence of a contrary intent expressed in the will, that the testator intended only to give a life estate to the first taker. *Id.*

3. A testator gave one-tenth part of his property, real, personal, and mixed, to the children of his son, John, to be equally divided among them on the death of their father, and directed that the said part be "held in trust by my executors during the life of the said John, and the interest or income arising from the same to be paid to the said John annually by my executors during his natural life." He then authorized and empowered his executors "to sell or dispose of all or any part of my real estate, or to lease the coal upon or under the same, and to convey the same to the purchasers by good and sufficient instruments of writing, provided" they "shall first have the written consent of the owners of six-tenths of the premises before selling or leasing the same." The executors leased all the merchantable coal upon, in, and under the land, the lessee agreeing to pay for the same, in periodical installments, at the rate of twenty-five cents per ton, etc. : *Held*, that the testator's son, John, is only entitled to the interest on the installments paid under the lease, and not to the principal absolutely, the income being a product of the sale of a part of the *corpus* of the estate. *Id.*

See *Eley's Appeal*, 325.

4. A bequest of a sum to be paid to the legatee annually for life out of the rents accruing under a lease named in the will, "if they fail not," does not authorize an executor to reserve or accumulate anything from the receipts of money in one year to pay the annuity of the next. *Skupp et al. v. Gaylord*, 283.

5. Such a legacy, however, will not be construed to be confined to the actual lease mentioned, unless that is the testator's plain intention. There being an evident desire to provide for the legatee for life, and no special reason for restricting her annuity to a fund received from a particular person, the language must be understood to indicate the property as the source of income, rather than the identical contract then in force. *Id.*

6. Testator died, leaving ten children. His estate consisted mostly of a tract of land valuable for agricultural purposes, but immeasurably more so for coal purposes. He gave to seven of his children each a tenth part of his estate absolutely. To each of the three others he gave the "interest or income" of a tenth part during their lives respectively, remainder over to children, vesting the estate in trust for that purpose. He authorized his executors, first having obtained the written consent of a majority of the beneficiaries, to sell the whole estate, or to lease the coal under the same. Executors, having complied with the directions of the will in this behalf, leased the coal. The fund accruing under the coal lease was brought into the court below for distribution. The life beneficiaries were awarded only the interest on their respective shares of the fund : *Held*, reversing the court below, that these beneficiaries were entitled to their respective shares of this fund absolutely. *Eley's Appeal*, 325.

7. Personal property is the primary fund for payment of legacies that are not expressly and exclusively charged on land; and in such case there must be a final account by the executor, showing a deficiency of assets, before entering a decree for the sale of the land for payment of the legacies. *Prince's Estate*, 357.

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Thomas Darling was the paternal greatgrandfather of Edward Payson Darling, the subject of the present sketch. He was either the first American ancestor of the family, or his immediate descendant. The family is of English extraction, and the first of the name to reach this country was among the earliest of the early New England arrivals. The exact date of his coming is not, however, known. Thomas Darling married Martha Howe, a niece of Lord Howe, the commander of the British forces in America during the Revolutionary war.

His son, the grandfather of Edward Payson, was Eliakim Darling, whose birth occurred in New Hampshire, in 1767. He married Ruth Buck, of Buckport, Maine, who was born in 1775, and died in 1855. Eliakim moved to Buckport, Maine, at an early age, where he became an extensive ship-builder and owner, in which he drove a thriving trade with several foreign countries. During the war of 1812 he was captured by the British while attempting to run the blockade of the New England coast, but as it was after peace had been declared, although not known at the time in this country, his ship and its contents were soon after released. He died at the age of sixty-six, in good circumstances.

His son, William Darling, who was the father of Edward Payson, was born in Buckport, Maine, but removed, when a very young man, to Reading, Berks county, Pa., where he was admitted to the bar, and entered actively into the practice of the law. He was a lawyer of fine parts, and held a leading position in the Courts for many years. In 1851 he was a United States Commissioner to the World's Fair, at Crystal Palace, London, and during that year delivered a series of addresses at Exeter Hall, in that city, on the relations of the two countries. The Earl of

Shaftesbury presided on these occasions, and the addresses elicited wide-spread notice and comment in both countries. He retired from active practice when but forty years old. He had been previously appointed President Judge of the Berks district, but his health failing shortly after, he resigned the position, though he nevertheless lived to the comparatively advanced age of seventy-eight years. He was also a Vice-President of the American Sunday School Union from its organization until the time of his death.

Edward Payson's mother was Margaret Vaughan Smith, the daughter of John Smith, of Berks county, who was owner of the Joanna furnace, in that county, a noted establishment at an early day. In 1832 the Joanna furnace was being operated by William Darling, and, as appears from a report made to the Auditor General of that year, employed one hundred and sixty-eight men. The furnace was owned by Mrs. Darling, to whom it descended from her father. John Smith was the son of Robert Smith, of Chester county, Pa., who was the son of John and Susanna Smith, who emigrated from the north of Ireland in 1720, and settled in Uychlan township, in the county last named. Robert was born at sea during the voyage over. He was of the sturdy, plucky, and enduring sort who constituted the main reliance of this now great country through the troublesome years of its infancy.

In an article written by Joseph S. Harris, Esq., and published in the *Pennsylvania Magazine of History and Biography*, we are indebted for the following sketch of the Smith family:

"Little is known of the history of the Smith family prior to their emigration to Pennsylvania, except that the family name was originally Macdonald, and that the branch of it from which Robert was descended formed an important part of the earliest Scottish emigration across the North Channel into Ireland in the time of James I. of England. Near the end of the seventeenth century, Robert Smith's grandfather lived in the northeastern part of Ireland. Just before the battle of the Boyne, as the soldier-king, William III., was personally reconnoitring the locality which was soon to become famous, his horse cast a shoe. There was, of course, no farrier in attendance to replace it, but Macdonald, in whose neighborhood the accident occurred, and who, like many other farmers in thinly peopled districts, volunteered to repair the injury, shod the horse, and so enabled the King to

proceed. His neighbors, who, like himself, were in sympathy with the cause of which William was the champion, dubbed Macdonald 'the Smith.' Such a change of name would not now be considered a compliment, as Smiths are so numerous that the name confers no special distinction, but in that district there was a surfeit of Macdonalds; all the possible changes had been rung on the name, and still there were hardly enough names to individualize the members of the clan. Smith was a novelty, and the branch of trade it represented has always been an honored one, especially in primitive society, and this particular Scotchman, proud to have his name linked with that of a great man and a decisive battle, as that of Boynewater was soon known to be, accepted the cognomen, and handed it down to his posterity as the family name. The Macdonalds held their lands in Ireland by tenant right, and while they, with the rest of their countrymen, were subduing the savage land which they now called home, they lived in peaceful obscurity. But when the colonists had won for themselves prosperity, that prosperity invited the interference both of their landlords and of the English government. Being Presbyterians, they resisted the legislation by which their rulers attempted to establish uniformity of ritual throughout the island, and when by the Sacrament Test, as it was called, they were required to pay tithes to the Established Church; when marriages by their own clergymen were declared null, and the issue of such marriages illegitimate; when they were forbidden to bury their dead by the rites of their own church, or to have teachers of their own faith; when they were debarred from all positions of power or trust, and heavily taxed on their productions and traffic; and when, in addition to these governmental oppressions, the absentee landlord took occasion, as the leases expired, greatly to increase the rents, these sturdy colonists, who had in one century turned the most desolate part of Ireland into a garden, and its most lawless district into an abode of peaceful and happy industry, decided again to abandon their homes, and to seek others beyond the seas; where, under Penn's mild and beneficent rule, permanent prosperity might be hoped for as the reward of honest toil; where they could build houses and reclaim land for the benefit of themselves and their children, and where they might worship God in the way that their customs and their consciences dictated.

"Such were the causes that led to the Scotch-Irish emigration to Pennsylvania in the first half of the eighteenth century, which gave to that colony so many of its best citizens. Among the first of these emigrants were the parents of Robert Smith—John and Susanna—who left their homes in 1720, one year after the

enforcement of 'The Test,' and whose special grievance was, not the raising of the rent of their homestead, but the absolute refusal of their landlord to renew their lease unless they would comply with the requirements of that hated act.

"The company was composed, as the beginning of such an emigration is apt to be, of the best class of the Scotch settlers in Ireland, men of property and education, many of them being clergymen and fine scholars, who, for years afterwards, furnished the most eminent teachers of the classical and theological schools in the southeastern part of Pennsylvania.

"Though the voyage was stormy, and unusually long even for those days of dull sailors, tradition tells of no losses of life on the journey, while there was certainly one life gained, for Robert Smith was born at sea. Immediately after landing at Philadelphia, the emigrants pushed westward thirty miles into Chester county, and passing by the fertile Great Valley took up lands to the northward in the hilly country of Uwchlan township, in a locality long known as the Brandywine settlement.

"With her brother John came Mary Smith, who married Alexander Fulton, removed to Little Brittain, Lancaster county, and to whom in due time was born a grandson, Robert Fulton, who has indissolubly linked his name with the history of steam navigation.

"Nothing is remembered of the early life of Robert Smith. His father died in 1760, and his mother in 1767; the homestead fell to Robert, who prospered there, as wise and diligent men did in those days. Sergeant Robert Smith is reported in the public records of the time as 'going to Reading to be qualified,' when, in 1757, the war between the French and English made the Indians restless and aggressive on the whole Pennsylvania border, and called out large bodies of militia in that peaceful colony. His next appearance is in the commencement of the Revolution, in August, 1775. The colony had but a small navy, and the chief reliance for the defense of Philadelphia was on obstructions to be placed in the channel of the Delaware river. Numerous plans were offered, and after discussing them thoroughly it was decided to place a line of *chevaux-de-frise* across the channel. At the date last mentioned, Robert Smith was thanked by the Supreme Executive Council of Pennsylvania for a model of a machine for handling *chevaux-de-frise*, and was soon after directed by the same body to report on the merits of the rival plans of Govett and Guion for building them. The next year the work was taken up in earnest, and in June, 1776, the Council instructed him to take charge of and sink the proposed defenses. He remained in charge of these works for nearly a year, during

which time he was also engaged in planning the land fortifications which were included in the same line of defenses. While engaged in these military defenses, he was also called to aid in raising the civil bulwarks of the State, and sat in the Convention which, on the 28th of September, 1776, adopted the first State Constitution of Pennsylvania.

"Robert Smith was at this time a man of considerable means, of great energy and extensive influence, and when, after the first flush of enthusiasm with which the colonists entered upon the Revolutionary war had passed away, the necessity of organizing and disciplining the forces who were to conquer freedom for a continent was recognized, he was considered the fittest man to do this work for his county, then the second in importance in the State, and was accordingly called, on the 12th day of March, 1777, by the Supreme Executive Council, to the responsible post of Lieutenant of Chester county. This office, whose name and duties were analogous to those of the King's Lieutenants in the counties of the mother country, gave him, with the rank of Colonel, the charge of raising, arming, and provisioning the military contingent of his district, and in every way preparing the troops to take the field. They remained under his command till they were called into active service.

"The selection proved a wise one. The Scotch-Irish were generally of good fighting material, and the circumstances under which they had left their old homes made them have no hesitation in taking up arms against the British government. Colonel Smith had had some experience in military affairs and in administration, and would no doubt have taken the field, but that he was somewhat past the prime of life, and had grown too large (weighing over 250 pounds) to undergo the fatigues of service at the front. He seems through this period of his life to have been somewhat of a pluralist, though it may have been to aid him in the discharge of his duties as County Lieutenant that he was elected Sheriff of Chester county, March 29, 1777, and appointed Justice of the Peace, March 31, 1777. The latter office he held for a number of years, and he was re-elected to the former, November 21, 1778. In October, 1783, he was one of the two persons elected by the people, as the custom then was, for the office of Sheriff, but the Governor, in whom was vested the final choice, selected William Gibbon, the other candidate.

"As illustrating the temper of the time, and especially the feelings of those who were his nearest neighbors, the following incident is worthy of note. When in the spring of 1776 Pennsylvania was called on for her quota of the troops needed to defend New York against the advance of the British under Howe, the Rev.

John Carmichael, pastor of the Presbyterian Church of Brandywine Manor, preached one Sunday the country's claim to the services of her sons with such vigorous eloquence that every man of his congregation enlisted, and that summer, while they fought the bloody battle of Long Island, women reaped the harvests at their homes in Uwchlan.

"Col. Smith retired from the position of County Lieutenant, March 21, 1786, which he had held for nine most eventful years, and from all public offices, except that of a Trustee of the State Loan Office, which he retained for about a year after this time. He served for one term in the State Assembly in 1785. In the latter part of 1787, being then sixty-seven years of age, and no longer in robust health, he retired to his farm, twelve years of uninterrupted public life having led him to covet the quiet of home, and his private affairs, which had been so long neglected, requiring his attention.

"His life was prolonged for sixteen years more, till 1803, and his death was caused by a paralytic stroke. He is remembered as a man of upright and decided character, but of winning manners, and from having so long been in official positions, so respected and confided in by his fellow-citizens, as to be constantly called on as an adviser in difficulties and an arbitrator in disputes. He was a staunch Presbyterian, an Elder, and a pillar in the church of which the Rev. John Carmichael was pastor, and he brought up his family after the most approved Scotch fashion. Reading the scriptures and prayer were an important part of the daily routine of the home life, and a large part of each Sunday was devoted to the study of the bible and the Westminster catechism.

"He married, December 20, 1758, Margaret Vaughan, daughter of John Vaughan, of Red Lion, Chester county, who survived him long, dying in 1822, at the age of eighty-seven. Of their children, Jonathan was for many years honorably and prominently connected with the First and Second United States Banks, and with the Bank of Pennsylvania, as their cashier; Joseph was an iron and shipping merchant of Philadelphia, and John (the grandfather of the subject of our sketch) was an iron-master, owning the Joanna furnace, near the line between Chester and Berks counties."

The late Gen. Persifer F. Smith was a grandson, as was also Persifer F. Smith, for so many years reporter for the Supreme Court of the State.

A daughter of Robert Smith married Rev. Levi Bull, D. D., an eminent clergymen of the Episcopal Church, and who was at the time of his decease the oldest Episcopal minister in the

Diocese of Pennsylvania. He was rector of St. Mary's Church, in Chester county, for nearly fifty years. He was a grandson on his maternal side of John Hunter, who was a member of the first vestry of St. Peter's Church, in Great Valley, Chester county. Dr. Bull was the son of Col. John Bull, of Revolutionary memory, who was one of the twelve members of Philadelphia county that met in Provincial Convention in January, 1775, and one of the four members that represented Philadelphia county in the Convention that framed the Constitution of the State, and which was adopted the 28th of September, 1776. He was a gentleman of considerable eminence in his day, and at one time was the owner of the mill and plantation of Charles Norris, where is now the present borough of Norristown.

Out of such ancestry came Edward Payson Darling. He was born in Robeson township, Berks county, on November 10, 1831, and was educated at New London Cross Roads Academy and at Amherst College, graduating from the latter in 1851. The New London Academy was established by Rev. Dr. Francis Allison in 1743. It became justly celebrated, and served to aid in furnishing the State with able civilians, and the church with well qualified ministers. Among those who were wholly or partially educated here were Charles Thomson, Secretary of the Continental Congress; Dr. John Ewing, Provost of the University of Pennsylvania; Dr. David Ramsay, the historian; the celebrated Dr. Hugh Williamson, one of the framers of the Constitution of the United States and historian of North Carolina, and three signers of the Declaration of Independence—Governor Thomas McKean, George Read, and James Smith. He read law in Reading, and was admitted to the bar there on November 10, 1853. In 1855 he removed to this city, and on August 13, of that year, became a member of the Luzerne bar, at which he quickly rose to a foremost position. He has never held nor sought political preferment; has, in fact, never taken an active hand in politics in any way. In all civil questions, involving commercial, real estate, and corporation law, he stands among the foremost in his profession, as is attested by two facts: first, that he has a larger number of students than any brother lawyer; and, second, that he is executor and trustee of many of the largest

estates in the county. He holds many business positions of great responsibility, being a Vice-President of the Wyoming National Bank and of the Miners' Savings Bank. He is also a partner in the banking house of F. V. Rockafellow & Co. He is one of the Directors of the Wilkes-Barre Gas Company, a Trustee of the Wilkes-Barre Female Institute, a Trustee of the Wilkes-Barre Academy, and a Trustee under the will of the late Isaac S. Osterhout of the "Osterhout Free Library," and was one of the applicants for the charter recently granted by the State, under which the finishing link in the new through line of railroad from Boston to Chicago, of which the new North and West Branch forms a part, is to be erected. By his associates in all these business enterprises and trusts, his clear conception of the law and admirable judgment and tact are highly valued.

Mr. Darling married, on September 29th, 1859, Emily H., a daughter of Nathaniel Rutter, Esq., of this city, who has borne him three children, Mary R. and Emily C., who are now being educated in Germany, and Thomas, who is at present in the Freshman class at Yale College. Mrs. Darling died during the last year.

The bulk of the creditable work of this world is accomplished by two very different kinds of men. The one includes the dashing, quick-witted, never-hesitating, always-to-the-fore kind, for whom the obstacles which beset all paths seem to possess a sort of fascination, and who go at them instanter, on a full tilt, and with a nerve and courage conspicuous to and winning the plaudits of all. The others are seldom thought by the masses to possess extraordinary talents. But to those who know them intimately, in place of quick wit, they present never-erring judgment, and in place of mere dash, an industry that never tires. Obstacles cause them to hesitate, but only long enough to determine the method by which they can be surely surmounted. They don't win applause, but they enlist confidence. They are paid, not with huzzas, but with trusts. If anywhere a record of what each accomplishes is kept, the balance will be found to be largely on the latter's side.

A brother of Edward Payson, Henry Darling, D. D., is now the President of Hamilton College, at Clinton, N. Y., a very

wealthy educational institution, being possessed of property valued at \$700,000. His first wife was the sister of ex-Judge Strong, of the Supreme Court of the United States. He was Moderator of the General Assembly of the Presbyterian Church in 1881. Hon. Charles E. Rice and Elliot P. Kisner, Esq., are graduates of Hamilton College. J. Vaughan Darling, Esq., of the Luzerne county bar, is also a brother.

Court of Common Pleas of Luzerne County.

PLYMOUTH BUILDING ASSOCIATION, *assigned*, v. ROOD.

Building association—Withdrawing stockholder—Opening judgment—Court to weigh the evidence.

1. On a motion to open a judgment, where, upon all the testimony, the court would not be justified, in the exercise of a sound discretion, in sustaining a verdict for the defendant, the issue ought to be refused.
2. A defendant in a building association judgment cannot off-set against the judgment the stock of another assigned to him after the maturity of the loan.
3. When a borrowing stockholder elects to apply his stock in payment of his loan, the proper course is to deduct from the ascertained value of the stock all arrearages chargeable thereon, and to credit the balance on the judgment. *Building Association v. Mangan* (11 Luz. Leg. Reg. 281; 2 Kulp, 260) followed.
4. This computation is to be made as of the date when the stock matured.

Rule to show cause why judgment should not be opened and defendant let into a defense.

The opinion of the court was delivered May 29, 1882, by

RICE, P. J.—The first ground of defense suggested is, that the defendant did not sign the agreement required by article v. of the constitution of the plaintiff association. The defendant swears: "I never signed any agreement with the association, that I know of, by which they could collect any more than six per cent interest. . . I don't recollect that I signed any other instruments when I signed this note. I won't swear that I did not sign others. I don't remember any book or paper of the association with writing on the top at the time I signed the note, and if I did sign any such thing I didn't know what I was signing." This testimony, taken at its very best, is very vague, and, even though

uncontradicted, it would be unsatisfactory. But it is clearly overcome by the testimony of Mr. Smith, who swears that he signed the defendant's name to the agreement in the general stockholders' book by the defendant's direction, and of Mr. Shonk, who testifies positively to the defendant's signature to the agreement in the borrowing stockholders' book. The defendant's testimony scarcely raises a conflict; certainly not such a conflict as ought to be sent to a jury. He simply does not remember a fact, which is satisfactorily proved by the plaintiff's witnesses. Even in case of conflict or discrepancy, it is the duty of the court to weigh the testimony, and to exercise a discretion in the granting or refusing of an issue. Where, upon all the testimony, the court would not be justified, in the exercise of a sound discretion, in sustaining a verdict for the defendant, the issue ought to be refused. *Earley's Appeal*, 9 Nor. 321; *Hickernell's Appeal*, *Id.* 328. It is unnecessary to say that the fact that the defendant did not know what he was signing would not, in itself, constitute a defense. *Greenfield's Estate*, 2 H. 496; *Pennsylvania Railroad Co. v. Shay*, 1 Nor. 198.

It is suggested in the defendant's testimony that misrepresentations were made to him at the time he joined the association, and also at the time he gave the note, to the effect that, even though he should become a borrower, he would still be required to pay only one dollar per month on a share. The proof utterly fails to make out a defense in this particular. Even if it were an undisputed fact that one of the directors made the statement alleged, it is evident that the defendant was not in any way defrauded thereby. Before he made the loan, he had in his possession a copy of the constitution and by-laws, and therefore may be presumed to have known their provisions. But aside from this presumption, the defendant admits that, at the next monthly meeting after the loan had been made, he learned that he would be required to pay five dollars per month as interest in addition to the five dollars which he had before paid as dues. If he had, in fact, been deceived in this particular, then was the time when he ought to have objected to paying the five dollars monthly interest; instead of doing which he continued to pay for a long period without protest. It is quite possible that the defendant

did not thoroughly understand the nature and workings of the scheme in which he embarked, but it would be impossible to conclude from the testimony that he was defrauded. His long acquiescence conclusively proves the contrary.

We are hardly required to say that the stock of A. J. Wilkinson, assigned to the defendant December 28th, 1881, cannot be received as an off-set to this judgment. They have no relation to each other in any way, and there is no evidence that the association has agreed to receive it as payment, nor is there any method under the by-laws by which it can be so applied by the court against the consent of the plaintiff. On the contrary, the effect of such forced application to the payment of this judgment would be to overthrow the whole method of withdrawal prescribed in article vi. of the by-laws, and therefore the prior assignee of the judgment has a legal right to object.

This brings us to the real ground of defense. The defendant testifies that between three and four years ago he gave notice by letter to Mr. Shonk, who, as he supposed, was attorney for the association, of his desire to pay up what he owed to the association, and to withdraw therefrom. While it does not positively appear that Mr. Shonk was the proper person to whom such notice should be given, the reception thereof by him, or by the association, is not denied. It does appear, however, from the testimony of Mr. Shaffer, the former secretary of the association, that the stock of the series to which this defendant belonged matured in May, 1878. In other words, this defendant's stock, which he was entitled to have applied in payment of his debt, then became worth two hundred dollars per share; subject, however, to the charge or off-set of the arrearages then existing. We infer from the notice to which the defendant testifies, taken together with his present application, that there is an election by him to have his stock applied in payment of the debt secured by this judgment. If, at the maturity of the stock (May, 1878), he had not been in arrears, it would have exactly paid the judgment; but, being in arrears, the residue only of the value of the stock, after the deduction of such arrearages, is to be credited upon the judgment. We held in *Plymouth Building Association v. Mangan* (11 Luz. Leg. Reg. 281; 2 Kulp, 210) that this computation

is to be made as of the date when the stock matured. We still adhere to the position there taken, and if, as is claimed by the plaintiff, the amount of the arrearages in May, 1878, was \$574.24, the strict and logical method of ascertaining the balance due upon the judgment would be as follows:

Amount of loan secured by the judgment, . . .	\$1000 00	
Par value of stock, May, 1878, . . .	\$1000 00	
Less arrearages,	574 24	
	425 76	
Balance due May, 1878,	\$ 574 24	

Upon this balance simple interest is to be computed to the present time.

Assuming the computation of the arrearages to be correct, there will be no necessity for an issue, provided the plaintiff will satisfy the residue of the judgment after the balance now due is ascertained in the method above given. If there is any error in the above computation it will be corrected upon immediate application being made.

And now, May 29th, 1882, upon condition that the plaintiff, within ten days from this date, satisfy all of said judgment over and above the arrearages due May, 1878 (\$574.24), together with interest on said sum from said date and costs, the rule is discharged; otherwise rule absolute.

George W. Shonk and J. A. Opp, Esqs., for plaintiff.

H. C. Magee, Esq., for defendant.

Burglars often make *safe* robberies.

Not a pleasant dish—the cold shoulder.

It was a sudden imp-pulse which made Eve masticate the apple.

“A new way to pay old debts” is to take the cash and pay them.

COMMON PLEAS TRIAL LIST—FEBRUARY TERM, 1883.

FIRST WEEK—FEBRUARY 5, 1883.

NO.	PL'FFS' ATT'YS.	PLAINTIFFS.	DEFENDANTS.	DEP'TN' ATT'YS.	NO.	TERM.	YR.	ACTION.	PLEA.
1	Martin	Grace Gribben	Plymouth Coal Co	Shonk	366½	Nov	1882	Appeal	Non ass., pay't w. leave, &c.
2	Martin	Daniel Schobert	N. & W. B. R. R. Co	Palmer	201	May	1882	Issue, tr. q. d. l. fr	Not guilty.
3	P. Farnham	Francis Heffern	Lehigh Valley Coal Co	H., D., Darlings	849	May	1876	Case	Not guilty.
4	Miller	Conrad Schong et ux	Frank Flosser	H. & B.	907	Jan	1878	Trover and con'n	Not guilty.
5	Miller	John Davis	Afram Lines	R.	197	April	1880	Appeal	Non assumpit, pay't, statute of lim.
6	P., D. & F.	Use of George Mahle	John Hummel	Hakes	224	Nov	1880	Appeal	Non assumpit.
7	Sarges	E. V. DeWitt	Jonas Seafoss	C. A. Zeigler et al	62	Jan	1881	Ejectment	Not guilty.
8	Farnham	Use of Christian Walter	City of Wilkes-Barre	McLean	15	April	1881	Debt	Nil debit, payment with leave, &c.
9	Payne	Frederick Vollman	S. Frauenthal	J. Stern	65	May	1881	Case	Not guilty.
10	Harding	William Shuman et ux	John L. Brown	Harding, McG	170	May	1881	Case	Non assumpit, pay't with leave, &c.
11	P., D. & F.	E. L. Underwood	George W. Leuder	Harding, McG	271	May	1881	T. v. ar. q. c. f	Not guilty.
12	Martin	Use of Wm. Stoddard	B. Frauenthal	Harding, McG	120	June	1881	Trover and con'n	Not guilty.
13	E. A. L.	Jacob Eroh	Joseph Rape	Harding, McG	242	Sept	1881	Ejectment	Not guilty.
14	E. A. L.	Methusalem Stone	Smith & Co	Hahn	176	Oct	1881	Appeal	Non assumpit, pay't with leave, &c.
15	Hahn	Adam Dombrowski	Henry Harvey	D. & F.	223	Nov	1881	Case	Not guilty.
16	Sarges	W. Butcher's Sons	Michael O'Brien et al	E. A. L., J. A. G	353	Feb	1882	Case	Not guilty.
17	M. L. & J.	John R. Crellin	John Fernau et al	Harding, McG	287	May	1882	Debt	Nil debit.
18		Samuel Miller	James Fox, dec'd	Brundage	28	Oct	1882	Ejectment	Not guilty.
19			Tobias Hts		28	Oct	1882	Interpleader	Usual plea.

SECOND WEEK—FEBRUARY 12, 1883.

1	Halsey	Louchheim Bros	A. Frauenthal	Brundage	1179	Oct.	1876	Debt	Nil debit, payment, &c.
2	Ferris	Miners' Sav. Bank, Pit	Cornelius Donnelly	J. T. L.	446	Nov	1879	Assumpit	Non assumpit, pay't with leave, &c.
3	Martin	Henry Benscoter et al	Jasper Winans et al	Osborne	314	June	1880	Ejectment	Not guilty.
4	P., D. & F.	J. S. Oberender, Assig	Manus Conaghan	McMannus	217	Jan	1881	Appeal	Non ass., pay't w. leave, scotff, &c.
5	E. A. L.	Francis R. Winters	Samuel H. Sturdevant	Powell	175	Feb	1881	Ejectment	Not guilty.
6	E. A. L.	Mrs. Samuel Clark	O. A. Peters	J. B.	414	April	1881	Appeal	Not guilty.
7	Kline, T	Thomas Birkbeck	Patrick Quinn	McG	58	May	1881	Appeal	Non assumpit, pay't with leave, &c.
8	D. & A.	Pardoe & Maikle	Edw. Kelley, Jr, et al	J. L.	251	May	1881	Ejectment	Not guilty.
9	Shonk	Jatiah Stookley	Thomas John, dec'd	Darlings	84	June	1881	Case	Non assumpit, pay't with leave, &c.
10	Hahn	John R. Davis	Jacob Kintz	T. H. B. L.	104	June	1881	Case	Non assumpit.
11	Payne	Whitney Bros	Augustus B. Leuder	J. L.	182	Sept	1881	Appeal	Payment with leave, &c.
12	Hakes	Francis Scarfoss	John L. Brown	Harding B., McG	615	Sept	1881	Appeal	Non assumpit, payment with leave.
13	M. L. & J.	Bean & Bro	Thomas Campbell	M. L. & J.	182	Oct	1881	Appeal	Not guilty.
14			Asa Gregory et al	P. H. C.	275	Nov	1881	Appeal	Non assumpit.
15			Alexander McLean	M. H. C.	358	Jan	1882	Appeal	Non assumpit, pay't with leave, &c.
16			Mortiz Engle	M. L. & J.	204	May	1882	Ejectment	Not guilty.
17					601	May	1882	Appeal	Non assumpit.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, January 13th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

1
Suit of John M. Fairchild and Henry S. Fairchild Administrators of John Fairchild, deceased, v. Daniel Moyer, defendant, and Henry Snyder and Samuel Snyder, terre tenants.

393 April term, 1881. Debt, \$797.68. Fi. fa. 30 January term, 1883.

Bennett & Nichols, Att'ys.
All that tract of land in Dorrance township, beginning at a post corner of land of Samuel Yohe, thence along lands of the same the several courses and distances 90 perches to post and stones, thence 96 perches to post and stones, thence along land in the warrantee name of Stephen Fuller 64 perches to a stone corner in the warrantee name of Robert Lenox, thence along same 23 perches to a post corner of land intended to be conveyed to Elias Keener, thence along land of same the several courses and distances 12 perches to a post, thence 80 perches to a post corner of Adam Moyer's land and land of Thomas Moyer, thence along same 96 perches to the place of beginning, containing 54 acres and 110 perches of land, more or less; partly improved, and having erected thereon a two-story wood dwelling and a barn.

2
Suit of the Empire Building and Loan Association v. David E. Morris.

292 January term, 1881. Debt, \$400.00. Fi. fa. 25 January term, 1883.

D. S. Bennett, Att'y.
All that lot of land on Meade street, city of Wilkes-Barre, bounded westerly by land now or late of J. C. Wells and G. D. Morzan, southerly by an alley, easterly by land of James Welsh, and northerly by Meade street, being 40 feet front on said Meade street, and about 190 feet in depth; improved, with a double two-story frame dwelling house, with basement of stone, and double outkitchen attached thereto, together with outbuildings and fruit trees thereon.

3
Suit of John Howell v. L. H. Evans.

141 January term, 1883. Debt, \$1,500.00. Fi. fa. 38 January term, 1883.

Ferris, Att'y.
All that lot of land in the borough of West Pittston, beginning at a corner of Luzerne avenue and Vine street, thence along Vine street 160 feet to a corner, thence along lands of John Howell 50 feet to a corner, thence along said lands 160 feet to a corner, and thence along Luzerne avenue 50 feet to the place of beginning, containing 8,000 square feet of land, more or less; all improved, with a two-story frame dwelling house and outbuildings thereon.

4
Suit of August Schlingman v. H. C. Gates.

765 January term, 1878. Debt, \$262.02. Al. fi. fa. 50 January term, 1883.

Hahn, Att'y.
All that piece of land in the city of Wilkes-Barre, beginning at a corner 20 feet from the Lehigh and Susquehanna Railroad and in the line of the cross street called Hanover street, thence 127 feet to a corner, thence by land of George Drake 92 feet, thence 25 feet to a corner, thence 12½ feet to a corner of land of Isaac E. Ross, thence along said land 150 feet to said Hanover street, and thence along said street 128 feet to the place of beginning, containing 14,933 square feet of land; all improved, and having erected thereon one brick foundry.

5
Suit of A. G. Gilmore & Co. v. A. F. Duffy, Administrator of the estate of Anthony Duffy, deceased.

623 October term, 1882. Debt, \$442.98. Vend. ex. 51 January term, 1883.

J. T. Lenahan, Att'y.
All the following described pieces of land in the borough of Plymouth, viz.:

1. Beginning at a corner on Center avenue and lot of S. R. Williams, thence 120 feet to corner of Duffy street, thence along Duffy street 122 feet to corner of lot on Duffy street and G. M. Williams' lot, thence:

along the same 90 feet to corner, thence along the back end of two lots 60 feet to an alley, thence 55½ feet to a corner on an alley and lot of Otis Allen's, thence 84 feet to a corner, thence 105 feet to a corner, thence 100 feet to the place of beginning; the above described lot being unsold portion of Duffy's addition to Center avenue, and above back street on Shawnee avenue; excepting about three-fourths of an acre; excepting and reserving the coal and all other minerals.

2. Beginning at a corner of lot of Michael Ratchford (northeast corner), thence in a northwesterly course direct with the northeast line of said Ratchford about 150 feet through the land of W. H. Cool & Co., thence along the land of said Cool & Co. in a southwesterly direction 82 feet to a corner, thence southeasterly in a direct line about 150 feet to a corner on said Ratchford land 75 feet from the place of beginning, thence northeasterly along the same 75 feet to a corner, the place of beginning, being 75 feet in front, with 82 feet in rear, and about 150 feet in depth, containing 7,800 square feet of land; excepting and reserving the coal and all other minerals.

3. Beginning at a corner on Center avenue extension and lot of Rosanna Clark, thence along the line of the same 100 feet to a corner on land now or formerly of Mrs. Mary Levi, thence along the line of said Mrs. Levi 50 feet to a corner of lot Warren Hoffman, thence along the line of said Hoffman 100 feet to a corner on said Center avenue extension, thence along the same 50 feet to a corner, the place of beginning, being 100 feet deep by 50 feet in width, and containing 5,000 square feet of surface, with a 1½-story frame dwelling thereon; excepting and reserving the coal and all other minerals.

4. Beginning on back street at a point in line of lands of Joseph Sweitzer, thence 50 feet to land of Ira Ransom, thence 150 feet to land of Samuel H. Shaffer, thence 50 feet to lands of said Joseph Sweitzer, thence 50 feet to the place of beginning, containing 7,500 square feet of land; excepting and reserving all the coal and other minerals.

6
Suit of Hancock & Macknight v. Patrick Considine.

603 October term, 1882. Debt, \$596.96. Fi. fa. 45 January term, 1883.

McLean & Jackson, Att'ys.
All that lot of land in the township of Plains, beginning at the northeast corner of Union and Mill streets, thence 190 feet along Union street to a corner, thence 40 feet to brow of bank of Mill Creek, thence along brow of bank 144 feet, thence 71 feet to a corner, thence 125 feet along Mill street to place of beginning, and containing in all 13,050 square feet of surface; coal and other minerals reserved; improved, with three 2-story frame dwelling houses and outbuildings thereon.

7
Suit of Rockwell & Hurlbutt v. Richard D. Lloyd and Ann Lloyd.

153 January term, 1883. Debt, real, \$87.00. Fi. fa. 40 January term, 1883.

Miller, Att'y.
All that lot of land in the city of Wilkes-Barre, in that part of the city known as Rolling Mill Hill, beginning at a corner on Hill street adjoining a lot contracted to Peter Wallace, thence 118½ feet to a corner of land of John W. Jones, thence along said Jones' lot 50 feet to a corner, thence 120 feet to a corner on Hill street aforesaid, and thence along the same 50 feet to the place of beginning, containing about 6,000 square feet of land; all improved, with a two-story frame house and outbuildings thereon.

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and unless exceptions are filed, will be presented for final approval on Monday, the 8th day of January, 1883:

Simon Remley, George Nansteel, Reuben Kisner, William J. McCullough, Ira Sackett, and Martin Murphy, deceased.

JOSEPH HENDLER,
Clerk O. C.

LICENSES.

Notice is hereby given that the following persons have filed their applications for license to keep hotels and restaurants, and to sell liquor by the quart, in the office of the Clerk of the Court of Quarter Sessions of the county of Luzerne, and that said applications will be heard by the court on Monday, January 22d, 1883:

ASHLEY.		
McGahren	Patrick McGovern	Restaurant.
Hines	Babstist Engle	"
J. L. L	Patrick Gallagher	By Quart.
BUTLER TOWNSHIP.		
Bryson	Dennis O'Donnell	Hotel.
Gorman	Bryan Martin	Restaurant.
BLACK CREEK TOWNSHIP.		
McManus	Lorenz Hossenflug	Restaurant.
DORRANCE TOWNSHIP.		
Gorman	Henry Krouse	Restaurant.
FREELAND.		
Hayes	A. C. Heiney	Hotel.
"	Frederick Haas	"
J. Lynch	Frank Gallagher	Restaurant.
Hayes	Libor Winter	"
"	John Hearon	"
"	Alfred Deloy	"
"	Frank McShea	"
"	Condy McCoole	"
"	Maurice Ferry	By Quart.
"	Louis Stindler	"
FOSTER TOWNSHIP.		
Hayes	Hugh & Thomas Elliott	Hotel.
"	William Lorenz	"
Halsey	John Richards	"
Hayes	John Ferry	Restaurant.
"	Austin Harvey	"
"	Andrew McGeehan	"
"	Anthony Surman	By Quart.
"	Condy Gaffney	"
Halsey	Philip Kennedy	"
"	Peter Timony	"
McManus	Condy Brennan	"
HANOVER TOWNSHIP.		
Hakes	William Jones	Restaurant.
HOLLENBACK TOWNSHIP.		
Martin	Paul Grover	Hotel.
HAZLETON.		
Gorman	Fred. Kepping	Hotel.
"	C. J. Volkenand	"
"	John Ballentine	"
Kline	Frederick Schaar	"
"	Michael McGerrity	"
Hahn	Frank Orawitz	Restaurant.
Kline	Conrad Schugard	"
"	Jo'n Lapp (1st)	"
McManus	Michael Angelo	"
"	Michael Kelly	"
Bryson	John Kennedy	By Quart.
R. H. Wright	William J. Feldhoff	"
Gorman	C. Kelley	"
McManus	Thomas McHale	"
HAZLE TOWNSHIP.		
Bryson	Matthew Long	By Quart.
KINGSTON.		
Reynolds	Francis Roth	By Quart.
KINGSTON TOWNSHIP.		
B. & N	John Moore	Hotel.
McL. & J	Adam Meisel	"
Jenkins	Harry A. Laycock	"
J. T. L	Patrick Hefferan	Restaurant.
McL. & J	J. R. Thomas	By Quart.
J. T. L	Martin Moran	"
NANTICOKE.		
J. Lynch	Lewis Hodges	Hotel.
E. A. L	Mary C. Elliott	Restaurant.
Loop	William Williams	"
"	John Krywicki	"
Hines	Alfred Landy	"
Chapin	Robert Holsworth	"
NEWPORT TOWNSHIP.		
E. A. L	Joseph Underwood	Restaurant.
PLYMOUTH.		
J. T. L	Thomas Carter	Hotel.

PLYMOUTH TOWNSHIP.		
Magee	William Allen	Restaurant.
Shonk	Charles E. Waters	"
"	Andrew Brennan	"
J. L. L	John McGowan	By Quart.
PITSTON.		
Hughes	M. M. Davis	By Quart.
PITSTON TOWNSHIP.		
Mahon	George Judge	Restaurant.
PARSONS.		
J. Lynch	John McGavin	Hotel.
Mahon	Stephen Toolin	Restaurant.
Brundage	Buchanan & Rhodes	By Quart.
SUGAR NOTCH.		
Jones	John Elliott	Hotel.
O'Neill	Peter Boice	Restaurant.
J. L. L	Patrick Reiley	By Quart.
WILKES-BARRE.		
O'Neill	George Ferstenfeld	Hotel.
Campbell	Jacob Stitzer	"
Coons & Shortz	John R. Kennedy	"
Moore	John H. Kneass	"
McL. & J	Robert McCadden	"
Robinson	George Reudelhuber	"
Cannon	George Rieder	"
Harding, McG	John Kinney	"
Bauman	Linus Zoeller	"
J. T. L	Henry Rittenauer	"
"	John Mailender	"
Evans	Andrew Hahn	"
Strauss	Nicholas Rose	"
P. D. & F	Bryan McManamin	Restaurant.
J. Lynch	Jacob Geier	"
J. T. L	Wendel Gransen	"
Hahn	A. Miller	"
"	George Russ	"
McL. & J	C. A. Gaughan	By Quart.
"	P. F. Peoples	"
Strauss	Lewis Lewith	"
J. L. L	William Griffiths	"
McCartney	Wm. M. Miller	"
WRIGHT TOWNSHIP.		
Harding, McG	George Carey	Hotel.
"	John Mackin	By Quart.

JAMES R. EHRET,
Clerk Q. S.

52-2

Also the following named persons:

HAZLETON.		
McManus	Daniel Duffy	Restaurant.
"	Peter Brady	By Quart.
"	Patrick B. Boyle	"
PLYMOUTH TOWNSHIP.		
J. Lynch	Mary Keating	Hotel.
Shonk	Patrick Kelley	Restaurant.
PARSONS.		
O'Neill	William Lawler	Restaurant.
WILKES-BARRE.		
Campbell	Lewis C. Engle	Restaurant.

1-3
L. K. STRENG,
Clerk Q. S.

ESTATE OF MATTHEW LONGWELL, LATE of Franklin township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
SARAH JANE LONGWELL,
E. G. BUTLER, Administratrix.
Attorney. 50-3

ESTATE OF JAMES C. HOWELLS, LATE OF Jeddo, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
ELIZABETH HOWELLS,
GEO. H. TROUTMAN, Administratrix.
Attorney. 51-4

ESTATE OF SAMUEL WOLFE, LATE OF
Union township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

BENJAMIN GREGORY,
Administrator.

58-5

ESTATE OF MARTHA E. MOORE, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CALVIN PARSONS,
Administrator.

52-5

ESTATE OF DANIEL VAN SCOY, LATE OF
Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HENRY VAN SCOY,
PALMER, DEWITT & FULLER, Executors.
Attorneys.

51-4

ESTATE OF JAMES FLETT, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARGARET FLETT,
CALVIN WADHAMS, Executrix.
Attorney.

50-3

ESTATE OF JOHN LONGWELL, LATE OF
Franklin township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SARAH JANE LONGWELL,
E. G. BUTLER, Administratrix.
Attorney.

50-3

ESTATE OF MILTON SMITH, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB REDDLER,
A. R. BRUNDAGE, Administrator.
Attorney.

48-1

ESTATE OF WILLIAM MANS, LATE OF
Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HENRY W. MANS,
C. W. KLINE, Administrator.
Attorney.

48-1

ESTATE OF PATRICK MOYLES, LATE OF
Laurel Run borough, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES MOYLES,
Administrator.

58-5

ESTATE OF EDMUND JAMES, LATE OF
Lackawanna township, Luzerne (now Lackawanna) county, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

T. R. HUGHES, Adm'r d. b. n. c. t. a.,
N. TAYLOR, Attorney.
Scranton, Pa.

52-5

ESTATES TO BE AUDITED BY THE
Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. Andrew Montanye; Geo. B. Kulp, Trustee; 9th January, 1883.
2. Jonas Buss; Benjamin Evans and A. G. Briggs, Executors; 9th January, 1883.
3. Elizabeth Boeger; F. J. Helfrich, Administrator; 10th January, 1883.
4. Kiley Nichols; T. R. Martin, Administrator; 10th January, 1883.
5. Fanny H. Tighman; Charles Morgan and E. S. Morgan, Executors; 11th January, 1883.
6. John Breese; Rosannah Breese, Administratrix; 11th January, 1883.
7. S. S. Coon; S. Bristol, Administrator; 12th January, 1883.
8. Mary McDermott; H. R. Hughes, Administrator; 12th January, 1883.
9. J. Pryor Williamson; E. G. Scott and Adolph Voigt, Executors; 13th January, 1883.
10. L. W. Drake; Ario Pardee, Calvin Pardee, and Elvira E. Drake, Executors; 15th January, 1883.
11. John H. Egbertson; Lorinda M. Egbertson, Administratrix; 15th January, 1883.
12. Benjamin Nulton; Elvira N. Nulton, Administratrix; 16th January, 1883.
13. Nathan Kocher; J. W. Kocher, Administrator; 16th January, 1883.
14. Philip Steger; William Kauffman, Executor; 17th January, 1883.
15. Alexander Jameson; S. C. Jayne, Administrator; 17th January, 1883.
16. Andrew Weiskerger; Gottlieb Schmalz, Executor; 18th January, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,
Clerk O. C.

51-1

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Governor of Pennsylvania, on the 18th day of January, 1883, under the Act of Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the incorporation of "The Wilkes-Barre Electric Light Company," the character and objects of which are the furnishing of light to the public by means of electricity.

RYMAN & LEWIS,
Solicitors.

51-1

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of John Hughes, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Saturday, January 27, 1883, at 9 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be debarred from coming in on said fund.

JOHN T. LENAHAU,
Auditor.

51-2

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Martin Murphy, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Saturday, the 6th day of January, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in upon said fund.

WILLIAM S. McLEAN,
Auditor.

30-1

AUDITOR'S NOTICE.

In Re Partition of the real estate of Francis Griesmer, deceased. The undersigned, an Auditor, appointed by the Orphans' Court of Luzerne county to marshal liens and ascertain and report the interests of the heirs of said decedent, hereby gives notice that he will attend to the duties of his appointment, at his office, on Franklin street, Wilkes-Barre, on Friday, January 12th, 1883, at 3 o'clock P. M., at which time and place all parties interested must appear, if they wish to be heard.

HENRY W. DUNNING,
Auditor.

30-1

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the proceeds of the Sheriff's sale of the real estate of A. Donop, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Tuesday, the 16th day of January, 1883, at 10 o'clock A. M., at which time and place all persons interested must present their claims, or else be debarred from coming in upon said fund.

L. W. DEWITT,
Auditor.

30-1

ESTATE OF HENRY SCHAEFER, LATE OF

Hazleton, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM SCHAEFER,
Administrator.
J. A. GORMAN,
Attorney.

1-6

ESTATE OF W. H. SPERRING, LATE OF

Wilkes-Barre, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

THOMAS SPERRING,
Executor.
BENNETT & NICHOLS,
Attorneys.

1-6

ESTATE OF THOMAS HUTCHINS, LATE OF

Kingston township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

R. H. WEIR,
R. H. HUTCHINS,
Administrators.
McLEAN & JACKSON,
Attorneys.

52-5

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved April 29, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Sugar Notch Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding real estate connected therewith.

E. P. & J. V. DARLING,
Solicitors.

1-3

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 1, May term, 1881. Libel in divorce a vinculo matrimonii. Lavina Cooper, by her next friend, Thos. G. Williamson, v. Chas. Cooper. To Chas. Cooper—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, January 13, 1883, at 10 o'clock A. M.

G. M. HARDING,
JOHN MCGAHREN,
Solicitors.

1-2

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Jacob Meyer, and that said license will be asked for in the court aforesaid, on Monday, January 22d, 1883, at 10 A. M.

JAMES L. IENAHAN,
Solicitor.

52-1

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Samuel Silverman, and that said license will be asked for in the court aforesaid, on Monday, January 22d, 1883, at 10 A. M.

JOHN T. IENAHAN,
Solicitor.

1-2

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Simon Silverman, and that said license will be asked for in the court aforesaid, on Monday, January 22d, 1883, at 10 A. M.

JOHN T. IENAHAN,
Solicitor.

1-2

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

McLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, JANUARY 12, 1883.

No. 2.

Court of Common Pleas of Luzerne County.

ENTERPRISE BUILDING AND LOAN ASSOCIATION *v.* GRIFFITH.

Practice—Striking off judgment—Form of issue.

1. When a defendant alleges that his signature to an amicable revival of a judgment was a forgery, or was obtained by false and fraudulent representations as to the nature of the instrument, and obtains a rule to strike off the judgment, the proper practice is to frame a special issue to try the disputed questions of fact, and in the meantime to allow the rule to stand over.
2. The original judgment, of which this was a revival, was entered in the Mayor's Court of Scranton: *Held*, that any defense to that judgment must be made in the Common Pleas of Lackawanna.

Rule to show cause why judgment shall not be stricken off.

The opinion of the court was delivered January 16, 1882, by

RICE, P. J.—If there is any equitable or legal defense to this judgment, aside from the alleged fraud or forgery connected with the execution of the amicable revival, it should be shown on motion to open the original judgment, and that motion must be made in the courts of Lackawanna county. The defendant alleges that his signature to the amicable revival entered on our records is a forgery, or was obtained by false and fraudulent representations as to the nature of the instrument. These questions of fact must be referred to a jury, the allegations not being admitted by the plaintiff. Until these facts are determined by a jury, this rule will stand over.

And now, January 16, 1882, an issue is awarded between the parties to determine the questions of fact: 1st. Whether or not the signature of the defendant to the amicable revival is a forgery. 2d. Whether or not it was procured by false and fraudulent representations of the nature and contents of the instrument. Issue to be framed by counsel and submitted to the court.

Court of Common Pleas of Luzerne County.

RITTENHOUSE *et al.* v. CREASY *et al.*

School house site—Act of April 9th, 1867, P. L. 51—Discretion of directors in selecting—Power of court to interfere by injunction—Eminent domain.

Land was conveyed to certain persons as trustees "for all German and English societies, Methodist only excepted, for the only proper use and benefit for said societies for school and worship for every religion and denomination, Methodists only excepted." The school directors of the township having appropriated a part of the lot for a school house site, the trustees filed a bill and asked for an injunction to restrain them from occupying it. *Held,—*

1. The necessity for the erection of the new school house, and the eligibility of the site selected, rest in the discretion of the directors.
2. An implication that they deemed the site eligible, and the selection thereof expedient, as against all others, would arise from their action on the subject. They need not record their motives when they have jurisdiction to act.
3. An averment that the district was already the owner of a lot in the vicinity ample for the purpose required would not sustain a bill by the trustees. Whether it would sustain a taxpayers' bill, not decided. In either case, if the fact were in doubt, the court would refuse a preliminary injunction.
4. The discretion having been vested in the directors, the question for the court is, whether they have proceeded contrary to law, or transcended their powers.
5. This is a use for which land may be taken compulsorily under the right of eminent domain.
6. Land held in trust as this was is private property, and may be taken in the exercise of this right.
7. It is not made a condition to the exercise of this right by the directors that they have been unable to obtain *any* other site by agreement with the owners of the land.

Motion to continue preliminary injunction.

The opinion of the court was delivered September 9, 1882, by

RICE, P. J.—The defendants, with the exception of George Nagle, constitute the board of directors of the schools of Black Creek township, and as such have appropriated and marked off a half acre of land for the purpose of erecting thereon a school house. The land, of which it constitutes a part, was conveyed in 1819 to the predecessors of the plaintiff trustees upon the following trust: "To have and to hold the said described lot unto the said George Drescher and Cornelius Rittenhouse, trustees, appointed for all German and English societies, Methodist only excepted, for the only proper use and benefit for the said German and English societies for school and worship for every religion and denomination, Methodists only excepted."

We are asked to restrain the defendants by injunction from proceeding with the erection of the school house thereon, for the reason, as alleged in the bill, "that there is no public necessity for taking any portion of said premises for the uses of said school district; that within some fifteen hundred feet thereof said school district owns a lot ample for such proposed building, and other lots in the immediate vicinity of above described premises can be readily obtained by said board, but no attempt has been made to procure the same."

The defendants claim to be acting under authority of the act of April 9, 1867 (P. L. 51), which empowers them to enter upon and occupy ground for the purpose aforesaid whenever they "shall be unable to procure such eligible sites for the erection of school houses as they may deem expedient by agreement with the owner or owners of the land."

The language of the statute is very plain, and cannot well be misconstrued. When a necessity for the erection of a school house has arisen, the directors are authorized and directed to exercise their discretion in the selection of an eligible site. Having made the selection which they deem expedient, they are to agree therefor with the owner of the land; but having failed to agree with him, they are authorized to mark off the quantity required, not exceeding an acre, and then to enter upon and occupy the same for the purposes required.

Now, it is not asserted here that a necessity has not arisen for the erection of a new school house; and, indeed, we do not think that the present plaintiffs, in the capacity in which they come into court, could raise that question. This fact, then, is to be presumed. Neither is it alleged that the selection of this particular site was not necessary and expedient in the judgment and discretion of the board of directors regularly exercised. On the contrary, their action appears to have been taken in pursuance of a resolution, and the defendants assert in their affidavits that the selection was made by them, "after mature consideration, as the most eligible situation, . . . and not arbitrarily, or with any desire to injure the plaintiffs." Even in the absence of this express declaration, an implication that they deemed the site eligible, and the selection thereof expedient, as against all others,

would arise from their action on the subject, inasmuch as they can act only in such a case. They need not record their motives when they have jurisdiction to act. 2 Dill. Mun. Corp. 466 (2d ed.) An attempt to agree with the owner must be made before taking the land compulsorily. It is not asserted that the directors proceeded without first having made such effort; nor is the motion for injunction put upon this ground. We may say in passing, however, that there being no such averment, this prerequisite, for the purposes of the present contention, may fairly be implied from the affidavit of the defendants as to the attempted negotiations with Mr. Schleicher.

In what respect, then, does it appear that the defendants have proceeded contrary to law? The chief ground of objection urged against their action is, that the selection of this particular site was not necessary, was inexpedient, and was an unreasonable exercise of discretion, which a court of equity ought to restrain. It is urged that such equitable interference would be justified by the alleged fact that the district is already the owner of a lot in the vicinity ample for the purpose required. We are not satisfied that, even if this fact were conceded, it would constitute an equity upon which this bill, in its present form, could be sustained. Whether it would sustain a taxpayers' bill, we need not decide, for the reason that it does not appear that the plaintiffs seek to interfere in that capacity. But beyond that, the fact is not conceded. The defendants' affidavits assert that the lot referred to is much too small for the requirements of the district, and thus the averment of the bill, if not overthrown, is at least counterbalanced, and the fact itself is left in doubt. This of itself would be sufficient to prevent the court from interfering. "To warrant interference by injunction with the exercise by the defendants of powers and discretion specially entrusted to them by the Legislature, the case should be clear from doubt." *Ford v. West Pittston*, 6 Luz. Leg. Reg. 54.

In the next place, it is claimed that the taking of this land will seriously interfere with the trusts for which it was set apart by the original donor; that it will be needed for church and burial purposes; and that other equally eligible sites could have been procured, the taking of which would have caused less inconveni-

ence and hardship to the owners of the land. Whether the directors have acted wisely in the selection of this particular site, we shall not attempt to decide. They, and not the court, constitute the tribunal in which the Legislature has vested the discretion of selection. The court may decide whether their proceedings are contrary to law, but when a chancellor undertakes to pass upon the wisdom of their acts, he enters a domain through which there can be no guide but individual judgment. Many of the considerations which have been called to the attention of the court might well have been urged upon the directors, and deserved from them the most careful attention; but forcible as these arguments may seem to us, we cannot say that the directors acted contrary to law in disregarding them. In other words, their decision is final and conclusive, and if we assume in one case of apparent hardship to set it aside because our judgment may differ from theirs, then we constitute ourselves a tribunal of appeal, before which every case may be brought. For this we can find no authority. This supreme right of eminent domain, easy to understand in the abstract, but often difficult to submit to in the particular case, has been vested by the Legislature in the directors, and with them must rest the responsibility for all errors of judgment in its exercise.

The question for the court is, have they proceeded contrary to law, or transcended their powers? Confining ourselves closely to this question, it is to be observed that, in the exercise of this right in the method prescribed by law, the directors, in deciding the question of expediency as between two or more sites, are not confined by the statute in their selection to that one which will cause the least inconvenience and hardship to private parties. The right of eminent domain involves in its very existence the possible suffering of private inconvenience for the public good, and this is a public use, for which land may be taken compulsorily. *Long v. Fuller*, 18 Sm. 170. This land, although set apart by the donor for the use of a considerable portion of the public for religious and educational purposes, is, nevertheless, private property, and is not, by reason of the trust, exempted, either in the organic or statute law, from liability to be taken in the exercise of this right, even though the appropriation thereof for a public

use might defeat the trust. We do not say that the taking of such property, as, for example, a church burial ground in actual use, or enclosed as such, might not be accompanied by such circumstances as to indicate beyond doubt a gross abuse of discretion which a court of equity would restrain. But such an extreme case is not presented here. The taking of the proposed ground will not defeat the trust for which the whole land was set apart by the donor. The burial ground as in use and now enclosed will not be disturbed, and the use of the church for religious purposes will not be prevented.

Again, it is not, as would seem to be suggested by the bill, made a condition to the exercise of this right by the directors that they have been unable to obtain any other site by agreement with the owners of the land; neither does the law require them to surrender the convictions of their own judgment upon the matter to the wishes or judgment of even a large majority of the taxpayers or patrons of the schools. All these are proper matters for them to take into consideration in making their decision, but in not permitting them to outweigh other considerations which may operate upon their judgment, we cannot say that they have clearly abused their discretionary powers, or have proceeded contrary to law. *Ford v. West Pittston, supra*; 1 Dillon, 58.

We can readily understand and appreciate the sentiments which have incited this opposition to the action of the directors, and while we feel constrained to decide that their action, so far as now appears, has not been in excess of their powers, nor contrary to law, and is therefore beyond our control, yet we may suggest to the defendants, acting as they do in a public capacity, the wisdom of carefully considering whether the requirements of the district cannot be met without doing violence to the justifiable wishes and sentiments of so large a portion of the community.

The motion to continue the preliminary injunction is denied.

Geo. R. Bedford and A. R. Brundage, Esqs., for plaintiffs.

G. H. Troutman and A. Farnham, Esqs., for defendants.

ORPHANS' COURT ARGUMENT LIST.

SATURDAY, JAN. 27, 1883.

- 1 In Re Estate of Thomas Montgomery, deceased
- 2 In Re Estate of Thomas Montgomery, deceased
- 3 In Re Estate of Robert Prince, deceased
- 4 In Re Estate of Jacob Drum, deceased

Lathrop, G., Darlings
G. M. L., Darlings
Hand, Farnham
Klaner, Brundage

Exceptions to final account of Executor.
Exceptions to final account of Executor.
Exceptions to report of Examiner.
Exceptions to partial account of Executor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county.
No. 44, November term, 1882. Libel in divorce a vinculo matrimonii. Rosa A. Dieffenbacher, by her next friend, Adam Lawin, v. Daniel F. Dieffenbacher. The alias subpoena in the above case having been returned non est inventus, you, the said Daniel F. Dieffenbacher, are hereby notified to appear at said court, on Monday, February 5, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

T. R. MARTIN, Sheriff.
WILLIAM O'MALLEY, Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Hanover Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding real estate connected therewith.

E. P. & J. V. DARLING, Solicitors.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, the 5th day of February, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "The Pittston Cornet Band," the character and objects of which are the practice and promotion of music.

F. C. MOSIER, Solicitor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county.
No. 775, October term, 1882. Libel in divorce a vinculo matrimonii. Matthew Harrison v. Margaret Harrison. The alias subpoena in the above case having been returned non est inventus, you, the said Margaret Harrison, are hereby notified to appear at said court, on Monday, the 5th day of February, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
F. C. MOSIER, Solicitor.

AUDITOR'S NOTICE.
The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of John Hughes, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Saturday, January 27, 1883, at 9 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be debarred from coming in on said fund.

JOHN T. LENAHAN, Auditor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county.
No. 106, November term, 1882. Libel in divorce a vinculo matrimonii. James Henderson v. Catharine Henderson. The alias subpoena in the above case having been returned non est inventus, you, the said Catharine Henderson, are hereby notified to appear at said court, on Monday, February 5, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
ALFRED DARTE, Jr., Solicitor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county.
No. 63, November term, 1882. Libel in divorce a vinculo matrimonii. Sarah Ann Elliot, by her next friend, Elizabeth Holdsworth, v. James Elliot. The alias subpoena in the above case having been returned non est inventus, you, the said James Elliot, are hereby notified to appear at said court, on Monday, the 5th day of February, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
ALFRED DARTE, Jr., Solicitor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county.
No. 1, May term, 1881. Libel in divorce a vinculo matrimonii. Lavina Cooper, by her next friend, Thos. G. Williamson, v. Chas. Cooper. To Chas. Cooper—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, January 13, 1883, at 10 o'clock A. M.

G. M. HARDING, JOHN MCGAHREN, Solicitors.

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved April 29, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Sugar Notch Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding real estate connected therewith.

E. P. & J. V. DARLING, Solicitors.

PARTITION NOTICE.

In the matter of the partition of the real estate of Ann P. Evans, late of the borough of Berwick, Columbia county, Pennsylvania, deceased.

Now, January 8th, 1883, inquest awarded as prayed for; returnable first day of next term, at two o'clock P. M. Service of notice on non-residents of the State shall be published in one newspaper published in the city of Wilkes-Barre for three successive weeks, and a copy of each mailed to last known residence, and in Luz. Leg. Register for same time. BY THE COURT.

To Mary Miller, nee Evans, and Sarah Miller, nee Evans, residing at Washington City, D. C.; Julia Kates, nee Smith, residing at Philadelphia, Pa.; Julia Dodson, a minor, having Dr. Henry L. Freas, of the borough of Berwick, Columbia county, Pa., as her guardian, and all other parties interested—You will please take notice that in pursuance of the above order of the Orphans' Court of said county, a writ of partition has issued from said court to the Sheriff of Luzerne county, returnable on Monday, February 5th, 1883, at 2 o'clock P. M., and that the inquest will meet for the purpose of making partition on Friday, February 2d, 1883, at 12 o'clock M. of said day, upon the premises, in the borough of Shickshinny, Luzerne county, Pa., at which time and place you can be present, if you see proper.

The premises in question are described as follows: A certain message and tract of land situate in Shickshinny, Pa., bounded on the north by land of John M. Stackhouse, on the south by land of N. B. Cray, on the east by the Lackawanna and Bloomsburg Railroad, on the west by Main street in said Shickshinny, being 50 feet on Main street, and 180 feet in depth.

C. B. JACKSON, Attorney. WILLIAM O'MALLEY, Sheriff. 2-4

ORPHANS' COURT SALE.

Estate of Barnard Sharkey, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Town Hall, in West Pittston, on Saturday, the 3d day of February, 1883, at 2 o'clock P. M., the following real estate, to wit:

1. All that lot of land in West Pittston, beginning at a corner of Luzerne avenue and Warren street, running thence along Warren street 125 feet to a corner, thence at right angles to Warren street 80 feet to a corner, thence at right angles to Luzerne avenue 125 feet to a corner on Luzerne avenue, thence by said avenue 80 feet to the beginning, containing 10,000 square feet of land; all improved, with a two-story brick dwelling house, with mansard roof, and outbuildings thereon.

2. All that lot of land in West Pittston, beginning at a corner on an alley 125 feet distant from Warren street, thence parallel to Warren street by other land of Barnard Sharkey, deceased, 50 feet, thence parallel to the said alley and along land of Mrs. John Hughes 60 feet to a corner, thence at right angles to said alley 50 feet to a corner on said alley, thence along said alley 60 feet to the beginning, containing 3,000 square feet of land; all improved.

3. All that lot of land in West Pittston, beginning at a corner on line of lands of Mrs. John Hughes 125 feet distant from Luzerne avenue, thence parallel to said Luzerne avenue 45 feet to a corner of first described lot, thence by same 5 feet to a corner, thence parallel to Luzerne avenue 40 feet to a corner 5 feet distant from land of Mrs. John Hughes, thence 55 feet to a corner of second described lot, thence by the same 5 feet to a corner on line of Mrs. John Hughes', thence by land of Mrs. John Hughes 60 feet to place of beginning; all improved.

TERMS OF SALE—One-fourth down, one-third of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation of sale, as follows: one-half in six months and one-half in one year from date of sale; unpaid balance to draw interest and be secured by bond and mortgage on the premises.

H. B. PAYNE, Attorney. CHARLES H. FOSTER, Administrator. 2-4

ORPHANS' COURT SALE.

Estate of Abigail Barney, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Wednesday, the 7th of February, 1883, at 10 o'clock A. M., all the following tract of land in Jackson township, being parts of lots Nos. 47, 49, and 51, in the first tier of the fifth division of lots in Jackson township, beginning where the road leading from Henry Boone's intersects the main road, thence along the middle of the main road 42 perches to a corner, thence 41 perches to the line of lots Nos. 49 and 51, thence 19 perches to a corner, thence 20 perches, thence 41 perches to the line of lots Nos. 49 and 51, thence 44 perches to a corner, thence to a corner, thence along the road 19 3-10 perches to a corner, thence 9 perches to a corner, thence 13 perches to a corner, thence 14 3-10 perches to the road, thence along the road to the beginning, containing 31 acres and 53 perches; all improved, with an old log and frame dwelling house, wooden barn, other outbuildings, orchard, and other improvements thereon.

TERMS OF SALE—One-third down, 50 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, as follows: one-half in six months and one-half in one year from date of sale; unpaid balance to draw interest and be secured by bond and mortgage on the premises.

H. B. PAYNE, Attorney. C. W. BOONE, Adm'r c. t. a. 2-4

ORPHANS' COURT SALE.

Estate of John A. Harmon, deceased. By virtue of an alias order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at the front door of the old homestead house, in the township of Salem, on Tuesday, February 6, 1883, at 2 o'clock P. M., the following real estate, being purport No. 1, in the township of Salem, beginning at a heap of stones at the southwest corner of said tract, and from thence 247 perches to a stone corner, thence 104 perches and 18 links to a stone corner, thence 246 perches and 11 links to a stone corner, thence 111 perches and 5 links to the place of beginning, containing 149 acres and 64 perches; excepting a small strip of land heretofore given for road purposes; about 49 acres being improved, with good timber on the same; and the balance, or 100 acres, improved, with the following buildings thereon: one 2½-story dwelling house, one 1½-story house, one barn, and one other barn with shed attached, one wagon house, corn crib, and other outbuildings, with two good apple orchards thereon and other fruit trees.

TERMS OF SALE—One-fourth cash on day of sale, one-fourth on confirmation of sale, one-fourth in six months, and the balance in one year, with interest on all unpaid sums from confirmation of sale to the time of payment, and all deferred payment to be secured by bond and mortgage on the premises.

HENRY HARMON, SOLOMON HARMON, OSBORNE & ESPY, Administrators. Attorneys. 2-4

ORPHANS' COURT SALE.

Estate of Ephraim R. Kittle, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on Friday, February 2, 1883, at 10 o'clock A. M., on the premises, in Lehman township, all that piece of land in Lehman township, bounded on the east by land of Isaac Cragle, on the north by lands of George Cease and Josiah Cease, on the west by lands of George Cease, Josiah Cease, and William Pollock, and on the south by the township line, containing about 200 acres of land; about 50 acres thereof improved, with one frame dwelling house and one frame barn thereon.

TERMS OF SALE—\$500 down on day of sale, and balance on confirmation of sale and delivery of deed.

H. B. PAYNE, Attorney. WILLIAM E. KYTTLE, Administrator d. b. n. C. CANNON, Attorney. 2-4

ORPHANS' COURT SALE.

Estate of Michael Miller, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, in Conyngham township, on Friday, February 2, 1883, at 2 o'clock P. M., all that lot of land in Conyngham township, bounded on the north by land of Daniel Cragle, on the south by land of John Andrews, on the east by land of Abram Andrews, on the west by land of Reuben Andrews, containing 54 acres, more or less; excepting and reserving, however, out of the same one acre and eight perches, sold to Adam Rockel by said Michael Miller and wife.

TERMS OF SALE—\$200 down, 25 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, one year from day of sale; deferred payments to be secured by bond and mortgage on the premises.

H. B. PAYNE, Attorney. REUBEN NAGLE, Administrator. 2-4

ORPHANS' COURT SALE.

Estate of Thomas Benedict, deceased. In Re Partion of Real Estate. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned, a Trustee appointed to make sale in said estate, will sell at public auction, at the Arbitration room, in the Court House, in the city of Wilkes-Barre, on Wednesday, February 7, 1883, at 10 o'clock A. M., the following real estate, to wit:

1. All that piece of land in Pittston borough, beginning at a corner on Cornelia street, thence 124 feet to corner of purpart No. 2, thence at right angles to first line about 100 feet to corner in back line of lot, thence 43 feet to corner, thence 138 feet to place of beginning; all improved, with a two-story dwelling house thereon.

2. All that piece of land in Pittston borough, beginning at a corner on Cornelia street and of purpart No. 1, thence by said street 62 feet, thence 105 feet, thence 88 feet to corner of purpart No. 1, thence about 100 feet to the beginning; all improved, with a two-story wood dwelling house thereon.

3. All that piece of land in Pittston borough, beginning at corner on Cornelia street, thence by said street 120 feet to a corner, thence 67 feet to a corner, thence 106 feet to a corner, thence 68½ feet to the beginning; all improved, with a two-story wood dwelling house thereon.

4. All that piece of land in Pittston borough, beginning at a corner on Cornelia street, thence 66 feet to a corner, thence 150 feet to a corner, thence 66 feet to a corner, thence 150 feet to the beginning; all improved, with a two-story frame dwelling house thereon.

TERMS OF SALE—\$200 down, one-fourth of balance in six months from day of confirmation, and balance in one year from confirmation of sale; deferred payments to draw interest, and secured by bond and mortgage on the premises.

H. B. PAYNE, Attorney. CHARLES PUGH, Trustee. 2-4

ESTATE OF HIRAM GEORGE, LATE OF NANTICOKE, DECEASED.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

F. C. STURGES, Attorney. AMANDA GEORGE, Administratrix. 2-7

ESTATE OF JANE MYERS, LATE OF KINGSTON, DECEASED.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

D. S. BENNET, Administrator. 2-7

ESTATE OF EDMUND GRIMES, LATE OF PLYMOUTH, DECEASED.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEO. W. SHONK, Attorney. DAVID GRIMES, Administrator. 2-7

ESTATE OF EPHRAIM R. KITTLE, LATE OF ROSS TOWNSHIP, DECEASED.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

M. CANNON, Attorney. WILLIAM E. KITTLE, Administrator d.b.n. 2-7

ESTATE OF JOHN BEHEE, LATE OF THE CITY OF WILKES-BARRE, DECEASED.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

L. D. SHOEMAKER, Attorney. MERCY B. BEHEE, Executrix. 2-7

ESTATE OF CHARLES PIKE, LATE OF THE CITY OF WILKES-BARRE, DECEASED.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. DARTE, JR., Attorney. BELINDA A. PIKE, Administratrix. 2-7

ESTATE OF CORNELIUS DOUGHERTY, LATE OF ASHLEY, DECEASED.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELLEN A. CARLE, Administrator. 2-7

ESTATE OF JULIA M. TITCOMB, LATE OF ASHLEY, DECEASED.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

W. B. HARROWER, Administrator. 2-7

ESTATE OF W. H. SPERRING, LATE OF WILKES-BARRE, DECEASED.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

BENNETT & NICHOLS, Attorneys. THOMAS SPERRING, Executor. 1-6

ESTATE OF HENRY SCHAEFER, LATE OF HAZLETON, DECEASED.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. A. GORMAN, Attorney. WILLIAM SCHAEFER, Administrator. 1-6

LICENSES.

Notice is hereby given that the following persons have filed their applications for license to keep hotels and restaurants, and to sell liquor by the quart, in the office of the Clerk of the Court of Quarter Sessions of the county of Luzerne, and that said applications will be heard by the court on Monday, January 22d, 1883:

ASHLEY.		
McGahren	Patrick McGovern	Restaurant.
Hines	Babstik Engle	"
J. L. L.	Patrick Gallagher	By Quart.
BUTLER TOWNSHIP.		
Bryson	Dennis O'Donnell	Hotel.
Gorman	Bryan Martin	Restaurant.
BLACK CREEK TOWNSHIP.		
McManus	Lorenz Hossenflug	Restaurant.
DORRANCE TOWNSHIP.		
Gorman	Henry Krouse	Restaurant.
FREELAND.		
Hayes	A. C. Heiney	Hotel.
"	Frederick Haas	"
J. Lynch	Frank Gallagher	Restaurant.
Hayes	Libor Winter	"
"	John Hearon	"
"	Alfred Defoy	"
"	Frank McShea	"
"	Condy McCoolle	"
"	Maurice Ferry	By Quart.
"	Louis Stindler	"
FOSTER TOWNSHIP.		
Hayes	Hugh & Thomas Elliott	Hotel.
"	William Lorenz	"
Halsey	John Richards	"
Hayes	John Ferry	Restaurant.
"	Austin Harvey	"
"	Andrew McGheehan	"
"	Anthony Surman	By Quart.
"	Condy Gaffney	"
Halsey	Philip Kennedy	"
"	Peter Timony	"
McManus	Condy Brennan	"
HANOVER TOWNSHIP.		
Hakes	William Jones	Restaurant.
HOLLENBACK TOWNSHIP.		
Martin	Paul Grover	Hotel.
HAZLETON.		
Gorman	Fred. Kepping	Hotel.
"	C. J. Volkenand	"
"	John Ballentine	"
Kline	Frederick Schaar	"
"	Michael McGerrity	"
Hahn	Frank Orawitz	Restaurant.
Kline	Conrad Schugard	"
"	John Lapp (1st)	"
McManus	Michael Angelo	"
"	Michael Kelly	"
Bryson	John Kennedy	By Quart.
R. H. Wright	William J. Feldhoff	"
Gorman	C. Kelley	"
McManus	Thomas McHale	"
HAZLE TOWNSHIP.		
Bryson	Matthew Long	By Quart.
KINGSTON.		
Reynolds	Francis Roth	By Quart.
KINGSTON TOWNSHIP.		
B. & N	John Moore	Hotel.
McL. & J.	Adam Meisel	"
Jenkins	Harry A. Laycock	"
J. T. L.	Patrick Heffernan	Restaurant.
McL. & J.	J. R. Thomas	By Quart.
J. T. L.	Martin Moran	"
NANTICOKE.		
J. Lynch	Lewis Hodges	Hotel.
E. A. L.	Mary C. Elliott	Restaurant.
Loop	William Williams	"
"	John Krywicki	"
Hines	Alfred Landy	"
Chapin	Robert Holsworth	"
NEWPORT TOWNSHIP.		
E. A. L.	Joseph Underwood	Restaurant.
PLYMOUTH.		
J. T. L.	Thomas Carter	Hotel.

PLYMOUTH TOWNSHIP.		
Magee	William Allen	Restaurant.
Shonk	Charles E. Waters	"
"	Andrew Brennan	"
J. L. L.	John McGowen	By Quart.
PITTSFORD.		
Hughes	M. M. Davis	By Quart.
PITTSFORD TOWNSHIP.		
Mahon	George Judge	Restaurant.
PARSONS.		
J. Lynch	John McGavin	Hotel.
Mahon	Stephen T'oolin	Restaurant.
Brundage	Buchanan & Rhodes	By Quart.
SUGAR NOTCH.		
Jones	John Elliott	Hotel.
O'Neill	Peter Boice	Restaurant.
J. L. L.	Patrick Reiley	By Quart.
WILKES-BARRRE.		
O'Neill	George Ferstenfeld	Hotel.
Campbell	Jacob Stitzer	"
Coons & Shortz	John R. Kennedy	"
Moore	John H. Kneass	"
McL. & J.	Robert McCadden	"
Robinson	George Reudelhuber	"
Cannon	George Rieder	"
Harding, McG	John Kinney	"
Bauman	Linus Zoeller	"
J. T. L.	Henry Rittenauer	"
"	John Mailender	"
Evans	Andrew Hahn	"
Strauss	Nicholas Rose	"
P., D. & F	Bryan McManamin	Restaurant.
J. Lynch	Jacob Geier	"
J. T. L.	Wendel Gransen	"
Hahn	A. Miller	"
"	George Russ	"
McL. & J.	C. A. Gaughan	By Quart.
"	P. F. Peoples	"
Strauss	Lewis Lewith	"
J. L. L.	William Griffiths	"
McCartney	Wm. M. Miller	"

Also the following named persons:
JAMES R. EHRET, Clerk Q. S.

HAZLETON.		
McManus	Daniel Duffy	Restaurant.
"	Peter Brady	By Quart.
"	Patrick B. Boyle	"
PLYMOUTH TOWNSHIP.		
J. Lynch	Mary Keating	Hotel.
Shonk	Patrick Kelley	Restaurant.
PARSONS.		
O'Neill	William Lawler	Restaurant.
WILKES-BARRRE.		
Campbell	Lewis C. Engle	Restaurant.
L. K. STRENG.		
Clerk Q. S.		

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by S. Salsberg, and that said license will be asked for in the court aforesaid, on Monday, January 22d, 1883, at 10 A. M.
JAMES L. LENAHAN,
 Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Samuel Silverman, and that said license will be asked for in the court aforesaid, on Monday, January 22d, 1883, at 10 A. M.
JOHN T. LENAHAN,
 Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Simon Silverman, and that said license will be asked for in the court aforesaid, on Monday, January 22d, 1883, at 10 A. M.
JOHN T. LENAHAN,
 Solicitor.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, JANUARY 19, 1883.

No. 3.

Orphans' Court of Luzerne County.

DRAKE'S ESTATE.

1. Where one secretly appropriates the funds of an estate placed in his trust and care, he is at least a borrower, and must be dealt with as such, and not any longer as a trustee, so far as questions of loss, interest, and compensation are concerned.
2. An unfaithful trustee is entitled to no favor. He stands exposed to every equity and every technical legal advantage which accrues to the *cestui que trust*.
3. An executor, administrator, guardian, or trustee who appropriates the trust funds to his own use renders himself liable to removal; to interest on the fund; to make good the principal, although lost; and to a criminal prosecution for embezzlement.

Exceptions to account of executor.

The opinion of the court was delivered January 11, 1883, by

RHONE, P. J.—The two exceptions relate to the one subject, and are disposed of together. The exception is to the allowance of any compensation for services, as the executor appropriated the funds of the estate to his own use, and died leaving his estate probably insolvent. There is no direct positive proof that the executor either appropriated the estate to his own use, or that his estate is insolvent, but both of these facts are fairly established by plain inference from other facts clearly proven, such as these: 1. The inventory consists almost entirely of government bonds, certificates of stocks, and of deposits in banks, with no offer to turn them over in specie, or to account for their loss. 2d. That this estate has been obliged to present its claim on the general estate of the deceased executor for payment. 3d. That the administrator of the deceased executor has allowed this estate interest on the fund. 4th. That the personal estate of the deceased executor is certainly insufficient for the payment of his debts,

and that the real estate will probably not be of sufficient value to make up the deficiency. We find, then, as matter of fact, that the allegations set forth in the exceptions are true.

Where one secretly appropriates the funds of an estate placed in his trust and care, he is at least a borrower, and must be dealt with as such, and not any longer as a trustee, so far as questions of loss, interest, and compensation are concerned. Stehman's Appeal, 5 Barr, 413; Dyott's Estate, 2 W. & S. 566; Robinett's Appeal, 12 Casey, 174.

An unfaithful trustee is entitled to no favor. He stands exposed to every equity and every technical legal advantage which accrues to the *cestui que trust*. Beck v. Urich, 4 Har. 503.

An executor, administrator, guardian, or trustee who appropriates the trust funds to his own use assumes fearful risks. Such conduct renders him liable to removal; to interest on the fund; to make good the principal, although lost; and to a criminal prosecution for embezzlement. His ability or inability to replace the fund, or the honesty of his intention, makes little or no difference in the legal aspect of the case, for the mere act of appropriation constitutes the offense, as it at least subjects the estate to delay, litigation, and consequent damage. In the investigation of his case, he is allowed no counsel fees for his defense, and the costs of the proceeding are put upon him.

It needs no citation of authorities to establish these points, as they are so very numerous, and the reasons of the law so obvious. It must follow, then, as matter of course, that such a trustee cannot be allowed any compensation for his services; for, instead of being entitled to any reward, he justly merits punishment. Perhaps if this deceased executor were present, he could explain this matter so as to give it a different appearance, but we must dispose of it as it is now presented.

We therefore sustain the exceptions, and refuse the credit of \$1,063.24 claimed for services, and direct that the costs of this proceeding be paid out of the estate of the deceased executor.

Geo. B. Kulp, Esq., for exceptions.

J. Vaughan Darling and Geo. K. Powell, Esqs., *contra*.

Court of Common Pleas of Luzerne County.

WHITAKER *et al.* v. THOMPSON *et al.*

1. The gist of the action against a bidder at a sheriff's sale, where the bid is not complied with, is a breach of contract.
2. If by such breach of contract the plaintiff has suffered injury, he may recover damages therefor. If he has suffered no injury, he can recover no damages.
3. Our statutes of amendment are broad and liberal, but they are not boundless. A party cannot introduce as an amendment a new and different cause of action, when, by reason of the statute of limitations, this would work an injury to the opposite party.

Motion for a new trial, &c.

The opinion of the court was delivered January 2, 1883, by

WOODWARD, J.—This was an action to recover the sum of \$4,900, being the amount of difference between two bids for real estate, sold by Aaron Whitaker, sheriff of Luzerne county, the first sale having been made on the 1st of June, 1872, for \$5,000, and the second on the 8th of June, 1872, a week later, for \$100.

There are several remarkable things about the case, to some of which we propose to call attention:

1st. Nearly six years elapsed after the sheriff's sale before any suit was brought to recover the \$4,900, being the amount of the difference between the two sales.

2d. It appears from the evidence that the building association, named as the use party for whom the sheriff sues, never authorized or requested the sheriff to bring the suit; and furthermore, that at the time the suit was instituted they were not parties in any way interested, for the reason that their entire claim against Sheridan, the defendant, had long before been fully paid.

3d. Sheriff Whitaker himself testifies that he never authorized the building association, nor any other party, to bring the suit, and that he had no knowledge of the existence of such a suit until two weeks before the trial.

4th. At the time of the trial, on the 14th of September, 1881, or more than nine years after the sheriff's sale, on motion of counsel for the plaintiffs, the names of certain alleged creditors,

numbering over fifty, were allowed to be added as use parties, and at the same time a disclaimer as to the building association, the original plaintiffs, was put on record. Among these were the names of J. B. Stark and E. A. Forrester. Both these gentlemen were called as witnesses for the defendants, and both testified that they were not creditors of Sheridan, and had not authorized the use of their names as plaintiffs in the pending suit.

5th. On the day before the first sale by the sheriff in this county, the same real estate had been sold by the United States marshal at Pittsburg, and had been bid off by Mr. Stark, the attorney of certain creditors of Sheridan, and among them the building association named as the use party in this suit. This sale, of course, wiped out the title of Sheridan, and discharged all liens and incumbrances existing at the time, so that on the day of the sheriff's sale no interest or title could be conveyed by the sheriff to the purchaser. Under the marshal's sale, by an arrangement among the creditors, some \$11,000 of record liens were paid and extinguished. The title of the defendant was an equitable one merely, and no evidence was offered to show that his interest was worth a larger sum than \$11,000. The purchaser at the marshal's sale and at the second sheriff's sale was the same party.

In view of the facts thus briefly stated, we ought, before granting a new trial at the instance of the plaintiffs, to be fully satisfied that some substantial and material error to their detriment was committed at the trial.

The gist of the action is a breach of contract. If by this breach the plaintiffs have been damaged, they undoubtedly may recover damages; but if, on the contrary, there has been no actual injury suffered, we are at a loss to see upon what principle, either of law or equity, they should be permitted to recover anything. In the case of *Holdship v. Doran* (2 Pa. 15), which resembles the present case very nearly, the Supreme Court say: "There are some acts so wicked in themselves, or so contrary to an express legislative provision, that any person may prosecute the perpetrator, and punish him by indictment; and some in which any informer may sue in a civil action, and recover a penalty prescribed by law. But the fact of bidding at a sheriff's sale is not

one of these; it is in the law a mere breach of contract. The bidder may be sued for the amount of his bid by the sheriff, and be compelled to pay it, in some cases, though not always; or he may, in some cases, though not in every possible case, be liable for the difference, if the land is sold a second time, and for a less sum. His breach of contract is as great, though the land sells for more at a second sale, and yet in such case he is not liable for damages, for there are none. It is not, therefore, the omission to pay, but the injury consequent on such omission, which subjects him to damages. The plaintiff must then be, either the sheriff—and he is the proper plaintiff; or, if any other can sue, it must be a plaintiff who can prove that he has sustained damage. I do not know any case, except that of a penalty by positive law to an informer, in which a civil suit can be sustained by a person with whom no contract has been made, and who has sustained no injury." And again, in the same case, the court say: "There is no ground for the assertion that in *every case* the bidder who does not pay is liable for the amount of his bid, or for the difference of price, if sold for less. His liability may exist, or not exist, according to the facts of the case. Whatever will set aside, and does set aside the sale, discharges the bidder from paying the bid, and from paying the difference if sold afterwards for less."

What we have already said disposes, we think, of all the questions raised by the reasons filed for a new trial, except that contained in the point of plaintiffs numbered iv. This point is as follows: "Although it may appear that all the creditors of Patrick Sheridan who had liens on this property at the time it was sold have since been paid, yet plaintiffs are even then entitled to recover for use of defendant, Patrick Sheridan, if for no other person."

As we have already stated, this action was brought originally, not in the name of the sheriff, but for the use of a single creditor, viz.: The Wyoming Savings and Building Association. Their right of action accrued at the time of the second sale by the sheriff, or on the 8th of June, 1872. At the time of trial, on the 14th of September, 1881, more than nine years later, the counsel for the plaintiffs ask leave to disclaim as to the building association, and put upon the record the names of some fifty new parties as use plaintiffs. The name of Patrick Sheridan is not among

the number, and he nowhere appears as a party to these proceedings, and there is no evidence in the case to show that he has sustained any loss or injury by reason of the failure of the party purchasing at the sheriff's sale to comply with his bid. On the contrary, the case of the plaintiffs themselves discloses the fact that there were some fifty lien creditors who, on their theory of the case, would be entitled to the fund now sought to be recovered before the defendant himself could have any claim upon it. This, in connection with the fact that the amount of these liens far exceeds the \$4,900, for which the suit was brought, would seem to estop and preclude the plaintiffs from making the point upon which we were asked to charge the jury.

But aside from all this, we are now prepared to go further than we were willing to go at the time of the trial, and to hold, as matter of law, that the claims of all these creditors, exclusive of the building association, were barred by the statute of limitations. Our statutes of amendment are broad and liberal, but they are not boundless. We may say, in the language of our Supreme Court in *Kille v. Ege* (1 Norris, 110), "while due effect should be given to the statutes authorizing amendments, yet care must be taken that they be not so used as to pervert their true spirit. . . . The so-called amendment was not the addition of names omitted through mistake, nor of parties holding any joint interest with the original plaintiffs. There was no privity of title or interest between them. They were strangers to each others claim. The substitution was not authorized by the statute," etc. In *Trego v. Lewis* (8 P. F. S. 469) the language of the court is: "Undoubtedly the court will never permit a party to shift his ground, or enlarge its surface, by introducing a new and different cause of action, especially when by reason of the statute of limitations . . . it would work an injury to the opposite party." See, also, *Kaul v. Lawrence*, 23 P. F. Smith, 416. In *Leeds v. Lockwood* (3 Norris, 73) the offer was to amend by substituting a new description of the land referred to in the ejectment writ. The court, while holding that the amendment should have been allowed, indicate the duty of the court in charging the jury by saying, that "as the amendment will necessarily substitute a tract of land entirely different from that described in the writ, it cannot

be permitted to relate back to the commencement of the action, and thus affect the rights the defendants might otherwise have under the statute of limitations."

We are of the opinion, therefore, that the third point of the defendants should have been affirmed. This point is in the following words: "All other use parties, except the Wyoming Building and Loan Association, to this suit having been added yesterday, and this being more than six years after the right of action in this case accrued, under the evidence there can be no recovery, and the verdict must be for the defendants."

Two of the reasons assigned for a new trial have reference to the admission of testimony in regard to the marshal's sale. No point was submitted to the court, however, by the plaintiffs on this subject. In plaintiffs' fifth point the fact of the marshal's sale is assumed and admitted, and we are asked to say that because defendants had notice and knowledge of such a sale, they should have applied to have the sale by the sheriff set aside. Besides, we are of the opinion that, under the circumstances, the evidence was admissible for the purpose for which it was offered.

After a careful consideration of all the reasons assigned for a new trial in this case, we feel compelled to deny the motion.

The rule for a new trial is discharged.

John McGahren and Wm. P. Ryman, Esqs., for plaintiffs.

S. B. Price, Esq., for defendants.

Court of Common Pleas of Luzerne County.

SAMPSELL v. BLOSS.

Certiorari—Attachment execution.

A. f. fa. and attachment cannot issue on same day. A return of *nulla bona* must precede attachment.

The opinion of the court was delivered November 20, 1882, by

RICE, P. J.—The plaintiff in error is not in position in this case to attack the original judgment. He was duly summoned and appeared, and the justice had jurisdiction of the cause of

action. If the proceedings were irregular, it was his duty to have taken out his *certiorari* within twenty days. Not having done so, the judgment stood good *as against him*, and the fact that an attachment execution issued subsequently does not open up to review the regularity of the judgment upon which it issued. The first, second, third, fifth, and sixth exceptions are overruled.

The fourth exception is that there was not a return of *nulla bona* before the attachment execution issued. This exception is well taken. In the first place, John Bloss had not been served with the original summons, and no valid judgment had been entered against him which would warrant the joining of him as a defendant in the *fi. fa.* In the second place, the *fi. fa.* and attachment issued on the same day, July 15th, and both were returned on the same day, July 17th. This was irregular. A return of *nulla bona* must precede the issuing of an attachment by a justice. Act of April 15, 1845, § 2, P. L. 459; P. D. 866, *pl.* 114; *Hagarty v. Seitzinger*, 1 Luz. Leg. Reg. 109; *Masters v. Turner*, 2 Id. 185.

The seventh exception is also well taken. The attachment was issued by John Bloss. But he was not the plaintiff in the judgment. On the contrary, he was one of the defendants in the original suit. There is nothing on the record to show that he had become the owner of the judgment, or that he even had acquired an equitable title thereto by payment as surety. We do not understand how he could issue an attachment against his co-defendant thereon.

The fourth and seventh exceptions are sustained, and the attachment proceedings are reversed.

Messrs. Dickson & Atherton, for plaintiff.

B. M. Espy, Esq., for defendant.

Young women read, with ill-concealed envy, that a Kansas widow has just come back from the funeral of her sixth husband.

A Boston singer stopped warbling and requested the removal of a crying youngster. Some singers can't tolerate a rival in the same house.

ORPHANS' COURT SALE.

Estate of Martin Williams, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, in the borough of Pittston, on Tuesday, the 13th day of February, 1883, at 2 o'clock P. M., all those lots of land, bounded and described as follows, to wit:

1. Beginning at a corner on the northerly side of Parsonage street, also a corner of land of John R. Smith, thence along said Smith's land in a northerly direction 19 feet to a point, thence in a northwesterly direction along other lands of Martin Williams, dec'd, 69 feet to a corner of lands of Chester R. Patterson and of Patrick Finerty, dec'd, thence along said Patterson's land in a southerly direction 78 feet to a corner on Parsonage street, and thence along Parsonage street in an easterly direction 58 feet to the place of beginning, containing 3,000 square feet of land, more or less; all improved, with a small one-story frame dwelling house, with kitchen attached, and fruit trees thereon.

2. Beginning at a corner of other land of said Martin Williams, deceased, also a corner of land of John R. Smith, thence along said Williams' land in a westerly direction 69 feet to a corner of lands of Chester R. Patterson and of Patrick Finerty, deceased, thence along said Finerty's land in an easterly direction 41 feet to a corner of land of John R. Smith aforesaid, and thence along said Smith's land in a southerly direction 61 feet to the place of beginning, containing 1,800 square feet of land, more or less; all improved, with two small outbuildings and fruit trees thereon.

TERMS OF SALE—One-half of purchase money down on day of sale, and balance on confirmation of sale and delivery of deed.

F. C. MOSIER, Attorney.
MICHAEL E. COLLIER, Administrator.

ORPHANS' COURT SALE.

Estate of Abigail Barney, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Wednesday, the 7th of February, 1883, at 10 o'clock A. M., all the following tract of land in Jackson township, being parts of lots Nos. 47, 49, and 51, in the first tier of the fifth division of lots in Jackson township, beginning where the road leading from Henry Boone's intersects the main road, thence along the middle of the main road 42 perches to a corner, thence 41 perches to the line of lots Nos. 49 and 51, thence 19 perches to a corner, thence 20 perches, thence 41 perches to the line of lots Nos. 49 and 51, thence 44 perches to a corner, thence to a corner, thence along the road 19 3-10 perches to a corner, thence 9 perches to a corner, thence 13 perches to a corner, thence 14 3-10 perches to the road, thence along the road to the beginning, containing 31 acres and 53 perches; all improved, with an old log and frame dwelling house, wooden barn, other outbuildings, orchard, and other improvements thereon.

TERMS OF SALE—One-third down, 50 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, as follows: one-half in six months and one-half in one year from date of sale; unpaid balance to draw interest and be secured by bond and mortgage on the premises.

H. B. PAYNE, Attorney.
C. W. BOONE, Adm'r c. t. a.

ORPHANS' COURT SALE.

Estate of John A. Harmon, deceased. By virtue of an alias order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at the front door of the old homestead house, in the township of Salem, on Tuesday, February 6, 1883, at 2 o'clock P. M., the following real estate, being purpart No. 1, in the township of Salem, beginning at a heap of stones at the southwest corner of said tract, and from thence 247 perches to a stone corner, thence 104 perches and 18 links to a stone corner, thence 246 perches and 11 links to a stone corner, thence 111 perches and 5 links to the place of beginning, containing 149 acres and 64 perches; excepting a small strip of land heretofore given for road purposes; about 49 acres being improved, with good timber on the same; and the balance, or 100 acres, improved, with the following buildings thereon: one 2 1/2-story dwelling house, one 1 1/2-story house, one barn, and one other barn with shed attached, one wagon house, corn crib, and other outbuildings, with two good apple orchards thereon and other fruit trees.

TERMS OF SALE—One-fourth cash on day of sale, one-fourth on confirmation of sale, one-fourth in six months, and the balance in one year, with interest on all unpaid sums from confirmation of sale to the time of payment, and all deferred payment to be secured by bond and mortgage on the premises.

HENRY HARMON, SOLOMON HARMON, OSBORNE & ESPY, Administrators.

ORPHANS' COURT SALE.

Estate of Ephraim R. Kittle, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on Friday, February 2, 1883, at 10 o'clock A. M., on the premises, in Lehman township, all that piece of land in Lehman township, bounded on the east by land of Isaac Cragie, on the north by lands of George Cease and Josiah Cease, on the west by lands of George Cease, Josiah Cease, and William Pollock, and on the south by the township line, containing about 200 acres of land; about 50 acres thereof improved, with one frame dwelling house and one frame barn thereon.

TERMS OF SALE—\$500 down on day of sale, and balance on confirmation of sale and delivery of deed.

WILLIAM E. KYTTLE, M. CANNON, Administrator d. b. n.

ORPHANS' COURT SALE.

Estate of Barnard Sharkey, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Town Hall, in West Pittston, on Saturday, the 3d day of February, 1883, at 2 o'clock P. M., the following real estate, to wit:

1. All that lot of land in West Pittston, beginning at a corner of Luzerne avenue and Warren street, running thence along Warren street 125 feet to a corner, thence at right angles to Warren street 80 feet to a corner, thence at right angles to Luzerne avenue 123 feet to a corner on Luzerne avenue, thence by said avenue 80 feet to the beginning, containing 10,000 square feet of land; all improved, with a two-story brick dwelling house, with mansard roof, and outbuildings thereon.

2. All that lot of land in West Pittston, beginning at a corner on an alley 125 feet distant from Warren street, thence parallel to Warren street by other land of Barnard Sharkey, deceased, 50 feet, thence parallel to the said alley and along land of Mrs. John Hughes 60 feet to a corner, thence at right angles to said alley 50 feet to a corner on said alley, thence along said alley 60 feet to the beginning, containing 3,000 square feet of land; all improved.

3. All that lot of land in West Pittston, beginning at a corner on line of lands of Mrs. John Hughes 125 feet distant from Luzerne avenue, thence parallel to said Luzerne avenue 45 feet to a corner of first described lot, thence by same 5 feet to a corner, thence parallel to Luzerne avenue 40 feet to a corner 5 feet distant from land of Mrs. John Hughes, thence 55 feet to a corner of second described lot, thence by the same 5 feet to a corner on line of Mrs. John Hughes', thence by land of Mrs. John Hughes 60 feet to place of beginning; all improved.

TERMS OF SALE—One-fourth down, one-third of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation of sale, as follows: one-half in six months and one-half in one year from date of sale; unpaid balance to draw interest and be secured by bond and mortgage on the premises.

H. B. PAYNE, Attorney.
CHARLES H. FOSTER, Administrator.

ORPHANS' COURT SALE.

Estate of Theodore T. Hale, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, on the premises, in the borough of Yatesville, on Tuesday, the 13th day of February, 1883, at 9 o'clock A. M., all the surface of those lots of land, bounded and described as follows, to wit:

1. Beginning at a corner at the intersection of Main street and alley No. 3, thence along said alley 8 perches to a corner, thence 20 perches to a corner, thence 8 perches to a corner on Main street aforesaid, and thence along Main street 10 perches to the place of beginning, containing 80 square perches of land, being lots 18 and 19 on T. T. Hale's plot of Yatesville.

2. Beginning at a corner at the intersection of alleys Nos. 3 and 4, thence along said alley 24 1/2 perches to a corner on alley No. 2, thence along said alley about 6 perches to a corner of land of the Pennsylvania Coal Company, thence along the said company's land about 26 perches to a corner on alley No. 3 aforesaid, and thence along said last mentioned alley 11 3/10 perches to the place of beginning, being lots Nos. 33 and 34 on the plot of lots aforesaid.

TERMS OF SALE—One-half of purchase money down on day of sale, and balance on confirmation of sale and delivery of deed.

F. C. MOSIER, Attorney. SARAH R. HALE, Administratrix. 3-5

ORPHANS' COURT SALE.

Estate of Philip Weiss, deceased. By virtue of an alias order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in Conyngham township, on Saturday, the 3d day of February, 1883, at 12 o'clock M., the following real estate, which, by authority of the court, has been divided into purparts, as follows:

Purpart No. 1. Beginning at a corner in the bank of the Susquehanna river, thence 76 4-10 perches, thence 29 8-10 per., thence 26 6-10 per., thence 32 7-10 per., thence 56 6-10 perches, thence 108 3/4 perches, thence 24 1/2 perches, thence 120 perches to the Susquehanna river, thence up said river to the corner, the place of beginning, containing 102 acres and 133 perches, with a frame dwelling, bank barn, stable, and outbuildings thereon; reserving out of the same a church lot, and the right of way of the land now used and secured by the North and West Branch Railroad Company.

Purpart No. 2. Beginning at or near the church lot, thence 133 4-10 perches, thence 176 perches, thence 75 perches, thence 60 perches, thence 56 perches, thence 108 3/4 perches to the place of beginning, containing 107 acres and 35 perches; on which are erected a dwelling house, stable, and outbuildings.

Purpart No. 3. Beginning at a corner, thence 75 perches, thence 94 perches, thence 90 4-10 perches, thence 78 perches, thence 50 perches, thence 176 perches to the place of beginning, containing 74 acres and 119 perches; on which are erected a dwelling house, house, stable, and outbuildings; about 50 acres of good timber.

TERMS OF SALE—\$300 down, 25 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, in one year from confirmation; deferred payments to be secured by bond and mortgage on the premises.

C. B. JACKSON, Attorney. BENJAMIN EVANS, Administrator. 3-5

ORPHANS' COURT SALE.

Estate of John Bovey, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at the Arbitration room, in the Court House, in the city of Wilkes-Barre, on Tuesday, February 13th, 1883, at 3 o'clock P. M., all that lot of land in the city of Wilkes-Barre, beginning at a corner of lot No. 1 of J. Spargo's plot on Hickory street, thence in a southwesterly direction running along Hickory street 37 1/2 feet more or less to lot No. 3, owned by Greesy, thence in a northwesterly direction by the said Greesy's line 90 feet to the Lehigh

and Susquehanna Railroad, thence in a northeasterly direction along said railroad 37 1/2 feet to J. Spargo's line, and thence in a southeasterly direction along said Spargo's line 90 feet more or less to the place of beginning, containing 3,375 square feet of land, more or less; all improved, with one two-story frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$200 down, and the balance upon confirmation of sale and delivery of deed.

GEO. K. POWELL, Attorney. JOSEPH BOVEY, Administrator. 3-5

ORPHANS' COURT SALE.

Estate of Michael Miller, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, in Conyngham township, on Friday, February 2, 1883, at 2 o'clock P. M., all that lot of land in Conyngham township, bounded on the north by land of Daniel Cragle, on the south by land of John Andrews, on the east by land of Abram Andrews, on the west by land of Reuben Andrews, containing 54 acres, more or less; excepting and reserving, however, out of the same one acre and eight perches, sold to Adam Rockel by said Michael Miller and wife.

TERMS OF SALE—\$200 down, 25 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, one year from day of sale; deferred payments to be secured by bond and mortgage on the premises.

H. B. PAYNE, Attorney. REUBEN NAGLE, Administrator. 2-4

ORPHANS' COURT SALE.

Estate of Thomas Benedict, deceased. In Re Partition of Real Estate. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned, a Trustee appointed to make sale in said estate, will sell at public auction, at the Arbitration room, in the Court House, in the city of Wilkes-Barre, on Wednesday, February 7, 1883, at 10 o'clock A. M., the following real estate, to wit:

1. All that piece of land in Pittston borough, beginning at a corner on Cornelia street, thence 124 feet to corner of purpart No. 2, thence at right angles to first line about 100 feet to corner in back line of lot, thence 43 feet to corner, thence 138 feet to place of beginning; all improved, with a two-story dwelling house thereon.

2. All that piece of land in Pittston borough, beginning at a corner on Cornelia street and of purpart No. 1, thence by said street 62 feet, thence 105 feet, thence 88 feet to corner of purpart No. 1, thence about 100 feet to the beginning; all improved, with a two-story wood dwelling house thereon.

3. All that piece of land in Pittston borough, beginning at corner on Cornelia street, thence by said street 120 feet to a corner, thence 67 feet to a corner, thence 106 feet to a corner, thence 68 1/2 feet to the beginning; all improved, with a two-story wood dwelling house thereon.

4. All that piece of land in Pittston borough, beginning at a corner on Cornelia street, thence 66 feet to a corner, thence 150 feet to a corner, thence 66 feet to a corner, thence 150 feet to the beginning; all improved, with a two-story frame dwelling house thereon.

TERMS OF SALE—\$200 down, one-fourth of balance in six months from day of confirmation, and balance in one year from confirmation of sale; deferred payments to draw interest, and secured by bond and mortgage on the premises.

H. B. PAYNE, Attorney. CHARLES PUGH, Trustee. 2-4

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by S. Salsberg, and that said license will be asked for in the court aforesaid, on Monday, January 22d, 1883, at 10 A. M.

JAMES L. LENAHAN, Solicitor.

SHERIFFS' SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, February 10, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1

Suit of the Empire Building and Loan Association v. William R. Herbert.

53 February term, 1883. Debt, \$800. Fl. fa. 12 February term, 1883. D. S. Bennet, Att'y.

All that tract of land in the city of Wilkes-Barre, bounded on the east by lot now or late owned by Daniel Thomas, on the west by Smith street, on the north by Blackman street, and being 50 feet front on Blackman street, and 123 feet in depth: all improved, with a two-story frame dwelling house and outbuildings thereon.

2

Suit of the Empire Building and Loan Association v. Lewis S. Jones.

93 September term, 1878. Debt, \$1,335.66. Fl. fa. 12 February term, 1883. D. S. Bennet, Att'y.

All that lot of land in the city of Wilkes-Barre, beginning on Market street at a corner of lot No. 3, thence along said lot 195 feet to a corner on an alley, thence along said alley 50 feet to a corner of lot No. 5, thence along said lot 195 feet to Market street, thence along said street 50 feet to the place of beginning, being lot No. 4, in block No. 4, on plot of lots of A. C. Laming, deceased; all improved, with one large two-story frame dwelling house fronting on Market street, two two-story frame dwelling houses on rear end of lot, outbuildings, outhouses, and fruit trees thereon.

3

Suit of Jones Clark v. C. M. Deringer.

42 June term, 1880. Debt, \$252.10. Vend. ex. 2 February term, 1883. Bedford, Att'y.

All those tracts of land in the townships of Sugarloaf and Black Creek, viz.:

1. Two contiguous tracts in the warrantee names of Job Rope and Samuel Rope, bounded by tracts in the warrantee names of William Gray, Samuel Stephens, John Roat, Leonard Rope, John Rope, Levi Rope, and Henry Lebo, containing 745 acres, more or less.

2. Three contiguous tracts in the warrantee names of Joseph Brown, Robert Brady, and John McGown, bounded by tracts in the warrantee names of David Hammon, Samuel Blair, James Davis, John Allen, Simon Rope, Simpson Rope, John Dunlap, William Stewart, and James McNeal, containing 1,200 acres, more or less.

4

Suit of Isaac M. Thomas and Ellen E. Thomas, Executors of Jesse Thomas, dec'd, v. Calvin Wadhams and Alexander Farnham.

606 October term, 1882. Debt, \$7,748.86. Lev. fa. 19 February term, 1883. Darlings, Att'y's.

All that tract of land in the township of Plains, beginning at a point in the center of the public road leading from Wilkes-Barre to Miner's mill as now used, thence by line between the estates of Charles and Asher Miner, deceased, 895 feet to a corner, thence along line of lands set off to the Thomas Iron Company 771 2-10 feet to a corner, thence 195 feet to a corner in the center of a projected road 50 feet wide, thence by the center line of said projected road 1,193 feet to the center of the above mentioned public road to Miner's mill, thence by the center of the last mentioned road the following courses and distances 219 feet, thence 112 3-10 feet, thence 58 4-10 feet, thence 55 8-10 feet, thence 170 feet to the place of beginning, containing 15 acres and 106 7-10 perches, strict measure; reserving coal; all improved, with 18 dwelling houses, 3 barns, and other outhouses thereon.

5

Suit of Use of Spencer Worden v. John M. Hollenback.

494 May term, 1882. Debt, \$38.73. Vend. ex. 4 February term, 1883. C. Wadhams, Att'y.

All that lot of land in the city of Wilkes-Barre, be-

ginning in a line of B. A. Bidlack's estate, thence 13 3-10 perches to a corner, thence 7 8-10 perches to a corner, thence 14 perches to a corner, thence 8 rods to the beginning, containing about three-quarters of an acre of land, being part of lot No. 5 in the fourth division of the certified township of Wilkes-Barre. 3-5

ESTATE OF MARTIN GURL, DECEASED.

In Orphans' Court of Luzerne county. In Re Petition of James J. Moran for specific performance. Luzerne County, ss: The Commonwealth of Pennsylvania: To Bridget Gurl (widow), Mariah Scanlon, Bridget O'Donnell, Sarah Collins, Julia O'Boyle, James Gurl, Tillie Gurl (children), and Martin Gurl, Sr. (Administrator): We command you, and every and all of you, that, laying aside all business and excuses, you be and appear in your proper person before our Judge of the Orphans' Court, to be holden at Wilkes-Barre, in and for the county of Luzerne, on Monday, the 5th day of February, 1883, to answer said bill or petition exhibited in our said court, and do further and receive what our said court shall have considered in that behalf. Hereof fail not at your peril and the penalty that may ensue.

Witness the Honorable D. L. Rhone, Judge of our said court, at Wilkes-Barre, this 9th of January, 1883. JOSEPH HENDLER, Clerk O. C.,

Per B. M. CRARY, Ass't.

To the said Mariah Scanlon—The citation, of which the above is a copy, is hereby, by order of the said Orphans' Court, served upon you by publication, and you are hereby notified to be and appear before the said the Orphans' Court of Luzerne county, on the 5th day of February, 1883, to answer the bill or petition of the above named James J. Moran, as in citation you are commanded.

R. W. ARCHBALD,

Attorney.

3-5

ESTATES TO BE AUDITED BY THE

Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. John P. Fell; W. S. Parsons, Administrator; 6th February, 1883.
2. George Peck; George M. Peck and L. W. Peck, Executors; 7th February, 1883.
3. Eufana Marcy; B. M. Espy, Administrator c.t.a.; 7th February, 1883.
4. Thomas Davis; Morgan B. Williams, Administrator c.t.a. d.b.n.; 8th February, 1883.
5. Edward Chapman; E. E. Hoyt, Administrator; 9th February, 1883.
6. S. H. Puterbaugh; I. T. Puterbaugh, Executor; 9th February, 1883.
7. Eliza Sickler; Earl Sickler, Administrator; 12th February, 1883.
8. Joseph Brittain; D. L. Chapin, Administrator; 12th February, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,

Clerk O. C.

3-5

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and, unless exceptions are filed, will be presented for final approval on Monday, the 5th day of February, 1883:

Milton Smith, Jared R. Baldwin, Jonathan R. Williams, Benjamin Saylor, Charles Noelke, and James C. Howells, deceased.

JOSEPH HENDLER,

Clerk O. C.

3-5

ORPHANS' COURT SALE.

Estate of Theodore T. Hale, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, on the premises, in the borough of Yatesville, on Tuesday, the 13th day of February, 1883, at 9 o'clock A. M., all the surface of those lots of land, bounded and described as follows, to wit:

1. Beginning at a corner at the intersection of Main street and alley No. 3, thence along said alley 8 perches to a corner, thence 10 perches to a corner, thence 8 perches to a corner on Main street aforesaid, and thence along Main street to perches to the place of beginning, containing 80 square perches of land, being lots 18 and 19 on T. T. Hale's plot of Yatesville.

2. Beginning at a corner at the intersection of alleys Nos. 3 and 4, thence along said alley 24½ perches to a corner on alley No. 2, thence along said alley about 6 perches to a corner of land of the Pennsylvania Coal Company, thence along the said company's land about 26 perches to a corner on alley No. 3 aforesaid, and thence along said last mentioned alley 11 3-10 perches to the place of beginning, being lots Nos. 33 and 34 on the plot of lots aforesaid.

TERMS OF SALE—One-half of purchase money down on day of sale, and balance on confirmation of sale and delivery of deed.

F. C. MOSIER,
Attorney.

SARAH R. HALE,
Administratrix. 3-5

ORPHANS' COURT SALE.

Estate of Philip Weiss, deceased. By virtue of an alias order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in Conyngham township, on Saturday, the 31 day of February, 1883, at 12 o'clock M., the following real estate, which, by authority of the court, has been divided into purparts, as follows:

Purpart No. 1. Beginning at a corner in the bank of the Susquehanna river, thence 76 4-10 perches, thence 89 8-10 per., thence 26 6-10 per., thence 32 7-10 per., thence 56 6-10 perches, thence 108½ perches, thence 24½ perches, thence 120 perches to the Susquehanna river, thence up said river to the corner, the place of beginning, containing 102 acres and 133 perches, with a frame dwelling, bank barn, stable, and outbuildings thereon; reserving out of the same a church lot, and the right of way of the land now used and secured by the North and West Branch Railroad Company.

Purpart No. 2. Beginning at or near the church lot, thence 133 4-10 perches, thence 176 perches, thence 75 perches, thence 60 perches, thence 56 perches, thence 108½ perches to the place of beginning, containing 107 acres and 35 perches; on which are erected a dwelling house, stable, and outbuildings.

Purpart No. 3. Beginning at a corner, thence 75 perches, thence 94 perches, thence 90 4-10 perches, thence 78 perches, thence 50 perches, thence 176 perches to the place of beginning, containing 74 acres, and 110 perches; on which are erected a dwelling house, house, stable, and outbuildings; about 50 acres of good timber.

TERMS OF SALE—\$300 down, 25 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, in one year from confirmation; deferred payments to be secured by bond and mortgage on the premises.

C. B. JACKSON,
Attorney.

BENJAMIN EVANS,
Administrator. 3-5

ORPHANS' COURT SALE.

Estate of John Bovey, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at the Arbitration room, in the Court House, in the city of Wilkes-Barre, on Tuesday, February 13th, 1883, at 3 o'clock P. M., all that lot of land in the city of Wilkes-Barre, beginning at a corner of lot No. 1 of J. Spargo's plot on Hickory street, thence in a southwesterly direction running along Hickory street 37½ feet more or less to lot No. 3, owned by Greesy, thence in a northwesterly

direction by the said Greesy's line 90 feet to the Lehigh and Susquehanna Railroad, thence in a northeasterly direction along said railroad 37½ feet to J. Spargo's line, and thence in a southeasterly direction along said Spargo's line 90 feet more or less to the place of beginning, containing 3,375 square feet of land, more or less; all improved, with one two-story frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$200 down, and the balance upon confirmation of sale and delivery of deed.

GEO. K. POWELL,
Attorney.

JOSEPH BOVEY,
Administrator. 3-5

ORPHANS' COURT SALE.

Estate of Solomon Yost, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in the township of Sugarloaf, on Friday, February 16, 1883, at 2 o'clock P. M., all that tract of land in the township of Sugarloaf, beginning at the northerly corner of land of Henry Lawn on line of land of Tobias Schobert, thence 80 8-10 perches to a post and stones, thence 26 4-10 perches to a post and stones on line of land of Drumbheller and Raedler, thence by said last named line 98½ perches to a post and stones, a corner also of land of Charles Brown, thence by line of said Charles Brown 44 perches to a post corner, being also a corner of Jacob Breithaupt, thence by line of land of said Jacob Breithaupt 40 perches to a post corner, thence still by line of Jacob Breithaupt 60 perches to a post corner, thence by line still of Jacob Breithaupt 24 perches to a corner of William Walp, thence by line of land of said William Walp 61 3-10 perches to a stone corner (the stone being buried) in the southerly side of the public road leading from the Berwick and Hazleton turnpike to Drums post office, thence along the southerly side of said public road 163 9-10 perches to a stone (buried) in the southerly side of said public road, at an angle of said road, and on line of Henry Lawn aforesaid, thence by line of land of said Henry Lawn 99 8-10 perches to the place of beginning, containing 133 acres and 110 perches, strict measure; there being about 77 acres thereof improved, with two dwelling houses thereon, each being 1½-story frame building, with two barns and other outbuildings, and an apple orchard of nearly four acres thereon.

TERMS OF SALE—10 per cent of the purchase money to be paid on the striking down of the sale, one-third of the balance on confirmation of the sale, one-third on April 1, 1884, and the remaining one-third on April 1, 1885, with interest on the unpaid balance from confirmation of the sale; deferred payments to be secured by bond and mortgage on the premises.

A. FARNHAM,
Attorney.

STEPHEN TURNBACH,
Administrator. 4-6

ORPHANS' COURT SALE.

Estate of Job Kocher, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at Yapple's Hotel, in the borough of Shickshinny, on Friday, February 16th, 1883, at 11 o'clock A. M., the following piece of land in Salem township, commencing on the northwest side of the Lackawanna and Bloomsburg Railroad, where Rocky Run passes under said railroad, and running 10 perches, thence 16 perches, thence 12 perches, thence 12 perches, thence 16 perches, thence 4 perches to a post and stones, the beginning of land belonging to Job Kocher, which is divided as follows: thence from last mentioned corner 40 perches to a stump and stones corner, thence 40 perches to a rock oak corner, thence 40 perches to a stake and stones corner 8 feet from high ledge of rocks, thence 40 perches to the place of beginning, containing 10 acres of land; improved, with a frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$100 down on day of sale, and the balance on the confirmation of the sale.

ISAAC P. HAND,
Attorney.

REUBEN GODSHALL,
Executor. 4-6

ORPHANS' COURT SALE.

Estate of Martin Williams, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, in the borough of Pittston, on Tuesday, the 13th day of February, 1883, at 2 o'clock P. M., all those lots of land, bounded and described as follows, to wit:

1. Beginning at a corner on the northerly side of Parsonage street, also a corner of land of John R. Smith, thence along said Smith's land in a northerly direction 19 feet to a point, thence in a northwesterly direction along other lands of Martin Williams, dec'd, 69 feet to a corner of lands of Chester R. Patterson and of Patrick Finerty, dec'd, thence along said Patterson's land in a southerly direction 75 feet to a corner on Parsonage street, and thence along Parsonage street in an easterly direction 58 feet to the place of beginning, containing 3,000 square feet of land, more or less; all improved, with a small one-story frame dwelling house, with kitchen attached, and fruit trees thereon.

2. Beginning at a corner of other land of said Martin Williams, deceased, also a corner of land of John R. Smith, thence along said Williams' land in a westerly direction 69 feet to a corner of lands of Chester R. Patterson and of Patrick Finerty, deceased, thence along said Finerty's land in an easterly direction 41 feet to a corner of land of John R. Smith aforesaid, and thence along said Smith's land in a southerly direction 61 feet to the place of beginning, containing 1,800 square feet of land, more or less; all improved, with two small outbuildings and fruit trees thereon.

TERMS OF SALE—One-half of purchase money down on day of sale, and balance on confirmation of sale and delivery of deed.

MICHAEL E. COLLIER,
Administrator. 3-5
F. C. MOSIER,
Attorney.

ORPHANS' COURT SALE.

Estate of Cecelia B. Carey, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, at the Arbitration room, Court House, at Wilkes-Barre, on Friday, the 16th day of February, 1883, at 10 o'clock A. M., the following lot of land in Marcy township, beginning at a corner on the northwesterly side of the public highway leading from Pittston to Providence, and across the southwestery line of John S. Marcy's land crosses the same, and thence along said line 6.6-10 perches to a post, thence 6.4-10 perches to a post, thence 6.6-10 perches to a corner in the side of the aforesaid highway, thence along the said highway 6.4-10 perches to place of beginning, containing 40 perches; improved, with a 2-story frame house and back building attached, stable and other houses thereon, and a well of excellent water near the back door or kitchen.

TERMS OF SALE—\$200 down on day of sale, and balance of purchase money on confirmation of sale and delivery of deed.

B. F. CAREY,
Administrator. 4-6
T. R. MARTIN,
Attorney.

IRRE WESLEY W. HARNED, A LUNATIC.

In Common Pleas of Luzerne county. No. 162, November term, 1880. Take notice that the undersigned, Committee of said lunatic, has filed his final account of the real estate fund and a final account of the personal fund in his hands to date, and the said accounts and the distribution made by him will be confirmed on the 5th day of February, 1883, at 10 A. M.

BENJAMIN HARRISON,
Committee. 3-5
Q. A. GATES,
Attorney.

ESTATE OF SAMUEL WOLFE, LATE OF

Union township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

BENJAMIN GREGORY,
Administrator. 3-5

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 643, October term, 1882. Libel in divorce a vinculo matrimonii. Phoebe Morris, by her next friend, John T. Jones, v. William D. Morris. The alias subpoena in the above case having been returned non est inventus, you, the said William D. Morris, are hereby notified to appear at said court, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff. 4-7
C. W. McALARNEY,
Solicitor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 775, October term, 1882. Libel in divorce a vinculo matrimonii. Matthew Harrison v. Margaret Harrison. The alias subpoena in the above case having been returned non est inventus, you, the said Margaret Harrison, are hereby notified to appear at said court, on Monday, the 5th day of February, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff. 2-5
F. C. MOSIER,
Solicitor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 44, November term, 1882. Libel in divorce a vinculo matrimonii. Rosa A. Dieffenbacher, by her next friend, Adam Lawn, v. Daniel F. Dieffenbacher. The alias subpoena in the above case having been returned non est inventus, you, the said Daniel F. Dieffenbacher, are hereby required to appear at said court, on Monday, February 5, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff. 2-5
T. R. MARTIN,
Solicitor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 106, November term, 1882. Libel in divorce a vinculo matrimonii. James Henderson v. Catharine Henderson. The alias subpoena in the above case having been returned non est inventus, you, the said Catharine Henderson, are hereby notified to appear at said court, on Monday, February 5, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff. 2-5
ALFRED DARTE, JR.,
Solicitor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 63, November term, 1882. Libel in divorce a vinculo matrimonii. Sarah Ann Elliot, by her next friend, Elizabeth Holdsworth, v. James Elliot. The alias subpoena in the above case having been returned non est inventus, you, the said James Elliot, are hereby notified to appear at said court, on Monday, the 5th day of February, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff. 2-5
ALFRED DARTE, JR.,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN

application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Gardner's Creek Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding real estate connected therewith.

G. MORTIMER LEWIS,
Solicitor.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Chas. Murrin, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Saturday, February 10, 1883, at 11 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be debarred from coming in on said fund.

G. L. HALSEY,
Auditor.

3-6

ESTATE OF EDMUND JAMES, LATE OF
Lackawanna township, Luzerne (now Lackawanna) county, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

T. R. HUGHES, Adm'r d. b. n. c. t. a.,
Scranton, Pa. 52-5
N. TAYLOR, Attorney.

ESTATE OF THOMAS HUTCHINS, LATE OF
Kingston township, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

R. H. WEIR,
R. H. HUTCHINS,
McLEAN & JACKSON, Administrators.
Attorneys. 52-5

ESTATE OF HIRAM GEORGE, LATE OF
Nanticoke, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

AMANDA GEORGE,
F. C. STURGES, Administratrix.
Attorney. 2-7

ESTATE OF EDMUND GRIMES, LATE OF
Plymouth, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DAVID GRIMES,
GEO. W. SHONK, Administrator.
Attorney. 2-7

ESTATE OF EPHRAIM R. KITTLE, LATE OF
Ross township, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM E. KITTLE,
M. CANNON, Administrator d.b.n.
Attorney. 2-7

ESTATE OF JOHN BEHEE, LATE OF THE
city of Wilkes-Barre, deceased. Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MERCY B. BEHEE,
L. D. SHOEMAKER, Executrix.
Attorney. 2-7

ESTATE OF CHARLES PIKE, LATE OF THE
city of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

BELINDA A. PIKE,
A. DARTE, Jr., Administratrix.
Attorney. 2-7

ESTATE OF JANE MYERS, LATE OF
Kingston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

D. S. BENNETT,
Administrator. 2-7

ESTATE OF PATRICK MOYLES, LATE OF
Laurel Run borough, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES MOYLES,
Administrator. 52-5

ESTATE OF MARTHA E. MOORE, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CALVIN PARSONS,
Administrator. 52-5

ESTATE OF CORNELIUS DOUGHERTY,
late of Ashley, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELLEN A. CARLE,
Administratrix. 2-7

ESTATE OF JULIA M. TITCOMB, LATE OF
Ashley, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

W. B. HARROWER,
Administrator. 2-7

ESTATE OF W. H. SPERRING, LATE OF
Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

THOMAS SPERRING,
BENNETT & NICHOLS, Executors.
Attorneys. 1-6

ESTATE OF HENRY SCHAEFER, LATE OF
Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM SCHAEFER,
J. A. GORMAN, Administrator.
Attorney. 1-6

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, FEBRUARY 9, 1883.

No. 6.

Court of Common Pleas of Luzerne County.

SHERIDAN *v.* SPARE.

Trespass—City pound—High constable.

Animals lawfully confined in the city pound (Wilkes-Barre) are in the custody of the high constable, and he may maintain trespass against a defendant who unlawfully takes the same from his possession.

The opinion of the court was delivered December 11, 1882, by RICE, P. J.—The exceptions of the plaintiff in error are based on the erroneous assumption that the proceedings before the alderman were to recover a penalty for the breach of a city ordinance. This is a mistake. The action is trespass, and the question is, whether such action can be maintained by the high constable of the city against a defendant for releasing a cow impounded by the former. We think it may. By section second of the city ordinance relating to animals, he is made the custodian of animals confined in the city pound, and the owners of such animals cannot require their release from his custody until the constable's fees and necessary expenses are paid (§ 3). In case these are not paid, he is authorized to sell the animals, and, first having deducted all charges and expenses, to pay over the balance received to the city treasury. The actual possession, coupled with such authority and interest as to remuneration, was sufficient to entitle him to maintain the action. 1 Ch. Pl. *168, etc.; 2 Br. T. & H. Prac. §§ 1563, 1574.

The proceedings are affirmed.

P. H. Campbell, Esq., for plaintiff in error.

W. S. McLean, Esq., for defendant in error.

Court of Common Pleas of Luzerne County.

HILDRETH *v.* REILLY.*Certiorari—Amendment of constable's return.*

Where the proceedings of a justice of the peace have been brought up on *certiorari*, the court has no authority to permit the constable to amend his return to the summons.

Rule to show cause why the constable should not be allowed to amend his return.

The opinion of the court was delivered November 27, 1882, by

RICE, P. J.—On the face of the record, the proceedings are regular, and must be sustained. The application of the constable to be permitted to amend his return cannot be allowed. It would seem from the depositions that the copy of the summons served on the plaintiff in error was not an exact copy, in that the name of the plaintiff below was omitted, but it stated the time and place when, and the alderman before whom it was returnable. For such an error, the remedy of the plaintiff in error, if any, is by action against the constable. Technically, he did not make a true return to the summons, but we fail to see how the plaintiff in error could have been harmed thereby, had he attended at the time and place named. But, however this may be, the consequences of the mistake of the constable cannot be visited on the defendant in error, when neither he nor the alderman were guilty of any misconduct, or, indeed, knew of the mistake. Further, this record comes before us simply for review, and to permit an amendment of a return made to the lower tribunal would be an unheard of and unwarranted proceeding. As was said by Judge Agnew in *O. & P. R. R. Co. v. Britain* (1 Pitts. 273), "the correction of a return belongs to the tribunal or court wherein it is made, and not to the court above."

The rule granted November 1, 1882, is discharged, and the proceedings are affirmed.

W. P. Ryman, Esq., for plaintiff in error.

P. H. Campbell, Esq., for defendant in error.

Court of Common Pleas of Luzerne County.

O'HARA v. MUTUAL AID SOCIETY.

Corporation—Service of summons.

A summons against an insurance company having its principal office in another county cannot be served on a soliciting agent residing in this county, who is merely authorized to receive applications and admission fees, and such assessments and annuals as may be sent to him for collection.

Rule to show cause why service of summons shall not be set aside.

The opinion of the court was delivered November 27, 1882, by

RICE, P. J.—This is an action of debt, and the return of service of the summons, so far as the same is material, is as follows: "Served this writ 4th April, 1882, on the within named The U. B. Mutual Aid Society, of Lebanon, Pa., by leaving in the hands of M. W. Harris, agent for said society, a true attested copy of this writ, and made contents known," etc. The deposition shows that the principal office of the defendant corporation is located at Lebanon, and that the said M. W. Harris resides at Wilkes-Barre. He is a soliciting agent, being authorized to receive applications and admission fees, and also such assessments and annuals as are sent to him for collection. Clearly he does not belong to either class of persons enumerated in the act of June 13, 1836, section 41 (P. L. 579; P. D. 286, *pl.* 25). It is extremely doubtful whether the agency of Mr. Harris is such as to authorize service on him in this county under section 6 of the act of April 8, 1851 (P. L. 354; P. D. 287, *pl.* 31). The words used in that section, "have an agency or transact any business," have been held to refer to branch offices, or agencies for the transaction of business, and not to authorize service on an agent for procuring applications for insurance, to be transmitted to the regular office of the company for action. *Parke v. Ins. Co.*, 8 Wr. 427. In the case of *Harrison v. The Col. Ins. Co.*, the service of the summons on an agent residing in the county was set aside by Judge Conyngham, and if we are not mistaken in our recollection, the duties of the agent were substantially the same as in this case.

But, aside from this consideration, it was held in *Cochran v. The Library Co.* (6 Phila. 492), by Mr. Justice Sharswood, sitting at *nisi prius*, that the above section related solely to foreign corporations. This we understand to be the settled construction of the statute.

The rule is made absolute.

J. T. Lenahan, Esq., for plaintiff.

C. E. Hawley and A. Ricketts, Esqs., for defendant.

Court of Common Pleas of Philadelphia County.

VINCENT v. WARNER.

An infant may be arrested upon a *capias ad respondendum* for torts committed. He cannot execute a bond, and must, therefore, either submit to imprisonment, or by the aid of a next friend appear, and by interposition of that friend execute a bond.

Rule to abate capias.

The defendant, a minor, was arrested on a *capias* for an assault and battery on John Vincent, and held under \$500 bail. On December 9, 1882, a rule was taken to show cause why the writ of *capias* issued in above case should not be abated.

The opinion of the court was delivered January 27, 1883, by

LUDLOW, P. J.—Undoubtedly an infant may be arrested upon a *capias ad respondendum* for torts committed. It is also true that he cannot execute a legal bond; he must, therefore, either submit to imprisonment, or by the aid of a next friend appear, and by the interposition of that friend execute a bond. In this case we think that the amount of the bond should be reduced to \$200, and when a bond for that amount is prepared, submitted and approved, we will direct the defendant to be discharged from the custody of the sheriff.

Rule discharged.

ORPHANS' COURT ARGUMENT LIST.

SATURDAY, FEB. 24, 1883.

1	In Re Estate of Thomas Montgomery, deceased	.....	Lathrop, G., Darlings.	.....	Exceptions to final account of Executor.
2	In Re Estate of Thomas Montgomery, deceased	.....	G. G. M. L., Darlings	.....	Exceptions to final account of Executor.
3	In Re Estate of Jacob Drumm, deceased	.....	Kinner, Brundage.	.....	Exceptions to partial account of Executor.
4	In Re Estate of William E. Morgan, deceased	.....	Tony	.....	Exceptions to account of Administrator.
5	In Re Estate of Philip Marks, deceased	.....	Gates, Mosier, Straus	.....	Exceptions to final account of Trustee.
6	In Re Estate of E. V. Kilder, deceased	.....	Payne, Wright, Sturges	.....	Exceptions to final account of Guardian.
7	In Re Estate of Peter Mill, deceased	.....	Payne, Hand	.....	Exceptions to final account of Guardian.
8	In Re Estate of Peter Mill, deceased	.....	Payne, Hand	.....	Exceptions to final account of Guardian.
9	In Re Estate of Lyman Hann, deceased	.....	Espy, Lathrop	.....	Exceptions to partial account of Guardian.
10	In Re Estate of George Peck, deceased	.....	Dewitt, Cannon	.....	Exceptions to partial account of George M. Peck, Executor.
11	In Re Estate of Edward Boyle, deceased	.....		.....	Exceptions to sale of real estate.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC,
WILKES-BARRE, PA.

MCLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of C. D. Wells, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Tuesday, February 27, 1883, at 10 o'clock A. M., at which time and place all parties interested are notified to appear and present their claims, or be debarred from coming in on said fund.

HENRY A. FULLER.

5-8

Auditor.

AUDITOR'S NOTICE.

In Re Indebtedness of Wright township. The undersigned has been appointed an Auditor to ascertain and marshal the indebtedness of the above township. All those who have claims or demands against the same are required to present them before me, on Saturday, the 3d of March, 1883, at 10 o'clock A. M.

S. J. STRAUSS,

5-8

Auditor.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Chas. Murrin, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Saturday, February 10, 1883, at 11 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be debarred from coming in on said fund.

G. L. HALSEY,

3-6

Auditor.

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Hazleton Coffin and Casket Works and Flaming Mill Company," the character and objects of which are the manufacture of and dealing in coffins, caskets, and undertakers' supplies, and materials of all kinds, and the manufacture of and dealing in all kinds of wood work, cabinet, carpenter, and building material.

GEO. H. TROUTMAN,

6-8

Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Court of Common Pleas of Luzerne county, on Monday, March 5, 1883, at 11 o'clock A. M., under the Act of Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Freeland German Cornet Band," the character and object whereof is for social enjoyment and the culture of music, and for these purposes to have, possess and enjoy all the rights, benefits and privileges of said Act of Assembly and supplements,

C. W. KLINE,

6-8

Solicitor.

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 643, October term, 1882. Libel in divorce a vinculo matrimonii. Phoebe Morris, by her next friend, John T. Jones, v. William D. Morris. The alias subpoena in the above case having been returned non est inventus, you, the said William D. Morris, are hereby notified to appear at said court, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,

C. W. McALARNEY,

Sheriff.

Solicitor.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, March 3d, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

Suit of Christian H. Sherrer, assigned to William B. Mitchell, v. Arnold Bertels.

1916 September term, 1878. Debt, \$2,500. Fl. fa. 2 March term, 1883. Daric, Jr., Att'y.

All the one-third part undivided of all the following described pieces of land, in the city of Wilkes-Barre, to wit:

1. Beginning at a corner of lot of A. Bertels on a street running nearly east from Main street, at a point nearly opposite Wood street, thence along line of said Bertels' lot about 120 feet to a corner, thence about 20 feet to a corner, thence about 20 feet to land sold to Jacob Farrek, thence along said Farrek's land about 120 feet to said street, thence along said street 20 feet to the place of beginning, containing about 2,400 square feet of land.

2. Beginning at a corner on the southeast side of Careytown road, thence at right angles to said road along line of lot now or late of Charles Morgan & Son 204 feet to line of the old Lehigh and Susquehanna Railroad, thence in a southerly direction along said railroad about 45 feet to a corner of lot now or late of Simon Long, Trustee, thence along said Long's lot 227 feet to said Careytown road, thence northeasterly along said road 40 feet to the place of beginning, containing 8,620 square feet of land, being lot No. 7 as shown on plot made by C. Scherer.

3. Beginning at a corner of land now or late of Abigail Hotchkiss, and running thence along the line of Canal street 3 perches to a corner, thence adjoining land now or late of Jesse Fell 8 perches to a corner, thence to a corner on land of said Jesse Fell 3 perches, thence on the line of Abigail Hotchkiss' land 8 perches to beginning, containing 24 square perches of ground.

4. Beginning at a corner on Washington street, thence 244 feet to a corner, thence 40 feet to a corner, thence along land of the Jewish Synagogue 244 feet to said Washington street, and thence along said street 40 feet to the place of beginning.

5. Fronting on Scott street, between Pine street and Baltimore lane, the same being about 50 feet front on said Scott street, and extending in the same width to the depth of 150 feet, containing 7,500 square feet of land.

6. Beginning at a corner on the northwest side of Oregon street, at the south corner of lot now or late of Levi King, thence along said Oregon street 56 feet 10 inches to a corner of lot now owned by John E. James, thence along said James' lot 146 feet 10 inches to the school house lot, thence 57 feet 3 inches to said Levi King's lot, thence about 140 feet to said Oregon street, the place of beginning, containing about 8,153 square feet of land.

7. Beginning at a corner on Barney street about 80 feet west from Wood street, and in line of land sold to Charles Feuerstein, thence at right angles to said Barney street and along said line about 100 feet to land late of Henry House, thence along the same and parallel with said Barney street 120 feet to land late of Mrs. Mann, thence along said Mann lot about 100 feet to said Barney street, thence along said street about 120 feet to the place of beginning, containing about 12,000 square feet of land.

8. Being the surface of those two lots adjoining, on the northeast side of Parrish street, beginning at a corner about 230 feet from Hazle avenue, thence at right angles from said street about 200 feet to land formerly of Jonathan Jones, thence along the same parallel with said street 80 feet to a corner, thence at right angles to line of said Jones lot about 200 feet to said Parrish street, and thence along said street about 80 feet to the place of beginning, containing about 16,000 square feet of land.

9. All that piece of land in the township of Lake, commencing on the corner of lands in the warrantee names of Allen Bump and Herman Chambers north

251 perches to a corner, thence east 328 perches along line in warrantee name of A. Bailey to a corner, thence south 257 perches along line of lands in warrantee names of Amasa Bailey and Adam Mann, thence west 328½ perches along line of warrantee names of Allen Bump and Nancy Mann to a corner, being a tract of land in the warrantee name of Amasa Bailey, containing 474 acres and allowance; unimproved.

Suit of Oscar J. Harvey, assigned to Olin F. Harvey, v. William P. Rudolph and Martha E. Rudolph, his wife.

423 May term, 1882. Debt, \$817 61. Al. lev. fa. 1 March term, 1883. Harvey, Att'y.

A certain piece of land in the city of Wilkes-Barre, beginning at a corner on Orchard street, thence by the same 40 feet to a corner, thence 200 feet to a corner, thence 40 feet to a corner, thence 200 feet to the place of beginning; all coal and other minerals reserved to Reading & Hunt; improved, with one two-story frame dwelling house and outhouses thereon. 6-8

LUZERNE COUNTY, ss:

In Re Assignment of A. N. Meylert for the benefit of creditors. Notice is hereby given that the Executors of the last will and testament of H. B. Wright, deceased, have exhibited and filed a final account of the said H. B. Wright, Trustee for the estate of A. N. Meylert, which account will be confirmed and allowed on the 5th day of March, 1883, unless cause is shown to the contrary.

JAMES M. NORRIS,
Prothonotary.

6-8

IN THE COURT OF QUARTER SESSIONS

of Luzerne county. No. 161, December sessions, 1882. In Re Division of the township of Lehman into Election District. Notice is hereby given that the report of the Commissioners in the above stated case has been filed with the Clerk of the Court of Quarter Sessions, and was confirmed nisi by the court on the 29th of January, 1883, and that said report will be confirmed absolutely by the court, unless exceptions thereto be filed not later than the third day of the next term of said court.

LOUIS K. STRENG,
Clerk Q. S.

5-7

ESTATE OF ELIZABETH KNAPP, DEC'D.

In Orphans' Court of Luzerne county. In Re Petition of John Cooper for appointment of Guardian ad litem for children of Joseph D. Cooper, etc.

Now, 5th February, 1883, rule is granted to show cause why the said minor children of Joseph D. Cooper shall not appear in court on or before the 5th day of March, 1883, and choose Guardians to represent them in this estate, and in default thereof to show cause why John Cooper, the petitioner, should not be appointed Guardian ad litem. Notice to be given by advertisement in one weekly newspaper in said county for three weeks, a copy of said newspaper to be mailed to the last residence of Sarah Cooper, mother of said minor children.

Certified from the records, this 7th February, 1883.

JOSEPH HENDLER, Clerk O. C.,

Per B. M. CRARY, Ass't.

F. C. STURGES,
Attorney. 6-8

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 52, November term, 1882. Libel an divorce a vinculo matrimonii. Mary J. Morgan, by her next friend, David Maxey, v. David C. Morgan. The alias subpoena in the above case having been returned non est inventus, you, the said David C. Morgan, are hereby notified to appear at said court, on Monday, March 5, 1883, at 11 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
GEO. H. TROUTMAN, Sheriff.
Solicitor. 6-9

ESTATE OF EDMUND GRIMES, LATE OF
Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DAVID GRIMES, Administrator. 2-7
GEO. W. SHONK, Attorney.

ESTATE OF EPHRAIM R. KITTLE, LATE
of Ross township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM E. KITTLE, Administrator d.b.n. 2-7
M. CANNON, Attorney.

ESTATE OF JOHN BEHEE, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MERCY B. BEHEE, Executrix. 2-7
L. D. SHOEMAKER, Attorney.

ESTATE OF CHARLES PIKE, LATE OF THE
city of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

BELINDA A. PIKE, Administratrix. 2-7
A. DARTE, JR., Attorney.

ESTATE OF JOHN GILLESPIE, LATE OF
Hazel township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

OWEN GILLESPIE, Administrator. 5-10
JOHN D. HAYES, Attorney.

ESTATE OF ELIZABETH CONNELL, LATE
of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. A. COLLIER, Executor. 5-10
JOHN H. MULLIN, Executor.
F. C. MOSIER, Attorney.

ESTATE OF THOMAS HUTCHINS, LATE OF
Kingston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

R. H. WEIR, Administrator. 52-5
R. H. HUTCHINS, Administrator.
McLEAN & JACKSON, Attorneys.

ESTATE OF JANE MYERS, LATE OF
Kingston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

D. S. BENNETT, Administrator. 2-7

ESTATE OF CORNELIUS DOUGHERTY,
late of Ashley, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

EILEN A. CARLE, Administratrix. 2-7

ESTATE OF JULIA M. TITCOMB, LATE
of Ashley, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

W. B. HARROWER, Administrator. 2-7

ESTATE OF HIRAM GEORGE, LATE OF
Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

AMANDA GEORGE, Administratrix. 2-7
F. C. STURGES, Attorney.

ESTATE OF W. H. SPERRING, LATE OF
Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

THOMAS SPERRING, Executor. 1-6
BENNETT & NICHOLS, Attorneys.

ESTATE OF HENRY SCHAEFER, LATE OF
Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM SCHAEFER, Administrator. 1-6
J. A. GORMAN, Attorney.

ESTATE OF ANTHONY MEYERS, LATE OF
Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

H. W. MEYERS, Administrator. 5-10
A. R. BRUNDAGE, Attorney.

ESTATE OF MARTHA FAIRCHILD, LATE
of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SAMUEL LINE, Administrator. 5-10
BENNETT & NICHOLS, Attorney.

ORPHANS' COURT SALE.

Estate of Solomon Yost, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in the township of Sugarloaf, on Friday, February 16, 1883, at 2 o'clock P. M., all that tract of land in the township of Sugarloaf, beginning at the northerly corner of land of Henry Lawn on line of land of Tobias Schobert, thence 80 8-10 perches to a post and stones, thence 26 4-10 perches to a post and stones on line of land of Drumheller and Raedler, thence by said last named line 98 1/2 perches to a post and stones, a corner also of land of Charles Brown, thence by line of said Charles Brown 44 perches to a post corner, being also a corner of Jacob Breithaupt, thence by line of land of said Jacob Breithaupt 40 perches to a post corner, thence still by line of Jacob Breithaupt 60 perches to a post corner, thence by line still of Jacob Breithaupt 24 perches to a corner of William Walp, thence by line of land of said William Walp 61 3-10 perches to a stone corner (the stone being buried) in the southerly side of the public road leading from the Berwick and Hazleton turnpike to Drums post office, thence along the southerly side of said public road 163 9-10 perches to a stone (buried) in the southerly side of said public road, at an angle of said road, and on line of Henry Lawn aforesaid, thence by line of land of said Henry Lawn 99 8-10 perches to the place of beginning, containing 133 acres and 110 perches, strict measure; there being about 77 acres thereof improved, with two dwelling houses thereon, each being 1 1/2-story frame building, with two barns and other outbuildings, and an apple orchard of nearly four acres thereon.

TERMS OF SALE—10 per cent of the purchase money to be paid on the striking down of the sale, one-third of the balance on confirmation of the sale, one-third on April 1, 1884, and the remaining one-third on April 1, 1885, with interest on the unpaid balance from confirmation of the sale; deferred payments to be secured by bond and mortgage on the premises.

STEPHEN TURNBACH,

A. FARNHAM, Attorney. **ADMINISTRATOR.**

4-6

ORPHANS' COURT SALE.

Estate of Cecelia B. Carey, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, at the Arbitration room, Court House, at Wilkes-Barre, on Friday, the 16th day of February, 1883, at 10 o'clock A. M., the following lot of land in Marcy township, beginning at a corner on the northwesterly side of the public highway leading from Pittston to Providence, and where the southwesterly line of John S. Marcy's land crosses the same, and thence along said line 6 6-10 perches to a post, thence 6 4-10 perches to a post, thence 6 6-10 perches to a corner in the side of the aforesaid highway, thence along the said highway 6 4-10 perches to place of beginning, containing 40 perches; improved, with a 2-story frame house and back building attached, stable and other houses thereon, and a well of excellent water near the back door or kitchen.

TERMS OF SALE—\$200 down on day of sale, and balance of purchase money on confirmation of sale and delivery of deed.

T. R. MARTIN, Attorney.

B. F. CAREY, Administrator.

4-6

ORPHANS' COURT SALE.

Estate of Job Kocher, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at Yapple's Hotel, in the borough of Shickshinny, on Friday, February 16th, 1883, at 11 o'clock A. M., the following piece of land in Salem township, commencing on the northwest side of the Lackawanna and Bloomsburg Railroad, where Rocky Run passes under said railroad, and running 10 perches, thence 16 perches, thence 12 perches, thence 12 perches, thence 16 perches, thence 4 perches to a post and stones, the beginning of land belonging to Job Kocher, which is divided as follows: thence from last mentioned corner 40 perches to a stump and

stones corner, thence 40 perches to a rock oak corner, thence 40 perches to a stake and stones corner 8 feet from high ledge of rocks, thence 40 perches to the place of beginning, containing 10 acres of land; improved, with a frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$100 down on day of sale, and the balance on the confirmation of the sale.

REUBEN GODSHALL,

ISAAC P. HAND, Attorney. **EXECUTOR.**

4-6

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 63, November term, 1882. Libel in divorce a vinculo matrimonii. Sarah Ann Elliot, by her next friend, Elizabeth Holdsworth, v. James Elliot. To James Elliot—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the original and alias subpoenas having failed on account of your absence. Returnable on Monday, March 5, 1883, at 10 A. M.

ALFRED DARTE, JR.,

Solicitor.

6-7

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 597, October term, 1882. Libel in divorce a vinculo matrimonii. Hannah Barker, by her next friend, William Kitching, v. Francis Barker. The alias subpoena in the above case having been returned non est inventus, you, the said Francis Barker, are hereby notified to appear at said court, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,

EDWARD A. LYNCH, Sheriff.

Solicitor.

6-9

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 113, February term, 1882. Libel in divorce a vinculo matrimonii. Janet Weir, by her next friend, Albert W. Detrick, v. William Weir. To William Weir—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable February 23d, 1883, at 10 o'clock A. M.

F. C. MOSIER,

Solicitor.

6-7

ESTATE OF REV. CHAS. A. MATTINGLY,

late of Nanticoke, deceased. Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REV. THOMAS J. RAY,**REV. TIMOTHY J. DONOHUE,**

Executors.

6-11

ESTATE OF JOHN BARNEY, LATE OF THE

borough of Nanticoke, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE BARNEY,

Administratrix.

6-11

W. S. PARSONS,**ALDERMAN,**

MARKET STREET, WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, FEBRUARY 16, 1883.

No. 7.

Supreme Court of Pennsylvania.

EWING'S APPEAL.

1. A *feme sole trader* has power to bind herself by agreement for the sale of her real estate, without acknowledgment of said agreement, or the joining of her husband therein, and although she was living with her husband at the time of making the agreement.
2. Equity will specifically enforce such agreement against her.

Appeal from the decree of the Court of Common Pleas of Allegheny county.

The opinion of the court was delivered November 20, 1882, by

PAXSON, J.—This was a bill in equity to compel specific performance of a contract for the sale of certain real estate. It was resisted below and here principally upon two grounds, viz.: 1st. That appellants, Samuel Maloney and wife, had entered into a prior parol contract with James A. Ewing, the other appellant, for a sale of the same premises to him. 2d. That the agreement sought to be specifically enforced was not acknowledged as required by the act of Assembly, which prescribes the mode in which the separate real estate of a married woman should be conveyed.

The learned master has demolished the first proposition by his finding of the fact that no such prior parol contract existed. Numerous exceptions have been filed to the master's finding upon this point, but there is ample evidence to sustain him. Indeed, I do not see how he could have found differently.

The case is, therefore, narrowed down to the single question, whether the omission of Mrs. Maloney to acknowledge the agreement is sufficient to enable her now to repudiate it. Upon this point, also, the law is against her. It was one of the admitted

facts in the cause that, in the year 1874, Mrs. Maloney was, upon her own application to the Court of Common Pleas of Allegheny county, duly declared a *feme sole trader*, and that the said decree stands upon the records of said court in full force and unrevoked. The second section of the act of 4th of May, 1855 (P. L. 430), gives to *feme sole traders* ample power to convey their real estate, and in order that purchasers and others may safely deal with them, the fourth section provides that the certificate of the court declaring her such trader shall be conclusive evidence of her authority, until revoked by the court. It is very clear, therefore, that Mrs. Maloney had the power to enter into a binding contract for the sale of her real estate without her husband joining therein. That he did so join, can make no difference. Indeed, it is, at least, a question whether his *courtesy* in the land would pass by a conveyance to which he was not a party. See Burson's Appeal, 10 Harris, 164.

We do not regard the fact that Mrs. Maloney was living with her husband at the time of the contract as of any importance. Under the act of 1855, a person dealing with a *feme sole trader* has no occasion to look beyond the certificate.

We need not discuss any of the minor questions involved. The appellants have nothing to stand upon.

The decree is affirmed and the appeal dismissed, at the costs of the appellants.

Orphans' Court of Philadelphia County.

WOLFF'S ESTATE.

The presumption of death from an absence of seven years, *held* not to apply to a case where the person's absence is accounted for by the fact of his having fled to escape the consequences of appropriating trust moneys, and hence had a strong motive for silence and concealment of his whereabouts.

Sur exceptions to adjudication.

The opinion of the court was delivered February 3, 1883, by

PENROSE, J.—The presumption of death from an absence of seven years is, as experience shows, a very unsafe one to act

upon. The case of *Devlin v. The Commonwealth* (12 W. N. 299) and *Jachumsen v. The Bank* (3 Allen, 87) are illustrations of this, and others are furnished by the records of our own court. In *Phelan's Estate* there had been an absence of over ten years, and the person, whose death, it was contended, was, therefore, to be presumed, had failed during all that time to claim an annuity to which she knew she was entitled; but an inquiry and advertisement directed by the court led, after a delay of many months, to the discovery that she was living, and for some years had been residing in Bahia, Brazil. In *Woodman's Estate*, upon the very day that the administrator's account was audited, and after the court had been asked to award payment of a distributive share to the personal representatives of a nephew of the decedent, who had not been heard of for more than seven years, under circumstances strongly corroborative of the presumption of death, a letter from him announcing that, after a prolonged absence abroad, he had returned to this country, and was then living in Walla Walla, Washington territory, was received by his sister. In the *Estate of John Leslie Quig*, upon the settlement of a guardian's account, the ward not having been heard of for eight years, the estate in the hands of the accountant was awarded to an administrator appointed in pursuance of the direction of the adjudication. All of this time the ward was living in Iowa; and having in some way received information of what had thus taken place, he afterwards petitioned for the appointment of a new guardian, and the letters of administration were vacated.

Such instances are of constant occurrence; and in a case referred to by Mr. Best (*Presumptions*, *192, note 2), it is said that the "vice chancellor of England declared that the old law of presumption was, by the altered state of European society, becoming every day less tenable; for, by the facilities which traveling by steam afforded, a man could now, in a very short time, and without the least difficulty, transport himself to the back woods of America, or to Van Dieman's land, where he might never be heard from." This remark, which was made some forty years ago, applies with much greater force at the present day, when the facilities for travel, and the means of rapidly reaching distant places, have been so wonderfully increased.

It is clear that the presumption should not be extended; and if it should not be confined to cases where the circumstances are such as reasonably to forbid any explanation of absence other than death, it, at least, cannot apply to a case like the present, where the fact that the person whose death we are asked to presume had appropriated trust moneys, and fled to escape the consequences of his dishonesty, fully accounts for his absence, and shows the strongest motive for silence and the concealment of his whereabouts. See *Watson v. England*, 14 Sim. 28; *Bourten v. Henderson*, 2 Sim. & Gif. 360.

The evidence of inquiry, it may be added, is wholly insufficient. A single witness testified that he "had asked people in New York whether they had ever heard or known of him, but they never heard anything;" and that he had written to the keeper of a hotel in that city where the person had stayed for some time after his flight, and, in reply, had been informed "that he had left there, but did not tell where he was going to."

The question with regard to the allowance for nursing, etc., is purely one of fact, and we are not convinced that the auditing judge has erred in his findings.

Exceptions dismissed and adjudication confirmed.

Court of Common Pleas of Luzerne County.

CULVER *v.* BEHEE.

Where judgment is entered by a magistrate in favor of the plaintiff by default, the defendant not appearing, it is necessary that the record show the hour as well as the day of entering judgment.

The opinion of the court was delivered January 2, 1883, by

WOODWARD, J.—Where judgment is entered by a magistrate in favor of the plaintiff by default, the defendant not appearing, it is necessary that the record show the hour as well as the day of entering the judgment. The transcript in this case does not show the hour, and for this reason the proceedings must be reversed. See 6 Phila. 309.

The proceedings are reversed.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, March 10th. A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

1
Suit of the Empire Building and Loan Association v. John T. Walters.

158 April term, 1881. Debt, \$566.93. Fi. fa. 26 March term, 1883. D. S. Bennet, Att'y.

The surface of all that lot of land on the easterly side of Meade street, city of Wilkes-Barre, being 40 feet front on said street, and about 190 feet in depth, the rear end of said lot being bounded by a public alley; improved, with a two-story frame dwelling house, frame barn, outhouses, and fruit trees thereon.

2
Suit of Catharine Youngblut v. Ferdinand Youngblut. 63 March term, 1883. Debt, \$231.50. Fi. fa. 23 March term, 1883. D. S. Bennet, Att'y.

All that lot of land on Tannery street, city of Wilkes-Barre, bounded northerly by J. Youngblut, easterly by Johnson, southerly by A. Youngblut, and westerly by Tannery street, being about 50 feet front on said street, and 180 feet in depth; improved, with a 1½-story frame dwelling house, barn, outbuildings, and fruit trees thereon.

3
Suit of the Wyoming Building and Loan Association of Wilkes-Barre, No. 2, v. Peter Wallace, and Peter Wallace, Administrator, etc., of Hannah Mariah Wallace, deceased.

80 November term, 1882. Debt, \$750. Lev. fa. 6 March term, 1883. E. G. Butler, Att'y.

A lot in the city of Wilkes-Barre, beginning at a stone corner on Wood street, thence running back northeast along the line of Sanford E. Parsons 100 feet to a corner, thence along the line of Abraham Merrick and M. Wood south west 40 feet to a corner on Wood street, thence along Wood street 45 feet to the place of beginning, containing about 5,375 square feet; all improved, with a large 2½-story dwelling house, barn, and other outbuildings, and fruit trees thereon.

4
Suit of Aaron Brown v. George Coray. 136 May term, 1881. Debt, \$10,311.92. Lev. fa. 15 March term, 1883. Dickson & Atheron, Att'ys.

All the surface and right of soil in all that certain piece and parcel of land situate in the township of Kingstess, Luzerne county, Pennsylvania, bounded and described as follows, to wit: Beginning at a corner on the main road running through said township, being also a corner of cross road; thence along said cross road, N. 33½° W., 576 perches to stones corner in line of the mountain tier of the fourth division of said township; thence along said line, S. 43° W., 37 7-10 perches to a corner of purpart No. 5 in the partition of the real estate of Elijah Shoemaker, deceased, now belonging to the estate of Chas. D. Shoemaker, deceased; thence along said purpart No. 5, S. 33½° E., 379 3-10 perches to a corner on the back road; thence S. 48° W., 1 8-10 perches to a corner; thence S. 33½° E., along other part of purpart No. 5 aforesaid a 3 perches to the main road aforesaid; and thence along said road, N. 35½° E., 4 perches to the place of beginning; containing 120 acres of land, more or less; being the same premises conveyed to the said George Coray from Daniel Searle and John M. Stark by deed dated April 5, 1877.

Excepting, however, from this sale the following lots heretofore sold and released: the said lots are 50 feet front by 175 feet in depth. The place of record of deeds of said lots in Luzerne county Recorder's office is given, so far as the same are recorded. They are likewise designated on the ground: 1 lot to F. C. Piller, dated April 1, 1881; 1 lot to Mary Tigue, D. B. 188, p. 541, etc.; 1 lot to A. Brown, dated October 25, 1881; 1 lot to R. C. Shoemaker et al.; 1 lot to William and Margaret McDowell, D. B. 227, p. 180; 1 lot to Patrick Rogers, dated October 25, 1881; 1 lot to Dan'l McAlister, D. B. 220, p. 153, etc.; 1 lot to James McQuade, D. B. 226, p. 84, etc.; 1 lot to John McDermott, dated October 26, 1881; 1 lot to William Jones, D. B.

220, p. 426, etc.; 1 lot to John McCarty, dated November 2, 1881; 1 lot to Thomas Manning, D. B. 216, p. 377, etc.; 1½ lots to John McEwen, or Owen, D. B. 224, p. 139, etc.; 1 lot to Catharine Nicols, D. B. 226, p. 292, etc.; 1 lot to Catharine Mann, or Naan, D. B. 227, p. 43; 1 lot to Patrick or Michael O'Brien, dated November 2, 1881; 1 lot to Mary Brown, dated October 25, 1881; 1 lot to Mrs. O'Boyle, dated October 25, 1881; 1 lot to John Roach, D. B. 228, p. 455, etc.; 1 lot to Rosanna McGovern, D. B. 227, p. 26; 1 lot to John McGarrhart; 7 lots to James Hughes, 2 deeds, 1 for 2 lots, dated April 22, 1882, other for 5 lots, dated October 5, 1881; 1 lot to Michael Diver; 1 lot to John Sullivan; also 1 lot on back of lot towards mountain to Caleb S. Malby of 50 acres, dated April 6, 1877, and recorded in D. B. 204, p. 201, etc.

The said land (not including that reserved) is improved, with one large farm house, six frame buildings, an apple orchard of 300 bearing trees, one large barn, and several outhouses thereon. About 20 acres altogether is laid out in building lots, about 55 acres of said land is good farming land, and about 15 acres is good timber for mining purposes.

5
Suit of Abram Fairchild v. Calvin Wadhams. 344 October term, 1882. Debt, \$1,857. Vend. ex. 11 March term, 1883. Hakes & Bennett, Att'ys.

1. The surface of parts of certified lots 14 and 15 in the first division of Wilkes-Barre township, being the whole of town lots 23, 24, 27, 28; two-thirds part undivided of 22, 29, and 30, located on Franklin and Main streets; also parts of two 15-foot alleys adjoining said lots 22 and 23, situate in the Fifteenth ward of the city of Wilkes-Barre; all improved.

2. Part of a 3-rod road in the city of Wilkes-Barre, bounded on the northwest by lots 1, 2, and 3 in the certified township of Wilkes-Barre, on the northeast by a part of said road, on the southeast by lots 13, 14, and 15 in said first division, and on the southwest by the Hanover township line, containing about 1¼ acres of land.

3. The surface of a lot in the township of Wilkes-Barre, bounded on the northeast by Blackman street, and on the other three sides by lands of the Franklin Coal Company, being about 87½ feet in front on said street, and about 145 feet deep, with a 1½-story frame house thereon.

4. The two equal undivided thirds part of the surface of land not heretofore sold by Calvin Wadhams et al., in the city of Wilkes-Barre, beginning at a corner on the main road, thence by lands of the estate of Alex. McLean, deceased, 214 6-10 perches to a corner, thence 33 3-10 perches to a corner on line of Hanover township, thence along same 214 6-10 perches to a stone corner on the said main road, and thence by same 33 3-10 perches to the place of beginning, being a part of lot 21 in the third division of lots in certified Wilkes-Barre township; all improved.

6
Suit of Peter Seibel v. Oscar F. Gaines and H. A. Gaines. 320 January term, 1883. Debt, \$218 72. Lev. fa. 12 March term, 1883. Miller, Att'y.

A lot of land in the borough of West Pittston, beginning at a corner of Luzerne avenue, thence along said avenue 50 feet to a corner, thence 230 feet to a corner on an alley, thence along said alley 50 feet to a corner thence 230 feet to the place of beginning, containing 11,500 square feet of land, more or less, being lot No. 997 on Luzerne avenue.

7
Suit of Samuel Van Loo v. Martin Brennan. 198 April term, 1881. Debt, \$122.52. Vend. ex. 5 March term, 1883. Magee, Att'y.

All that lot of land on Franklin street, in the borough of Plymouth, bounded on the southwest by Franklin street, on the southeast by land of A. J. Case, on the northeast by land of Lloyd W. Williams, and on the northwest by land of Ira Davenport, being 50 feet in front by 150 feet in depth; all improved, with a two-story frame dwelling house, with basement, and other outbuildings thereon.

Suit of the Anthracite Building and Loan Association of Wilkes-Barre, Pa., now in part to the use of Peter Ward, Administrator of the estate of James Ward, deceased, v. Daniel Sullivan.

166 November term, 1881. Debt, \$709.09. Fi. fa. 20 March term, 1882. O'Neill, Att'y.

A lot of land in the township of Wilkes-Barre, beginning at a point in the Blackman road on the line of Kidder street, thence along Kidder street 210 feet to a corner of lot No. 49, thence to the corner of lots Nos. 41 and 42, thence 210 feet to the line of the Blackman road, and thence along the Blackman road to the place of beginning, containing about 23,100 square feet of land, more or less, being lot No. 41 on plot of lots laid out by Ketcham et al.; all improved, with a frame dwelling and outhouses thereon.

Suit of Abram Goodwin, Jr., et al., Executors, etc., v. Elliott Aldrich, Administrator of George Cussey, deceased.

104 January term, 1880. Debt, \$596.44. Fi. fa. 4 March term, 1883. Powell, Att'y.

All that lot of land in the township of Plymouth, beginning at corner on old Ross Hill road and Mrs. Lydia Jones' lot, and running along said Mrs. Jones' lot northwesterly 100 feet to corner, thence by said Mrs. Jones' lot 40 feet to corner of said lot and line of land late belonging to John Gould, thence along said line northwesterly 153 feet or thereabouts to a 20-foot alley, thence along said alley 91½ feet to a corner, thence southeasterly 248½ feet to said old Ross Hill road, and thence along said road southwesterly 50 feet to the place of beginning; all improved, and having erected thereon one two-story frame dwelling house and outbuildings, and fruit trees.

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Hazleton Coffin and Casket Company," the character and objects of which are the manufacture of and dealing in coffins, caskets, and undertakers' supplies, and materials of all kinds, and the manufacture of and dealing in all kinds of wood work, cabinet, carpenter, and building material.

GEO. H. TROUTMAN,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "The Excelsior Cornet Band," of West Pittston, the character and objects of which are the practice and promotion of music.

F. C. MOSIER,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Court of Common Pleas of Luzerne county, on Monday, March 5, 1883, at 11 o'clock A. M., under the Act of Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Freeland German Cornet Band," the character and object whereof is for social enjoyment and the culture of music, and for these purposes to have, possess and enjoy all the rights, benefits and privileges of said Act of Assembly and supplements,

C. W. KLINE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Wyoming Accidental Insurance Company," the object of which is to insure workmen of all classes against accidents while at work.

W. H. HINES,
Solicitor.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the personal property of LeGrand & Boyer, will attend to the duties of his appointment, at the office of Alexander Farnham, Esq., on Franklin street, in the city of Wilkes-Barre, on Wednesday, the 14th day of March, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

R. D. EVANS,
Auditor.

AUDITOR'S NOTICE.

In Re Indebtedness of Wright township. The undersigned has been appointed an Auditor to ascertain and marshal the indebtedness of the above township. All those who have claims or demands against the same are required to present them before me, on Saturday, the 3d of March, 1883, at 10 o'clock A. M.

S. J. STRAUSS,
Auditor.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of C. D. Wells, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Tuesday, February 27, 1883, at 10 o'clock A. M., at which time and place all parties interested are notified to appear and present their claims, or be debarred from coming in on said fund.

HENRY A. FULLER,
Auditor.

ESTATE OF JOHN BLANCHARD, DEC'D.

In Orphans' Court of Luzerne county. In Re Petition of James Post and Joseph Blanchard, Administrators of said estate, for specific performance of contract with G. M. Wolf.

Now, 11th January, 1883, the court order citation to the parties interested and named in the petition to appear and show cause why the prayer of the petitioners shall not be granted, &c. BY THE COURT.

Certified from the records, this 15th day of February, 1883. JOSEPH HENDLER, Clerk O. C.

Per B. M. CRARY, Ass't

In pursuance of the above order, notice is hereby given to Eveline Clark, Joseph Blanchard, John Robbins, Ada Robbins, Clarence Robbins, Mattie Robbins, William Robbins, Jackson Robbins, Caroline Post, Mariah Savage, and Martha A. Bisher, children and heirs of John Blanchard, deceased, and G. M. Wolf, to appear before Hon. D. L. Rhone, Judge of the Orphans' Court, to be held at Wilkes-Barre, Luzerne county, Pennsylvania, on Monday, the 12th day of March, 1883, at 10 o'clock A. M. of said day, to answer the said petition.

M. E. WALKER,
Attorney.

ESTATE OF MICHAEL STEIN, LATE OF Dorrance township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereby will please make payment to

GEO. H. HINKLEMAN,
Executor.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, March 3d, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1. Suit of Christian H. Sherer, assigned to William B. Mitchell, v. Arnold Bertels. 1016 September term, 1878. Debt, \$2,500. Fi. fa. 2 March term, 1883. Darre, Jr., Att'y.

All the one-third part undivided of all the following described pieces of land, in the city of Wilkes-Barre, to wit:

1. Beginning at a corner of lot of A. Bertels on a street running nearly east from Main street, at a point nearly opposite Wood street, thence along line of said Bertels' lot about 120 feet to a corner, thence about 20 feet to a corner, thence about 20 feet to land sold to Jacob Farrek, thence along said Farrek's land about 120 feet to said street, thence along said street 20 feet to the place of beginning, containing about 2,400 square feet of land.

2. Beginning at a corner on the southeast side of Careytown road, thence at right angles to said road along line of lot now or late of Charles Morgan & Son 204 feet to line of the old Lehigh and Susquehanna Railroad, thence in a southerly direction along said railroad about 45 feet to a corner of lot now or late of Simon Long, Trustee, thence along said Long's lot 227 feet to said Careytown road, thence northeasterly along said road 40 feet to the place of beginning, containing 8,620 square feet of land, being lot No. 7 as shown on plot made by C. Scharer.

3. Beginning at a corner of land now or late of Abigail Hochkiss, and running thence along the line of Canal street 3 perches to a corner, thence adjoining land now or late of Jesse Fell 8 perches to a corner, thence to a corner on land of said Jesse Fell 3 perches, thence on the line of Abigail Hochkiss' land 8 perches to beginning, containing 24 square perches of ground.

4. Beginning at a corner on Washington street, thence 244 feet to a corner, thence 40 feet to a corner, thence along land of the Jewish Synagogue 244 feet to said Washington street, and thence along said street 40 feet to the place of beginning.

5. Fronting on Scott street, between Pine street and Baltimore lane, the same being about 50 feet front on said Scott street, and extending in the same width to the depth of 150 feet, containing 7,500 square feet of land.

6. Beginning at a corner on the northwest side of Oregon street, at the south corner of lot now or late of Levi King, thence along said Oregon street 56 feet 10 inches to a corner of lot now owned by John E. James, thence along said James' lot 146 feet 10 inches to the school house lot, thence 57 feet 3 inches to said Levi King's lot, thence about 140 feet to said Oregon street, the place of beginning, containing about 8,153 square feet of land.

7. Beginning at a corner on Barney street about 80 feet west from Wood street, and in line of land sold to Charles Feuerstein, thence at right angles to said Barney street and along said line about 100 feet to land late of Henry House, thence along the same and parallel with said Barney street 120 feet to land late of Mrs. Mann, thence along said Mann lot about 100 feet to said Barney street, thence along said street about 120 feet to the place of beginning, containing about 12,000 square feet of land.

8. Being the surface of those two lots adjoining, on the northeast side of Parrish street, beginning at a corner about 230 feet from Hazle avenue, thence at right angles from said street about 200 feet to land formerly of Jonathan Jones, thence along the same parallel with said street 80 feet to a corner, thence at right angles to line of said Jones lot about 200 feet to said Parrish street, and thence along said street about 80 feet to the place of beginning, containing about 16,000 square feet of land.

9. All that piece of land in the township of Lake, commencing on the corner of lands in the warrantee names of Allen Bump and Herman Chambers north

251 perches to a corner, thence east 328 perches along line in warrantee name of A. Bailey to a corner, thence south 257 perches along line of lands in warrantee names of Amasa Bailey and Adam Mann, thence west 328½ perches along line of warrantee names of Allen Bump and Nancy Mann to a corner, being a tract of land in the warrantee name of Amasa Bailey, containing 474 acres and allowance; unimproved.

Suit of Oscar J. Harvey, assigned to Olin F. Harvey, v. William P. Rudolph and Martha E. Rudolph, his wife. 423 May term, 1882. Debt, \$817 61. Al. lev. fa. 1 March term, 1883. Harvey, Att'y.

A certain piece of land in the city of Wilkes-Barre, beginning at a corner on Orchard street, thence by the same 40 feet to a corner, thence 200 feet to a corner, thence 40 feet to a corner, thence 200 feet to the place of beginning; all coal and other minerals reserved to Reading & Hunt; improved, with one two-story frame dwelling house and outhouses thereon. 6-8

LUZERNE COUNTY, ss:

In Re Assignment of A. N. Meylert for the benefit of creditors. Notice is hereby given that the Executors of the last will and testament of H. B. Wright, deceased, have exhibited and filed a final account of the said H. B. Wright, Trustee for the estate of A. N. Meylert, which account will be confirmed and allowed on the 5th day of March, 1883, unless cause is shown to the contrary.

JAMES M. NORRIS,
Prothonotary.

6-8

IN THE COURT OF QUARTER SESSIONS

of Luzerne county. No. 161, December sessions, 1882. In Re Division of the township of Lehman into Election District. Notice is hereby given that the report of the Commissioners in the above stated case has been filed with the Clerk of the Court of Quarter Sessions, and was confirmed nisi by the court on the 29th of January, 1883, and that said report will be confirmed absolutely by the court, unless exceptions thereto be filed not later than the third day of the next term of said court.

LOUIS K. STRENG,
Clerk Q. S.

5-7

ESTATE OF ELIZABETH KNAPP, DEC'D.

In Orphans' Court of Luzerne county. In Re Petition of John Cooper for appointment of Guardian ad litem for children of Joseph D. Cooper, etc.

Now, 5th February, 1883, rule is granted to show cause why the said minor children of Joseph D. Cooper shall not appear in court on or before the 5th day of March, 1883, and choose Guardians to represent them in this estate, and in default thereof to show cause why John Cooper, the petitioner, should not be appointed Guardian ad litem. Notice to be given by advertisement in one weekly newspaper in said county for three weeks, a copy of said newspaper to be mailed to the last residence of Sarah Cooper, mother of said minor children.

Certified from the records, this 7th February, 1883.
JOSEPH HENDLER, Clerk O. C.,
Per B. M. CRARY, Ass't.

F. C. STURGES,
Attorney.

6-8

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 52, November term, 1882. Libel in divorce a vinculo matrimonii. Mary J. Morgan, by her next friend, David Maxey, v. David C. Morgan. The alias subpocna in the above case having been returned non est inventus, you, the said David C. Morgan, are hereby notified to appear at said court, on Monday, March 5, 1883, at 11 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
GEO. H. TROUTMAN, Sheriff.
Solicitor.

6-9

LUZERNE COUNTY, ss :

In the Court of Common Pleas of said county. No. 643, October term, 1882. Libel in divorce a vinculo matrimonii. Phoebe Morris, by her next friend, John T. Jones, v. William D. Morris. The alias subpoena in the above case having been returned non est inventus, you, the said William D. Morris, are hereby notified to appear at said court, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
C. W. McALARNEY, Solicitor. 4-7

LUZERNE COUNTY, ss :

In the Court of Common Pleas of said county. No. 63, November term, 1882. Libel in divorce a vinculo matrimonii. Sarah Ann Elliot, by her next friend, Elizabeth Holdsworth, v. James Elliot. To James Elliot—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the original and alias subpoenas having failed on account of your absence. Returnable on Monday, March 5, 1883, at 10 A. M.

ALFRED DARTE, Jr., Solicitor. 6-7

LUZERNE COUNTY, ss :

In the Court of Common Pleas of said county. No. 597, October term, 1882. Libel in divorce a vinculo matrimonii. Hannah Barker, by her next friend, William Kitching, v. Francis Barker. The alias subpoena in the above case having been returned non est inventus, you, the said Francis Barker, are hereby notified to appear at said court, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
EDWARD A. LYNCH, Solicitor. 6-9

LUZERNE COUNTY, ss :

In the Court of Common Pleas of said county. No. 113, February term, 1882. Libel in divorce a vinculo matrimonii. Janet Weir, by her next friend, Albert W. Detrick, v. William Weir. To William Weir—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable February 23d, 1883, at 10 o'clock A. M.

F. C. MOSIER, Solicitor. 6-7

ESTATE OF ELIZABETH CONNELL, LATE of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. A. COLLIER, JOHN H. MULLIN, Executors. 5-10
F. C. MOSIER, Attorney.

ESTATE OF REV. CHAS. A. MATTINGLY, late of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REV. THOMAS J. RAY, REV. TIMOTHY J. DONOHUE, Executors. 6-21

ESTATE OF JANE MYERS, LATE OF Kingston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

D. S. BENNET, Administrator. 2-7

ESTATE OF CORNELIUS DOUGHERTY, late of Ashley, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELEN A. CARLE, Administratrix. 2-7

ESTATE OF JULIA M. TITCOMB, LATE of Ashley, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

W. B. HARROWER, Administrator. 2-7

ESTATE OF JOHN BARNEY, LATE OF THE borough of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE BARNEY, Administratrix. 6-11

ESTATE OF HIRAM GEORGE, LATE OF Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

AMANDA GEORGE, Administratrix. 2-7
F. C. STURGES, Attorney.

ESTATE OF ANTHONY MEYERS, LATE OF Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

H. W. MEYERS, Administrator. 5-10
A. R. BRUNDAGE, Attorney.

ESTATE OF MARTHA FAIRCHILD, LATE of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SAMUEL LINE, Administrator. 5-10
BENNETT & NICHOLS, Attorney.

ESTATE OF JOHN GILLESPIE, LATE OF Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

OWEN GILLESPIE, Administrator. 5-20
JOHN D. HAYES, Attorney.

ORPHANS' COURT SALE.

Estate of Catharine Stout, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, at the Arbitration room, Court House, at Wilkes-Barre, on Saturday, March 10, 1883, at 10 o'clock A. M., all that piece of land in Salem township, bounded northerly by the Pennsylvania Canal, easterly by lands of Catharine Stukey and Daniel Brobst, southerly by the Susquehanna river, and westerly by lands of Josiah F. Beach, now James Lockard, containing one acre, more or less; improved, with two 1½-story frame dwelling houses and other small outhouses thereon, also some fruit trees.

TERMS OF SALE—\$50 cash down on day of sale, and the balance of purchase money on confirmation of sale and delivery of deed.

T. R. MARTIN, Attorney. **WESLEY RABERT,** Administrator. 7-9

ORPHANS' COURT SALE.

Estate of James Gallagher, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, on the premises, at Hazleton, on Thursday, the 15th day of March, 1883, at 2 o'clock P. M., all that lot of ground in the borough of Hazleton, which originally consisted of two lots of ground, bounded and described as follows:

The one lot is on the southwest corner of Wyoming and Maple streets, containing in breadth or front on said Wyoming street 30 feet, and extending of that breadth in length or depth along the south side of Maple street 190 feet to a 20-foot wide street.

The other is on the west side of Wyoming street, commencing at a distance of 120 feet northward from the north side of Green street, containing in front or breadth on said Wyoming street 30 feet, and extending of that breadth in length or depth westward 190 feet to a 20-foot wide street.

Both the lots being contiguous and to be sold as one lot, being 60 feet in front or breadth, and 190 feet in depth or length. All improved, with a two-story frame dwelling house and outbuildings thereon.

TERMS OF SALE—20 per cent cash, and the balance on confirmation.

JAMES F. GALLAGHER, Administrator. 7-9

ORPHANS' COURT SALE.

Estate of Lewis Weidenbach, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in Hazleton, on Saturday, March 10, 1883, at 2 o'clock P. M., a lot of ground on the south side of West Broad street, in the borough of Hazleton, bounded on the north Broad street, on the east by lot of Susan E. Bright, on the south by Mine street, and on the west by lot of F. Lauderburn, containing in front on said Broad street 19 feet and 4 inches, and extending of this width back to Mine street 150 feet; upon which is erected a two-story frame building, used as a store by Powell Brothers & Harris, together with joint use of chimney situate on the division line of said property on the east, and to remain unchanged as long as buildings are unchanged.

TERMS OF SALE—25 per cent cash on day of sale, 25 per cent on confirmation of sale, and the balance in six months from day of sale; to be secured by bond and mortgage, with interest.

C. W. KLINE, Attorney. **JOHN G. SEAGER,** Adm'r d. b. n. c. t. a. 7-9

ESTATE OF CHARLES PIKE, LATE OF THE
city of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. DARTE, Jr., Attorney. **BELINDA A. PIKE,** Administratrix. 2-7

ESTATE OF EDMUND GRIMES, LATE OF
Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEO. W. SHONK, Attorney. **DAVID GRIMES,** Administrator. 2-7

ESTATE OF EPHRAIM R. KITTLE, LATE
of Ross township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

M. CANNON, Attorney. **WILLIAM E. KITTLE,** Administrator d. b. n. 2-7

ESTATE OF JOHN BEHEE, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

L. D. SHOEMAKER, Attorney. **MERCY B. BEHEE,** Executrix. 2-7

ESTATES TO BE AUDITED BY THE
Orphans' Court of Luzerne county. Notice is

hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. George Klinger; Joseph McMurrice and Gideon D. Klinger, Executors; 6th March, 1883.
2. John Gross; Samuel Beener, Administrator; 6th March, 1883.
3. Benjamin Chandler; Abram C. Chandler and D. A. Reeves, Executors; 7th March, 1883.
4. M. L. Everett; Isaac Everett, Executor; 8th March, 1883.
5. James Casterline; Joseph Casterline, Administrator; 8th March, 1883.
6. Silas Callendar; Clark Callendar, Administrator; 9th March, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER, Clerk O. C. 7-9

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and, unless exceptions are filed, will be presented for final approval on Monday, the 5th day of March, 1883:

Robert Helm, Daniel Van Scoy, Thomas Hutchins, Samuel Wolf, James C. Howells, Wm. H. Sperring, and Hiram George, deceased.

JOSEPH HENDLER, Clerk O. C. 7-9

MOLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, FEBRUARY 23, 1883.

No. 8.

Supreme Court of Pennsylvania.

LAVERY *v.* COMMONWEALTH.

The act of May 1, 1861, which provides that upon the arrest of a defendant for certain crimes therein defined, upon demand of the defendant, the justice shall call a jury of six and try the offense, is constitutional.

Error to the Court of Common Pleas of Crawford county.

The opinion of the court below was delivered by

CHURCH, P. J.—The record in this case shows the plaintiff in error and defendant before the justice of the peace was arrested on the 24th of October, 1881, upon the complaint of Jeremiah Mahoney, charging him with having committed an assault and battery upon him, the complainant. The defendant was arrested and brought before the justice of the peace. The complaint was read aloud to him in his hearing, and he pleaded not guilty, and demanded to be tried before the justice and a jury of six men; whereupon the justice proceeded in accordance with the act of the 1st of May, 1861, issued his *venire*, organized a court as provided by that act, and tried the defendant, and the verdict was guilty. Upon the defendant's conviction and sentence, he removed the proceedings to this court for reversal, and now assigns for error that the act of May 1st, 1861, is unconstitutional, and therefore void, in that it deprives him of the common law trial by jury. The only question, therefore, is, whether the act of May 1st, 1861, is constitutional or not. It is an act entitled "An act to change the mode of criminal procedure in Erie and Union counties." It was approved May 1st, 1861, and by act of April 1st, 1863, it was extended to Crawford county, and was subsequently extended to various counties throughout the Commonwealth, until probably one-half or two-thirds of the counties have it in operation within their borders.

In the light of what has been so ably said, we approach this

act of 1861. It provided, among other things, that upon the arrest of the defendant for certain crimes therein defined (the lower grades of misdemeanors and some of the lower grades of felonies) the justice, upon the demand of the defendant, and not otherwise, but only on the demand of the defendant, constitutes a court to which he subjects the defendant by calling a jury of six and trying the defendant in due course of common law. In this connection, it is to be borne in mind that the act was passed in 1861, and it has, therefore, been in operation in at least two counties of the Commonwealth for over twenty-one years, and in many counties for various terms, the last legislation being ten years ago. The fact that the constitutionality of the act of Assembly has not been called in question heretofore, and has not received from the highest tribunal of the Commonwealth any adjudication, we think ought to be at least persuasive evidence that the act is not in conflict with the constitution of the State. It is alleged that it is in conflict with the sixth section of article 1 of the bill of rights—"trial by jury shall be as heretofore, and the right thereof remain inviolate"—and the tenth section of the same article—"no person shall for any indictable offense be proceeded against criminally by information, except in cases arising in the land and naval forces, or in the militia when in actual service, in times of war or public danger, or by leave of the court for oppression or misdemeanor in office. No person shall for the same offense be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use without authority of law, and without just compensation being first made or secured." If it were necessary for a determination of the case it might possibly well be argued that when the constitution of 1873 said that "trial by jury shall be as heretofore," *heretofore* might mean before the adoption of the constitution of 1873, not before the constitution of 1776, 1790, or 1838, but before the constitution of 1873. This act of Assembly was in operation in 1861, twelve years prior to the adoption of the constitution of 1873; hence, in technical strictness, permission to a justice of the peace to try an offense before a jury of six in accordance with that act of Assembly would leave trial by jury as *heretofore*; that is, prior to the adoption of the constitution of 1873. I do not think it necessary, however, to strain the point of construction

that far. It is to be borne in mind that this jury of six can only be invoked when the defendant himself demands it. Judge Trunkey, in the case of *Commonwealth v. Saal* (10 Phila. 496), when he was on the Common Pleas bench of Mercer county, in considering the act of 1871, known as the Mercer county liquor law, decided that upon the compulsory feature of the sixth section of that act, wherein *either party* could demand a jury trial, and against the protest, perchance, of the defendant, that so much of that section was unconstitutional; but he expressly said "this decision does not interfere with the right of the defendant to plead guilty before a justice, or demand a trial by a justice and six persons. When he does so, the justice will proceed in like manner as in other criminal cases wherein jurisdiction has been given to the justice for final jurisdiction at the request of the defendant. But when the defendant refuses to plead, and refuses a trial before a justice, then the justice will hear the case, and if cause appear, hold him to answer at the next term of the Court of Quarter Sessions, as in other criminal cases."

If trial by jury and proceeding by information, as this is called, is a constitutional right, why is it not a right that a defendant may waive? A defendant may waive a constitutional provision in his favor. Section 10 of article i. of the bill of rights says: "No person shall for the same offense be twice put in jeopardy of life or limb." A defendant convicted of an offense who applies for a new trial, and receives it, waives the privilege of section 10. The defendant has volunteered to put himself in jeopardy of life and limb. He is tried twice for the same offense, and it is done with his consent. Section 9 says: "In all criminal prosecutions the accused hath a right to be heard by himself and his counsel," and so on. If he pleads guilty to an indictment, he waives that privilege, as also the privilege of a trial by jury according to the course of the common law, or any other law. And further, by section 9, he has a right to meet the witnesses face to face, "and to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or information a speedy public trial by an impartial jury of the vicinage." Very many times in the trial of a cause depositions are taken, and the witnesses are not present in court, so the testimony taken in a former trial is read against him upon a second trial. It is done by the consent

of the defendant, and so far it is a waiver by the defendant of the privileges of the bill of rights. The defendant is also entitled to a speedy public trial by a jury of the vicinage, and he applies for a continuance (it may be for one, two, or three weeks), and does not demand a speedy public trial, does he not, then, waive a privilege of the bill of rights?

I might enumerate many other cases wherein individuals have waived, where they conceived it to be for their own benefit, the privileges of the bill of rights and the provisions of the constitution. I think this act of Assembly, wherein it gives this defendant the right, if he so elects and demands, to be tried before a justice and jury of six, without the delay and expense of a trial in court, is perfectly legitimate, and not in violation of any constitutional provision.

It is said that the defendant's consent cannot give the court jurisdiction of an offense. That is very true. But it is not consent that gives jurisdiction in this case: it is the act of Assembly that gives jurisdiction, and the justice allows that act of Assembly to operate in the defendant's favor upon his own personal demand. The suggestion that consent cannot give the court jurisdiction is also to be taken with a grain of allowance. Courts do sometimes obtain jurisdiction by consent, and make decrees that are enforced, and the jurisdiction of the court would be adhered to. For example, the Common Pleas and Orphans' Court have each jurisdiction over the proof of contracts of decedents and partitions of decedents' estates. In some, at least, of these cases a party may and does choose his own forum, and hence jurisdiction, or the right of making a decree, is, to some extent at least, dependent upon choice or consent. So with the equity side and common law side of the court. A suitor proceeds on the equity side of the court where the common law side of the court has jurisdiction, and if no objection by the opposite party or by the court itself is interposed, their decrees are legitimate and have full force. Hence it cannot be exactly true, in the broad acceptation of the term, that consent cannot give jurisdiction. However, in the case before us, it is not consent, but the act of Assembly, which gives jurisdiction.

I cannot, therefore, conceive that this act of Assembly is unconstitutional in any sense or respect, and, therefore, the exceptions are overruled, and judgment and sentence are affirmed.

PER CURIAM (December 11, 1882)—This judgment is affirmed upon the opinion of the learned judge in the court below.

Judgment affirmed.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, March 10th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

1
Suit of the Empire Building and Loan Association v. John T. Walters.

158 April term, 1881. Debt, \$566.93. Fi. fa. 26 March term, 1883. D. S. Bennet, Att'y.

The surface of all that lot of land on the easterly side of Meade street, city of Wilkes-Barre, being 40 feet front on said street, and about 190 feet in depth, the rear end of said lot being bounded by a public alley; improved, with a two-story frame dwelling house, frame barn, outhouses, and fruit trees thereon.

2
Suit of Catharine Youngblut v. Ferdinand Youngblut. 63 March term, 1883. Debt, \$231.50. Fi. fa. 23 March term, 1883. D. S. Bennet, Att'y.

All that lot of land on Tannery street, city of Wilkes-Barre, bounded northerly by J. Youngblut, easterly by Johnson, southerly by A. Youngblut, and westerly by Tannery street, being about 50 feet front on said street, and 180 feet in depth; improved, with a 1½-story frame dwelling house, barn, outbuildings, and fruit trees thereon.

3
Suit of the Wyoming Building and Loan Association of Wilkes-Barre, No. 2, v. Peter Wallace, and Peter Wallace, Administrator, etc., of Hannah Maria Wallace, deceased.

89 November term, 1882. Debt, \$750. Lev. fa. 6 March term, 1883. E. G. Butler, Att'y.

A lot in the city of Wilkes-Barre, beginning at a stone corner on Wood street, thence running back northeast along the line of Sanford E. Parsons 100 feet to a corner, thence along the line of Abraham Merrick and M. Wood southwest 40 feet to a corner on Wood street, thence along Wood street 45 feet to the place of beginning, containing about 5,275 square feet; all improved, with a large 2½-storied dwelling house, barn, and other outbuildings, and fruit trees thereon.

4
Suit of Aaron Brown v. George Coray. 136 May term, 1881. Debt, \$10,311.92. Lev. fa. 25 March term, 1883. Dickson & Atherion, Att'ys.

All the surface and right of soil in all that certain piece and parcel of land situate in the township of Kingston, Luzerne county, Pennsylvania, bounded and described as follows, to wit: Beginning at a corner on the main road running through said township, being also a corner of cross road; thence along said cross road, N. 33½° W., 578 perches to stones corner in line of the mountain tier of the fourth division of said township; thence along said line, S. 43° W., 37 7-20 perches to a corner of purpart No. 5 in the partition of the real estate of Elijah Shoemaker, deceased, now belonging to the estate of Chas. D. Shoemaker, deceased; thence along said purpart No. 5, S. 33½° E., 379 3-10 perches to a corner on the back road; thence S. 42° W., 1 8-10 perches to a corner; thence S. 33½° E., along other part of purpart No. 5 aforesaid 3 perches to the main road aforesaid; and thence along said road, N. 35½° E., 4 perches to the place of beginning; containing 140 acres of land, more or less; being the same premises conveyed to the said George Coray from Daniel Searle and John M. Stark by deed dated April 5, 1877.

Excepting, however, from this sale the following lots heretofore sold and released; the said lots are 50 feet front by 175 feet in depth. The place of record of deeds of said lots in Luzerne county Recorder's office is given, so far as the same are recorded. They are likewise designated on the ground: 1 lot to F. C. Pilger, dated April 1, 1881; 1 lot to Mary Tigue, D. B. 228, p. 541, etc.; 1 lot to A. Brown, dated October 25, 1881; 1 lot to R. C. Shoemaker et al.; 1 lot to William and Margaret McDowell, D. B. 227, p. 180; 1 lot to Patrick Rogers, dated October 25, 1881; 1 lot to Dan'l McAllister, D. B. 220, p. 153, etc.; 1 lot to James McQuade, D. B. 226, p. 84, etc.; 1 lot to John McDermott, dated October 26, 1881; 1 lot to William Jones, D. B.

229, p. 426, etc.; 1 lot to John McCarty, dated November 2, 1881; 1 lot to Thomas Manning, D. B. 216, p. 377, etc.; 1½ lots to John McEwen, or Owen, D. B. 224, p. 139, etc.; 1 lot to Catharine Nicols, D. B. 226, p. 292, etc.; 1 lot to Catharine Mann, or Naan, D. B. 227, p. 43; 1 lot to Patrick or Michael O'Brien, dated November 2, 1881; 1 lot to Mary Brown, dated October 25, 1881; 1 lot to Mrs. O'Boyle, dated October 25, 1881; 1 lot to John Roach, D. B. 228, p. 455, etc.; 1 lot to Rosanna McGovern, D. B. 227, p. 26; 1 lot to John McGarhart; 7 lots to James Hughes, 2 deeds, 1 for 2 lots, dated April 22, 1882, other for 5 lots, dated October 5, 1881; 1 lot to Michael Diver; 1 lot to John Sullivan; also 1 lot on back of lot towards mountain to Caleb S. Maltby of 50 acres, dated April 6, 1877, and recorded in D. B. 204, p. 201, etc.

The said land (not including that reserved) is improved, with one large farm house, six frame buildings, an apple orchard of 200 bearing trees, one large barn, and several outhouses thereon. About 20 acres altogether is laid out in building lots, about 55 acres of said land is good farming land, and about 15 acres is good timber for mining purposes.

5
Suit of Abram Fairchild v. Calvin Wadhams. 344 October term, 1882. Debt, \$1,857. Vend. ex. 11 March term, 1883. Hakes & Bennett, Att'ys.

1. The surface of parts of certified lots 14 and 15 in the first division of Wilkes-Barre township, being the whole of town lots 23, 24, 27, 28; two-thirds part undivided of 22, 29, and 30, located on Franklin and Main streets; also parts of two 15-foot alleys adjoining said lots 22 and 23, situate in the Fifteenth ward of the city of Wilkes-Barre; all improved.

2. Part of a 3-rod road in the city of Wilkes-Barre, bounded on the northwest by lots 1, 2, and 3 in the certified township of Wilkes-Barre, on the northeast by a part of said road, on the southeast by lots 13, 14, and 15 in said first division, and on the southwest by the Hanover township line, containing about 1½ acres of land.

3. The surface of a lot in the township of Wilkes-Barre, bounded on the northeast by Blackman street, and on the other three sides by lands of the Franklin Coal Company, being about 87½ feet in front on said street, and about 145 feet deep, with a 1½-story frame house thereon.

4. The two equal undivided thirds part of the surface of land not heretofore sold by Calvin Wadhams et al., in the city of Wilkes-Barre, beginning at a corner on the main road, thence by lands of the estate of Alex. McLean, deceased, 214 6-10 perches to a corner, thence 33 3-10 perches to a corner on line of Hanover township, thence along same 714 6-10 perches to a stone corner on the said main road, and thence by same 33 3-10 perches to the place of beginning, being a part of lot 21 in the third division of lots in certified Wilkes-Barre township; all improved.

6
Suit of Peter Seibel v. Oscar F. Gaines and H. A. Gaines.

320 January term, 1883. Debt, \$218 72. Lev. fa. 12 March term, 1883. Miller, Att'y.

A lot of land in the borough of West Pittston, beginning at a corner of Luzerne avenue, thence along said avenue 50 feet to a corner, thence 230 feet to a corner on an alley, thence along said alley 50 feet to a corner thence 230 feet to the place of beginning, containing 11,500 square feet of land, more or less, being lot No. 997 on Luzerne avenue.

7
Suit of Samuel Van Loon v. Martin Brennan. 198 April term, 1881. Debt, \$122.52. Vend. ex. 5 March term, 1883. Magee, Att'y.

All that lot of land on Franklin street, in the borough of Plymouth, bounded on the southwest by Franklin street, on the southeast by land of A. J. Case, on the northeast by land of Lloyd W. Williams, and on the northwest by land of Ira Davenport, being 50 feet in front by 150 feet in depth; all improved, with a two-story frame dwelling house, with basement, and other outbuildings thereon.

8
Suit of the Anthracite Building and Loan Association of Wilkes-Barre, Pa., now in part to the use of Peter Ward, Administrator of the estate of James Ward, deceased, v. Daniel Sullivan.

166 November term, 1881. Debt, \$799.09. Fi. fa. 20 March term, 1882. O'Neill, Att'y.

A lot of land in the township of Wilkes-Barre, beginning at a point in the Blackman road on the line of Kidder street, thence along Kidder street 210 feet to a corner of lot No. 49, thence to the corner of lots Nos. 41 and 42, thence 210 feet to the line of the Blackman road, and thence along the Blackman road to the place of beginning, containing about 23,100 square feet of land, more or less, being lot No. 41 on plot of lots laid out by Ketcham et al.; all improved, with a frame dwelling and outhouses thereon.

9
Suit of Abram Goodwin, Jr., et al., Executors, etc., v. Elliott Aldrich, Administrator of George Cussey, deceased.

104 January term, 1880. Debt, \$596.44. Fi. fa. 4 March term, 1883. Powell, Att'y.

All that lot of land in the township of Plymouth, beginning at corner on old Ross Hill road and Mrs. Lydia Jones' lot, and running along said Mrs. Jones' lot northwesterly 100 feet to corner, thence by said Mrs. Jones' lot 40 feet to corner of said lot and line of land late belonging to John Gould, thence along said line northwesterly 153 feet or thereabouts to a 20-foot alley, thence along said alley 91½ feet to a corner, thence southeasterly 248½ feet to said old Ross Hill road, and thence along said road southwesterly 50 feet to the place of beginning; all improved, and having erected thereon one two-story frame dwelling house and outbuildings, and fruit trees.

10
Suit of Ezra Stair v. Abraham Arnold and Elizabeth Arnold.

134 February term, 1883. Debt, \$206.25. Fi. fa. 14 March term, 1883. Cannon, Att'y.

Also three other suits of same amount.
All that lot of land in Slocum township, beginning at a stone planted for a corner in the middle of a public road, thence along the Christian Leuder estate and middle of said public road 39 2-10 perches to a stone corner of land of Josiah Jones, thence along land of the same 36 8-10 perches to a post, thence to a post in the public road, thence along said public road 51 2-10 perches to a stone corner, the place of beginning, containing 10 acres of land, more or less; all improved, with a two-story frame dwelling, a barn, and other outhouses, and blacksmith shop and fruit trees thereon.

E STATE OF JOHN BLANCHARD, DEC'D.
In Orphans' Court of Luzerne county. In Re Petition of James Post and Joseph Blanchard, Administrators of said estate, for specific performance of contract with G. M. Wolf.

Now, 11th January, 1883, the court order citation to the parties interested and named in the petition to appear and show cause why the prayer of the petitioners shall not be granted, &c. By THE COURT.

Certified from the records, this 15th day of February, 1883. JOSEPH HENDLER, Clerk O. C.,
Per B. M. CHARY, Ass't.

In pursuance of the above order, notice is hereby given to Eveline Clark, Joseph Blanchard, John Robbins, Ada Robbins, Clarence Robbins, Mattie Robbins, William Robbins, Jackson Robbins, Caroline Post, Mariah Savage, and Martha A. Bisher, children and heirs of John Blanchard, deceased, and G. M. Wolf, to appear before Hon. D. L. Rhone, Judge of the Orphans' Court, to be held at Wilkes-Barre, Luzerne county, Pennsylvania, on Monday, the 12th day of March, 1883, at 10 o'clock A. M. of said day, to answer the said petition.

M. E. WALKER,
Attorney.

7-9
JOHN F. EVERHART,
a student at law in the office of G. S. Ferris, will apply at March term, 1883, for admission to practice as an attorney in the several courts of the county of Luzerne.

40

ESTATES TO BE AUDITED BY THE

Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. George Klinger; Joseph McMurtree and Gideon D. Klinger, Executors; 6th March, 1883.

2. John Gross; Samuel Benner, Administrator; 6th March, 1883.

3. Benjamin Chandler; Abram C. Chandler and D. A. Reeves, Executors; 7th March, 1883.

4. M. L. Everett; Isaac Everett, Executor; 8th March, 1883.

5. James Casterline; Joseph Casterline, Administrator; 8th March, 1883.

6. Silas Callendar; Clark Callendar, Administrator; 9th March, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,
Clerk O. C.

7-9

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and unless exceptions are filed, will be presented for final approval on Monday, the 5th day of March, 1883:

Robert Helm, Daniel Van Scoy, Thomas Hutchins, Samuel Wolf, James C. Howells, Wm. H. Sperring, and Hiram George, deceased.

JOSEPH HENDLER,
Clerk O. C.

7-9

LUZERNE COUNTY, ss:

To all whom it may concern: Take notice that H. J. Seely and Peter Meixel, Trustees of the real estate conveyed by Christian Billhamer and wife to the German Presbyterian and Lutheran Churches of Salem, have applied to the Court of Common Pleas of Luzerne county for an order to sell said property, and that all persons interested may be heard before said court on Monday, March 12, 1883, at 10 o'clock A. M. By order of the court.

Q. A. GATES,
Attorney.

8-10

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Hazleton Coffin and Casket Company," the character and objects of which are the manufacture of and dealing in coffins, caskets, and undertakers' supplies, and materials of all kinds, and the manufacture of and dealing in all kinds of wood work, cabinet, carpenter, and building material.

GEO. H. TROUTMAN,
Solicitor.

7-9

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "The Excelsior Cornet Band," of West Pittston, the character and objects of which are the practice and promotion of music.

F. C. MOSIER,
Solicitor.

7-9

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Court of Common Pleas of Luzerne county, on Monday, March 5, 1883, at 11 o'clock A. M., under the Act of Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto for the charter of an intended corporation, to be called "The Freeland German Cornet Band," the character and object whereof is for social enjoyment and the culture of music, and for these purposes to have, possess and enjoy all the rights, benefits and privileges of said Act of Assembly and supplements,

C. W. KLINE,
Solicitor.

6-8

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Wyoming Accidental Insurance Company," the object of which is to insure workmen of all classes against accidents while at work.

W. H. HINES,
Solicitor.

7-9

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Consumers Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding, and demise real and personal estate connected therewith.

E. P. & J. V. DARLING,
Solicitors.

1-10

ESTATE OF ELIZABETH KNAPP, DEC'D. In Orphans' Court of Luzerne county. In Re Petition of John Cooper for appointment of Guardian ad litem for children of Joseph D. Cooper, etc.

Now, 5th February, 1883, rule is granted to show cause why the said minor children of Joseph D. Cooper shall not appear in court on or before the 5th day of March, 1883, and choose Guardians to represent them in this estate, and in default thereof to show cause why John Cooper, the petitioner, should not be appointed Guardian ad litem. Notice to be given by advertisement in one weekly newspaper in said county for three weeks, a copy of said newspaper to be mailed to the last residence of Sarah Cooper, mother of said minor children.

By the Court,
Certified from the records, this 7th February, 1883.

JOSEPH HENDLER, Clerk O. C.,
Per B. M. CRARY, Ass't.

F. C. STURGES,
Attorney.

6-8

AUDITOR'S NOTICE.

In Re Indebtedness of Wright township. The undersigned has been appointed an Auditor to ascertain and marshal the indebtedness of the above township. All those who have claims or demands against the same are required to present them before me, on Saturday, the 3d of March, 1883, at 10 o'clock A. M.

S. J. STRAUSS,
Auditor.

5-8

AUDITOR'S NOTICE.

Estate of Elias Hoyt, dec'd. The undersigned, as Auditor, appointed to report upon the exceptions to the account of Executor, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Saturday, March 24th, 1883, at 10 A. M.

G. R. BEDFORD,
Auditor.

8-11

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of C. D. Wells, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Tuesday, February 27, 1883, at 10 o'clock A. M., at which time and place all parties interested are notified to appear and present their claims, or be debarred from coming in on said fund.

HENRY A. FULLER,
Auditor.

5-8

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the personal property of LeGrand & Boyer, will attend to the duties of his appointment, at the office of Alexander Farnham, Esq., on Franklin street, in the city of Wilkes-Barre, on Wednesday, the 14th day of March, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

R. D. EVANS,
Auditor.

7-10

LUZERNE COUNTY, ss:

In Re Assignment of A. N. Meylert for the benefit of creditors. Notice is hereby given that the Executors of the last will and testament of H. B. Wright, deceased, have exhibited and filed a final account of the said H. B. Wright, Trustee for the estate of A. N. Meylert, which account will be confirmed and allowed on the 5th day of March, 1883, unless cause is shown to the contrary.

JAMES M. NORRIS,
Prothonotary.

6-8

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 106, November term, 1882. Libel in divorce a vinculo matrimonii. James Henderson v. Catharine Henderson. To Catharine Henderson—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the original and alias subpoenas having failed on account of your absence. Returnable on Monday, 5th March, 1883, at 10 o'clock A. M.

ALFRED DARTE, Jr.,
Solicitor.

8-9

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 52, November term, 1882. Libel in divorce a vinculo matrimonii. Mary J. Morgan, by her next friend, David Maxey, v. David C. Morgan. The alias subpoena in the above case having been returned non est inventus, you, the said David C. Morgan, are hereby notified to appear at said court, on Monday, March 5, 1883, at 11 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
GEO. H. TROUTMAN, Sheriff.
Solicitor. 6-9

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 597, October term, 1882. Libel in divorce a vinculo matrimonii. Hannah Barker, by her next friend, William Kitching, v. Francis Barker. The alias subpoena in the above case having been returned non est inventus, you, the said Francis Barker, are hereby notified to appear at said court, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
EDWARD A. LYNCH, Sheriff.
Solicitor. 6-9

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, March 3d, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

Suit of Christian H. Sherer, assigned to William B. Mitchel, v. Arnold Bertels.

1016 September term, 1878. Debt, \$2,500. Fi. fa. 2 March term, 1883. Darte, Jr., Att'y.

All the one-third part undivided of all the following described pieces of land, in the city of Wilkes-Barre, to wit:

1. Beginning at a corner of lot of A. Bertels on a street running nearly east from Main street, at a point nearly opposite Wood street, thence along line of said Bertels' lot about 120 feet to a corner, thence about 20 feet to a corner, thence about 20 feet to land sold to Jacob Farrek, thence along said Farrek's land about 190 feet to said street, thence along said street 20 feet to the place of beginning, containing about 2,400 square feet of land.

2. Beginning at a corner on the southeast side of Careytown road, thence at right angles to said road along line of lot now or late of Charles Morgan & Son 204 feet to line of the old Lehigh and Susquehanna Railroad, thence in a southerly direction along said railroad about 45 feet to a corner of lot now or late of Simon Long, Trustee, thence along said Long's lot 227 feet to said Careytown road, thence northeasterly along said road 40 feet to the place of beginning, containing 8,600 square feet of land, being lot No. 7 as shown on plot made by C. Scharer.

3. Beginning at a corner of land now or late of Abigail Hotchkiss, and running thence along the line of Canal street 3 perches to a corner, thence adjoining land now or late of Jesse Fell 8 perches to a corner, thence to a corner on land of said Jesse Fell 3 perches, thence on the line of Abigail Hotchkiss' land 8 perches to beginning, containing 24 square perches of ground.

4. Beginning at a corner on Washington street, thence 244 feet to a corner, thence 40 feet to a corner, thence along land of the Jewish Synagogue 244 feet to said Washington street, and thence along said street 40 feet to the place of beginning.

5. Fronting on Scott street, between Pine street and Baltimore lane, the same being about 50 feet front on said Scott street, and extending in the same width to the depth of 150 feet, containing 7,500 square feet of land.

6. Beginning at a corner on the northwest side of Oregon street, at the south corner of lot now or late of Levi King, thence along said Oregon street 56 feet 10 inches to a corner of lot now owned by John E. James, thence along said James' lot 146 feet 10 inches to the school house lot, thence 57 feet 3 inches to said Levi King's lot, thence about 140 feet to said Oregon street, the place of beginning, containing about 8,153 square feet of land.

7. Beginning at a corner on Barney street about 80 feet west from Wood street, and in line of land sold to Charles Feuerstein, thence at right angles to said Barney street and along said line about 100 feet to land late of Henry House, thence along the same and parallel with said Barney street 120 feet to land late of Mrs. Mann, thence along said Mann lot about 100 feet to said Barney street, thence along said street about 120 feet to the place of beginning, containing about 12,000 square feet of land.

8. Being the surface of those two lots adjoining, on the northeast side of Parrish street, beginning at a corner about 230 feet from Hazle avenue, thence at right angles from said street about 200 feet to land formerly of Jonathan Jones, thence along the same parallel with said street 80 feet to a corner, thence at right angles to line of said Jones lot about 200 feet to said Parrish street, and thence along said street about 80 feet to the place of beginning, containing about 16,000 square feet of land.

9. All that piece of land in the township of Lake, commencing on the corner of lands in the warrantee names of Allen Bump and Herman Chambers north

251 perches to a corner, thence east 328 perches along line in warrantee name of A. Bailey to a corner, thence south 257 perches along line of lands in warrantee names of Amasa Bailey and Adam Mann, thence west 328½ perches along line of warrantee names of Allen Bump and Nancy Mann to a corner, being a tract of land in the warrantee name of Amasa Bailey, containing 474 acres and allowance; unimproved.

Suit of Oscar J. Harvey, assigned to Olin F. Harvey, v. William P. Rudolph and Martha E. Rudolph, his wife.

423 May term, 1882. Debt, \$817 61. Al. lev. fa. 1 March term, 1883. Harvey, Att'y.

A certain piece of land in the city of Wilkes-Barre, beginning at a corner on Orchard street, thence by the same 40 feet to a corner, thence 200 feet to a corner, thence 40 feet to a corner, thence 200 feet to the place of beginning; all coal and other minerals reserved to Reading & Hunt; improved, with one two-story frame dwelling house and outhouses thereon. 6-8

ORPHANS' COURT SALE.

Estate of Catharine Stout, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, at the Arbitration room, Court House, at Wilkes-Barre, on Saturday, March 10, 1883, at 10 o'clock A. M., all that piece of land in Salem township, bounded northerly by the Pennsylvania Canal, easterly by lands of Catharine Stukey and Daniel Brobst, southerly by the Susquehanna river, and westerly by lands of Josiah F. Beach, now James Lockard, containing one acre, more or less; improved, with two 1½-story frame dwelling houses and other small outhouses thereon, also some fruit trees.

TERMS OF SALE—\$50 cash down on day of sale, and the balance of purchase money on confirmation of sale and delivery of deed.

T. R. MARTIN, WESLEY RABERT,
Attorney. Administrator. 7-9

ORPHANS' COURT SALE.

Estate of James Gallagher, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, on the premises, at Hazleton, on Thursday, the 15th day of March, 1883, at 2 o'clock P. M., all that lot of ground in the borough of Hazleton, which originally consisted of two lots of ground, bounded and described as follows:

The one lot is on the southwest corner of Wyoming and Maple streets, containing in breadth or front on said Wyoming street 30 feet, and extending of that breadth in length or depth along the south side of Maple street 190 feet to a 20-foot wide street.

The other is on the west side of Wyoming street, commencing at a distance of 120 feet northward from the north side of Green street, containing in front or breadth on said Wyoming street 30 feet, and extending of that breadth in length or depth westward 190 feet to a 20-foot wide street.

Both the lots being contiguous, and to be sold as one lot, being 60 feet in front or breadth, and 190 feet in depth or length. All improved, with a two-story frame dwelling house and outbuildings thereon.

TERMS OF SALE—20 per cent cash, and the balance on confirmation.

JAMES F. GALLAGHER,
Administrator. 7-9

ORPHANS' COURT SALE.

Estate of Lewis Weidenbach, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in Hazleton, on Saturday, March 10, 1883, at 2 o'clock P. M., a lot of ground on the south side of West Broad street, in the borough of Hazleton, bounded on the north Broad street, on the east by lot of Susan E. Bright, on the south by Mine street, and on the west by lot of F. Lauderburn, containing in front on said Broad street 19 feet and 4 inches, and extending of this width back to Mine street 150 feet; upon which is erected a two-story frame building, used as a store by

Powell Brothers & Harris, together with joint use of chimney situate on the division line of said property on the east, and to remain unchanged as long as buildings are unchanged.

TERMS OF SALE—25 per cent cash on day of sale, 25 per cent on confirmation of sale, and the balance in six months from day of sale; to be secured by bond and mortgage, with interest.

JOHN G. SEAGER,
Adm'r d. b. n. c. t. a.
C. W. KLINE,
Attorney.

street 200 feet to Philadelphia avenue aforesaid, and thence northwesterly along said avenue 50 feet to the place of beginning; the said lot being No. 70, Philadelphia avenue; reserving all the fossil or mineral coal, iron, or other ores.

TERMS OF SALE—10 per cent on day of sale, 15 per cent on confirmation of sale, and the balance (75 per cent) one year from sale, with interest from day of sale; deferred payments to be secured by bond and mortgage on the premises.

R. H. WEIR,
R. H. HUTCHINS,
McLEAN & JACKSON, Administrators.
Attorneys. 8-10

ORPHANS' COURT SALE.

Estate of Thomas Hutchins, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Terra Cotta Works, in Wyoming village, on Friday, March 16th, 1883, at 10 o'clock A. M., the following described real estate, viz.:

1. All those messuages and tracts of land (the surface thereof) in the village of Wyoming, Kingston township, bounded and described as follows, to wit:

(1) Beginning at a corner of land of Isaac C. Shoemaker, thence along said Shoemaker's land from the north rail of the Lackawanna and Bloomsburg Railroad 14 rods and 32 links to a corner on land of William S. Shoemaker, thence along the said lands of William S. Shoemaker 15 rods to a corner, thence along lands of William S. Shoemaker 19 rods and 9 links to a corner at the north rail of the said Lackawanna and Bloomsburg Railroad Co., thence down said railroad 15 rods and 1 link to a corner, the place of beginning, containing 1 acre and 96 perches of land, be the same more or less.

(2) Beginning at a corner of land of Thos. Hutchins, deceased, and Isaac C. Shoemaker, thence 3 rods to a corner, thence 14 rods and 14 links to a corner, thence 1 rod and 2 links to a corner on said Hutchins' land, thence 15 rods to a corner, the place of beginning, containing 30 perches of land, more or less.

(3) Beginning at a corner of land of Thos. Hutchins, deceased, at north rail of the Lackawanna and Bloomsburg Railroad, thence along land of the said Hutchins and W. S. Shoemaker 17 rods and 22 links to a corner, thence 4 rods to a corner, thence 11 rods and 3 links to a corner, thence 14 rods and 10 links to land of Lawrence Myers, being the Commissioners' line between lots Nos. 35 and 36, third division of Kingston township (18 feet in width along the northwest side to remain in Isaac C. Shoemaker for a right of way only), thence 6 rods to the north rail of the Lackawanna and Bloomsburg Railroad Company, and thence along the said railroad 14 rods and 10 links and 4 rods to the place of beginning, containing 156 perches of land, more or less.

(4) Beginning on the east corner of the Lackawanna and Bloomsburg Railroad Company's depot lot, at the north rail of said railroad, thence 6 rods to a corner, thence 17½ rods to a corner near a linden tree on land of Lawrence Myers, thence 11 rods to the line of the Lackawanna and Bloomsburg Railroad, and thence down said railroad 7½ rods to the place of beginning, containing 74 perches of land, more or less; 18 feet on the northwest side of the last mentioned lot being reserved by Isaac C. Shoemaker for a right of way; and reserving all the coal and other minerals; and having erected thereon a terra cotta manufactory.

2. Being the premises on Careytown road, city of Wilkes-Barre, beginning at a corner of Patrick Wallgar's lot, and running back at right angles with said road 147 feet to a corner, thence on a line parallel with said road 50 feet to a corner, thence on a straight line parallel with the first 147 feet to a corner on said road, thence up along said road 50 feet to the place of beginning, containing one-quarter of an acre of land, more or less; and having a two-story frame dwelling house and outbuildings thereon.

3. Being the premises in the borough of West Pittston, beginning at a point on Philadelphia avenue at a distance of 50 feet southeastwardly from Fifth street, and extending southwestwardly at right angles to said avenue the distance of 200 feet to Atlantic street, thence southeastwardly along said Atlantic street 50 feet, thence northeasterly at right angles to Atlantic

ESTATE OF JULIA McNULTY, LATE OF Wilkes-Barre township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ALICE McNULTY,
E. P. & J. V. DARLING, Administratrix.
Attorneys. 8-13

ESTATE OF W. S. HILLARD, LATE OF THE city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RUTH B. HILLARD,
E. G. BUTLER, Executrix.
Attorney. 8-13

ESTATE OF JOSEPH SCHAPPERT, LATE of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY ANN SCHAPPERT,
JACOB SCHAPPERT, Executors. 8-13

ESTATE OF MICHAEL STEIN, LATE OF Dorrance township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

GEO. H. HINKLEMAN,
Executor. 7-12

ESTATE OF ELIZA BOWERS, LATE OF Wyoming, Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM HANCOCK,
Executor. 8-14

ESTATE OF ELIZABETH CONNELL, LATE of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. A. COLLIER,
JOHN H. MULLIN, Executors. 5-10
F. C. MOSIER,
Attorney.

ESTATE OF ANTHONY MEYERS, LATE OF
Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. R. BRUNDAGE, Attorney. **H. W. MEYERS,** Administrator. 5-10

ESTATE OF MARTHA FAIRCHILD, LATE
of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

BENNETT & NICHOLS, Attorney. **SAMUEL LINE,** Administrator. 5-10

ESTATE OF JOHN GILLESPIE, LATE OF
Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN D. HAYES, Attorney. **OWEN GILLESPIE,** Administrator. 5-10

MCLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

ESTATE OF JOHN BARNEY, LATE OF THE
borough of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE BARNEY, Administratrix. 6-11

ESTATE OF REV. CHAS. A. MATTINGLY,
late of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REV. THOMAS J. RAY,
REV. TIMOTHY J. DONOHUE, Executors. 6-11

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, MARCH 2, 1883.

No. 9

Orphans' Court of Luzerne County.

ELEY'S ESTATE.

1. A devise of the rents, issues, and profits of land for a certain period is equivalent to a devise of the land itself for the same period, and if the devise be without limitation as to time of enjoyment or other conditions, it will carry a fee.
2. A devise over, the intervention of a trustee, followed by a power of sale in the trustee, will be considered conclusive evidence, in the absence of a contrary intent expressed in the will, that the testator intended only to give a life estate to the first taker.
3. A lease of the exclusive right to mine and sell all the minerals in or under land, without limitation as to quantity or time, is to be taken as a sale of the mineral in place, and consequently a sale of a portion of the land.
4. A testator gave one-tenth part of his property, real, personal, and mixed, to the children of his son, John, to be equally divided among them on the death of their father, and directed that the said part "be held in trust by my executors during the life of the said John, and the interest or income arising from the same to be paid to the said John annually by my executors during his natural life." He then authorized and empowered his executors "to sell or dispose of all or any part of my real estate, or to lease the coal upon or under the same, and to convey the same to the purchasers by good and sufficient instruments of writing, provided" they "shall first have the written consent of the owners of six-tenths of the premises before selling or leasing the same." The executors leased all the merchantable coal upon, in, and under the land, the lessee agreeing to pay for the same, in periodical installments, at the rate of twenty-five cents per ton, etc.: *Held, that the testator's son, John, is only entitled to the interest on the installments paid under the lease, and not to the principal absolutely, the income being a product of the sale of a part of the corpus of the estate.*

Exceptions to report of audit by the court.

The opinion of the court was delivered February 17, 1883, by

RHONE, P. J.—This decedent died in November, 1879, leaving a will, dated August, 1876, and two codicils thereto, dated November, 1877, and November, 1879, respectively. The parts of the will relating directly to the claim of John S. Eley are items two and thirteen.

Item two reads as follows: "I give and bequeath one-tenth part of all my property, real, personal, and mixed, to the children of my son, John S. Eley, to be divided equally among them, share and share alike, at the death of their father, John S. Eley. The part hereby given to the children of John S. Eley, I direct to be held in trust by my executors hereinafter named during the natural life of the said John S. Eley, and the interest or

income arising from the same to be paid to the said John S. annually by my said executors during his natural life. From this share is to be deducted what money I have advanced to the said John S. Eley, which amount will be shown by the notes I hold against him."

The thirteenth item reads as follows: "I hereby authorize and empower my executors hereafter named, and the survivor of them, to sell and dispose of all or any part of my real estate, or to lease the coal upon or under the same, and to convey the same to the purchasers by good and sufficient instruments of writing: *Provided*, however, that my said executors shall first have the written consent of the owners of six-tenths of the premises before selling or leasing the same; and subject, also, to the provisions that the surface of the land between the main road and the railroad shall not be sold for fifteen years after my death."

On the 7th day of October, 1881, the executors made a lease of the coal to the Delaware, Lackawanna, and Western Railroad Company. The lease is in the usual form of such conveyances in this county, the company agreeing to "mine all the merchantable coal upon, in, and under the land," and pay for the same, in periodical installments, at the rate of twenty-five cents per ton, with the right to take coal at any subsequent time at that rate where the periodical installments exceed the amount actually mined at the time of such payments.

The fund now for distribution is an installment of rent under the coal lease. The court has reported a distribution of the fund to a trustee, to be invested by him for the use of John S. during his life, and at his death to pay the principal to his children; and to this distribution John S. has excepted, claiming that the fund should have been distributed to him absolutely.

The exceptant's counsel claims the substance of the testator's language to be, that if his executors lease the coal under his land, as he has authorized them to do, then the income arising therefrom shall be paid to John S. annually during his life. This is, perhaps, the strongest light in which his case can be put, and retain any portion of the language of the will. Then it is argued the exceptant will take the income absolutely under the general rule, that "a devise of the rents, issues, and profits of land is equivalent to a devise of the land itself." We have stated the

rule of law as it was argued by the counsel to be, but there must be added to it this important qualification, that in order to carry the fee a devise of the rents, issues, and profits must be without limitation as to time of enjoyment or other conditions. *Bentley v. Kauffman*, 5 *Norris*, 99; *Frances' Estate*, 25 *Smith*, 220.

The same rule applies to personal estate, though with greater force. *Millard's Appeal*, 6 *Norris*, 457.

In *Frances' Estate* the devise was to the testator's wife the "one-third of all my personal estate, and one-third part of all the income, rents, and use of my real estate," and to testator's son "all the residue and remainder of my estate, real and personal," giving his executors full power to sell and convey any and all of his real estate. The land was sold in pursuance of such power, and on the distribution of the fund it was held, reversing the court below, that the devise to the widow carried only a life estate. The reasoning of Judge *Mercur* in that case is very applicable to this one.

Here there is a devise over, the intervention of a trustee, the express provision that the interest or income shall be paid by the trustees to the first taker "annually for life," followed by a power of sale in the trustees, which, in the absence of a contrary intent expressed in the will, shuts the claimant up to a life estate in the land and its proceeds in case of a sale. *Sheets' Estate*, 2 *Smith*, 257.

Here, as in the cases cited, the testator blends his personal and real estate; hence follows the expression, "interest or income"—interest on the personal estate fund and proceeds of a sale or lease, and income from the land if unconverted.

As we remember the argument of the counsel for the exceptant, his next proposition is, that admitting it was the intent of the testator that his son, *John S.*, should have only the interest on the fund in case of a sale of the land, yet when he used the term "lease" of the coal he meant a leasing in its ordinary sense, in which case the payments thereon must be considered as compensation for the use of the land, or income thereof, which would clearly belong to the exceptant absolutely. But a *lease* of the exclusive right to mine and sell all the minerals in or under land, without limitation as to quantity or time, is to be taken as a *sale* of the mineral in place, and consequently a sale of a portion of

the land. *Caldwell v. Fulton*, 7 Casey, 475; *Harlan v. Lehigh Coal and Navigation Co.*, 11 Casey, 287.

Wherever a conveyance is made of mineral, whether the conveyance be called a lease or a deed, it is, in effect, the grant of a part of the *corpus* of the estate, and not of a mere incorporeal right. *Stoughton's Appeal*, 7 Norris, 198.

We are bound to presume that the testator knew the legal interpretation of the term "lease," and that in the absence of his own definition to the contrary, we must say he used it in the sense of a sale, as before shown, especially as he has prescribed no terms or conditions on which the lease should be made. It follows, then, that John S. has no more right to the income from the coal lease than he would have to the proceeds of a sale of the entire land in case one had been made. On the whole, we know of no language that could have been used to better express a gift to John S. of a mere life estate in the land and its proceeds, whether from a sale or lease of the coal.

As the gift is of the estate, "real, personal, and mixed," we do not consider it necessary to decide whether the income from the coal lease be real or personal estate. Certain it is the devise to the executors did not work a conversion of the real estate into personalty, for the direction to sell is not absolute, and is coupled with certain contingencies. *McClure's Appeal*, 22 Smith, 414.

The devise to the testator's daughter, Elizabeth, is found in item one to be a fee, modified into a mere life estate in the first codicil, at the conclusion of which the testator says: "The fee to said share to be and remain in my other heirs." It seems to us this devise cannot be distinguished from the former one, except that the intent to give only a life estate is, perhaps, more clearly expressed. Neither can we see that the testator intended Thomas should have any more than a life estate, the devise to him being in substantially the same language as that to John S. In the case of both Elizabeth and Thomas a fee had been given by the will, and the only purpose of the codicils seems to have been to reduce the estate to them for life, for the reasons therein given.

The exceptions are dismissed, and the report of audit is confirmed absolutely.

Hon. Garrick M. Harding, for exceptant.

T. H. B. Lewis and A. H. Dickson, Esqs., *contra*.

COMMON PLEAS CERTIORARI LIST.

MONDAY, MARCH 26, 1883.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	CERTIORARI.
1	Lenahan	J. F. Donohue	S. L. Brown		Certiorari.
2	McL. & J.	W. L. Stewart	Sarah Verri		Certiorari.
3	E. V. B., Harding	Luzerne County	Nicob F. Challett		Certiorari.
4	D. S. B., Harding	James Vivian et al	Thomas Tomkins	Lenahan, C.	Certiorari.
5	D. S. B., Harding	James Vivian et al	George McGinnis	Lenahan, C.	Certiorari.
6	J. T. L.	James Mulligan	John Farley	Halsey	Certiorari.
7	Jones	Richard D. Lloyd et al	George W. Sayer		Certiorari.
8	Harding, McG	G. M. Miller et al	J. Lowenstein		Certiorari.
9	Martin	Fresman Larned et al	Martin Keating	Dewitt	Certiorari.
10	Shonk	Plymouth Coal Company	John Gintley	Darte, Jr.	Certiorari.
11	Shonk	Henry Williams et ux	Calvin Blasing		Certiorari.
12	Farnham	David Natrath	Daniel Mulhern	Mosier	Certiorari.
13	J. L. L.	Charles Acton et ux	Charles McCormack		Certiorari.
14	J. L. L.	James Johnson et ux	Borough of Pittston		Certiorari.
15	Darlings, G. M. L.	John Batterton et al.	Evan Davis		Certiorari.
16		Wm. Moore & Co.	Irwin B. Wolfinger		Certiorari.
17	J. L.	Kate Foyle	W. P. Boyle		Certiorari.
18	Gates	W. Hayes et al	The Commonwealth		Certiorari.
19	J. L. L.	A. C. Watson et al	Smith Gray	P. D. & F.	Certiorari.
20	J. L. L.	Charles Culver	James Eagan	Harding, McGahren	Certiorari.
21	J. L. L.	Henry Bodmer	Martha Keegan	Harding, McGahren	Certiorari.
22	J. L. L.	John Hendricks et ux	Joseph A. Scranton	Mosier	Certiorari.
23	Gates	M. B. Houpt, Garnishee	Josiah Lewis		Certiorari.
24	J. L. L.	John Keeley	James Hughes		Certiorari.
25	J. L. L.	James McGinty et al	Peter Weitzel		Certiorari.
26	B. & N.		J. J. Smythe		Certiorari.
27					Certiorari.

COMMON PLEAS ARGUMENT LIST.

TUESDAY, MARCH 27, 1883.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
1	C. B. Jackson, Farnham	Seth B. Bowman	Daniel F. Seybert	Ricketts	For new trial.
2	Stark, Harding, Hahn	Ernest Schmalz	Patrick Mehan et al	Winchester, Robinson	For new trial.
3	Gates, N. B.	Henry A. Bates	Lehigh Valley Coal Co	Darlings, G. M. L.	For new trial.
4	Hahn	Charles Dougherty	Wesley Johnson et al	B. & N.	For new trial.
5	Hahn	Charles Redmer	G. B. Markle & Co	D. & A.	For new trial.
6	Kline, T.	John Gibbs, Assignee	Elias Smith et ux	MCL. & J.	For new trial.

TUESDAY, MARCH 27, 1883—CONCLUDED.

NO.	PLAINTIFFS' ATTORNEYS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
7	Brundage, Halsey	George Hughes et al	Harding, McG	For new trial.
8	Halsey	A. Frauenthal	Brundage	For new trial.
9	I. L. L.	Patrick Quinn	McGahren	For new trial.
10	Denn	B. Lynch	McGahren	Exceptions to Referee's report.
11	Martin	Kobuschild Bros.	R	Exceptions to Referee's report.
12	Patrick	Wm. N. Clark	Amerman	Exceptions to Referee's report.
13	Darlings	F. V. Rokatello, Adm'r.	McL. & J.	Exceptions to Referee's report.
14	Ryan	J. B. Sperring	T. H. B. L.	Exceptions to defendant's answer.
15	Ryman	Sallie P. Streater	Robinson	Exceptions to Auditor's report.
16	Farnham	In Re Assignment of	Miller	Exceptions to Auditor's report.
17	McLean	In Re Shif's S. of P. P. of	Darlings, Palmer	Exceptions to Auditor's report.
18	J. L.	In Re Shif's S. of R. E. of	Hahn	Exceptions to Auditor's report.
19	Harding	In Re Shif's S. of R. E. of	Hahn	To open judgment.
20	Farnham	James S. Slocum	Osborne	To open judgment.
21	Miller	In Re Assignment, Assignee	J. L.	To strike off appeal.
22	Miller	H. B. Payne, Assignee	Osborne	For attachment.
23	Richards, B. & N.	W. P. Kirkendall	T. F. W	To open judgment as to all except \$30.
24	E. A. L.	Township of Pittston	J. L.	To satisfy judgment.
25	E. A. L.	Helen Gruver	J. L.	To file account.
26	Darlings	Use of John M. Ward	J. L.	For alimony, &c.
27	R.	Patrick McCaun	Hahn	To strike off judgment.
28	Connollys	J. S. Sickler	McGahren	To enter appeal nunc. pro tunc.
29	Hahn	Henry Lutz, assigned	McGahren	To open judgment.
30	D. L. P.	E. W. Mundy	McGahren	To open judgment as to \$20.
31	McCartney	Hiram Swingle, Assignee	McGahren	To set aside sale.
32	S.	Hugh O'Boyle, Assignee	McGahren	To dissolve attachment.
33	McG	Howell & King	McGahren	To file amended declaration.
34	Richards	Elizabeth Haynes, Assignee	McGahren	To strike off non suit.
35	Hines		McGahren	To reinstate rule, &c.
36	Lenahan		Darlings	To open appeal.
37	O'Neill		Darlings	To enter judgment.
38	Palmer, Fuller		Darlings	To strike off appeal.
39	O', Halsey		Darlings	For inspection of record, &c.
40	E. A. L.		Darlings	To revoke affirmation.
41	Miller		Darlings	To open judgment.
42	Lynch		Darlings	For security for costs.
43	Lenahan		Darlings	
44	E. D. N.		Darlings	
45	R.		Darlings	
46	Payne		Darlings	
47			Darlings	
48			Darlings	

WEDNESDAY, MARCH 28, 1883.

37	Lenahan	Lehigh Valley R. R. Co.	Darlings	To file amended declaration.
38	O'Neill	Lehigh Valley R. R. Co.	Darlings	To strike off non suit.
39	Palmer, Fuller	S. Frauenthal	Darlings	To reinstate rule, &c.
40	O', Halsey	Henry Bornheim	Darlings	To open appeal.
41	E. A. L.	Dennis Breslin	Darlings	To enter judgment.
42	Miller	H. D. Benscoter	Darlings	To strike off appeal.
43	Lynch	Christopher Miers	Darlings	To strike off appeal.
44	Lenahan	Charles Behler	Darlings	For inspection of record, &c.
45	E. D. N.	John J. Edwards et ux	Darlings	To revoke affirmation.
46	R.	Joseph Baker	Darlings	To open judgment.
47	Payne	Andrew Miller, dec'd	Darlings	For security for costs.
48		Racine School Furnis'g Co	Darlings	

ORPHANS' COURT ARGUMENT LIST.

SATURDAY, MARCH 31, 1883.

- 1 In Re Estate of Thomas Montgomery, deceased
- 2 In Re Estate of Thomas Montgomery, deceased
- 3 In Re Estate of E. V. Kidder, deceased
- 4 In Re Estate of Peter Mill, deceased
- 5 In Re Estate of Lyman Hanny, deceased
- 6 In Re Estate of John Davis, deceased
- 7 In Re Estate of Benjamin Nulton, deceased
- 8 In Re Estate of Alexander Gray, deceased
- 9

- Lathrop, G., Darlings
- G., G. M. L., Darlings
- Payne, Wright, Sturges
- Payne, Wright, Sturges
- Payne, Hand
- Powell, Bedford
- R. C. S., Gates
- Ricketts, Butler

- Exceptions to final account of Executor.
- Exceptions to final account of Executor.
- Exceptions to final account of Trustees.
- Exceptions to final account of Guardian.
- Exceptions to final account of Guardian.
- Exceptions to final account of Guardian.
- Exceptions to report of Examiner.
- Exceptions to report of auditor.
- Exceptions to account of Alexander Gray, Executor.

ESTATE OF JOHN GILLESPIE, LATE OF Hazle township, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
JOHN D. HAYES, Administrator. 5-10

ESTATE OF MARTHA FAIRCHILD, LATE of Natick, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
BENNETT & NICHOLS, Administrator. 5-10

ESTATE OF ANTHONY MEYERS, LATE OF Hazleton, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
H. W. MEYERS, Administrator.
A. R. BRUNDAGE, Attorney. 5-10

ESTATE OF ANN MIDDLETON, LATE OF Plains township, deceased.
 Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
STEPHEN HEALEY,
RICHARD BURKE, Executors. 9-14
COONS & SHORTZ, Attorneys.

ESTATE OF JASPER B. STARK, LATE OF Wilkes-Barre, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
FRANCIS R. STARK,
E. P. & J. V. DARLING, Administratrix. 9-14
 Attorneys.

ESTATE OF JOSEPH STACKHOUSE, LATE OF Shickshinny, deceased.
 Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
JOHN W. CHAPIN, Executor. 9-14
I. P. HAND, Attorney.

ESTATE OF JOHN M. STACKHOUSE, LATE OF Shickshinny, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
JAMES POST, Administrator. 9-15
I. P. HAND, Attorney.

ESTATE OF JOHN MANGAN, LATE OF Pittston township, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
THOMAS MANGAN, Administrator. 9-14
F. C. MOSIER, Attorney.

ESTATE OF JOHN ORR, LATE OF FOSTER township, deceased.
 Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
ELIZABETH A. POLLOCK, Executrix. 9-14

NOTICE IS HEREBY GIVEN THAT AN application will be made under an Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved the 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Dixon Pulp and Paper Company," the character and objects of which are the manufacturing and preparing paper from wood pulp by chemical process, as well purchasing and selling the same, and also the leasing, purchasing, holding, and demising real and personal estate connected therewith.
ISAAC P. HAND, Solicitor. 9-11

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, March 10th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

1
Suit of the Empire Building and Loan Association v. John T. Walters.

158 April term, 1881. Debt, \$566.93. Fi. fa. 26 March term, 1883. D. S. Bennet, Att'y.

The surface of all that lot of land on the easterly side of Meade street, city of Wilkes-Barre, being 40 feet front on said street, and about 100 feet in depth, the rear end of said lot being bounded by a public alley: improved, with a two-story frame dwelling house, frame barn, outhouses, and fruit trees thereon.

2
Suit of Catharine Youngblut v. Ferdinand Youngblut.

63 March term, 1883. Debt, \$231.50. Fi. fa. 23 March term, 1883. D. S. Bennet, Att'y.

All that lot of land on Tannery street, city of Wilkes-Barre, bounded northerly by J. Youngblut, easterly by Johnson, southerly by A. Youngblut, and westerly by Tannery street, being about 50 feet front on said street, and 180 feet in depth: improved, with a 1½-story frame dwelling house, barn, outbuildings, and fruit trees thereon.

3
Suit of the Wyoming Building and Loan Association of Wilkes-Barre, No. 2, v. Peter Wallace, and Peter Wallace, Administrator, etc., of Hannah Mariah Wallace, deceased.

89 November term, 1882. Debt, \$750. Lev. fa. 6 March term, 1883. E. G. Butler, Att'y.

A lot in the city of Wilkes-Barre, beginning at a stone corner on Wood street, thence running back northeast along the line of Sanford E. Parsons 100 feet to a corner, thence along the line of Abraham Merrick and M. Wood southwest 40 feet to a corner on Wood street, thence along Wood street 45 feet to the place of beginning, containing about 5,275 square feet: all improved, with a large 2½-storied dwelling house, barn, and other outbuildings, and fruit trees thereon.

4
Suit of Aaron Brown v. George Coray.

136 May term, 1881. Debt, \$10,311.92. Lev. fa. 25 March term, 1883. Dickson & Atherton, Att'ys.

All the surface and right of soil in all that certain piece and parcel of land situate in the township of Kingston, Luzerne county, Pennsylvania, bounded and described as follows, to wit: Beginning at a corner on the main road running through said township, being also a corner of cross road; thence along said cross road, N. 33¼° W., 578 perches to stones corner in line of the mountain tier of the fourth division of said township; thence along said line, S. 43° W., 377-70 perches to a corner of purpart No. 5 in the partition of the real estate of Elijah Shoemaker, deceased, now belonging to the estate of Chas. D. Shoemaker, deceased; thence along said purpart No. 5, S. 33¼° E., 379 3-10 perches to a corner on the back road; thence S. 43° W., 18-10 perches to a corner; thence S. 33¼° E., along other part of purpart No. 5 aforesaid 2 3 perches to the main road aforesaid; and thence along said road, N. 35¼° E., 4 perches to the place of beginning; containing 140 acres of land, more or less: being the same premises conveyed to the said George Coray from Daniel Searle and John M. Stark by deed dated April 5, 1877.

Excepting, however, from this sale the following lots heretofore sold and released; the said lots are 50 feet front by 175 feet in depth. The place of record of deeds of said lots in Luzerne county Recorder's office is given, so far as the same are recorded. They are likewise designated on the ground: 1 lot to F. C. Piler, dated April 1, 1881; 1 lot to Mary Tighe, D. B. 288, p. 541, etc., 1 lot to A. Brown, dated October 25, 1881; 1 lot to R. C. Shoemaker et al.; 1 lot to William and Margaret McDowell, D. B. 227, p. 180; 1 lot to Patrick Rogers, dated October 25, 1881; 1 lot to Dan'l McAllister, D. B. 220, p. 153, etc.; 1 lot to James McQuade, D. B. 226, p. 84, etc.; 1 lot to John McDermott, dated October 26, 1881; 1 lot to William Jones, D. B.

229, p. 426, etc.; 1 lot to John McCarty, dated November 2, 1881; 1 lot to Thomas Manning, D. B. 216, p. 377, etc.; 1½ lots to John McEwen, or Owen, D. B. 224, p. 139, etc.; 1 lot to Catharine Nicols, D. B. 226, p. 292, etc.; 1 lot to Catharine Mann, or Naan, D. B. 227, p. 43; 1 lot to Patrick or Michael O'Brien, dated November 2, 1881; 1 lot to Mary Brown, dated October 25, 1881; 1 lot to Mrs. O'Boyle, dated October 25, 1881; 1 lot to John Roach, D. B. 228, p. 455, etc.; 1 lot to Rosanna McGovern, D. B. 227, p. 26; 1 lot to John McGarhart; 7 lots to James Hughes, 2 deeds, 1 for 2 lots, dated April 22, 1882, other for 5 lots, dated October 5, 1881; 1 lot to Michael Diver; 1 lot to John Sullivan; also 1 lot on back of lot towards mountain to Caleb S. Malthy of 50 acres, dated April 6, 1877, and recorded in D. B. 204, p. 201, etc.

The said land (not including that reserved) is improved, with one large farm house, six frame buildings, an apple orchard of 200 bearing trees, one large barn, and several outhouses thereon. About 20 acres altogether is laid out in building lots, about 55 acres of said land is good farming land, and about 15 acres is good timber for mining purposes.

5
Suit of Abram Fairchild v. Calvin Wadhams.

344 October term, 1882. Debt, \$1,857. Vend. ex. 11 March term, 1883. Hakes & Bennett, Att'ys.

1. The surface of parts of certified lots 14 and 15 in the first division of Wilkes-Barre township, being the whole of town lots 23, 24, 27, 28; two-thirds part undivided of 22, 29, and 30, located on Franklin and Main streets; also parts of two 15-foot alleys adjoining said lots 22 and 23, situate in the Fifteenth ward of the city of Wilkes-Barre; all improved.

2. Part of a 3-rod road in the city of Wilkes-Barre, bounded on the northwest by lots 1, 2, and 3 in the certified township of Wilkes-Barre, on the northeast by a part of said road, on the southeast by lots 13, 14, and 15 in said first division, and on the southwest by the Hanover township line, containing about 1½ acres of land.

3. The surface of a lot in the township of Wilkes-Barre, bounded on the northeast by Blackman street, and on the other three sides by lands of the Franklin Coal Company, being about 87½ feet in front on said street, and about 145 feet deep, with a 1½-story frame house thereon.

4. The two equal undivided thirds part of the surface of land not heretofore sold by Calvin Wadhams et al., in the city of Wilkes-Barre, beginning at a corner on the main road, thence by lands of the estate of Alex. McLean, deceased, 214 6-10 perches to a corner, thence 33 3-10 perches to a corner on line of Hanover township, thence along same 214 6-10 perches to a stone corner on the said main road, and thence by same 33 3-10 perches to the place of beginning, being a part of lot 21 in the third division of lots in certified Wilkes-Barre township; all improved.

6
Suit of Peter Seibel v. OSCAR F. GRINES and H. A. GAINES.

320 January term, 1883. Debt, \$218 72. Lev. fa. 12 March term, 1883. Miller, Att'y.

A lot of land in the borough of West Pittston, beginning at a corner of Luzerne avenue, thence along said avenue 50 feet to a corner, thence 230 feet to a corner on an alley, thence along said alley 50 feet to a corner thence 230 feet to the place of beginning, containing 11,500 square feet of land, more or less, being lot No. 997 on Luzerne avenue.

7
Suit of Samuel Van Loon v. Martin Brennan.

198 April term, 1881. Debt, \$122.52. Vend. ex. 5 March term, 1883. Magee, Att'y.

All that lot of land on Franklin street, in the borough of Plymouth, bounded on the southwest by Franklin street, on the southeast by land of A. J. Case, on the northeast by land of Lloyd W. Williams, and on the northwest by land of Ira Davenport, being 50 feet in front by 150 feet in depth; all improved, with a two-story frame dwelling house, with basement, and other outbuildings thereon.

8

Suit of the Anthracite Building and Loan Association of Wilkes-Barre, Pa., now in part to the use of Peter Ward, Administrator of the estate of James Ward, deceased, v. Daniel Sullivan.

166 November term, 1881. Debt, \$709.09. Fi. fa. 20 March term, 1882. O'Neill, Att'y.

A lot of land in the township of Wilkes-Barre, beginning at a point in the Blackman road on the line of Kidder street, thence along Kidder street 210 feet to a corner of lot No. 49, thence to the corner of lots Nos. 41 and 42, thence 210 feet to the line of the Blackman road, and thence along the Blackman road to the place of beginning, containing about 23,100 square feet of land, more or less, being lot No. 41 on plot of lots laid out by Ketcham et al.; all improved, with a frame dwelling and outhouses thereon.

9

Suit of Abram Goodwin, Jr., et al., Executors, etc., v. Elliott Aldrich, Administrator of George Cussey, deceased.

104 January term, 1880. Debt, \$596.44. Fi. fa. 4 March term, 1883. Powell, Att'y.

All that lot of land in the township of Plymouth, beginning at corner on old Ross Hill road and Mrs. Lydia Jones' lot, and running along said Mrs. Jones' lot northwesterly 100 feet to corner, thence by said Mrs. Jones' lot 40 feet to corner of said lot and line of land late belonging to John Gould, thence along said line northwesterly 153 feet or thereabouts to a 20-foot alley, thence along said alley 91½ feet to a corner, thence southeasterly 248¾ feet to said old Ross Hill road, and thence along said road southwesterly 50 feet to the place of beginning; all improved, and having erected thereon one two-story frame dwelling house and outbuildings, and fruit trees.

10

Suit of Ezra Stair v. Abraham Arnold and Elizabeth Arnold.

134 February term, 1883. Debt, \$206.25. Fi. fa. 14 March term, 1883. Cannon, Att'y.

Also three other suits of same amount.

All that lot of land in Slocum township, beginning at a stone planted for a corner in the middle of a public road, thence along the Christian Leuder estate and middle of said public road 39 2-10 perches to a stone corner of land of Josiah Jones, thence along land of the same 36 8-10 perches to a post, thence to a post in the public road, thence along said public road 51 2-10 perches to a stone corner, the place of beginning, containing 10 acres of land, more or less; all improved, with a two-story frame dwelling, a barn, and other outhouses, and blacksmith shop and fruit trees thereon.

ESTATE OF JOHN BLANCHARD, DEC'D.

In Orphans' Court of Luzerne county. In Re Petition of James Post and Joseph Blanchard, Administrators of said estate, for specific performance of contract with G. M. Wolf.

Now, 11th January, 1883, the court order citation to the parties interested and named in the petition to appear and show cause why the prayer of the petitioners shall not be granted, &c. BY THE COURT.

Certified from the records, this 15th day of February, 1883. JOSEPH HENDLER, Clerk O. C.

Per B. M. CRAVY, Ass't

In pursuance of the above order, notice is hereby given to Eveline Clark, Joseph Blanchard, John Robbins, Ada Robbins, Clarence Robbins, Mattie Robbins, William Robbins, Jackson Robbins, Caroline Post, Mariah Savage, and Martha A. Bisher, children and heirs of John Blanchard, deceased, and G. M. Wolf, to appear before Hon. D. L. Rhone, Judge of the Orphans' Court, to be held at Wilkes-Barre, Luzerne county, Pennsylvania, on Monday, the 12th day of March, 1883, at 10 o'clock A. M. of said day, to answer the said petition.

M. E. WALKER, Attorney.

7-9

JOHN F. EVERHART,
a student at law in the office of G. S. Ferris, will apply at March term, 1883, for admission to practice as an attorney in the several courts of the county of Luzerne.

50

ESTATES TO BE AUDITED BY THE

Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. George Klinger; Joseph McMurrie and Gideon

D. Klinger, Executors; 6th March, 1883

2. John Gross; Samuel Benner, Administrator; 6th March, 1883.

3. Benjamin Chandler; Abram C. Chandler and D. A. Reeves, Executors; 7th March, 1883.

4. M. L. Everett; Isaac Everett, Executor; 8th March, 1883.

5. James Casterline; Joseph Casterline, Administrator; 8th March, 1883.

6. Silas Callendar; Clark Callendar, Administrator; 9th March, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be barred from coming in upon said fund.

JOSEPH HENDLER, Clerk O. C.

7-9

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and, unless exceptions are filed, will be presented for final approval on Monday, the 5th day of March, 1883:

Robert Helm, Daniel Van Scoy, Thomas Hutchins, Samuel Wolf, James C. Howells, Wm. H. Sperring, and Hiram George, deceased.

JOSEPH HENDLER, Clerk O. C.

7-9

L UZERNE COUNTY, ss:

To all whom it may concern: Take notice that H. J. Seely and Peter Meikel, Trustees of the real estate conveyed by Christian Billhamer and wife to the German Presbyterian and Lutheran Churches of Salem, have applied to the Court of Common Pleas of Luzerne county for an order to sell said property, and that all persons interested may be heard before said court on Monday, March 12, 1883, at 10 o'clock A. M. By order of the court.

Q. A. GATES, Attorney.

8-10

NOTICE IS HEREBY GIVEN THAT AN

application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Hazleton Coffin and Casket Company," the character and objects of which are the manufacture of and dealing in coffins, caskets, and undertakers' supplies, and materials of all kinds, and the manufacture of and dealing in all kinds of wood work, cabinet, carpenter, and building material.

GEO. H. TROUTMAN, Solicitor.

7-9

NOTICE IS HEREBY GIVEN THAT AN

application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "The Excelsior Cornet Band," of West Pittston, the character and objects of which are the practice and promotion of music.

F. C. MOSIER, Solicitor.

8-10 7-9

ORPHANS' COURT SALE.

Estate of Catharine Stout, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, at the Arbitration room, Court House, at Wilkes-Barre, on Saturday, March 10, 1883, at 10 o'clock A. M., all that piece of land in Salem township, bounded northerly by the Pennsylvania Canal, easterly by lands of Catharine Stukey and Daniel Brobst, southerly by the Susquehanna river, and westerly by lands of Josiah F. Beach, now James Lockard, containing one acre, more or less, improved, with two 1½-story frame dwelling houses and other small outhouses thereon, also some fruit trees.

TERMS OF SALE—\$50 cash down on day of sale, and the balance of purchase money on confirmation of sale and delivery of deed.

T. R. MARTIN, Attorney.
WESLEY RABERT, Administrator. 7-9

ORPHANS' COURT SALE.

Estate of James Gallagher, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, on the premises, at Hazleton, on Thursday, the 15th day of March, 1883, at 2 o'clock P. M., all that lot of ground in the borough of Hazleton, which originally consisted of two lots of ground, bounded and described as follows:

The one lot is on the southwest corner of Wyoming and Maple streets, containing in breadth or front on said Wyoming street 30 feet, and extending of that breadth in length or depth along the south side of Maple street 190 feet to a 20-foot wide street.

The other is on the west side of Wyoming street, commencing at a distance of 120 feet northward from the north side of Green street, containing in front or breadth on said Wyoming street 30 feet, and extending of that breadth in length or depth westward 190 feet to a 20-foot wide street.

Both the lots being contiguous, and to be sold as one lot, being 60 feet in front or breadth, and 190 feet in depth or length. All improved, with a two-story frame dwelling house and outbuildings thereon.

TERMS OF SALE—20 per cent cash, and the balance on confirmation.

JAMES F. GALLAGHER, Administrator. 7-9

ORPHANS' COURT SALE.

Estate of Lewis Weidenbach, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in Hazleton, on Saturday, March 10, 1883, at 2 o'clock P. M., a lot of ground on the south side of West Broad street, in the borough of Hazleton, bounded on the north Broad street, on the east by lot of Susan E. Bright, on the south by Mine street, and on the west by lot of F. Lauderburn, containing in front on said Broad street 29 feet and 4 inches, and extending of this width back to Mine street 150 feet; upon which is erected a two-story frame building, used as a store by Powell Brothers & Harris, together with joint use of chimney situate on the division line of said property on the east, and to remain unchanged as long as buildings are unchanged.

TERMS OF SALE—25 per cent cash on day of sale, 25 per cent on confirmation of sale, and the balance in six months from day of sale; to be secured by bond and mortgage, with interest.

C. W. KLINE, Attorney.
JOHN G. SEAGER, Adm'r d. b. n. c. t. a. 7-9

ORPHANS' COURT SALE.

Estate of Thomas Hutchins, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Terra Cotta Works, in Wyoming village, on Friday, March 16th, 1883, at 10 o'clock A. M., the following described real estate, viz:

1. All those messages and tracts of land (the surface thereof) in the village of Wyoming, Kingston township, bounded and described as follows, to wit:

(1) Beginning at a corner of land of Isaac C. Shoemaker, thence along said Shoemaker's land from the north rail of the Lackawanna and Bloomsburg Railroad 14 rods and 32 links to a corner on land of William S. Shoemaker, thence along the said lands of William S. Shoemaker 15 rods to a corner, thence along lands of William S. Shoemaker 19 rods and 9 links to a corner at the north rail of the said Lackawanna and Bloomsburg Railroad Co., thence down said railroad 15 rods and 1 link to a corner, the place of beginning, containing 1 acre and 96 perches of land, more or less.

(2) Beginning at a corner of land of Thos. Hutchins, deceased, and Isaac C. Shoemaker, thence 3 rods to a corner, thence 14 rods and 14 links to a corner, thence 1 rod and 2 links to a corner on said Hutchins' land, thence 15 rods to a corner, the place of beginning, containing 30 perches of land, more or less.

(3) Beginning at a corner of land of Thos. Hutchins, deceased, at north rail of the Lackawanna and Bloomsburg Railroad, thence along land of the said Hutchins and W. S. Shoemaker 17 rods and 22 links to a corner, thence 4 rods to a corner, thence 11 rods and 3 links to a corner, thence 14 rods and 10 links to land of Lawrence Myers, being the Commissioners' line between lots Nos. 35 and 36, third division of Kingston township (18 feet in width along the northwest side to remain in Isaac C. Shoemaker for a right of way only), thence 6 rods to the north rail of the Lackawanna and Bloomsburg Railroad Company, and thence along the said railroad 14 rods and 10 links and 4 rods to the place of beginning, containing 156 perches of land.

(4) Beginning on the east corner of the Lackawanna and Bloomsburg Railroad Company's depot lot, at the north rail of said railroad, thence 6 rods to a corner, thence 17½ rods to a corner near a linden tree on land of Lawrence Myers, thence 11 rods to the line of the Lackawanna and Bloomsburg Railroad, and thence down said railroad 7½ rods to the place of beginning, containing 74 perches of land, more or less; 18 feet on the northwest side of the last mentioned lot being reserved by Isaac C. Shoemaker for a right of way; and reserving all the coal and other minerals; and having erected thereon a terra cotta manufactory.

2. Being the premises on Careytown road, city of Wilkes-Barre, beginning at a corner of Patrick Wallgar's lot, and running back at right angles with said road 147 feet to a corner, thence on a line parallel with said road 50 feet to a corner, thence on a straight line parallel with the first 147 feet to a corner on said road, thence up along said road 50 feet to the place of beginning, containing one-quarter of an acre of land, more or less; and having a two-story frame dwelling house and outbuildings thereon.

3. Being the premises in the borough of West Pittston, beginning at a point on Philadelphia avenue at a distance of 50 feet southeastwardly from Fifth street, and extending southwestwardly at right angles to said avenue the distance of 200 feet to Atlantic street, thence southeastwardly along said Atlantic street 50 feet, thence northeasterly at right angles to Atlantic street 200 feet to Philadelphia avenue aforesaid, and thence northwesterly along said avenue 50 feet to the place of beginning; the said lot being No. 70, Philadelphia avenue; reserving all the fossil or mineral coal, iron, or other ores.

TERMS OF SALE—10 per cent on day of sale, 15 per cent on confirmation of sale, and the balance (75 per cent) one year from sale, with interest from day of sale; deferred payments to be secured by bond and mortgage on the premises.

R. H. HEITZ,
R. H. HUTCHINS, Administrators.
McLEAN & JACKSON, Attorneys. 8-10

ESTATE OF JOHN BARNEY, LATE OF THE

borough of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE BARNEY, Administratrix. 6-11

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 30th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Wyoming Accidental Insurance Company," the object of which is to insure workmen of all classes against accidents while at work.

W. H. HINES,
Solicitor.

7-9

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Consumers Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding, and demising real and personal estate connected therewith.

E. P. & J. V. DARLING,
Solicitors.

8-10

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 16, November term, 1882. Libel in divorce a vinculo matrimonii. James Henderson v. Catharine Henderson. To Catharine Henderson—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the original and alias subpoenas having failed on account of your absence. Returnable on Monday, 5th March, 1883, at 10 o'clock A. M.

ALFRED DARTE, Jr.,
Solicitor.

8-9

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 52, November term, 1882. Libel in divorce a vinculo matrimonii. Mary J. Morgan, by her next friend, David Maxey, v. David C. Morgan. The alias subpoena in the above case having been returned non est inventus, you, the said David C. Morgan, are hereby notified to appear at said court, on Monday, March 5, 1883, at 11 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
GEO. H. TROUTMAN, Solicitor.

6-9

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 597, October term, 1882. Libel in divorce a vinculo matrimonii. Hannah Barker, by her next friend, William Kitching, v. Francis Barker. The alias subpoena in the above case having been returned non est inventus, you, the said Francis Barker, are hereby notified to appear at said court, on Monday, the 5th day of March, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
EDWARD A. LYNCH, Solicitor.

6-9

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the personal property of LeGrand & Boyer, will attend to the duties of his appointment, at the office of Alexander Farnham, Esq., on Franklin street, in the city of Wilkes-Barre, on Wednesday, the 14th day of March, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

R. D. EVANS,
Auditor.

7-10

52

AUDITOR'S NOTICE.

Estate of Elias Hoyt, dec'd. The undersigned, an Auditor, appointed to report upon the exceptions to the account of Executor, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Saturday, March 24th, 1883, at 10 A. M.

G. R. BÉDFORD,
Auditor.

8-11

ESTATE OF REV. CHAS. A. MATTINGLY, late of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REV. THOMAS J. RAY,
REV. TIMOTHY J. DONOHUE,
Executors.

6-11

ESTATE OF JULIA McNULTY, LATE OF Wilkes-Barre township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ALICE McNULTY, Administratrix.
E. P. & J. V. DARLING, Attorneys.

8-13

ESTATE OF W. S. HILLARD, LATE OF THE city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RUTH B. HILLARD, Executrix.
E. G. BUTLER, Attorney.

8-13

ESTATE OF JOSEPH SCHAPPERT, LATE of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY ANN SCHAPPERT,
JACOB SCHAPPERT,
Executors.

8-13

ESTATE OF MICHAEL STEIN, LATE OF Dorrance township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

GEO. H. HINKLEMAN,
Executor.

7-12

ESTATE OF ELIZA BOWERS, LATE OF Wyoming, Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM HANCOCK,
Executor.

8-14

ESTATE OF ELIZABETH CONNELL, LATE of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. A. COLLIER,
JOHN H. MULLIN,
Executors.
F. C. MOSIER, Attorney.

5-10

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, MARCH 9, 1883.

No. 10.

Agib Ricketts was born in Orangeville, Columbia county, Pennsylvania, in 1833. He is the son of the late Elijah Green Ricketts, an old settler of Columbia county, and is of English and Scotch extraction. In his young days he entered Wyoming Seminary, after which time he taught school in his native place, subsequently graduating at Dickinson College, at Carlisle, Pa. He then entered the law office of William G. Hurley, at Bloomsburg, and was admitted to the bar of Columbia county in 1856, and on the 6th of January, 1857, was admitted to the bar of Luzerne county, where he has been in continual practice since.

On May 17, 1862, Mr. Ricketts was appointed Chief of Police of the borough of Wilkes-Barre. It was during his term in this office that he arrested the late Hon. Ezra B. Chase, at one time Speaker of the House of Representatives of Pennsylvania, and at that time District Attorney of the county; Ira Davenport, a prominent merchant of Plymouth, and Geo. B. Kulp. Speaking from personal knowledge, the writer, as one of the persons arrested, has never learned the cause of his arrest, although more than twenty years have passed since the event. Mr. Ricketts claimed that it was by virtue of the following order of the War Department:

August 8, 1862.

Ordered, that all . . . Chiefs of Police of any town, city, or district, be and they are hereby authorized and directed to imprison any person or persons who may be engaged by any act of speech or writing in discouraging volunteer enlistments, or in any way giving aid and comfort to the enemy, or any other disloyal practice against the United States.

EDWIN M. STANTON,
Secretary of War.

Messrs. Chase, Davenport, and Kulp were arrested on Friday evening, August 29, 1862. They applied next day before Judge Conyngham for a writ of *habeas corpus*. Mr. Ricketts claimed until the following Wednesday for time to make answer, when he quoted the above order as his justification. Judge Conyngham remanded the prisoners to the custody of the Sheriff, claiming that the President had suspended the writ of *habeas corpus*, when, as a matter of fact, Congress had not passed the act authorizing the President to suspend the writ, until March 3, 1863. The following are the words of the law enacted at the last named date :

“That during the present rebellion the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of *habeas corpus* in any case throughout the United States, or any part thereof.

It was estimated that over four thousand persons were arrested during the month of August, 1862, but the exact number was never given, as the War Department issued an order “that the names of parties arrested should not be published.” The arrest of the persons named caused great excitement and indignation, and led to the resignation of Mr. Ricketts as Chief of Police, as appears from the following letter of his to the Town Council :

WILKES-BARRE, *October 17, 1862.*

Gentlemen of the Town Council: You will please accept my resignation of the position of Chief of Police of this borough. Having been told by members of your body that they considered me incompetent to discharge the duties of the office with proper judgment, and requested, therefore, to resign, it would be presumption to retain it. It was impossible to resign at once in obedience to this request, as it would have then seemed disloyal and a shrinking from grave duty, but now recent action of the War Department has removed this difficulty. Permit me to return grateful thanks to those of you who have sustained me so manfully in the discharge of my duty.

Respectfully,

A. RICKETTS.

During the three days, from Wednesday until Saturday, that Messrs. Chase, Davenport, and Kulp were under arrest, they

amused themselves in the following manner: Mr. Chase in visiting Camp Luzerne, at Mill Hollow, where the 143d Regiment Pennsylvania Volunteers were encamped, and in assisting Col. Hannum in editing the *Luzerne Union*; Mr. Davenport in visiting friends and relatives in Wilkes-Barre; and the writer in visiting Scranton, Pittston, and other places in the valley. On Saturday morning they came to the conclusion that the whole matter was a farce, and they returned to their respective places of business, and that was the last they ever heard of the arrest. As almost every Chief of Police in the United States had arrested from three to five men under similar circumstances, it became necessary for the War Department to issue the following order:

September 8, 1862.

Arrests for violations of these orders and for disloyal practices will hereafter be made only upon my express warrant, or by direction of the Military Commander or Governor of a State.

Because of the arrests by the Chiefs of Police throughout the North, the Democratic party carried the States of New Jersey, New York, Pennsylvania, Ohio, Indiana, and Illinois in 1862, and after that time very few arrests of citizens were made,

During the Antietam campaign, Mr. Ricketts was Captain of Company I, Third Regiment Pennsylvania Volunteers. He left for the seat of war on September 13, 1862, and remained in the service about three weeks.

In 1878 Mr. Ricketts presented a petition to the Legislature of Pennsylvania for the impeachment of the late Hon. Charles P. Waller, President Judge of Wayne county, and in 1879 for the impeachment of Hon. Garrick M. Harding. It is needless to say that none of the charges alleged as cause for impeachment were sustained.

In 1880 he was the Independent or Labor Reform candidate for Additional Law Judge of Luzerne county. In a total poll of nearly 25,000 votes, he received 470.

In 1862 Mr. Ricketts married Annie Piper, of Carlisle, Pa. The couple have a family of five children, two sons and three daughters.

It is not the purpose of the writer of these papers to carp or criticise. Any attempt in that direction in the case of the gen-

tleman whose biography is above briefly outlined would be construed as prompted by a desire for revenge, arising out of the circumstances of the arrests that have been alluded to, but we can honestly say that we entertain no such desire. Nevertheless, we feel that our task would be far from complete, our outlinings of the characters and records of our brothers of the legal fraternity of Luzerne much short of accuracy, were we to refrain, even in this case, from the general summarizing with which all the previous sketches have ended.

Agib Ricketts is manifestly a man of great natural ability. He is a student of wonderful industry. He has been a great reader, not only in the field of jurisprudence, but of general literature; is a ready and concise writer, and an excellent speaker; has a remarkable memory, and a moral and physical courage that make him wholly insensible to fear. Yet there is an erratic something that has always stood between him and success in his profession and in general life; that has resulted in his being distanced by men of far less capacity, and far fewer of the qualities that usually achieve the victories of the professional arena, and that has caused him to net a much narrower margin of material gain than would seem to be the legitimate earnings of such exceptional talents and energies as he undoubtedly possesses. He will quote the law of Moses against the Jew; will cite the teachings of Christ to correct the erring Christian; has, seemingly, a formidable array of the best authorities in support of every position he assumes; but very often they are like symmetrical and beautiful arches, perfect in every particular, saving only that they have a defective keystone.

Personally, Mr. Ricketts is all that a gentleman should be under ordinary circumstances. He is a delightful companion to those with whom he has had no cause of contention. It is only when his apparently irresistible inclination to exaggerate his own grievances or those of his clients is upon him, that he is led into unfairness and injustice to his fellows—to the effort for the incarceration of the innocent citizen, and the pulling down of the unoffending judge.

The family of Wadham had its origin in Devonshire, England, and its name from the place of its residence, Wadham, which signifies "home by the ford," in the parish Knowston, near the incorporated town of South Molton. Lyson, in his "Magna Brittanica," says: "The manor of Wadham, at the time of the Domesday survey, in 1086, belonged to an old Saxon by the name of Ulf, who held it in demesne since the time of Edward the Confessor, 1042. It was not improbable that he, Ulf, might be the ancestor of Wadham, of which this was the original residence. William De Wadham was freeholder of this land in the time of King Edward I., 1272, and both East and West Wadham descended in this name and posterity until the death of Nicholas Wadham, founder of Wadham College, Oxford, in 1609, when it passed to his sisters' families, and is still in possession of their descendants. Merrifield, in Somersetshire, came into possession of Sir John Wadham, Knight, by his marriage with Elizabeth, daughter and heir of Stephen Popham, and was inherited by their son, Sir John Wadham, whose descendants were called 'Wadham, of Merrifield.' The principal places of residence of this family in England were in the counties of Devon, Somerset, and Dorset."

Calvin Wadhams, the subject of this sketch, is a native of Plymouth, in Luzerne county, where he was born, December 14, 1833. He is a descendant of John Wadham, or Wadhams, as the name is now spelled, who came from Somersetshire, England, as early as 1650, and settled in Wethersfield, Conn., as may be seen from deeds of purchase of lands and other records of the town. He died there, 1676.

John Wadhams, son of John, born July 8, 1655, also died in Wethersfield.

Noah Wadhams, son of John, was born August 10, 1695, and removed from Wethersfield to Middletown, Conn., in 1736, thence to Goshen, Conn., about 1773, where he died, 1783.

Noah Wadhams, son of Noah, was born May 17, 1726, and was educated at the College of New Jersey, now at Princeton, then at Newark, N. J., where he graduated. His diploma, dated

September 25, 1754, is now in possession of the above-named Calvin Wadhams, his great-grandson. It bears the name of Rev. Aaron Burr (father of Aaron Burr, who was, in 1801, Vice-President of the United States) as President of the College. "The document is the surviving witness of three generations past and gone, and a testament, also, of the times of George III., and when the present State of New Jersey was one of the colonies of his realm." Mr. Wadhams studied theology at New Haven, Conn., receiving the degree of A. M. from Yale College, 1758. He was ordained a minister of the Congregational Church, and settled as the first pastor of the New Preston Society, in the towns of New Milford and Washington, Conn., at its organization, in 1757, and continued his pastoral relations to that society for eleven years. At a meeting of the Susquehanna Company, in Connecticut, in 1768. "the standing committee was directed to procure a pastor to accompany the second colony, called the 'first forty,' for carrying on religious worship and services, according to the best of his ability, in the wilderness country," and Rev. Noah Wadhams was chosen for that purpose. He had married Elizabeth Ingersoll, of New Haven, November 8, 1758, and they had a family of small children. "Leaving his family at their home in Litchfield, he embarked with his flock in 1769, amid the perils which lay before them on the distant shore of the Susquehanna, in a wilderness made more forbidding because of the savage people who were in possession of the valley." He continued his pastoral relations, interrupted by an occasional visit to his family in Litchfield, until the year succeeding the Wyoming Massacre, when he removed them to Plymouth. There he faithfully pursued his religious duties, holding meetings in Plymouth and other and distant parts of the county, during the remainder of his life. He died May 22, 1806.

Calvin Wadhams, son of Rev. Noah, was born December 22, 1765. He was one of the prominent business men of the county, and his success was remarkable. In frugality and industry, he was a genuine type of the men of his time, and his labor, economy, and good judgment made up the rule of his long and prosperous life. He was a religious man, whose charity and hospitality were all embracing. He married, February 10, 1791,

Esther Waller, of Connecticut, and he died April 22, 1845, aged eighty years.

Samuel Wadhams, son of Calvin, and father of the subject of this sketch, was born in Plymouth, August 21, 1806. He inherited largely the energy, character, and views of his father; was a man of good business qualities, even tempered, and of friendly disposition. He married, April 7, 1824, Clorinda Starr Catlin, of New Marlboro, Mass., and he died, December 15, 1868, as he had lived, an upright and worthy Christian member of society.

The subject of this sketch graduated at the College of New Jersey (Princeton) in 1854, exactly one hundred years after his great-grandfather graduated from the same institution. He studied law with Hon. L. D. Shoemaker, and was admitted to the bar April 6, 1857. He married, October 8, 1861, Fanny D. Lynde, a native of Wilkes-Barre, daughter of John W. Lynde, a native of Putney, Vt. Her maternal grandfather was Capt. Josiah Cleveland, of Revolutionary memory. They have had four children, Mary Catlin, Lynde Henderson, Frank Cleveland, all of whom are now deceased, and Raymond Lynde, who was born September 25, 1872.

Mr. Wadhams is one of the oldest members of the Wyoming Historical and Geological Society, having been elected during the first year of its existence, on the 6th of September, 1858. He was chosen its Secretary in 1861, and served for eleven years, with the exception of two years, when he was Corresponding Secretary. At the annual meeting, February 11, 1873, he was elected President of the society, and served for one year, with efficiency.

Mr. Wadhams was one of the incorporators and first managers of the Wilkes Barre Hospital, and took an active part in the direction which brought about its present success.

As a memorial to their deceased children, Calvin Wadhams and Fanny, his wife, erected Memorial Church, one of the principal church edifices in Wilkes-Barre, at a cost of \$125,000. Their object in so doing is fully set forth in the following extract from the deed conveying the property:

WHEREAS, Mary Catlin Wadhams, who was born July 20, 1862, and who died January 16, 1871; Lynde Henderson Wadhams,

who was born April 8, 1864, and who died February 9, 1871; and Frank Cleveland Wadhams, who was born May 7, 1868, and who died January 14, 1871, were all children of Calvin Wadhams and Fanny D. L. Wadhams, and were taken away by death early in life, leaving their parents at the time childless. And the said Calvin Wadhams and Fanny D. L. Wadhams desiring to commemorate the brief lives of their children, and feeling accountable as parents, not only for the influence exerted by their children while on earth, but for the perpetuation of good influences after they have gone to their reward, and anxious to do some act as representing the good works which they hoped of and from their children had the latter attained mature years, have erected in the city of Wilkes-Barre a church for the worship of Almighty God, intended as a house of prayer for all people.

And in connection therewith a congregation was gathered and a church organization duly effected, February 24, 1874, the membership numbering forty-two.

In the fall of 1870 Mr. Wadhams organized a Sunday-school in the upper part of town, which rapidly increased in membership, and at the organization of the church became attached thereto, he remaining Superintendent a number of years.

The work on the church was begun on Tuesday, May 21, 1872, and on Saturday, July 20, same year, the tenth anniversary of Mary Catlin Wadhams' birth, the corner-stone was laid with appropriate religious services. The motives actuating Mr. and Mrs. Wadhams in erecting this church are very clearly expressed in a paper which was read on the occasion of the laying of the corner-stone.

These children were not permitted to live long enough to exert much influence for good in the world. We, therefore, desire to enlarge that influence by erecting this edifice for the worship of God. We feel that as our children can no more speak for Jesus here, they may have a representative to do it for them; and as they cannot go about doing good, the money that would have been theirs may be profitably spent in getting others to go about doing good for them.

The church was publicly dedicated to the worship of Almighty God April 8, 1874, the tenth anniversary of the birth of Lynde Henderson Wadhams. Mr. Wadhams formerly presented the church to the Board of Trustees, by whom it was accepted, subject to the following conditions:

1st. That the same shall be kept and maintained as a place for the worship of Almighty God agreeably to the principles of the Presbyterian Church in the United States of America in its doctrines, ministry, forms, and usages. 2d. That the same shall be used only for religious purposes, and shall not be used for any secular purpose whatever. 3d. That said Memorial Church shall keep and maintain the buildings and premises in thorough order and repair. 4th. That the buildings and furniture be kept reasonably insured. 5th. That every tenth pew in the church edifice shall remain forever free, and shall not be liable to any charge or assessment for any purpose whatever. 6th. That the said Memorial Church, in case of the death or inability of the said grantors, shall keep in thorough order the lot in Hollenback Cemetery in which lie buried the said three children of the said Calvin Wadhams and Fanny D. L. Wadhams, his wife.

On May 7, 1874, the sixth anniversary of the birth of Frank Cleveland Wadhams, the first pastor was installed.

Many of Mr. Wadhams' relatives are and have been well and favorably known, some of them as occupants of important positions in this and other parts of the country. Hon. E. C. Wadhams, late State Senator for this district, is a brother; Hon. L. D. Shoemaker, ex-Congressman, a brother-in-law, and Sam F. Wadhams, one of the young members of the Luzerne bar, a nephew. The late Moses Wadhams, Esq., of this city, was also a brother. Rt. Rev. Edward Prindle Wadhams, Bishop of the Diocese of Ogdensburg, is also a relative.

Mr. Wadhams had an attack of paralysis in May, 1882, from which he has never wholly recovered. Previous to that time he was an active business man and enterprising citizen, solicitous for the city's welfare, and never loth to contribute of his means and time and effort to advance its interests.

It is needless to add to the facts above detailed, that he is a man of most generous impulses. What he gave away for good purposes, out of the great charity of his heart, when he was wealthy, would have left him still so, had it been retained by him. He works now in his profession, not much as an advocate, but industriously as an office lawyer, seemingly not at all embarrassed or hindered in any way by an eyesight so defective that it compels him almost to bury his head in the paper he is reading, or on which he is writing. He has many friends, and just

enough enemies to affirm his possession of that quality of self-respect without which a man is not a man.

Court of Common Pleas of Luzerne County.

THE LEWISBURG NATIONAL BANK *v.* BROADHEAD.

Affidavit of defense—Warranty in sale of chattels—Check.

1. Any defense which would be good against the payee of a check is good against his agent, to whom it had been indorsed merely for the purpose of collection.
2. An averment in an affidavit of defense that the defendant is informed and believes this to be the fact, and that he expects to be able to prove the same, is sufficiently certain.

Rule for judgment for want of a sufficient affidavit of defense.

The opinion of the court was delivered November 27, 1882, by

RICE, P. J.—The affidavit of the defendant avers an express warranty for the horses, for which the check in suit was given in part payment, a breach of the warranty, and damages to the amount of one hundred and seventy-five dollars. As against the payee in the check, this constitutes a complete *prima facie* defense. An express warranty being averred, it was not incumbent on the defendant to aver that he did not purchase on inspection. It is also beyond question that any defense which would be good against the payee of the check, would be good against the payee's agent, to whom it had been indorsed merely for the purpose of collection. The defendant swears that "he is informed and believes" this to be the fact, "and expects to be able to prove" the same. Under the authorities, this averment is sufficiently certain. *Black v. Halstead*, 3 Wr. 64; *Thompson v. Clark*, 6 Sm. 33; *Reznor v. Supplee*, 31 Sm. 180; *Moeck v. Littell*, 1 Nor. 354.

The rule is discharged.

D. L. O'Neill, Esq., for plaintiff.

John McGahren, Esq., for defendant.

ORPHANS' COURT SALE.

Estate of Thomas Hutchins, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Terra Cotta Works, in Wyoming village, on Friday, March 16th, 1883, at 10 o'clock A. M., the following described real estate, viz.:

1. All those messages and tracts of land (the surface thereof) in the village of Wyoming, Kingston township, bounded and described as follows, to wit:

(1) Beginning at a corner of land of Isaac C. Shoemaker, thence along said Shoemaker's land from the north rail of the Lackawanna and Bloomsburg Railroad 14 rods and 32 links to a corner on land of William S. Shoemaker, thence along the said lands of William S. Shoemaker 15 rods to a corner, thence along lands of William S. Shoemaker 10 rods and 9 links to a corner at the north rail of the said Lackawanna and Bloomsburg Railroad Co., thence down said railroad 15 rods and 1 link to a corner, the place of beginning, containing 1 acre and 96 perches of land, more or less.

(2) Beginning at a corner of land of Thos. Hutchins, deceased, and Isaac C. Shoemaker, thence 3 rods to a corner, thence 14 rods and 14 links to a corner, thence 1 rod and 2 links to a corner on said Hutchins' land, thence 15 rods to a corner, the place of beginning, containing 30 perches of land, more or less.

(3) Beginning at a corner of land of Thos. Hutchins, deceased, at north rail of the Lackawanna and Bloomsburg Railroad, thence along land of the said Hutchins and W. S. Shoemaker 17 rods and 22 links to a corner, thence 4 rods to a corner, thence 11 rods and 3 links to a corner, thence 14 rods and 10 links to land of Lawrence Myers, being the Commissioners' line between lots Nos. 35 and 36, third division of Kingston township (18 feet in width along the northwest side to remain in Isaac C. Shoemaker for a right of way only), thence 6 rods to the north rail of the Lackawanna and Bloomsburg Railroad Company, and thence along the said railroad 14 rods and 10 links and 4 rods to the place of beginning, containing 156 perches of land.

(4) Beginning on the east corner of the Lackawanna and Bloomsburg Railroad Company's depot lot, at the north rail of said railroad, thence 6 rods to a corner, thence 17½ rods to a corner near a linden tree on land of Lawrence Myers, thence 11 rods to the line of the Lackawanna and Bloomsburg Railroad, and thence down said railroad 7½ rods to the place of beginning, containing 74 perches of land, more or less; 18 feet on the northwest side of the last mentioned lot being reserved by Isaac C. Shoemaker for a right of way; and reserving all the coal and other minerals; and having erected thereon a terra cotta manufactory.

2. Being the premises on Careytown road, city of Wilkes-Barre, beginning at a corner of Patrick Wallgar's lot, and running back at right angles with said road 147 feet to a corner, thence on a line parallel with said road 50 feet to a corner, thence on a straight line parallel with the first 147 feet to a corner on said road, thence up along said road 50 feet to the place of beginning, containing one-quarter of an acre of land, more or less; and having a two-story frame dwelling house and outbuildings thereon.

3. Being the premises in the borough of West Pittston, beginning at a point on Philadelphia avenue at a distance of 50 feet southeastwardly from Fifth street, and extending southwestwardly at right angles to said avenue the distance of 200 feet to Atlantic street, thence southeastwardly along said Atlantic street 50 feet, thence northeasterly at right angles to Atlantic street 200 feet to Philadelphia avenue aforesaid, and thence northwestwardly along said avenue 50 feet to the place of beginning; the said lot being No. 70, Philadelphia avenue; reserving all the fossil or mineral coal, iron, or other ores.

TERMS OF SALE—10 per cent on day of sale, 15 per cent on confirmation of sale, and the balance (75 per cent) one year from sale, with interest from day of sale; deferred payments to be secured by bond and mortgage on the premises.

R. H. WEIR,
R. H. HUTCHINS,Administrators.

McLEAN & JACKSON,
Attorneys.

8-10

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Consumers Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding, and demising real and personal estate connected therewith.

E. P. & J. V. DARLING,

8-10

Solicitors.

NOTICE IS HEREBY GIVEN THAT AN application will be made under an Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved the 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Dixon Pulp and Paper Company," the character and objects of which are the manufacturing and preparing paper from wood pulp by chemical process, as well purchasing and selling the same, and also the leasing, purchasing, holding, and demising real and personal estate connected therewith.

ISAAC P. HAND,

9-11

Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, March 26, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Pittston Cornet Band," the character and objects of which are the practice and promotion of music.

F. C. MOSIER,

10-12

Solicitor.

IN THE ORPHANS' COURT OF LUZERNE county. In Re Estate of Andrew Montanye, deceased. Now, March 5th, 1883, rule is granted to show cause why Geo. B. Kulp, Trustee, should not be discharged. Returnable the 31st day of March, 1883, at 10 o'clock A. M.

10-12 BY THE COURT.

IN THE ORPHANS' COURT OF LUZERNE county. Rule for discharge of Executor. Now, March 8, 1883, on filing within petition and affidavit, and on motion of C. B. Gardner, attorney for petitioner, a rule is granted to show cause why E. C. Silvius, Executor, etc., shall not be discharged as prayed for. Ten days' notice to be given to all interested parties living in Luzerne county, and said notice to be also inserted in the Luzerne Legal Register and Union-Leader for three weeks before making said application. Returnable March 31, 1883.

10-12 BY THE COURT.

JOHN F. EVERHART, a student at law in the office of G. S. Ferris, will apply at March term, 1883, for admission to practice as an attorney in the several courts of the county of Luzerne.

8-10

CHARLES A. REED, a member of the Supreme Court of New Jersey, will apply for admission on March 26, 1883, to practice as an attorney in the several courts of the county of Luzerne.

10-12

LUZERNE COUNTY, ss: In Re Assignment of J. A. Wood for the benefit of creditors. Notice is hereby given that Charles A. Jones, Assignee, has exhibited and filed a final account as such Assignee, which account will be confirmed and allowed on the 31st day of March, 1883, unless cause is shown to the contrary.

JAMES M. NORRIS,
Prothonotary.

16-12

ESTATE OF THOMAS W. JONES, LATE OF
Hanover township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REESE J. JONES,
JANE JONES,

G. H. R. PLUMB,
Attorney. Administrators. 10-15

ESTATE OF ELIZABETH CONNELL, LATE
of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. A. COLLIER,
JOHN H. MULLIN,

F. C. MOSIER,
Attorney. Executors. 5-10

ESTATE OF JAMES DOLAN, LATE OF THE
township of Plains, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PHILIP McANIFF,

M. CANNON,
Attorney. Executor. 10-15

ESTATE OF EDGAR GREEN, LATE OF THE
township of Franklin, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ISAAC SUTTON,

PALMER, DEWITT & FULLER,
Attorney. Executor. 4-15

ESTATE OF ANN MIDDLETON, LATE OF
Plains township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

STEPHEN HEALEY,
RICHARD BURKE,

COONS & SHORTZ,
Attorneys. Executors. 9-14

ESTATE OF REV. CHAS. A. MATTINGLY,
late of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REV. THOMAS J. RAY,
REV. TIMOTHY J. DONOHUE,

Executors. 6-11

ESTATE OF JULIA McNULTY, LATE OF
Wilkes-Barre township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ALICE McNULTY,

E. P. & J. V. DARLING,
Attorneys. Administratrix. 8-13

ESTATE OF WILLIAM MINNICH, LATE OF
Sugarloaf township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANN ELIZA MINNICH,

Executrix. 10-15

ESTATE OF JOHN BARNEY, LATE OF THE
borough of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE BARNEY,

Administratrix. 6-11

ESTATE OF JOSEPH SCHAPPERT, LATE
of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY ANN SCHAPPERT,
JACOB SCHAPPERT,

Executors. 8-13

ESTATE OF MICHAEL STEIN, LATE OF
Dorranee township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

GEO. H. HINKLEMAN,

Executor. 7-12

ESTATE OF ELIZA BOWERS, LATE OF
Wyoming, Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM HANCOCK,

Executor. 8-14

ESTATE OF JOHN MANGAN, LATE OF
Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

THOMAS MANGAN,

Administrator. 9-14

ESTATE OF W. S. HILLARD, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RUTH B. HILLARD,

Executrix. 8-13

ESTATE OF JOHN ORR, LATE OF FOSTER
township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELIZABETH A. POLLOCK,

Executrix. 9-14

ESTATE OF ANTHONY MEYERS, LATE OF
Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. R. BRUNDAGE, Attorney. **H. W. MEYERS,** Administrator. 5-10

ESTATE OF JOHN GILLESPIE, LATE OF
Hazel township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN D. HAYES, Attorney. **OWEN GILLESPIE,** Administrator. 5-10

ESTATE OF MARTHA FAIRCHILD, LATE
of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

BENNETT & NICHOLS, Attorney. **SAMUEL LINE,** Administrator. 5-10

ESTATE OF JOHN M. STACKHOUSE, LATE
of Shickshinny, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND, Attorney. **JAMES POST,** Administrator. 9-15

ESTATE OF JOSEPH STACKHOUSE, LATE
of Shickshinny, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND, Attorney. **JOHN W. CHAPIN,** Executor. 9-14

ESTATE OF JASPER B. STARK, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

E. P. & J. V. DARLING, Attorneys. **FRANCIS R. STARK,** Administratrix. 9-14

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, March 10th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

10
Seit of Ezra Stair v. Abraham Arnold and Elizabeth Arnold.

134 February term, 1883. Debt, \$206.25. Fl. fa. 14 March term, 1883. Cannon, Att'y.

Also three other suits of same amount.

All that lot of land in Slocum township, beginning at a stone planted for a corner in the middle of a public road, thence along the Christian Leuder estate and middle of said public road 39 2-10 perches to a stone corner of land of Josiah Jones, thence along land of the same 36 8-10 perches to a post, thence to a post in the

public road, thence along said public road 51 2-10 perches to a stone corner, the place of beginning, containing 10 acres of land, more or less; all improved, with a two-story frame dwelling, a barn, and other outhouses, and blacksmith shop and fruit trees thereon.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the personal property of LeGrand & Boyer, will attend to the duties of his appointment, at the office of Alexander Farnham, Esq., on Franklin street, in the city of Wilkes-Barre, on Wednesday, the 14th day of March, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

R. D. EVANS, Auditor.

AUDITOR'S NOTICE.

Estate of Elias Hoyt, dec'd. The undersigned, an Auditor, appointed to report upon the exceptions to the account of Executor, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Saturday, March 24th, 1883, at 10 A. M.

G. R. BEDFORD, Auditor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 476, October term, 1882. Libel in divorce a vinculo matrimonii. Libbie Jane Spencer, by her next friend, Ferdinand Ferrell, v. Orrin R. Spencer. To Orrin R. Spencer—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, March 19, 1883, at 10 o'clock A. M.

T. R. MARTIN, Solicitor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 52, November term, 1882. Libel in divorce a vinculo matrimonii. Mary J. Morgan, by her next friend, David Maxey, v. David C. Morgan. To David C. Morgan—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, March 26, 1883, at 10 o'clock A. M.

GEO. H. TROUTMAN, Solicitor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 597, October term, 1882. Libel in divorce a vinculo matrimonii. Hannah Barker, by her next friend, William Kitching, v. Francis Barker. To Francis Barker—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, March 26, 1883, at 10 o'clock A. M.

E. A. LYNCH, Solicitor.

LUZERNE COUNTY, ss:

To all whom it may concern: Take notice that H. J. Seely and Peter Meixel, Trustees of the real estate conveyed by Christian Billhauer and wife to the German Presbyterian and Lutheran Churches of Salem, have applied to the Court of Common Pleas of Luzerne county for an order to sell said property, and that all persons interested may be heard before said court on Monday, March 12, 1883, at 10 o'clock A. M. By order of the court.

Q. A. GATES, Attorney.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, MARCH 16, 1883.

NO. 11.

Orphans' Court of Luzerne County.

MOTT'S ESTATE.

1. After a testamentary trust has been completed, the Orphans' Court may compel a trustee to convey the estate to the beneficiaries.
2. It matters not what may be the nominal duration of an estate given by will to a trustee, it continues no longer than the thing sought to be secured by the trust demands.

Petition for removal of executor.

The opinion of the court was delivered September 4, 1882, by

RHONE, P. J.—These petitioners ask the court to remove the surviving executor on two grounds: 1. Because he is wasting and mismanaging the estate. 2. Because the duties of his trust have terminated.

The allegation of waste and mismanagement has not been sustained by any evidence. The executor by his answer has fully and entirely exhibited his course as executor to have been a wise one, and also profitable to the estate, so that the first ground of complaint has entirely failed, and if this were all we would dismiss the petition, with costs.

Should the executor be removed on the second ground stated? This part of the case has not been fully developed, and we send the matter to an examiner to take testimony. We make the following suggestions and inquiries without any other object or purpose than to direct the investigation before the examiner. Has not the testator expressed his intention to be to provide: first, for the payment of his debts; second, for the support of his wife and sister; third, for the support of his minor children; and, fourth, for a distribution, when his youngest child should come of age, of all his estate, except so much as might be necessary to complete his former purposes?

The sister is dead, the children are all of age, and the widow expresses her desire to release the executor; so, when the debts are all paid, what will remain for the executor to do to complete the testator's purposes? What are the debts, and has their lien been continued? What effort has the executor made to effect a sale of the property, so as to be able to make distribution? Is there any personal estate?

Power to act at discretion need not be expressly given, if it can be implied from the nature of the trust. *Pickering v. Shotwell*, 10 Barr, 23.

Discretionary power of sale does not vest the title in the executors. *Bleight v. M. & M. Bank*, 10 Barr, 131; *Chew v. Micklin*, 9 Wright, 84; *Peterson's Appeal*, 7 Norris, 397.

The Orphans' Court has full power and authority to control executors in the exercise of the powers given them by will for the sale or management of real estate. The court may order the executors to make the sale, etc. *Dundas' Appeal*, 14 Smith, 325; *Twaddell's Appeal*, 32 Smith, 221; *Daily's Appeal*, 6 Norris, 487; *Williams' Appeal*, 23 Smith, 249; *Hutchinson's Appeal*, 1 Norris, 509; *Bruner v. Naglee*, 7 Phila. R. 384.

Since the act of May 1, 1861 (P. L. 680), the Orphans' Court may remove an executor or administrator "where for any cause the interests of the estate or property are likely to be jeopardized" by his continuance." *Kellberg's Appeal*, 5 Norris, 129; *Parsons' Estate*, 1 Norris, 465.

After the trust has been completed, the Orphans' Court may compel a trustee to convey the estate to the beneficiaries. *Apple's Estate*, 3 Phila. R. 23.

It matters not what may be the nominal duration of an estate given by will to a trustee, it continues no longer than the thing sought to be secured by the trust demands. *Koenig's Appeal*, 7 Smith, 352; *Kay v. Scates*, 1 Wright, 31; *Dodson v. Ball*, 10 Smith, 492, and cases there cited.

We have, perhaps, said more than was our duty to say at this stage of the case, but we have done so to indicate to the parties that while we refuse to grant the prayer of the petitioners now, we do not shut the door against a disposition of the case on its merits when all the material facts are ascertained.

We, therefore, refer the case on the second ground of complaint to the standing examiner to investigate the facts and make report thereon, and dismiss the petition as to the first ground.

Messrs. E. P. & J. V. Darling, for trustee.

A. Ricketts, Esq., *contra*.

Orphans' Court of Luzerne County.

MOTT'S ESTATE.

1. The duties and powers of an auditor appointed to investigate the facts, and make report thereon, are co-extensive with those of an examiner and master combined.
2. The duties of an auditor in the taking of testimony are as much separated from his duty to report thereon as those of an examiner are from his duties as master in equity. So far as the taking of testimony is concerned, his duties are more like those of a "commissioner to take depositions," but are not nearly so limited, being specially appointed to investigate all the facts of the case, to develop the true points, and bring before the court only the real matters at issue. In his report, which follows the taking of the testimony, he is to decide upon the admissibility, relevancy, and weight of the testimony, and the competency of the witnesses.
3. If there be sufficient competent evidence to support his report, it will not be set aside because incompetent testimony has been admitted by him, unless it is shown that he was led into some specific error by that which is incompetent.
4. The parties have no right to appeal to the court on the rulings of the auditor or examiner during the taking of the testimony, as this would be to pass upon the case piece meal.
5. Phillips' Appeal (18 Smith, 130) commented on.

The opinion of the court was delivered February 24, 1883, by

RHONE, P. J.—This proceeding was commenced to remove the executor on two grounds: 1. For waste. 2. Because his duties as executor and trustee are terminated by operation of law.

The case was heard on bill, answer, and demurrer, and the court, by opinion filed, refused to remove the executor on the allegation of committing waste, but concerning the other question referred the matter to what we call in our rules of court a standing examiner, "to investigate the facts and make report thereon to the court." The examiner has proceeded with the taking of testimony until the question has arisen whether he has power to reject testimony submitted to him on the ground of irrelevancy, or incompetency of the witness, and he has propounded this question to the court.

The term "auditor" is the one most usually adopted by this court, instead of the "examiner and master" of the equity courts.

Under this title, the duties and powers of an auditor appointed to investigate the facts, and make report thereon, are co extensive with those of an examiner and master combined. The most complete exposition of the purposes for which an auditor may be appointed, and the effect of his report, when acting as a master, may be found set forth by Justice Agnew in Phillips' Appeal (18 Sm. 130).

The auditors expressly authorized by acts of Assembly to be appointed to distribute a fund in court may have more extensive judicial powers than the one appointed at the instance of the court to aid in the development of the facts and the law on which a general decree is to be based. In either case, however, he is but an auxiliary of the court, and his power to decide on the admissibility or relevancy of testimony must be very limited, else the suitor might have his case strangled in the dark. The duties of an auditor in the taking of testimony are as much separated from his duty to report thereon as those of an examiner are from his duties as master in equity. So far as the taking of testimony is concerned, his duties are more like those of a "commissioner to take depositions," but are not nearly so limited, being specially appointed to investigate all the facts of the case, to develop the true points, and bring before the court only the real matters at issue. In his report, which follows the taking of the testimony, he is to decide upon the admissibility, relevancy, and weight of the testimony, and the competency of the witnesses.

If there be sufficient competent evidence to support his report, it will not be set aside because incompetent testimony has been admitted by him, unless it is shown that he was led into some specific error by that which is incompetent. *Sawtell's Appeal*, 3 *Norris*, 309; *Breneman's Estate*, 15 *Smith*, 299; *Kennedy's Appeal*, 4 *Barr*, 152.

Of course, there comes a time in the taking of testimony when he must decide what testimony he will reject or refuse to take, in which case the party offering the testimony, or the witness, should state in writing his offer and its purpose; the opposing counsel, or party, should state his objections, and the auditor should state the ground on which he concludes to reject the offer. The parties are left to their right of exception before the court after the report is filed, when the fullest opportunity is given to bring out the merits of the case.

The parties have no right to appeal to the court on the rulings of the auditor or examiner during the taking of the testimony, as this would be to pass upon the case piece meal. *Howell's Estate*, 38 *Leg. Int.* 478; *Collins' Estate*, 2 *W. N. C.* 430.

If it be argued that the taking of testimony in this manner may be ruinously expensive, we answer that the court has discretionary power over the costs.

On the whole, we say, then, let this case proceed under the control of the auditor, or, as we have called him, standing examiner. As there is no charge of dishonesty laid against him, the soundness of his judgment can be inquired into when the whole case is before us, without prejudice to the rights of either party.

ESTATE OF THOMAS W. JONES, LATE OF
Hanover township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REESE J. JONES,
JANE JONES,
Administrators.
G. H. R. PLUMB,
Attorney.

10-15

ESTATE OF JASPER B. STARK, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FRANCIS R. STARK,
Administratrix.
E. P. & J. V. DARLING,
Attorneys.

9-14

ESTATE OF JAMES DOLAN, LATE OF THE
township of Plains, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PHILIP McANIFF,
Executor.
M. CANNON,
Attorney.

10-15

ESTATE OF EDGAR GREEN, LATE OF THE
township of Franklin, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ISAAC SUTTON,
Executor.
PALMER, DEWITT & FULLER,
Attorney.

10-15

ESTATE OF ANN MIDDLETON, LATE OF
Plains township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

STEPHEN HEALEY,
RICHARD BURKE,
Executors.
COONS & SHORTZ,
Attorneys.

9-14

ESTATE OF REV. CHAS. A. MATTINGLY,
late of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REV. THOMAS J. RAY,
REV. TIMOTHY J. DONOHUE,
Executors.

6-11

ESTATE OF JULIA McNULTY, LATE OF
Wilkes-Barre township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ALICE McNULTY,
Administratrix.
E. P. & J. V. DARLING,
Attorneys.

8-13

ESTATE OF WILLIAM MINNICH, LATE OF
Sugarloaf township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANN ELIZA MINNICH,
Executrix.

10-15

ESTATE OF JOHN BARNEY, LATE OF THE
borough of Nanticoke, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE BARNEY,
Administratrix.

6-11

ESTATE OF JOSEPH SCHAPPERT, LATE
of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY ANN SCHAPPERT,
JACOB SCHAPPERT,
Executors.

8-13

ESTATE OF MICHAEL STEIN, LATE OF
Dorrance township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

GEO. H. HINKLEMAN,
Executor.

7-12

ESTATE OF ELIZA BOWERS, LATE OF
Wyoming, Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM HANCOCK,
Executor.

8-14

ESTATE OF JOHN MANGAN, LATE OF
Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

THOMAS MANGAN,
Administrator.
F. C. MOSIER,
Attorney.

9-14

ESTATE OF W. S. HILLARD, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RUTH B. HILLARD,
Executrix.
E. G. BUTLER,
Attorney.

8-13

ESTATE OF JOHN ORR, LATE OF FOSTER
township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELIZABETH A. POLLOCK,
Executrix.

9-14

ESTATE OF JOHN M. STACKHOUSE, LATE
of Shickshinny, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND,
Attorney.
JAMES POST,
Administrator.
9-15

ESTATE OF JOSEPH STACKHOUSE, LATE
of Shickshinny, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND,
Attorney.
JOHN W. CHAPIN,
Executor.
9-14

ESTATE OF MARY E. MACCARTNEY, LATE
of Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
Administrator c. t. a. d. b. n.
11-16

ESTATE OF JOHN HENRY, LATE OF THE
township of Nescopceck, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
Administrator.
11-16

ESTATE OF ANN WILLIAMS, LATE OF
Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RICHARD J WILLIAMS,
Executor.
11-16

ESTATE OF DANIEL JONES, LATE OF THE
borough of West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB KERN,
JOHN W. NIMMO,
GEO. S. FERRIS,
Attorney.
Adm'rs c. t. a. d. b. n.
11-16

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by M. Silverman, and that said license will be asked for in the court aforesaid, on Monday, April 16, 1883, at 10 A. M.

JOHN T. LENAHAN,
Solicitor.
11-12

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by L. J. Thomas, and that said license will be asked for in the court aforesaid, on Monday, April 16, 1883, at 10 A. M.

WM. L. McLEAN,
Solicitor.
11-12

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Louis Dunie, and that said license will be asked for in the court aforesaid, on Monday, the 16th day of April, 1883, at 10 o'clock A. M.

S. J. STRAUSS,
Solicitor.
11-12

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, April 16th, 1883, at 10 o'clock A.M., for the charter of an intended corporation, to be called "The Welsh Presbyterian Church," of Ashley, the character and objects of which are to purchase lands and erect buildings for the support of public worship.

W. H. HINES,
Solicitor.
11-13

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

W. H. HINES,
Solicitor.
11-13

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, on Monday, April 16th, 1883, for the incorporation of an intended corporation, to be called "The Saint Kazimierza Society," of Plymouth, Pa., the character and objects of which are benevolence and charity.

H. C. MAGEE,
Solicitor.
11-13

NOTICE IS HEREBY GIVEN THAT AN application will be made under an Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved the 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Dixon Pulp and Paper Company," the character and objects of which are the manufacturing and preparing paper from wood pulp by chemical process, as well purchasing and selling the same, and also the leasing, purchasing, holding, and demising real and personal estate connected therewith.

ISAAC P. HAND,
Solicitor.
9-11

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, March 26, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Pittston Cornet Band," the character and objects of which are the practice and promotion of music.

F. C. MOSIER,
Solicitor.
10-12

ORPHANS' COURT SALE.

Estate of Ann Middleton, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, the 31st of March, 1883, at 10 o'clock A. M., the following piece of land in the township of Plains, beginning on the back road at a corner of land of Mrs. Ann Courtright, thence along said land 218 feet to a corner of land of John Mitchell, thence 50 feet to a corner, thence 218 feet to the back road aforesaid, thence along same 50 feet to the place of beginning; excepting and reserving the coal and other minerals; improved, with a two-story frame house, 16x26 feet, and outbuildings thereon.

TERMS OF SALE—\$300 down on day of sale, and the balance on confirmation of sale.

THOS. H. ATHERTON,
Trustee.

11-13

ORPHANS' COURT SALE.

Estate of Cornelius Dougherty, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Friday, the 30th of March, 1883, at 10 o'clock A. M., the surface of all that lot of land in the borough of Ashley, beginning at a corner in line of Hazleton turnpike and in line of a public road, thence along said public road about 72 feet to a corner in line of Nanticoke Railroad, thence 23 4-10 feet to a corner in line of land of Ellen Carle, thence about 72 feet to a corner in line of Hazleton turnpike aforesaid, and thence along said Hazleton turnpike 30 feet or thereabouts to place of beginning, containing 1.922 4-10 square feet; reserving all coal and other minerals.

TERMS OF SALE—One-half of the purchase money to be paid on day of sale, and one-half on confirmation of sale.

E. G. BUTLER, Attorney.
ELLEN A. CARLE, Administratrix.
11-13

PARTITION NOTICE.

In Re Partition of the Real Estate of John Blanchard, late of Ross township, Luzerne county, Pennsylvania, deceased. Now, March 13th, 1883, inquest is awarded as prayed for; returnable first day of next term, at 2 o'clock P. M. Service of notice on non-residents of the State shall be published in the Mountain Echo for three successive weeks, and a copy of each mailed to the last known residence, and in the Luz. Leg. Reg. for same time. BY THE COURT.

To John Robbins, Helena, Montana Territory; Asa Robbins, New York City; Clarence Robbins, Bellefont, Pa., and Maria Savage, Buck Horn, Pa., and all other parties interested—You will please take notice that in pursuance of the above order of the Orphans' Court of said county, a writ of partition has been issued from said court to the Sheriff of Luzerne county, returnable on Monday, May 14, 1883, at 2 o'clock P. M., and that the inquest will meet for the purpose of making partition on Tuesday, April 10, 1883, at 12 o'clock M. of the same day, upon the premises, in the township of Ross, Luzerne county, Pa., at which time and place you can be present, if you see proper.

WILLIAM O'MALLEY, Sheriff.
M. E. WALKER, Attorney.
11-13

IN THE ORPHANS' COURT OF LUZERNE county. Rule for discharge of Executor. Now, March 8, 1883, on filing within petition and affidavit, and on motion of C. B. Gardner, attorney for petitioner, a rule is granted to show cause why E. C. Silvius, Executor, etc., shall not be discharged as prayed for. Ten days' notice to be given to all interested parties living in Luzerne county, and said notice to be also inserted in the Luzerne Legal Register and Union-Leader for three weeks before making said application. Returnable March 31, 1883. 10-12 BY THE COURT.

IN THE ORPHANS' COURT OF LUZERNE county. In Re Estate of S. S. Coon, late of the city of Wilkes-Barre, deceased. Now, March 14th, 1883, rule is granted to show cause why Sylvester Bristol, Administrator, should not be discharged. Returnable the 31st day of March, 1883, at 10 A. M. 11-13

BY THE COURT.

IN THE ORPHANS' COURT OF LUZERNE county. In Re Estate of Andrew Montanye, deceased. Now, March 5th, 1883, rule is granted to show cause why Geo. B. Kulp, Trustee, should not be discharged. Returnable the 31st day of March, 1883, at 10 o'clock A. M. 10-12

BY THE COURT.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 476, October term, 1882. Libel in divorce a vinculo matrimonii. Libbie Jane Spencer, by her next friend, Ferdinand Ferrell, v. Orrin R. Spencer. To Orrin R. Spencer—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, March 19, 1883, at 10 o'clock A. M.

T. R. MARTIN,
Solicitor.

10-11

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 52, November term, 1882. Libel in divorce a vinculo matrimonii. Mary J. Morgan, by her next friend, David Maxey, v. David C. Morgan. To David C. Morgan—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, March 26, 1883, at 10 o'clock A. M.

GEO. H. TROUTMAN,
Solicitor.

10-11

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 597, October term, 1882. Libel in divorce a vinculo matrimonii. Hannah Barker, by her next friend, William Kitching, v. Francis Barker. To Francis Barker—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, March 26, 1883, at 10 o'clock A. M.

E. A. LYNCH,
Solicitor.

10-11

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 137, November term, 1882. Libel in divorce a vinculo matrimonii. Rosa A. Dieffenbacher, by her next friend, Adam Lawn, v. Daniel F. Dieffenbacher. To Daniel F. Dieffenbacher—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, March 26, 1883, at 10 o'clock A. M.

T. R. MARTIN,
Solicitor.

11-12

LUZERNE COUNTY, ss:

In Re Assignment of J. A. Wood for the benefit of creditors. Notice is hereby given that Charles A. Jones, Assignee, has exhibited and filed a final account as such Assignee, which account will be confirmed and allowed on the 31st day of March, 1883, unless cause is shown to the contrary.

JAMES M. NORRIS,
Prothonotary.

10-12

IN THE COURT OF COMMON PLEAS OF Luzerne county. In Re Petition of Magdalena Brehm to be declared a feme sole trader under the Act of Assembly, approved May 4, 1855. Now, March 12, 1883, on filing the within petition, the court being satisfied of the justice and propriety of the application, direct notice thereof to be given in the Luzerne Legal Register for four successive weeks, and fix Monday, the 16th day of April, 1883, as the time for granting the within prayer of petitioner, and of making decree as prayed for.

By THE COURT.

MICHAEL CANNON,
Solicitor.

11-14

CHARLES A. REED, a member of the Bar of the Supreme Court of New Jersey, will apply for admission on March 26th, 1883, to practice as an attorney in the several courts of the county of Luzerne.

10-12

AUDITOR'S NOTICE.

Estate of Elias Hoyt, dec'd. The undersigned, an Auditor, appointed to report upon the exceptions to the account of Executor, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Saturday, March 24th, 1883, at 10 A. M.

G. R. BEDFORD

Auditor.

8-11

McLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, MARCH 23, 1883.

No. 12.

Orphans' Court of Luzerne County.

HOYT'S ESTATE.

1. No Orphans' Court will approve an investment in the stocks of any public or private corporation, except those authorized by some act of Assembly; and in this case the court refused to approve an investment by guardian in the first mortgage bonds of a railroad company, located in the State of New York.
2. In approving an investment, the courts consider that absolute safety of the principal is of more consequence than great expectations of interest.
3. Since the act of Assembly of May 8, 1876, extending the list of approved securities to "all bonds or certificates of debt now or hereafter to be created, and issued according to law, by any of the counties, cities, school districts, or municipal corporations of this Commonwealth," it would be safe to say that no court should authorize an investment outside of those recommended by the Legislature.
4. It is considered that no court should authorize an investment where its collection can only be enforced by resort to the courts of another state or country.

Application for authority to invest trust funds.

The opinion of the court was delivered February 24, 1883, by

RHONE, P. J.—In this proceeding we are asked by a guardian to authorize an investment in the first mortgage bonds of a railroad company, a corporation of the State of New York, the road being also located in that State. The securities are at a premium of nine and one-quarter cents, and bear six per cent interest.

This court never approves an investment in the *stocks* of any public or private corporation, except in cases to prevent an extreme hardship on trustees, who have been induced, under peculiar circumstances, to make such investment. Worrell's Appeal, 9 Barr, 508; Prag's Appeal, 10 Casey, 100; Ihmsen's Appeal, 7 Wright, 431; Twaddle's Appeal, 5 Barr, 15; Nyce's Estate, 5 W. & S. 254. The reasons for this rule of law are many and obvious, and may be found so clearly set forth by the

judges of the superior court in the cases cited that it would be idle for us to attempt to add anything thereto or to take anything therefrom.

Nor can we see any very material difference in principle between the mortgages of a railroad company and its stock. The difference, if any, is only in degree of security, for both are based almost entirely on commercial chances, for a railroad without traffic is of small value. It seems certain that any securities of a private corporation, at least such as a railroad company, must be set down as of a speculative or chance character, and hence such as no trustee should invest in.

Since the act of Assembly of May 8, 1876, extending the list of approved securities to "all bonds or certificates of debt now or hereafter to be created, and issued according to law, by any of the counties, cities, school districts, or municipal corporations of this Commonwealth," it would be safe to say that no court should authorize an investment outside of those recommended by the Legislative. Again, it is considered that no court should authorize an investment where its collection can only be enforced by resort to the courts of another state or country. *Rush's Estate*, 2 Jones, 375; *Pownell's Estate*, 2 Lan. Bar, April 22, 1871.

There is nothing about this corporation to recommend it above any other which at present pays a dividend, and we cannot open the door for any such class of investments, as there are no such securities which cannot find persons who think them desirable. Absolute *security* for the *principal* can be found only in the bonds of the United States, or of States or other municipal corporations, or in those based on real estate in the hands of the individual owners thereof; and safety is of more consequence than great expectations of interest. Trustees should never take any chances of losing the principal.

On the whole, we cannot authorize this investment, nor any other like it, and the proceeding is dismissed at the costs of the estate, so far as it relates to the investment in the railroad securities. We do, however, approve the investment in government bonds at three per cent, as prayed for by the petitioner in the alternative of our refusal to approve the other.

Messrs. Dickson & Atherton, for guardian.

Orphans' Court of Luzerne County.

GIBLIN'S ESTATE.

1. The real estate of an intestate descends to his heirs at the instant of his death, and remains there until sold by order of the court; and whether the estate be solvent or insolvent, the heirs have the same right to draw the rents that he would have had if living.
2. The heirs may authorize the administrator to collect the rents and apply them on the debts of the decedent, yet such payment will not enure to the benefit of any creditor not paid, unless it be clearly proven that the payment was to be a pure gift to all the creditors, or that those who are not so paid had suffered some loss by the arrangement.
3. No administrator is liable for any assets, except those within the Commonwealth at the time of the decedent's death, unless he has actually received them from some other state or country.

Exceptions to account of administrator.

The opinion of the court was delivered February 24, 1883, by

RHONE, P. J.—The exceptant is Farnham, assignee of Briggs *et al.*, and he claims to be a creditor entitled to a portion of the fund. His claim is based on a judgment entered on the verdict of a jury in the Common Pleas of this county, to No. 492, April term, 1873, wherein Leonard, this administrator, was sole defendant. The heirs of the decedent are now contesting Farnham's judgment on original grounds, which they have a right to do, provided his claim reaches the real estate fund. Murphy's Appeal, 8 W. & S. 165; Atherton *v.* Atherton, 2 Barr, 112; Steele *v.* Lineberger, 9 Smith, 308.

It will be seen that the fund now in court for distribution consists of both real and personal assets in nearly equal proportions, and that both funds are insolvent.

This being the case, Farnham is a creditor as to the personal estate, as a judgment in the Common Pleas is conclusive on us in the distribution of such fund. See authorities cited.

It will be seen, too, by reference to the distribution herewith made and filed, that Farnham has no lien on the real estate fund, the same being taken up by preferred liens of record, and this being the case, we need not decide whether the judgment is well founded or not.

The first exception is not sustained, as the real estate of an intestate descends to his heirs at the instant of his death, and

remains there until sold by order of the court; and whether the estate be solvent or insolvent, the heirs have the same right to draw the rents that he would have had if living. *Haslage v. Krugh*, 1 Casey, 97. Admitting that the heirs may authorize the administrator to collect the rents and apply them on the debts, yet such payment will not enure to the benefit of any creditor not paid, unless it be clearly proven that the payment was to be a pure gift to all the creditors, or that those who are not so paid had suffered some loss by the arrangement. There is no such proof in this case. On the contrary, the arrangement seems simply to have been an attempt to pay off the debts and save the real estate to the heirs; and as this has been a failure, they have a right to subrogation. *Williamson's Appeal*, 13 Norris, 231, and cases there cited.

The second exception is not sustained, as no administrator is liable for any assets, except those within the Commonwealth at the time of the decedent's death, unless he has actually received them from some other state or country. *Mothland v. Wiseman*, 3 P. & W. 185; *Freeman's Appeal*, 18 Smith, 151.

The exceptions numbered 4, 5, 7, and 8 are now dismissed, as they were virtually disposed of on the decree confirming the auditor's report distributing the purchase money.

Exceptions six and nine are disposed of with the third, and raise the questions: 1st. What claims should be allowed the administrator as credits? 2d. Which should be allowed as preferred claims on each fund?

While the costs, counsel fees, and expenses seem enormous, yet we must conclude, from the result of the various contests in the Common Pleas, that there has been a very determined attempt by some New York parties to plunder this estate, and that the administrator has succeeded in defeating all of them. The amount saved to the estate far exceeds the sum of all the costs and expenses involved therein. All this class of claims is allowed as charged. We cannot allow any more counsel fees, but refuse to disallow those already paid. If counsel are entitled to any more fees, they must look to the administrator personally. We think that, under all the circumstances, the estate has been managed with skill and prudence, and with a singleness of purpose to benefit the estate, and so we allow the charges for services as made.

As we state the amount and character of the preferred claims in the distribution which follows, it is unnecessary to state them here.

All the exceptions are dismissed at the costs of the estate, and the claim of Farnham is allowed as proved on the judgment certified from the Common Pleas, with interest and costs.

IN THE COURT OF COMMON PLEAS OF Luzerne county. In Re Petition of Magdalena Brehm to be declared a feme sole trader under the Act of Assembly, approved May 4, 1855. Now, March 12, 1883, on filing the within petition, the court being satisfied of the justice and propriety of the application, direct notice thereof to be given in the Luzerne Legal Register for four successive weeks, and fix Monday, the 16th day of April, 1883, as the time for granting the within prayer of petitioner, and of making decree as prayed for.

By THE COURT.
MICHAEL CANNON,
Solicitor.

11-14

CHARLES A. REED, a member of the Bar of the Supreme Court of New Jersey, will apply for admission on March 26th, 1883, to practice as an attorney in the several courts of the county of Luzerne.

10-12

ORPHANS' COURT SALE.

Estate of Ann Middleton, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, the 31st of March, 1883, at 10 o'clock A. M., the following piece of land in the township of Plains, beginning on the back road at a corner of land of Mrs. Ann Courtright, thence along said land 218 feet to a corner of land of John Mitchell, thence 50 feet to a corner, thence 218 feet to the back road aforesaid, thence along same 50 feet to the place of beginning; excepting and reserving the coal and other minerals; improved, with a two-story frame house, 16x26 feet, and outbuildings thereon.

TERMS OF SALE—\$300 down on day of sale, and the balance on confirmation of sale.

THOS. H. ATHERTON,
Trustee.

11-13

ORPHANS' COURT SALE.

Estate of Cornelius Dougherty, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Friday, the 30th of March, 1883, at 10 o'clock A. M., the surface of all that lot of land in the borough of Ashley, beginning at a corner in line of Hazleton turnpike and in line of a public road, thence along said public road about 72 feet to a corner in line of Nanticoke Railroad, thence 23 4-10 feet to a corner in line of land of Ellen Carle, thence about 72 feet to a corner in line of Hazleton turnpike aforesaid, and thence along said Hazleton turnpike 30 feet or thereabouts to place of beginning, containing 1,922 4-10 square feet; reserving all coal and other minerals.

TERMS OF SALE—One-half of the purchase money to be paid on day of sale, and one-half on confirmation of sale.

E. G. BUTLER, **ELLEN A. CARLE,**
Attorney. Administratrix.

11-13

ORPHANS' COURT SALE.

Estate of John Henry, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, in the township of Nescopeck, on Friday, April 20th, 1883, at 1 o'clock P. M., all that piece of land in Nescopeck township, bounded on the north by land of Andrew Keen, on the south by land of Amanda Smith, on the west by land of John Smith, on the east by land of Mortimer Briggs, containing 8 acres, more or less; on which are erected a frame house, barn, and outbuildings.

TERMS OF SALE—25 per cent down, 25 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, in one year from confirmation; deferred payments to be secured by bond and mortgage on the premises.

C. B. JACKSON,
Administrator.

12-24

ORPHANS' COURT SALE.

Estate of Edward Ide, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, April 21, 1883, at 10 o'clock A. M., the two following pieces of land, viz.:

1. Being purpart No. 1 in the township of Lehman, beginning at a stake in Lake road, and running thence by lands of S. P. Ide 217 perches to the line of the Jas. Withy tract, thence along the said line 64 perches to a white oak, thence 30 perches to a black oak in the line of certified Bedford, thence along said line 129 perches to a corner, thence 55 perches to a stake, thence 107 4-10 perches to the aforesaid road, and thence along the same 23 perches to the place of beginning, containing 82 acres and 2 perches, more or less; about 8 acres improved, balance being timber and woodland.

2. All that other piece of land in the township of Lehman, commencing at a corner of land of A. H. Ketcham in line of certified Bedford township, thence 55 perches to a corner, thence 75 perches to a corner, thence 55 perches to a corner, and thence 75 perches to the place of beginning, and containing 25 acres and 125 perches, more or less; all improved.

TERMS OF SALE—One-third down on day of sale, and balance on confirmation of sale and delivery of deed.

S. P. IDE,
E. S. OSBORNE,
Attorney. Administrator.

12-14

PARTITION NOTICE.

In Re Partition of the Real Estate of John Blanchard, late of Ross township, Luzerne county, Pennsylvania, deceased. Now, March 13th, 1883, inquest is awarded as prayed for; returnable first day of next term, at 2 o'clock P. M. Service of notice on non-residents of the State shall be published in the Mountain Echo for three successive weeks, and a copy of each mailed to the last known residence, and in the Luz. Leg. Reg. for same time. By THE COURT

To John Robbins, Helena, Montana Territory; Ada Robbins, New York City; Clarence Robbins, Bellefont, Pa., and Maria Savage, Buck Horn, Pa., and all other parties interested—You will please take notice that in pursuance of the above order of the Orphans' Court of said county, a writ of partition has been issued from said court to the Sheriff of Luzerne county, returnable on Monday, May 14, 1883, at 2 o'clock P. M., and that the inquest will meet for the purpose of making partition on Tuesday, April 10, 1883, at 12 o'clock M. of the same day, upon the premises, in the township of Ross, Luzerne county, Pa., at which time and place you can be present, if you see proper.

WILLIAM O'MALLEY,
M. E. WALKER,
Attorney. Sheriff.

11-13

I

N THE ORPHANS' COURT OF LUZERNE county. Rule for discharge of Executor. Now, March 8, 1883, on filing within petition and affidavit, and on motion of C. B. Gardner, attorney for petitioner, a rule is granted to show cause why E. C. Silvius, Executor, etc., shall not be discharged as prayed for. Ten days' notice to be given to all interested parties living in Luzerne county, and said notice to be also inserted in the Luzerne Legal Register and Union-Leader for three weeks before making said application. Returnable March 31, 1883. 10-12 BY THE COURT.

I

N THE ORPHANS' COURT OF LUZERNE county. In Re Estate of S. S. Coon, late of the city of Wilkes-Barre, deceased. Now, March 14th, 1883, rule is granted to show cause why Sylvester Bristol, Administrator, should not be discharged. Returnable the 31st day of March, 1883, at 10 A. M.

11-13

BY THE COURT.

I

N THE ORPHANS' COURT OF LUZERNE county. In Re Estate of Andrew Montanye, deceased. Now, March 5th, 1883, rule is granted to show cause why Geo. B. Kulp, Trustee, should not be discharged. Returnable the 31st day of March, 1883, at 10 o'clock A. M.

10-12

BY THE COURT.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, April 16th, 1883, at 10 o'clock A.M., for the charter of an intended corporation, to be called "The Welsh Presbyterian Church," of Ashley, the character and objects of which are to purchase lands and erect buildings for the support of public worship.

11-13

W. H. HINES,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

11-13

W. H. HINES,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 20th, 1874, and the supplements thereto, on Monday, April 16th, 1883, for the incorporation of an intended corporation, to be called "The Saint Kazimierz Society," of Plymouth, Pa., the character and objects of which are benevolence and charity.

11-13

H. C. MAGEE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved April 29, 1874, and the supplements thereto, on Monday, March 26, 1883, at 10 o'clock A.M., for the charter of an intended corporation, to be called "The Pittston Cornet Bank," the character and objects of which are the practice and promotion of music.

10-12

F. C. MOSIER,
Solicitor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county. No. 137, November term, 1882. Libel in divorce a vinculo matrimonii. Rosa A. Dieffenbacher, by her next friend, Adam Lawn, v Daniel F. Dieffenbacher. To Daniel F. Dieffenbacher—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, March 26, 1883, at 10 o'clock A. M.

11-12

T. R. MARTIN,
Solicitor.

LUZERNE COUNTY, ss:
In Re Assignment of J. A. Wood for the benefit of creditors. Notice is hereby given that Charles A. Jones, Assignee, has exhibited and filed a final account as such Assignee, which account will be confirmed and allowed on the 31st day of March, 1883, unless cause is shown to the contrary.

10-12

JAMES M. NORRIS,
Prothonotary.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by M. Silverman, and that said license will be asked for in the court aforesaid, on Monday, April 16, 1883, at 10 A. M.

11-12

JOHN T. LENAHAN,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by L. J. Thomas, and that said license will be asked for in the court aforesaid, on Monday, April 16, 1883, at 10 A. M.

11-12

WM. S. McLEAN,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Louis Dunie, and that said license will be asked for in the court aforesaid, on Monday, the 16th day of April, 1883, at 10 o'clock A. M.

11-12

S. J. STRAUSS,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Leon Hufford, and that said license will be asked for in the court aforesaid on Monday, the 16th of April, 1883, at 10 o'clock A. M.

12-13

BENNETT & NICHOLS,
Solicitors.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Henry Goodman, and that said license will be asked for in the court aforesaid on Monday, the 16th day of April, 1883, at 10 o'clock A. M.

12-13

S. J. STRAUSS,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Myer Finklestein, and that said license will be asked for in the court aforesaid on Monday, the 16th day of April, 1883, at 10 o'clock A. M.

12-13

JOHN T. LENAHAN,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Wolf Rockman, and that said license will be asked for in the court aforesaid on Monday, the 16th of April, 1883, at 10 o'clock A. M.

12-13

JOHN T. LENAHAN,
Solicitor.

ESTATE OF DANIEL JONES, LATE OF THE borough of West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB KERN,
JOHN W. NIMMO,
GEO. S. FERRIS, Adm'rs c. t. a. d. b. n.
Attorney. 11-16

ESTATE OF THOMAS W. JONES, LATE OF
Hanover township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REESE J. JONES,
JANE JONES,
Administrators. 10-15
G. H. R. PLUMB,
Attorney.

ESTATE OF JASPER B. STARK, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FRANCIS R. STARK,
Administratrix. 9-14
E. P. & J. V. DARLING,
Attorneys.

ESTATE OF JAMES DOLAN, LATE OF THE
township of Plains, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PHILIP McANIFF,
Executor. 10-15
M. CANNON,
Attorney.

ESTATE OF EDGAR GREEN, LATE OF THE
township of Franklin, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ISAAC SUTTON,
Executor. 10-15
PALMER, DEWITT & FULLER,
Attorney.

ESTATE OF ANN MIDDLETON, LATE OF
Plains township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

STEPHEN HEALEY,
RICHARD BURKE,
Executors. 9-14
COONS & SHORTZ,
Attorneys.

ESTATE OF JOHN M. STACKHOUSE, LATE
of Shickshinny, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES POST,
Administrator. 9-15
I. P. HAND,
Attorney.

ESTATE OF JULIA McNULTY, LATE OF
Wilkes-Barre township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ALICE McNULTY,
Administratrix. 8-13
E. P. & J. V. DARLING,
Attorneys. 8-13

ESTATE OF MARY E. MACCARTNEY, LATE
of Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
Administrator c. t. a. d. b. n. 11-16

ESTATE OF WILLIAM MINNICH, LATE OF
Sugarloaf township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANN ELIZA MINNICH,
Executrix. 10-15

ESTATE OF JOSEPH SCHAPPERT, LATE
of Nanticoke, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY ANN SCHAPPERT,
JACOB SCHAPPERT,
Executors. 8-13

ESTATE OF MICHAEL STEIN, LATE OF
Dorrance township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

GEO. H. HINKLEMAN,
Executor. 7-12

ESTATE OF ELIZA BOWERS, LATE OF
Wyoming, Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM HANCOCK,
Executor. 8-14

ESTATE OF JOHN MANGAN, LATE OF
Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

THOMAS MANGAN,
Administrator. 9-14
F. C. MOSIER,
Attorney.

ESTATE OF W. S. HILLARD, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RUTH B. HILLARD,
Executrix. 8-13
E. G. BUTLER,
Attorney.

ESTATE OF JOHN ORR, LATE OF FOSTER
township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELIZABETH A. POLLOCK,
Executrix. 8-13

ESTATE OF MARY E. PETERS, LATE OF
Hollenback township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. T. LENAHAN, Attorney. **DANIEL BLOSS,** Administrator. 12-17

ESTATE OF REBECCA PETERS, LATE OF
Hollenback township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. T. LENAHAN, Attorney. **DANIEL BLOSS,** Administrator. 12-17

ESTATE OF JOSEPH STACKHOUSE, LATE
of Shickshinny, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND, Attorney. **JOHN W. CHAPIN,** Executor. 9-14

ESTATE OF JULIA ROBERTS, LATE OF
Hughestown, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

F. C. MOSIER, Attorney. **ALFRED P. HOUSE,** Administrator. 12-17
FRANCIS H. CHIVERS,

ESTATE OF DANIEL JONES, LATE OF THE
borough of West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEO. S. FERRIS, Attorney. **JACOB KERN,** Administrator. 11-16
JOHN W. NIMMO,

ESTATE OF JOSEPH WHIPP, LATE OF
Exeter township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

PALMER, DEWITT & FULLER, Attorneys. **WM. H. WHIPP,** Executor. 13-18
HANNAH WHIPP,

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county. No. 23, January term, 1883. Libel in divorce a vinculo matrimonii. Emma Stevens, by her next friend, John Pagsley, v. Alexander A. Stevens. The alias subpoena in the above case having been returned non est inventus you, the said Alexander A. Stevens, are hereby notified to appear at said court, on Monday, the 14th day of May, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

D. M. JONES, Solicitor. **WILLIAM O'MALLEY,** Sheriff. 13-16

ESTATE OF JOHN HENRY, LATE OF THE
township of Nescopeck, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON, Administrator. 11-16

ORPHANS' COURT SALE.

Estate of Cornelius Dougherty, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Friday, the 30th of March, 1883, at 10 o'clock A. M., the surface of all that lot of land in the borough of Ashley, beginning at a corner in line of Hazleton turnpike and in line of a public road, thence along said public road about 72 feet to a corner in line of Nanticoke Railroad, thence 23 4-10 feet to a corner in line of land of Ellen Carle, thence about 72 feet to a corner in line of Hazleton turnpike aforesaid, and thence along said Hazleton turnpike 30 feet or thereabouts to place of beginning, containing 1,922 4-10 square feet; reserving all coal and other minerals.

TERMS OF SALE—One-half of the purchase money to be paid on day of sale, and one-half on confirmation of sale.

E. G. BUTLER, Attorney. **ELLEN A. CARLE,** Administratrix. 11-13

ORPHANS' COURT SALE.

Estate of John Henry, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, in the township of Nescopeck, on Friday, April 20th, 1883, at 1 o'clock P. M., all that piece of land in Nescopeck township, bounded on the north by land of Andrew Keen, on the south by land of Amanda Smith, on the west by land of John Smith, on the east by land of Mortimer Briggs, containing 80 acres, more or less; on which are erected a frame house, barn, and out-buildings.

TERMS OF SALE—25 per cent down, 25 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, in one year from confirmation; deferred payments to be secured by bond and mortgage on the premises.

C. B. JACKSON, Administrator. 12-14

ORPHANS' COURT SALE.

Estate of Edward Ide, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, April 21, 1883, at 10 o'clock A. M., the two following pieces of land, viz.:

1. Being purpart No. 1 in the township of Lehman, beginning at a stake in Lake road, and running thence by lands of S. P. Ide 217 perches to the line of the Jas. Withy tract, thence along the said line 64 perches to a white oak, thence 30 perches to a black oak in the line of certified Bedford, thence along said line 129 perches to a corner, thence 55 perches to a stake, thence 107 4-10 perches to the aforesaid road, and thence along the same 23 perches to the place of beginning, containing 82 acres and 2 perches, more or less; about 8 acres improved, balance being timber and woodland.

2. All that other piece of land in the township of Lehman, commencing at a corner of land of A. H. Ketcham in line of certified Bedford township, thence 55 perches to a corner, thence 75 perches to a corner, thence 55 perches to a corner, and thence 75 perches to the place of beginning, and containing 25 acres and 125 perches, more or less; all improved.

TERMS OF SALE—One-third down on day of sale, and balance on confirmation of sale and delivery of deed.

E. S. OSBORNE, Attorney. **S. P. IDE,** Administrator. 12-14

ORPHANS' COURT SALE.

Estate of Ann Middleton, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, the 31st of March, 1883, at 10 o'clock A. M., the following piece of land in the township of Plains, beginning on the back road at a corner of land of Mrs. Ann Courtright, thence along said land 218 feet to a corner of land of John Mitchell, thence 50 feet to a corner, thence 218 feet to the back road aforesaid, thence along same 50 feet to the place of beginning; excepting and reserving the coal and other minerals; improved, with a two-story frame house, 16x26 feet, and outbuildings thereon.

TERMS OF SALE—\$300 down on day of sale, and the balance on confirmation of sale.

THOS. H. ATHERTON,
Trustee.

11-13

PARTITION NOTICE.

In Re Partition of the Real Estate of John Blanchard, late of Ross township, Luzerne county, Pennsylvania, deceased. Now, March 13th, 1883, inquest is awarded as prayed for; returnable first day of next term, at 2 o'clock P. M. Service of notice on non-residents of the State shall be published in the Mountain Echo for three successive weeks, and a copy of each mailed to the last known residence, and in the Luz. Leg. Reg. for same time. BY THE COURT.

To John Robbins, Helena, Montana Territory; Ada Robbins, New York City; Clarence Robbins, Bellefont, Pa., and Maria Savage, Buck Horn, Pa., and all other parties interested—You will please take notice that in pursuance of the above order of the Orphans' Court of said county, a writ of partition has been issued from said court to the Sheriff of Luzerne county, returnable on Monday, May 14, 1883, at 2 o'clock P. M., and that the inquest will meet for the purpose of making partition on Tuesday, April 10, 1883, at 12 o'clock M. of the same day, upon the premises, in the township of Ross, Luzerne county, Pa., at which time and place you can be present, if you see proper.

WILLIAM O'MALLEY,
Sheriff.

M. E. WALKER,
Attorney.

11-13

IN THE ORPHANS' COURT OF LUZERNE

county. In Re Estate of S. S. Coon, late of the city of Wilkes-Barre, deceased. Now, March 14th, 1883, rule is granted to show cause why Sylvester Bristol, Administrator, should not be discharged. Returnable the 31st day of March, 1883, at 10 A. M.

BY THE COURT.

IN THE COURT OF COMMON PLEAS OF

Luzerne county. In Re Petition of Magdalena Brehm to be declared a feme sole trader under the Act of Assembly, approved May 4, 1855. Now, March 12, 1883, on filing the within petition, the court being satisfied of the justice and propriety of the application direct notice thereof to be given in the Luzerne Legal Register for four successive weeks, and six Monday, the 16th day of April, 1883, as the time for granting the within prayer of petitioner, and of making decree as prayed for.

MICHAEL CANNON,
Solicitor.

11-14

NOTICE IS HEREBY GIVEN THAT AN

application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, April 16th, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Welsh Presbyterian Church," of Ashley, the character and objects of which are to purchase lands and erect buildings for the support of public worship.

W. H. HINES,
Solicitor.

11-13

NOTICE IS HEREBY GIVEN THAT AN

application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

W. H. HINES,
Solicitor.

11-13

NOTICE IS HEREBY GIVEN THAT AN

application will be made to one of Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, on Monday, April 16th, 1883, for the incorporation of an intended corporation, to be called "The Saint Kazimierza Society," of Plymouth, Pa., the character and objects of which are benevolence and charity.

H. C. MAGEE,
Solicitor.

11-13

JALTON DAVIS,

a member of the Bar of Lackawanna county, will apply for admission on April 16, 1883, to practice as an attorney in the several courts of the county of Luzerne.

13-15

NOTICE IS HEREBY GIVEN THAT AN

application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by N. Finklestein, and that said license will be asked for in the court aforesaid, on Monday, April 16, 1883, at 10 A. M.

D. M. JONES,
Solicitor.

13-14

NOTICE IS HEREBY GIVEN THAT AN

application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Leon Hufford, and that said license will be asked for in the court aforesaid on Monday, the 16th of April, 1883, at 10 o'clock A. M.

BENNET & NICHOLS,
Solicitors.

12-13

NOTICE IS HEREBY GIVEN THAT AN

application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Henry Goodman, and that said license will be asked for in the court aforesaid on Monday, the 16th day of April, 1883, at 10 o'clock A. M.

S. J. STRAUSS,
Solicitor.

12-13

NOTICE IS HEREBY GIVEN THAT AN

application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Myer Finklestein, and that said license will be asked for in the court aforesaid on Monday, the 16th day of April, 1883, at 10 o'clock A. M.

JOHN T. LENAHAN,
Solicitor.

12-13

NOTICE IS HEREBY GIVEN THAT AN

application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Wolf Rockman, and that said license will be asked for in the court aforesaid on Monday, the 16th of April, 1883, at 10 o'clock A. M.

JOHN T. LENAHAN,
Solicitor.

12-13

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, APRIL 6, 1883.

No. 14.

Court of Quarter Sessions of Luzerne County.

COMMONWEALTH *v.* SEWARD.

Constitutional law—Police power of the State—Camp meetings—Act of May 8th, 1878, regulating traffic near.

1. The act of May 8th, 1878, which, subject to certain exceptions, makes it a misdemeanor for any person "to erect, place, or have any booth, stall, tent, shed, carriage, boat or vessel, or any other place or vehicle whatever for the purpose or use of selling, giving, or otherwise disposing of all or any kinds of articles of traffic or merchandise (except as hereinafter excepted) within one mile of any camp meeting held for religious worship in this Commonwealth," is not unconstitutional.
2. Police power of the State defined.
3. The above act in its purpose, and in its provisions to carry out that purpose, may be fairly considered as within the police power of the State.
4. The purpose of the act being lawful and constitutional, a large discretion as to the means necessary to accomplish it must be left to the Legislature, and the courts cannot interfere with the exercise of that discretion, except in a very clear case, without usurping legislative functions.

Rule why indictment should not be quashed.

The opinion of the court was delivered January 5, 1883, by

RICE, P. J.—This indictment is well drawn under the act of May 8th, 1878 (P. L. 46), which, subject to certain exceptions, makes it a misdemeanor for any person "to erect, place, or have any booth, stall, tent, shed, carriage, boat or vessel, or any other place or vehicle whatever, for the purpose or use of selling, giving, or otherwise disposing of all or any kinds of articles of traffic or merchandise (except as hereinafter excepted) within one mile of any camp meeting held for religious worship in this Commonwealth." Three classes of persons are excepted from the prohibition of the statute, as follows: 1st. Licensed tavern or hotel keepers, merchants, mechanics, farmers, and shop keepers, in their lawful and

ordinary business, at their usual place of business or residence. 2d. Persons who have procured a written "permit" from the trustees or managers of the camp meeting. 3d. Farmers living within one mile of the camp meeting disposing on their own premises of their own farm products or vegetables. As the case is now presented, it must be assumed that the defendant did not come within either of these excepted classes.

The sole question which the present motion requires us to decide is, whether or not the act is constitutional. The defendant's counsel argue that it is not, because it unreasonably interferes with the right of holding, using, and enjoying private property, or at least that it makes the exercise of the right dependent on the will of another.

The right to buy and sell whensoever and wheresoever one will is not an indefeasible right which the Legislature may not regulate and restrain when the public welfare requires. "Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the Legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient." *Comlth. v. Alger*, 7 Cush. 85. "The police of a state, in a comprehensive sense, embraces its system of internal regulation, by which it is sought not only to preserve the public order, and to prevent offences against the state, but also to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of right, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others." *Cooley Const. Lim.* *p. 572. It would be an almost endless task to enumerate the instances wherein this power has been exercised without question. *A business, trade, occupation, industry, or amusement may be perfectly innocent or lawful in itself, but it becomes injurious when it disturbs or interferes with the enjoyment by others of their rights. The public welfare is promoted by the prevention of a conflict of rights between individuals, and to accomplish this the state has undoubted authority

to make extensive and varied regulations as to the time, mode, and circumstances in and under which parties shall assert, enjoy, or exercise their rights, without coming in conflict with any of those constitutional principles which are established for the protection of private rights and private property.

It must be conceded that the Legislature has undoubted authority to make reasonable regulations to secure the people of the State, in the peaceable and quiet enjoyment of their right to assemble together, either in a church edifice, or in the open field, or in the grove, for the purpose of religious worship and instruction. This authority has been claimed and exercised from a very early period in this Commonwealth. It includes not merely the authority to punish the wilful disturbance of religious assemblies as a misdemeanor, but to regulate and control otherwise lawful employment and conduct, so that they shall not cause disturbance. As an illustration of the exercise of the police power, the Legislature, in 1798, authorized the religious societies of Philadelphia to extend chains across the streets in front of their church edifices on Sunday to prevent vehicles from passing and re-passing. The purpose of this act and its justification, as expressed in the preamble, was to secure and protect the peaceable and quiet enjoyment of the right to assemble together for religious worship. Again, by the act of April 2d, 1822 (7 Sm. L. 660; P. D. 1263, *pl.* 4), it was made unlawful for any person to have a place for the purpose of selling or otherwise disposing of any kinds of articles of traffic, spirituous liquors, etc., within three miles of any place of religious worship, during the time of holding any meeting therefor. The second section of the act authorized the summary seizure and sale of the goods. The third section made nearly the same exceptions as are made in the act of 1878 (*supra*). This act twice came before the highest court of the State for review. It was held in both cases that under a proper construction of its terms the enumeration of liquors known to have a tendency to produce intoxication was meant as an exposition of the term traffic. In the first case two of the judges thought that the section authorizing a summary seizure and sale of the goods was in conflict with the provision of the bill of rights, that one cannot be deprived of his property unless

by the judgment of his peers or the law of the land. But in neither case was it suggested that it was not within the constitutional power of the Legislature to regulate, and, under proper safeguards, to restrain the traffic in all kinds of merchandise, as well as intoxicating liquors, within the period and limits named, except upon the conditions prescribed. *Fetter v. Wilt*, 10 Wr. 457; *Kramer v. Marks*, 14 Sm. 151. The absence of such suggestion is of some value as showing that the objection to the statute on this ground could not be successfully urged.

The faults of the act of 1822 have been avoided in the act of 1878, and the limits within which general traffic may be carried on have been reduced to one mile. Great care has been taken not to interfere with any business, trade, or occupation already established, and not to restrain any person from the use and enjoyment of his property as he would have enjoyed it were the camp meeting not held. Is it unreasonable to provide that other persons, attracted solely by the assembling of a large number of people for religious worship and instruction, shall not take advantage of that circumstance, and establish places for general traffic in the immediate vicinity of the camp meeting, without the consent of the managers of the association? We can discover only one purpose for this provision of the statute, and that is to prevent disturbances of the religious meetings; and it can readily be seen that from the nature of the assemblages, and the character of the places where camp meetings are usually held, some such provision is necessary for that purpose, which would not be required if the meetings were held within the walls of a church edifice. Assuming, as we must, that the purpose of the statute is a proper one for legislative action, it must very clearly appear that the regulations of the statute are so unreasonable as to leave no room for doubt that the Legislature has exceeded its constitutional powers, or the courts will not be justified in setting them aside. A large discretion as to the means necessary to accomplish this lawful and constitutional purpose must be left to the Legislature, and the courts cannot interfere with the exercise of that discretion, except in a very clear case, without usurping legislative functions. The police power of the State, as vested in the Legislature, is not without limitation, and we do not mean to

be understood as saying that the courts may not declare an act unconstitutional which has been passed under the ostensible exercise of that power, but only that the case must be clear and free from doubt. If it could be discovered that the purpose of the act was not what we have stated it to be, but was one in which the public welfare was in no way concerned, the courts would undoubtedly be justified in declaring that the Legislature had transcended its constitutional powers. For example, if the purpose and effect of the law were to confer upon camp meeting associations the right of monopolizing the sale of all kinds of goods within a certain radius for their own profit, it would be open to very serious objections. It would be difficult to see how the public welfare could be subserved by such legislation. This objection was raised in a recent case in Massachusetts, and was so fully and satisfactorily considered that we quote at length from the opinion, which has not as yet been published in the reports.

"The Legislature," says Mr. Justice Devens, "is largely the judge of its own powers in reference to these matters. If it can be seen, indeed, that the rights of property are invaded under the pretence of a police regulation, it would be our duty to interfere to protect them. It is contended that the defendant's use of his own land is subjected to the will of another; that he cannot, under the law, use it for an otherwise lawful purpose but with the consent of another. But no general control has been assumed over his land; no lawful and established business that he has interfered with. If it be that of selling provisions and refreshments, he may continue it, although the camp meeting has assembled. But if he purposes to make a use of his land that he would not have made but for the assembling of the camp meeting, it is not an improper police regulation which requires him to obtain its consent. The protection of such a meeting, as of every public meeting, is certainly an object in which the public welfare is concerned. The sale of provisions and refreshments is one often submitted to supervision as liable to occasion disorder. Inasmuch as the defendant seeks to pursue it, not as an established business, but only by reason of the camp meeting, it is not unjust to him or his use of the property that its authorities shall determine whether they will be disturbed by it. . . . Nor

is the intention of this law to invest the camp meeting with a franchise by which it may properly assume the control of the business of selling provisions, etc., and thus of monopolizing the pecuniary advantages to be derived from it. The gift to one of the right to carry on a business in a particular vicinity may be a very valuable right. The authority to control it is equally so, and if here conferred with a view of investing the camp meeting with such a privilege for any purpose except the preservation of order would be subject to serious objection. There would be much reason for asserting that thus conferred it was an invasion of the rights of property. An examination of the various provisions of the statute will determine whether all that it has been attempted to accomplish by legislation is merely to limit the use of property in the interest of the public peace and welfare. That such is its object is shown by the history of the legislation, by the classes of business forbidden absolutely, by those forbidden unless permission is obtained, by the temporary character of such prohibition, and by the fact that no established business is disturbed." *Comlth. v. Bears* (Sup. Ct. Mass., Mss.)

The reasoning upon which this case was decided is pertinent here. All of the points raised before us were fully considered in that opinion. Coming, as it does, from a court of very high authority, and there being no conflicting decision by the courts of our own State, the decision is entitled to very great weight.

We conclude that the act under consideration in its purpose, and in its provisions to carry out that purpose, may be fairly considered as within the police power of the State, and hence the motion to quash the indictment must be overruled.

The rule is discharged.

Q. A. Gates and Gustav Hahn, Esqs., for rule.

A. Dart, Jr., J. V. Darling, and S. M. Rhone, Esqs., *contra*.

Court of Quarter Sessions of Luzerne County.

COMMONWEALTH v. SHELLY.

Criminal law—Indictment—Exceptions in a penal statute—When to be negatived in indictment—Camp meetings—Act of May 8th, 1878.

1. It is a general rule that where the enacting clause of a statute describes the offence, with certain exceptions, it is necessary to state all the circumstances which constitute the offence, and to negative the exceptions; but where the exceptions are contained in separate clauses or provisions of the statute, they may be omitted in the indictment, and may be shown by the defendant as matters of defense.
2. Where by the terms, "except as hereinafter excepted," the exception is introduced into the enacting clause as a part of the definition of the offence, and not as a proviso, it should be negatived.
3. The enacting clause of the act of May 8, 1878 (P. L. 46), relating to the regulation of traffic near camp meeting, contains the words, "except as hereinafter excepted;" the third section states the exceptions: *Held*, that in an indictment the exceptions should be negatived.

Rule to show cause why indictment should not be quashed.

The opinion of the court was delivered January 9, 1883, by

RICE, P. J.—The first section of the act of May 8, 1878 (P. L. 46), makes it unlawful for any person to erect or have any place for the purpose of disposing of any kinds of merchandise, "except as hereinafter excepted," within one mile of any camp meeting held for religious worship. The second section of the act makes it a misdemeanor for any person to violate the provisions of the first section. The third section provides that certain classes of persons shall not be affected by the act. It is under this act that the indictment was intended to be drawn.

The first reason urged for quashing the indictment is, that the act is unconstitutional. We conclude, however, that it may be justified as a reasonable exercise of the police power of the State. Our reasons for this conclusion are given in the opinion recently filed in the case of *Comlth. v. Seward* (*ante* 81).

Another objection, which did not arise in the *Seward* case, is stated as follows: "The indictment ought to have averred that the defendant sold his merchandise, not only contrary to the act of Assembly, but also contrary to the section of the act of

Assembly containing the saving clause or exceptions." It is a rule of very general application that where the enacting clause of a statute describes the offence, with certain exceptions, it is necessary to state all the circumstances which constitute the offence, and to negative the exceptions; but where the exceptions are contained in separate clauses or provisions of the statute, they may be omitted in the indictment, and may be shown by the defendant as matters of defense. See 1 Wh. Cr. L. § 378; 1 Bish. Cr. Pr. § 635, and cases there cited. If the first section of the act of 1878 had contained no reference to the exceptions contained in the third section, then, following the general rule above stated, there would have been no difficulty in sustaining this indictment. But if, on the other hand, these exceptions had been written out in full in the enacting clause, it would seem, under the same general rule, that they should have been negatived in the indictment. For example, if the section had read, "it shall not be lawful for any person, except licensed tavern keepers, merchants, etc., and persons who have procured a permit, etc.," good pleading would require these exceptions to be negatived. *Com. v. Maxwell*, 2 Pick. 139; *State v. Barker*, 18 Vt. 195. These exceptions, thus introduced into and made part of the enacting clause, would seem to qualify the general terms used at the outset, and hence would become a material part of the definition of the offence. As it seems to us, after a careful examination of the authorities, the terms in the enacting clause, "except as hereinafter excepted," have the same effect. By their introduction into that clause before the completion of the definition, and not as a proviso, it appears that the Legislature did not intend to make the prohibition general, but limited to certain circumstances and certain classes of persons. Hence it was as material to negative the exceptions as it was to aver that the goods were offered for sale within one mile of the camp meeting. The fact that the exceptions are, by relation, brought into the same *section* with the enacting clause is not decisive. Cases might be cited where the prohibitory clause has been immediately followed by a proviso, and yet it has not been held essential to aver that the defendant did not come within the proviso. The reason supporting these rulings is, that the matter contained in the proviso was not

an essential part of the definition of the offence, but was excusatory, or matter of defense. But where the exception is so incorporated with the clause defining the offence, either by its introduction in express terms in the enacting clause, or by being referred to in terms such as are used in this statute, as to become a material part of the definition, it would seem reasonable to hold that it must be negated in order that the description of the offence laid in the indictment may correspond with that prohibited by the statute. This is held to be the test in the case of the United States v. Cook (17 Wall. 168, 173, etc.) where this question of pleading is very fully considered. In the case of Comlth. v. Hart (11 Cush. 130) Mr. Justice Metcalf says: "There is a middle class of cases, namely, where the exception is not in express terms introduced into the enacting clause, but only by reference to some subsequent or prior clause, or to some other statute. As when the words, 'except as hereinafter mentioned,' or other words referring to matter out of the enacting clause, are used. The rule in these cases is, that all circumstances of exemption and modification, whether applying to the offence or to the person, which are incorporated by reference with the enacting clause, must be distinctly negated. *Verba relata inesse videntur.*" This language, if not required by the facts of the case, is supported by authority, and is consistent with the principle of the general rule which we stated at the outset. See *Varasour v. Ormrod*, 6 B. & C. 430 (13 E. C. L. 199); *State v. O'Donnell*, 10 R. I. 472. The case of *Stul v. Smith* (1 Barn. & Ald. 94; 4 E. C. L. 45) is sometimes referred to by text writers as authority to the contrary. This is not warranted by the report of the case. The judges especially call attention to the fact that in the enacting clause of the statute then under consideration there was no reference to the exception. Abbott, J., says: "Here are not in the enacting clause any words such as 'except as hereinafter provided.' If any such words had been introduced, it might fairly have been contended that the subsequent proviso was incorporated with the enacting clause, and then the objection might have been supported." The case of *Comlth. v. Davenger* (2 Luz. Leg. Reg. 177) was based on an act of a similar nature to this. The enacting clause made it unlawful for any person to erect or have

a place for the sale of certain kinds of merchandise within two miles of the camp meeting without having obtained a license. It was then further provided that nothing in the act should be taken to affect any person who had procured a permit from the managers. It was held that the information should aver not only that the defendant had no license, but also that he did not have the permit referred to in the proviso.

This question is full of perplexity. It will be found, after an examination of the authorities and conflicting *dicta* of courts and text writers, extremely difficult for the pleader to determine whether exceptions and provisos enter into the definition of the offence, or are to be shown by the other party as matters of defense. Dr. Wharton concludes his discussion of the question by saying that the test is practically this: "Is it the scope of the statute to create a general offence, or an offence limited to a particular class of persons? In other words, is the crime meant to be viewed as generally wrong, and subject to general moral condemnation; or is it an artificial and arbitrary offence, only becoming such when it is executed by persons of a particular class? In the latter case the defendant must be declared to be within this class; in the former case this is not necessary." 1 Wh. Cr. L. § 380. This test seems to us to be based on just principles, and if it be applied to the case in hand it will be seen that the prohibition of this statute is not general, but limited to certain classes of persons, and that in order to precisely describe the offence it is as important to aver that the defendant was not a licensed tavern or hotel keeper, merchant, mechanic, farmer, or shop keeper, in his lawful and ordinary business, at his usual place of business or residence, and that he did not have a permit from the managers of the camp meeting, as it is to aver that the goods were offered for sale within one mile of the camp meeting. Without such averments the act charged against the defendant would be perfectly lawful. For these reasons we conclude that the indictment must be quashed.

The rule is made obsolete.

Gustav Hahn, Esq., for rule.

A. Darte, Jr., and T. R. Martin, Esq., *contra*.

LICENSES.

Notice is hereby given that the following persons have filed their applications for license to keep hotels and restaurants, and to sell liquor by the quart, in the office of the Clerk of the Court of Quarter Sessions of the county of Luzerne, and that said applications will be heard by the court on Monday, April 16, 1883:

HOTELS.

H. & McG	John M. Caffray	Ashley.
"	Michael McKiernan	"
Farnham	Daniel H. Evans	"
J. L.	M. A. McCarty	"
Hines	James Fredrick	"
Landmesser	Peter Smith	"
Hahn	Daniel B. Kegie	Black Creek Tp.
Troutman	Joel Morton	"
Brundage	W. J. Myers	"
Harding	Barnet Scarfoss	Bear Creek Tp.
Kline	Anna M. Drum	Butler Tp.
"	John N. Landmesser	"
"	David Mace	"
"	Joseph Woodring	"
Kisner	George Drum	"
Gorman	Dennis B O'Donnell	"
Hahn	Thomas Lannon	"
Brundage	Milton Hess	Conyngnam Tp.
"	Werner Smith	"
Hakes	Philip Raub	Dallas
Brundage	George H. Hoch	Dorrance Tp.
Hughes	Christ. Remming	Exeter.
Hahn	John Fuchs	Foster Tp.
Hayes	John Melley	"
"	Andrew W. Bechtleaf	"
"	Frank P. Whitebread	"
Kline	Conrad Schaub	"
Martin	S. R. Ferrell	Franklin Tp.
Hayes	William Gibbons	Freeland.
"	John Yannis	"
"	Michael Zemany	"
"	Robert Wallace	"
"	Alfred Defoy	"
J. T. L.	A. Harvey	"
H. & McG	James Caffrey	Hanover Tp.
Derr	S. J. Faux	"
Hahn	John H. Washburn	Hollenback Tp.
Martin	Daniel Warner	Hunlock Tp.
Magee	Sol Hursh	"
E. A. L.	A. P. Cotes	"
Kline	Otto Brien	Harle Tp.
"	Robert Gauff	"
McManus	C. Herron	"
Troutman	William Horn	"
Gorman	John McNeal	"
"	James McFadden	"
Hahn	Jacob Rosenstock	"
McManus	William Bach	Hazleton.
"	George Gibbons	"
"	Martin Modjeska	"
"	Frederick Meirs	"
"	Henry Coller	"
"	Philip Stocker	"
"	Christian Mathes	"
Gorman	Joseph Pheotes	"
"	William Cassidy	"
"	James Fitzpatrick	"
"	John McGinty	"
"	Adam Schreiner	"
Kline	Philip Feist	"
"	C. W. Krapf	"
"	Henry Krapf	"
"	Thos. P. Morgan	"
"	George Schaefer	"
"	George Seigel	"
"	John Stein	"
"	A. F. Volkenand	"
"	Anton Wagner	"
"	John V. Wagner	"
"	C. L. Kline	"
"	Adam Schneider	"
"	William Hartig	"
"	Charles Ermish, Sr.	"
"	Henry Knoth	"
"	Wm. L. Williams	"
Troutman	Samuel B. Cressman	"

McL. & J	Munson Sigler	Jackson Tp.
"	Samuel Hodgdon	Jenkins Tp.
Reynolds	Nathan Kunkle	Kingston.
"	T. McDonough	"
Darte	Peter Wolcott	"
Hakes	D. A. LaBar	"
Campbell	John Batterton	Kingston Tp.
D. & A	A. Callahan	"
Martin	Henry Kemp	"
H. & McG	W. E. Steele	"
Hahn	James E. Williams	"
"	Eugene M. Phillips	"
"	Linn Jones	"
Martin	James W. Rhoads	Lehman Tp.
Plumb.	C. D. Skodden	"
Phoenix	E. W. Drake	"
D. & A	Edward T. Jones	Luzerne.
"	George Woodyatt	"
Hines	H. C. Beck	"
Reynolds	E. W. Steel	"
Plumb.	J. H. Oplinger	Nanticoke.
Osborne	Xavier Wernet	"
Magee.	I. K. Fellows	"
Hines	Andrew Dombroski	"
Kline	C. C. Williams	Nescopeck Tp.
Plumb.	W. C. Gruver	Newport Tp.
H. & McG	E. B. Courtright	"
Hines	William Tate	"
J. T. L.	John Hares	Parsons.
Jones	Catharine Morgan	"
Brundage	John Schumacher	"
Robinson	William Neimeyer	"
J. L. L.	P. Battle, Agt	Pittston.
H. & McG	Paul Bohan	"
"	James J. Rigney	"
Koon	William Bechtold	"
"	John Donley	"
"	John F. Eichholzer	"
"	F. L. Farnham	"
"	R. Streng	"
"	Joseph Weber	"
"	Harry Scheidel	"
Bauman	F. W. Ginz, Jr	"
Miller	H. W. Lee	"
Hughes	Michael Murray	"
"	John W. Davis, Agt	"
"	Thomas Cody	"
"	C. H. Schuyler	"
Mosier	E. M. Sinclair	"
"	J. R. Ehret	"
"	Thos. B. Leonard	"
"	James S. Baker	"
Payne	George Smith	"
H. & McG	Archib McQueen	Pleasant Valley.
Phoenix	Jacob H. Snyder	"
B. & N	Thomas Hooper	Plains Tp.
J. T. L.	Bridget Mangan	"
H. & McG	C. M. Williams	"
Moore	Michael Athey	"
J. L.	Patrick Mangan	Plymouth.
Magee.	James Eley	"
"	K. A. Frantz	"
"	Geo. P. Richards	"
"	R. W. Roberts	"
"	Thomas B. Case	"
"	Benjamin Krothe	"
"	John Dempsey	Plymouth Tp.
O'Neill	John McAnany	"
Patrick	Samuel Rogers	"
McL. & J	James J. Ruch	"
J. T. L.	James Duffy	"
Martin	J. J. Hess	Salcm Tp.
Gates	George Fisher	"
Martin	Joseph M. Turner	Shickshinny.
O'Neill	William Shoemaker	"
Osborne	C. W. Yaple	"
Weaver	Wm. H. Brommer	Sugarloaf Tp.
"	Jeremiah Trash	"
Kline	Lewis Frederick	"
"	A. J. Minnick	"
Hahn	Abraham Hetler	"
C. & S	Samuel B. VanHorn	"
Brundage	Edward Henry	"
"	William Else	"

J. L. L.	John T. Conway	Sugar Notch.
Plumb	Evan T. Jones	"
	Minor Bencotter	Union Tp.
Farnham	Clara Halfpenny	West Pittston.
Halsey	Samuel Altemus	White Haven.
"	Lydia A. Driggs	"
"	Theo. Runke	"
C. & S.	Chas. A. Shumaker	"
Hahn	Nicholas Hildebrand	Wright Tp.
	Gustav Wech	"
O'Neill	Thomas Caffrey	Wilkes-Barre Tp
	Ann Kane	"
Osborne	P. J. Foley	"
	WILKES-BARRE.	
H. & McG	John Brady	First Ward.
O'Neill	Wm. P. Gardner	"
Robinson	Martin Kingeter	Second Ward.
J. L.	A. J. Lewis	"
"	Joseph Zoeller	"
Cannon	John Mundy	"
Bauman	S. Zirnheit	"
Campbell	John Stetzer	"
Strauss	Caroline Bausch	Thlrld Ward.
Hahn	John Becker	"
J. T. L.	John Kern	"
McL. & J	William Murphy	"
J. L. L.	H. H. Webb	Fourth Ward.
Kulp	S. Bristol	"
Bulkeley	J. M. Courtright	"
"	Wm E. Farrell	"
Miller	W. J. McLaughlin	"
J. L. L.	Jacob Reuffer	"
B. & N	John W. Staats	"
Hines	Thomas Trembath	"
Espy, Mahon	Philip Moyer	"
Mahon	William Dettmar	Fifth Ward.
"	Adam Price	"
"	William Zirnheit	"
"	F. J. Niemeyer	"
"	P. J. Gallagher	"
"	Samuel Geisinger	"
Robinson	Frank Flosser	"
"	G. A. Krothe	"
Bulkeley	Moses Vancampen	"
McL. & J	Chas. T. Howard	"
Campbell	Andreas Mutter	"
Miller	Julia A. Shearer	"
Cannon	Jacob Schmidt	"
O'Neill	Aaron Whitaker	"
"	W. C. Hanna	"
Jones	Jeanette Williams	"
"	Stephen Reese	"
Hakes	Geo W. Mabey	"
Farnham	James Gallagher	Sixth Ward.
Mahon	Michael Meehan	"
J. T. L.	Peter Harvey	"
McGahren	Benj. Dille	Seventh Ward.
Robinson	John L. Raeder	"
McL. & J	Peter Schappert	"
E. A. L.	Edward Harley	"
J. T. L.	P. Kleeman & Bro	"
Burke	A. Lindacher	"
Raeder	John Raeder	"
H. & McG	Jno. S. Eley	"
O'Neill	Henry D. Higgins	"
Farnham	George Dearie	"
Darlings	Francis R. Stark	"
Osborne	Jacob Becker	Eighth Ward.
Jones	Ivor Davis	"
"	William Evans	"
Farnham	William B. Evans	"
Robinson	Andrew Ebert	"
"	Philip Furstenfeld	"
"	A. Grosser	"
"	Baltzer Helfrick	"
"	John J. Hummel	"
"	George A. Lohman	"
"	E. C. Wasser	"
"	Herman Zeterburg	"
"	C. S. Fowler	"
"	George Mahle	"
Martin	Charles Gable	"
"	G. W. Leas	"
Landmesser	Charles Saeger	"

Hahn	Peter Warker	Eighth Ward.
"	P. Weiss	"
J. T. L	John Alles	"
Darte	Thomas D. Thomas	"
Mahon	Patrick Cullen	Ninth Ward.
Robinson	F. C. Bressler	"
McL. & J	B. H. Brodhun	Tenth Ward.
E. A. L.	A. Kline	"
Rhone	Lewis Greismer	Eleventh Ward.
Bennett	Nicholas Miller	"
"	Valentine Schuler	"
Hahn	Leopold Storz	"
H. & McG	Henry Weiss	"
McL. & J	Conrad Jacobs	"
"	Frederick Ittig	"
B. & N	Louis Creter	Twelfth Ward.
"	Rosina Goekel	"
Martin	H. W. Connor	Thirteenth Wd.
Hahn	John Hochreiter	"
Mahon	Jacob Guttendorf	"
Gibbons	T. J. Gallagher	"
J. L.	Patrick Corrigan	"
J. L. L.	Thomas Devaney	Fourteenth Wd.
H. & McG	Jacob Schwab	"
McL. & J	C. L. Kleemans	"
J. T. L.	Michael Gibbons	"
Banks	A. F. Farr	Fifteenth Ward.
McL. & J	Jacob Kocher	"
Espy	M. Rottman	"
Hakes	John C. White	"
Hahn	John Eveland	"
RESTAURANTS.		
Hines	E. Doney	Ashley.
"	Wm. F. Imlay	"
"	James McTigue	"
Campbell	Peter Murphy	"
Plumb	C. B. Stivers	"
H. & McG	Frank Koons	Denison Tp.
Halsey	John O'Dea	Exeter Tp.
Koon	John Toohey	"
"	John Melville	"
Gorman	Ann Boyle	Freeland.
"	James Givens	"
McManus	John Brislin	"
"	John Brown	"
"	Joseph Davis	"
"	Manus Brennan	"
Kline	Elizabeth Weigand	"
Hayes	John M. Powell	"
"	Patrick Quinn	"
"	John Rush	"
"	John Rugens	"
"	John Shiko	"
"	Rudolph Ludwig	"
"	David Kear	"
"	Stephen Dresher	"
Hines	C. Betzler	Hanover Tp.
H. & McG	D. Higgins	"
"	Thomas Powell	"
E. A. L.	Henry Watkins	"
Hakes	William Jones, Jr	"
Koon	John Bechtold	Hughestown.
"	James Brown	"
"	E. Rickert	"
"	Thomas Mitchell	"
"	Henry James	"
McManus	Charles Altmiller	Hazleton.
"	R. Cramer	"
"	John Glanceous	"
"	C. Lahn	"
"	James McFarland	"
"	John F. Melkrantz	"
"	William Berger	"
"	Jacob Schmidt	"
"	Neil McMonigal	"
"	Bernard McGuire	"
"	Jacob Smidt	"
"	William Rheinhart	"
Kline	Fred Berger	"
"	J. F. Fisher	"
"	Elizabeth Keunhold	"
"	Frank McGinty	"
"	Bernard Paul	"
"	Fred Schaar	"

Klise	Christian Schneider	Hazleton.
"	Adam Smauch	"
"	Martin Specht	"
"	Martin Wendel	"
"	Mrs. W. J. Williams	"
"	John Wolfram	"
"	John Kohlhaas	"
"	Catharine M. Hebel	"
"	Henry Knoth	"
"	Justus Schmidt	"
"	Anna M. Boddin	"
"	John G. Koshler	"
"	Mrs. Henry Fey	"
Gorman	Jacob Drumtra	"
"	D. C. Boyle	"
"	Neal McGinty	"
"	Charles Widenbach	"
"	John O'Donnell	"
"	John McGinty	"
Martin	Owen Holland	Jenkins Tp.
Mahon	Edward Meginnis	Kingston Tp.
Farnham	John Balcher	"
Hahn	Barbara Keller	"
"	John Palmer	"
O'Neill	David Culver	"
J. T. L.	Dora Sherry	"
H. & McG	Charles G. Banta	"
B. & W	William J. Stephens	"
Jones	David Thomas	"
Campbell	Patrick Ratchford	"
J. T. L.	Hugh Boyle	Luzerne.
H. & McG	Michael Farley	"
D. & A	Robert Clayson	"
"	Edward T. Jones	"
Koon	Michael Delaney	Marcy Tp.
J. L. L.	John Nales	"
Mosier	Peter L. Carey	"
Hines	John Corcoran	Nanticoke.
"	Frank Dagnan	"
"	Francis Patsykoske	"
J. T. L.	Michael Clifford	"
Hahn, Plumb	A. Dropiewskie	"
Hahn	Mary Croski	"
"	W. Heiduckiewicz	"
"	John Stadt	"
"	Piotr Sztukowski	"
Plumb	Wm. H. James	"
"	Peter Stackowicki	"
"	Alfred Evans	"
Magee	George Williams	"
Martin	Henry Harvey	"
Chapin	Thomas McGuire	"
"	John Reagan	"
"	Joseph Hughes	"
"	John O'Brien	"
"	Jane James	"
Jones	George P. Miller	Nescopeck Tp.
Osborne	George Segar	Newport Tp.
H. & McG	Patrick Shea	"
Plumb	John Bowman	"
E. A. L.	Thos. J. Evans	Parsons.
Jones	Patrick Golden	"
Mahon	James Kenney	"
O'Neill	Thomas Cusick	"
J. L. L.	Thomas Cusick	"
Koon	Anthony Boos	Pittston.
"	Peter Finley	"
"	John Hauser	"
"	John Lewellyn	"
"	Jacob Pfingsten	"
"	John Fagan	"
"	Daniel Howell	"
"	Vincent Blazys	"
J. L. L.	O. J. Nicholas	"
"	Edward Gallagher	"
Mosier	Charles Reilly	"
Hughes	Albert Sutter	"
"	Edward Bolin	"
"	James Jordan	"
"	James James	"
"	Thomas Tighe	"
"	Leo Dorbath	"
"	Genevieve Getz	"
"	Wm. J. Jenkins	"
"	William Rowe	"

Raeder	Amzi Myers	Pittston.
Mosier	A. Richard	"
H. & McG	John Connell	"
"	Patrick Connell	"
"	P. J. Duffy	"
Brundage	P. J. Daley	"
Bauman	S. Sturmer	"
J. T. L.	Chas. H. Smith	"
"	James Gibbons	"
"	Patrick McNally	"
"	Bernard McKone	"
"	John Riker	"
"	Thomas Lyons	"
Nichols	Patrick Sheridan	"
Koon	Michael Brown	Pittston Tp.
"	Charles A. Zeigler	"
O'Neill	Arthur Davidson	Pleasant Valley.
"	Michael Dempsey	"
"	M. Whealon	"
Koon	Michael Reap	"
J. T. L.	William Keating	"
"	John Walsh	"
Mahon	Michael Lawler	"
Campbell	Tim Allen	Plains Tp.
Farnham	David Aston	"
J. T. L.	Michael Coffield	"
"	Riley & Ruddy	"
"	M. H. Ruddy	"
"	Patrick Corrigan	"
H. & McG	Mary O'Malley	"
Plumb	Peter Hines	"
"	Thomas W. Lewis	"
"	William Morris	"
"	Thomas Morpeth	"
"	George Fenton	"
Jones	Moses Griffiths	"
Bulkeley	William Tasker	"
Strauss	Henry Merritt	"
Moore	William Wright	"
Mahon	Patrick Clune	"
Shonk	George Blakey	Plymouth.
"	Florence Shewan	"
"	John W. Thomas	"
J. L. L.	James Connell	"
Cannon	John Thomas	"
Magee	John Bryson	"
"	A. F. Butzbach	"
"	Thomas Clark	"
"	B. J. Gallagher	"
"	Edward Geaton	"
"	Samuel Haycock	"
"	Mira Johns	"
"	Sarah Martin	"
"	M. J. Reddington	"
"	Timothy Thomas	"
"	John M. Thomas	"
"	David T. Williams	"
"	John Hiowak	"
"	Anthony Bendrift	"
"	John May	"
"	Alfred Munda	"
McAlarney	Joseph Harris	"
"	Martin Wilkes	"
"	John Larwouth	"
Farnham	John O. Jones	"
Robinson	J. H. Monk	"
Magee	J. Brennan	Plymouth Tp.
"	Michael Morrissey	"
"	William Gillespie	"
"	Edward Collett	"
C. & S	James Curry	"
J. L.	M. C. Russell	"
"	Owen Doyle	"
Jones	William Hatchwell	"
Ryman	J. H. Hildreth	"
Shonk	James Reese	"
"	John Brennan	"
E. A. L.	H. McGroarty	"
Farnham	Thomas Walsh	"
McAlarney	James Coughlin	"
"	William Dailey	"
H. & McG	Michael Kelly	"
Brundage	Aug. Rusemweaver	Sugarloaf Tp.
J. L. L.	John J. McAndrew	Sugar Notch.

Plumb	Michael Farrell	Sugar Notch.	McManus	Frank Barnhill	Hazleton.
"	Condy O'Donnell	"	"	Condy Byrne	"
"	Daniel Phillips	"	"	George Zierdt	"
"	John Elliott	"	"	Patrick McCarron	"
Martin	James O'Brien	"	"	Patrick McCoy	"
"	Thomas Roach	"	Kline	Thomas Campbell	"
E. A. L	Rose Sheridan	"	"	Muhl & Graaf	"
Halsey	Dennis Dinan	White Haven.	"	Charles McCarren	"
"	Otto Feist	"	"	John Hausman	"
"	Henry Kaiser	"	"	William Bettenhausen	"
"	John Kern	"	Gorman	Patrick Gallagher	Hazle Tp.
"	Martin Lavelle	"	E. A. L	Michael McDonough	Kingston.
"	Philip Stempel	"	H. & McG	Thomas O'Malley	Kingston Tp.
J. L. L	John Trimble	Wright Tp.	Mahon	John F. Hogan	"
Halsey	John Lavelle	"	Osborne	James McQuade	"
Hines	John Kelly	Wilkes-Barre Tp	J. T. L	James Kennedy	Marcy Tp.
WILKES-BARRE.					
Campbell	Charles Werner	First Ward.	Plumb	Robert Schwartz	Nanticoke.
O'Neill	August Unger	"	Jones	G. R. Snyder	"
McL. & J	Frank Albert	Second Ward.	Chapin	Wash. L. Noble	"
Brundage	Anna Flugle	"	Mahon	Golden & Walsh	Parsons.
J. L. L	Edward Nevin	"	"	Thomas Kelly	"
Hahn	William Blase	Fourth Ward.	J. T. L	John H. Thomas	"
O'Neill	John J. Edwards	Fifth Ward.	Mosier	John Cawley	Pleasant Valley.
Bulkeley	Kate Swartman	"	Hand	M. A. Bevan	Pittston.
Robinson	Leo Geissler	"	Burke	Oliver Burke	"
"	H. Newcomb	"	Mosier	Thomas Granahan	"
"	Leon Buchli	"	Koon	John J. Roberts	"
Mahon	Robert Krieg	"	O'Neill	Brady & McCormick	Plains Tp.
Hahn	Charles Diehl	"	"	John Mayoock	"
Strauss	Joseph Kern	Sixth Ward.	"	Michael Mayoock	"
J. T. L	Morgan D. Jones	"	"	Thomas McDonnell	"
"	Jonah Davis	"	J. T. L	Wm. T. Merrick	"
Bulkeley	M. J. Kingsley	Seventh Ward.	Magee	Patrick A. Beatty	Plymouth.
Robinson	A. Turkes, Jr.	"	"	Freeman & Steindler	"
Hahn	George Schaller	"	"	Emma Edwards	"
McGahren	Ellen Hughes	"	"	H. I. Davenport	"
J. T. L	M. J. Lynch	"	Reynolds	Ira Davenport	"
Hahn	John Becker	Eighth Ward.	Shonk	John R. Lynch	"
Robinson	T. J. Flanigan	"	"	Fred Schwartz & Bro.	"
"	Adam Mueller	"	J. T. L	Patrick Moran	Plymouth Tp.
"	Adam Turkes, Sr	"	O'Neill	Michael McCough	"
"	Maiser & Meehan	"	"	Patrick Carney	"
"	Ed. Gunster	"	"	James McAnany	"
Farnham	John Davis	"	McL. & J	John Sweeny	"
Landmesser	Michael Klein	"	C. & S	John R. Edwards	"
McManus	Peter McManus	"	"	Patrick Quinn	"
H. & McG	James Fox	"	Mahon	Edward McGinnes	"
C. & S	Thomas McKenna	Ninth Ward.	Halsey	William Comber	White Haven.
Mahon	Wendell Snyder	"	WILKES-BARRE.		
Kidder	Leopold Keiper	Eleventh Ward.	Campbell	T. F. Sheridan	First Ward.
Bennett	John Schmidt	"	O'Neill	C. Burke	"
Hahn	Peter Stump	"	"	James Markey	"
McL. & J	Fred Ittig	"	"	Frances Ramsay	Second Ward.
H. & McG	Henry Weiss	"	J. L. L	John Cullen	"
"	Watkins Gettins	Thirteenth Wd.	"	Sarah Meehan	Third Ward.
H. & McG	William Smith	Fourteenth Wd.	J. T. L	Bernard C. Williamson	"
Gibbons	Elizabeth Knelky	"	"	John Jennings	"
O'Neill	Patrick Quillen	"	"	John Walsh	Fourth Ward.
J. T. L	Lewis T. Davis	"	Hahn	Anna Baldes	Fifth Ward.
Brundage	Fred Smith	Fifteenth Ward.	C. & S	C. Rosenbluth	"
BY THE QUART.					
Halsey	William Surtees	Exeter Tp.	Butler	John D. Birmingham	"
Hayes	Patrick Dougherty	Foster Tp.	O'Neill	T. S. & W. S. Hillard	"
"	Hugh McMenamin	"	J. T. L	O'Boyle & McGreevy	"
Gorman	Patrick Burke	Freeland.	McManus	John A. Merrick	Sixth Ward.
"	Hugh Gallagher	"	"	Tim McManus	"
Hayes	T. Campbell	"	Campbell	Ig Freeman	"
"	Raphael Depierro	"	"	Peter McGourty	Seventh Ward.
H. & McG	Oliver Plunkett	Hanover Tp.	O'Neill	Thos. F. Sheridan	"
Gorman	John W. Boyle	Hazleton.	Osborne	John Mahoney	Eighth Ward
"	Peter Dershuck	"	McL. & J	L. J. Fogel & Co	"
"	Patrick Dougherty	"	Robinson	James McCalloch	"
"	Jacob Fechter	"	H. & McG	Owen O'Neill	"
"	Peter Kennedy	"	F. & B	John M. Caffrey, Agt.	"
"	John B. Cannon	"	"	Geo. M. Orr	"
"	D. J. McElleny	"	J. T. L	Henry Luft	Tenth Ward.
"	Charles F. Held	"	E. A. L	Patrick McGrath	Eleventh Ward.
"	James O'Donnell	"	Campbell	Michael Reading	"
"	Wm. J. Widbor	"	Gibbons	John Kearney	Thirteenth Wd.
"	Morris Ferry	"	McL. & J	Patrick McCaffray	Fourteenth Wd.
"	Patrick Burke	"	O'Neill	Daniel McDade	"
"	Neal McGeeghan	"	"	Patrick Quillen	"
Wright	A. Slowatzky & Bro	"	Taylor	Daniel O'Donnell	"
			J. T. L	Michael Monaghan	"

ALSO the following applications on Monday, April 30th, 1883:

HOTEL.		
Hayes	John L. Jones	Freeland.
Hines	Arthur Featherston	Wilkes-Barre.
RESTAURANTS.		
Hayes	Catharine Wassner	Freeland.
"	James Sharpe	"
Kline	Jacob Schneider	Hazleton.
Hayes	Denis Boyle	"
Hahn	Ludwig Michalowski	Nanticoke.
McAlarney	Thomas Brennan	Plymouth Tp.
Powell	W. A. Wagner	"
O'Neill	William Lawler	Parsons.
Gates	David Richards	Pittston Tp.
O'Neill	Thomas Keats	Pittston.
J. L. L	Thomas Burns	Pleasant Valley.
O'Neill	P. B. Brehony	"
Taylor	William Leslie	Wilkes-Barre Tp.
Campbell	James Wallace	Wilkes-Barre.
BY THE QUART.		
Farnham	W. B. Evans	Kingston Tp.
14-16	L. K. STRENG, Clerk Q. S.	

SHERIFF'S SALE.
 The following property will be sold by the Sheriff, Wm. O'Malley, at the Arbitration room, Court House, in the city of Wilkes-Barre, on Tuesday, May 1, 1883, at 10 o'clock A. M., viz.:
 Suit of Ella G. Turner v. John Nealon.
 161 May term, 1883. Debt, \$3,146.16. Fi. fa. 55
 May term, 1883. E. P. & J. V. Darling, } Att'ys.
 A. J. Dietrick,

A lot of land in the borough of Plymouth, bounded on the south by Main street, on the west by lands of Samuel Snyder, on the north by an alley, and on the east by lands of James Lee, being 22 feet in front, and 148 feet in depth, containing 3,340 square feet of land, improved by a cellar and wall erected thereon. 15-17

ORPHANS' COURT SALE.
 Estate of Job Kocher, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at Yapple's Hotel, in the borough of Shickshinny, on Friday, May 4th, 1883, at 11 o'clock A. M., the following piece of land in Salem township, commencing on the northwest side of the Lackawanna and Bloomsburg Railroad, where Rocky Run passes under said railroad, and running 10 perches, thence 16 perches, thence 12 perches, thence 12 perches, thence 16 perches, thence 4 perches to a post and stones, the beginning of land belonging to Job Kocher, which is divided as follows: thence from last mentioned corner 40 perches to a stump and stones corner, thence 40 perches to a rock oak corner, thence 40 perches to a stake and stones corner 8 feet from high ledge of rocks, thence 40 perches to the place of beginning, containing 10 acres of land; improved, with a frame dwelling house and outbuildings thereon.
TERMS OF SALE—\$100 DOWN on day of sale, and the balance on the confirmation of the sale.

REUBEN GODSHALL,
 Isaac P. Hand, Attorney. Reuben Godshall, Executor. 15-17

ORPHANS' COURT SALE.
 Estate of John Fry, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose at public sale, at the hotel of Joel Martin, in Falls Run, Black Creek township, on Friday, May 4, 1883, at 10 o'clock A. M., the following described real estate in said village of Falls Run:
 1. All that lot of ground distinguished on the plot of Elias Smith and Henry Croll as lot No. 72, beginning at southeast corner of Chestnut and Falls streets, thence east by Falls street 150 feet to an alley, south 50 feet to corner of lot No. 73, thence east by lot No. 73 150 feet to Chestnut street, thence by said Chestnut street north 50 feet to the place of beginning, containing 7,500 square feet, more or less, with a 1½-story frame dwelling house thereon.
 2. All that lot of land distinguished on the plot of Elias Smith and Henry Croll as lot No. 73, beginning

at a corner of lot No. 72 on Chestnut street, thence east by said lot No. 72, 150 feet to an alley, thence south by said alley 50 feet to a corner of lot No. 74, thence west by said lot No. 74 to said Chestnut street, and thence north by said Chestnut street to the place of beginning, containing 7,500 square feet, more or less, with a two-story frame dwelling house thereon.
 3. All that lot of ground distinguished on the plot of Elias Smith and Henry Croll as lot No. 43, beginning at Penn street, thence north along said street 50 feet front, thence west along Falls street 150 feet, thence south by an alley 50 feet, thence east along lot No. 42 150 feet to the place of beginning, containing 7,500 square feet, more or less, with a two-story frame dwelling house thereon.

TERMS OF SALE—20 per cent down, 30 per cent to be paid on confirmation of sale, and the balance in one year from confirmation of sale; to be secured on the premises, with interest from confirmation.
STEPHEN TURNBACH,
 ALEXANDER FARNHAM, Executor. Attorney. 15-17

AUDITOR'S NOTICE.
 The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute fund in the hands of the Executors of the estate of Hendrick B. Wright, Trustee of the estate of A. N. Meylert, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Saturday, May 5, 1883, at 10 o'clock A. M., when and where all parties interested are hereby notified to appear.
GEORGE R. BEDFORD,
 15-18 Auditor.

AUDITOR'S NOTICE.
 The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to marshal the liens against the real estate of Daniel Hinkle, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Thursday, May 3, 1883, at 10 o'clock A. M., when and where all parties interested are hereby notified to appear.
JOHN B. REYNOLDS,
 14-17 Auditor.

LUZERNE COUNTY, ss:
 In the Court of Common Pleas of said county. No. 23, January term, 1883. Libel in divorce a vinculo matrimonii. Emma Stevens, by her next friend, John Pagsley, v. Alexander A. Stevens. The alias subpoena in the above case having been returned non est inventus, you, the said Alexander A. Stevens, are hereby notified to appear at said court, on Monday, the 14th day of May, 1883, at 10 o'clock A. M., to answer the complaint therein filed.
WILLIAM O'MALLEY,
 D. M. Jones, Solicitor. Sheriff. 13-16

JALTON DAVIS,
 a member of the Bar of Lackawanna county, will apply for admission on April 18, 1883, to practice as an attorney in the several courts of the county of Luzerne. 13-25

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Governor of the Commonwealth of Pennsylvania, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Kingston Water Company," the character and object whereof is the supply of pure water to the borough of Kingston and parts of the adjoining townships of Kingston and Plymouth, in Luzerne county, Pennsylvania, and for these purposes to have, possess, and enjoy all the rights, benefits, and privileges of the said Act of Assembly and its supplements.
CHARLES D. FOSTER,
 Solicitor. 15-17

ESTATE OF JOSEPH WHIPP, LATE OF
Exeter township, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

WM. H. WHIPP,
HANNAH WHIPP,
PALMER, DEWITT & FULLER, Executors.
13-18 Attorneys.

ESTATE OF JULIA ROBERTS, LATE OF
Hughestown, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ALFRED P. HOUSE,
FRANCIS H. CHIVERS,
F. C. MOSIER, Administrators.
Attorney. 12-17

ESTATE OF DANIEL JONES, LATE OF THE
borough of West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB KERN,
JOHN W. NIMMO,
GEO. S. FERRIS, Adm'rs c. t. a. d. n.
Attorney. 11-16

ESTATE OF THOMAS W. JONES, LATE OF
Hanover township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RESE J. JONES,
JANE JONES,
G. H. R. PLUMB, Administrators.
Attorney. 10-15

ESTATE OF JAMES DOLAN, LATE OF THE
township of Plains, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PHILIP McANIFF,
M. CANNON, Executor.
Attorney. 10-15

ESTATE OF EDGAR GREEN, LATE OF THE
township of Franklin, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ISAAC SUTTON,
PALMER, DEWITT & FULLER, Executor.
Attorney. 10-15

ESTATE OF JOSEPH STACKHOUSE, LATE
of Shickshinny, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN W. CHAPIN,
I. P. HAND, Executor.
Attorney. 9-14

ESTATE OF ANN WILLIAMS, LATE OF
Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RICHARD J WILLIAMS,
11-16 Executor.

ESTATE OF MARY E. MACCARTNEY, LATE
of Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
11-16 Administrator c. t. a. d. n.

ESTATE OF WILLIAM MINNICH, LATE OF
Sugarloaf township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANN ELIZA MINNICH,
10-15 Executrix.

ESTATE OF JOHN HENRY, LATE OF THE
township of Nescopeck, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
11-16 Administrator.

ESTATE OF ELLEN MADDEN, LATE OF
Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

EDWARD GILLORAN,
14-19 Administrator.

ESTATE OF REBECCA PETERS, LATE OF
Hollenback township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DANIEL BLOSS,
J. T. LENAHA, Administrator.
Attorney. 12-17

ESTATE OF MARY E. PETERS, LATE OF
Hollenback township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DANIEL BLOSS,
J. T. LENAHA, Administrator.
Attorney. 12-17

ESTATE OF ELIZA BOWERS, LATE OF
Wyoming, Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM HANCOCK,
12-14 Executor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, May 14th, 1883, at 10 o'clock A.M., for the charter of an intended corporation, to be called "The Welsh Calvinistic Methodist or Presbyterian Church," of Ashley, the character and objects of which are to purchase lands and erect buildings for the support of public worship.

14-16

W. H. HINES,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, on Monday, May 14th, 1883, for the incorporation of an intended corporation, to be called "The Evangelical Protestant Church," of Nanticoke, the character and objects of which are for the support of public worship.

14-16

W. H. HINES,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

14-24

W. H. HINES,
Solicitor.

IN RE ESTATE OF AUGUST STEPHENS, deceased. In pursuance of a citation issued by the Register of Wills of Luzerne county, on April 5th, 1883, at my instance, notice is hereby given to the heirs and legal representatives of August Stephens, late of the borough of Plymouth, deceased, to appear before the Register of Wills aforesaid, at his office, in Wilkes-Barre, on Thursday, 19th inst., at 10 A.M., and take out letters of administration on said estate, or show cause why such letters shall not be granted to the petitioner.

14-15

JOSIAH W. ENO.

IN THE COURT OF COMMON PLEAS OF Luzerne county. In Re Petition of Magdalena Brehm to be declared a feme sole trader under the Act of Assembly, approved May 4, 1855. Now, March 12, 1883, on filing the within petition, the court being satisfied of the justice and propriety of the application, direct notice thereof to be given in the Luzerne Legal Register for four successive weeks, and fix Monday, the 16th day of April, 1883, as the time for granting the within prayer of petitioner, and of making decree as prayed for.

11-14

By THE COURT,
MICHAEL CANNON,
Solicitor.

ESTATE OF CHARITY PRINGLE, LATE OF Salem township, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB G. PRINGLE, Adm'r,
McKune's F. O., Falls Twp., Wyoming Co., Pa.
R. C. SHOEMAKER,
Attorney.

14-19

ESTATE OF GEORGE SMILNUK, LATE OF Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANDREW BERKLEY,
B. McMANUS, Administrator.
Attorney. 12-17

ESTATE OF JASPER B. STARK, LATE OF Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FRANCIS R. STARK,
E. P. & J. V. DARLING, Administratrix.
Attorneys. 9-14

ESTATE OF JOHN MANGAN, LATE OF Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

THOMAS MANGAN,
F. C. MOSIER, Administrator.
Attorney. 9-14

ESTATE OF JOHN ORR, LATE OF FOSTER township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELIZABETH A. POLLOCK,
9-14
Executrix.

ESTATE OF JOHN M. STACKHOUSE, LATE of Shickshinny, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES POST,
I. P. HAND, Administrator.
Attorney. 9-14

ESTATE OF JOSHUA VINCENT, LATE OF Exeter township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SUSANNA VINCENT,
BENNETT & NICHOLS, Administratrix.
Attorneys. 14-19

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, APRIL 20, 1883.

No. 16.

Copyright, 1883, by Geo. B. Kulp.

John Richards, of Pittston, is a native of Woodstock, Vermont, where he was born August 16, 1830. He is a descendant of Thomas Richards, a Puritan, as to whom almost nothing can be gathered from the available records but his name. The exact time of his birth, arrival, and death is uncertain. From the ages of his children, and the "advanced age" of his widow, in 1671, he is supposed, however, to have been born about 1600-5. His name does not occur on any record of Massachusetts or the Plymouth colony. This, considering the generally complete state of these records, makes it certain that he did not first settle at Cambridge, but might have tarried some years at Weymouth, and have afterwards joined Mr. Hooker, some of whose flock first settled at Weymouth, and subsequently at Cambridge. He was not of the one hundred original purchasers of Hartford, but one of the sixty-two original settlers to whom "were granted lotts, to have onely at the town's courtesie, with liberty to fetch woode, and keep swine or coves on the common." The vote conferring the privilege passed February 10, 1639, when his wife was a widow. It was no doubt intended as a legal security to his heirs of what had been possessed by consent in his lifetime; nor was it then an uncommon use of a representative name. He did not, probably, arrive at Hartford before 1637, and as he seems to have made no improvements, and as no use of his name in any record implies that he was alive even in 1638, he no doubt died soon after his arrival, and probably with those who fell, in 1637, in the Pequod war.

John, son of Thomas, was born in 1631. He married Lydia Stocking, and settled on the homestead in Hartford, where he served as collector of a tax of £10, "appointed" by the town in 1655.

Thomas, Deacon, son of John, was born at Hartford in 1666. He settled in the old homestead in Hartford, and was styled "Mr." in 1701, and in 1693 was by a vote of the town allowed to set a shop, which he was building, three feet in the highway. In 1701 he was chosen lister and ratemaker and chimney-viewer for the south side of Little River, and in 1713 grand-juryman. He married October 1, 1691, Mary, daughter of Deacon Benjamin Parsons, of Springfield, and November 10, 1695, was with her received to full communion in the church at Hartford. He died April 9, 1749.

Thomas, son of Deacon Thomas, was born April 3, 1694, and June 16, 1717, married Abigail Turner, of Hartford. He resided in Southington, Conn., but probably died east of the line, in Wethersfield, Conn.

Samuel, M. D., son of Thomas, was born October 22, 1726, at Hartford. When he was but one year of age his parents removed from Hartford to Southington, where he was brought up on a farm, with only the most scanty opportunities for education. At the age of eighteen years he joined the expedition to Cape Breton, where, as a servant to a physician in the hospital established for New England troops, he had free access to medical books, and witnessed many operations and modes of treating disease. After his return he continued his medical studies and observations, and eventually devoted himself to practice, and rose to eminence in the profession. In December, 1747, he married Lydia Buck, whose parents were from Scotland, where she was born in April, 1725. Dr. Richards died November 10, 1793.

Samuel, Deacon, son of Dr. Samuel, was born September 17, 1753, at Canaan, Conn. Of his youthful history nothing is remembered, but he is presumed, by some means, to having obtained uncommon advantages for education. During the Revolutionary war he served in the army as an ensign, was in several battles, and at West Point at the capture and execution of Andre. Before the close of the war he retired on half pay, and afterwards received a pension, and was a member of the Cincinnati. He settled in Farmington, Conn.; as a merchant, where he held the office of post-master for thirty-one years, and did business as a merchant until near the time of his death, which came to him at

the age of eighty-eight years. He often served in town offices, and repeatedly represented Farmington in the Legislature of the State, and was highly respected for his discernment, sound judgment, probity, and responsibility. He married April 22, 1782, Sarah Gridley, who died March 16, 1795, and his second wife, Sarah Wells, April 27, 1796. She was the daughter of Jonathan Wells, of Glastenbury, Conn., by his wife, Catharine Saltonstall, and the granddaughter of Thomas Wells, and the great-granddaughter of Samuel Wells, and the great-great-granddaughter of Thomas Wells, the emigrant. Mrs. Richards' mother was the daughter of Roswell Saltonstall, of Branford, by his wife, Mary (Haynes) Lord, the daughter of John Haynes, A. M., of Hartford, and granddaughter of Rev. Joseph Haynes, A. M., of Hartford, and great-granddaughter of John Haynes, Governor of Massachusetts, 1635, and the first Governor of Connecticut, 1639. Roswell Saltonstall was the son of Governor Gurdon Saltonstall, of New London, who was the son of Col. Nathaniel Saltonstall, of Haverhill, and grandson of Richard Saltonstall, of Ipswich, and great-grandson of Sir Richard Saltonstall, ambassador from England to Holland. In a funeral sermon preached by President Lord, of Dartmouth College, on the occasion of the death of Rev. John Richards, D. D., the son of Samuel Richards, he used the following language: "His father was an officer of the Revolution, a good Christian, and an honest man. He was a deacon of the church, held responsible offices in the General and State Governments, and was a pattern of the civic and Christian virtues of the old school, which has now nearly passed away. An intelligent friend characterized him as the best specimen of the old Puritan stock of New England that he had known. He commanded his children and his household after him to fear God." Deacon Richards' only daughter by his second wife was Cornelia, who married November 9, 1826, John Lord Butler, of Wilkes-Barre, Pa., grandson of Colonel Zebulon Butler. Her daughter Sarah is the wife of Hon. Stanley Woodward, of this city. Mr. Richards died at Wilkes-Barre, December 31, 1841.

Rev. John Richards, D. D., the father of the subject of our sketch, was the only son of Deacon Samuel by his second wife, Sarah Wells. He was born March 14, 1797, at Farmington.

President Lord, in a discourse at his funeral, said: "At the age of seventeen, being then a clerk in the neighboring city of Hartford, and intended for mercantile pursuits, he came under the ministry of the venerable Dr. Strong. He was greatly instructed and moved by the preaching of that distinguished man. His mind became profoundly engaged upon the great doctrines of the gospel, and after many spiritual conflicts his heart was bowed to Christ. Then he returned to Farmington, resolved upon a different pursuit of life, and said with his characteristic, abrupt, and unstudied air, 'Father, I want to study and to preach the gospel.' 'T was said and done. He became, in due time, a student at Yale. During his junior year, being then more quickened in his religious feelings, he made profession of his faith. He graduated with honor in 1821; at the Theological Seminary, Andover, Mass., in 1824; was then for one year an agent of the American Board of Foreign Missions; from 1827 to 1831 an honored pastor at Woodstock, Vt.; then till 1837 an associate editor of the *Vermont Chronicle*, and in 1841 was installed as pastor of the church at Dartmouth College." He married in June, 1828, Emily Cowles, the sister of Hon. Thos. Cowles, of Farmington. She was the daughter of Zenas Cowles, a merchant of Farmington, who was the son of Solomon, who was the son of Isaac, who was the son of Samuel, who was the son of John Coles, one of the seven original members of the church at Farmington at its foundation, October 13, 1652. Mr. Richards died March 29, 1859.

Mr. Richards, the subject of our sketch, graduated at Dartmouth College in 1851. He studied law at Hartford, Conn., with John Hooker and Hon. Joseph R. Hawley, and was admitted to the bar of Hartford county in 1853. His health failing, he went in the field with a corps of engineers, and remained for three years. In 1856 he removed to Pittston, and was employed by his relatives, John L. and Lord Butler, at their coal works in Pittston, and in 1857 was supercargo of the first boat of coal shipped at the opening of the extension of the North Branch Canal from Pittston to Elmira, N. Y. He then entered the office of A. T. McClintock, and was admitted to the bar of Luzerne county April 5, 1858. He practiced law until 1863, when he became a private in Capt.

Stanley Woodward's company of Pennsylvania Volunteers. He became sick, and was in the hospital at Chambersburg for some considerable time, and has never fully recovered.

In 1870 Mr. Richards resumed the practice of his profession, and ever since then has remained actively engaged thereat. He is not an eloquent speaker, and makes no pretensions to forensic excellence or elegance. He is, however, a patient and persevering reader and student, and a conscientious practitioner of the law, and is, therefore, always well equipped as a counsellor to advise clients safely and judiciously as to the best methods of enforcing their rights and defending their interests in the courts. Time was when only the great orators, the men of marvelous eloquence, who talked tears to the eyes of jurors and court loungers, were recognized as leaders in the profession of law, when, in fact, it was possible for but few others to achieve therein either distinction or a competence. The finished elocutionist, the sublime rhetorician, the lawyer who brings the bench and box willing worshippers to the shrine of his great eloquence, still walks head and shoulders, in the estimation of the on-looking general public, above his fellows at the bar, but there are now-a-days a class of practitioners, practically unknown to the past, whose quiet advice is the one thing golden, both to their clients and to themselves. These, by persistent research, familiarize themselves thoroughly with the letter and spirit of the common and the statute law, and with the practice of the courts, possess themselves of every detail, however insignificant, of their clients' cases, and, thus prepared, advise unerringly as to the course that will involve the least delay and bring the surest remedy. Every here and there in the older States are representatives of this class, whose voices are scarcely ever heard in a court room, whose names seldom find their way into the public print, yet who have amassed large fortunes in legitimate practice, and brought to speedy and successful arbitrament complicated issues, involving, perhaps, millions of capital and untold private and prized rights and interests. In the humbler ranks of this goodly contingent, John Richards occupies no unenviable place.

His genealogy, above given, shows him to come of most excellent stock, and it is but little to say that in both his busy

professional career and private life he has done full honor to his ancestry and the name he inherited from them. He is of a most unassuming demeanor, yet an enjoyable companion, and, where his affections attach, a warm, even an enthusiastic, friend. It is the speech of all who know him that he is a good man, who has led a good and useful life, that in justice merits, when the measure of his years shall have been fulfilled, a good and peaceful ending.

Mr. Richards has been for many years a member of the Presbyterian Church, and is a Trustee of the same. He has also been a Director of the People's Bank, and a member of the Borough Council of West Pittston.

Mr. Richards was married January 22, 1873, to Susan B. Chadwick, daughter of George Chadwick, A. M., the son of Joseph and Mary (Parker) Chadwick, who was born at Bradford, Mass., October 5, 1802, and died at Boston November 11, 1843. He studied medicine with Dr. Rufus Longley, of Haverhill, Mass., Dr. Winslow Lewis, of Boston, Mass., and at Dartmouth Medical College, graduating M. D. in 1828. He began practice at Ipswich, Mass., removed to Chelsea, Mass., and thence to Boston, leaving practice and going into mercantile business. He married Susan Brewster, daughter of Benjamin Joseph Gilbert, of Boston. Mr. and Mrs. Richards have a family of four children.

Court of Common Pleas of Luzerne County.

MANGAN v. MCMONEGAL.

Practice—Summons, service of—Amendment of return.

The return of service of a summons may be amended, notwithstanding the sheriff who made it has gone out of office.

Rule to strike off judgment, and to set aside service of writ.

The opinion of the court was delivered April 25, 1881, by

RICE, P. J.—The return to this writ is as follows: "I hereby certify and return that I served this writ May 31, 1880, on within

named defendant *by leaving a true and attested copy of within writ at his residence with an adult member of his family.*" It is not shown that the writ was improperly served, except as it may be presumed from the return. It has been said in several cases that the return is irregular, because it leaves it doubtful in which of the two methods of service by copy allowed by the statute the writ was served. It is possible that what has been said as to this question may have to be reconsidered, but it is not necessary to do so in this case, for the reason that if the return is defective it is amendable, and such an application was made on the argument of the rule. Neither do we think that the defendant can object to the allowance of the amendment, that the officer who served the writ has gone out of office. If the writ was properly served, he cannot, under the circumstances of this case, be harmed by having it properly returned, and we therefore allow it.

And now, April 25th, 1881, upon the return to the writ being amended, it is ordered that the rule to set aside the service be discharged; the rule to set aside the judgment is made absolute, the defendant to appear, plead, and file affidavit of defense on or before the first day of May term, 1881, otherwise judgment.

John McGahren, Esq., for plaintiff.

John Lynch, Esq., for defendant.

Court of Common Pleas of Luzerne County.

MILLER v. MILLER.

Divorce—Alimony pendente lite—Counsel fees.

1. The wife petitioned for divorce on the ground of desertion; the husband's answer simply denied the allegations of the petition: *Held*, that she was entitled to a reasonable allowance for counsel fees, etc.
2. A woman who is living in a state of adultery has no claim upon her husband for support, and where this is shown clearly the court will refuse an application for alimony *pendente lite*.

Rule to show cause why the respondent shall not pay the libellant a reasonable sum to provide an attorney and procure witnesses in her cause, and to maintain and support her *ad litem*.

The opinion of the court was delivered November 27, 1882, by

RICE, P. J.—We conclude, after a careful consideration of the evidence taken on this rule, that the application for alimony *pendente lite* ought to be refused. A woman who is living in a state of adultery has no claim upon her husband for support, and where this is clearly shown the court will, in the exercise of their discretion, refuse an application of this nature. The reasons for this rule are forcibly stated by Thayer, P. J., in *Stock v. Stock* (11 Phila. 324.)

The request for an allowance for counsel fees rests on a different basis. The answer of the respondent does not charge adultery against the libellant, and to meet the issue, as the respondent has seen fit to present it, she is entitled to a reasonable allowance to pay counsel and to procure the attendance of witnesses.

And now, November 27, 1882, upon due consideration of the evidence taken on the rule granted October 2, 1882, the application for alimony *pendente lite* is refused, but it is ordered that the respondent, within twenty days from this date, pay to the libellant, or to her attorney of record, the sum of twenty dollars as counsel fees, and the sum of five dollars to procure the attendance of witnesses.

E. G. Butler, Esq., for libellant.

M. E. Walker, Esq., for respondent.

Railroad engines are now provided with a hose and pump to throw water on burning cars, but when a train has jumped the track the engineer is too busy digging himself out of the debris to think of experimenting with the apparatus.

A South Carolina baby has four arms. If it is a male infant, and lives to become a man, he'll be apt to take to slinging beer for a living. Either at that or hugging the girls four arms are very useful.

LICENSES.

Notice is hereby given that the following persons have filed their applications for license to keep hotels and restaurants, and to sell liquor by the quart, in the office of the Clerk of the Court of Quarter Sessions of the county of Luzerne, and that said applications will be heard by the court on Monday, April 30, 1883:

HOTEL.		
Hayes	John L. Jones	Freeland.
Hines	Arthur Featherston	Wilkes-Barre.
RESTAURANTS.		
Hayes	Catharine Wassner	Freeland.
"	James Sharpe	"
Kline	Jacob Schneider	Hazleton.
Hayes	Denis Boyle	"
Hahn	Ludwig Michalowski	Nanticoke.
McAlarney	Thomas Brennan	Plymouth Tp.
Powell	W. A. Wagner	"
O'Neill	William Lawler	Parsons.
Gates	David Richards	Pittston Tp.
O'Neill	Thomas Keats	Pittston.
J. L. L	Thomas Burns	Pleasant Valley.
O'Neill	P. B. Brehony	"
Taylor	William Leslie	Wilkes-Barre Tp.
Campbell	James Wallace	Wilkes-Barre.

BY THE QUART.

Farnham	W. B. Evans	Kingston Tp.
14-16	L. K. STRENG, Clerk Q. S.	

SHERIFF'S SALE.

The following property will be sold by the Sheriff, Wm. O'Malley, at the Arbitration room, Court House, in the city of Wilkes-Barre, on Tuesday, May 1, 1883, at 10 o'clock A. M., viz :

Suit of Ella G. Turner v. John Nealon.
 161 May term, 1883. Debt, \$3,146.16. Fi. fa. 55
 May term, 1883. E. P. & J. V. Darling, } Att'ys.
 A. J. Dietrick, }

A lot of land in the borough of Plymouth, bounded on the south by Main street, on the west by lands of Samuel Snyder, on the north by an alley, and on the east by lands of James Lee, being 22 feet in front, and 148 feet in depth, containing 3,240 square feet of land, improved by a cellar and wall erected thereon. 15-17

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute fund in the hands of the Executors of the estate of Hendrick B. Wright, Trustee of the estate of A. N. Meylert, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Saturday, May 5, 1883, at 10 o'clock A. M., when and where all parties interested are hereby notified to appear.

GEORGE R. BEDFORD

15-18

Auditor.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to marshal the liens against the real estate of Daniel Hinkle, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Thursday, May 3, 1883, at 10 o'clock A. M., when and where all parties interested are hereby notified to appear.

JOHN B. REYNOLDS

14-17

Auditor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 23, January term, 1883. Libel in divorce a vinculo matrimonii. Emma Stevens, by her next friend, John Pagsley, v. Alexander A. Stevens. The alias subpoena in the above case having been returned non est inventus, you, the said Alexander A. Stevens, are hereby notified to appear at said court, on Monday, the 14th day of May, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
 Sheriff.
 D. M. JONES, Solicitor. 13-16 16-19

ORPHANS' COURT SALE.

Estate of John Fry, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose at public sale, at the hotel of Joel Martin, in Falls Run, Black Creek township, on Friday, May 4, 1883, at 10 o'clock A. M., the following described real estate in said village of Falls Run :

1 All that lot of ground distinguished on the plot of Elias Smith and Henry Croll as lot No. 72, beginning at southeast corner of Chestnut and Falls streets, thence east by Falls street 150 feet to an alley, south 50 feet to corner of lot No. 73, thence east by lot No. 73 150 feet to Chestnut street, thence by said Chestnut street north 50 feet to the place of beginning, containing 7,500 square feet, more or less, with a 1 1/4-story frame dwelling house thereon.

2 All that lot of land distinguished on the plot of Elias Smith and Henry Croll as lot No. 73, beginning at a corner of lot No. 72 on Chestnut street, thence east by said lot No. 72, 150 feet to an alley, thence south by said alley 50 feet to a corner of lot No. 74, thence west by said lot No. 74 to said Chestnut street, and thence north by said Chestnut street to the place of beginning, containing 7,500 square feet, more or less, with a two-story frame dwelling house thereon.

3 All that lot of ground distinguished on the plot of Elias Smith and Henry Croll as lot No. 43, beginning at Penn street, thence north along said street 50 feet front, thence west along Falls street 150 feet, thence south by an alley 50 feet, thence east along lot No. 42 150 feet to the place of beginning, containing 7,500 square feet, more or less, with a two-story frame dwelling house thereon.

TERMS OF SALE—20 per cent down, 30 per cent to be paid on confirmation of sale, and the balance in one year from confirmation of sale; to be secured on the premises, with interest from confirmation.

STEPHEN TURNBACH,
 ALEXANDER FARNHAM, Executor.
 Attorney. 15-17

ORPHANS' COURT SALE.

Estate of Job Kocher, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at Yapple's Hotel, in the borough of Shickshinny, on Friday, May 4th, 1883, at 11 o'clock A. M., the following piece of land in Salem township, commencing on the northwest side of the Lackawanna and Bloomsburg Railroad, where Rocky Run passes under said railroad, and running 10 perches, thence 16 perches, thence 12 perches, thence 12 perches, thence 16 perches, thence 4 perches to a post and stones, the beginning of land belonging to Job Kocher, which is divided as follows: thence from last mentioned corner 40 perches to a stump and stones corner, thence 40 perches to a rock oak corner, thence 40 perches to a stake and stones corner 8 feet from high ledge of rocks, thence 40 perches to the place of beginning, containing 10 acres of land; improved, with a frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$100 DOWN ON DAY OF SALE, AND THE BALANCE ON THE CONFIRMATION OF THE SALE.

REUBEN GODSHALL,
 ISAAC P. HAND, Executor.
 Attorney. 15-17

IN RE INCORPORATION OF EDWARDS

borough, in the county of Luzerne. Application having been made to the Court of Quarter Sessions of Luzerne county by certain citizens of Kingston and Plymouth townships, asking that certain territory therein described should be incorporated into a borough, to be named Edwards, the court, on the 16th day of April, 1883, directed the petition to be filed, and fixed May 20th, 1883, at 9 o'clock A. M., as the time for presenting the same before the Grand Jury for approval thereby; notice to be given thereof by publication according to law.

In pursuance thereof, notice is hereby given to all parties interested to be present before the Grand Jury, if they so desire, at the time fixed, as above stated by the court.

H. B. PAYNE,
 Solicitor

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, May 12th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1
Suit of Estate of Sylvester Dana, dec'd, v. Arnold Bertels.

112 May term, 1881. Debt, \$5,164.50. Al. lev. fa. 34 March term, 1883. Bennett & Nichols, Att'ys.

A piece of land in the city of Wilkes-Barre, beginning at the west corner of Dennis Quillan's lot, on the southeast side of Main street, at a point nearly opposite intersection of Sullivan street with said Main street, thence along said Quillan's land 202 feet, thence 19 feet, thence 131 feet to the Wyoming Canal, thence along said canal 86 feet and 9 inches, thence 292 feet to said Main street, thence along said Main street 50 feet to the place of beginning, containing 18,000 square feet of land, more or less; all improved, and having erected thereon one two-story frame dwelling house, one frame barn, and other outbuildings.

2
Suit of Thomas T. Hess and Hannah Hess, Administrators of Philip Hess, dec'd, v. Abraham Leirguth. 98 September term, 1878. Debt, \$500. Fi. fa. 21 May term, 1883. Kisner, Att'y.

All that lot of ground in the township of Butler, beginning in the center of the road leading from Hazleton to Wilkes-Barre, thence by lot around by Mrs. Durst 20 perches to corner of Michael Bershline's land, thence by land of Michael Bershline's estate 7 perches to corner in same and line of Henry Schleppey's lot, thence by lot now or late in the occupancy of D. P. Rakes as tenant 34 perches to center of said road leading towards Hazleton, thence along center of said road by land of Hannah Jane Roberts to place of beginning, containing 1 acre and 112 perches; all improved, and having erected thereon a two-story frame dwelling house, a frame barn, and other outhouses.

3
Suit of Use of D. B. Koons v. Wesley Wolfinger. 329 May term, 1883. Debt, \$84.06. Fi. fa. 63 May term, 1883. J. Lynch, Att'y.

All that tract of land in the township of Fairmount, bounded on the north by lands now or late of William P. Robinson, on the east by lands late of Jacob P. Smith, estate of S. P. Headley, and William Marshall, on the south by lands of William Marshall and Wesley Finsley, on the west by lands of Daniel Wolfinger, containing about 120 acres; about 60 acres improved, balance unimproved, and having erected thereon two small dwelling houses and barn and outbuildings; also two orchards.

4
Suit of the Pennsylvania Coal Co. v. Mrs. Catharine Joice.

95 May term, 1883. Debt, \$1,000. Fi. fa. 17 May term, 1883. A. H. McClintock, Att'y.

The surface of two lots in the borough of Pittston, being lots No. 50 on Broad street and No. 27 on Tunnel street, described as follows:

1. Lot No. 50 being 58 feet in front on Broad street, 102 feet on an alley at the rear, and 130 feet deep at right angles, containing 10,400 square feet of land; reserving coal; all improved, with a two-story wooden dwelling and outhouses.

2. Lot No. 27 being 102 feet in front on Tunnel street, 58 feet on the alley at the rear, and 130 feet deep at right angles, containing 10,400 square feet of land; reserving coal.

5
Suit of Annie A. Wright, Carrie G. Wright, and George R. Wright, Executors of the last will and testament of Hendrick B. Wright, deceased, v. David Bradley.

Suit of Emily L. Wright v. David Bradley. 25 and 26 June T., 1882. Debt, \$7739 and \$2579.86. Lev. fa. 60 and 61 May T., 1883. Sturges, Att'y.

The surface of the following described piece of land, on Shawnee flats, in the township of Plymouth, and composed of the whole of lot No. 33, the southeast end

of lot No. 32, and the northwesterly half of lot No. 34, in the river tier of meadow lots in old certified Plymouth, beginning at a corner in the line dividing certified lots Nos. 31 and 32, thence 133½ rods more or less to the low water line on the Susquehanna river, thence the whole width of certified lots Nos. 32 and 33, and to the center of certified lot No. 34, about 58½ rods to a corner, thence 147 3-10 perches to the line of the flat road, thence along the same about 35 36-100 rods to the corner of lot No. 32, thence along the line dividing lots Nos. 32 and 33, 23 rods more or less to a corner, thence across lot No. 32, 22½ rods to the place of beginning, and containing 48 acres, be the same more or less; coal reserved; all improved.

6
Suit of D. S. Stark, now assigned to Jonas Long, v. Caroline Lengfeldt.

477 September term, 1879. Debt, \$5,000. Fi. fa. 65 May term, 1883. Strauss, Att'y.

All that lot of land in the city of Wilkes-Barre, beginning at a corner on Main street, same being also a corner of land lately of B. Frauenthal, thence along Main street northwesterly 20 feet to land lately property of Samuel Frauenthal, thence by the said Samuel Frauenthal about 225 feet to back line of land lately property of Washington Lee, thence by same 20 feet to land lately of B. Frauenthal, thence along the same 225 feet to place of beginning; excepting that strip 6 inches in width sold to B. Frauenthal, and also all the defendant's rights arising under party wall agreement with Samuel Frauenthal; all improved, with one three-story brick building, used as a store and dwelling, one one-story brick addition to the store, and one one-story brick kitchen, and outbuildings thereon. 16-18

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Governor of the Commonwealth of Pennsylvania, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Kingston Water Company," the character and object whereof is the supply of pure water to the borough of Kingston and parts of the adjoining townships of Kingston and Plymouth, in Luzerne county, Pennsylvania, and for these purposes to have, possess, and enjoy all the rights, benefits, and privileges of the said Act of Assembly and its supplements.

CHARLES D. FOSTER,
Solicitor.

15-17

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, to the Judges of the Court of Common Pleas of Luzerne county, on Monday, May 21st, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "St. James' Lutheran Church," of Hollenback, the character and objects of which are the worship of God according to the forms and usages of the Lutheran Church in the State of Pennsylvania.

A. R. BRUNDAGE,
Solicitor.

16-18

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, May 14th, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Welsh Calvinistic Methodist or Presbyterian Church," of Ashley, the character and objects of which are to purchase lands and erect buildings for the support of public worship.

W. H. HINES,
Solicitor.

14-16

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

14-24

W. H. HINES,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 20th, 1874, and the supplements thereto, on Monday, May 14th, 1883, for the incorporation of an intended corporation, to be called "The German Evangelical Protestant Church," of Nanticoke, the character and objects of which are for the support of public worship.

14-16

W. H. HINES,
Solicitor.

ESTATE OF RICHARD DEARIE, LATE OF Wilkes-Barre, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. FARNHAM,
Attorney.

GEORGE DEARIE,
Administrator. 16-21

ESTATE OF JOHN SIMMER, LATE OF THE township of Newport, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

W. S. McLEAN,
Attorney.

JAMES M. NORRIS,
Administrator. 16-21

ESTATE OF JAMES BIRTH, LATE OF ROSS township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

16-21

JAMES CROCKETT,
Administrator.

ESTATE OF NILS JOHNSON, LATE OF THE borough of Parsons, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

16-21

JOHN JOHNSON,
Administrator.

ESTATE OF ANDREW LEE, LATE OF THE city of Wilkes-Barre, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

16-21

E. P. DARLING,
JOHN WROTH,
Executors.

ESTATE OF CHARITY PRINGLE, LATE OF Salem township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB G. PRINGLE, Adm'r,
McKune's P. O., Falls Twp., Wyoming Co., Pa
R. C. SHOEMAKER,
Attorney

14-19

ESTATE OF JOSEPH WHIPP, LATE OF Exeter township, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

WM. H. WHIPP,
HANNAH WHIPP,
PALMER, DEWITT & FULLER, Executors.
13-18 Attorneys.

ESTATE OF JULIA ROBERTS, LATE OF Hughestown, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ALFRED P. HOUSE,
FRANCIS H. CHIVERS,
F. C. MOSIER, Administrators. 12-17
Attorney.

ESTATE OF DANIEL JONES, LATE OF THE borough of West Pittston, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB KERN,
JOHN W. NIMMO,
GEO. S. FERRIS, Adm'rs c. t. a. d. n. 11-16
Attorney.

ESTATE OF GEORGE SMILNUK, LATE OF Hazle township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANDREW BERKLEY,
B. McMANUS, Administrator. 12-17
Attorney.

ESTATE OF JOSHUA VINCENT, LATE OF Exeter township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SUSANNA VINCENT,
BENNETT & NICHOLS, Administratrix. 14-19
Attorneys.

ESTATE OF REBECCA PETERS, LATE OF Hollenback township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DANIEL BLOSS,
J. T. LENAHA, Administrator. 12-17
Attorney.

ESTATE OF JOHN HENRY, LATE OF THE
township of Nescopeck, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

11-16 **C. B. JACKSON,**
Administrator.

ESTATE OF ELLEN MADDEN, LATE OF
Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

14-19 **EDWARD GILLORAN,**
Administrator.

ESTATE OF ANN WILLIAMS, LATE OF
Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

11-16 **RICHARD J. WILLIAMS,**
Executor.

ESTATE OF MARY E. MACCARTNEY, LATE
of Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

11-16 **C. B. JACKSON,**
Administrator c. t. a. d. b. n.

ESTATE OF MARY E. PETERS, LATE OF
Hollenback township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DANIEL BLOSS,
Administrator. 12-17
J. T. LENAHAN,
Attorney.

McLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, APRIL 27, 1883.

No. 17.

Court of Common Pleas of Luzerne County.

MYERS *et al.* v. DEVENS *et al.*

New trial—Ejectment—Act March 27, 1867, P. L. 47—Evidence—Competency of party as witness.

1. Practice in granting new trials, for improper statements of counsel in argument of case, discussed.
2. As a general rule, the failure of opposing counsel to object at the time will prevent the granting of a new trial.
3. A disclaimer under the act of March 27, 1867 (P. L. 47), relating to actions of ejectment, may be filed on the trial of the case. If the opposite party is surprised, the court will prevent injustice by continuing the case.
4. If the disclaimant pays the costs, and follows his disclaimer by an assignment or release, he is made a competent witness by the act of 1867 (*supra*).
5. It seems that after the disclaimant had complied with the provisions of the act of 1867 (*supra*), he would be a competent witness without the execution of the subsequent assignment.
6. Competency of parties as witnesses, as affected by the statutes, discussed.

Rule for new trial.

The opinion of the court was delivered December 11, 1882, by

RICE, P. J.—The first reason urged for a new trial is the alleged misconduct of the defendants' counsel in his opening address to the jury. The practice with relation to granting new trials for this cause has been fully discussed in the cases of *Monroe v. The D. L. & W. R. R. Co.* and *Sweeney v. The L. V. R. R. Co.* In addition to what is said in those cases, we will briefly refer to the alleged objectionable statements of counsel. We cannot say that the statement, that Philip Myers was a man of bad temper and abusive, was entirely illegitimate. The plaintiffs' witnesses had been examined on that subject, and, in one view of the case, positive proof of the fact might possibly have been admissible. The statement that he had taken four thousand dollars dishon-

estly in the negotiation of a certain lease, was entirely outside the case, and ought not to have been made. But we are not satisfied that it tended to prejudice the minds of the jurors. It might have done so had his honesty been a matter in issue, or had he been a party or witness in the cause. But he was neither, and the jury could not help seeing that the fact of his dishonesty, whether proved or not, had nothing to do with the cause. Objectionable as the remark was, it could not have influenced the jurors in their verdict. What Mrs. Devens had told her counsel with relation to the declarations of her husband in his lifetime was not properly stated to the jury. We think, however, that when the counsel proceeded to make this statement, the plaintiffs' counsel ought to have made immediate objection. Had he done so, the present cause of complaint would have been avoided. But aside from this, we have no report of what these remarks were, nor do we remember them; therefore we are unable to form any opinion as to their probable effect on the jury. The statement as to the improvements which the defendants had made on the premises, although we subsequently rejected the evidence, was apparently made in good faith, and in the honest expectation of establishing the fact by proof. This being the case, the counsel cannot be justly charged with misconduct in this particular. Finally, while we conclude that, under all the circumstances, a new trial ought not to be granted for the reason urged, we wish to be understood as emphatically disapproving of the wide latitude which members of the bar too frequently take in opening and arguing cases to the jury, and in remarks made in the hearing of the jury during the progress of the trial. The prominence which this subject has recently had in our courts will undoubtedly be followed by greater care in these particulars.

If the jury believed the testimony of Catharine E. Devens, they were authorized to infer from Mrs. Myers' declarations and admissions to her that Mrs. Myers had "dispensed" with the services of Mr. Devens, and that thereupon, under the conditions of the will of Madison F. Myers, the entire estate had become absolutely vested in Mr. Devens. The effect of the admission was not that her son, Philip Myers, had, of his own motion, discharged Mr. Devens, but that she had discharged him, or "dis-

pensed with his services," to use the language of the condition in the will, on the advice of her son. As to these declarations there was a direct conflict of testimony between Mrs. Myers and Mrs. Devens, which, we think, was properly submitted to the jury.

Was Mrs. Devens a competent witness? Madison Myers, by his will, probated October 10, 1859, devised the land in controversy, then in the occupancy of Henderson G. Devens, to John D. Hoyt, in trust for the said Devens, so long as he should faithfully continue in the service of his widow, Harriet Myers, until the youngest child of the devisor should arrive at the age of twenty-one years, or until his widow should, in her discretion, dispense with his services, if she should see proper sooner to dispense with them, then and in that case in trust for the sole use and behoof of the said Devens, his heirs, etc.

Mr. Devens continued in the service of Mrs. Myers about two years after the death of Madison Myers. When he left the service of Mrs. Myers the youngest child of the devisor was not of age. Mr. Devens continued to live upon the premises in dispute until the time of his death, and thereafter his widow, Catharine E. Devens, and children, who were the defendants in the writ, lived upon the premises until the time of trial.

The plaintiffs having shown title in Madison Myers, and the devise, on condition, to Mr. Devens, introduced testimony to show that he had voluntarily abandoned the service of Mrs. Myers, and then rested.

The defendants then filed the disclaimer of Catharine E. Devens, the widow, and one of the defendants, "of all title to the premises in controversy at the time of action brought," paid all the costs taxed, and gave bond for all other costs that might have accrued up to the time of the claimer filed, and offered her as a witness to prove the admissions of Mrs. Myers, to which we have heretofore alluded. These admissions were alleged to have been made in the lifetime of Henderson G. Devens.

At common law, Mrs. Devens would not have been a competent witness for two reasons: first, because she was a party to the record; second, because, though she had not been a party, she was interested in the result of the issue. 1 Greenl. Ev. §§ 329, 389.

This disqualification was not removed by the act of April 15, 1869, or subsequent legislation, except so far as to permit her to testify to matters occurring after the death of Henderson Devens, under whom the defendants claim title. *Hess v. Gourley*, 8 Nor. 95; *Ewing v. Ewing*, 9 W. N. C. 489.

The act of March 27, 1867 (P. L. 47; P. D. 624, *pl.* 14), provides as follows: "That in all actions of ejectment against two or more persons, any of the defendants shall be competent as a witness, for either plaintiff or defendant, as effectually as if not made a party to the record: *Provided*, that it shall appear to the court, upon the trial, that the party so offered as a witness has disclaimed, upon the record, all title to the premises in controversy at the time of action brought, and paid into court the costs already accrued, or given security for the payment thereof, at the discretion of the court."

So far as we have been able to learn, this statute has not heretofore received judicial construction. It was contended by the plaintiffs' counsel, in the first place, that the disclaimer was not filed in time. This objection is not well founded. The obvious impossibility of filing such disclaimer at the time or instant the suit is brought, the natural sense and arrangement of the terms used, the context, and above all the manifest purpose of the act, all combine to show that the terms, "at the time of action brought," relate, not to the time when the disclaimer must be filed, but to the title held by the disclaimant at the inception of the suit. The objections to permitting the disclaimer to be filed on the trial of the case are no greater than the objections to permitting a defendant to change his plea on the trial, which is very common in practice. The plaintiff gets all his costs, and in case of surprise the court will prevent injustice by continuing the case, if he requests it.

As we have already suggested, the case fell within the proviso of the act of 1869. Mrs. Devens, being a party defendant, and having pleaded the general issue, could not make herself a competent witness for her co-defendants by the mere execution of a release or assignment to them on the trial. By the return to the writ, her plea, and the evidence, she was a party to the record, and in possession at the time of suit brought, and as such she

still would have been liable to the plaintiffs for costs at least. This would have been a sufficient interest to exclude her, whether her release or assignment were merely colorable or not.

Had she not have been a party, this liability to the plaintiffs for the costs, in case of a recovery against the defendants, would not have existed; and it would seem, under the later decisions, that the rule against colorable assignments, laid down in *Post v. Avery* (5 W. & S. 509), would not apply to prevent her from qualifying herself as a witness by executing an assignment of all her estate or interest in the land to her co-defendants. *McClelland's Exrs. v. West's Admrs.*, 20 Sm. 183.

But Mrs. Devens having removed her disability as a party by filing a disclaimer and paying the costs, as required by the act of 1867, and having divested herself of all interest in the result of the issue, which she would have had though she had not been made a party, by executing a release or assignment to her co-defendants, there can be little doubt that she was properly admitted to testify.

On the trial of the cause, we were of the opinion that the act of 1867 (*supra*) was intended only to provide a method for removing the technical disqualification which arose from the fact that the disclaimant was a party to the cause, and did not extend to the case of a defendant who was shown by the evidence to be interested in the title. To illustrate this, we suggested the case of a person who had acquired an interest in the title after action brought. We were led to this conclusion by the meaning which we thought ought to be given to the words, "as effectually as if not made a party to the record." Hence we ruled that the effect of the disclaimer and payment of costs was only to place Mrs. Devens in the same position which she would have held had she not been made a party to the record, and rejected her as a witness until after she had released her interest to the defendants. After a more careful consideration of the case, we are inclined to think that we took too narrow a view of the statute, and did not give the full effect to the disclaimer to which it was entitled. It was not only a declaration to the plaintiffs that she would no longer defend against their suit, but it also operated in favor of the other defendants, by way of estoppel, as fully and effectually as though

she had formally assigned her interest by deed. As it did not appear that she had any other interest or title than that which she had at the time to which her disclaimer related, it follows that she was a competent witness without the execution of the subsequent assignment.

The rule is discharged.

A. Ricketts, Esq., for plaintiffs.

A. Farmham, Esq., for defendants.

Court of Common Pleas of Luzerne County.

STEWART *v.* NORRIS.

Certiorari—Off-set, duty of defendant to present, before justice.

The court will reverse proceedings where the demand of the plaintiff was in existence, and might have been set-off in a previous action by the defendant against him.

Certiorari.

The opinion of the court was delivered April 16, 1883, by

RICE, P. J.—It appears from the transcript that the demand of the defendant in error was in existence, and could have been set up as off-set in the suit of Stewart *v.* Norris, tried before Alderman Parsons in December, 1881. This being the case, the present action was barred. The defendant in error was imperatively required by the statute to present her claim as an off-set in the former case. Herring *v.* Adams, 5 W. & S. 460. When the plaintiff below pleaded and proved the former recovery by himself in the case tried before Alderman Parsons, the alderman should have entered judgment in his favor. His refusal to do so is error, for which this court may reverse on *certiorari*. Slyhoof *v.* Flitcraft, 1 Ash. 171; White *v.* Johnson, 2 Ash. 146.

The proceedings are reversed and set aside.

Messrs. McLean & Jackson, for plaintiff in error.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, May 12th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1
Suit of Estate of Sylvester Dana, dec'd, v. Arnold Betels.

112 May term, 1881. Debt, \$5,164.50. Al. lev. fa. 34 March term, 1883. Bennett & Nichols, Att'y's.

A piece of land in the city of Wilkes-Barre, beginning at the west corner of Dennis Quillan's lot, on the southeast side of Main street, at a point nearly opposite intersection of Sullivan street with said Main street, thence along said Quillan's land 302 feet, thence 19 feet, thence 131 feet to the Wyoming Canal, thence along said canal 86 feet and 9 inches, thence 292 feet to said Main street, thence along said Main street 50 feet to the place of beginning, containing 18,000 square feet of land, more or less; all improved, and having erected thereon one two-story frame dwelling house, one frame barn, and other outbuildings.

2
Suit of Thomas T. Hess and Hannah Hess, Administrators of Philip Hess, dec'd, v. Abraham Leirguth. 958 September term, 1878. Debt, \$500. Fi. fa. 21 May term, 1883. Kisner, Att'y.

All that lot of ground in the township of Butler, beginning in the center of the road leading from Hazleton to Wilkes-Barre, thence by lot around by Mrs. Durst 20 perches to corner of Michael Bershline's land, thence by land of Michael Bershline's estate 7 perches to corner in same and line of Henry Schleppey's lot, thence by lot now or late in the occupancy of D. P. Rakes as tenant 34 perches to center of said road leading towards Hazleton, thence along center of said road by land of Hannah Jane Roberts to place of beginning, containing 1 acre and 112 perches; all improved, and having erected thereon a two-story frame dwelling house, a frame barn, and other outhouses.

3
Suit of Use of D. B. Koons v. Wesley Wolfinger. 329 May term, 1883. Debt, \$84.06. Fi. fa. 63 May term, 1883. J. Lynch, Att'y.

All that tract of land in the township of Fairmount, bounded on the north by lands now or late of William P. Robinson, on the east by lands late of Jacob P. Smith, estate of S. P. Headley, and William Marshall, on the south by lands of William Marshall and Wesley Finsley, on the west by lands of Daniel Wolfinger, containing about 120 acres; about 60 acres improved, balance unimproved, and having erected thereon two small dwelling houses and barn and outbuildings; also two orchards.

4
Suit of the Pennsylvania Coal Co. v. Mrs. Catharine Joyce. 95 May term, 1883. Debt, \$1,000. Fi. fa. 17 May term, 1883. A. H. McClintock, Att'y.

The surface of two lots in the borough of Pittston, being lots No. 50 on Broad street and No. 27 on Tunnel street, described as follows:

1. Lot No. 50 being 58 feet in front on Broad street, 102 feet on an alley at the rear, and 130 feet deep at right angles, containing 10,400 square feet of land; reserving coal; all improved, with a two-story wooden dwelling and outhouses.

2. Lot No. 27 being 102 feet in front on Tunnel street, 58 feet on the alley at the rear, and 130 feet deep at right angles, containing 10,400 square feet of land; reserving coal.

5
Suit of Annie A. Wright, Carrie G. Wright, and George R. Wright, Executors of the last will and testament of Hendrick B. Wright, deceased, v. David Bradley.

Suit of Emily L. Wright v. David Bradley. 15 and 26 June T., 1882. Debt, \$7739 and \$2579.86. Lev. fa. 60 and 61 May T., 1883. Sturges, Att'y.

The surface of the following described piece of land, on Shawnee flats, in the township of Plymouth, and composed of the whole of lot No. 33, the southeast end

of lot No. 32, and the northwesterly half of lot No. 34, in the river tier of meadow lots in old certified Plymouth, beginning at a corner in the line dividing certified lots Nos. 31 and 32, thence 133½ rods more or less to the low water line on the Susquehanna river, thence the whole width of certified lots Nos. 32 and 33, and to the center of certified lot No. 34, about 58½ rods to a corner, thence 147 3-10 perches to the line of the flat road, thence along the same about 35 26-100 rods to the corner of lot No. 32, thence along the line dividing lots Nos. 32 and 33, 23 rods more or less to a corner, thence across lot No. 32, 22½ rods to the place of beginning, and containing 48 acres, be the same more or less; coal reserved; all improved.

6
Suit of D. S. Stark, now assigned to Jonas Long, v. Caroline Lengfeldt.

477 September term, 1879. Debt, \$5,000. Fi. fa. 65 May term, 1883. Strauss, Att'y.

All that lot of land in the city of Wilkes-Barre, beginning at a corner on Main street, same being also a corner of land lately of B. Frauenthal, thence along Main street northeasterly 20 feet to land lately property of Samuel Frauenthal, thence by the said Samuel Frauenthal about 225 feet to back line of land lately property of Washington Lee, thence by same 20 feet to land lately of B. Frauenthal, thence along the same 225 feet to place of beginning; excepting that strip 6 inches in width sold to B. Frauenthal, and also all the defendant's rights arising under party wall agreement with Samuel Frauenthal; all improved, with one three-story brick building, used as a store and dwelling, one one-story brick addition to the store, and one one-story brick kitchen, and outbuildings thereon. 16-18

IN RE INCORPORATION OF EDWARDS

borough, in the county of Luzerne. Application having been made to the Court of Quarter Sessions of Luzerne county by certain citizens of Kingston and Plymouth townships, asking that certain territory therein described should be incorporated into a borough, to be named Edwards, the court, on the 16th day of April, 1883, directed the petition to be filed, and fixed May 29th, 1883, at 9 o'clock A. M., as the time for presenting the same before the Grand Jury for approval thereby; notice to be given thereof by publication according to law.

In pursuance thereof, notice is hereby given to all parties interested to be present before the Grand Jury, if they so desire, at the time fixed, as above stated by the court.

H. B. PAYNE,
Solicitor.

16-19

NOTICE IS HEREBY GIVEN THAT AN

application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

W. H. HINES,
Solicitor.

14-24

NOTICE IS HEREBY GIVEN THAT AN

application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, to the Judges of the Court of Common Pleas of Luzerne county, on Monday, May 21st, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "St. James' Lutheran Church," of Hollenback, the character and objects of which are the worship of God according to the forms and usages of the Lutheran Church in the State of Pennsylvania.

A. R. BRUNDAGE,
Solicitor.

16-18

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Governor of the Commonwealth of Pennsylvania, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Kingston Water Company," the character and object whereof is the supply of pure water to the borough of Kingston and parts of the adjoining townships of Kingston and Plymouth, in Luzerne county, Pennsylvania, and for these purposes to have, possess, and enjoy all the rights, benefits, and privileges of the said Act of Assembly and its supplements.

CHARLES D. FOSTER,
Solicitor.

13-17

ESTATE OF ELLEN MADDEN, LATE OF Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

EDWARD GILLORAN,
Administrator.

14-19

ESTATE OF RICHARD DEARIE, LATE OF Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. FARNHAM, Administrator.
Attorney. 16-21

ESTATE OF JOHN SIMMER, LATE OF THE township of Newport, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

W. S. McLEAN, Administrator.
Attorney. 16-21

ESTATE OF JAMES BIRTH, LATE OF ROSS township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES CROCKETT, Administrator.
16-21

ESTATE OF NILS JOHNSON, LATE OF THE borough of Parsons, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN JOHNSON, Administrator.
16-21

ESTATE OF ANDREW LEE, LATE OF THE city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

E. P. DARLING, Executors.
JOHN WROTH,
16-21

ESTATE OF CHARITY PRINGLE, LATE OF Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB G. PRINGLE, Adm'r,
McKune's P. O., Falls Twp., Wyoming Co., Pa.
R. C. SHOEMAKER, Attorney.
14-19

ESTATE OF JOSEPH WHIPP, LATE OF Exeter township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

WM. H. WHIPP,
HANNAH WHIPP,
PALMER, DEWITT & FULLER, Executors.
13-18 Attorneys.

ESTATE OF JULIA ROBERTS, LATE OF Hughestown, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ALFRED P. HOUSE,
FRANCIS H. CHIVERS, Administrators.
F. C. MOSIER, Attorney. 12-17

ESTATE OF GEORGE SMILNUK, LATE OF Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANDREW BERKLEY, Administrator.
B. McMANUS, Attorney. 12-17

ESTATE OF JOSHUA VINCENT, LATE OF Exeter township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SUSANNA VINCENT, Administratrix.
BENNETT & NICHOLS, Attorneys. 14-19

ESTATE OF REBECCA PETERS, LATE OF Hollenback township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DANIEL BLOSS, Administrator.
J. T. LENAHAN, Attorney. 12-17

ESTATE OF MARY E. PETERS, LATE OF Hollenback township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DANIEL BLOSS, Administrator.
J. T. LENAHAN, Attorney. 12-17

ESTATE OF ANTHONY SCHAPPERT, LATE

of Wilkes-Barre, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

BARBARA SCHAPPERT,
L. B. LANDMESSER, Administratrix.
 Attorney. 17-22

ESTATE OF A. G. RICKARD, M. D., LATE

of Plymouth, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

LIVA A. RICKARD,
R. N. SMITH, Administrators.
R. D. EVANS, Attorney. 17-22

ESTATE OF AUGUST STEPHENS, LATE OF

Plymouth, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. W. ENO, Administrator.
O. F. NICHOLSON, Attorney. 17-22

ESTATE OF FRANCES S. KNAPP, LATE OF

Pittston, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

AVERY KNAPP, Administrator.
F. C. MOSIER, Attorney. 17-22

ESTATE OF SAMUEL HARRIS, LATE OF

Kingston, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

LORENZO D. HARRIS, Administrator.
E. G. BUTLER, Attorney. 17-22

ESTATE OF CORNELIUS O'NEILL, LATE

of Pittston township, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE SHEA, Administratrix.
JOHN T. LENAHAN, Attorney. 17-22

ESTATE OF ELLEN O'NEILL, LATE OF

Pittston township, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE SHEA, Administratrix.
JOHN T. LENAHAN, Attorney. 17-22

ORPHANS' COURT SALE.

Estate of John Fry, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose at public sale, at the hotel of Joel Martin, in Falls Run, Black Creek township, on Friday, May 4, 1883, at 10 o'clock A. M., the following described real estate in said village of Falls Run:

1. All that lot of ground distinguished on the plot of Elias Smith and Henry Croll as lot No. 72, beginning at southeast corner of Chestnut and Falls streets, thence east by Falls street 150 feet to an alley, south 50 feet to corner of lot No. 73, thence east by lot No. 73 150 feet to Chestnut street, thence by said Chestnut street north 50 feet to the place of beginning, containing 7,500 square feet, more or less, with a 1½-story frame dwelling house thereon.

2. All that lot of land distinguished on the plot of Elias Smith and Henry Croll as lot No. 73, beginning at a corner of lot No. 72 on Chestnut street, thence east by said lot No. 72, 150 feet to an alley, thence south by said alley 50 feet to a corner of lot No. 74, thence west by said lot No. 74 to said Chestnut street, and thence north by said Chestnut street to the place of beginning, containing 7,500 square feet, more or less, with a two-story frame dwelling house thereon.

3. All that lot of ground distinguished on the plot of Elias Smith and Henry Croll as lot No. 43, beginning at Penn street, thence north along said street 50 feet front, thence west along Falls street 150 feet, thence south by an alley 50 feet, thence east along lot No. 42 150 feet to the place of beginning, containing 7,500 square feet, more or less, with a two-story frame dwelling house thereon.

TERMS OF SALE—20 per cent down, 30 per cent to be paid on confirmation of sale, and the balance in one year from confirmation of sale; to be secured on the premises, with interest from confirmation.

STEPHEN TURNBACH,
ALEXANDER FARNHAM, Executor.
 Attorney. 15-17

ORPHANS' COURT SALE.

Estate of Job Kocher, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at Vaple's Hotel, in the borough of Shickshinny, on Friday, May 4th, 1883, at 11 o'clock A. M., the following piece of land in Salem township, commencing on the northwest side of the Lackawanna and Bloomsburg Railroad, where Rocky Run passes under said railroad, and running to perches, thence 16 perches, thence 12 perches, thence 12 perches, thence 16 perches, thence 4 perches to a post and stones, the beginning of land belonging to Job Kocher, which is divided as follows: thence from last mentioned corner 40 perches to a stump and stones corner, thence 40 perches to a rock oak corner, thence 40 perches to a stake and stones corner 8 feet from high ledge of rocks, thence 40 perches to the place of beginning, containing 10 acres of land; improved, with a frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$100 down on day of sale, and the balance on the confirmation of the sale.

REUBEN GODSHALL,
ISAAC P. HAND, Executor.
 Attorney. 15-17

SHERIFF'S SALE.

The following property will be sold by the Sheriff, Wm. O'Malley, at the Arbitration room, Court House, in the city of Wilkes-Barre, on Tuesday, May 1, 1883, at 10 o'clock A. M., viz.:

Suit of Ella G. Turner v. John Nealon.
 161 May term, 1883. Debt, \$3,146.16. Fi. fa. 55
 May term, 1883. E. P. & J. V. Darling, } Att'ys.
 A. J. Dietrick, }

A lot of land in the borough of Plymouth, bounded on the south by Main street, on the west by lands of Samuel Snyder, on the north by an alley, and on the east by lands of James Lee, being 22 feet in front, and 148 feet in depth, containing 3,340 square feet of land, improved by a cellar and wall erected thereon. 15-17

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, May 19th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

1
Suit of J. E. Bulkeley v. William Howey.
57 April term, 1882. Debt, \$85.06. Vend. ex. 11
May term, 1883. Brundage, Att'y.

A lot of land in the city of Wilkes-Barre, beginning at a corner on Lehigh street and corner of land now or late of William Millham, thence 40 feet along said Lehigh street to land now or late of H. Carps, thence along said Carps' land about 68 feet to a corner in line of land of R. McGrath, thence along line of said McGrath's corner of alley in line of land of said Wm. Millham, thence along line of land of said Wm. Millham about 93 feet to the beginning; having erected thereon one two-story frame dwelling and outbuildings.

2
Suit of the Huntington Township School District v. Elias Hoffman, Martha Williams, William Killian.
35 September term, 1880. Debt, \$125. Vend. ex. 41
May term, 1883. Dorrance & Price, Att'y's.

All that lot of land in Huntington township, bounded on the east by lands of Perry Munroe, on the north by lands of Geo. Wagner, on the west by lands of D. M. Williams, and on the south by lands of A. Harvard and T. Franklin, containing about 80 acres; all improved, except about 4 acres of woods, with one large 1½-story frame house, two barns, and other outbuildings thereon; also an orchard.

3
Suit of Andrew Bryden v. William Bryden.
213 January term, 1883. Debt, \$1,500. Al. fi. fa. 48
May term, 1883. Ferris, Att'y.

1. All the surface of the following piece of land in the borough of Pittston, beginning at the corner of lot No. 19 on Swallow street, thence in a southerly direction by lot No. 19, 150 feet, thence in a northwesterly direction 50 feet to a corner of lot No. 15, thence in a northeasterly direction by lot No. 15, 150 feet to a corner on Swallow street, thence in a southeasterly direction by Swallow street 50 feet to the place of beginning, containing 7,500 square feet of land, more or less, being lot No. 17 on Swallow street; all improved, with a two-story frame dwelling house thereon.

2. Also the surface of one other piece of land in the borough of Pittston, being lot No. 19 on Swallow street, and being 50 feet on Swallow street, and extending at right angles to said street 150 feet, containing 7,500 square feet of land, more or less; all improved, with outbuildings and a number of fruit trees thereon; said lot No. 19 is immediately adjoining the above described lot No. 17.

4
Suit of the Miners' and Mechanics' Building and Loan Association of Plainsville v. John Nolan and Patrick Gorman, Administrators of James Gorman, deceased.
965 May term, 1876. Debt, \$314.20. Al. fi. fa. 71
May term, 1883. Lamb, Att'y.

All that piece of land in the township of Plains, beginning at a corner by the lands of the Wyoming Valley Coal Company on the plank road, leading from Wilkes-Barre to Pittston, thence in a westerly direction about 115 feet to the Lehigh and Susquehanna Railroad, thence along said railroad northeasterly 74 feet to the land of John Pryor, thence easterly about 115 feet to the said plank road, thence along the same about 75 feet to the place of beginning; all improved, with a large two-story frame building, with one two-story addition in rear, board shanty, outhouses, etc., used as a hotel; also a two-story frame dwelling house, with one-story addition, frame barn, and outbuildings, and fruit trees thereon; coal and minerals reserved.

5
Suit of Peter Garvin v. Patrick Garvin.
98 April term, 1880. Debt, \$250. Al. vend. ex. 31
May term, 1883. McLean & Jackson, Att'y's.

The following piece of land in the city of Wilkes-Barre, 14th ward, beginning at a corner in line of a

30-foot street, and running thence along lot No. 16, now or lately owned by Michael Gill, 175 feet to corner of lot No. 2, now or lately owned by Peter McGann, and thence along said McGann's lot 47½ feet to corner of lot No. 14, thence along lot No. 14, 175 feet to corner in line of said 30-foot street, thence along said street 47½ feet to the place of beginning, containing about 8,312 square feet of land; improvements, a two-story frame dwelling house, 18 feet wide and 28 feet long, with a fine porch in front and a one-story brick kitchen in rear, a 1½-story barn or stable, 12 feet wide, about 16 feet long, a good well, and a large number of growing fruit trees thereon.

6
Suit of Lazarus Moyer v. C. J. Gallagher.
203 May term, 1882. Debt, \$255.50. Al. fi. fa. 56
May term, 1883. O'Neill, Att'y.

All that lot of land in the borough of Freeland, beginning at a corner on the southwest corner Main and Washington streets, thence by south side of Main street 45 feet 10 inches to a corner, thence by land now or late of James Berckbeck 150 feet to a corner in line of an alley, thence by said alley 45 feet 10 inches to a corner on the west side of Washington street, thence by line of same 150 feet to the place of beginning, containing 6,825 square feet of land; all improved, with a two-story frame dwelling house, with slate roof, used as a hotel, and other improvements thereon.

7
Suit of Calvin Parsons v. John G. Jones.
267 May term, 1883. Debt, \$500. Fi. fa. 58
May term, 1883. Howell, Dunning, Att'y's.

All the surface of lot of land in Plains township, being lot No. 28 in plot of lots laid out by Calvin Parsons, beginning at a corner of lot No. 29, thence 100 feet to a 10-foot wide alley, thence along said alley 50 feet to a corner of lot No. 27, thence 100 feet to Oliver street, thence along Oliver street 50 feet to place of beginning, containing 5,000 square feet of land.

8
Suit of C. J. Volkenand, assigned to Peter Deisroth, v. Martin Engelhart.
93 September term, 1881. Debt, real, \$1,195. Fi. fa. 68
May term, 1883. Patrick, Att'y.

1. Lot of ground on the south side of Broad street, in the borough of Hazleton, commencing at a distance of 310 feet westward from the west side of Vine street, containing in front or breadth on Broad street 30 feet, and extending of that breadth in length or depth southward 150 feet to Mine street.

2. Another lot in said borough, on the south side of Green street, being part of square No. 4 in plan of said town, commencing at a distance of 233 feet 4 inches westward from the west side of Cedar street 33 feet 4 inches, and extending of that breadth in length or depth southward 150 feet to Spruce alley, bounded north by Green street, east by lots formerly of Baches, south by Spruce alley, and west by land formerly of Hazleton Coal Co.; improved, with a frame dwelling house and outbuildings thereon.

9
Suit of Abijah S. Davenport v. Emily Keizer
163 April term, 1879. Debt, \$1,990.00. Vend. ex. 64
May term, 1883. Sturges, Att'y.

1. The surface of all that lot of land in the township of Plymouth, being lot No. 40, in the second tier, fourth division of certified Plymouth, bounded northeasterly by lot No. 38, northwesterly by lot No. 41, southwesterly by lot No. 42, and southeasterly by lot No. 50, containing 118 acres and 103 perches and allowance; unimproved.

2. The surface of that lot of land in the borough of Ashley, beginning at a point on the southeast side of Hartford street, about 50 feet from the center of an alley, on line of lands sold to Arnold Bertels, thence southwesterly parallel with said alley 94 feet, more or less, to a corner, thence southeasterly parallel with said Hartford street about 70 feet to a corner, thence northeasterly at right angles to the last mentioned corner about 94 feet to Hartford street aforesaid, thence northwesterly along Hartford street about 70 feet to the place of beginning; improved, with one 1½-story frame dwelling house, outbuildings, fruit trees, and well of water thereon.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, MAY 11, 1883.

No. 19.

Supreme Court of Pennsylvania.

LEHIGH COAL AND NAVIGATION CO. *v.* BROWN *et al.*

1. The payment of tolls exacted by a canal company, whose right to the same is disputed, but which, by the exercise of threats and other means of coercion, compels the parties to accede to its demands, or be put to considerable loss in their business, are such involuntary payments that the company will be compelled to make restitution upon suit for their recovery.
2. If the jury find that a person without authority wrongfully collects money, and it is paid involuntarily, it may be recovered back.
3. Rule laid down by Mr. Justice Field in *Brumigan v. Tillinghast* (18 Cal. 272) adopted as to what are involuntary payments.
4. What are involuntary payments a question of fact for the jury.

Error to the Court of Common Pleas of Luzerne county.

The opinion of the court was delivered October 2, 1882, by

STERRETT, J.—It is conceded the plaintiffs below were not entitled to recover back the amount of tolls paid by them to the Lehigh Coal and Navigation Company without proving to the satisfaction of the jury: first, that the navigation company wrongfully and without authority demanded and collected the tolls in question; and, second, that the payment of the tolls by the plaintiffs was involuntary. If they failed to establish either of these propositions the verdict should have been in favor of the defendant below.

The question involved in the former proposition is presented by the first three specifications of error. In disposing of it the court below was called upon to construe the charter of the navigation company, including the several acts supplementary thereto. This has been so fully and satisfactorily done by the learned judge in his general charge and answers to points submitted by

counsel, that it is unnecessary to add anything to what is there said. Having thus correctly construed the several acts of Assembly bearing on the subject, he then instructed the jury that the navigation company was not authorized to collect tolls on logs floated down the Lehigh river to the mouth of Wright's creek, if they found from the evidence that the artificial navigation was destroyed in 1862, and the company had neither reconstructed nor elected to reconstruct the same. As to these matters of fact, there was practically no conflict of testimony, and the verdict being in favor of the plaintiffs below, the question of the navigation company's right to collect the tolls in controversy was thereby determined in the negative. We fail to discover any error in the rulings of the court on that subject, and hence the first, second, and third assignments are not sustained.

The question involved in the second proposition, as to whether the tolls in controversy were voluntarily or involuntarily paid, is raised by the fourth, fifth, and sixth specifications. The complaint in the fourth assignment is, that the court refused to affirm defendant's second, third, and fourth points, and thereby withdraw the question of involuntary payment from the jury. Under the testimony in the case, that became a question of fact for the jury, and it appears to have been submitted to them with proper instructions. In affirming the second point of plaintiffs below, which is the subject of complaint in the fifth assignment, the learned judge charged the jury that if the plaintiffs denied the right of the company to collect the tolls, that the company threatened to stop the logs, in case of non-payment, by drawing the water from the dams at White Haven, that it had the ability to carry the threat into execution, and that the tolls were paid under such a state of facts, then the payments were not voluntary and may be recovered. He also charged, in answering the point covered by the sixth assignment, that if the payments were made under a threatened exercise of power (possessed or supposed by the plaintiffs to be possessed by the company) by its agent or servant, acting within the general scope of his authority over the property of the plaintiffs, the money thus paid can be recovered; but the threat of an agent, not acting within the general scope of his authority, would not make a payment to him, under those

circumstances, involuntary. In further elucidation of these instructions, the learned judge, in his general charge, summarized the facts which the plaintiffs below were required to prove before they could recover, as follows, to wit: that their mill was located on the company's pool; that the company had the power to draw off the water in the pool; that such action would render it practically impossible to get out their logs, and thus prevent them from using the stream for the purpose of floating or driving logs from their lands above; that the plaintiffs denied the right of the company to collect the tolls in question; that the company, or its agent, acting within the general scope of his authority, before the tolls were paid, and before the logs were delivered, declared to plaintiffs that if the tolls were not paid the water would be drawn off from the dams, and plaintiffs would have been thus prevented from getting out their logs if the threat had been executed, and that this threat was repeated from time to time, and was the cause which induced the plaintiffs to make the payments. Assuming, as we must necessarily do, that the jury obeyed their instructions, the facts above specified are conclusively established by their verdict. Can there be any doubt, then, that, upon the facts so found, the plaintiffs below were entitled to recover? We think not. They bring the case fairly within the rule stated by Mr. Justice Field in *Brumigan v. Tillinghast* (18 California, 272), in which, after discussing the English and American cases on the subject of involuntary payments, he says: "What shall constitute the compulsion or coercion which the law will recognize as sufficient to render the payments involuntary, may often be a question of difficulty. It may be said in general that there must be some actual or threatened exercise of power, possessed or supposed to be possessed by the party exacting or receiving the payment, from which the latter has no other means of immediate relief." According to the finding of the jury in the case before us, there was a threatened exercise of power possessed by the company, which, if it had been carried into execution, would have practically ruined the business of the plaintiffs below. The jury has found that the threat, repeated from time to time, had the effect of coercing payment of the tolls. The plaintiffs below had no other means

of immediate relief. They were compelled either to submit to the unlawful demand of the company, or run the risk of having their business practically destroyed or seriously interrupted. The same general principle is recognized in some of our own cases. *Hospital v. Philadelphia County*, 12 Harris, 229; *White v. Heylman*, 10 Casey, 142; *Motz v. Mitchell*, 10 Norris, 114, and cases there cited. In the former case it is said, "where a party has been compelled by duress of his person or goods to pay money for which he is not liable, it is not voluntary, and he may rescue himself from such duress by payment of the money, and afterwards, on proof of the fact, recover it back;" and in support of this doctrine *Astley v. Reynolds* (2 Strange, 915) is there cited. In that case the plaintiff had pawned a lot of plate as security for a loan for twenty pounds. In due time he offered to redeem the pledge, and in addition to the principal tendered more than sufficient to cover the interest to which defendant was entitled, but the latter demanded ten pounds interest. After repeating the tender without success, he finally yielded to the exorbitant demand of defendant, paid the ten pounds, and then brought suit to recover the excess over the legal interest. It was contended that the payment, being made with full knowledge of all the facts, was voluntary; and that plaintiff, having made a sufficient tender, might have maintained an action of trover and conversion, etc. But the court, in entering judgment in his favor, said: "The plaintiff might have such immediate want of his goods that an action of trover would not do his business. Where the rule, *volenti non fit injuria*, is applied, it must be where the party had his freedom of exercising his will, which this man had not. We must take it that he paid the money, relying on his legal remedy to get it back again."

The remaining assignments are not sustained. The testimony was quite sufficient to justify the court in submitting the question of involuntary payment to the jury. There is no error in the ruling of the court in regard to interest.

Judgment affirmed.

Hon. Andrew T. McClintock and Charles Gibbons, Esq., for plaintiff in error.

Hon. Henry W. Palmer and G. L. Halsey, Esq., *contra*.

BOOK NOTICE.

PRACTICE AND PROCESS IN THE ORPHANS' COURT OF PENNSYLVANIA, embracing also the laws relating to the settlement and distribution of the estates of decedents, the management of the estates of minors, and the construction of testamentary trusts and wills, in the Courts of Common Pleas and Equity. By Hon. D. L. Rhone, President Judge of the Orphans' Court of Luzerne county. In two volumes. Rees Welsh & Co., Philadelphia. Volume I., pp. 792.

The announcement, a few years ago, that Judge Rhone had undertaken to prepare a treatise on the law of decedents' estates in Pennsylvania was hailed with pleasure by the profession. The need of such a work was keenly felt, and Judge Rhone's eminent fitness for the task led us to form great expectations of the manner of its accomplishment. Those expectations are richly satisfied in the volume before us. It is destined to become the invaluable aid of every active practitioner in Pennsylvania. Excellent books, no doubt, we already have in this department, notably Scott on Intestates—all, however, special in their scope, and not sufficiently contemporaneous to be complete even in their specialty. What we needed was a complete manual, for practical use, of the law pertaining to decedents' estates, and such a manual, thanks to Judge Rhone, we now possess. The table of contents, with its alphabetical list of the subjects treated, will, perhaps, convey a better idea of the scope, than does the title page. Accounts, actions, advancements, attachments, auditors, bonds, collateral inheritance tax, contracts, debts, deeds, descent, devise, distribution, errors and appeals, escheat, evidence, executions, executors and administrators, exemption, fees, costs and expenses, foreign executors, etc., guardian and ward, husband and wife, injunction, interest, investments, issues, legacies and annuities, letters testamentary, etc., liens, life estates, orphans' courts, partition, personal property, practice and process, real estate, records, registers and registers' courts, release and satis-

faction, removal and discharge, review, sureties, taxes, testamentary trustees, uses and trusts, wills—such is the vast field of investigation covered by this work.

In the treatment about four thousand cases are cited, comprising all of the reported decisions pertinent, not only of the Supreme Court, but also of the courts of those counties having local legal publications, specially Philadelphia, Pittsburg, Chester, Luzerne, Lancaster, and York. The point of each decision is stated, not in the language of the syllabus, so often inaccurate, but in the learned author's own words, plain, forcible, and direct. The mechanical arrangement and execution are admirably adapted for convenient and ready reference.

Want of space forbids the extended review which the book deserves. We need only observe that it forms no unworthy achievement wherewith to crown a career of activity and usefulness at the bar and upon the bench. Judge Rhone has well paid the debt which every lawyer owes to his profession.

A point has position, but no size. That is probably the reason why so many fail to "see the point."

When a drummer gets the mumps it increases the size of his face without adding anything to his inherent cheek.

"A poet is born, not made," is the ancient assertion. That's the reason so many callow rhymers act like "natural born fools."

"At last I know there is such a thing as a cold snap," remarked the burglar to the sheriff as he clapped the steel shackles on the shekel stealer.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, May 19th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

Suit of J. E. Bulkeley v. William Howey.
57 April term, 1882. Debt, \$85.96. Vend. ex. 11 May term, 1883. Brundage, Att'y.

A lot of land in the city of Wilkes-Barre, beginning at a corner on Lehigh street and corner of land now or late of William Millham, thence 40 feet along said Lehigh street to land now or late of H. Carps, thence along said Carps' land about 68 feet to a corner in line of land of R. McGrath, thence along line of said McGrath's to corner of alley in line of land of said Wm. Millham, thence along line of land of said Wm. Millham about 93 feet to the beginning; having erected thereon one two-story frame dwelling and outbuildings.

Suit of the Huntington Township School District v. Elias Hoffman, Martha Williams, William Killian.
35 September term, 1880. Debt, \$125. Vend. ex. 41 May term, 1883. Dorrance & Price, Att'ys.

All that lot of land in Huntington township, bounded on the east by lands of Perry Munroe, on the north by lands of Geo. Wagner, on the west by lands of D. M. Williams, and on the south by lands of A. Harvard and T. Franklin, containing about 80 acres; all improved, except about 4 acres of woods, with one large 1½-story frame house, two barns, and other outbuildings thereon; also an orchard.

Suit of Andrew Bryden v. William Bryden.
213 January term, 1883. Debt, \$1,500. Al. fi. fa. 48 May term, 1883. Ferris, Att'y.

1. All the surface of the following piece of land in the borough of Pittston, beginning at the corner of lot No. 19 on Swallow street, thence in a southerly direction by lot No. 19, 150 feet, thence in a northwesterly direction 50 feet to a corner of lot No. 15, thence in a northeasterly direction by lot No. 15, 150 feet to a corner on Swallow street, thence in a southeasterly direction by Swallow street 50 feet to the place of beginning, containing 7,500 square feet of land, more or less, being lot No. 17 on Swallow street; all improved, with a two-story frame dwelling house thereon.

2. Also the surface of one other piece of land in the borough of Pittston, being lot No. 19 on Swallow street, and being 50 feet on Swallow street, and extending at right angles to said street 150 feet, containing 7,500 square feet of land, more or less; all improved, with outbuildings and a number of fruit trees thereon; said lot No. 19 is immediately adjoining the above described lot No. 17.

Suit of the Miners' and Mechanics' Building and Loan Association of Plainsville v. John Nolan and Patrick Gorman, Administrators of James Gorman, deceased.

965 May term, 1876. Debt, \$314.20. Al. fi. fa. 71 May term, 1883. Lamb, Att'y.

All that piece of land in the township of Plains, beginning at a corner by the lands of the Wyoming Valley Coal Company on the plank road, leading from Wilkes-Barre to Pittston, thence in a westerly direction about 125 feet to the Lehigh and Susquehanna Railroad, thence along said railroad northeasterly 74 feet to the land of John Pryor, thence easterly about 115 feet to the said plank road, thence along the same about 75 feet to the place of beginning; all improved, with a large two-story frame building, with one two-story addition in rear, board shanty, outhouses, etc., used as a hotel; also a two-story frame dwelling house, with one-story addition, frame barn, and outbuildings, and fruit trees thereon; coal and minerals reserved.

Suit of Peter Garvin v. Patrick Garvin.
98 April term, 1880. Debt, \$250. Al. vend. ex. 31 May term, 1883. McLean & Jackson, Att'ys.

The following piece of land in the city of Wilkes-Barre, 14th ward, beginning at a corner in line of a

30-foot street, and running thence along lot No. 16, now or lately owned by Michael Gill, 175 feet to corner of lot No. 2, now or lately owned by Peter McGann, and thence along said McGann's lot 47½ feet to corner of lot No. 14, thence along lot No. 14, 175 feet to corner in line of said 30-foot street, thence along said street 47½ feet to the place of beginning, containing about 8,312 square feet of land; improvements, a two-story frame dwelling house, 18 feet wide and 28 feet long, with a fine porch in front and a one-story brick kitchen in rear, a 1½-story barn or stable, 12 feet wide, about 16 feet long, a good well, and a large number of growing fruit trees thereon.

Suit of Lazarus Moyer v. C. J. Gallagher.
203 May term, 1882. Debt, \$255.50. Al. fi. fa. 56 May term, 1883. O'Neill, Att'y.

All that lot of land in the borough of Freeland, beginning at a corner on the southwest corner Main and Washington streets, thence by south side of Main street 45 feet 10 inches to a corner, thence by land now or late of James Berkbeck 150 feet to a corner in line of an alley, thence by said alley 45 feet 10 inches to a corner on the west side of Washington street, thence by line of same 150 feet to the place of beginning, containing 6,825 square feet of land; all improved, with a two-story frame dwelling house, with slate roof, used as a hotel, and other improvements thereon.

Suit of Calvin Parsons v. John G. Jones.
267 May term, 1883. Debt, \$500. Fi. fa. 58 May term, 1883. Powell, Dunning, Att'ys.

All the surface of lot of land in Plains township, being lot No. 28 in plot of lots laid out by Calvin Parsons, beginning at a corner of lot No. 29, thence 100 feet to a 10-foot wide alley, thence along said alley 50 feet to a corner of lot No. 27, thence 100 feet to Oliver street, thence along Oliver street 50 feet to place of beginning, containing 5,000 square feet of land.

Suit of C. J. Volkenand, assigned to Peter Deisroth, v. Martin Engelhart.
93 September term, 1881. Debt, real, \$1,195. Fi. fa. 68 May term, 1883. Patrick, Att'y.

1. Lot of ground on the south side of Broad street, in the borough of Hazleton, commencing at a distance of 310 feet westward from the west side of Vine street, containing in front or breadth on Broad street 30 feet, and extending of that breadth in length or depth southward 150 feet to Mine street.

2. Another lot in said borough, on the south side of Green street, being part of square No. 4 in plan of said town, commencing at a distance of 233 feet 4 inches westward from the west side of Cedar street 33 feet 4 inches, and extending of that breadth in length or depth southward 150 feet to Spruce alley, bounded north by Green street, east by lots formerly of Bacher, south by Spruce alley, and west by land formerly of Hazleton Coal Co.; improved, with a frame dwelling house and outbuildings thereon.

Suit of Abijah S. Davenport v. Emily Keizer.
163 April term, 1879. Debt, \$1,990.00. Vend. ex. 64 May term, 1883. Sturges, Att'y.

1. The surface of all that lot of land in the township of Plymouth, being lot No. 40, in the second tier, fourth division of certified Plymouth, bounded northeasterly by lot No. 38, northwesterly by lot No. 41, southwesterly by lot No. 42, and southeasterly by lot No. 50, containing 118 acres and 103 perches and allowance; unimproved.

2. The surface of that lot of land in the borough of Ashley, beginning at a point on the southeast side of Hartford street, about 50 feet from the center of an alley, on line of lands sold to Arnold Bertels, thence southwesterly parallel with said alley 94 feet, more or less, to a corner, thence southeasterly parallel with said Hartford street about 70 feet to a corner, thence northeasterly at right angles to the last mentioned corner about 94 feet to Hartford street aforesaid, thence northwesterly along Hartford street about 70 feet to the place of beginning; improved, with one 1½-story frame dwelling house, outbuildings, fruit trees, and well of water thereon.

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates, have been approved nisi by the Orphans' Court of Luzerne county, and, unless exceptions are filed, will be presented for final approval on Monday, the 14th day of May, 1883:

John M. Stackhouse, Elisha Atherton F. V. Taylor, Edger Green, and John Barney, deceased.

JOSEPH HENDLER,

17-19

Clerk O. C.

ESTATES TO BE AUDITED BY THE Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. Dorothea Rimbach; William Kauffman, Administrator; 15th May, 1883.

2. John B. Wood; John G. Wood, Trustee; 15th May, 1883.

3. Ira Sackett; Henry W. Dunning, Administrator; 16th May, 1883.

4. A. J. Pringle; Abram Nesbitt, Administrator; 16th May, 1883.

5. Mary A. Perry; A. H. Holcomb, Executor; 17th May, 1883.

6. Philip Marks; Henry Cohen, Administrator; 17th May, 1883.

7. Stoddard Driggs; Charles M. Driggs, Administrator; 18th May, 1883.

8. Fanny Barnum; Amos Sax, Executor; 18th May, 1883.

9. Sarah Morrison; I. P. Hand, Administrator; 21st May, 1883.

10. Elisha Nulton; D. W. Nulton, Administrator; 21st May, 1883.

11. Christian Arnold; W. F. Martz, Administrator d. b. n.; 22d May, 1883.

12. George Woodring; Reuben Thomas, Executor; 22d May, 1883.

13. Rev. George Peck; Rev. George M. Peck, Executor; 23d May, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,

17-19

Clerk O. C.

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Governor of the Commonwealth of Pennsylvania, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved April 20th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Franklin Coal Company," the character and object of which is to purchase, lease, hold, sell, lease, and convey coal lands, to mine and quarry coal therefrom, and to prepare coal for market, to buy, sell, and ship coal, and to transact all business connected therewith, and for these purposes to have, possess, and enjoy all the rights, benefits, and privileges conferred by the said Act of Assembly and its supplements.

HENRY S. DRINKER,

18-20

Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

W. H. HINES,

14-24

Solicitor.

IN RE INCORPORATION OF EDWARDS

borough, in the county of Luzerne. Application having been made to the Court of Quarter Sessions of Luzerne county by certain citizens of Kingston and Plymouth townships, asking that certain territory therein described should be incorporated into a borough, to be named Edwards, the court, on the 16th day of April, 1883, directed the petition to be filed, and fixed May 29th, 1883, at 9 o'clock A. M., as the time for presenting the same before the Grand Jury for approval thereby; notice to be given thereof by publication according to law.

In pursuance thereof, notice is hereby given to all parties interested to be present before the Grand Jury, if they so desire, at the time fixed, as above stated by the court.

H. B. PAYNE,

16-19

Solicitor.

ESTATE OF JOSHUA VINCENT, LATE OF Exeter township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SUSANNA VINCENT,
BENNETT & NICHOLS, Administratrix.
Attorneys. 14-19

ESTATE OF ELLEN MADDEN, LATE OF Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

EDWARD GILLORAN,
Administrator. 14-19

ESTATE OF JAMES BIRTH, LATE OF ROSS township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES CROCKETT,
Administrator. 16-21

ESTATE OF NILS JOHNSON, LATE OF THE borough of Parsons, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN JOHNSON,
Administrator. 16-21

ESTATE OF EMILY H. DARLING, LATE OF Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

E. P. DARLING,
Administrator. 17-22

ESTATE OF CHARITY PRINGLE, LATE OF Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JACOB G. PRINGLE, Adm'r,
McKune's P. O., Falls Twp., Wyoming Co., Pa.
R. C. SHOEMAKER,
Attorney. 14-19

ESTATE OF THOMAS DODSON, LATE OF
Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN DODSON,
GEORGE P. RICHARDS,
H. C. MAGEE, **Executors.**
Attorney. 18-23

ESTATE OF JOHN REED, LATE OF THE
borough of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HANNAH REED,
GEO. S. FERRIS, **Administratrix.**
Attorney. 18-23

ESTATE OF WASHINGTON LEE, LATE OF
the city of New York, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOSEPH STICKNEY,
R. SUYDAM GRANT,
E. P. & J. V. DARLING, **Executors.**
Attorneys. 18-23

ESTATE OF ANTHONY SCHAPPERT, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

BARBARA SCHAPPERT,
L. B. LANDMESSER, **Administratrix.**
Attorney. 17-22

ESTATE OF AUGUST STEPHENS, LATE OF
Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. W. ENO,
O. F. NICHOLSON, **Administrator.**
Attorney. 17-22

ESTATE OF FRANCES S. KNAPP, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

AVERY KNAPP,
F. C. MOSIER, **Administrator.**
Attorney. 17-22

ESTATE OF SAMUEL HARRIS, LATE OF
Kingston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

LORENZO D. HARRIS,
E. G. BUTLER, **Administrator.**
Attorney. 17-22

ESTATE OF RICHARD DEARIE, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEORGE DEARIE,
A. FARNHAM, **Administrator.**
Attorney. 16-21

ESTATE OF JOHN SIMMER, LATE OF THE
township of Newport, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES M. NORRIS,
W. S. McLEAN, **Administrator.**
Attorney. 16-21

ESTATE OF ANDREW LEE, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

E. P. DARLING,
JOHN WROTH, **Executors.**
16-21

ESTATE OF CORNELIUS O'NEILL, LATE
of Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE SHEA,
JOHN T. LENAHAN, **Administratrix.**
Attorney. 17-22

ESTATE OF ELLEN O'NEILL, LATE OF
Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE SHEA,
JOHN T. LENAHAN, **Administratrix.**
Attorney. 17-22

ESTATE OF ELIZABETH ASHELMAN,
late of West Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PETER ASHELMAN,
E. D. NICHOLS, **Executor.**
Attorney. 17-22

ESTATE OF A. G. RICKARD, M. D., LATE
of Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

LIVA A. RICKARD,
R. N. SMITH,
U. D. EVANS, **Administrators.**
Attorney. 17-22

ESTATE OF DANIEL FOLEY, LATE OF
Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

MARY E. FOLEY,
Executrix.

19-24

ESTATE OF HUGH CRAWFORD, LATE OF
Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HUGH R. CRAWFORD,
JOHN RICHARDS,
Attorney. Executrix. 19-24

ESTATE OF EDMUND TAYLOR, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN TAYLOR,
Administrator d. b. n. c. t. a. 19-24

ESTATE OF GEORGE BROWN, LATE OF
Conyngham township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REUBEN SWANK,
Administrator. 19-24

ESTATE OF MARIA POWELL, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

F. C. MOSIER,
GRIFFITH THOMAS,
Administrator. 19-24

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Solomon Davidson, and that said license will be asked for in the court aforesaid on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

GUSTAV HAHN,
Solicitor. 19-20

NOTICE IS HEREBY GIVEN THAT APPLI- cation will be made to the Court of Quarter Sessions of Luzerne county for the purpose of annexing to the borough of Hazleton a certain tract of land adjoining the same to the northward, and known as Diamond addition, together with the Lehigh Valley Railroad plot north of said borough, west of Pine street, extended and adjoining said Diamond addition.

GEORGE H. TROUTMAN,
Solicitor. 19-21

NOTICE IS HEREBY GIVEN THAT ADAM Dombroski has filed his application to keep a hotel in the office of the Clerk of the Court of Quarter Sessions of Luzerne county, and that said application will be heard by the court on Saturday, June 2d, 1883,

L. K. STRENG,
Clerk Q. S. 19-21

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 97, February term, 1883. Libel in divorce a vinculo matrimonii. Rebecca H. Bateman, by her next friend, Joseph Heath, v. Henry Bateman. The alias subpoena in the above case having been returned non est inventus, you, the said Henry Bateman, are hereby notified to appear at said court, on Monday, the 4th day of June, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
HARDING & MCGAHREN,
Solicitors. Sheriff. 19-22

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 42, January term, 1883. Libel in divorce a vinculo matrimonii. Kate F. Leonard, by her next friend, Geo. N. Reichard, v. Charles H. Leonard. The alias subpoena in the above case having been returned non est inventus, you, the said Charles H. Leonard, are hereby notified to appear at said court, on Monday, the 4th day of June, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
E. P. & J. V. DARLING,
Solicitors. Sheriff. 18-21

IN THE COURT OF QUARTER SESSIONS of Luzerne county. No. 66, January sessions, 1883. In Re Division of the township of Ross into three Election Districts. Notice is hereby given that the report of the Commissioners in the above stated case has been filed with the Clerk of the Court of Quarter Sessions, and was confirmed nisi by the court on the 30th of April, 1883, and that said report will be confirmed absolutely by the court, unless exceptions thereto be filed not later than the third day of the next term of said court.

LOUIS K. STRENG,
Clerk Q. S. 18-20

MCLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, MAY 18, 1883.

No. 20.

Court of Common Pleas of Luzerne County.

SWALLOW *v.* RED ASH COAL CO.

Appeal from justice of the peace—Striking off—Wages of labor—Practice.

The rule laid down in *Gordon v. Snyder* (12 Luz. Leg. Reg. 91), as to the practice in cases of unauthorized appeals, followed.

Rule to show cause why appeal should not be stricken off.

The opinion of the court was delivered May 14, 1883, by

RICE, P. J.—That the above was the proper rule to enter in this case is decided in *Gordon v. Snyder* (12 Luz. Leg. Reg. 91). In response to the rule, the defendant should have taken depositions to show that the omission to file the proper affidavit was caused by the fault, fraud, or misconduct of the magistrate, and that the defendant corporation was guilty of no *laches*. An *ex parte* affidavit will not suffice. It is time that the requirements for an appeal from a judgment for the wages of manual labor were understood, but as there has been some confusion as to the practice in taking advantage of defects in taking such appeals, we feel compelled to permit the defendant to show, if such be the fact, that there was no fault on their part, as is alleged in their affidavit. See *Burd v. Long*.

And now, May 14, 1883, it is ordered that the above rule stand over until next argument court, with leave to the defendant in the meantime to take depositions.

Jas. L. Lenahan, Esq., for plaintiff.

J. A. Opp, Esq., for defendant.

Court of Common Pleas of Luzerne County.

DEVERT *v.* LEHIGH VALLEY COAL CO.*Negligence—Non-suit.*

1. In the absence of evidence to the contrary, a boy between fifteen and sixteen years of age is presumed to have sufficient capacity and understanding to be sensible of danger, and to have the power to avoid it.
 2. If he knew the risks, and continued in the employment, it was his duty to exercise that judgment and discretion which the law imputed to him.
 3. If, in performing the duties of his employment, he unnecessarily puts himself in a place of known danger, and an accident results, he is chargeable with contributory negligence.
 4. In such case the father cannot recover, although notice was not given to him that the employment had been changed.
- ‘ *Rule* to show cause why compulsory non-suit should not be taken off.

The opinion of the court was delivered May 14, 1883, by

RICE, P. J.—We have re-examined with great care the evidence submitted on the trial of this case, and have fully reconsidered the reasons which we then thought were conclusive against the plaintiff's right to recover, but we still think that the granting of the non-suit was required. The deceased was a minor, but he was under no compulsion on that account to accept a more hazardous employment than that in which he was first engaged. He had driven through the gangway repeatedly during the two weeks immediately previous to the accident. He was between fifteen and sixteen years of age, and it was not shown that he did not have that discretion and intelligence which is usual with boys of that age. If it is to be legally presumed, as is decided in the case of *Nagle v. The Allegheny Valley R. R. Co.* (7 Norris, 35), that he had sufficient capacity and understanding to be sensible of danger, and to have the power to avoid it, he must certainly have known and appreciated the danger of riding in the car through the section of the gangway in question, whether reasonable care and skill had been exercised in its construction, or whether it was defective. If the employment in which he was engaged was in itself necessarily dangerous, and he voluntarily

continued in it, knowing the risks, whether general or special in their character, it was his duty to exercise that judgment and discretion which the law imputed to him. If, in performing the duties of his employment, he unnecessarily put himself in a place of known danger, he was chargeable with contributory negligence. In whatever light we regard the evidence, we conclude, without further elaboration, that it was our plain duty to declare that this was one of those painful accidents for which the law does not furnish a remedy in damages.

The rule is discharged.

T. R. Martin and D. L. O'Neill, Esqs., for plaintiff.

H. W. Palmer and J. V. Darling, Esqs., for defendant.

Court of Common Pleas of Luzerne County.

EMPIRE BUILDING AND LOAN ASSOCIATION *v.* MORRIS.

Judgment—Striking off—Fraud.

1. A *scire facias* had issued against, and been served on, a defendant to revive a judgment containing a waiver of exemption. The defendant, not wishing to proceed further in his defense, confessed a judgment, in which he waived the benefit of the exemption law. He swore that he could not read English, and did not know that the paper contained such waiver. There was not sufficient evidence of fraud or misrepresentation to submit to a jury. Upon these facts it was held, on a motion to strike off the judgment, that his ignorance of the language was not a sufficient cause for such action.
2. If a person who cannot read does not ask to have a paper, presented for his signature, read or explained to him, he is guilty of supine negligence, and unless fraud or misrepresentation be clearly shown, the paper will not be set aside.

Rule to show cause why judgment should not be stricken off.

The opinion of the court was delivered May 14, 1883, by

RICE, P. J.—The present rule was based on the defendant's sworn allegation that the confession of judgment was signed in blank, and that subsequently a waiver of inquisition and exemption was inserted without his knowledge, and contrary to the express understanding of the parties. We cannot find from all the testimony that this allegation is sustained, nor that there is sufficient conflict of evidence as to the fact to warrant us in awarding an issue. Neither can we conclude that there was

misrepresentation as to the contents of the instrument when the defendant signed it. The defendant swears that he cannot read English writing or print to understand it. Assuming this to be so, it is quite possible that he did not understand that the paper contained the waiver of exemption. This fact alone, without proof of fraud or misrepresentation, would not constitute a sufficient cause for setting aside the paper, or the judgment founded on it. It was his duty to have required the paper to be read or explained to him, and not having done so, he was guilty of supine negligence, which is not the subject of protection, either at law or in equity. *Greenfield's Estate*, 2 H. 496; *Pennsylvania R. R. Co. v. Shay*, 1 Nor. 198.

The rule is discharged.

F. W. Wheaton, Esq., for plaintiff.

D. M. Jones, Esq., for defendant.

Court of Common Pleas of Luzerne County.

CLARK v. SULLIVAN.

Referee—Conclusiveness of findings of.

Where there is a direct conflict in the testimony, involving the credibility of the witnesses, the decision of the conflict by the referee will not be disturbed, unless it is clearly shown that he has committed gross error.

Exceptions to report of referee.

The opinion of the court was delivered April 5, 1883, by

RICE, P. J.—Where there is a direct conflict in the testimony, the referee, before whom the case is tried, must necessarily be the best judge of the credibility of the witnesses, and his findings upon such an issue will not be disturbed, unless it is clearly shown that he has committed gross error. After an examination of the evidence in this case, we find no reason to depart from this rule. There was abundant evidence before him, if believed, to warrant his conclusion that there was an original undertaking on the part of the defendant; and this fact being found, the other exceptions fall to the ground.

The finding of the referee that the defendant had paid for the potatoes is equally conclusive against the plaintiff.

The exceptions are overruled, the report of the referee is confirmed, and judgment is entered thereon in favor of the plaintiff for the sum of \$82.41, with interest from March 28, 1883.

Court of Common Pleas of Luzerne County.

MCDADE v. CAMPBELL.

Where a verdict is rendered against the binding instructions of the court, it is the duty of the court to grant a new trial, even though it may be possible that the court erred in giving such instructions.

Rule for new trial.

The opinion of the court was delivered December 11, 1882, by

RICE, P. J.—As to the one hundred dollars alleged to have been paid upon the note in suit by an order or check on the building association, the verdict of the jury was against the binding instructions of the court. We shall not stop at this time to decide whether the jury or the court reached the correct conclusion as to the law. The former were bound to obey our instructions, and if we committed error the remedies for its correction were adequate. Our duty to grant a new trial under such circumstances is imperative. To refuse to do so because we should now conclude that we ought not to have given binding instructions would be grossly unjust, for the reason that, however erroneous such conclusion might be, the plaintiff would be deprived of the right of having it reviewed. We have no sensitiveness which would prevent us from acknowledging that we had committed an error in our charge. In more than one case have we granted new trials for such error. That is not the question. The parties have a right by law to have our decision upon the legal question which was the subject of consideration in our charge reviewed by the higher court, and to refuse this application would deprive the plaintiff of that right. This would be the arbitrary exercise of power which would not be creditable to the administration of justice.

In the case of *Flemming v. Marine Insurance Co.* (4 Wh. 59), tried at *Nisi Prius*, Judge Kennedy charged the jury that the plaintiff had not made out his case, and was not entitled to recover. Notwithstanding the express instructions of the court, the jury found for the plaintiff. Although the court in banc were of opinion that there was evidence to go to the jury, and that the instructions of the trial judge were erroneous in this particular, it was held that a new trial should be granted. The reasons for the rule adopted seem to be conclusive here.

The rule is made absolute.

John Lynch, Esq., for plaintiff.

W. S. McLean, Esq., for defendant.

Court of Common Pleas of Luzerne County.

MOORE v. BAKER.

Certiorari—Twenty days rule—Irregular return of service of summons.

Where the justice had jurisdiction of the subject-matter of the action, and the return shows that the service of summons, though irregular, and not in strict conformity to the statute, was personal, and more than six years have elapsed from the date of the entry of judgment, and the parties are living, it is incumbent on the plaintiff in error to show affirmatively want of knowledge of the judgment and action.

The opinion of the court was delivered June 12, 1882, by

RICE, P. J.—This judgment was entered by default in December, 1873. In December, 1881, a *scire facias* issued thereon. The plaintiff in error immediately sued out this writ of *certiorari*. There is no evidence that he had notice of the original suit and judgment against him, unless it is to be presumed from the return to the summons. It is well argued by the counsel for the defendant in error that after this lapse of time, during which his client's demand may have been barred by the statute of limitations, the court ought not to be extremely technical in examining the record of the proceedings; but notwithstanding the disposition to sustain a judgment of such long standing, it is now too late to question the authorities which hold that "the twenty days'

limitation" (for suing out the writ of *certiorari*) "does not apply to cases in which the justice has no jurisdiction, either of the parties or the subject-matter, and he has no jurisdiction of the former when they are not legally summoned." *Lacock v. White*, 7 H. 498; *Paine v. Godshall et al.*, 1 Luz. Leg. Reg. 3; *Mulligan v. Riley*, 1 Kulp, 79.

It is sometimes argued by counsel from these premises that where the service of the summons is irregular, and there is no appearance by the defendant, there is no limitation upon the time within which he may sue out a *certiorari*. However logical this conclusion may be, it is not fully warranted by the statute and the weight of authority. However irregular the service may be, the judgment is not void, and the defendant cannot impeach it, except by direct proceedings. *Sloan v. McKinstry*, 6 H. 120.

The statute has provided in unequivocal terms "that no judgment shall be set aside, in pursuance of a writ of *certiorari*, unless the same be issued within twenty days after judgment was rendered, and served within five days thereafter." Act March 20, 1810, § 21, P. D. 608, *pl.* 28. If we say that a defendant irregularly served with a summons is not included within this statutory limitation, but, in disregard of it, may sue out a writ of *certiorari* at any indefinite period, even though he has had actual notice of the judgment, we will be making an exception neither expressly nor impliedly recognized by the statute. The cases do not warrant us in going so far in overturning the plain terms of the statute. It must be conceded that want of notice will take the case out of the operation of the twenty days' limitation, and this may be shown by parol (*Lacock v. White*, *supra*); but where the defendant has notice, even though the service of summons is irregular, and he has not waived the irregularity by appearance, he will not be justified in treating the judgment and the statutory limitation as nullities. *Dailey v. Bartholomew*, 1 Ash. 135; *Brookfield v. Hill*, 1 Phil. 439; *Stedman v. Bradford*, 3 Phil. 258; *Harrison v. Wilkinson*, 1 Luz. Leg. Reg. 89; *Wasser v. Brown*, 1 Kulp, 341; *Hillside Coal and Iron Co. v. Featherman*, *ibid.*, 314. Many other cases, both reported and unreported, might be cited to the same effect, but these will suffice to show that where the defendant's sole complaint is irregularity in the service of the

summons, the exception of the case from the operation of the twenty days' limitation is based on the want of notice.

This being the true ground of the exception, the question arises, upon whom does the burden rest of proving notice, or the want thereof? It has been held in the Philadelphia courts that the defendant must satisfy the court by affirmative proof that he applied for the writ within twenty days after the fact of judgment came to his knowledge. *Dailey v. Bartholomew, supra*; *Brookfield v. Hill, supra*.

We are not called on in this case to adopt or reject that rule, but we think that justice to the parties, and a fair regard to a reasonable construction of the statute, do require us to hold, that where the justice had jurisdiction of the subject-matter of the action, and the return shows that the service of the summons, though irregular, and not in strict conformity to the statute, was personal, and more than six years have elapsed from the date of the entry of the judgment, and the parties are living, it is incumbent on the plaintiff in error to show affirmatively want of knowledge of the judgment and action.

The return of the summons, as shown by the transcript, is as follows: "Served on defendant personally, December 20, 1873, by making contents known." It may be conceded that this return is defective in not showing that the original was produced, but yet at the most this was an irregularity, and not a total want of service, and after this lapse of time the return, though irregular, ought to carry with it a *prima facie* presumption of notice of the action at least. This must be overcome before we will be justified in setting aside the provision of the statute we have been considering. If, in fact, the plaintiff in error had notice, though irregular, of the action and judgment, it would be awarding a premium to delay to permit him now to complain. If he did not, in fact, have notice thereof, he could and ought to have shown it. Whether it is now too late, we do not decide. It is sufficient to say that, there being no sworn denial thereof, the proceedings must be affirmed.

The proceedings are affirmed.

E. Robinson, Esq., for plaintiff in error.

John McGahren, Esq., for defendant in error.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, June 9th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

Suits of Kreamer & Mann and Hayes & Co. v. S. H. Sturdevant and W. F. Goff, and Lehigh Coal and Navigation Co. v. S. H. Sturdevant.

406 and 407 April term, 1879, and 48 June term, 1883. Debt, \$1,654 98, \$1,784.30, and \$14,400.

Bennet & Wheaton, } Att'ys.
Dorrance & Price.

The surface of all those lots of land in the city of Wilkes-Barre, on plot of lots of Sturdevant & Goff, described as follows:

1. Lot No. 1 being 20 feet front on Hazle street and 100 feet in depth, and bounded on the west and rear by an alley; improved, with a two-story brick building, used as a store and dwelling house, and outbuildings thereon.

2. Lot No. 2 being 20 feet front on Hazle street and 100 feet in depth, and bounded in the rear by an alley; improved, with a two-story brick building, used as a store and dwelling house, and outbuildings thereon.

3. Lot No. 3 being 30 feet front on Hazle street and 100 feet in depth, and bounded in the rear by an alley; improved, with a two-story brick building, used as a store and dwelling house, and outbuildings thereon.

4. Lot No. 4 being 20 feet front on Hazle street and 100 feet in depth, and bounded in the rear by an alley; improved, with a two-story brick building, used as a store and dwelling house, thereon.

5. Lot No. 5 being 20 feet front on Hazle street and 100 feet in depth, and bounded in the rear by an alley; improved, with a two-story brick building, used as a store and dwelling house, thereon.

6. Lot No. 8 being 26 feet front on Ruddle street and 84 feet in depth, and bounded on the east side by an alley; improved, with a two-story frame dwelling house and outbuildings thereon.

7. Lot No. 9 being 26 feet front on Ruddle street and 84 feet in depth; improved, with a two-story frame dwelling house and outbuildings thereon.

8. Lot No. 10 being 26 feet front on Ruddle street and 75 feet in depth; unimproved.

9. Lot No. 11 being 26 feet front on said Ruddle street and 75 feet in depth; unimproved.

10. Lot No. 12 being 26 feet front on Ruddle street and 75 feet in depth; unimproved.

11. Lot No. 13 being 26 feet front on Ruddle street and 75 feet in depth; unimproved.

12. Lot No. 14 being 26 feet front on Ruddle street and 75 feet in depth; unimproved.

13. Lot No. 15 being 26 feet front on Ruddle street and 75 feet in depth; unimproved.

14. Lot No. 16 being 26 feet front on Ruddle street and 75 feet in depth; unimproved.

15. Lot No. 17 being 26 feet front on Ruddle street and 75 feet in depth; unimproved.

16. Lot No. 18 being 26 feet front on Ruddle street and 75 feet in depth; unimproved.

17. Lot No. 19 being 27 feet front on Ruddle street and 75 feet in depth; unimproved.

18. Beginning at a corner in line of Hazle street and the Lehigh Valley Railroad, thence along said Hazle street 35 feet to a corner on an alley, thence along said alley 112 feet to corner, thence 106 feet along an alley to a corner, thence 52 feet to a corner, thence 9 feet to a corner, thence 261 feet to a corner, thence 90 feet to a corner in line of the Lehigh Valley Railroad, thence along said railroad about 430 feet to place of beginning, containing about 37,825 square feet of surface, now used as a lumber-yard; improved, with a two-story frame building, used as an office and store-room, together with a frame barn, dry-house, and outbuildings thereon. The above lot has three sidings from the L. V. R. R. and the L. & S. R. R.

19. Beginning at a corner on the northerly side of Meade street, thence along the same 30 feet to a corner, thence 190 feet to an alley, thence along the same 30 feet to a corner of lot now or late belonging to C. F.

Terry, thence along said lot 190 feet to Meade street, the place of beginning, being part of lot No. 43, in block No. 4, on plot of lots of A. C. Laning, dec'd; unimproved.

20. Beginning at a point on the northwesterly side of Lincoln street 700 feet distant from the corner of South street, thence northwesterly along line of lot No. 1 and parallel with South street 130 feet, more or less, to the line of the Lehigh and Susquehanna Railroad, thence southwesterly along the line of said railroad 50 feet to corner of lot No. 3, thence southeasterly along said lot about 130 feet to Lincoln street aforesaid, thence along said street 50 feet to the place of beginning, being lot block No. 2, in No. 1, on plot of the Wilkes-Barre Coal and Iron Co.; unimproved.

Suit of Robert S. Dana, Administrator, and E. A. Dana, Administratrix of the estate of Sylvester Dana, deceased, v. Arnold Bertels.

112 May term, 1881. Debt, \$5,164.50. Pl. lev. fa. 7 June term, 1883. Bennet & Nichols, Att'ys.

A piece of land in the city of Wilkes-Barre, beginning at the west corner of Dennis Quillan's lot, on the southeast side of Main street, at a point nearly opposite the intersection of Sullivan street with said Main street, thence along said Quillan's land 202 feet, thence 19 feet, thence 131 feet to the Wyoming canal, thence along said canal 86 feet and 9 inches, thence 292 feet to said Main street, thence along said Main street 50 feet to the place of beginning, containing 18,000 square feet of land, more or less.

Suit of J. G. Miller v. Owen L. Hughes. 216 October term, 1878. Debt, real, \$1,115. Pl. fa. 10 June term, 1883. Butler, Att'y.

All that lot of land in the township of Wilkes-Barre, beginning at a corner in the southeast line of the Lehigh and Susquehanna Railroad, and also in the line dividing certified lots Nos. 31 and 32, thence along the same 180 7-10 feet to a corner, thence 1,007 feet to a corner, thence 125 7-10 feet to the line of said railroad, and thence a northeasterly course along the line of said railroad about 920 feet to the place of beginning, containing 3 acres, more or less; all improved, with a double two-story frame dwelling house, barn, other outbuildings, and fruit trees thereon, with a road running from the Wilkes-Barre and Easton turnpike to the said house, affording access to the said property.

Suits of Michael Cannon v. James Petrick, Garnishee of Jacob Stemmer.

139, 140, and 141 February term, 1883. Debt, \$20.52, \$14.37, and \$16.03. Vend. ex. 2, 3, and 4 June term, 1883. Cannon, Att'y.

1. All that lot of land in the city of Wilkes-Barre, beginning at a point on Lincoln street 60 feet northwesterly from South street, thence northwesterly on a line parallel with South street back to the line of the Lehigh and Susquehanna Railroad, thence northeasterly along said railroad 40 feet to a corner, thence southeasterly on a line parallel to South street to Lincoln street, thence southeasterly along said Lincoln street 40 feet to the place of beginning, being a part of lot No. 1, in block No. 2, on map and plot of lots laid out by the Wilkes-Barre Coal and Iron Company; excepting and reserving coal; all improved, with a large frame building, used as a tenement house, being two stories high, fronting on Lincoln street, and three stories high in the rear, facing the Lehigh and Susquehanna Railroad, and other smaller outbuildings.

2. All that other lot of land on Mechanics alley, between Northampton and South streets, in the city of Wilkes-Barre, bounded on the west by said alley, on the north by lot land of S. S. Coon, on the east by land of A. Y. Smith, and on the south by land of G. M. Miller, being 26 feet in front on said alley, and 76 feet in depth; all improved, with a two-story frame building and other smaller outbuildings thereon.

3. All that other parcel of land on Lincoln street, in the city of Wilkes-Barre, being the whole of block No. 2 on the map and plot of the Wilkes-Barre Coal and Iron Company's addition to the city of Wilkes-Barre, being between South street and the old line between certified lots Nos. 33 and 34, excepting a lot 100 feet

in front on the corner of South and Lincoln streets, sold to William and James Pethrick by F. J. Leavenworth; all improved, with three large frame buildings, used as tenements, the said buildings being two stories in height, fronting on Lincoln street, and three stories in height in rear, facing the L. & S. R. R.; also one two-story frame building on the rear of said lot or block, and other smaller outbuildings.

5
Suit of William Kisner, Elliott P. Kisner, and the Hazleton Savings Bank, use of, v. William Thomas. 276 May term, 1883. Debt, \$750.00. Vend. ex. 1 June term, 1883. Kisner, Att'y.

All that lot of ground on the north side of Broad street, in the village of West Hazleton, being lot No. 7, of square No. 8, beginning 240 feet westward from northwest corner of Broad and Second streets, thence extending westward along said Broad street 40 feet, and thence of that same width extending northwardly in length or depth 150 feet to Spruce alley; unimproved.

6
Suit of Eckley B. Coxe, Administrator d. b. n. c. t. a. of the estate of Trench Coxe, deceased, v. Theodore Naugle.

84 March term, 1883. Debt, real, \$2,350.48. Vend. ex. 6 June term, 1883. McClintocks, Att'ys.

1. Being part of a tract of land surveyed in the warrantee name of John Tittsworth, in Nescopeck township, beginning at stone corner at the point of intersection of the line of the said John Tittsworth survey by the line dividing the said Nescopeck township and Black Creek township, thence along the line between the said townships and through the John Tittsworth survey 293 perches to a stone, thence along the line of land now of Samuel Smith and surveyed in the warrantee name of Robert Taggart 137 perches to a white oak, thence along the lands now or late of Nathan Miller, John Sherman, and Henry Kerchner, and formerly belonging to the German Reformed congregation, 269 perches to a stone and 31 perches to a hickory, thence along the line of land now of Henry Kerchner 106 perches to the stone corner, the place of beginning, containing 228 acres and 21 perches, strict measure.

2. Being a tract of land surveyed in the warrantee name of James Nodd, partly in said Nescopeck township and partly in Black Creek township, beginning at a white oak corner of lands surveyed in the warrantee name of the said James Nodd, German Reformed congregation, Thomas Hamilton, and John Nodd, thence along the line of the said lands surveyed in the warrantee name of the said German Reformed congregation 216 perches to a poplar, 76 perches to a white oak, 170 perches to a black oak, 32 perches to a birch, 90 7-10 perches to a maple stump and stone corner, thence along line of land surveyed in the warrantee name of Michael App 101 perches to a stone corner, 246 1/2 perches to a stone corner and fence by land surveyed in the warrantee name of the said John Nodd 293 perches to the white oak, the place of beginning, containing 359 acres and 80 perches, and allowance of 6 per cent for roads, etc.

3. Situate in said Nescopeck township, beginning at a stone on the west bank of Nescopeck creek, thence down said creek 66 perches to a hemlock tree, thence down said creek 56 perches to a stone, thence down and across said creek 61 perches to a post, thence down the east side of said creek 33 perches to a stone, thence along lands of Daniel Arner 145 perches to a stone corner, thence along lands of John H. Harter 137 perches to the place of beginning, containing 90 acres and 62 perches, strict measure.

4. Situate in the said Nescopeck township, beginning at a poplar tree on the south bank of Nescopeck creek, thence 67 perches to a dog wood corner, thence by lands of J. G. Koehler 50 perches to a corner, thence across Nescopeck creek 16 perches to a chestnut tree, thence down said creek 83 perches to the place of beginning, containing 13 acres and 31 perches, strict measure; all improved.

The first and second described tracts unimproved, and the third and fourth improved with house, barn, and other outbuildings.

Improvements: First described tract, about 7 acres

cleared, balance unimproved. Second described tract, about 6 acres cleared, balance unimproved. On third described tract are erected a two-story plank or frame dwelling house, a frame wash house, a frame barn and other outbuildings, a saw and lath mill, a wheelwright and blacksmith shop.

7
Suit of D. L. O'Neill v. Hannah Duffy, Executrix of Michael Duffy, deceased. 111 April term, 1879. Debt, \$74.37. Al. vend. ex. 11 June term, 1883. O'Neill, Att'y.

1. The following described piece of land in Plains township, beginning at a corner, the intersection of Plains and West streets, and running thence along Plains street 150 feet to a corner, thence 164 1/2 feet to a corner, thence 150 feet to a corner, thence 164 1/2 feet to the place of beginning, containing 24,675 square feet of land, more or less, being lots Nos. 140 and 142 in plot of lots laid out for Jesse Thomas, together with two two-story frame dwelling houses and other outbuildings thereon.

2. All that lot of land in the township of Plains, beginning at a corner at the intersection of Union street with Mocktown road, and running thence along said Mocktown road 160 feet to a corner on line of West street, thence along said West street 141 feet to the line of the Nanticoke Railroad, thence along the curve of the Nanticoke Railroad about 175 feet to Union street aforesaid, thence 81 feet to the place of beginning, containing about 17,460 square feet of land, being lots Nos. 116, 117, and 118 in plot of lots laid out for Jesse Thomas.

8
Suit of Abram Nesbitt, Administrator c. t. a. of A. J. Pringle, deceased, and A. N. Harvey, Administrator of N. H. Laycock, deceased, v. Samuel Pringle, Administrator of Caturah Ann Dilley, deceased, and Ira M. Dilley, Guardian of Carrie S. Dilley, minor child of Caturah Dilley.

429 May term, 1883. Debt, \$22.58. Vend. ex. 9 June term, 1883. Powell, Att'y.

All that piece of land in Kingston borough, beginning at a corner on Pringle street, thence along land of David Fairchild 104 feet to a corner, thence along land sold to Julius Mulford 95 feet to a corner, thence along said Mulford lot 100 feet to a corner, thence 3 7-10 feet to a corner, thence 200 feet to a corner, thence along said Pringle street 142 feet to the beginning; all improved, and having erected thereon one two-story frame dwelling house and one carpenter shop; also fruit trees and well of water.

INSOLVENT'S NOTICE.

Notice is hereby given that Monday, June 4th, 1883, at 10 o'clock A. M., has been fixed as the time of hearing by the court of the application of E. A. Niven for final discharge under the insolvent laws.

PALMER, DEWITT & FULLER,
Attorneys.

20-22

ORPHANS' COURT SALE.

Estate of Ella C. Solly, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose at public auction, at the Arbitration room, in the Court House, at Wilkes-Barre, on Thursday, June 7th, 1883, at 10 o'clock A. M., all that piece of land in the borough of Dallas, beginning at a corner of land of Thos. A. Garrahan on the south side of road leading from Dallas village to Huntsville, thence along said Garrahan's land 12 perches to a post, thence by land of Jacob Rice 6 perches to a corner of land of the Dallas High School Association, thence by land of said association 12 perches to a post, a corner on south bank of the road aforesaid, thence along the said road an easterly course 6 perches to the place of beginning, containing 7 1/2 perches of land, strict measure, together with a 1 1/2-story house and outbuildings thereon.

TERMS OF SALE—Cash.

WILLIAM J. SOLLY,
H. B. PAYNE, Administrator.
HENRY W. DUNNING,
Attorneys.

20-22

ESTATES TO BE AUDITED BY THE

Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. Joseph Hess; William Meixell, Executor; 5th June, 1883.
2. Owen Ellis; E. P. Kiser, Administrator; 5th June, 1883.
3. John R. Edwards; J. N. Edwards, Administrator; 5th June, 1883.
4. John A. Harmon; Solomon Harmon and Henry Harmon, Administrators; 6th June, 1883.
5. John B. Gay; Fisher Gay, Executor; 6th June, 1883.
6. Daniel Davis; Owen Fritzinger, Executor; 6th June, 1883.
7. John Stoddart; William Stoddart, Administrator; 7th June, 1883.
8. Daniel Gillespie; Michael Russell, Administrator; 7th June, 1883.
9. Catharine Gross; Nathan Snyder, Executor; 7th June, 1883.
10. William Briggs; J. F. Briggs, Administrator; 8th June, 1883.
11. James Brown; John Lynch, Trustee; 8th June, 1883.
12. Luke Murphy; G. L. Halsey, Administrator; 8th June, 1883.
13. Nathan Klinetob; John Robinson, Administrator; 11th June, 1883.
14. George Nansteel; John Fisher, Administrator; 11th June, 1883.
15. Cecelia B. Carey; B. F. Carey, Administrator; 11th June, 1883.
16. Martha Jameson; S. C. Jayne, Executor; 12th June, 1883.
17. Samuel Rough; Benj. Evans, Administrator; 12th June, 1883.
18. Tobias Moyer; Homer Smethers, Administrator; 12th June, 1883.
19. Mary Macartney; C. B. Jackson, Administrator; 12th June, 1883.
20. Ephraim R. Kittle; William E. Kittle, Administrator; 13th June, 1883.
21. Susan Houck; Washington Houck, Administrator; 13th June, 1883.
22. Mary Sinclair; H. H. Hadsall, Administrator; 13th June, 1883.
23. Martin Williams; Michael E. Collier, Administrator; 14th June, 1883.
24. D. W. Turner; Geo. G. Turner, Administrator; 14th June, 1883.
25. Catharine Smith; H. B. Wright, late Executor; 14th June, 1883.
26. John W. Davis; W. W. Amsbry, Administrator; 14th June, 1883.
27. Alexander Gray; Alexander Gray, Executor; 15th June, 1883.
28. J. Pryor Williamson; E. G. Scott and A. Voigt, Executors; 16th June, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,
Clerk O. C.

20-22

ORPHANS' COURT SALE.

Estate of Harrison Honeywell, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Thursday, June 7th, 1883, at 10 o'clock A. M., the equal undivided half interest of all that lot of land in the city of Wilkes-Barre, beginning at a point on the northerly side of Regent street in line of lot No. 91, thence along said lot 150 feet to a corner in line of lot No. 92, thence along said lot 40 feet to lot No. 89, thence along said lot 150 feet to northerly side of said

Regent street, thence along said street 40 feet to the beginning, containing 6,000 square feet of land, more or less, being lot No. 90 in plot of lots laid out by Calvin Wadhams and Alexander Farnham in the 15th ward; reserving coal; all improved, with no buildings thereon.

TERMS OF SALE—\$100 down, and the balance on the confirmation of the sale and delivery of deed.

HENRY W. DUNNING, Attorney.
B. C. REEVE, Administrator.

20-23

ORPHANS' COURT SALE.

Estate of Robert Helm, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, on the premises, on Friday, June 15, 1883, at 10 o'clock A. M., all that lot of land in the borough of West Pittston, being 30 feet on Exeter street, between Spring and Park streets, and running back 230 feet to an alley, containing 6900 square feet of land, being the southerly one-half of lot No. 19 on the map of the West Pittston Land Association, having thereon an abundance of choice fruit trees.

TERMS OF SALE—One-quarter down at sale, one-quarter down on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, in six months from confirmation absolute; deferred payments to be secured by bond and mortgage on the premises.

JOHN RICHARDS, Attorney.
LYDIA HELM, Administratrix.

21-23

ORPHANS' COURT SALE.

Estate of Ziba G. Major, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, in the Arbitration room, in the Court House, at Wilkes-Barre, on Friday, June 22d, 1883, at 10 o'clock A. M., all those two several lots of land in the township of Lehman:

One thereof beginning at a corner in line of lots Nos. 16 and 17, thence on said line 27 perches to a corner, thence by part of said lot No. 17, 74 4-10 perches to a corner, thence 50 perches to a corner, thence 18 perches, thence 18 perches to a corner, thence 18 $\frac{1}{2}$ perches to a corner, thence on the line between lots Nos. 17 and 18, 111 perches to a corner, and thence by land formerly owned by Garner H. Snyder 106 perches to the place of beginning, containing 39 acres and 39 perches of land, more or less.

The other piece of land beginning at a corner in the line between lots Nos. 17 and 18, thence 106 perches to a corner in line of lots Nos. 16 and 17, thence 61 7-10 perches to a corner, thence 106 perches to a corner of lot No. 37, near Harvey's creek, thence by lot No. 36 61 7-10 perches to the place of beginning, containing 40 acres and 140 perches of land, more or less.

Reserving the pine timber on both of the said above described lots; and also excepting and reserving from the above described premises all that piece of land, containing twelve acres, according to reservations contained in deed of Thomas N. Major and wife to Z. G. Major.

Also one other piece of land in said township, beginning at the southwest corner of No. 38 at a stake and stones, but formerly a yellow pine tree, thence 30 perches to a corner in road leading from Lehman Center to Ross township, thence along said road 30 36-100 perches to a corner, thence 30 perches to a corner in the center line in Lehman township, thence along said center line 30 36-100 perches to the place of beginning, containing $\frac{5}{8}$ acres of land.

The said several pieces of land constituting one body of land, and having erected thereon a dwelling house, barn, and other outbuildings, apple orchards, etc.

TERMS OF SALE—10 per cent cash or day of sale, 15 per cent on confirmation, and balance in one year from day of confirmation, with interest from confirmation; deferred payments to be secured by bond and mortgage.

A. R. BRUNDAGE, Attorney.
KATE MAJOR, Administratrix.

21-23

ESTATE OF THOMAS DODSON, LATE OF
Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN DODSON,
GEORGE P. RICHARDS,
H. C. MAGEE, **Executors.**
Attorney. 18-23

ESTATE OF JOHN REED, LATE OF THE
borough of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HANNAH REED,
GEO. S. FERRIS, **Administratrix.**
Attorney. 18-23

ESTATE OF WASHINGTON LEE, LATE OF
the city of New York, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOSEPH STICKNEY,
R. SUYDAM GRANT,
E. P. & J. V. DARLING, **Executors.**
Attorneys. 18-23

ESTATE OF JOSIAH KOCHER, LATE OF
Lake township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. R. KOCHER,
E. P. DARLING, **Executor.**
Attorney. 20-25

ESTATE OF OWEN CAFFREY, LATE OF
Ashley, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HONORA CAFFREY,
JOHN MCGAHREN, **Executrix.**
Attorney. 20-25

ESTATE OF HUGH CRAWFORD, LATE OF
Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HUGH R. CRAWFORD,
JOHN RICHARDS, **Executor.**
Attorney. 19-24

ESTATE OF MARIA POWELL, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GRIFFITH THOMAS,
F. C. MOSIER, **Administrator.**
Attorney. 19-24

ESTATE OF CORNELIUS O'NEILL, LATE
of Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE SHEA,
JOHN T. LENAHAN, **Administratrix.**
Attorney. 17-22

ESTATE OF ELLEN O'NEILL, LATE OF
Pittston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE SHEA,
JOHN T. LENAHAN, **Administratrix.**
Attorney. 17-22

ESTATE OF ELIZABETH ASHELMAN,
late of West Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PETER ASHELMAN,
E. D. NICHOLS, **Executor.**
Attorney. 17-22

ESTATE OF THOMAS H. FRANCIS, LATE
of Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEORGE P. RICHARDS,
H. C. MAGEE, **Executor.**
Attorney. 20-25

ESTATE OF LEWIS R. LEWIS, LATE OF
Parsons, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RACHEL LEWIS,
I. P. HAND, **Executrix.**
Attorney. 20-25

ESTATE OF THOMAS C HARKNESS, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ISAAC LIVINGSTON,
E. S. OSBORNE, **Administrator.**
Attorney. 20-25

ESTATE OF A. G. RICKARD, M. D., LATE
of Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

LIVA A. RICKARD,
R. N. SMITH,
R. D. EVANS, **Administrators.**
Attorney. 19-22

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, JUNE 8, 1883.

No. 23.

In Re AMENDMENT TO RULE OF COURT
XXXIV., SECTION 11. } *In the Court of Common
Pleas of the county of
Luzerne.*
No. 277, May T., 1883.

And now, to wit, April 5, 1883, section 11 of Rule XXXIV. of the Rules of Court is amended so as to read as follows:

In making up the trial list precedence shall be given to cases of the nature and in the order stated, as follows:

1st. Actions for the recovery of wages for manual labor, as provided by Act of 22d March, 1877, § 1.

2d. Feigned issues directed by the Orphans' Court and Court of Common Pleas, sitting in Equity.

3d. Issues under the Sheriff's Interpleader Act, according to the number and term of the execution under which they have been directed.

4th. Issues in other interpleaders directed by the Court of Common Pleas: provided, that the money which may be the subject of controversy has been paid into court.

5th. Issues on Auditors' reports and issues directed under section 2 of the Act of April 20, 1846 (P. L. 411).

6th. Issues framed on appeals from the reports of auditors of the accounts of the county, city, boroughs, townships, and poor districts.

BY THE COURT.

In Re COURSE OF STUDY PRESCRIBED BY
BOARD OF EXAMINERS FOR APPLICANTS } *No. 82, May T., 1883.*
FOR ADMISSION AS ATTORNEYS AT LAW.

Now, March 6th, 1883, the Board of Examiners hereby (as directed by rule of court) prescribe the following course of study,

which is made obligatory upon applicants for examination for admission as attorneys at law, subject to approval of court:

1. Blackstone's Commentaries (Sharswood's edition).
2. Kent's Commentaries, Vol. I.
3. Greenleaf's Evidence, Vol. I.
4. Smith or Parsons on Contracts.
5. Byles on Bills.
6. Story's or Bispham's Equity.
7. Stephen on Pleading.
8. Troubat & Haly's Practice (Brightly's Ed. recommended).
9. Rules of Courts of Luzerne county.
10. Equity Rules.
11. Constitution of the United States.
12. Constitution of Pennsylvania.
13. "A Brief of a Title in the Seventeen Townships in the county of Luzerne," by H. M. Hoyt.
14. Acts of Assembly and Supplements in Purdon's Digest relating to Amendment, Competency of Witnesses, Execution, Frauds and Perjuries, Intestates, Judgments, Distress for Rent, Marriage, Wills.

It is also directed that the works formerly in the obligatory course, and now omitted therefrom, viz., Introduction to Robertson's Charles V. or Hallam's Middle Ages, Kent's Commentaries, Vols. II., III., and IV., Bouvier's Institutes, and Acts of Assembly relating to Deeds and Mortgages and Decedents' Estates, be added to the course of study as now recommended to be read, but not obligatory.

H. B. PAYNE,
EDWIN SHORTZ,
ALLAN H. DICKSON,
Board of Examiners.

Now, 16th March, 1883, after due consideration, the course of study as within prescribed by the Board of Examiners is hereby approved, and the Prothonotary is directed to enter the same at length upon the record.

CHARLES E. RICE,
STANLEY WOODWARD,
Judges.

Amendment of Section 11, Rule VII. of Rules of Orphans' Court.

Now, 10th June, 1882, section 11, Rule VII. of the Rules of the Orphans' Court, is amended so as to read: Reports of Examiners made by order of the court for any purpose will be confirmed *nisi* at the time when filed, provided notice of filing has been given the parties interested, or their counsel, and if exceptions be not filed by the third day after such filing, the court will make the proper decree in relation thereto. If exceptions be filed, they shall be placed on the next argument list, made up after such date, for disposition by the court, and the said section as heretofore published is hereby abolished. BY THE COURT.

Amendment of Section 4, Rule XXI. of Rules of Orphans' Court.

Now, 8th December, 1882, it is ordered that in all cases of partition in the Orphans' Court the return of the inquest shall be confirmed *nisi* when filed, and unless exceptions be filed thereto within ten days thereafter, the same shall be confirmed absolutely, and immediately after such final confirmation the court will, on application, grant a rule on heirs and parties interested to accept or refuse the estate at the valuation, or to make bids on the same, or to show cause why the same shall not be sold.

It is further ordered that so much of section 4 of Rule XXI. now existing as may be in conflict herewith be abolished, and that this rule shall take effect at the next January term of court.

BY THE COURT.

Amendment of Section 9, Rule VII. of Rules of Orphans' Court.

Now, 9th February, 1883, it is ordered that section 9 of Rule VII. of the Rules of the Orphans' Court, be amended so as to read: Reports of Auditors appointed to distribute a fund will be confirmed *nisi* when filed, and if exceptions be not filed within ten days thereafter the same will be confirmed absolutely, and shall be so entered by the clerk on the court minutes and the proper docket. The reports of Auditors appointed for any other

purpose than making distribution of a fund will be confirmed after three days, as provided for the reports of Examiners.

BY THE COURT.

Additional Rule of the Orphans' Court, to be known as "Section 4 of Rule 1.—Accounts."

Now, May 21st, 1883, the court decree the following: When Executors, Administrators, Guardians, or Trustees shall account in the Orphans' Court for the proceeds of sales of real estate made by the order of court, or under process given by will, the same shall be filed by the clerk on presentation, and shall be by him advertised in like manner for the same time, and together with those accounts which are filed in the Register's office for presentation to the court at the next term for confirmation *nisi*: *Provided*, that the fees of the clerk and the costs of advertising shall be paid before the account be filed: *And provided further*, that such accounts shall be on the oath or affirmation of the accountant.

BY THE COURT.

Court of Common Pleas of Luzerne County.

HAZEN v. ALBERTSON.

Appeal—Wages.

The act of February 28, 1870 (P. L. 269), applying to appeals from "wages" suits in Luzerne county, was not repealed by the general act of April 20, 1876 (P. L. 43).

Rule on defendant to perfect his appeal, as provided by the act of April 20th, 1876, or in default thereof, to show cause why the appeal should not be quashed.

The opinion of the court was delivered April 16, 1883, by

RICE, P. J.—This case is not shown by the transcript to be within the act of April 9, 1872 (P. L. 47; P. D. 1464, *pl.* 5). It is not so certain that it does not by reasonable intendment show that it is within the first section of the act of April 20, 1876 (P. L. 43). The first clause of that section, it is true, speaks of the

wages of *manual* labor, but the last clause provides as follows: "And the said defendant shall be required to give good and sufficient bail for the payment of the debt and costs . . . *in all cases for labor.*" We need not decide as to the applicability of that act to the demand of the plaintiff, as described in the transcript, for we have no hesitancy in concluding that, under the act of February 28, 1870, relating to Luzerne county (P. L. 269), the appeal is clearly defective. In the case of *Burd v. Long* this act was held to be in force, notwithstanding the passage of the act of 1876.

Now, April 16, 1883, it is ordered that, if the defendant perfect his appeal within ten days from this date, the rule be discharged, but if not, that it be made absolute, and the appeal stricken off.

T. R. Martin, Esq., for plaintiff.

W. S. McLean, Esq., for defendant.

Court of Quarter Sessions of Luzerne County.

In Re DIVISION OF JACKSON TWP. INTO ELECTION DISTRICTS.

Election districts—Practice.

1. Under the act of May 18, 1876 (P. L. 178), relating to the erection of election districts, the court may, upon petition, and in the exercise of their discretion, grant a review, although no exceptions have been filed to the report of viewers.
2. Such review is not demandable of right, nor can the court award it of their own motion.
3. The allowance of a petition for review will prevent the confirmation absolute of the original report until the report of reviewers is made, when, upon consideration of both reports and the evidence, the court may adopt either.
4. If, however, no exceptions be filed to the original report, enough should appear on the face of the petition for review, or it should be accompanied by such proofs as will be sufficient to inform the court that a review is necessary.

Exceptions to report of reviewers.

The opinion of the court was delivered April 23, 1883, by

RICE, P. J.—Upon petition in due form commissioners were appointed to report upon the necessity and expediency of dividing the township of Jackson into two election districts. Their

report in favor of the division was confirmed *nisi*, June 22, 1882. No exceptions were filed to this report.

On the 4th of September following, a petition of certain qualified freeholders of the township was presented to the court, setting forth that the division of the township as aforesaid was unnecessary, and that the erection of an additional election district would be expensive and burdensome. The petition also states at length their reasons for opposition to the proposed division, and prays for a review. Upon this petition being filed, the court appointed reviewers, who, on December 15, 1882, filed a report adverse to the proposed division.

The first exception to this report is, "that the review should only have been awarded on exceptions filed to the original report, and no such exceptions having been filed to said original report of viewers, it should be confirmed absolutely, and the report of the reviewers set aside." The other exceptions are to the same effect.

The third section of the act of May 18, 1876 (P. L. 178), provides as follows: "That when a report has been made by the said commissioners it shall be confirmed *nisi* by said court, which confirmation shall become absolute, unless exceptions be filed to the same not later than the third day of the next term of said court, and should exceptions be filed as aforesaid, they shall be disposed of on evidence, as said court shall deem just: *Provided*, that, if desired, a review may be had, if, in the opinion of the court, it may be necessary to secure a fair adjudication of the same, said review to be asked for, however, before the report has been absolutely confirmed."

Under this act a review is not demandable of right, nor can it be awarded by the court of its own motion. It is only to be allowed when asked for by the parties interested, and not then unless the court is satisfied of its necessity. But when must it be asked for, and how is the court to be satisfied of its necessity? It may be asked for at any time before the report of the original commissioners has been confirmed absolutely; hence it would seem that the request would not come too late, although testimony had been taken, and the confirmation had been delayed several terms by exceptions. But we can find nothing in the act

to indicate that the request must necessarily be delayed until the testimony has been taken. The terms of the *proviso*, "if, in the opinion of the court, it may be necessary to secure a fair adjudication of the same," do not, in our opinion, relate to the evidence taken on the exceptions previously filed, but to the question of the erection of the new district. The whole question, and not merely those suggested by the exceptions and the evidence taken thereon, is to be referred to the reviewers.

It is argued that exceptions should be filed to the original report in order to inform the court as to the necessity for a review. In the case in hand this objection goes to the form and not to the substance of the proceedings, for the reason that the so-called petition for review is so full and specific in its statement of the objections to the original report that, in everything but form, it is equivalent to exceptions; and, having been filed before the third day of the succeeding term, may be treated as such.

But, after a careful consideration of the act, we are constrained to go a step further, and to hold that the *proviso* annexed to the third section of the act applies to the whole of the preceding enacting clause, and qualifies the duty of the court in absolutely confirming the original report. Hence, in analogy to proceedings in road cases, where a petition for review is presented before the time when a report of commissioners can be absolutely confirmed, the court may grant the prayer of the petition, if, in their opinion, it is necessary to a fair adjudication of the question of the erection of the proposed new district or districts; and the allowance of such review will prevent the confirmation absolute of the original report until the whole matter can be brought before the court. If, however, no exceptions be filed to the original report, enough should appear on the face of the petition for review, or it should be accompanied by such proofs as will be sufficient to inform the court as to the necessity for the review. We suggest this as to future cases; but it is clear that when a review has been once awarded, an adjudication that the court deemed it necessary is to be implied, which cannot be inquired into subsequently.

Where the reports are conflicting, it does not follow that we must confirm the last one. As in road cases, the court may

adopt either. As to this question, we desire to hear the arguments of counsel.

The exceptions to the report of reviewers are overruled, and it is ordered that the two reports be placed on the next argument list.

M. Cannon, Esq., for exceptions.

A. Darte, Jr., Esq., *contra*.

Court of Common Pleas of Luzerne County.

STEINHAUER v. HILL.

Attachment—Wages.

1. The act of May 8, 1876 (P. L. 139), relating to attachment of wages for board, does not authorize the issuing of an attachment until after a judgment has been obtained. *Carden v. Scott* (1 Kulp, 196) followed.
2. As to form of judgment against garnishee, *Masters v. Turner* (2 Luz. Leg. Reg. 185) followed.

Certiorari.

The opinion of the court was delivered November 20, 1882, by

RICE, P. J.—The act of May 8th, 1876 (P. L. 139), does not authorize the commencement of suits by attachment. *Carden v. Scott*, 1 Kulp, 196. The judgment against the garnishee was entirely irregular, even had there been a prior judgment against the defendant upon which the attachment could issue. *Layman v. Beam*, 6 Wh. 181; *Corbyn v. Bollman*, 4 W. & S. 342; *Masters v. Turner*, 2 Luz. Leg. Reg. 185.

Both exceptions are sustained, and the proceedings reversed.

James L. Lenahan, Esq., for plaintiff.

James Mahon, Esq., for defendant.

Handsome tidies are placed on satin-covered sofas, not so much as a guarantee of good faith, as to cover up the spots that are worn out.—*Puck*.

ORPHANS' COURT ARGUMENT LIST.

SATURDAY, JUNE 30, 1883.

<p>1 In Re Estate of E. V. Kiddler, deceased</p> <p>2 In Re Estate of August Donop, deceased</p> <p>3 In Re Estate of Jacob Drum, deceased</p> <p>4 In Re Estate of Mary McDermott, deceased</p> <p>5 In Re Estate of A. J. Pringle, deceased</p> <p>6 In Re Estate of Peter Aten, deceased</p> <p>7 In Re Estate of Catharine Smith, deceased</p> <p>8 In Re Estate of Catharine Holloran, deceased</p> <p>9 In Re Estate of Ann Lee, deceased</p> <p>10 In Re Estate of William Cosner, deceased</p>	<p>Exceptions to final account of Trustees.</p> <p>Exceptions to final account of Administratrix.</p> <p>Exceptions to final account of Executor.</p> <p>Exceptions to audit.</p> <p>Exceptions to audit.</p> <p>Exceptions to final account of Guardian.</p> <p>Exceptions to final account of Executor.</p> <p>For attachment of Guardian.</p> <p>To strike off confirmation of account.</p> <p>Exceptions to account of Administrator.</p>
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NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by J. D. Smith, and that said license will be asked for in the court aforesaid, on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

P. H. CAMPBELL,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Moses Hyman, and that said license will be asked for in the court aforesaid on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by S. Rutzstein, and that said license will be asked for in the court aforesaid on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Jos. Berlowitz, and that said license will be asked for in the court aforesaid on Monday, the 18th of June, 1883, at 10 o'clock A. M.

D. M. JONES,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by John H. Mitchell, and that said license will be asked for in the court aforesaid, on Monday, the 18th of June, 1883, at 10 o'clock A. M.

JOHN T. LENAHAN,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Joseph Levison, and that said license will be asked for in the court aforesaid on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

A. R. BRUNDAGE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Abram Michalowsky, and that said license will be asked for in the court aforesaid on Monday, the 18th of June, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Moses M. Gotlieb, and that said license will be asked for in the court aforesaid on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

P. H. CAMPBELL,
Solicitor.

ESTATE OF JESSE W. BAIRD, LATE OF Kingston, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEO. K. POWELL, HART PHILLIPS,
Attorney. Administrator.

23-28

ESTATE OF WILLIAM BRACE, LATE OF Franklin township, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FISHER GAY,
MYRTLE W. BRACE,
DICKSON & ATHERTON, Executors.
Attorneys.

23-28

ESTATE OF EMILY H. DARLING, LATE OF Wilkes-Barre, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

E. P. DARLING,
Administrator.

ORPHANS' COURT SALE.

Estate of James Casterline, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at the old homestead of Joseph Casterline, in Franklin township, on Thursday, the 28th day of June, 1883, at 10 o'clock A. M., certain undivided interests, as hereinafter mentioned, in the following real estate:

1. Beginning at a corner of Asa Casterline in line of land of Martin Winter, thence along said land 60 perches to a corner of Wayman Roberts, thence along said Roberts' land 14 7-10 perches to small ash, thence 36½ perches to another corner of said Roberts, thence along said Roberts' land and the public highway, and lands of heirs of Joseph Ross and land of Joseph Casterline, 224 perches to a stone corner in said road and corner of land of George Greish, thence along said Greish's land 205 perches to a small ash, thence 49 8-10 perches to John Nulton's corner post and stones, thence along said Nulton's 128 perches to a corner in the road leading from said Nulton's to Orange, thence along said road the several distances, thence to a corner of land of Asa Casterline, thence along line of said Casterline 77 6-10 perches to a corner in a spring, thence 32 9-10 perches, thence 36 9-10 perches, thence 29 3-10 perches along public road leading to 'Courtright's', thence 56½ perches to the place of beginning, containing 197 acres and 85 perches of land; about 75 acres improved, and having thereon one 1½-story wood dwelling house, wood barn, wagon house, and other outbuildings, with one apple orchard.

2. One other tract, being the surface of a lot of land in the borough of West Pittston, being lot No. 61 as laid down on a certain plan of the town of Luzerne, on New York avenue, said lot being 50 feet in front on said New York avenue, and 200 feet in depth; all improved.

3. The surface of those lots of land in the village of Sturmerville, Exeter township, bounded as follows:

(1) Beginning at a corner on the westerly side of Wyoming avenue, also corner of lot of Solomon Sturmer, thence along said Sturmer's land in a westerly direction 175 feet to a corner on an alley, thence along said alley in a northerly direction 50 feet to a corner of a lot of Rozelle, thence along said Rozelle's land in an easterly direction 175 feet to a corner on said Wyoming avenue, thence along same in a southerly direction 50 feet to beginning, containing 8,750 square feet of land; all improved, with no buildings thereon.

(2) Beginning at a corner on the northerly side of Lincoln avenue at a corner of lands late of George Corey, thence along said land in a northerly direction 150 feet to a corner on an alley, thence along said alley easterly 50 feet to a corner of land late of said George Corey, thence along said Corey's lands southerly 150 feet to a corner on said Lincoln avenue, thence along said avenue westerly 50 feet to beginning, containing 7,500 square feet of land; all improved, with no buildings thereon.

(3) Beginning at a corner on the southerly side of Pennsylvania avenue, also a corner on an alley, thence along said alley southerly 150 feet to a corner on another alley, thence along last mentioned alley westerly 50 feet to corner of lands late of George Corey, thence along said Corey's land northerly 150 feet to a corner on Pennsylvania avenue, thence by said avenue easterly 50 feet to beginning, containing 7,500 square feet of land; all improved, with no buildings thereon.

It is now ordered and decreed that Chandler B. Williams, Guardian, Alvin Holmes, Guardian, and J. P. Rosencrans, Guardian, sell at public sale the interest of Isaac G. Casterline and James A. Casterline, minor children of James G. Casterline, deceased, being two-thirds of one-seventh of the same; also the interest of Anna E. Casterline, a minor child of James G. Casterline, deceased, being one-third of one-seventh of the same, and also the interest of Ziba A. Casterline and Clayton R. Casterline, minor children of James Casterline, deceased, being two-thirds of one-seventh of the same, upon the following terms of sale: One-third down on day of sale, one-third on day of confirmation of sale, and that one-third be secured upon the lands by bond and mortgage, interest to be paid annually to Eliza Casterline, widow of James Casterline,

during the life of said Eliza Casterline, principal to be paid to Isaac G. Casterline, James A. Casterline, Anna E. Casterline, Ziba A. Casterline, and Clayton R. Casterline, their heirs and assigns, thirty days after the death of Eliza Casterline.

C. B. WILLIAMS,
ALVIN HOLMES,
J. P. ROSECRANS,

Guardians.

NOTE.—The heirs of age have joined in an agreement to sell their undivided interest in the hereinbefore described land to any person or persons who may purchase the interest of the wards of the said Guardians at public sale, at the same price relatively for the whole estate that is given by such purchaser or purchasers for the interest of said minors.

A. R. BRUNDAGE,
HUBBARD B. PAYNE,

Attorneys.

22-24

ORPHANS' COURT SALE.

Estate of Robert Helm, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, on the premises, on Friday, June 15, 1883, at 10 o'clock A. M., all that lot of land in the borough of West Pittston, being 30 feet on Exeter street, between Spring and Park streets, and running back 230 feet to an alley, containing 6900 square feet of land, being the southerly one-half of lot No. 19 on the map of the West Pittston Land Association, having thereon an abundance of choice fruit trees.

TERMS OF SALE.—One-quarter down at sale, one-quarter down on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, in six months from confirmation absolute; deferred payments to be secured by bond and mortgage on the premises.

JOHN RICHARDS,
Attorney.

LYDIA HELM,
Administratrix.

21-23

ORPHANS' COURT SALE.

Estate of Ziba G. Major, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, in the Arbitration room, in the Court House, at Wilkes-Barre, on Friday, June 22d, 1883, at 10 o'clock A. M., all those two several lots of land in the township of Lehman:

One thereof beginning at a corner in line of lots Nos. 16 and 17, thence on said line 27 perches to a corner, thence by part of said lot No. 17, 74 4-10 perches to a corner, thence 50 perches to a corner, thence 18 perches, thence 18 perches to a corner, thence 18½ perches to a corner, thence on the line between lots Nos. 17 and 18, 111 perches to a corner, and thence by land formerly owned by Garner H. Snyder 106 perches to the place of beginning, containing 39 acres and 39 perches of land, more or less.

The other piece of land beginning at a corner in the line between lots Nos. 17 and 18, thence 106 perches to a corner in line of lots Nos. 16 and 17, thence 61 7-10 perches to a corner, thence 106 perches to a corner of lot No. 37, near Harvey's creek, thence by lot No. 36 61 7-10 perches to the place of beginning, containing 40 acres and 140 perches of land, more or less.

Reserving the pine timber on both of the said above described lots; and also excepting and reserving from the above described premises all that piece of land, containing twelve acres, according to reservations contained in deed of Thomas N. Major and wife to Z. G. Major.

Also one other piece of land in said township, beginning at the southwest corner of No. 38 at a stake and stones, but formerly a yellow pine tree, thence 30 perches to a corner in road leading from Lehman Center to Ross township, thence along said road 30 36-100 perches to a corner, thence 30 perches to a corner in the center line in Lehman township, thence along said center line 30 36-100 perches to the place of beginning, containing 5½ acres of land.

The said several pieces of land constituting one body of land, and having erected thereon a dwelling house, barn, and other outbuildings, apple orchards, etc.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, JUNE 15, 1883.

No. 24.

Court of Common Pleas of Luzerne County.

HOUPT, *Garnishee*, v. LEWIS.

Justice of the peace—Attachment execution.

1. Where a garnishee in his answer denies any indebtedness to the defendant as an individual or principal, but admits that he has had dealings with him as agent, the answer will prevent judgment against the garnishee.
2. Where the answer denies indebtedness to the defendant as a principal, a claim by the defendant to have the fund set apart to him under the exemption law will not conclude the garnishee, nor alone warrant the entering of judgment against him.
3. It is competent for the plaintiff, notwithstanding the answers of the garnishee, to require the issue to be tried before the justice; and if the record shows a trial, the court cannot, on *certiorari*, review the correctness of the justice's conclusions from the evidence.
4. It is possible, also, that upon the day of the hearing the plaintiff might cause additional interrogatories to be served upon the garnishee, and require him to answer them.
5. The verbal statements of the garnishee, made in the presence of the justice, after his answers have been delivered, and when not under oath, and which are not irreconcilable with his former answers, will not authorize the justice to disregard his former answers, and to enter judgment against him.
6. Practice before justice of the peace in cases of attachment execution, considered.

Certiorari.

The opinion of the court was delivered June 11, 1882, by

RICE, P. J.—On December 6th, 1882, the alderman issued an attachment execution against H. C. Gates, as defendant, and M. B. Houpt. On the same day the plaintiff filed interrogatories. The writ and a copy of the interrogatories and a rule to answer were duly served. On December 14th, 1882, the return day of the writ and the rule, all parties appeared before the alderman. The defendant in the writ put in a written claim for the benefit of the exemption law. The garnishee filed written answers to the interrogatories, as follows: "I have not had transactions with him" (the defendant) "as an individual or principal since the within attachment was served on me, nor was I then indebted

to him as such, nor have I since been. Prior to the service of said attachment I had been dealing with said Gates as agent, and at the time of the service thereof I had ordered the manufacture of certain goods by him as such. Since, and prior to the service thereof, he has delivered said goods to me as such agent, amounting to \$595.18, and I have paid him on account thereof, to wit, December 13th, 1882, the sum of \$250." The interrogatory to which this answer was made reads as follows: "Have you had any business transactions with the said H. C. Gates by which you are indebted to him? If yes, state the amount of your indebtedness to him at the time of the service of this attachment. State in your answers the particulars in relation to your indebtedness to him, and whether on account, note, or otherwise."

A garnishee is only required to answer the interrogatories that may be submitted to him. "And judgment will not be entered against him on his answer, unless he expressly or impliedly admits his indebtedness to, or his possession of assets belonging to, the judgment debtor; and the admission ought to be of such a character as to leave no doubt in regard to its nature and extent." 9 Sm. 361-364.

Although the facts of the case cited differ from those involved in this case, the principle controlling the decision is a general one, and is applicable here. The general denial by the garnishee of any indebtedness to the defendant, and of any transactions with him as an individual or a principal, was a complete answer to the interrogatory, and relieved him from the necessity of explaining his transactions with him as an agent. The garnishee asserts in his answer, not merely that the defendant in his transactions with him claimed to act as an agent, but that he was, in fact, such; and, therefore, if the answer was in itself sufficient to prevent judgment against the garnishee, no act of the defendant subsequent to the service of the writ, as, for example, claiming the benefit of the exemption law, could destroy its effect. We do not wish to be understood as saying that evidence of such an act would not be competent for any purpose, or in any stage of the proceedings. It might be evidence to discredit the defendant, or to estop him from denying that the fund was his. But what we mean to decide is this, that when the garnishee denies in his

answer any indebtedness to the defendant, and the record shows nothing further than a claim by the defendant to have the fund set apart to him under the exemption law, judgment cannot be entered against the garnishee on his answer.

The record further shows that the hearing was continued until December 16th, 1882, at which time the parties again appeared before the magistrate. On the last mentioned date the plaintiff filed a paper excepting to the answer of the garnishee, and concluding with a request "that the garnishee may be further examined and required to make further answers, and that the matter may be fully inquired into and tried before the alderman." The garnishee declined to file any further answers in writing to the interrogatories already answered, "but answered verbally" (as the transcript states) "that nothing was said about defendant being agent at the time he contracted the debt with defendant, and that the reason he paid a part of the claim was that he supposed it would make no difference, as he still had money enough in his hands to pay plaintiff's claim." The record thus concludes: "The alderman being of the opinion that the claim of the defendant is virtually an admission that the debt is owing to him personally, and not to him as agent, and the defendant and garnishee both failing to disclose whom defendant is agent for, and also failing to give the particulars of the transaction, therefore judgment is publicly entered that the plaintiff have execution," etc.

In thus entering judgment against the garnishee, we think the alderman erred. It was competent for the plaintiff, notwithstanding the answers of the garnishee, to require the issue to be tried, and to introduce evidence to show that the money attached was a debt due to the defendant as an individual or principal, and if after hearing such evidence the alderman had entered judgment for the plaintiff, the court could not, on *certiorari*, review the correctness of his conclusions from such evidence. The only remedy of the party aggrieved would be by appeal. So, also, upon the trial of the issue, the plaintiff could have required the defendant and the garnishee to be sworn, and to testify as if under cross-examination. It is possible, also, that upon the day of the hearing the plaintiff might have caused additional written interrogatories to be served upon the garnishee, and have required

him, by rule, to answer them within the time fixed by the statute. But the record, by which alone we must decide as to the regularity of this judgment, does not show that either of these methods was followed, and hence we conclude: first, that the admission of the defendant, implied from his claim of the exemption, could not conclude, nor alone warrant, judgment against the garnishee; second, that such judgment was not warranted by the failure of the garnishee to state specifically for whom the defendant was agent, the interrogatories, as served upon him, not requiring such answer; third, that his verbal statement, made after his answers had been delivered to the magistrate, and when not under oath, and which were not in themselves irreconcilable with his former answers, did not authorize the alderman to disregard his former answers, and to enter judgment against him.

The judgment is reversed.

Q. A. Gates, Esq., for plaintiff.

J. G. Miller, Esq., for defendant.

Court of Common Pleas of Luzerne County.

HERROD & CO. v. FRAUENTHAL BROS.

An affidavit of defense must state clearly and fully the exact grounds and extent of the defense.

Rule for judgment for want of a sufficient affidavit of defense.

The opinion of the court was delivered January 29, 1883, by

WOODWARD, J.—Under the authorities, we are disposed to think that the affidavit of defense filed in this case is defective in not alleging a warranty as to the goods sold, although an inference that such an allegation was intended is possible from the language used in the affidavit. It seems to us that the justice of the case requires a clearer and fuller statement of the exact grounds and extent of the defense. It is, therefore, now ordered that the defendants have leave to file an additional or supplemental affidavit of defense within ten days. If such affidavit is filed, and is satisfactory, the present rule will be discharged, otherwise it will then be made absolute.

ORPHANS' COURT SALE.

Estate of James Casterline, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at the old homestead of Joseph Casterline, in Franklin township, on Thursday, the 28th day of June, 1883, at 10 o'clock A. M., certain undivided interests, as hereinafter mentioned, in the following real estate:

1. Beginning at a corner of Asa Casterline in line of land of Martin Winter, thence along said land 60 perches to a corner of Wayman Roberts, thence along said Roberts' land 14 7-10 perches to small ash, thence 36 1/2 perches to another corner of said Roberts, thence along said Roberts' land and the public highway, and lands of heirs of Joseph Ross and land of Joseph Casterline, 224 perches to a stone corner in said road and corner of land of George Greish, thence along said Greish's land 105 perches to a small ash, thence 49 8-10 perches to John Nulton's corner post and stones, thence along said Nulton's 128 perches to a corner in the road leading from said Nulton's to Orange, thence along said road the several distances, thence to a corner of land of Asa Casterline, thence along line of said Casterline 77 6-10 perches to a corner in a spring, thence 32 9-10 perches, thence 36 9-10 perches, thence 29 3-10 perches along public road leading to Courtright's, thence 56 1/2 perches to the place of beginning, containing 197 acres and 85 perches of land; about 75 acres improved, and having thereon one 1 1/2-story wood dwelling house, wood barn, wagon house, and other outbuildings, with one apple orchard.

2. One other tract, being the surface of a lot of land in the borough of West Pittston, being lot No. 61 as laid down on a certain plan of the town of Luzerne, on New York avenue, said lot being 50 feet in front on said New York avenue, and 200 feet in depth; all improved.

3. The surface of those lots of land in the village of Sturmerville, Exeter township, bounded as follows:

(1) Beginning at a corner on the westerly side of Wyoming avenue, also corner of lot of Solomon Sturmer, thence along said Sturmer's land in a westerly direction 175 feet to a corner on an alley, thence along said alley in a northerly direction 50 feet to a corner of a lot of Rozelle, thence along said Rozelle's land in an easterly direction 175 feet to a corner on said Wyoming avenue, thence along same in a southerly direction 50 feet to beginning, containing 8,750 square feet of land; all improved, with no buildings thereon.

(2) Beginning at a corner on the northerly side of Lincoln avenue at a corner of lands late of George Corey, thence along said land in a northerly direction 150 feet to a corner on an alley, thence along said alley easterly 50 feet to a corner of land late of said George Corey, thence along said Corey's lands southerly 150 feet to a corner on said Lincoln avenue, thence along said avenue westerly 50 feet to beginning, containing 7,500 square feet of land; all improved, with no buildings thereon.

(3) Beginning at a corner on the southerly side of Pennsylvania avenue, also a corner on an alley, thence along said alley southerly 150 feet to a corner on another alley, thence along last mentioned alley westerly 50 feet to corner of lands late of George Corey, thence along said Corey's land northerly 150 feet to a corner on Pennsylvania avenue, thence by said avenue easterly 50 feet to beginning, containing 7,500 square feet of land; all improved, with no buildings thereon.

It is now ordered and decreed that Chandler B. Williams, Guardian, Alvin Holmes, Guardian, and J. P. Rosencrans, Guardian, sell at public sale the interest of Isaac G. Casterline and James A. Casterline, minor children of James G. Casterline, deceased, being two-thirds of one-seventh of the same; also the interest of Anna E. Casterline, a minor child of James G. Casterline, deceased, being one-third of one-seventh of the same, and also the interest of Ziba A. Casterline and Clayton R. Casterline, minor children of James Casterline, deceased, being two-thirds of one-seventh of the same, upon the following terms of sale: One-third down on day of sale, one-third on day of confirmation of sale, and that one-third be secured upon the lands by bond and mortgage, interest to be paid annually to Eliza Casterline, widow of James Casterline,

during the life of said Eliza Casterline, principal to be paid to Isaac G. Casterline, James A. Casterline, Anna E. Casterline, Ziba A. Casterline, and Clayton R. Casterline, their heirs and assigns, thirty days after the death of Eliza Casterline.

C. B. WILLIAMS,
ALVIN HOLMES,
J. P. ROSECRANS,
Guardians.

NOTE.—The heirs of age have joined in an agreement to sell their undivided interest in the hereinbefore described land to any person or persons who may purchase the interest of the wards of the said Guardians at public sale, at the same price relatively for the whole estate that is given by such purchaser or purchasers for the interest of said minors.

A. R. BRUNDAGE,
HUBBARD B. PAYNE,
Attorneys.

22-24

ORPHANS' COURT SALE.

Estate of Edgar W. Mandeville, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Tuesday, the 3d day of July, 1883, at 10 o'clock A. M., all that certain lot of land in the township of Plains, beginning at a corner on the public road leading from Mitchell's hotel building to the plank road and North Branch Canal, thence along said road 60 feet in a westerly direction to a corner of lands now or formerly of Hancock & Macknight, thence along same in a northeasterly direction to a corner of lands now or formerly of the estate of William H. Merritt 149 feet, thence along lands now or formerly of said Merritt estate 60 feet in an easterly direction to a corner of lands now or formerly of said Hancock & Macknight, thence along same 50 feet in a southerly direction to a corner of lots now or formerly of the said Hancock & Macknight, continuing thence in a southerly direction 90 feet to the place of beginning, containing 8,670 square feet of land; all improved, with a 2-story frame dwelling and frame barn erected thereon and with the right and privilege of one-half of the well on the westerly side of said lot, said well being one-half on land of Hancock & Macknight; excepting and reserving, however, all coal and other minerals under the surface of said lot, together with the right of mining and removing the same.

TERMS OF SALE.—One-fourth of purchase money payable on day of sale, one-fourth on confirmation, and the balance in one year, with interest from confirmation; to be secured by bond and mortgage.

FRANCIS A. KING,
BENNETT & NICHOLS, Trustee.
Attorneys. 23-25

ORPHANS' COURT SALE.

Estate of Lewis Weidenbach, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, in the borough of Hazleton, on Saturday, the 7th day of July, 1883, at 2 o'clock P. M., all that lot of ground on the south side of Broad street, in the borough of Hazleton, being lot marked No. 7, in square No. 20, according to the general plan of said borough, commencing at the distance of 200 feet westward from the west side of Cedar street, containing in front or breadth on said Broad street 33 feet and 4 inches, and extending of that width in length or depth southward to the north side of Mine street; subject to certain rights and mining privileges reserved to the Lehigh Valley Railroad Co. The lot improved by a two-story frame dwelling, used as a saloon and double dwelling and kitchen, etc.

TERMS OF SALE.—25 per cent cash on day of sale, 25 per cent on confirmation of sale, and balance in one year from day of sale, with interest; to be secured by bond and mortgage on the premises.

JOHN G. SEAGER,
C. W. KLINE, Administrator d. b. n. c. t. a.
Attorney. 24-26

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 42, January term, 1883. Libel in divorce a vinculo matrimonii. Kate F. Leonard, by her next friend, George N. Reichard, v. Charles H. Leonard. To Charles H. Leonard—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, June 16, 1883, at 10 o'clock A. M.

E. P. & J. V. DARLING,
Solicitors.

23-24

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 101½, May term, 1883. Libel in divorce a vinculo matrimonii. Mary Mountjoy, by her next friend, John Dennis, v. John Mountjoy. The alias subpoena in the above case having been returned non est inventus, you, the said John Mountjoy, are hereby notified to appear at said court, on Monday, October 1, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
T. R. MARTIN, Solicitor.

23-26

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 97, February term, 1883. Libel in divorce a vinculo matrimonii. Rebecca H. Bateman, by her next friend, Joseph Heath, v. Henry Bateman. To Henry Bateman—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, June 16, 1883, at 10 o'clock A. M.

HARDING & MCGAHREN,
Solicitors.

23-24

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 23, January term, 1883. Libel in divorce a vinculo matrimonii. Emma Stevens, by her next friend, John Pagsley, v. Alexander A. Stevens. To Alexander A. Stevens—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, June 25, 1883, at 10 o'clock A. M.

D. M. JONES,
Solicitor.

23-24

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 232, February term, 1882. Libel in divorce a vinculo matrimonii. Francis Trumbower v. Sophia Trumbower. The alias subpoena in the above case having been returned non est inventus, you, the said Sophia Trumbower, are hereby notified to appear at said court, on Monday, the 1st of October, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
M. E. WALKER, Solicitor.

23-26

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

W. H. HINES,
Solicitor.

14-24

ESTATES TO BE AUDITED BY THE

Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

26. John W. Davis; W. W. Amsbry, Administrator; 14th June, 1883.
27. Alexander Gray; Alexander Gray, Executor; 15th June, 1883.
28. J. Pryor Williamson; E. G. Scott and A. Voigt, Executors; 16th June, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be barred from coming in upon said fund.

JOSEPH HENDLER,
Clerk O. C.

20-24

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by S. Rutstein, and that said license will be asked for in the court aforesaid on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

23-24

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Moses Hyman, and that said license will be asked for in the court aforesaid on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

23-24

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by J. D. Smith, and that said license will be asked for in the court aforesaid, on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

P. H. CAMPBELL,
Solicitor.

23-24

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Moses M. Gotlieb, and that said license will be asked for in the court aforesaid on Monday, the 18th day of June, 1883, at 10 o'clock A. M.

P. H. CAMPBELL,
Solicitor.

23-24

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Evan Evans, and that said license will be asked for in the court aforesaid on Monday, the 25th of June, 1883, at 10 o'clock A. M.

D. M. JONES,
Solicitor.

24-25

ESTATE OF WARREN BENSOTER, LATE of Union township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

G. L. BENSOTER,
CLARINDA BENSOTER,
Executors.

22-27

ESTATE OF GEORGE BROWN, LATE OF
Conyngham township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

REUBEN SWANK,
Administrator.

19-24

ESTATE OF DANIEL FOLEY, LATE OF
Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them duly authenticated for payment, and those indebted thereto will please make payment to

MARY E. FOLEY,
Executrix.

19-24

ESTATE OF LOUIS ROUDY, LATE OF THE
township of Dorrance, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEORGE HELLER,
Administrator.

T. R. MARTIN,
Attorney.

20-25

ESTATE OF THOMAS MCKIERNAN, LATE
of Hazle township, deceased

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY MCKIERNAN,
Administratrix.

22-27

ESTATE OF EDMUND TAYLOR, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN TAYLOR,
Administrator d. b. n. c. t. a.

19-24

ESTATE OF JESSE W. BAIRD, LATE OF
Kingston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HART PHILLIPS,
Administrator.

GEO. K. POWELL,
Attorney.

23-28

ESTATE OF THOMAS McNAMARA, LATE
of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANN McNAMARA,
Administratrix.

GEO. S. FERRIS,
Attorney.

21-26

ESTATE OF SAMUEL BALLIET, LATE OF
Sugarloaf, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DAVID BALLIET,
Administrator.

22-27

ESTATE OF WILLIAM BRACE, LATE OF
Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FISHER GAY,
MYRTLE W. BRACE,
DICKSON & ATHERTON,
Executors.
Attorneys.

23-28

ESTATE OF ROBERT THOMPSON, LATE
of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MUNGO THOMPSON,
JANET THOMPSON,
Administrators.
GEO. S. FERRIS,
Attorney.

22-27

ESTATE OF JOSIAH KOCHER, LATE OF
Lake township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

J. R. KOCHER,
Executrix.
E. P. DARLING,
Attorney.

20-25

ESTATE OF THOMAS DODSON, LATE OF
Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN DODSON,
GEORGE P. RICHARDS,
Executors.
H. C. MAGEE,
Attorney.

18-23

ESTATE OF JOHN REED, LATE OF THE
borough of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HANNAH REED,
Administratrix.
GEO. S. FERRIS,
Attorney.

18-23

ESTATE OF WASHINGTON LEE, LATE OF
the city of New York, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOSEPH STICKNEY,
R. SUYDAM GRANT,
Executors.
E. P. & J. V. DARLING,
Attorneys.

18-23

ESTATE OF THOMAS H. FRANCIS, LATE
of Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEORGE P. RICHARDS,
Executrix.
H. C. MAGEE,
Attorney.

20-25

ESTATE OF LEWIS R. LEWIS, LATE OF
Parsons, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

RACHEL LEWIS,
Executrix.
I. P. HAND,
Attorney. 20-25

ESTATE OF THOMAS C. HARKNESS, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ISAAC LIVINGSTON,
Administrator.
E. S. OSBORNE,
Attorney. 20-25

ESTATE OF MARIA POWELL, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GRIFFITH THOMAS,
Administrator.
F. C. MOSIER,
Attorney. 19-24

ESTATE OF OWEN CAFFREY, LATE OF
Ashley, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HONORA CAFFREY,
Executrix.
JOHN MCGAHREN,
Attorney. 20-25

ESTATE OF HUGH CRAWFORD, LATE OF
Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HUGH R. CRAWFORD,
Executor.
JOHN RICHARDS,
Attorney. 19-24

AUDITOR'S NOTICE.

Estate of Barna Suthiff, dec'd. In Re Proceedings in partition of real estate. The undersigned, an Auditor, appointed by the Orphans' Court of Luzerne county to marshal liens against decedent and heirs, to fix and adjust owelty, dower, and amounts of recognizances to be given, and to tax costs and make distribution, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Wednesday, the 18th day of July, 1883, at 10 o'clock A. M., at which time all persons interested are hereby notified to appear.

S. J. STRAUSS,
Auditor. 24-27

MCLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

In Re AMENDMENT TO RULE OF COURT } *In the Court of Common
Pleas of the county of
Luzerne.*
XXXIV., SECTION 11. } *No. 277, May T., 1883.*

And now, to wit, April 5, 1883, section 11 of Rule XXXIV. of the Rules of Court is amended so as to read as follows:

In making up the trial list precedence shall be given to cases of the nature and in the order stated, as follows:

1st. Actions for the recovery of wages for manual labor, as provided by Act of 22d March, 1877, § 1.

2d. Feigned issues directed by the Orphans' Court and Court of Common Pleas, sitting in Equity.

3d. Issues under the Sheriff's Interpleader Act, according to the number and term of the execution under which they have been directed.

4th. Issues in other interpleaders directed by the Court of Common Pleas: provided, that the money which may be the subject of controversy has been paid into court.

5th. Issues on Auditors' reports and issues directed under section 2 of the Act of April 20, 1846 (P. L. 411).

6th. Issues framed on appeals from the reports of auditors of the accounts of the county, city, boroughs, townships, and poor districts.

BY THE COURT.

In Re COURSE OF STUDY PRESCRIBED BY } *No. 82, May T., 1883.*
BOARD OF EXAMINERS FOR APPLICANTS }
FOR ADMISSION AS ATTORNEYS AT LAW. }

Now, March 6th, 1883, the Board of Examiners hereby (as directed by rule of court) prescribe the following course of study, which is made obligatory upon applicants for examination for admission as attorneys at law, subject to approval of court:

1. Blackstone's Commentaries (Sharswood's edition).
2. Kent's Commentaries, Vol. I.
3. Greenleaf's Evidence, Vol. I.
4. Smith or Parsons on Contracts.
5. Byles on Bills.
6. Story's or Bispham's Equity.
7. Stephen on Pleading.
8. Troubat & Haly's Practice (Brightly's Ed. recommended).

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, JUNE 29, 1883.

No. 26.

Court of Quarter Sessions of Luzerne County.

COMMONWEALTH *v.* REYNOLDS.

In an extreme case of a crime affecting the public justice, and where there would otherwise be a failure of justice, and the escape of a public offender, an indictment may be found without a previous binding over, although in general an indictment must be preceded by information and hearing.

Motion to quash indictment for perjury.

The opinion of the court was delivered January 30, 1882, by

RICE, P. J.—On the 14th of July, 1881, the defendant was held to bail for his appearance at the next sessions on a charge of perjury, alleged to have been committed on the 2d day of August, 1876, in a certain affidavit made before Joseph D. Coons, Esq., a notary public, preparatory and for the purpose of obtaining a rule to open a certain described judgment, and also for the purpose of obtaining an order of court in the same case staying proceedings upon an execution issued upon the said judgment. The grand jury for the succeeding sessions convened on the 20th of August, 1881, and on the succeeding 1st day of September this indictment was found. At the September term (September 23d, 1881) this motion to quash was made. There was no other binding over nor information than that already referred to. The indictment charges a perjury, alleged to have been committed by the defendant on the 13th day of November, 1876, before W. S. Parsons, Esq., an alderman, in a certain deposition taken on a rule to open the judgment, granted on the affidavit first referred to. The fact that the affidavit and deposition were taken in different stages of the same proceeding is not asserted in the

indictment, but was stated by the Commonwealth's counsel on the argument, and was not controverted. Notwithstanding this fact, it must be conceded that the information does not support the indictment. Though the matters of fact stated in the affidavit and in the subsequent deposition are the same, yet the offences were distinct, authorized separate indictment, and conviction and punishment. The reasons urged for quashing the indictment are: first, that it was not based on information, etc.; second, that the offence was not given in charge to the grand jury by the court; third, that the offence was not made the subject of presentment by the grand jury based on their own knowledge or observation; fourth, that it not was preferred before the grand jury by the district attorney, acting either under the supervision of the court, or upon his own official responsibility. All of these reasons are well stated; except the last. There was no express authority given by the court to submit this indictment to the grand jury, but the fact that it is signed by the district attorney is evidence that it was presented to the grand jury for their action on his official responsibility. The law and practice upon this subject are well settled in Pennsylvania. "It has never been thought that the ninth section of the ninth article of the constitution, commonly called the bill of rights, prohibits all modes of originating a criminal charge against offenders, except that by a prosecution before a committing magistrate. Had it been so thought, the court, the attorney general, and the grand jury would have been stripped of powers universally conceded to them." *McCullough v. Commonwealth*, 17 Sm. 33. That the district attorney may, in a proper case, and under certain restrictions, send up a bill to the grand jury without a previous commitment of the accused is undoubted. 1 Wh. Cr. L. § 458, note *j*. In *Rowand v. Commonwealth* (1 Nor. 405), Mr. Justice Woodward thus sums up the law upon this question: "It is thus apparent that, upon considerations involving the maintenance of the public security, it has been found necessary to lodge this extraordinary and delicate authority somewhere, and is is apparent also that it has been lodged in the prosecuting officer of the Commonwealth. It is to be exercised, in the ordinary case, under the supervision of the proper court of criminal jurisdiction, and

in all cases its exercise is subject to their revision and approval.

. . . While, however, the possession of this exceptional power by prosecuting officers cannot be denied, its employment can only be justified by some pressing and adequate necessity. When exercised without such necessity, it is the duty of the Quarter Sessions to set the officer's act aside." This being the rule of law in this State, as laid down by the best authorities, it remains to inquire whether there was such adequate and pressing public necessity for the exercise of this extraordinary power by the district attorney as requires us, in the exercise of a sound discretion, to approve his act. In order to justify it, we feel constrained to hold that it must satisfactorily appear that a less prompt mode of proceeding might have led to the escape of a public offender. See charge of Judge King, 1 Wh. Cr. L. § 458, note *j*.

After a careful examination of the authorities, we feel it our duty to sustain the action of the district attorney for the following reasons:

1st. While, as we have said, the information does not support the indictment, it is not to be entirely overlooked in this proceeding. The object of such information is to give to the accused adequate notice of the accusation. This information and the hearing before the alderman gave to the defendant some notice of the testimony alleged to be false, and thus show that the action of the district attorney was not intended to be, and was not, in fact, arbitrary and oppressive.

2d. In offences where the injury is chiefly personal, and for which there is a remedy by civil action, the delay of the prosecutor in bringing the offence to the notice of the proper officers ought to estop him from claiming indulgence to proceed out of the ordinary course. Neither ought the court to grant such indulgence, though the prosecutor should induce the district attorney to ask it for him. But perjury is not such an offense. It is a crime against public justice, and as such should be prosecuted by the public officer and punished by the court. The injury to the individual suitor is trifling compared with the injury and danger to the public administration of justice. In case of conviction and sentence, a legal consequence is disqualification from ever giving testimony thereafter. This is not so much a

part of the punishment as it is the judgment of the law, that one who has been guilty of this crime is not to be believed. Hence, if for no other reason, the interests of public justice require the conviction of the offender, if his guilt be established. This being the nature of the offence, no delay on the part of a private prosecutor ought to be permitted to be pleaded to estop the Commonwealth and her officer, provided such delay does not appear to have prejudiced the rights of the defendant.

3d. The first official knowledge which the district attorney appears to have had of this alleged offence was when the transcript came into his hands at the meeting of the grand jury. But at that time the statute of limitations had run on the particular offence charged in the information, and, in the ordinary course of procedure, had he then caused a new information to be made for the alleged false oath, taken on November 13, 1876, the transcript would not have been returned until November 14, 1881, the next day for the meeting of the grand jury. It follows that the prosecution must have failed had not this course been taken. In view of the nature of the offence, and the circumstances surrounding the prosecution, to which we have alluded, we conclude that the district attorney was justified in exercising his extraordinary powers in order to prevent a failure of public justice. We may remark, however, that we can hardly think of a case where it is not the better practice for the district attorney to first make known his reasons to the court, and obtain their approval before sending an indictment before the grand jury not based on a previous information.

The rule is discharged.

Messrs. Coons & Shortz, for rule.

A. Darte, Jr., and A. Ricketts, Esqs., *contra*.

When a California man sees "no cards" at the end of a marriage notice of a friend, he remarks that "that girl has put some of her pious notions into Jim's head, but he'll get over them after he has been married awhile."

ORPHANS' COURT SALE.

Estate of Lewis Weidenbach, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, in the borough of Hazleton, on Saturday, the 7th day of July, 1883, at a o'clock P. M., all that lot of ground on the south side of Broad street, in the borough of Hazleton, being lot marked No. 7, in square No. 20, according to the general plan of said borough, commencing at the distance of 200 feet westward from the west side of Cedar street, containing in front or breadth on said Broad street 33 feet and 4 inches, and extending of that width in length or depth southward to the north side of Mine street; subject to certain rights and mining privileges reserved to the Lehigh Valley Railroad Co. The lot improved by a two-story frame dwelling, used as a saloon and double dwelling and kitchen, etc.

TERMS OF SALE—25 per cent cash on day of sale, 25 per cent on confirmation of sale, and balance in one year from day of sale, with interest; to be secured by bond and mortgage on the premises.

JOHN G. SEAGER,
Administrator d. b. n. c. t. a.
C. W. KLINE, Attorney. 24-26

ORPHANS' COURT SALE.

Estate of Peter Rockel, Jr., deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned, as Trustee for the sale in partition of the real estate of said decedent, will sell at public sale, on the premises, in Hollenback township, on Saturday, July 7th, 1883, at 10 o'clock A. M., the real estate described in said writ, beginning at a pine, thence by land of Philip Moyer, Jr., and M. Freck 130 perches, thence by land of John Weiss 112½ perches to a stone, thence by same 43 perches to a white oak, thence by Daniel Snyder and Conrad Harter's lands 200 perches to the place of beginning, containing 140 acres and 130 perches, strict measure; whereon is erected a large two-story frame dwelling house, wagon house, bank barn, and other outbuildings, and a good orchard.

TERMS OF SALE—\$300 at the striking down of the property, 33½ per cent of the purchase money bid, less \$300, at confirmation absolute and delivery of deed, 33½ per cent, with interest, in one year from said confirmation absolute; the interest on the remaining one-third to be paid annually to the widow of said decedent during her life, and at her death the principal to be paid to her legal representatives as ascertained by the Orphans' Court upon audit; deferred payments to be secured on the premises.

WILLIAM O'MALLEY,
Trustee.
M. E. WALKER, Attorney. 25-27

ORPHANS' COURT SALE.

Estate of Thomas Hutchins, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, the 21st day of July, 1883, at 10 o'clock A. M., the surface of all that lot of land in the township of Kingston, beginning at a point on the main road, or Wyoming avenue, 111 feet from line of Kingston and Exeter townships, being the center of a 10-foot alley, thence along center of said alley 162 feet to a corner, thence 50 feet to a corner, thence along land of Thos. Hutchins, deceased, 162 feet to a corner on said Wyoming avenue, thence along said avenue 50 feet to the place of beginning, containing 8100 square feet of land; excepting all the coal and other minerals, with the right to mine and take out the same.

TERMS OF SALE—One-quarter of purchase money down on day of sale, one-quarter on confirmation of sale, and the balance, with interest from confirmation of sale, in six months from day of sale; to be secured by bond and mortgage on the premises.

R. H. WEIR,
R. W. HUTCHINS,
Administrators.
WM. S. McLEAN, Attorney. 26-28

ORPHANS' COURT SALE.

Estate of Anthony Schappert, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, in the Arbitration room, in the Court House, at Wilkes-Barre, on Tuesday, July 17th, 1883, at 10 o'clock A. M., the following real estate in the city of Wilkes-Barre, beginning at a corner of Park avenue and Lehigh street, thence along said Lehigh street 98 feet more or less to line of land of John J. Buerkle, thence along said Buerkle's land 156 feet more or less to land now or late of Jacob Siley, thence along said Siley's land and others 90 feet more or less to Park avenue aforesaid, thence along Park avenue 148 feet more or less to the place of beginning, with a two-story frame dwelling house, shed, and other outbuildings thereon.

TERMS OF SALE—25 per cent on day of sale, and the balance on confirmation of sale and delivery of deed.

BARBARA SCHAPPERT,
L. B. LANDMESSER, Administrator. 25-27
Attorney.

IN RE ESTATE OF JOHN BLANCHARD,

deceased. Now, June 4th, 1883, the return of the writ of partition in the above estate having been confirmed absolutely, court grant rule on heirs and parties in interest to accept, bid, or refuse the premises described in said writ at the said appraisement, or show cause why the same shall not be sold. Service of notice on non-resident heirs to be made by publication in the Legal Register and the Mountain Echo for three successive weeks, and a marked copy of each issue of the same to be mailed to the last known postoffice address of such heirs. Returnable the first day of next day, at 10 o'clock A. M.

By THE COURT.
To Ada Robbins, New York City; Clarence Robbins, Bellefonte, Pa.; John Robbins, Montana Ty., and all other parties interested—You are hereby notified, in pursuance of the above order, to appear at the next term of the Orphans' Court of Luzerne county, to be held at Wilkes-Barre, on the first Monday of September next, and accept, bid, or refuse the premises described in the writ of partition in this case, or show cause why the same shall not be sold.

M. E. WALKER,
Solicitor. 25-27

NOTICE IS HEREBY GIVEN THAT AN

application will be made to the Governor of the Commonwealth of Pennsylvania, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Kingston Coal Company," the character and object of which is the mining and preparing for market coal, iron ore, and other minerals, and to manufacture iron or steel, or both, and to exercise all other rights and powers granted to such corporations by the 38th section of said Act of Assembly of April 29, 1874, and for such purposes to have and to enjoy all the rights, benefits, and privileges of said Act of Assembly and its supplements.

HUBBARD B. PAYNE,
Solicitor. 26-28

NOTICE IS HEREBY GIVEN THAT AN

application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Craig Electric Lighting and Power Company," the character and objects of which are the manufacturing and supplying light, heat, and power to the citizens of Pittston, West Pittston, and vicinity, and for these purposes to have, possess, and enjoy the rights, benefits, and privileges conferred by said Act of Assembly and its supplements.

A. E. DETRO,
Solicitor. 26-28

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, at Chambers, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Saturday, the 7th day of July, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "The St. Joseph's Benevolent Society of Nanticoke," a society formed for the support of benevolent and charitable purposes

L. B. LANDMESSER,
Solicitor.

25-27

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

W. H. HINES,
Solicitor.

14-27

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 101½, May term, 1883. Libel in divorce a vinculo matrimonii. Mary Mountjoy, by her next friend, John Dennis, v. John Mountjoy. The alias subpoena in the above case having been returned non est inventus, you, the said John Mountjoy, are hereby notified to appear at said court, on Monday, October 1, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff.

T. R. MARTIN,
Solicitor.

23-26

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 232, February term, 1882. Libel in divorce a vinculo matrimonii. Francis Trumbower v. Sophia Trumbower. The alias subpoena in the above case having been returned non est inventus, you, the said Sophia Trumbower, are hereby notified to appear at said court, on Monday, the 1st of October, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff.

M. E. WALKER,
Solicitor.

23-26

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 156, May term, 1883. Libel in divorce a vinculo matrimonii. J. C. Coon v. Emma E. Coon. The alias subpoena in the above case having been returned non est inventus, you, the said Emma E. Coon, are hereby notified to appear at said court, on Monday, the 1st day of October, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff.

JAMES MAHON,
Solicitor.

26-29

AUDITOR'S NOTICE.

Estate of Barna Suthff, dec'd. In Re Proceedings in partition of real estate. The undersigned, an Auditor, appointed by the Orphans' Court of Luzerne county to marshal liens against decedent and heirs, to fix and adjust owelty, dower, and amounts of recognizances to be given, and to tax costs and make distribution, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Wednesday, the 18th day of July, 1883, at 10 o'clock A. M., at which time all persons interested are hereby notified to appear.

S. J. STRAUSS,
Auditor.

24-27

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Sturdevant & Goff, will attend to the duties of his appointment, at the office of E. P. & J. V. Darling, in the city of Wilkes-Barre, on Friday, the 13th of July, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

GEORGE H. FISHER,
Auditor.

25-28

AUDITOR'S NOTICE

In Re Indebtedness of Foster township. The undersigned has been appointed an Auditor to ascertain and marshal the indebtedness of the above township. All those who have claims or demands against the same are required to present them before me, on Monday, July 16, 1883, at 10 o'clock A. M.

WILLIAM R. GIBBONS,
Auditor.

25-28

ESTATE OF WARREN BENSOTER, LATE of Union township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

G. L. BENSOTER,
CLARINDA BENSOTER,
Executors.

22-27

ESTATE OF WILLIAM BRACE, LATE OF Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FISHER GAY,
MYRTLE W. BRACE,
DICKSON & ATHERTON,
Attorneys. 23-28

ESTATE OF ROBERT THOMPSON, LATE of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MUNGO THOMPSON,
JANET THOMPSON,
GEO. S. FERRIS,
Attorney. Administrators. 22-27

ESTATE OF JESSE W. BAIRD, LATE OF Kingston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HART PHILLIPS,
GEO. K. POWELL,
Attorney. Administrator. 23-28

ESTATE OF THOMAS McNAMARA, LATE of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ANN McNAMARA,
GEO. S. FERRIS,
Attorney. Administratrix. 21-26

ESTATE OF LEWIS R. LEWIS, LATE OF
Parsons, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND,
Attorney.

RACHEL LEWIS,
Executrix. 20-25

ESTATE OF THOMAS C. HARKNESS, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

E. S. OSBORNE,
Attorney.

ISAAC LIVINGSTON,
Administrator. 20-25

ESTATE OF OWEN CAFFREY, LATE OF
Ashley, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN MCGAHREN,
Attorney.

HONORA CAFFREY,
Executrix. 20-25

ESTATE OF THOMAS H. FRANCIS, LATE
of Plymouth, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

H. C. MAGEE,
Attorney.

GEORGE P. RICHARDS,
Executor. 20-25

ESTATE OF LOUIS ROUDY, LATE OF THE
township of Dorrance, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

T. R. MARTIN,
Attorney.

GEORGE HELLER,
Administrator. 20-25

ESTATE OF DAVID KLINGER, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

26-31

N. D. SMITH,
Administrator.

ESTATE OF GEORGE H. HOCH, LATE OF
Dorrance township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

T. R. MARTIN,
Attorney.

MARY HOCH,
Administratrix. 26-31

ESTATE OF SALLY ABBOTT, LATE OF
Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

L. D. SHOEMAKER,
Attorney.

CHARLES A. MINER,
Executor. 26-31

ESTATE OF THOMAS MCKIERNAN, LATE
of Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

22-27

MARY MCKIERNAN,
Administratrix.

ESTATE OF SAMUEL BALLIET, LATE OF
Sugarloaf, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

22-27

DAVID BALLIET,
Administrator.

McLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, JULY 6, 1883.

No. 27.

Court of Common Pleas of Luzerne County.

EVERHART *v.* EVERHART.

The recommitment of a master's report to the master for a specific purpose does not open the whole case, or permit the introduction by the defendant of an entirely new defense, such as the statute of limitations.

Motions to strike off decrees of March 12, 1883.

The opinion of the court was delivered March 26, 1883, by

WOODWARD, J.—On the 4th of September, 1882, we made an order recommitting the master's report to the master, on the ground that he had not, with sufficient clearness, disposed of a single question raised before him by the counsel for the plaintiff in an exception to his report.

On the 2d of October, 1882, defendant's counsel moved that upon the recommitment, as above stated, the master be directed to take into consideration certain additional matters, viz.: "all the testimony in the case;" and, also, that the answer might be so amended as to set up an entirely new defense, to wit: the statute of limitations. We ordered these motions upon the next regular argument list, and on the 4th of January, 1883, they were argued and submitted.

On the 16th of January, 1883, the master filed his supplementary or corrected report, and to this report the defendant's counsel filed exceptions. Thereupon, Monday, the 22d day of January, 1883, was fixed for the argument of the exceptions, and on that day the hearing was continued until January 29, 1883, of all which the defendant's counsel had notice. Upon the same day

the exceptions were dismissed and the report confirmed. This practically disposed of the motions of October 2, 1882, which had been argued and submitted to us, and to the pendency of which no allusion had been made by the defendant in his exceptions to the supplemental report.

On the 12th of March, 1883, we made and entered the final decree in the case, and also formally overruled the motions of the 2d of October, 1882.

We are now asked to hold, that the master erred in making his supplemental report while the motions of October 2, 1882, were pending. It does not appear, however, that any order staying the proceedings of the master until these motions were disposed of was ever granted or asked for, or that he had any notice whatever of their existence in the case; nor, as we said before, does it appear that the defendant's exceptions to the master's supplemental report made any reference to the pendency of these motions. It was the duty of the master to make and file his supplemental report in pursuance of the order of the court, and this duty he performed.

When we made the order overruling the exceptions and confirming the report of the master, we did so with full knowledge of the pendency of the motions of October 2, 1882. They had been argued and submitted, and the confirmation of the report was a practical overruling of the motions, although the formal decree to that effect was not entered until March 12, 1883, or contemporaneously with the final decree in the case.

In conclusion, we will add, that as this case has now been in court nearly nine years, we are disposed to think that the time has arrived for a decree which, in form, at least, shall be "final."

The motion to strike off the final decree of March 12, 1883, is denied.

The motion to strike off the confirmation of the master's supplemental report is also denied.

Messrs. Palmer, Dewitt & Fuller, for plaintiff.

A. Ricketts, Esq., for defendant.

Court of Common Pleas of Luzerne County.

MCLEAN v. PALMER.

Fixtures.

1. The question of fixture or not depends on the nature and character of the act by which the structure is put in place, the policy of the law connected with its purpose, and the intentions of those concerned in the act.
2. The question of intention is one of fact to be left to a jury, and the finding of a referee has the effect of a verdict, unless clearly unwarranted by the testimony.
3. The true criterion of an irremovable fixture consists in the united application of three tests, viz. :
1st. Real or constructive annexation of the article in question to the realty. 2d. Appropriation or adaptation to the use or purpose of that part of the realty with which it is connected. 3d. The intention of the party making the annexation to make the article a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation and the policy of the law in relation thereto, the structure and mode of annexation, and the purpose or use for which the annexation has been made. Of these three tests the clear tendency of modern authority seems to be to give preeminence to the question of intention to make the article a permanent accession to the freehold, and the others seem to derive their chief value as evidence of such intention.
4. Actual physical annexation is of itself of but little importance in determining the question of fixtures.
5. To estop privies by a recital in a deed, such recital must be distinct, not general.
6. Lamps, chandeliers, candlesticks, candelabra, and the various contrivances for lighting houses by oil or other fluids, have never been considered as fixtures, and as forming part of the freehold.

Exceptions to referee's report.

This was an action of replevin for four store counters, two mirrors, one glass show case, and two chandeliers. The plea was *non cepit* and property, the defendant having retained the property by giving bond.

The facts found by the referee, L. H. Bennett, Esq., were as follows:

In 1867 the defendant, who was then, and has ever since been, engaged in carrying on the business of a hatter, erected on his lot in Wilkes-Barre a three-story brick building, with a store room on the first floor, which he fitted up and occupied for the express purpose of carrying on his business aforesaid. The two mirrors in question were of plate glass, set in stationary frames, as particularly described by the referee. The counters were of an expensive pattern, in the aggregate some sixty-four feet in length, with numerous drawers of different sizes. The counters

were originally nailed to the floor, but were subsequently loosened, in order that they might be more easily moved, from time to time, in cleaning and scrubbing the room. The glass show case was placed upon one of the counters without being fastened, and contained fancy goods. There were plate glass show windows in front of the store room, and lines of shelving on either side enclosed with glass doors hung on hinges. The counters, mirrors, shelving, etc., were intended as a permanent accession to the freehold, and were necessary for the purpose of defendant's business. In April, 1876, the defendant made a deed of assignment of his real and personal property, including the lot and store in question, in trust for creditors, to Douglass Smith. In May, 1876, Smith and defendant deeded the lot to plaintiff, and from this time the defendant continued to occupy the building with his business under lease from plaintiff until March, 1880, when the former removed, taking with him the articles in question. At the time of the assignment the defendant held a policy of fire insurance covering, among other things, "show windows and plate glass in front of building, store fixtures, counters and show cases, gas and water pipes, furnace and fixtures," which he assigned to Smith, who, in July, 1876, assigned to plaintiff, the latter paying the unearned premium. At the expiration of this policy the plaintiff took out another, using, as part of description of property, the words, "side show cases," instead of "show cases," in the original. In August, 1876, Smith assigned to Darling the stock of goods, together with store fixtures and appurtenances in the store building, and the latter thereupon assigned to plaintiff.

The referee concludes his report as follows:

"It was conceded by the plaintiff upon the trial that the counter show case and gas pendants did not pass to him under the deed from Douglass Smith and defendant for the Market street lot. That such is the law as to the pendants is settled in *Vaughen v. Haldeman & Casey*, 322.

"Again, it was not claimed that there was ever a transfer to plaintiff of any of the articles replevied other than as evidenced by the deed for the real estate.

"How, then, did the counter show case and gas pendants

become the property of the plaintiff? He avers that the assignment of the policy of fire insurance, the recital therein, the payment of the unearned premium, and the subsequent insurances effected by him, as set forth in finding No. 10, operated to pass the property in said articles to him, or that these elements of fact estop the defendant from denying plaintiff's ownership.

"To estop privies by a recital in a deed, such recital must be distinct, not general. *Nagle v. Ingersoll*, 7 Pa. St. Rep. 185; *Wells v. Sloyer*, 1 Clark, 516. As we read the description of the property insured by the policy of insurance in question, originally taken out by the defendant, it does not necessarily include the counter show case or the gas pendants. There were in the store building, as we have seen, stationary side show cases, formed by hanging glass doors in front of the shelving. These certainly justified the use of the words 'show cases' in the policy, and as very persuasive evidence that even the plaintiff did not understand that term as including the *counter show case*, he, in renewing the insurance, as we have found, used the words '*side show cases*,' thereby particularly excluding from the terms of the new policy the counter show case in question.

"Again, the words 'gas and water pipes, furnaces and fixtures,' do not necessarily include the gas fixtures, viz.: the chandeliers or pendants. The recital in the assignment of the policy is to be read and construed in connection with the deed for the real estate to the plaintiff, and no articles of a personal nature which did not, as matter of law, pass as part of the realty should, by general terms, be held to pass by a mere recital.

"As was said by the court in *Vaughen v. Haldeman* (*supra*), 'lamps, chandeliers, candlesticks, candleabra, and the various contrivances for lighting houses by oil or other fluids, have never been considered as fixtures, and as forming part of the freehold;' and the learned judge concludes by holding that gas fixtures are governed by the same rule as the articles for which they are substituted.

"The plaintiff, therefore, as matter of law, and as matter of fact also, for the knowledge of the law is part of his profession, cannot be held to have been misled by the recital in question as to the gas pendants any more than in the matter of the counter

show case, and for these reasons we think it would be an unjust rule to hold that the defendant has been deprived of the articles in question by a mere recital of the character referred to.

"We come now to the question of the ownership of the counters and mirrors under the facts as found. It is laid down in *Ewell on Fixtures* (pp. 21-22), that according to the weight of modern authority and of reason, the true criterion of an irremovable fixture consists in the united application of three tests, viz.: 1st. Real or constructive annexation of the article in question to the realty. 2d. Appropriation or adaptation to the use or purpose of that part of the realty with which it is connected. 3d. The intention of the party making the annexation to make the article a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation and the policy of the law in relation thereto, the structure and mode of the annexation, and the purpose or use for which the annexation has been made. It is further laid down by the same author that of these three tests the clear tendency of modern authority seems to be to give preeminence to the question of intention to make the article a permanent accession to the freehold, and the others seem to derive their chief value as evidence of such intention.

"This doctrine seems to be clearly in accord with the authorities in Pennsylvania, where, however, the Supreme Court has repeatedly emphasized the proposition that actual physical annexation is of itself of but little importance in determining the question of fixtures. *Voorhis v. Freeman*, 2 W. & S. 116; *Pyle v. Pennock*, Id. 390; *Christian v. Dripps*, 28 Pa. St. Rep. 271; *Hill v. Sewald*, 53 Id. 271; *Meigs' Appeal*, 62 Id. 28; *Patterson v. Delaware County*, 70 Id. 381; *Seeger v. Pettit*, 77 Id. 437.

"The referee has discovered no Pennsylvania case where, as between vendor and vendee, a controversy has arisen as to what constitutes a fixture passing to the latter in the case of the transfer of a store building fitted up for certain business. The cases in this State generally pertain to manufacturing establishments of some kind or other where different kinds of machinery are used. He can see no reason, however, why the principles of those cases are not equally applicable to the one under consid-

ration. *Taylor v. Robinson* (36 Barbour, 483) was similar to the one in hand. There the shelving, drawers, and counter tables of a country store, fitted up for that purpose, were held to pass to the grantee of the freehold, as without them the building was not adapted to the business.

"In view of the law, as thus understood, the findings of fact by the referee, particularly as to the appropriation and adaptation of the counters and mirrors, and the intention of the defendant in placing them in his store room, determine the ownership of these articles. The referee, therefore, finds the following conclusions of law:

"1. That at the time the writ in this case was issued, the right of property in, and the right of possession of, the counter show case and the gas pendants were in the defendant, and had been since August 8th, 1876, when the transfer set forth in finding No. 12 took place.

"2. That at the time of the issuing of said writ, the right of property in, and the right of possession of, the four counters and the two mirrors were in the plaintiff, and had been since the 31st of May, 1876, when he, the said plaintiff, became the owner thereof by virtue of the deed to him set forth in finding No. 4.

"3. That the plaintiff is entitled to recover damages in this action for the value of the four counters and two mirrors, on the 9th of March, 1880, with interest from that time, to wit, for the sum of three hundred and sixteen dollars and thirty-eight cents; and unless exceptions are filed to this report, the prothonotary is directed to enter judgment accordingly."

The opinion of the court was delivered April 17, 1882, by

RICE, P. J.—In the case of *Meigs' Appeal* (12 P. F. Sm. 28), Mr. Justice Agnew says: "The question of fixture or not depends on the nature and character of the act by which the structure is put in place, the policy of the law connected with its purpose, and the intentions of those concerned in the act." But, as is well said by the learned referee, the clear tendency of modern authority seems to be, to give preeminence to the question of intention to make the article a permanent accession to the freehold, and the other tests seem to derive their chief value as evidence of

such intention. Judged by the modern rule, we think the facts, as found by the referee, fully warranted his conclusion, that such was the intention with which the mirrors were, both physically and constructively, and the counters were, constructively at least, attached to the freehold by the defendant.

In *Seeger v. Pettit* (27 Sm. 437) it was held, that the question of intention should be left to the jury. This being the case, the finding of the referee has the effect of a verdict of the jury, and while the statute requires us to consider exceptions to a referee's findings of fact, as well as of law, the court will not reverse them, except where they are clearly unwarranted by the testimony.

It was suggested on the argument that the case of *Johnson v. Mehaffy* (7 Wr. 308) is adverse in principle to the conclusion reached here. We do not so think. The articles named in the opinion are referred to to illustrate the point before the court, and not with any intention, so far as we can see, to place them in the same category with gas fixtures, which, it is said in *Vaughen v. Haldeman* (9 C. 522), do not become part of the real estate. That case does not decide, nor does the opinion warrant the conclusion, that the fact that the articles in controversy would not fit or be adapted to any other building or store-room is essential to the plaintiff's recovery, "though," says Chief Justice Lowrie, "this peculiarity of adaptation may, by inference or corroboration, supply the want or the weakness of direct evidence of annexation, whenever this fact can be reasonably said to be left in doubt by the other evidence." As we understand the opinion, the fact alluded to would be pertinent, but its conclusiveness would depend on other circumstances. The real point of the decision is, that though there be peculiarity of adaptation, an intention to annex in the future is not enough, but there must be "a purpose of annexation actually effected." These two conditions concur in this case, and, therefore, for the reasons so fully stated by the learned referee, his report must be confirmed.

The exceptions are overruled, the report confirmed, and judgment entered thereon for the plaintiff for the amount reported by the learned referee.

Wm. S. McLean, Esq., for plaintiff.

Hon. H. B. Payne, for defendant.

ORPHANS' COURT SALE.

Estate of W. W. Ketcham, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, August 4, 1883, at 11 o'clock A. M., the following described real estate:

1. All those lots of ground in the township of Wilkes-Barre, being lots Nos. 48, 50, 62, 64, 78, 79, 100, 101, 106, 107, 114, 115, 120, 121, 126, 127, 132, 133, 138, 139, 142, 151, 152, 153, 154, 163, 164, 165, 166, 172, 174, 185, 187, 247, 252, 253, 258, 259, 264, and 265, in a plan of lots laid out by Brown et al.

2. Also lots Nos. 39, 171, 173, 182, 184, 194, 227, 229, 239, 240, 241, and 242 in said plan, situate in the city of Wilkes-Barre.

3. Also an undivided interest in lots Nos. 70 and 111 in said plan, situate in said township.

4. Also an undivided interest in lots Nos. 49, 51, 53, and 55 in said plan, situate in said city.

5. Also an undivided interest in a lot of ground in said city, bounded on the easterly side by land of William McLaughlin, on the northerly side by the Wilkes-Barre Coal Company railroad and a creek, and on the southerly side by Miller street, being a triangular piece of land, the quantity unknown.

TERMS OF SALE—Cash down on day of sale.

J. G. MILLER, Attorney. JOHN M. KENNEDY, Administrator. 27-29

ORPHANS' COURT SALE.

Estate of Peter Rockel, Jr., deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned, as Trustee for the sale in partition of the real estate of said decedent, will sell at public sale, on the premises, in Hollenback township, on Saturday, July 7th, 1883, at 10 o'clock A. M., the real estate described in said writ, beginning at a pine, thence by land of Philip Moyer, Jr., and M. Freck 130 perches, thence by land of John Weiss 112½ perches to a stone, thence by same 43 perches to a white oak, thence by Daniel Snyder and Conrad Harter's lands 200 perches to the place of beginning, containing 140 acres and 130 perches, strict measure; whereon is erected a large two-story frame dwelling house, wagon house, bank barn, and other outbuildings, and a good orchard.

TERMS OF SALE—\$300 at the striking down of the property, 33½ per cent of the purchase money bid, less \$300, at confirmation absolute and delivery of deed, 33½ per cent, with interest, in one year from said confirmation absolute; the interest on the remaining one-third to be paid annually to the widow of said decedent during her life, and at her death the principal to be paid to her legal representatives as ascertained by the Orphans' Court upon audit; deferred payments to be secured on the premises.

M. E. WALKER, Attorney. WILLIAM O'MALLEY, Trustee. 25-27

ORPHANS' COURT SALE.

Estate of Anthony Schappert, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, in the Arbitration room, in the Court House, at Wilkes-Barre, on Tuesday, July 17th, 1883, at 10 o'clock A. M., the following real estate in the city of Wilkes-Barre, beginning at a corner of Park avenue and Lehigh street, thence along said Lehigh street 98 feet more or less to line of land of John J. Buerkle, thence along said Buerkle's land 156 feet more or less to land now or late of Jacob Siley, thence along said Siley's land and others 90 feet more or less to Park avenue aforesaid, thence along Park avenue 148 feet more or less to the place of beginning, with a two-story frame dwelling house, shed, and other outbuildings thereon.

TERMS OF SALE—25 per cent on day of sale, and the balance on confirmation of sale and delivery of deed.

L. B. LANDMESSER, Attorney. BARBARA SCHAPPERT, Administratrix. 25-27

ORPHANS' COURT SALE.

Estate of Thomas Hutchins, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, the 21st day of July, 1883, at 10 o'clock A. M., the surface of all that lot of land in the township of Kingston, beginning at a point on the main road, or Wyoming avenue, 111 feet from line of Kingston and Exeter townships, being the center of a 10-foot alley, thence along center of said alley 162 feet to a corner, thence 50 feet to a corner, thence along land of Thos. Hutchins, deceased, 162 feet to a corner on said Wyoming avenue, thence along said avenue 50 feet to the place of beginning, containing 8300 square feet of land; excepting all the coal and other minerals, with the right to mine and take out the same.

TERMS OF SALE—One-quarter of purchase money down on day of sale, one-quarter on confirmation of sale, and the balance, with interest from confirmation of sale, in six months from day of sale; to be secured by bond and mortgage on the premises.

R. H. WEIR, Attorney. R. W. HUTCHINS, Administrators. WM. S. McLEAN, Attorney. 26-28

IN RE ESTATE OF JOHN BLANCHARD,

deceased. Now, June 4th, 1883, the return of the writ of partition in the above estate having been confirmed absolutely, court grant rule on heirs and parties in interest to accept, bid, or refuse the premises described in said writ at the said appraisement, or show cause why the same shall not be sold. Service of notice on non-resident heirs to be made by publication in the Legal Register and the Mountain Echo for three successive weeks, and a marked copy of each issue of the same to be mailed to the last known postoffice address of such heirs. Returnable the first day of next day, at 10 o'clock A. M.

By the COURT. To Ada Robbins, New York City; Clarence Robbins, Bellefonte, Pa.; John Robbins, Montana Ty., and all other parties interested—You are hereby notified, in pursuance of the above order, to appear at the next term of the Orphans' Court of Luzerne county, to be held at Wilkes-Barre, on the first Monday of September next, and accept, bid, or refuse the premises described in the writ of partition in this case, or show cause why the same shall not be sold.

M. E. WALKER, Solicitor. 25-27

IN RE SATISFACTION OF MORTGAGE.

Henry M. Hoyt to John Grandin, Mortgage Book 23, page 252. No. 20, October term, 1883. In the Court of Common Pleas of Luzerne county. To John Grandin, his legal representative or representatives—Take notice that the petition of Herz Lowenstein has been filed in the Court of Common Pleas of Luzerne county, in which petition the said Lowenstein makes application to the court to have satisfied of record the mortgage recorded in the Recorder's office of Luzerne county, in Mortgage Book 23, page 252, Henry M. Hoyt being the mortgagor and John Grandin the mortgagee. You are therefore required to appear and answer the said petition on the first day of next term, to wit, on Monday, the 1st day of October, 1883, at 10 o'clock A. M., at which time the court will appoint a Commissioner to take testimony in the matter.

WILLIAM O'MALLEY, Sheriff. 27-29

AUDITOR'S NOTICE

In Re Indebtedness of Foster township. The undersigned has been appointed an Auditor to ascertain and marshal the indebtedness of the above township. All those who have claims or demands against the same are required to present them before me, on Monday, July 16, 1883, at 10 o'clock A. M.

WILLIAM R. GIBBONS, Auditor. 25-28

AUDITOR'S NOTICE.

Estate of Barna Suthff, dec'd. In Re Proceedings in partition of real estate. The undersigned, an Auditor, appointed by the Orphans' Court of Luzerne county to marshal liens against decedent and heirs, to fix and adjust owelty, dower, and amounts of recognizances to be given, and to tax costs and make distribution, will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Wednesday, the 18th day of July, 1883, at 10 o'clock A. M., at which time all persons interested are hereby notified to appear.

S. J. STRAUSS,
Auditor.

24-27

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Sturdevant & Goff, will attend to the duties of his appointment, at the office of E. F. & J. V. Darling, in the city of Wilkes-Barre, on Friday, the 13th of July, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

GEORGE H. FISHER,
Auditor.

25-28

ESTATE OF WILLIAM BRACE, LATE OF
Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FISHER GAY,
MYRTLE W. BRACE,
DICKSON & ATHERTON, Executors.
Attorneys. 23-28

ESTATE OF JESSE W. BAIRD, LATE OF
Kingston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HART PHILLIPS,
GEO. K. POWELL, Administrator.
Attorney. 23-28

ESTATE OF GEORGE H. HOCH, LATE OF
Dorran township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY HOCH,
T. R. MARTIN, Administratrix.
Attorney. 26-31

ESTATE OF SALLY ABBOTT, LATE OF
Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CHARLES A. MINER,
L. D. SHOEMAKER, Executor.
Attorney. 26-31

ESTATE OF DAVID KLINGER, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

N. D. SMITH,
Administrator. 14-27

26-31

ESTATE OF SAMUEL BALLIET, LATE OF
Sugarloaf, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DAVID BALLIET,
Administrator.

22-27

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 156, May term, 1883. Libel in divorce a vinculo matrimonii. J. C. Coon v. Emma E. Coon. The alias subpoena in the above case having been returned non est inventus, you, the said Emma E. Coon, are hereby notified to appear at said court, on Monday, the 1st day of October, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
JAMES MAHON, Solicitor. 26-29

NOTICE IS HEREBY GIVEN THAT AN application will be made to the Governor of the Commonwealth of Pennsylvania, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Kingston Coal Company," the character and object of which is the mining and preparing for market coal, iron ore, and other minerals, and to manufacture iron or steel, or both, and to exercise all other rights and powers granted to such corporations by the 38th section of said Act of Assembly of April 29, 1874, and for such purposes to have and to enjoy all the rights, benefits, and privileges of said Act of Assembly and its supplements.

HUBBARD B. PAYNE,
Solicitor. 26-28

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, at Chambers, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Saturday, the 7th day of July, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "The St. Joseph's Benevolent Society of Nanticoke," a society formed for the support of benevolent and charitable purposes

L. B. LANDMESSER,
Solicitor. 25-27

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Craig Electric Lighting and Power Company," the character and objects of which are the manufacturing and supplying light, heat, and power to the citizens of Pittston, West Pittston, and vicinity, and for these purposes to have, possess, and enjoy the rights, benefits, and privileges conferred by said Act of Assembly and its supplements.

A. E. DETRO,
Solicitor. 26-28

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act for the incorporation and regulation of banks of discount and deposit," approved May 13, 1876, and the supplements thereto, for the incorporation of an intended banking corporation, to be called the "Nanticoke Bank," and to be located in the borough of Nanticoke, Luzerne county, Pa., the character and objects of which are the carrying on the general business of banking as a bank of deposit and discount.

W. H. HINES,
Solicitor. 14-27

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, JULY 13, 1883.

No. 28.

Supreme Court of Pennsylvania.

DUNNING *v.* HELLER.

Writing his name across the back of a promissory note by the payee is an indorsement, notwithstanding the signature is preceded by a detailed statement of the payee's financial condition, and of the consideration of the note.

Error to the Common Pleas of Luzerne county.

The opinion of the court was delivered April 30, 1883, by

PAXSON, J.—The note in controversy was offered in evidence without objection on the part of defendant. This disposes of the argument based on the rule of court and the affidavit of defense. Conceding the right of the defendant to demand proof of the signature, he waived it by allowing the note to go in without objection.

The learned judge below, however, non-suited the plaintiff for the reason that the note was not indorsed. It was made payable to the order of the maker. His name was written across the back of the note, in the place where indorsements are usually placed. Over his signature we find the following words:

“I hereby certify that I own and am worth in personal and real estate, in the county of Luzerne, and State of Pennsylvania, \$4,000 over and above all indebtedness, and that the within obligation is given for goods bought by me of the Queen City Fertilizing Company, and the same is in full settlement of all claims and demands of every name and nature between said company and myself up to the date of this obligation.

(Signed) “RENATUS HELLER.”

The learned judge, in granting the motion for a non-suit, said: "I do not think that the signature in question can have a two-fold force—one as a contract growing out of the certificate, and the other as an indorsement of negotiable paper."

We do not think the words over the indorsement amount to a contract. They contain a statement as to the indorser's pecuniary responsibility, and the consideration of the note. It was unnecessary, and, perhaps, foolish, for the maker to put all this over his signature as indorser. But he has done it, and as it does not vary his contract as maker and indorser, we are unable to say, as a matter of law, that the note was not indorsed as required by the commercial law. Nor was the learned judge strictly accurate in saying that the signature cannot have a two-fold force. The indorser may waive protest over his indorsement, which, manifestly, gives a two-fold character to his signature, and affects the rights of the parties.

It was held in *Ege v. Kyle* (2 Watts, 222) that an indorsement on a negotiable note of a receipt on account of a quantity of iron, "the net proceeds of which are to be credited on the within," and which were afterwards credited on it by indorsement, did not destroy its negotiable character. The usual form of indorsement is by writing the name of the indorser across the back of the note. When the note is payable to order, any order in writing is sufficient which shows an intent to pass the title. Thus, "I give this note to A.—George Chaworth," was held to be a sufficient indorsement. *Chaworth v. Beach*, 21 Vesey, 555. And where the indorsement is in the form of a guaranty, it has been held sufficient. *Partridge v. Davis*, 20 Vermont, 499; *Upham v. Prince*, 12 Mass. 14; *Myrich v. Hasey*, 27 Maine, 9; *Childs v. Davidson*, 38 Ill. 438; *Watson v. McLaren*, 19 Wend. 557.

This disposes of the single point in the case. No other question is properly presented upon the record, and no other will be discussed.

Judgment reversed, and a *procedendo* awarded.

John McGahren, Esq., for plaintiff in error.

Alexander Farnham, Hubbard B. Payne, and Gustav Hahn, Esqs., for defendant in error.

Court of Common Pleas of Luzerne County.

HELLER v. LEACH.

A sheriff's inquisition and extension of real estate will not be set aside because the jury did not take into view all the incumbrances upon the land, in fixing the annual sum to be paid, where the party complaining appeared before the inquest, and gave the usual notice of election to retain, and has received payments under the extension until his judgment is nearly paid off. He will be held estopped.

The opinion of the court was delivered May 8, 1882, by

WOODWARD, J.—The real estate of the defendant was levied on by virtue of an execution issued upon the above judgment. On the 2d of September, 1881, the real estate in question was extended by the sheriff's jury of inquest at the annual sum of two hundred and twenty dollars, and, upon the same day, the attorneys for the writ gave notice to the defendant of plaintiff's intention to permit him to retain possession at the annual valuation fixed by the inquest. On the 29th of September, 1881, the defendant, by paper duly filed, signified his intention to accept the proposition of the plaintiff, and retain possession under the statute. It further appears that the plaintiff has received from the defendant the installments as they fell due under the extension, and that his judgment has been very nearly, if not entirely, paid off; the only controversy being over a question of costs. The plaintiff now asks to have the inquisition and extension set aside, on the ground that the jury did not take in view all the incumbrances, and that the annual sum of two hundred and twenty dollars will not pay the liens in seven years.

Assuming, as seems to be true, that the jury of inquest failed to perform their duty in not considering the total amount of all the incumbrances, and in not fixing the extension at such a sum as would pay them all in the time allowed by law, it still remains to inquire whether the plaintiff is the proper party to complain. He obtained a judgment against the defendant; issued execution thereon, which he had levied upon certain real estate; appeared before the inquest, and was present during their deliberations

upon the case; and, after they had acted and fixed upon the annual sum to be paid, gave the usual notice to the defendant of his election to permit him (the defendant) to remain in possession. Further, it is not denied by the plaintiff that he has accepted payments of the installments under the extension, until his judgment has been paid off, leaving out of view certain costs which are in dispute.

Under these circumstances, we are of the opinion that the plaintiff is precluded and estopped from setting up the erroneous action of the inquest as a ground for annulling the extension, and the rule is therefore discharged.

Messrs. Ryman & Lewis, for plaintiff.

N. Taylor and A. Hunlock, Esqs., for defendant.

Court of Common Pleas of Luzerne County.

KEELEY v. WENTZEL.

The record of the justice is defective in not stating the *hour* at which the judgment was rendered, the judgment being by default.

Certiorari.

The opinion of the court was delivered June 23, 1883, by

WOODWARD, J.—The record in this case is defective in not stating the hour at which the judgment was rendered. This is necessary in all cases where the defendant fails to appear, and the judgment against him is by default.

The proceedings are reversed.

The new law in Kentucky, fixing one mile as the legal distance between a church and saloon, was passed for the purpose of ascertaining how rapidly a Kentuckian can get over the ground. Some great bursts of speed are reported as having occurred.

ORPHANS' COURT SALE.

Estate of W. W. Ketcham, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, August 4, 1883, at 11 o'clock A. M., the following described real estate:

1. All those lots of ground in the township of Wilkes-Barre, being lots Nos. 48, 50, 62, 64, 78, 79, 100, 101, 106, 107, 114, 115, 120, 121, 126, 127, 132, 133, 138, 139, 142, 151, 152, 153, 154, 163, 164, 165, 166, 172, 174, 185, 187, 247, 252, 253, 258, 259, 264, and 265, in a plan of lots laid out by Brown et al.

2. Also lots Nos. 39, 171, 173, 182, 184, 194, 227, 229, 239, 240, 241, and 242 in said plan, situate in the city of Wilkes-Barre.

3. Also an undivided interest in lots Nos. 70 and 111 in said plan, situate in said township.

4. Also an undivided interest in lots Nos. 49, 51, 53, and 55 in said plan, situate in said city.

5. Also an undivided interest in a lot of ground in said city, bounded on the easterly side by land of William McLaughlin, on the northerly side by the Wilkes-Barre Coal Company railroad and a creek, and on the southerly side by Miller street, being a triangular piece of land, the quantity unknown.

TERMS OF SALE—Cash down on day of sale.

J. G. MILLER, Attorney. JOHN M. KENNEDY, Administrator. 27-29

ORPHANS' COURT SALE.

Estate of Thomas Hutchins, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, the 21st day of July, 1883, at 10 o'clock A. M., the surface of all that lot of land in the township of Kingston, beginning at a point on the main road, or Wyoming avenue, 111 feet from line of Kingston and Exeter townships, being the center of a 10-foot alley, thence along center of said alley 162 feet to a corner, thence 50 feet to a corner, thence along land of Thos. Hutchins, deceased, 162 feet to a corner on said Wyoming avenue, thence along said avenue 50 feet to the place of beginning, containing 8700 square feet of land; excepting all the coal and other minerals, with the right to mine and take out the same.

TERMS OF SALE—One-quarter of purchase money down on day of sale, one-quarter on confirmation of sale, and the balance, with interest from confirmation of sale, in six months from day of sale; to be secured by bond and mortgage on the premises.

R. H. WEIR, R. W. HUTCHINS, Administrators. WM. S. McLEAN, Attorney. 26-28

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 156, May term, 1883. Libel in divorce a vinculo matrimonii. J. C. Coon v. Emma E. Coon. The alias subpoena in the above case having been returned non est inventus, you, the said Emma E. Coon, are hereby notified to appear at said court, on Monday, the 1st day of October, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff. JAMES MAHON, Solicitor. 26-29

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Sturdevant & Goff, will attend to the duties of his appointment, at the office of E. P. & J. V. Darling, in the city of Wilkes-Barre, on Friday, the 13th of July, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

GEORGE H. FISHER, Auditor. 25-28

AUDITOR'S NOTICE

In Re Indebtedness of Foster township. The undersigned has been appointed an Auditor to ascertain and marshal the indebtedness of the above township. All those who have claims or demands against the same are required to present them before me, on Monday, July 16, 1883, at 10 o'clock A. M.

WILLIAM R. GIBBONS, Auditor. 25-28

NOTICE IS HEREBY GIVEN THAT AN

application will be made to the Governor of the Commonwealth of Pennsylvania, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Kingston Coal Company," the character and object of which is the mining and preparing for market coal, iron ore, and other minerals, and to manufacture iron or steel, or both, and to exercise all other rights and powers granted to such corporations by the 38th section of said Act of Assembly of April 29, 1874, and for such purposes to have and to enjoy all the rights, benefits, and privileges of said Act of Assembly and its supplements.

HUBBARD B. PAYNE, Solicitor. 26-28

NOTICE IS HEREBY GIVEN THAT AN

application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Craig Electric Lighting and Power Company," the character and objects of which are the manufacturing and supplying light, heat, and power to the citizens of Pittston, West Pittston, and vicinity, and for these purposes to have, possess, and enjoy the rights, benefits, and privileges conferred by said Act of Assembly and its supplements.

A. E. DETRO, Solicitor. 26-28

IN RE SATISFACTION OF MORTGAGE.

Henry M. Hoyt to John Grandin, Mortgage Book 23, page 252. No. 20, October term, 1883. In the Court of Common Pleas of Luzerne county. To John Grandin, his legal representative or representatives—Take notice that the petition of Herz Lowenstein has been filed in the Court of Common Pleas of Luzerne county, in which petition the said Lowenstein makes application to the court to have satisfied of record the mortgage recorded in the Recorder's office of Luzerne county, in Mortgage Book 23, page 252, Henry M. Hoyt being the mortgagor and John Grandin the mortgagee. You are therefore required to appear and answer the said petition on the first day of next term, to wit, on Monday, the 1st day of October, 1883, at 10 o'clock A. M., at which time the court will appoint a Commissioner to take testimony in the matter.

WILLIAM O'MALLEY, Sheriff. 27-29

ESTATE OF GEORGE H. HOCH, LATE OF

Dorrance township, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY HOCH, Administratrix. T. R. MARTIN, Attorney. 26-31

ESTATE OF DAVID KLINGER, LATE OF

Salem township, deceased. Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

N. D. SMITH, Administrator. 26-31

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, August 4th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1

Suit of Trustees of Estate of E. V. Kidder, now assigned to Thomas Farrell, v. Elizabeth Holdsworth, Executrix of John Holdsworth, deceased.

227 October term, 1883. Debt, \$259.00. Fi. fa. 50

Farnham, Att'y.

The surface of all that piece of land in the city of Wilkes-Barre, being parts of lots Nos. 198 and 199 of the survey of the estate of the late Luther Kidder, deceased, beginning at point 170 feet from the easterly line of an alley at an intersection with Bowman street, thence northeasterly along the line of said street 50 feet to a corner, thence at right angles to said Bowman street to the line of the right of way of the Lehigh and Susquehanna Railroad, thence southwardly along said line of right of way to land of Peter Straub, thence along said Straub's line to line of Bowman street, the place of beginning, being 50 feet front on Bowman street, and extending back to said line of right of way, with a two-story brick dwelling house, with a stone basement, and a two-story frame dwelling house, with a stone basement, and frame summer kitchen, and other outbuildings thereon.

2

Suit of Robt. Seamans & Co. v. Wyrewood Thomas, 65 February term, 1883. Debt, \$739.40. Fi. fa. 25

June term, 1883. Miller, Att'y.

1. All that lot of land in Parsons borough, beginning at a corner of lot No. 26, thence 100 feet to a corner on alley, thence 50 feet along said alley to a corner, thence 100 feet to a corner on Oliver street, thence 50 feet along Oliver street to place of beginning, containing 5,000 square feet of ground, more or less; excepting and reserving out of the same all the coal and other minerals in and under said lot; there is a two-story double frame house erected on said lot, about 20 by 32 feet.

2. All that piece of land in the Fourteenth ward, city of Wilkes-Barre, bounded on the southerly side by lands of John R. Hunter and Patrick Martin, on the westerly side by land of Harding, Mayer, and McLean, on the northerly side by land of the estate of William Smith, and on the easterly side by Spruce street, being 50 feet in front on Spruce street by 200 feet in depth, with a two-story frame house, with back kitchen attached, outhouses, and fruit trees thereon.

3

Suit of Geo. H. Parrish and Chas. M. Conyngham v. John S. Jones.

226 May term, 1883. Debt, \$205.36. Vend. ex. 33

June term, 1883. McLean, Gibbons, Att'ys.

All that lot of land in Wilkes-Barre township, being lot No. 12, in block D, on plot in hands of George H. Parrish et al., said lot being 50 feet in front on Spruce street, and 200 feet in depth; coal and other minerals reserved.

4

Suit of Geo. H. Parrish and Chas. M. Conyngham v. John S. Jones.

227 May term, 1883. Debt, \$205.36. Vend. ex. 34

June term, 1883. McLean, Gibbons, Att'ys.

All that lot of land in Wilkes-Barre township, being lot No. 11, in block D, on plot in hands of George H. Parrish et al., said lot being 50 feet in front on Spruce street, and 200 feet in depth; improved, with 2-story frame dwelling house, 20 feet long by 12 feet wide, and other outbuildings thereon; coal and minerals reserved.

5

Suit of William Connell, Assignee, v. Jackson Lunn, 40 November term, 1880. Debt, \$531.09. Fi. fa.

46 October term, 1883. McLean, Att'y.

All that piece of land in the city of Wilkes-Barre, beginning at a point on the west side of Grove street, 148 feet 3 inches from Moyallen street, thence south-

westerly along said Grove street 36 feet 9 inches to a corner, thence northwesterly at right angles to said Grove street 120 feet to a corner, thence northeasterly on a line parallel with said Grove street 36 feet 9 inches to a corner, thence southeasterly on a line parallel with Moyallen street 120 feet to the place of beginning; improvements, one two-story frame dwelling house, outhouses, and fruit trees.

6

Suit of Mary Elliott v. George Blackburn, now McLean, Att'y.

1. The surface of all that piece of land in the borough of Plymouth, beginning at a corner on Church street, thence by land sold to William O'Hara 148 feet to a corner, thence along a creek 40 feet to a corner, thence along a lot sold to A. Clewell 148 feet to a corner, thence along Church street 40 feet to the place of beginning, containing 5,600 square feet of surface; improvements, a double frame house, outbuildings, fruit trees, etc.

2. All the surface of that lot of land in the borough of Plymouth, beginning at a corner on the northwesterly side of Main street 81 feet in a southwesterly direction from land of Albert Gabriel, thence along Main street 100 feet to a corner, thence 124 feet to a corner, thence 124 feet to Main street, the place of beginning, containing 12,400 square feet of land; improvements, one two-story frame dwelling house, outbuildings, and fruit trees.

7

Suit of W. P. Kirkendall, Assignee, v. George Fritz, 77 September term, 1880. Debt, \$876.25. Fi. fa.

7 October term, 1883. Ryman, Att'y.

All that lot of land in the city of Wilkes-Barre, beginning at a corner in line of Lincoln street, between lots Nos. 6 and 7, thence by line of Lincoln street 45 feet to a corner, thence by a tier of lots running from Northampton street 117 feet to a corner at the back end of lot No. 5, thence 45 feet to a corner between lots Nos. 6 and 7, thence 117 feet to the place of beginning, containing 5,265 feet, more or less; all improved, with a two-story wooden dwelling house, shop, outhouses, farm, and fruit trees thereon.

8

Suit of Abijah Davenport et al. v. Emily Keizer, Sturges, Att'y.

The surface of that lot of land in the borough of Ashley, beginning at a point on the southeast side of Hartford street about 50 feet from the center of an alley on line of lands sold to Arnold Bertels, thence southwesterly parallel with said alley 94 feet to a corner, thence southeasterly parallel with said Hartford street about 70 feet to a corner, thence northeasterly at right angles to last mentioned corner about 94 feet to Hartford street aforesaid, thence northwesterly along Hartford street about 70 feet to the place of beginning; improved, with one 1½-story frame dwelling house, outbuildings, fruit trees, and well of water thereon.

28-30

ESTATE OF WILLIAM BRACE, LATE OF Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FISHER GAY,
MYRTLE W. BRACE,
DICKSON & ATHERTON, Executors.
Attorneys. 23-28

ESTATE OF SALLY ABBOTT, LATE OF Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CHARLES A. MINER,
L. D. SHOEMAKER, Executor
Attorney. 26-31

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, JULY 20, 1883.

No. 29.

Court of Common Pleas of Luzerne County.

REESE v. PAYNE & CO.

1. Negligence of fellow-servants—the rule of law in regard thereto.
2. A new trial will not be granted simply because counsel in addressing the jury referred to the action of the jury on the former trial. Objection should have been made at the time, and the court would then protect the party complaining, either by withdrawing a juror, or by a proper caution in their charge.

The opinion of the court was delivered January 2, 1883, by

WOODWARD, J.—The first reason assigned in favor of a new trial is, that the verdict was against the weight of the evidence; and a portion of the second reason is, that the court erred in disaffirming defendants' fifth point. As to both these reasons, we content ourselves with the answer afforded by the language of Mr. Justice Gordon, which is as follows: "The method of using the blow-off pipe of their boilers was certainly not a strong point of their (the defendants') case. This pipe, used for the blowing off of some six or more boilers, terminated in a wooden box some twenty inches or two feet in the ground, and directly under the path over which the hands from the colliery were constantly passing and repassing to and from the repair-shop and prop-yard. That the action of the water and steam, thus confined, must necessarily hollow out and cave in the loose material around and above it was something that did not require the learning of an expert to foresee and predict; and we think it would take a good deal of evidence, and a very ingenious argument, to convince a jury of average intelligence that such an arrangement was one of even ordinary safety."

The answer of the court to the sixth point is also complained of. This, in substance, was a request that we should take the

case from the jury, on the ground that the accident was caused, in any view of the case, not by the negligence of the defendants themselves, but by that of a fellow-servant or workman, and that for such negligence the defendants were not liable. We declined to charge as requested, on the ground that the legal principle sought to be invoked was not applicable to the case in hand. At the outset of the charge the jury were distinctly instructed, first, that if they believed the method adopted for disposing of the steam was good and ordinarily safe, and such as ordinarily prudent men would employ, then there was no negligence on the part of the defendants, and the case was at an end; and secondly, that even if they believed the defendants negligent, but were also of the opinion that the plaintiff himself was guilty of want of ordinary care, so that his own negligence concurred with that of the defendants in producing the injury, then and in that case their verdict should be for the defendants. It must be, therefore, that the jury, thus instructed, found, first, the fact of negligence on the part of the defendants; and secondly, that the plaintiff himself was not guilty of any concurrent negligence. And from this it follows that the sixth point of the defendants was correctly disposed of. The rule in regard to the negligence of fellow-servants is this: "The master is not liable to a servant for injury caused by the negligence of a fellow-servant, provided he is himself free from the imputation of negligence in connection with the injury. Bigelow on Torts, 709. If, therefore, we are right in assuming that the jury regarded the instructions given them, then there was no room left for the application of the doctrine of the law invoked by the defendants in their sixth point. That the general rule referred to is the one adopted in Pennsylvania will be apparent to any one who will study the cases. See *Murphy v. Crossan*, 11 W. N. C. 9; *Green and Coates St. Pass. R. R. v. Bresmer*, 10 W. N. C. 380. We refer also and particularly to the case of *O'Donnell v. Allegheny Valley R. R. Co.* (9 P. F. S. 239), where the whole subject is fully discussed by Mr. Justice Agnew. See also the case of *Fuller v. Jewett* (80 N. Y. 46), where it was held that the machinists of a railroad company, who are employed to manufacture and repair its engines, are not to be considered as co-employees or fellow-workmen of the engineers employed

to run the engines, because they are not engaged in the same general business.

The only other question demanding attention is raised by the third reason assigned for granting a new trial. This is based on the alleged improper conduct of counsel for the plaintiff, who, in making his argument to the jury, used the following language: "These witnesses (referring to the testimony of defendants' witnesses in regard to steam issuing from the ground) testified on the other trial just as strong as they do now; the other jury did not regard them, and I trust this jury will do as that jury did," etc. It is proper to state that at the time of the argument I was busily engaged in preparing the notes of my charge, and did not personally notice the language of counsel. But it is admitted that at least one of the counsel for the defendants was present, heard the argument, and made a note of the speech now complained of, without interposing any objection, or asking the court to caution the jury as to its effect. Admitting, then, that the language used was objectionable, and that the court, upon application made at the time, would either have withdrawn a juror and continued the case, or else have noticed the matter in their charge in such a manner as to have prevented prejudice to the defendants' case, it remains to inquire whether, under the circumstances, it is our duty to grant a new trial at the request of the defendants. In Wharton on Criminal Law (§ 3334), we find the rule on this subject, as applied to criminal practice, laid down as follows: "A new trial will not be granted simply because counsel in their addresses traveled beyond the evidence, unless the court was called upon to interpose, and, on a case requiring it, refused to do so." In *McCorkle v. Binns* (5 Binn. 348), where it was known to one of the parties, before verdict rendered, that a juror, before he was impaneled, had declared that he had made up his mind against him, it was held that it was the duty of the party complaining to make the facts known at once, and that he could not take the chance of a verdict in his favor, and, upon its being against him, move for a new trial. The language of the Supreme Court is this: "Now, if the defendant supposed that he should not have a fair trial, he ought to have laid the matter immediately before the court, and requested that the jury might be

discharged. He ought not to have taken the chance of a verdict in his favor, and kept his motion for a new trial in reserve, because the plaintiff and the defendant were then placed on an unequal footing." In *St. Louis Railway Co. v. Myrtle* (reported in 51 *Indiana Rep.* 576), the language of the court is as follows: "It is settled by the very decided weight of authority that the failure of the court to interfere when opposing counsel are present in court, and do not ask the interposition of the court, or object to the line of argument being pursued, will not entitle the party to a new trial." See also *Commonwealth v. Twitchell*, 1 *Brewster*, 592, and *Commonwealth v. Hanlon*, 3 *Brewster*, 496.

We have thus considered all the questions raised by the motion for a new trial, and are of the opinion that no sufficient reason for a new trial have been established.

The motion for a new trial is denied, and the rule discharged.

John Lynch, Esq., for plaintiff.

Messrs. Palmer, Dewitt & Fuller, for defendants.

Court of Quarter Sessions of Luzerne County.

COMMONWEALTH v. TAYLOR.

1. The act of Assembly of the 8th of June, 1881, entitled "An act to provide for the registration of all practitioners of medicine and surgery," is a constitutional and valid statute, and not within the prohibition as to laws *ex post facto*.
2. A vested right or property in a business calling or profession can only exist when the pursuit or practice of it is in conformity with the law of the land.
3. The distinction between laws which are retrospective merely and those *ex post facto*.

The opinion of the court was delivered June 23, 1883, by

WOODWARD, J.—The defendant was convicted upon two indictments preferred against him under the act of Assembly of June 8, 1881, entitled "An act to provide for the registration of all practitioners of medicine and surgery." One of these indictments charges that he did "wrongfully and unlawfully engage in and pursue the practice of medicine and surgery for gain and reward in the city of Wilkes-Barre, not being a graduate of a

legally chartered medical college or university having authority to confer the degree of doctor of medicine, and not having been in the continuous practice of medicine or surgery in this Commonwealth since 1871," etc. The other indictment charges that the defendant did unlawfully and falsely make affidavit to a statement that he had been in the continuous practice of medicine and surgery in this State since the year 1871, which affidavit and statement was filed and registered in the office of the prothonotary in accordance with section 5 of the act of Assembly of June 8, 1881. The two cases were, by consent of counsel and with the approval of the court, tried together. The result of the trial was a general verdict of guilty, and the case is now before us on a motion in arrest of judgment and for a new trial, founded on two reasons, which are, first, that the act of Assembly of June 8, 1881, is an *ex post facto* law, and therefore unconstitutional; and secondly, that the court erred in admitting in evidence the affidavit of the defendant filed in the prothonotary's office, the same having been sworn to before a deputy, instead of the prothonotary himself.

The constitution of the United States, in article i., section 10, provides that no State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts. The constitution of Pennsylvania also declares, in article i., section 17, that "no *ex post facto* law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed."

Is the act of Assembly of June 8, 1881, an *ex post facto* law? If so, is it unconstitutional and void?

An *ex post facto* law is thus described by Mr. Justice Blackstone: "When, after an action (indifferent in itself) is committed, the legislator then, for the first time, declares it to have been a crime, and inflicts a punishment upon the person who has committed it."

In Cooley on Constitutional Limitations it is said that a law comes within the intent of the prohibition when "it makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action." Cooley on Const. Lim., star page 265.

An *ex post facto* law is one which makes an act punishable in a manner in which it was not punishable when it was committed. *Fletcher v. Peck*, 6 Cranch. 138; *Lane v. Nelson*, 2 W. N. C. 216.

There is a distinction to be noted between laws *ex post facto* and those which are objectionable merely because they are retrospective. Every *ex post facto* law must necessarily be retroactive, but every retroactive law is not *ex post facto*. The former are prohibited by the constitution; the latter are not. A law that takes away or impairs rights vested agreeably to existing law is retrospective, and may be unjust, but it is not necessarily unconstitutional. There is nothing in the constitution of the United States, nor of Pennsylvania, to prevent retrospective legislation, provided it does not impair the obligation of a contract, or change the punishment of a criminal act. See *Lane v. Nelson*, *supra*.

With these definitions and distinctions clearly in mind, let us see in what way, and with what effect, they are applicable to the present case. Dr. Taylor, the defendant, was indicted, not for having practiced medicine and surgery without a diploma, or without a continuous experience and practice of ten years, prior to the passage of the act of June 8, 1881; but, on the contrary, the offence charged was a violation of the statute after its passage, in continuing to practice in violation of its provisions. The date of the offence set out in the indictment is the 2d of October, 1882, or a point of time some sixteen months later than the date of the statute. He was not tried, and is not to be punished, for anything done, or omitted to be done by him, prior to the 2d of October, 1882. Nothing done by him before the act of Assembly, and which was then innocent, is now made criminal, nor is he charged with any offence of that character. But it is alleged against him that, after the passage of the act of June 8, 1881, and with full knowledge of its requirements, he continued in the practice of a profession for which he did not possess the necessary and legal requirements. In other words, the precise question in the case is this: Did Dr. Taylor, on the 2d of October, 1882, hold a diploma as a graduate of a legally chartered medical college or university, having authority to confer the degree of doctor of medicine; or, not having such diploma, had he been in the continuous practice of medicine and surgery in

this Commonwealth since the year 1871? As he makes no claim of being a graduate from a medical college, the question is narrower still. And this question of continuous practice since 1871 was distinctly submitted to the jury as the important question of fact in the case under the evidence.

Again, it must be remembered that the defendant has recognized the force of the obligation imposed on him by this act of Assembly. He did not refuse to be bound by it, and challenge its validity. On the contrary, he presented himself at the prothonotary's office, and made the required affidavit, which was duly filed and registered. He was charged with having sworn falsely, and this issue, as we have said, was tried before the jury, and fairly submitted to them as a question of fact. In this respect, the present case is to be distinguished from that of the *Comlth. v. Wasson* (2 York Leg. Rec. 211), decided by Wickes, J., whose opinion was handed to us at the time of the argument.

Something was said during the argument to the effect that the statute in question might be obnoxious to the objection that it would deprive the defendant of his property, without the judgment of his peers, or due process of law. But what vested right or property can a man have in a profession, unless he conforms to the law of the land in his pursuit and practice of it? A familiar illustration might be found in our system of granting licenses for, and regulating the manufacture and sale of, intoxicating liquors. A man may have a natural and vested right to spend his money as he pleases. He may invest it in wines and liquors to any extent, but if he desires to dispose of them to others as a dealer, he must do so in conformity with the restrictions of the statutes. The same principal animates and pervades all those laws, which compel the inspection and branding of flour and meal; the inspection of whiskey; the compulsory suppression of many kinds of business dangerous and detrimental to the safety or health of a community; and the power of taxation, almost unlimited, reposed in the Legislature. The right to compel a lawyer to pursue, for a certain time, a prescribed course of study, and to submit himself to the ordeal of an examination, as a condition precedent to entering upon the practice of the profession of the law, and receiving its emoluments, has never been success-

fully questioned, and this in the absence of any positive statute on the subject. Under the common law of England, all persons desirous of following any trade were obliged to serve a regular apprenticeship of seven years, and an attempt to engage in a trade without having first served an apprenticeship was made punishable under the statute of 5 Elizabeth, c. 4. See 2 Blackstone Com. 159, 197. And it would seem that all the arguments drawn from considerations of the welfare of the public, and the general good, apply with peculiar force to the profession of medicine and surgery. In no other avocation or profession is mere pretence and quackery so common, and in no other is it so difficult to detect and demonstrate their existence.

We are of the opinion that the act of Assembly of June 8, 1881, is not an *ex post facto* law, but that it is, in all respects, a valid and constitutional statute.

We are also of the opinion that the deputy prothonotary might administer the oath, as was done in the present case. In *Commonwealth v. Greason* (5 S. & R. 332) it was held that a deputy clerk of the peace has power to administer the oath required on the registry of a negro or mulatto servant, although the act required the clerk of the peace to administer it. The language of Tilghman, C. J., is as follows: "By this act the clerk of the peace is authorized and required to administer the oath; and as it was well known that it was usual for the clerks of the peace to appoint deputies, there can be no doubt but it was the intent of the act that, in such case, the deputy should administer these oaths." This case was decided in 1819, and was followed, in 1828, by the case of the *Commonwealth v. Allen* (17 S. & R. 285) where the court say: "It has never been questioned, nor can it, that a prothonotary may make a deputy, and a deputy may do all acts which his principal can do." See also the case of *Commonwealth v. Jermon* (29 Leg. Int. 165), which was a prosecution for perjury, and where the oath was administered by a deputy prothonotary, and held to be sufficient.

The motions in arrest of judgment and for a new trial are denied.

John McGahren, Esq., for plaintiff.

T. R. Martin, Esq., for defendant.

Court of Common Pleas of Luzerne County.

SWALLOW *v.* RED ASH COAL CO.

It is misconduct on the part of a magistrate to omit to inform a party who has given bail for an appeal, and paid the costs, that an affidavit is also required to perfect the appeal.

Rule to strike off appeal, etc.

The opinion of the court was delivered June 23, 1883, by

WOODWARD, J.—On the 14th of May, 1883, an order was made by Judge Rice that the rule in this case stand over until the next argument court, with leave to the defendants in the meantime to take depositions. The purpose of this was to ascertain whether the omission of the defendants to file the proper affidavit for an appeal was caused by the fault, fraud, or misconduct of the magistrate, and whether the defendants were or were not themselves guilty of *laches*.

The deposition of J. C. Williamson has been taken. It shows that after calling at the alderman's office during business hours for the purpose of taking an appeal, and finding it locked, he met the alderman in the court house. They went together to the bar office, where the alderman made out a bill of costs, which Williamson paid. Bail was given for the appeal, and the transcript was afterwards forwarded by the magistrate by mail. Mr. Williamson states that nothing whatever was said to him about an affidavit, and that he was prepared to make one if he had known that the law required it.

The alderman is careful to state in his transcript that the defendants failed to file the required affidavit. This fact is important as showing, first, that the alderman knew that an affidavit was necessary; and secondly, that he failed in his duty in accepting payment of the costs and taking bail for the appeal without apprising Mr. Williamson of the further requirement of the law. This was misconduct on the part of the magistrate, by which the defendants were deceived and misled.

The rule to strike off the appeal is discharged, and it is now

directed that the defendants have twenty days in which to perfect their appeal according to law.

J. T. Lenahan, Esq., for plaintiff.

J. A. Opp, Esq., for defendants.

Court of Common Pleas of Luzerne County.

FIDELITY AND CASUALTY CO. *v.* HESTY.

1. The act of April 4, 1873, in regard to foreign insurance companies, does not enlarge the jurisdiction of justices of the peace so as to permit them to direct process to a constable of another county.
2. The acts of April 24, 1857, and of April 8, 1868, refer to actions commenced in courts of record only.

Certiorari.

The opinion of the court was delivered June 23, 1883, by

WOODWARD, J.—The summons in this case was issued by an alderman of the city of Wilkes-Barre, and directed to the constable of Reading, Berks county, Pennsylvania. It was returned served by such constable, "on the within named defendant, the 7th of March, 1883, personally, by producing to Geo. P. Zeiber, Esq., state attorney or agent for the Fidelity and Casualty Company of New York, the original, and informing him of the contents thereof."

It is claimed that this method of obtaining service of a summons upon a foreign insurance company, doing business in this State, is warranted by the thirteenth section of the act of April 4, 1873 (Purd. 1798, *pl.* 22). The act of March 20, 1810 (Purd. 850, *pl.* 40), defines the powers of justices of the peace in civil causes, and directs that process shall issue to the constable of the township, ward, or district where the defendant usually resides, or can be found, or to the next constable most convenient to the defendant. It is the universal practice, however, for justices to issue their precepts to any constable of the county. It does not seem to us that the act of April 4, 1873, was intended to so enlarge the jurisdiction of justices as to permit them to direct process to a constable of another county. The acts of April 24,

1857 (Purd. 802), and of April 8, 1868 (P. L. 70), prescribe the method of serving process upon insurance companies of other States, doing business in this State, but both these acts, in our opinion, refer to actions commenced in courts of record, and not to those before justices of the peace. See *Clark v. Wooley*, 7 S. & R. 352.

The first and second exceptions are sustained, and the proceedings are reversed.

Messrs. Bennett & Nichols, for plaintiff.

E. A. Lynch, Esq., for defendant.

Court of Common Pleas of Luzerne County.

KRUEGER v. RUTLEDGE *et al.*

Equity—Injunction—Landlord and tenant.

1. The act of December 14, 1863 (landlord and tenant), is a complete system for obtaining possession by a landlord.
2. The plaintiff, a tenant, claimed that before the expiration of the term he had acquired the rights of a vendee under an agreement accompanying the lease: *Held*, that this was a defense which he could make before the justice, and that the court had no jurisdiction in equity to restrain the landlord from proceeding under the statute to try his right to repossess himself of the leased premises.

Motion for preliminary injunction.

The opinion of the court was delivered April 26, 1882, by

RICE, P. J.—This motion must be refused, for the reason that the facts alleged do not give a court of equity jurisdiction to restrain the defendants from proceeding before the alderman. If, as matter of fact, before the expiration of the term, the plaintiff acquired the rights of a vendee under the agreement accompanying the lease, this is a defense which he may make before the alderman, whose proceedings we are now asked to restrain. *Newall v. Gibbs*, 1 W. & S. 496; *Koontz v. Hammond*, 12 Sm. 177. The remedy provided by the landlord and tenant act of 1863 is not one-sided, for it allows to the defendant ample scope to allege and prove any legal defense he may have against the

plaintiff's demand, with the right of review by appeal or *certiorari*. *Brown's Appeal*, 16 Sm. 155; *Heritage v. Wilfong*, 8 Sm. 137; *Quinn v. McCarty*, 31 Sm. 475. The magistrate is not to give judgment against the tenant unless it shall "appear right and proper" to him. He thus has ample power to hear such matter of defense as is alleged in this bill. If dissatisfied with his judgment, the tenant may appeal, and have the case tried before a jury as an action of ejectment. It is true, the appeal is not a *supersedeas*, but the statute makes ample provision to satisfy him in damages in case he finally succeeds, and for all necessary writs to restore to him the possession.

It is conceded that the plaintiff went into a possession under a lease from the defendant, and that the term named therein is at an end. The plaintiff's remedy under the statute is complete, and under all the authorities it is clear that we have no jurisdiction in equity to restrain the defendants from proceeding under the statute *to try their right* to repossess themselves of the leased premises in question. *Brown's Appeal, supra*; *Reynolds v. Davis et al.*, 1 Kulp, 342. The authorities cited seem to us to be so clearly decisive that we need not elaborate further.

The motion for a preliminary injunction is refused.

E. Robinson and T. J. Chase, Esqs., for plaintiff.

W. S. McLean and A. Bauman, Esqs., for defendants.

Court of Common Pleas of Luzerne County.

HODGES v. LAUREL RUN LODGE, No. 344, KNIGHTS OF PYTHIAS.

Equity.

Where the answer is responsive to the bill, the latter must be sustained by the testimony of two witnesses, or of one witness and strongly corroborative circumstances.

Exceptions to master's report.

The opinion of the court was delivered May 8, 1882, by

RICE, P. J.—By its charter the defendant society undertakes to grant weekly benefits, as they are called, to disabled members

in good standing. The plaintiff's demand is for benefits accrued since October 5, 1876, and he prayed for a decree that the society account for and pay over the same to him. Assuming that a court of equity has jurisdiction at all, in order to show that the plaintiff was entitled to the benefits claimed, it was material to aver, not merely that he was in good standing at the time he became disabled, as is alleged in the third paragraph of the bill, but that he was in good standing during the period covered by his present claim. Art. XVI., § 3, Constitution. This was the point in issue, and it is to this point that the defendant's answer must be held to apply. If, therefore, the averment, on the plaintiff's part, of this material fact is to be implied from the averment that he was in good standing when his disability commenced in 1875, then, clearly, a similar implication must be made in favor of the answer, and the denial that he was in good standing at the time he made a legal claim for assistance was not the introduction of new matter, but was so responsive to the material element of the plaintiff's averment as to require him to establish it by affirmative proof. It is true, the fourth paragraph of the bill avers, in general terms, that the plaintiff, being disabled, was *entitled* to receive the relief claimed. This is a very general and sweeping allegation; but if it be held that it is sufficiently specific to require an answer from the defendant, it must also be conceded that the answer is quite as sweeping, as well as specific, in this particular, in denying that the plaintiff was ever justly entitled to the relief claimed. The plaintiff might, by greater particularity, have required a more specific answer; but, after careful consideration, we conclude that the answer is responsive, and the only evidence introduced in support of the disputed averments being that of the plaintiff, the master rightly held that the bill was not sustained by the *quantum* of proof required by the equity rule.

And now, May 8, 1882, this cause having been heard on bill, answer, proofs, and report of master, and having been argued by counsel and duly considered by the court, it is ordered, adjudged, and decreed that the bill be dismissed, at the cost of the plaintiff.

H. A. Fuller, Esq., for plaintiff.

A. Ricketts, Esq., for defendant.

Court of Common Pleas of Luzerne County.

LONG v. CAFFREY.

1. A plaintiff who has failed to recover in a *scire facias* upon a mechanics' lien may resort to an action of debt against the same defendant upon the original contract, without payment of costs allowed in the mechanics' lien proceeding.
2. Where the defendant in the action upon the contract has appeared before arbitrators, and agreed to the entry of a judgment against himself for a sum certain, reserving the right to appeal, and has then entered his appeal, the application to set aside the proceedings because of non-payment of costs is too late.
3. *Powell v. Wyoming Valley Manufacturing Co.* (9 Luz. Leg. Reg. 115; 1 Kulp, 91) presents the exact converse of the present question.

Rule to stay proceedings until payment of costs.

The opinion of the court was delivered September 18, 1882, by

WOODWARD, J.—It is the well settled policy of the law to protect parties from being harrassed by a multiplicity of suits for the same cause of action. In the case of *Neritt v. Lade* (3 Doug. 396), the first suit was in the Exchequer, and the second in the King's Bench, and the latter court stayed the proceedings until the costs of the former were paid. And it seems that the practice of compelling payment of costs is not confined to cases in which there has been a trial on the merits, but is applicable as well to cases of discontinuance, *non pros*, and judgment on demurrer. See *Gerety v. Reading Railroad Co.*, 9 Phila. Rep. 153. The leading case in this State seems to be *Fleming v. Pennsylvania Insurance Co.* (4 Barr, 475), where, in a second suit upon a policy of insurance, it was held that the costs upon a former suit in a different court, but upon the same policy, ending in a compulsory non-suit, must be paid by the plaintiff as a condition precedent to such suit.

The first difficulty in the present case arises when we come to apply the practice in question to the circumstances under which the two suits were instituted. The first proceeding was by a *scire facias* issued upon a mechanics' lien. The defense to this suit was successful. The plaintiff then resorted to the present action of debt upon the original contract. In a certain sense, the

cause of action in both cases is the same, viz.: the work done and the materials furnished in and about the erection of a building. But, in another view of the matter, the mechanics' lien was but a collateral security, and the plaintiff was at liberty to proceed against the property on it at the same time that he resorted to a personal action against the defendant. The one is a statutory remedy, and is strictly a proceeding *in rem*, while the other is the common law right of action for the recovery of a debt, which, when pursued to judgment, entitles the plaintiff to have execution upon all, or any portion, of the defendant's estate. The exact converse of the present question was presented in the case of *Powell v. Wyoming Valley Manufacturing Co.* (9 Luz. Leg. Reg. 115; 1 Kulp, 91), which went up from this county. In that case the Supreme Court, in affirming the ruling of Judge Rice, hold that a judgment in a personal action for materials furnished is no bar to a proceeding upon a mechanics' lien for the same materials. And if this be so, it would seem to follow that the complaint of multiplicity of suits cannot be successfully urged in a case like the present one, but that the opinion of the Supreme Court, in the case first referred to, expresses the doctrine of the law when it says, that "a party may have many securities for the same debt, and may proceed on them all until he obtains satisfaction."

We are of the opinion, therefore, that the authorities relied on by the learned counsel for the defendant are not applicable to the present case, and that the fact of the plaintiff's failure to recover upon his mechanics' lien does not subject him to the necessity of paying costs before proceeding with his personal action.

There is still another view of this case which we feel bound to notice, and which would compel us to discharge the present rule. The plaintiff brought suit on the 15th of February, 1881. On the 8th of February, 1882, he entered a rule to arbitrate, and service of this rule was accepted by defendant's counsel. Arbitrators were duly chosen, and the arbitration fixed for the 8th of March, 1882. Upon that day an agreement in writing was made between the counsel for the plaintiff and the defendant, and filed in the office of the prothonotary. This agreement is as follows:

"Now, March 8, 1882, it is hereby agreed that judgment should be entered in above case in favor of the plaintiff, and against the defendant, in the sum of \$1,203.85, with interest from March 8, 1882: to have the same force and effect as if the above-named arbitrators had met at the time and place fixed in the within rule, and, after having been sworn and heard the proof and allegations of the parties, had duly awarded in favor of the plaintiff, and against the defendant, in the above sum of \$1,203.85. The said defendant to have the right to appeal in the usual way at any time with twenty days from the filing of this agreement.

(Signed)

"L. B. LANDMESSER,

"Attorney for Plaintiff."

"HARDING & MCGAHREN,

"Attorneys for Defendant."

On the 22d of March, 1882, the defendant appeared at the prothonotary's office, and entered his appeal, as from an award of arbitrators, in the usual form. On the 24th of April, 1882, the present rule was taken.

It is now too late, it seems to us, for the defendant to complain of the non-payment of costs in the *scire facias* before suit brought, and to ask for a stay of proceedings on that ground. If he might have done this successfully at any time, it is clear that he cannot do it now. By appearing before the arbitrators, agreeing to an award, and reserving only the right to appeal, he has recognized the right of the plaintiff to bring the suit, and has waived his right to claim abatement until payment of costs as a precedent condition. The award, when filed, became a lien and incumbrance upon the defendant's real estate, and the security thus acquired by the plaintiff is not disturbed by the appeal. To make the order now prayed for would either not touch or effect the lien of the judgment entered upon the award, and would then be absurd, or else it would set aside and nullify a judgment entered according to law, and with the consent of the defendant, and would then be unjust.

The rule is discharged.

L. B. Landmesser and Geo. R. Bedford, Esqs., for plaintiff.

Hon. G. M. Harding and John McGahren, Esq., for defendant.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, August 4th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1

Suit of Trustees of Estate of E. V. Kidder, now assigned to Thomas Farrell, v. Elizabeth Holdsworth, Executrix of John Holdsworth, deceased.

27 October term, 1883. Debt, \$250.00. Fi. fa. 50 October term, 1883. Farnham, Att'y.

The surface of all that piece of land in the city of Wilkes-Barre, being parts of lots Nos. 198 and 199 of the survey of the estate of the late Luther Kidder, deceased, beginning at point 170 feet from the easterly line of an alley at an intersection with Bowman street, thence northeasterly along the line of said street 50 feet to a corner, thence at right angles to said Bowman street to the line of the right of way of the Lehigh and Susquehanna Railroad, thence southwardly along said line of right of way to land of Peter Straub, thence along said Straub's line to land of Bowman street, the place of beginning, being 50 feet front on Bowman street, and extending back to said line of right of way, with a two-story brick dwelling house, with a stone basement, and a two-story frame dwelling house, with a stone basement, and frame summer kitchen, and other outbuildings thereon.

2

Suit of Robt. Seamans & Co. v. Wyrewood Thomas. 65 February term, 1883. Debt, \$739.40. Fi. fa. 25 June term, 1883. Miller, Att'y.

1. All that lot of land in Parsons borough, beginning at a corner of lot No. 26, thence 100 feet to a corner on alley, thence 50 feet along said alley to a corner, thence 100 feet to a corner on Oliver street, thence 50 feet along Oliver street to place of beginning, containing 5,000 square feet of ground, more or less; excepting and reserving out of the same all the coal and other minerals in and under said lot; there is a two-story double frame house erected on said lot, about 20 by 32 feet.

2. All that piece of land in the Fourteenth ward, city of Wilkes-Barre, bounded on the southerly side by lands of John R. Hunter and Patrick Martin, on the westerly side by land of Harding, Mayer, and McLean, on the northerly side by land of the estate of William Smith, and on the easterly side by Spruce street, being 50 feet in front on Spruce street by 200 feet in depth, with a two-story frame house, with back kitchen attached, outhouses, and fruit trees thereon.

3

Suit of Geo. H. Parrish and Chas. M. Conyngham v. John S. Jones. 226 May term, 1883. Debt, \$205.36. Vend. ex. 33 June term, 1883. McLean, Gibbons, Att'ys.

All that lot of land in Wilkes-Barre township, being lot No. 12, in block D, on plot in hands of George H. Parrish et al., said lot being 50 feet in front on Spruce street, and 200 feet in depth; coal and other minerals reserved.

4

Suit of Geo. H. Parrish and Chas. M. Conyngham v. John S. Jones. 227 May term, 1883. Debt, \$205.36. Vend. ex. 34 June term, 1883. McLean, Gibbons, Att'ys.

All that lot of land in Wilkes-Barre township, being lot No. 11, in block D, on plot in hands of George H. Parrish et al., said lot being 50 feet in front on Spruce street, and 200 feet in depth; improved, with 2-story frame dwelling house, 20 feet long by 12 feet wide, and other outbuildings thereon; coal and minerals reserved.

5

Suit of William Connell, Assignee, v. Jackson Lunn. 200 November term, 1880. Debt, \$531.09. Fi. fa. 46 October term, 1883. McLean, Att'y.

All that piece of land in the city of Wilkes-Barre, beginning at a point on the west side of Grove street, 148 feet 3 inches from Moyallen street, thence south-

westerly along said Grove street 36 feet 9 inches to a corner, thence northwesterly at right angles to said Grove street 120 feet to a corner, thence northeasterly on a line parallel with said Grove street 36 feet 9 inches to a corner, thence southeasterly on a line parallel with Moyallen street 120 feet to the place of beginning; improvements, one two-story frame dwelling house, outhouses, and fruit trees.

Suit of Mary Elliott v. George Blackburn.

McLean, Att'y.

1. The surface of all that piece of land in the borough of Plymouth, beginning at a corner on Church street, thence by land sold to William O'Hara 148 feet to a corner, thence along a creek 40 feet to a corner, thence along a lot sold to A. Clewell 148 feet to a corner, thence along Church street 40 feet to the place of beginning, containing 5,600 square feet of surface; improvements, a double frame house, outbuildings, fruit trees, etc.

2. All the surface of that lot of land in the borough of Plymouth, beginning at a corner on the northwesterly side of Main street 81 feet in a southwesterly direction from land of Albert Gabriel, thence along Main street 100 feet to a corner, thence 124 feet to a corner, thence 124 feet to Main street, the place of beginning, containing 12,400 square feet of land; improvements, one two-story frame dwelling house, outbuildings, and fruit trees.

Suit of W. P. Kirkendall, Assignee, v. George Fritz.

77 September term, 1880. Debt, \$876.25. Fi. fa. 7 October term, 1883. Ryman, Att'y.

All that lot of land in the city of Wilkes-Barre, beginning at a corner in line of Lincoln street, between lots Nos. 6 and 7, thence by line of Lincoln street 45 feet to a corner, thence by a tier of lots running from Northampton street 117 feet to a corner at the back end of lot No. 5, thence 45 feet to a corner between lots Nos. 6 and 7, thence 117 feet to the place of beginning, containing 5,265 feet, more or less; all improved, with a two-story wooden dwelling house, shop, outhouses, farm, and fruit trees thereon.

Suit of Abijah Davenport et al. v. Emily Keizer.

Sturges, Att'y.

The surface of that lot of land in the borough of Ashley, beginning at a point on the southeast side of Hartford street about 50 feet from the center of an alley on line of lands sold to Arnold Bertels, thence southwesterly parallel with said alley 94 feet to a corner, thence southeasterly parallel with said Hartford street about 70 feet to a corner, thence northeasterly at right angles to last mentioned corner about 94 feet to Hartford street aforesaid, thence northwesterly along Hartford street about 70 feet to the place of beginning; improved, with one 1½-story frame dwelling house, outbuildings, fruit trees, and well of water thereon.

ESTATE OF WILLIAM BRACE, LATE OF Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

FISHER GAY,
MYRTLE W. BRACE,
DICKSON & ATHERTON, Executors.
Attorneys. 23-28

ESTATE OF SALLY ABBOTT, LATE OF Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CHARLES A. MINER,
L. D. SHOEMAKER, Executors.
Attorney. 26-31

ESTATE OF MORRIS HUGHES, LATE OF
of West Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**ELIZABETH HUGHES,
WILLIAM J. HUGHES,**
Executors.

29-34

ESTATE OF JOHN T. WILLIAMS, Sr., LATE
of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**JOHN T. WILLIAMS,
BENNETT & NICHOLS,**
Attorneys. Executor.

29-34

ESTATE OF PATRICK BURKE, LATE OF
Jenkins township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**JAMES O'DONNELL,
MICHAEL T. HOBAN,**
Executors.
J. T. LENAHAN,
Attorney.

29-34

ESTATE OF CELIA A. DAILY, LATE OF
Clinton county, State of Indiana, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM E. KYTTLE,
Administrator.
M. CANNON,
Attorney.

29-34

ESTATE OF ADAM STUPPI, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**ELIZABETH STUPPI,
JACOB BECKER, 2D,**
Executors.

29-34

ESTATE OF R. C. SUTLIFF, LATE OF THE
township of Huntington, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. R. PENNINGTON,
Administrator.
I. P. HAND,
Attorney.

29-34

ESTATE OF CHRISTIAN RUTH, LATE OF
Butler township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**ARIO RUTH,
SAMUEL BENNER,**
Administrators.

29-34

ESTATE OF DAVID KLINGER, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

N. D. SMITH,
Administrator.

26-31

ESTATE OF GEORGE H. HOCH, LATE OF
Dorranoe township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY HOCH,
Administratrix.
T. R. MARTIN,
Attorney.

26-31

ESTATE OF JESSE W. BAIRD, LATE OF
Kingston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HART PHILLIPS,
Administrator.
GEO. K. POWELL,
Attorney.

23-28

ESTATE OF THOMAS McKIERNAN, LATE
of Hazle township, deceased

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY McKIERNAN,
Administratrix.

22-27

ESTATE OF ROBERT THOMPSON, LATE
of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**MUNGO THOMPSON,
JANET THOMPSON,**
Administrators.

22-27

ESTATE OF WARREN BENSCHOTER, LATE
of Union township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**G. L. BENSCHOTER,
CLARINDA BENSCHOTER,**
Executors.

22-27

LUZERNE COUNTY, ss :

In the Court of Common Pleas of said county. No. 156, May term, 1883. Libel in divorce a vinculo matrimonii. J. C. Coon v. Emma E. Coon. The alias subpoena in the above case having been returned non est inventus, you, the said Emma E. Coon, are hereby notified to appear at said court, on Monday, the 1st day of October, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff.
JAMES MAHON,
Solicitor.

26-29

IN RE SATISFACTION OF MORTGAGE.

Henry M. Hoyt to John Grandin, Mortgage Book 23, page 252. No. 20, October term, 1883. In the Court of Common Pleas of Luzerne county. To John Grandin, his legal representative or representatives—Take notice that the petition of Herz Lowenstein has been filed in the Court of Common Pleas of Luzerne county, in which petition the said Lowenstein makes application to the court to have satisfied of record the mortgage recorded in the Recorder's office of Luzerne county, in Mortgage Book 23, page 252, Henry M. Hoyt being the mortgagor and John Grandin the mortgagee. You are therefore required to appear and answer the said petition on the first day of next term, to wit, on Monday, the 1st day of October, 1883, at 10 o'clock A. M., at which time the court will appoint a Commissioner to take testimony in the matter.

WILLIAM O'MALLEY,

27-30

Sheriff.

ORPHANS' COURT SALE.

Estate of W. W. Ketcham, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Saturday, August 4, 1883, at 11 o'clock A. M., the following described real estate:

1. All those lots of ground in the township of Wilkes-Barre, being lots Nos. 48, 50, 62, 64, 78, 79, 100, 101, 106, 107, 114, 115, 120, 121, 126, 127, 132, 133, 138, 139, 142, 151, 152, 153, 154, 163, 164, 165, 166, 172, 174, 185, 187, 247, 252, 253, 258, 259, 264, and 265, in a plan of lots laid out by Brown et al.
2. Also lots Nos. 39, 171, 173, 182, 184, 194, 227, 229, 230, 240, 241, and 242 in said plan, situate in the city of Wilkes-Barre.
3. Also an undivided interest in lots Nos. 70 and 111 in said plan, situate in said township.
4. Also an undivided interest in lots Nos. 49, 51, 53, and 55 in said plan, situate in said city.
5. Also an undivided interest in a lot of ground in said city, bounded on the easterly side by land of William McLaughlin, on the northerly side by the Wilkes-Barre Coal Company railroad and a creek, and on the southerly side by Miller street, being a triangular piece of land, the quantity unknown.

TERMS OF SALE—Cash down on day of sale.

J. G. MILLER, Attorney. JOHN M. KENNEDY, Administrator. 27-29

ORPHANS' COURT SALE.

Estate of Philip Goss, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in Huntington township, on Saturday, August 25, 1883, at 10 o'clock A. M., all that piece of land in Huntington township, bounded on the north by land of John Metcalf, on the east by lands of Albert Wilkinson, on the south and west by lands of Delilah Wilkinson, containing 12 acres of land; all improved, with a frame house and frame barn thereon.

TERMS OF SALE—10 per cent of the purchase money on striking down of the property; the one-fourth, less the 10 per cent, at confirmation absolute; one-fourth in six months from confirmation nisi, and the balance in one year after confirmation nisi, with interest on each payment from that date; the installments to be secured by bond and mortgage on the premises.

J. G. MILLER, Attorney. WILLIAM KOONS, Administrator. 29-31

MCLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
MARKET STREET, WILKES-BARRE, PA.

CALVIN WADHAMS,
ATTORNEY AT LAW AND NOTARY PUBLIC,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

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FRIDAY, JULY 27, 1883.

No. 30.

Court of Common Pleas of Luzerne County.

ZEIGLER *v.* EVERHART.

Watching timber at a salary of fifty dollars per annum is not the kind of "manual labor," nor the salary such "wages of labor," as are contemplated by the act of Assembly requiring an affidavit and bail absolute for appeals.

Rule to strike off appeal.

The opinion of the court was delivered May 15, 1882, by

WOODWARD, J.—It has not been made clear to us that the claim of the plaintiff in this case was for what is known as the "wages of labor." The first section of the act of April 9, 1872, (Purd. 1464, *pl.* 1) describes the class of persons whose earnings are to be protected. These are miners, mechanics, laborers, clerks, etc. The act of April 20, 1876, in its first section, provides the method of appeal from the judgments of justices of the peace for the wages of "manual labor." The transcript in this case shows that the claim was for work and labor done, and the depositions explain that the service consisted in watching timber for six years at fifty dollars per year. We do not think that such a claim comes within the spirit and meaning of the act of Assembly requiring an affidavit and bail absolute.

The rule to strike off the appeal is discharged.

E. Robinson, Esq., for plaintiff.

Hon. Steuben Jenkins, for defendant.

Court of Quarter Sessions of Lebanon County.

COMMONWEALTH *v.* TROUT.

A resident of the Commonwealth in confinement for costs alone, under sentence of a criminal court, is entitled to be set at liberty forthwith upon making application for the benefit of the insolvent law, and presenting a bond in accordance therewith.

Motion for leave to issue *capias*.

The opinion of the court was delivered February, 1883, by

McPHERSON, J.—At January sessions, 1883, John Trout was acquitted of the charge of selling liquor without a license, but directed by the jury to pay one-half the costs. On January 9th he was sentenced, and on January 15th, having made application for the benefit of the insolvent laws, and presented a bond as thereby required, he was discharged from custody. The district attorney now asks for a *capias*, alleging that the order for his discharge was illegal, and that he must be considered as an escaped prisoner. The argument is, that a sentence for costs requires either payment, imprisonment for thirty days under section 48 of the insolvent law of 1836, after which the prisoner is discharged without further proceedings of any kind, or imprisonment for three months if a discharge is sought as an insolvent. Confinement for three months is made necessary, it is said, by section 3 of the act of 1836, which provides that "no debtor shall be entitled to relief under this act, unless he shall have resided within this Commonwealth for six months immediately preceding his application to the court, or shall have been confined in jail for three months immediately preceding such application." A careful examination of the various statutes and decisions on this subject has led us to a different conclusion, the reason for which we will state as briefly as possible.

At common law, as is well known, no provision was made for costs in any form of proceeding, civil or criminal. In *Irwin v. Commissioners* (1 S. & R. 508) Judge Yeates declares that before the passage of the act of December 8, 1804, empowering grand

and petit jurors to dispose of the costs in certain cases, "the defendant, whether convicted or acquitted of the offence charged, was obliged to pay the costs, and left to his remedy against the prosecutor by action of malicious prosecution. If he was convicted, the payment of costs formed part of the sentence; if acquitted, he was discharged on payment of fees." There had been earlier legislation, viz., the acts of September 23, 1791, and of March 20, 1797 (Read's Dig. 287, *pl.* 25, and 293, *pl.* 51), but the act of 1804 (4 Sm. Laws, 204) first gave juries power over the subject. See also *Commonwealth v. Tilghman*, 4 S. & R. 127; *Strein v. Zeigler*, 1 W. & S. 260; *Commonwealth v. Johnson*, 5 S. & R. 199; *McKinney's Am. Mag.* 316, 319, *et seq.* The criminal procedure act of 1860 reenacted the former statutes, and the act of 1804, with its supplements, is substantially the law to-day. Where the defendant was confined for costs, under either the common law or this legislation, he could originally only be released upon payment. The insolvent law of April 4, 1798, (Read's Dig. 176) did not touch the subject at all, and it was not until 1814, by section 17 of the act of March 26, that persons "in confinement . . . for the payment of the costs of prosecution" became entitled to relief under the acts relating to insolvent debtors. A similar provision appears in section 47 of the act of June 16, 1836 (P. L. 729). At what time, then, is an insolvent debtor entitled to his discharge from confinement? The act of 1798 provided, in section 1, that "any debtor having been an inhabitant of this State for two years next before his application" might apply to the court in term time; and in section 2, that he should be discharged from imprisonment only after assigning all his property. This compelled him to remain in jail while notice of his application was being given or published, and until after final hearing. If, however, he was arrested in vacation, he might, by section 14, be discharged "forthwith" upon application to a judge, and giving bond to the plaintiff to appear at the next term and comply with the requirements of the statute. This act expired in 1801. The first section of the act of March 26, 1814, made six months residence in the State sufficient, and the second section provided for the debtor's discharge from confinement only after final hearing. No provision was made for arrests in

vacation, and neither statute extended to non-residents. To remedy this latter defect, the act of March 13, 1815 (P. L. 156), was passed, allowing "all and every person or persons" to apply, but provided that those who had not been residents of the State for six months must first suffer confinement for three months. Liberty, pending the proceedings, was given in 1820 to certain debtors, but persons confined for costs could not be released until final hearing. *Henry v. Commonwealth*, 3 Watts, 384. The revised act of 1836, in section 3, provides that the debtor must have "resided within the Commonwealth for six months immediately preceding his application to the court, *or* shall have been confined in jail for three months immediately preceding such application," plainly intending to consolidate the provisions of the acts of 1814 and 1815. The language of section 1, also referring to "insolvent debtors residing *or being* within this Commonwealth," shows that the act was meant for residents and non-residents alike. As to non-residents, confinement for three months is necessary before an application can be made; but in the case of residents it seems clear, from sections 4, 5, and 6, that the debtor is entitled to discharge "forthwith" upon giving bond to appear at the next term and present his petition for the benefit of the law. It is not even necessary to apply to the court or a judge; the prothonotary, under the act of March 30, 1833 (P. L. 107), may approve the security and make the order to discharge. This is the case of a debtor, and section 47 seems to us quite as explicit with regard to "any person confined for non-payment of . . . the costs of prosecution." The language is that the "Court of Common Pleas . . . shall have power to discharge such person from such confinement on his making application and conforming to the provisions hereinbefore directed in the case of insolvent debtors." This is very different from section 16 of the act of 1814, which only gave to such persons the "benefit of this act," under which, as we have seen, even a debtor could not be released until after final hearing, and shows plainly, as we think, that the intention of the Legislature was to remedy the inequality pointed out in *Henry v. Comlth.* (*supra*), decided in 1834, and put persons imprisoned only for costs on precisely the same footing as debtors. But, however this may be, section 6 of the

act of January 24, 1849 (P. L. 677), seems to remove all doubt by providing that "any applicant for the benefit of the insolvent laws, who is, or may hereafter be, in confinement under sentence of any criminal court, and who shall be entitled to be released from such confinement on compliance with the provisions of existing acts of Assembly, shall be released on giving bond as in civil cases."

The Commonwealth's whole case rests, therefore, on the construction of section 3, for which it contends; and this construction, besides being at variance with the apparent meaning of the words used, and with the history of former legislation on the subject, further loses probability when section 48 is considered. Under that section, which is taken from section 18 of the act of 1814, as construed in *Commonwealth v. Long* (5 Binn. 489), imprisonment for thirty days entitles a person in confinement for costs to his discharge without proceedings of any kind. Is it conceivable, with such a provision in the law, that the Legislature meant, in 1836, also to say that such prisoners might apply for discharge under the formalities of the insolvent law if they would stay in jail two months after they were entitled to be free, and particularly when the consequences of discharge are the same in either case, viz., freedom from imprisonment for the same cause, but not freedom from the debt or charge?

We think the provisions of the law, so far as fines and costs are concerned, may be summarized as follows:

1. A person sentenced to pay a fine not exceeding \$15, or to pay such a fine and costs, or to pay costs alone, is entitled to release after a confinement of thirty days.

2. A person sentenced to pay a fine more than \$15 with or without costs, can only be released under the insolvent law, and cannot make application until he has been in confinement for three months.

3. One who has been a resident of the State for six months immediately preceding his application, and who has been sentenced to pay costs alone, may be discharged forthwith upon making application under the law.

Trout comes within this latter class, and was, therefore, properly discharged.

The case of *Ex parte* Woods (1 Pitts. 17), in which a different conclusion is reached, does not bind us, and the reasoning is not convincing. The case of *Ex parte* Feehan (Brightly, 462) is not in point, for the prisoner there had been convicted and sentenced to pay a *fine*, and he was clearly within the proviso to section 47, which declares that "where such person shall have been sentenced to the payment of a fine, . . . he shall not be entitled to make such application until he shall have been in actual confinement, in pursuance of such sentence, for a period not less than three months." These two cases are briefly mentioned in *Schuylkill County v. Reifsnyder* (10 Wr. 450), but the question here considered was not before the court, and we have not been able to find any authority on the subject.

We have gone further than the precise question involved, because there seems to be a diversity of practice under the act, and we hope the county of Lebanon, which has a considerable interest in the matter, will take measures to bring it in some way before the Supreme Court, and have it definitely settled.

The *capias* is refused.

Oper and Terminer of Luzerne County.

COMMONWEALTH v. GOTOFSKI.

Murder under the Pennsylvania statute, and the degrees thereof, considered and illustrated.

Indictment, murder.

The opinion of the court was delivered March 4, 1880, by

WOODWARD, J.—The prisoner was charged with the homicide, on the 20th day of December, 1879, of John Blumm, in the borough of Nanticoke. On the — day of January, 1880, upon being arraigned for trial, he entered a plea of guilty to the indictment. The indictment contains two counts, the first for murder and the second for manslaughter, and the plea is to the whole offence.

The prisoner, therefore, stands before us, in the language of the statute, "convicted by confession." The solemn and responsible duty is imposed upon the court to "determine the degree of the crime, and to give sentence accordingly." On the 16th day of January, 1880, the testimony of witnesses was taken on behalf both of the Commonwealth and the defendant, and from this testimony alone we are to decide whether the crime be that of murder in the first or second degree, according to the Pennsylvania statute.

The facts of the case may be briefly stated. On the evening of the 20th of December, 1879, a crowd of men, numbering from thirty to forty, had gathered in Wernet's saloon, in the borough of Nanticoke. Between seven and eight o'clock, the deceased was standing near the end of the bar, engaged in drinking beer with some of his friends. The defendant was also in the room, and more or less under the influence of liquor. While pushing about in the crowd in a rude and disorderly manner, he forced a portion of it against the deceased, who grew angry, calling upon him to keep off. The defendant, a second time, pushed somebody against him. The deceased thereupon stepped out into the room, and struck the defendant a blow on the mouth with sufficient violence to draw blood. The parties were prevented from further violence, for which they seemed ready, by the interference of the by-standers. The prisoner called upon the parties present to bear witness that he had been struck, and then left the room, declaring his intention to sue or prosecute the deceased. After an absence of from ten to twenty minutes, he returned to the bar room, went up to the deceased, and asked why he struck him. Some reply was made, and immediately the prisoner struck the deceased on the right temple with a small screw-driver, forcing the end of it so far into the head as to inflict a wound of an inch in depth, in which the iron part of the instrument remained, detached from the handle, which fell to the floor. It is shown by the medical testimony, and not denied by the defendant, that the wound thus inflicted resulted in heart clot, and death, some six days later.

The act of March 31, 1860, conforming to that of 1794, divided the offence of murder into two degrees. "All murder which

shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree, and all other kinds of murder shall be deemed murder of the second degree."

We may, at the outset, eliminate from the present case several questions which often arise in the trial of indictments for murder. This will serve to simplify our inquiry by confining its limits. In the first place, the fact of the homicide is not denied; secondly, it seems clear to us that the killing was both felonious and malicious, in that the mortal blow was given with an intent to do, at least, great bodily harm; thirdly, it was not committed by poison, or by lying in wait, or in the perpetration, or attempt to perpetrate, any one of the felonies of arson, rape, robbery, or burglary. Was the killing, then, wilful, deliberate, and premeditated? Or, in other words, the vital question is, did the prisoner give the mortal blow *with an intent to take life*? If, beyond a reasonable doubt, this intent is apparent from the evidence, then the crime is murder of the first degree. If, on the contrary, it is not clearly apparent that the intent to take life existed, or if, after the closest analysis of the evidence, the mind of a reasonable man remains in doubt, there should be no conviction of a higher offence than murder in the second degree.

Having thus endeavored to simplify the case in hand by concentrating our attention upon the exact issue involved, we are next to bear in mind that the presumptions of the law are with the prisoner, and not against him. A man charged with the crime of murder is presumed to be innocent of that crime. When this presumption is overcome, and it is made clear from the evidence that murder has been committed by the prisoner, the presumption remains that the crime is murder of the second degree, and not of the first. The effect of these presumptions is to require, at the hands of the Commonwealth, not only satisfactory proof of a felonious and malicious homicide by the defendant, but also of a wilful, deliberate, and premeditated intent on his part to take human life. This intent may, however, be established in more ways than one. Men bent upon crime seldom declare their

purpose. Their actions, and the circumstances under which they act, often speak for them. The Commonwealth, therefore, may invoke the aid of acts and circumstances, as well as of distinct declarations. The former relations of the parties; the existence of latent anger; the character of the weapon; the location of the wound; the conduct of the accused party before and after the homicide—these, and many other such things as these, may furnish the methods of overcoming the presumptions which the law raises in favor of innocence, or in mitigation of guilt.

In the present case, after a careful and conscientious review of all the evidence, the question of the degree of the murder seems to us to turn entirely on the intent with which the blow was given. That it was a brutal and cowardly blow cannot be doubted. But was it inflicted with a defined and specific intent to take life? Did the prisoner, after receiving a blow on the mouth from the deceased, leave the saloon with the deliberate purpose to procure a weapon likely to take life, and, after obtaining it, return to the saloon, renew the quarrel, and inflict the wound, with the wilful and premeditated design to kill the man who had insulted and injured him? The weapon was a screw-driver, small in size, and said to be of a kind and pattern adapted to the purpose of adjusting the apparatus of sewing machines. Where or when the prisoner possessed himself of it is not shown. That he procured it after the quarrel at the saloon, and during the interval between the first and second meeting with the deceased, rests in theory merely, and not in proof. There had been no difficulty, not so far as is shown, any acquaintance or intimacy between the parties at any time. The only threat made by the defendant was, to the effect, that he would prosecute the deceased, and there is some evidence that he went from the saloon to the office of a magistrate for that purpose. The location of the wound inflicted upon the side of the head seems to point rather to accident, than to a well defined intent to take life by reaching a vital part. The character of the prisoner up to the time of the homicide is shown, by a number of witnesses, to have been that of an orderly, quiet, and inoffensive workingman.

The Commonwealth has been faithfully and ably represented by her counsel, and has undoubtedly presented the case as

strongly against the prisoner as was possible. We have carefully considered the testimony, and the views of the law presented by the learned counsel for the prisoner and for the Commonwealth. While we are clearly of the opinion that the crime is that of a felonious and malicious homicide, and therefore murder, we deem it our duty to hold that it is murder of the second degree only. We, therefore, determine the degree of the crime of which the prisoner is convicted by confession to be that of murder of the second degree.

A. Darte, Jr., and Geo. B. Kulp, Esqs., for Commonwealth.
Hon. Garrick M. Harding, for defendant.

CALVIN WADHAMS.*

Calvin Wadhams, a member of the bar of Luzerne county, died at his summer residence, Harvey's Lake, July 20, 1883. He had been feeling particularly well, and left his cottage about 8 A. M., in company with his wife and son, with the intention of driving to the Hollenback Cemetery, in this city, and placing flowers on the graves of his dead children, it being their custom to make such visit on each recurring birthday anniversary. Friday was the twenty-first birthday of his eldest child, Mary Catlin, the corner-stone of Memorial Church having been laid on the tenth anniversary, July 20, 1872, and it was on this day that he was suddenly called to yield up his life. After the carriage had proceeded two miles, Mr. Wadhams said he felt ill, and as he had omitted his usual morning walk, ascribed his indisposition to this cause. He desired to get out at the Ross farm house and exercise a few minutes, and made the attempt to do so, but found he could not walk. A return was made to the cottage and physicians summoned by wire. Mr. Wadhams was conveyed to his bed, and it was found that his left side was completely paralyzed. The right side, the seat of the original attack, was unimpaired.

* For biography, see 12 Luz. Leg. Reg. 63.

For an hour the sick man was able to converse, and fully realized what had occurred, but he soon lost the power of speech, and remained in a semi-conscious condition until his death, which occurred at 9.30 in the evening.

Memorial Church was suitably draped in black last Sabbath, and at the morning service Rev. W. H. Swift preached a sermon suitable to the occasion, his text being, "Therefore let us not sleep as do others." I. Thess. v., 6. In the course of his remarks the pastor spoke as follows:

It becomes my duty this morning to announce the death of one whose name was first on our roll of membership—Calvin Wadhams. This church wears the symbol of death to-day out of regard for, and appreciation of, the crowning act of his life—the erection of this house of worship as a memorial to the three children whom God, in infinite wisdom, took from him. Long after his excellencies and faults shall have been forgotten, the name will be perpetuated here. When his peculiarities shall be no more remembered, the large-hearted, generous, Christian impulse that blossomed into this temple of God will be recognized, and will be cherished so long as stone and bronze endure. This church is his monument. There is something almost poetic, to my mind, in his being taken away when he was. Some of us, who have been connected with this church from the beginning, will recall our impatience with him because of the seeming needless delay in completing the building. He had his reasons for delay, and these reasons became apparent. The church was dedicated to the worship of God upon the birthday of one of his children; the pastor was ordained and installed upon the birthday of another, and the corner-stone laid upon the birthday of his oldest child. Last Friday was the anniversary of her birth, and on that day he died. He was on his way to the cemetery to lay upon the graves of his children his tribute of affection, when God called him home. He was a lonely man, as you all know. He never outgrew his sense of loss sustained in the death of his children, and, I doubt not, the warm welcome those sainted children gave him last Friday night made his heart bound with the throbs of immortal youth. May he rest in peace!

BAR MEETING.

The members of the Luzerne county bar convened on Monday, July 23, 1883, to take action regarding the death of the late Calvin Wadhams, Esq. The meeting organized by appointing

Hon. Charles E. Rice, Chairman, and Geo. B. Kulp, Secretary.
Judge Rice, on taking the chair, spoke as follows:

The bar has met to express their appreciation of the life and character of their departed brother, Calvin Wadhams. This was no idle or formal ceremony. In honoring and preserving his memory they did honor to the profession to which they belonged. He was a man of marked individuality, but that which in after years would give his individuality a glorious distinction was the fact that in all his purposes he was unselfish. This was shown not only in the crowning act of his life, but in numberless acts of kindness known only to the individual recipient. If on the morrow, when his lifeless body should be laid in the grave, each one to whom he, in his prosperity, gave help should bring but a single blossom, it would be covered with a multitude of flowers. So long as gratitude should remain a living virtue, the memory of Calvin Wadhams would rest secure.

S. J. Strauss, Esq., said:

As a citizen of Wilkes-Barre since my birth, as a member of the bar, as one who for the last few months have been a neighbor of Mr. Wadhams, I feel it a duty to speak a few words of eulogy on this occasion, and indeed it is a pleasure to feel that eulogy is well merited. It is only within the past six or eight years that I have had an opportunity to learn his character, and I am free to say that for a long time, in common with many others who knew him, I misunderstood the man. Judging him by what he did within the view of men during these years, judging him by the many facts of his history familiar to all of us, the conviction forces itself deeply upon me that his motives were good, his strivings were noble, his life was earnest, his heart was sincere. He may have been mistaken in his judgment, but his aspirations were right. In fact, perhaps this particular weakness, that he sometimes overestimated his own business capacity, was the one failing in his character. I know of no other. Born and bred in affluence; having for many years, in fact until after he had passed the prime of life, had all that heart could wish; his every want satisfied by simply stretching forth his hand, he was destined to see his fortune swept away and his brightest hopes blotted out. But he did not go down before the whirlwind. From that period we see him a toilsome, indefatigable worker. He labored then with the zeal of an earnest law student. What a lawyer who has been in practice only a few years has already come to regard as drudgery (for the searching of records and attending those details which must be done about this court house are drudgery), he did

hour after hour and day after day. He worked, too, under adverse circumstances and physical defects. And yet, with it all, he was constant and cheerful—the possessor of a disposition that could accommodate itself to misfortunes and trials without useless complaint or worry. He spent no time in relating his troubles, or wearying one with regrets, but seemed always to be happy in the present. This one trait in his character is well worthy of our emulation. It is not difficult to stand upright and labor hard when we have never known another condition. It is not difficult to stand upright and do our duty when all our plans meet with success, and results encourage us to continue our work. But it is difficult to stand upright and be men when, accustomed to ease, if not to luxury, after the prime of life, all our experiences are reversed, and we need to resume the anxious toil that we have long given over. And Calvin Wadhams did this difficult thing.

Hon. Harry Hakes said:

Death is sometimes (with doubtful propriety) called a thief, for first or last he calls for all, though he takes us one by one. And now again he seizes from us a brother; nor does it signify whether it is the wisest, the oldest, the greatest, or the youngest, and him of modest pretensions; it has to those who are for the time spared the same portentous significance, the same unwelcome solemnity. We have a custom on these occasions to review, and, in a general way, speak of, the professional character of a departed brother. This is about all we may properly do. The high prerogative to give judgment on the total character of our departed fellow-men is not delegated to us. In any given case the problem is too complicated for the human mind or understanding; the motives, the secret springs of action, are too mysterious for us to comprehend or justly estimate. God alone, the supreme author, the everlasting judge, can pronounce that judgment which is absolutely just and irrevocable. Yet, in a brotherly manner, in modesty and charity, we may compare ourselves, one with another, to the profit of the living, and without injustice to the dead. I was so little acquainted with Mr. Wadhams that I quite hesitate to attempt to mete to his memory its proper merit. In his profession, he was an industrious laborer, not despising its drudgery, honest and conscientious in his relations to his clients, his brethren of the bar, and the court. One visible, tangible, crowning act of his life was the erection, at his own cost, of Memorial Church. Prompted as it was by the tenderest feeling that can possess the heart, by the keenest affliction at the disposal of an overruling Providence, he has erected a monument that emphasizes its heavenly pointing, the way of life and light, to the

generations that now are and to those following, in the ages when we may fear that most of us will be forgotten.

Allan H. Dickson, Esq., said:

It is with great reluctance that I arise here to-day, for the story of Calvin Wadhams' life is too pathetic to be told in words. It touches chords that vibrate harmoniously only in solitude. A Quaker meeting, described by Charles Lamb as "a coming together for the purpose of more complete abstracted solitude," if it were possible here, would best impress the lesson of the mysteries of his life upon all who knew him, and could sympathize with his misfortunes. "For a man to refrain even from good words, and to hold his peace, it is commendable, but for a multitude, it is great mastery." But, in accordance with the prevalent custom among us, I will add my mite of testimony. I never knew "Cal," as he was familiarly called, except as a passing acquaintance, until within the last six months, when fate had already done her worst upon him. Since then I think I grew to understand the open secret of his life. The remark of Solon to Croesus, that "no man should be called happy until his death," applies strongly to Calvin Wadhams. For a brief, comparatively very brief, period he was apparently happy. He was at least excited and enthusiastic. He had health, wealth, and children. Within a few weeks of each the children were taken away. Soon his fortune disappeared, and paralysis came to fill the cup of bitterness to the full. I think he was largely misunderstood, even by many who had an opportunity of knowing him well. His extreme near-sightedness was a type of his failings. These were manifest external. His virtues were internal, innate and apparent on closer acquaintance. There is an undoubted tendency in mankind, in spite of reason and experience, to associate moral or mental deficiencies with a physical deformity. We look at one man and say, "What a fine, open, generous countenance. He could be trusted anywhere." Yet he may prove to be a most plausible villain—selfish, deceitful, and treacherous. We look at another, and—well, I guess it is part of our early education, our children's story books having shown us clearly, at an impressionable age, that all villains are murderous looking, and all good people are handsome, bright eyed, well formed, and with smiling faces. And so "Cal" had the misfortune among us unreasonable mortals to have a *prima facie* case always made out against him—a judgment entered, as it were, for want of appearance—and he was obliged, in each case, to take a rule to show cause why it should not be set aside, and put it down for consideration after a more intimate acquaintance with the facts had been obtained.

Undoubtedly he had some faults, some failings. But why should they be mentioned? Such as they were, they were temporary, evanescent, venial. The continuous, fixed bent and purpose of his life was unselfish, generous, and brave. No man in the long list of noble dead who, gone out from among us to the majority, ever more truly pitied the poor in his suffering, or the sorrowful in his desolation, than did Calvin Wadhams. It was a pity which touched the pocket nerve, and brought tears from deep springs of sympathy. Of his last years, it is almost impossible to speak. While in his prosperity he had many critics and some enemies, in his great adversity he was beloved of all. He was energetic to the last. Always willing to work, he almost passionately desired to make a livelihood. He thought little of himself. True, he kept the memory of his departed children green through all the changing seasons of the year. He lived to see the day when, in his poverty, his sickness, and his misfortunes, he was glad the three little ones were gone, and very glad he was soon going to meet them. I think I never knew a man to "suffer the stings and arrows of outrageous fortune" with a more noble patience and courage. Death had no sorrow to him equivalent to life. And now he is at rest. He has gone to a place where, although his failings are known, his virtues will be rewarded. Long after his body shall have mouldered into dust, the story of his sorrows will be told, and the church upon the hill will point with its spire beyond the stars a thing of beauty and a joy forever to generations yet unborn.

Messrs. E. H. Chase, R. C. Shoemaker, Allan H. Dickson, N. Taylor, and William S. McLean were appointed a committee on resolutions. They reported as follows:

The bar of Luzerne county condole with the family and kindred of Calvin Wadhams upon his sudden demise, and desire to express their appreciation of the loss which his unexpected death has brought to them. Calvin Wadhams was born in Plymouth, Luzerne county, on the 14th of December, 1833. His ancestors were among the earlier settlers of the county, and have been continuously numbered in the list of its most active and successful citizens. Young Wadhams, inheriting the studious predilections which marked the career of his great-grandfather, prepared for college at Wyoming Seminary. He graduated from Princeton College in the class of 1854, the one hundredth anniversary of his great-grandfather's graduation. He entered the law office of Hon. L. D. Shoemaker, and was admitted to the bar on the 6th of April, 1857. Early called to manage his portion of the large

estate at the death of his father, he was withdrawn from active general practice in the courts, but he retained his acquaintance with the details of his profession, and upon return to its practice he displayed the impulsive activity which characterized the transactions of his enormous private business. Although disaster rapidly followed misfortune in the last decade of his life, he refused to succumb in spirit, and to the very last preserved the brave amiability which had always been a pronounced trait of his character. He signalized this unselfish resistance of spirit by the magnificent Memorial Church monument to the memory of his lost children, which, in conception, design, and execution, will remain the perpetual reminder and memento of our late companion and associate.

Resolved, That in token of their respect and esteem the members of the bar will attend his funeral in a body, with the usual badge of mourning.

Resolved, That the proceedings of the bar meeting be entered upon the court records, and a copy be delivered to the family of the deceased.

Alexander Farnham, Esq., said:

In moving the adoption of the resolutions that have just been read, I desire, at the same time, to give utterance to a few of the thoughts that are stirred up within me by the death of Calvin Wadhams. It is well for us to bear in mind the real object of a meeting like this. There is no profession, perhaps, wherein the sympathies growing out of a fellow-calling are so marked and decided as in ours. Our own promptings, then, eagerly responding to the demand of custom, cause us all to meet together upon the death of a brother lawyer, that we may pause for awhile, and take note of the fact that all our contentions, our strifes, our rivalries and labors, must end at last where the hopes, ambitions, and troubles of our departed friend have ended—in the grave. Who can doubt that the contemplation of this truth must tend to kindle a kindlier feeling among us all? for, at the brink of the grave, no one is triumphant, no one is overcome. Victory or defeat in the world's strife are of no moment in the hour when the shadow of our common destiny closes over the vision of our mortal life. Who can doubt that these reflections come to mind as our brethren, one after another, pass away? Who can doubt that the lessons of forbearance and endurance, one with another, are thus irresistably, even though unconsciously, forced upon our minds, and that gentler intercourse between us is the result? In stopping to consider the death of Calvin Wadhams, a vivid contrast is brought to my mind. It is not alone because a name

of local celebrity, familiar as a household name to this community, is suddenly become but the memento of a past life. In the ending of his mortal career at this time I am forced back through the rush of years to its very beginning, when both of us, then but twelve years of age, attended the Wyoming Seminary, occupying the same room in the home of its principal, the late Dr. Nelson, to whose paternal care we had been committed. I presume I have known Calvin Wadhams longer than has any other member of this bar, and for much of the time since our acquaintance was first begun I have known him intimately. Whatever the rank or station one may occupy in life, and however marked or exalted the position he holds before his fellow-men, he is, after all, simply the embodiment of character—character formed through the years of his mortal existence, and in the light of which he becomes distinguished among the herd of his fellow-creatures. Character is a lens which serves to focus a man's qualities, revealing to others the whole extent of his nature; but in order to understand this nature rightly, one must go further into analysis, and take up the elements which form it, and give to it the mark of an individuality. If we thus inquire into the character, or rather the nature, of Mr. Wadhams, we will observe that he was an impulsive man, and yet it can truly be said that he was not blindly impulsive. Another distinguishing feature was his generosity, a trait which with him found practical expression to an extent hardly equaled in this community. He was a man who had a moral courage equal to the strength of his convictions, and whatever they might be, he was not the one to conceal them from before the world. Perhaps he allowed them to hold too strong a sway over his mind, causing him to appear sometimes not tolerant enough of the convictions of others when brought into antagonism with them. The honesty of his own belief, however, could never be doubted. One might find, perhaps, that he was at times too ready in the avowal of his opinions, and in such a manner as to invite controversy, but this is the utmost that can be urged against him, and at the same time it must be admitted that while he always bravely stood his ground, he never shrank from the judgment of a just criticism, however pronounced it might be. Impulsive as he seemed, he never acted on his impulses blindly. He often surprised the community with some bold scheme of enterprise which had its first origin in an impulse, but when the scheme was carried into effect it was always found that its details were carefully considered and worked out. His work was thorough and complete in whatever he undertook. This same thoroughness he carried into his professional labors. He had never sought distinction at the bar, and,

indeed, his weakness of eyesight precluded him from engaging advantageously in the trial of cases. In addition to this, his large private business interests, rapidly accumulating, absorbed all his time, so that, for several years, he was not numbered among our active lawyers. These very business interests, however, were of such a nature as to draw his attention to the law of real estate, and brought as I was into intimate relation with him for a portion of this time, I was often surprised at the ability, as well as clear knowledge, he displayed concerning the questions arising out of the law governing the descent and purchase of land. The investigation of titles became to him a work of love, and he developed, in fact, a remarkable gift in this direction, so that after he resumed his profession he was equipped, I believe, with a better knowledge of the properties of this immediate region, and of the intricacies of the titles to them, than any other member of this bar. I have said that Mr. Wadhams was a generous man, but he was more than this. He was a man of charity and good deeds to the unfortunate. He had great energy, and his efforts in the work of charity never lagged, notwithstanding the incessant demands of business upon his time. In the plenitude of his wealth and prosperity, he never gave deaf ear to the cry of suffering humanity, and when adversity overtook him, and he became poor, his first and last desire was still that he might have enough to help, in a humble way, others more unfortunate than himself. I will barely allude to his work in the Sunday school and the church, and to the strength of his religious faith in the midst of adversity and suffering. During the last decade misfortune came in quick succession over him. His three and only children were at one fell stroke swept from his sight by death. That terrible revulsion, that laid low so many a proud fortune, brought financial ruin to him; and finally disease, in its most dread and mysterious form—paralysis—struck him down in the midst of apparent health. How bravely he bore up under these accumulating woes, determined never to yield to the weight of his own despair. As we recall him, with his weakened side, in his daily walk among us during the past year, we realize now the earnestness of his struggle for life, and his greater struggle to look cheerfully into the face of the world, while his heart was sickened by sorrow. He is now at rest. May he rest in peace!

Gustav Hahn, Esq., in seconding the resolutions, said:

It is with more than ordinary sad and melancholy feelings that we appear here to-day to pay the last tribute of affection to our deceased brother. All these familiar and well known faces express the solemn fact that one place has become vacant, and

that one link of the chain which ties us together has been broken. Our ranks have been broken again, and we are here to-day to perform a time-honored custom of the members of our profession—to discuss the merits of character and the professional career of our deceased brother. Everything combines to render the occasion melancholly, even nature seems to be robbed in the garment of sorrow, and as an Oriental writer describes it, "the glittering stars above seem to weep over the sufferings and the sorrows of mortals." If we closely scrutinize the character of him who has been taken away from our midst, we find that every one has lost a friend. Calvin Wadhams from the time when he was a young man was modest, unassuming, and far from any selfish and impure motive. I have been acquainted with Calvin Wadhams for almost thirty years, and during all that time he was the same quiet, even-tempered man, and ever ready to serve his fellow-man. When he had been the possessor of a large fortune, he showed himself a liberal and public spirited man—liberal and willing to do as much good as the means which had been bestowed on him allowed. But these are qualities which others share with him. He was distinguished by virtues which were far brighter than most of the qualities that adorn men in every-day life. When at the height of fortune his children were taken away from him, he bowed his head in Christian submission, and in memory of these children he erected that edifice which to day points to heaven as a token that our hopes and our wishes should not be confined to this world, but that there is another home free from the cares and turmoils of this life. When his children had been taken from him, Calvin Wadhams devoted himself to the work of being instrumental to do good to the children of other parents, and to grant to them the benefit of Christian instruction. Another manly quality was manifest in the character of Calvin Wadhams. When earthly treasures had been swept away from him, who, at one time, had had at his command an abundance of means, and when he had been reduced to comparative poverty, instead of wasting his powers in grief, and giving up in despair, he entered the arena of his profession, and renewed the battle of life bravely, and faithfully he fought his way, and notwithstanding his bodily infirmities, he got into a fair way to obtain a remunerative office practice, when, suddenly, in the midst of his usefulness, he was stricken down with disease. When he reached out his hand to me, bidding farewell, and when he said, "Good-bye, I shall not see you for a long time," I did not expect that it would be the last time I should meet him here. But why grieve for him! He died nobly and honorably. We

can truly say of him, he died in the harness; and when all that is mortal of Calvin Wadhams shall have decayed, the memory of his name will be still green; it will be said of him, "The righteous passeth away, and his works do follow him."

The resolutions were then unanimously adopted.

THE FUNERAL.

The funeral took place Tuesday afternoon, July 24, 1883, at 3 o'clock, at the residence on Franklin street, and, despite the rain, was quite largely attended. The corpse, contained in a rich and beautiful cloth covered casket, lay in the parlor, where it was viewed by all so desiring. The funeral ceremony of the Presbyterian Church was read by Rev. F. B. Hodge, who also made a prayer and pronounced the benediction. The hymns, "Nearer My God to Thee," and "Jesus, Lover of My Soul," were sung by a trio, composed of Miss Lizzie James, G. S. Rippard, and William Frear. The coffin was borne from the house to the hearse by the following gentlemen acting as carriers: N. Taylor, Dr. O. F. Harvey, M. L. Driesbach, H. B. Payne, Isaac P. Hand, and G. Murray Reynolds. The lid of the coffin bore a silver plate with the name of the deceased and the dates of his birth and death engraved thereon, and was strewn with wreaths of flowers. The following were the pall-bearers: Alexander Farnham, Charles P. Hunt, Charles E. Rice, Andrew Hunlock, G. R. Bedford, and R. C. Shoemaker. At the grave the ceremony was concluded by Rev. Mr. Hodge. In addition to the flowers resting on the coffin, a floral offering representing a pillow, with the words "At Rest" arranged in its center, was placed on the grave.

Sitting Bull has fairly turned farmer. He was seen nugging a jug in a fence corner the other day, while his four wives were scratching up the ground for corn.

When two young lovers happen to sit down at the same moment on two tacks, the immediate result is a social hop.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, August 4th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1

Suit of Trustees of Estate of E. V. Kidder, now assigned to Thomas Farrell, v. Elizabeth Holdsworth; Executrix of John Holdsworth, deceased.

227 October term, 1883. Debt, \$250.00. Fi. fa. 50 October term, 1883. Farnham, Att'y.

The surface of all that piece of land in the city of Wilkes-Barre, being parts of lots Nos. 198 and 199 of the survey of the estate of the late Luther Kidder, deceased, beginning at point 170 feet from the easterly line of an alley at an intersection with Bowman street, thence northeasterly along the line of said street 50 feet to a corner, thence at right angles to said Bowman street to the line of the right of way of the Lehigh and Susquehanna Railroad, thence southwardly along said line of right of way to land of Peter Straub, thence along said Straub's line to line of Bowman street, the place of beginning, being 50 feet front on Bowman street, and extending back to said line of right of way, with a two-story brick dwelling house, with a stone basement, and a two-story frame dwelling house, with a stone basement, and frame summer kitchen, and other outbuildings thereon.

2

Suit of Robt. Seamans & Co. v. Wyrewood Thomas. 65 February term, 1883. Debt, \$739.40. Fi. fa. 25 June term, 1883. Miller, Att'y.

1. All that lot of land in Parsons borough, beginning at a corner of lot No. 26, thence 100 feet to a corner on alley, thence 50 feet along said alley to a corner, thence 100 feet to a corner on Oliver street, thence 50 feet along Oliver street to place of beginning, containing 5,000 square feet of ground, more or less; excepting and reserving out of the same all the coal and other minerals in and under said lot; there is a two-story double frame house erected on said lot, about 20 by 32 feet.

2. All that piece of land in the Fourteenth ward, city of Wilkes-Barre, bounded on the southerly side by lands of John R. Hunter and Patrick Martin, on the westerly side by land of Harding, Mayer, and McLean, on the northerly side by land of the estate of William Smith, and on the easterly side by Spruce street, being 50 feet in front on Spruce street by 200 feet in depth, with a two-story frame house, with back kitchen attached, outhouses, and fruit trees thereon.

3

Suit of Geo. H. Parrish and Chas. M. Conyngham v. John S. Jones.

226 May term, 1883. Debt, \$205.36. Vend. ex. 33 June term, 1883. McLean, Gibbons, Att'ys.

All that lot of land in Wilkes-Barre township, being lot No. 12, in block D, on plot in hands of George H. Parrish et al., said lot being 50 feet in front on Spruce street, and 200 feet in depth; coal and other minerals reserved.

4

Suit of Geo. H. Parrish and Chas. M. Conyngham v. John S. Jones.

227 May term, 1883. Debt, \$205.36. Vend. ex. 34 June term, 1883. McLean, Gibbons, Att'ys.

All that lot of land in Wilkes-Barre township, being lot No. 11, in block D, on plot in hands of George H. Parrish et al., said lot being 50 feet in front on Spruce street, and 200 feet in depth; improved, with 2-story frame dwelling house, 20 feet long by 12 feet wide, and other outbuildings thereon; coal and minerals reserved.

5

Suit of William Connell, Assignee, v. Jackson Lunn.

209 November term, 1880. Debt, \$531.09. Fi. fa. 46 October term, 1883. McLean, Att'y.

All that piece of land in the city of Wilkes-Barre, beginning at a point on the west side of Grove street, 148 feet 3 inches from Moyallen street, thence south-

westerly along said Grove street 36 feet 9 inches to a corner, thence northwesterly at right angles to said Grove street 120 feet to a corner, thence northeasterly on a line parallel with said Grove street 36 feet 9 inches to a corner, thence southeasterly on a line parallel with Moyallen street 120 feet to the place of beginning; improvements, one two-story frame dwelling house, outhouses, and fruit trees.

6

Suit of Mary Elliott v. George Blackburn.

McLean, Att'y.

1. The surface of all that piece of land in the borough of Plymouth, beginning at a corner on Church street, thence by land sold to William O'Hara 148 feet to a corner, thence along a creek 40 feet to a corner, thence along a lot sold to A. Clewell 148 feet to a corner, thence along Church street 40 feet to the place of beginning, containing 5,600 square feet of surface; improvements, a double frame house, outbuildings, fruit trees, etc.

2. All the surface of that lot of land in the borough of Plymouth, beginning at a corner on the northwesterly side of Main street 81 feet in a southwesterly direction from land of Albert Gabriel, thence along Main street 100 feet to a corner, thence 124 feet to a corner, thence 124 feet to Main street, the place of beginning, containing 12,400 square feet of land; improvements, one two-story frame dwelling house, outbuildings, and fruit trees.

7

Suit of W. P. Kirkendall, Assignee, v. George Fritz. 77 September term, 1880. Debt, \$876.25. Fi. fa. 7 October term, 1883. Ryman, Att'y.

All that lot of land in the city of Wilkes-Barre, beginning at a corner in line of Lincoln street, between lots Nos. 6 and 7, thence by line of Lincoln street 45 feet to a corner, thence by a tier of lots running from Northampton street 117 feet to a corner at the back end of lot No. 5, thence 45 feet to a corner between lots Nos. 6 and 7, thence 117 feet to the place of beginning, containing 5,265 feet, more or less; all improved, with a two-story wooden dwelling house, shop, outhouses, farm, and fruit trees thereon.

8

Suit of Abijah Davenport et al. v. Emily Keizer.

Sturges, Att'y.

The surface of that lot of land in the borough of Ashley, beginning at a point on the southeast side of Hartford street about 50 feet from the center of an alley on line of lands sold to Arnold Bertels, thence southwesterly parallel with said alley 94 feet to a corner, thence southeasterly parallel with said Hartford street about 70 feet to a corner, thence northeasterly at right angles to last mentioned corner about 94 feet to Hartford street aforesaid, thence northwesterly along Hartford street about 70 feet to the place of beginning; improved, with one 1½-story frame dwelling house, outbuildings, fruit trees, and well of water thereon. 28-30

ESTATE OF PATRICK BURKE, LATE OF Jenkins township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES O'DONNELL,
MICHAEL T. HOBAN,

J. T. LENAHAN,
Attorney. Executors. 29-34

ESTATE OF SALLY ABBOTT, LATE OF Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CHARLES A. MINER,
I. D. SHOEMAKER,

Attorney. Executor. 26-31

1

ESTATE OF MORRIS HUGHES, LATE OF
West Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**ELIZABETH HUGHES,
WILLIAM J. HUGHES,**
Executors.

29-34

ESTATE OF JOHN T. WILLIAMS, SR., LATE
of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**JOHN T. WILLIAMS,
BENNETT & NICHOLS,**
Attorneys. Executor.

29-34

ESTATE OF CELIA A. DAILY, LATE OF
Clinton county, State of Indiana, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM E. KYTTLE,
Administrator. Attorney.

29-34

ESTATE OF ADAM STUPPI, LATE OF THE
city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**ELIZABETH STUPPI,
JACOB BECKER, 2d,**
Executors.

29-34

ESTATE OF R. C. SUTLIFF, LATE OF THE
township of Huntington, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. R. PENNINGTON,
Administrator. Attorney.

29-34

ESTATE OF CHRISTIAN RUTH, LATE OF
Butler township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

**ARIO RUTH,
SAMUEL BENNER,**
Administrators.

29-34

ESTATE OF DAVID KLINGER, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

N. D. SMITH,
Administrator.

26-31

ESTATE OF GEORGE FLOTUNG, LATE OF
Hazleton, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM FLOTUNG,
Executor. Attorney.

30-35

ESTATE OF PETER HERRON, LATE OF
Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CON D. HERRON,
Administrator.

30-35

IN THE MATTER OF THE PARTITION OF
the real estate of Philip Houpt, late of the city of Wilkes-Barre, Luzerne county, Pennsylvania, dec'd

The heirs and devisees of said decedent will take notice that in pursuance of an order of the Orphans' Court of Luzerne county, a writ of partition has issued from said court to the Sheriff of said county, returnable on Monday, the 3d day of September, 1883, at 2 o'clock P. M., and that the inquest will meet for the purpose of making partition of the real estate of said decedent on Friday, the 24th day of August, 1883, at 10 o'clock A. M. of said day, upon the premises, at which time and place you can be present if you see proper. The premises in question are described as follows, to wit: Two adjoining lots of land situate on the southwest side of Ross street, between Franklin and Main streets, in the city of Wilkes-Barre, Luzerne county, Pennsylvania: the first thereof being 50 feet front on Ross street, and about 210 feet deep, bounded on the southeast side by an alley, and on the northwest side by the lot hereinafter described, and containing about 10,175 square feet of land, and having erected thereon a small brick dwelling and frame barn; and the second thereof being also 50 feet front on Ross street, and about 162 feet deep, bounded on the northwest side by land of M. B. Houpt, and on the southeast side by the lot hereinafter described, and containing about 8,100 square feet of land, and having erected thereon a two-story brick dwelling and small frame barn.

WILLIAM O'MALLEY,
BENNETT & NICHOLS, Sheriff.
Attorneys.

30-2

IN RE SATISFACTION OF MORTGAGE.

Henry M. Hoyt to John Grandin, Mortgage Book 23, page 252. No. 20, October term, 1883. In the Court of Common Pleas of Luzerne county. To John Grandin, his legal representative or representatives—Take notice that the petition of Herz Lowenstein has been filed in the Court of Common Pleas of Luzerne county, in which petition the said Lowenstein makes application to the court to have satisfied of record the mortgage recorded in the Recorder's office of Luzerne county, in Mortgage Book 23, page 252, Henry M. Hoyt being the mortgagor and John Grandin the mortgagee. You are therefore required to appear and answer the said petition on the first day of next term, to wit, on Monday, the 1st day of October, 1883, at 10 o'clock A. M., at which time the court will appoint a Commissioner to take testimony in the matter.

WILLIAM O'MALLEY,
Sheriff.

27-30

ORPHANS' COURT SALE.

Estate of Philip Goss, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, on the premises, in Huntington township, on Saturday, August 25, 1883, at 10 o'clock A. M., all that piece of land in Huntington township, bounded on the north by land of John Metcalf, on the east by lands of Albert Wilkinson, on the south and west by lands of Delilah Wilkinson, containing 12 acres of land; all improved, with a frame house and frame barn thereon

TERMS OF SALE—10 per cent of the purchase money on striking down of the property; the one-fourth, less the 10 per cent, at confirmation absolute; one-fourth in six months from confirmation nisi, and the balance in one year after confirmation nisi, with interest on each payment from that date; the installments to be secured by bond and mortgage on the premises.

WILLIAM KOONS,
J. G. MILLER, Administrator.
Attorney.

29-31

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, AUGUST 3, 1883.

No. 31.

BOOK NOTICE.

PRACTICE AND PROCESS IN THE ORPHANS' COURTS OF PENNSYLVANIA. By Hon. D. L. Rhone, Judge of the Orphans' Court of Luzerne county. In two volumes. Vol. I., Practice, pp. 792. Vol. II., Acts of Assembly and Forms, pp. 623. Philadelphia: Rees Welsh & Co., 1883.

Prior to the establishment of separate Orphans' Courts in Philadelphia, Allegheny, and Luzerne counties under the constitution of 1874, the Orphans' Court business was conducted by the Common Pleas Judges, of necessity, in a less formal way than its importance demanded. Since then the vast amount of business devolving upon the Orphans' Courts in many counties of the State, and the delicate judicial discretion required in some branches of jurisdiction, have been more fully recognized by the profession and the public. With the adoption of a formal, and, in some respects, complex system of practice in the separate courts, which is even yet in a formative state, the demand arose for a work expressly devoted to the subject, which demand has been independently responded to by two capable authors, Hon. Wm. M. Hall and Hon. D. L. Rhone. Judge Rhone's work is the first in the field. It is divided into two distinct parts.

Volume I. is rather a digest of the law of Pennsylvania relating to decedents' estates, than an essay upon the technical practice of the court. *All the cases upon the subject have been summarized with greater care than digests generally exhibit*, and are classified under appropriate headings in alphabetical order, supplemented by some practical and elementary *remarks* at the close of each section. It is very possible that those who looked for a comprehensive treatise may be disappointed. It is very probable, however, that the plan adopted will prove, upon the whole, more useful to the practitioner, as by it one is enabled to turn at once to a very accurate analysis of all the cases upon the point under consideration. The subject depends so much upon statutes and their judicial construction that any other plan would prove certainly difficult, and would, perhaps, involve the defect so common in text-books—vagueness.

Volume II. consists of all the acts of Assembly bearing upon the subject, arranged under heads corresponding with those of Volume I. The very valuable reports of the Commissioners who prepared the codes of 1832, '33, '34, and '53 are added in foot-notes to the acts to which they refer, forming an immediately accessible commentary upon them. *The collection of forms has been very carefully prepared, and will prove extremely valuable;* for, although they are especially calculated for the meridian of Wilkes-Barre, they may be easily adapted by the practitioner for Philadelphia or Allegheny county. In a number of instances notes are appended prepared by A. J. Fortin, Esq., whose long experience in the Orphans' Court of Philadelphia county has enabled him to make some valuable suggestions.

We regard as a defect in the second volume the separation of the acts of Assembly and the judicial decisions by which they have been construed. Where a doubtful clause of a statute has been interpreted by the courts, convenience suggests that the case should be noted in connection with it, as in Purdon's Digest. We think it would have been an improvement had the author grouped together all the statutes, decisions, and forms relating to the same subject, and added thereto his own suggestions. The indexes are well prepared.

Upon the whole, the book is a very valuable contribution to our legal literature, and it will doubtless find its way into every library of Pennsylvania law.

The foregoing review of Judge Rhone's books is from the *Weekly Notes of Cases* of July 19, 1883, and is a fair expression of the opinion of all reviewers of the work, except that none others have intimated that a rival book on the same subject is now desirable or at all necessary.

Court of Common Pleas of Luzerne County.

ALEXANDER & SON v. STUART.

Bankruptcy—Judgment—Lien of.

Notwithstanding a defendant's discharge in bankruptcy, the plaintiff has a right to issue execution in enforcement of the lien of a judgment on real estate.

Rule to show cause why the execution and levy shall not be set aside at the costs of the plaintiffs.

The opinion of the court was delivered December 6, 1880, by RICE, P. J.—This judgment was entered October 1, 1877. On

April 27, 1878, the defendant filed his application in bankruptcy, and on August 19, 1878, he was discharged. This *test. fi. fa.* issued from this court March 12, 1880, and was levied on personal property. Notwithstanding the defendant's discharge in bankruptcy, the plaintiffs had a right to issue execution in enforcement of the lien of the judgment on real estate (*Feehley v. Barr*, 16 Sm. 196; *Biddle's Appeal*, 18 Sm. 13; *Keller v. Denmead*, 18 Sm. 449; *Reese v. Johnson*, 26 Sm. 313; *Sleek and Blackman v. Turner's Assignee*, 26 Sm. 142); but a levy on personal property was an attempt to enforce a personal liability, from which the defendant was released by his discharge.

The levy is set aside and the writ is stayed as to personal property at the costs of the plaintiffs. This order not to prevent the plaintiffs from proceeding by execution in enforcement of any alleged lien of the judgment on real estate.

E. Robinson, Esq., for plaintiffs.

A. Farnham, Esq., for defendant.

Court of Common Pleas of Mercer County.

COMMONWEALTH v. KING.

1. The record of a summary conviction will be reversed if it does not set forth a well defined act forbidden by law.
2. In summary convictions a justice must set forth the charge specifically; he must, under the act of 1876 (P. L. 154), reduce the evidence of witnesses to writing as it is delivered by them before him.
3. The second section of the vagrant act of 1836 is not repealed by the tramp law of 1876.
4. Mere idleness and disorderly conduct does not make one a vagrant. To sustain a conviction under these statutes, the record and evidence must bring the case within the very terms of the law.

The opinion of the court was delivered June 30, 1883, by

MCDERMITT, P. J.—On the 29th of June, 1883, the relator was sentenced by Benj. A. Ride, a justice of the peace, on a summary conviction, to pay a fine of \$5, the costs of prosecution, and to undergo an imprisonment in the county jail for the period of thirty days; and to test the legality of this sentence, he has sued

out this writ. The following is a copy of the record of his conviction:

"Commonwealth v. Daniel J. King. Mercer, June 28, 1883. Defendant arrested by Constable Murphy, and charged by Constable Murphy with being found drunk and disorderly, a suspicious character, and a vagrant, in the borough of Mercer, Pa., on June 28, 1883, contrary to act of Assembly made and passed. Defendant committed to jail till June 29, 1883, for hearing.

"And now, to wit, June 29, 1883, defendant brought into office by Constable Murphy, who is sworn, and, after hearing proofs and allegations, the defendant is sentenced to pay a fine of five dollars and costs and thirty days in jail. Had no money to pay costs."

On the hearing it was contended by the relator's counsel that the record, as a record of a summary conviction, fails to set forth facts warranting a conviction and said sentence. The Commonwealth's counsel concedes "the sentence, so far as it was imposed on the relator for being drunk and a suspicious character, cannot be sustained by the record."

In *Commonwealth v. Nesbit* (10 Casey, 398) the court, *inter alia*, says: "The technical formalities of an old summary conviction are much beyond the ordinary skill of justices of the peace in this country, and for this and other reasons some parts of them have been much condemned in modern legislation. But it is still essential that a summary conviction shall contain a finding that a special act has been performed by the defendant, and that it shall describe or define it in such a way as to individuate it, and show that it falls within an unlawful class of acts. Without this a judgment that the law has been violated stands for nothing."

Now this is not merely a formal or technical rule of summary convictions, but a most essential and substantial one. No citizen could have any protection against the ignorance or wickedness of inferior magistrates if these were authorized to convict citizens of offences, and yet allowed to so record their proceedings that the very act done cannot be ascertained, and thus their judgment cannot be tested by their judicial superiors. The most common purpose for which inferior tribunals are reviewed by their supe-

riors is in order to correct their erroneous applications of law to ascertained facts. But when the record contains no definite facts, but only a legal conclusion from unrecorded facts, the Supreme Court cannot, without compelling a return of the evidence, or taking testimony of what it was, decide whether the legal conclusion, that is, the conviction of the offence, is right or wrong. In such a case, for the safety of the citizen, they usually reverse the conviction, simply because no act appears upon it that justifies the judgment. And this rule applies not only to summary convictions, but to indictments and trials by jury in the higher courts, and generally even to judgments in civil actions there. "A sentence is reversed if the record does not show the commission of a well defined act that is forbidden by law." This case was followed by the Supreme Court a few months since in *Reid v. Wood* (30 Pitts. L. J. 436).

Tested by this case, is this record sufficient? The relator is charged by the officer arresting him with being, in his view, "drunk and disorderly, a suspicious character, and a vagrant."

The Commonwealth's counsel having conceded this sentence can only be sustained as to the charge of vagrancy, the other charges will not be considered.

Who is a vagrant? The statute of February 21st, 1767, declared as illegal all the acts forbidden by the statutes of 1836 and 1876, except the one of refusing "to perform the work which shall be allotted them by the overseers of the poor," etc. The two latter acts are found in Purdon's Digest, pp. 1453 and 2081. Persons committing the acts defined by the statutes of 1836 and 1876 as constituting vagrancy were denominated "idle and disorderly persons" by the act of 1767. The act of 1876, popularly known as the tramp act, thus defines and describes vagrants:

1. All persons who shall unlawfully return into any district whence they have been legally removed without bringing a certificate from the proper authorities of the city or district to which they belong, stating that they have a settlement therein.

2. All persons who shall refuse the work which shall be allotted to them by the overseers of the poor, as provided by the act of June 13, 1836, etc.

3. All persons going about from door to door, or placing

themselves in streets, highwys, or other roads, to beg or gather alms, and all persons wandering abroad and begging who have no fixed residence in the township, ward, or borough in which the vagrant is arrested.

4. All persons who shall come from any place without this Commonwealth to any place within it, and shall be found loitering or residing therein, and shall follow no labor, trade, occupation, or business, and have no visible means of subsistence, and can give no reasonable account of themselves or their business in such place.

These definitions are substantially, but not quite literally, the same as those contained in the first, third, fourth, and fifth sections of said act of 1836. The second section of this last named act is not re-enacted in said act of 1876, and it reads: "All persons who, not having wherewith to maintain themselves and their families, live idly and without employment, and refuse to work for the usual and common wages given to other laborers in the like work in the place where they then are." But as the act of 1876 has no section repugnant to said second section of the act of 1836 it remains in force.

From the fact that vagrants were, by the act of 1767, denominated "idle and disorderly persons," has arisen the popular but erroneous opinion that one may be summarily convicted as a vagrant, or as an "idle, disorderly person," upon the mere ground that he was arrested when "idle and disorderly." Justices of the peace must, however, remember that "idle and disorderly persons" are, in law, only known now as vagrants, and that no person can be convicted of vagrancy unless he has committed some act forbidden in the above quoted provisions of the acts of 1836 and 1876.

A justice must base his judgment on the evidence adduced upon the hearing, and not upon the facts charged in the written or oral information of the arresting officer. If the defendant admits his guilt, the justice must state the facts he admits, unless the written information, to which he pleads guilty, charges him with the commission of such acts as constitute vagrancy. If he pleads guilty to the oral charges of the arresting officer, the justice must set forth on his record the substance of such charges. He must, also, under the act of 1876 (P. L. 154), reduce to writ-

ing the evidence of the witnesses while the same is being delivered by them. He shall, in every case of conviction, "make up and sign a record of conviction, annexing thereto the names and records of the different witnesses," etc. This term, "records of the different witnesses," means their testimony as delivered before the justice.

As this record does not set forth "the commission," by the relator, "of a well defined act that is forbidden by the law," and "contains no definite facts, but only a legal conclusion from unrecorded facts," he must be discharged.

Anxious not to discharge the relator if he were, in fact, a vagrant, I heard the evidence of the only witness examined before the justice, and had his testimony shown him to have been a vagrant when tried, I should, whilst reversing the conviction and sentence, have remanded him for another hearing before the justice.

It was argued, but not strenuously, that the relator's only remedy was by an "appeal to the present or next general Quarter Sessions." Unless one should be convicted during a term of said sessions, or his sentence should overlap the next term, an appeal could not liberate him at any time between said terms. The act does not give the appellant the right to be bailed out pending his appeal. Such an appeal as this never should have been on our statute books, and it cannot be that it suspends the operation of the writ of *habeas corpus*. If this appeal affords a person convicted under this act any remedy, it is merely cumulative. I have no doubt of the relator's right to this writ, nor of my right to hear said evidence. Commonwealth *ex rel.* Joseph McKeagy, 1 Ash. 248.

The evidence taken before me was the same as adduced before the justice, and it showed the relator, when arrested, to have been drunk, noisy, profane, and trying to sell a watch. In all of these acts combined, none of said acts which alone constitute vagrancy are to be found.

Our borough justices, and some others, have requested me to incorporate into this opinion some forms of records for summary convictions, but I have not the time to do so, and it would make the opinion too long and cumbersome. I think, however, that

if they shall carefully study the chapter devoted by Binn's Justice to "Summary Convictions" they can easily frame a record in accordance with the cited case of Comlth. v. Nesbit (*supra*).

And now, to wit, June 30, 1883, the conviction and sentence is reversed, and the prisoner discharged.

Court of Quarter Sessions of Lackawanna County.

COMMONWEALTH v. GALLAGHER.

In a case of assault and battery, where the defendant died after the grand jury had returned a true bill against him, and before the trial was had, the county cannot be compelled to pay the costs of prosecution.

Motion for an order on county to pay costs.

The opinion of the court was delivered by

HANDLEY, P. J.—John Scanlon presented his bill of indictment against James Gallagher, charging him with assault and battery. The grand jury returned a true bill, but before the case was called for trial the Great Judge called Gallagher before him for hearing on final appeal. He has not thus far returned from the court above, and the law permits us to presume that he never will again return to answer any charge that may be preferred against him here. The prosecutor, therefore, desires that an order be made directing the county commissioners to pay the costs of prosecution. Can we make such an order? We think not. We have examined all our statutes on costs, and we can gather nothing out of the mouth of these statutes that provides, when a man is called to his final rest, and is bid to sleep the eternal sleep of man, that the county shall pay the costs. Gallagher cannot be made to pay them until a jury of his country first say that he must. It will be exceedingly hard to find a jury to agree on that point now, and we are, therefore, clear that the county may not, or his estate, be forced to pay them *pro hac vice*.

Motion and order refused.

QUARTER SESSIONS ARGUMENT LIST.

MONDAY, SEPTEMBER 3, 1883.

1	In Re Commonwealth v. McGovern	Lenahan, Dartt	For new trial.
2	In Re Commonwealth v. Frank Carey	J. L., J. T. L., A. Darric, Jr	To quash indictment.
3	In Re Commonwealth v. P. & N. V. C. & R. R. Co. et al	Darlings, Mosier	Appeal by Overseers of Fairmount Township.
4	In Re Ross Township Poor District	O'Neill	Exceptions to report of viewers.
5	In Re Road in Newport Township	McL. & J. Darlings, Hines	Why capias should issue, and to stay the same.
6	In Re Commonwealth v. Charles Zeiger	Martin, McGahren	To strike off confirmation
7	In Re Streets and Alleys in Shickshinny	Walker	To stay capias.
8	In Re Commonwealth v. Thomas Lawgan		Exceptions to report and review.
9	In Re Additional Election District in Jackson Township	Gates, McG	To quash proceedings.
10	In Re Commonwealth v. James McHugh		Exceptions to report of Commissioners.
11	In Re School District in Hunlock Township		Certiorari.
12	In Re Smith & Frantz v. Commonwealth	Butler, Lenahan	To strike off confirmation.
13	In Re Ross Street, Wilkes-Barre.		To reinstate rule.
14	In Re Commonwealth v. R. H. Holgate et al		

COMMON PLEAS CERTIORARI LIST.

MONDAY, SEPTEMBER 3, 1883.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.
1	Lenahan	J. F. Donohue	S. L. Brown	J. V. D
2	Farnham	David Natrath	Daniel Mulhern	
3	B. & N.	Wm. Moore & Co.	Ira B. Wolfinger	
4	J. L. L.	John Hendricks et ux.	James Hughes	
5	J. L. L.	John Keeley	Peter Wenzel	E. A. L., M
6	E. A. L.	Henry McOrroarty et ux.	John Bersch	
7	Darlings, G. M. L.	Joseph Rice et al.	Charles Dugan	
8	L. B. L.	George U. Saurdavant.	Dickson & Sturdevant	
9	J. T. L.	Thomas Shea	P. F. McNulty, Agent	Bedford
10	Atherton	James Smythe	John Morgan	J.
11	Hayes	Enos Royer et ux.	James Dougherty	
12	J. T. L.	Celia McCloskey	John Finster	Gates
13	J. T. L.	Patrick Jones	Philip Clark	
14	J. T. L.	Henry Miller	William O'Malley	
15	Strauss	Patrick Burke et ux.	John Meier	Hahn.
16	Mosier	Patrick McDonald et al.	Jonas S. Grey	
17		Richard Cartright.	John Young	Payne

COMMON PLEAS ARGUMENT LIST.

TUESDAY, SEPTEMBER 4, 1883.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
1	C. B. Jackson, Farnham	Seth B. Bowman	Daniel F. Seybert	Ricketts	For new trial.
2	Halsey	Louchheim Bros	A. Frauenthal	Brundage	For new trial.
3	J. L., McManus	Patrick Quinn	Linderman, Skeer & Co.	Bedford, B., T	For new trial.
4	H. & P.	Hunt Bros	A. A. Chase et al	B	For new trial.
5	E. A. L.	James S. Brown	O. A. Peters	B	For new trial.
6	Ricketts	William Hay	City of Wilkes-Barre	McLean	For new trial.
7	Gates	Coon & Mooney	Pennsylvania Canal Co	Martin	For new trial.
8	Ryman	Jacob Gillman	John J. Edwards et al.	Gates	In arrest of judgment.
9	Farnham	In Re Assignment of	George Lazarus	Robinson	Exceptions to Auditor's report.
10	Derr	In Re Shiff's S. of R. E. of	P. & N. Y. C. & R. R. Co	Darlings, Palmer	Exceptions to Auditor's report.
11	Harding	James S. Slocum	Charles Murrin	J. L.	Exceptions to report of viewers.
12	Harding, McG	In Re Shiff's S. of R. E. of	United School Dis. Hanover	B. & N	Exceptions to Auditor's report.
13	G. M. L.	William O'Malley	United School Dis. Hanover	Harding, McG	Exceptions to Referee's report.
14	Ryman	Racine School Furniture Co	L. S. Walker	J. T. McC., Darlings	Exceptions to Referee's report.
15	McL. & J.	Chester White	Lehigh Valley Coal Co. et al	Bennett, F., MCL., G	Exceptions to Referee's report.
16	D. & A.	Payne Petebone et x et al	Max Knoll	McLean	Demurrer.
17		In Re Shiff's S. of P. F. of	County of Luzerne	Ricketts	Exceptions to Auditor's report.
18	Kulp, Payne	E. B. Ordly	Herz Lowenstein	Darlings, Straus	Case stated.
19	Ricketts	Joseph S. Frauenthal et al.	S. Frauenthal	Ricketts	Case stated.
20	F., D. & F	A. B. Well	Stuart for ben't of creditors	Osborne	Appeal from relaxation of costs.
21	Farnham	In Re Assignment of John	W. H. Williams et al	O'Neill	To open judgment.
22	Miller	W. P. Kirkendall	Henry Zeigler et al	O'Neill	To open judgment.
23	Darlings	Use of John M. Ward	Elizabeth J. Belles	O'Neill	To open judgment as to all except \$30.
24	D. L. P	Jordan Belles	W. & P. Cordner	O'Neill	For alimony, &c.
25	Farnham	Henry Lutz, assigned	Lyman H. Carle	O'Neill	To strike off judgment.
26	McG	Hugh O'Boyle, Assignee	Catharine Shovlin	O'Neill	To set aside sale.
27	Richards	Howell & King	Patrick Mooney et al	O'Neill	To open judgment as to \$20.
28	Hines	Elizabeth Haynes, Assignee	Lehigh Valley R. R. Co	O'Neill	To dissolve attachment.
29	Lenahan	Dr. J. J. Smythe	Henry Bornelsen	O'Neill	To file amended declaration.
30	G., Halsey	Henry Maus et ux	Andrew Miller, dec'd	O'Neill	To reinstate certiorari.
31	Payne	Pottsville Bank, Assignee	William Jones et al	O'Neill	To open judgment.
32	Hines	W. C. Odell	O. Carpenter	O'Neill	To strike off claim No. 160.
33		L. W. Stone	W. K. Warman	O'Neill	To open judgment.
34	Harding, McG	Lazarus Moyer, Assignee	A. Frauenthal	O'Neill	To open judgment, &c.
35	Halsey	Louchheim Brothers	C. V. Vandegrift, Adm'r	O'Neill	To mark \$2000 to separate use of Ellen Kern.
36	Payne	Edward Laughlin	J. S. Miller	O'Neill	To open judgment.
37	Ricketts	James Cobb, dec'd	Philo Lee	O'Neill	To open judgment.
38		Eaton & Co.	Elisha Beers et ux	O'Neill	To open judgment.
39	Farnham	Miners City B. & L. Asso	Thomas Mullaney et al	O'Neill	To strike off judgment.
40	O'Neill	Win. H. Page & Co	J. P. McGinty et al	O'Neill	To set aside h. in.
41	Lamb	W. P. Kirkendall	James Duggan et al.	O'Neill	To open judgment as to Patrick McDonald.
42	Miller			O'Neill	

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
43	O'Neill	D. L. O'Neill	E. R. Barrett	E. A. L.	To open judgment.
44	Foster	P. H. Tuska	Ig Freeman & Co	Brundage	To open judgment.
45	Foster	In Re Lunacy of	M. C. Tamany	Bedford	Why Committee shall not sell, &c.
46	Halvey	James V. Cagnor	W. L. Paine	Hakes	To open judgment.
47	D. P.	H. C. Bacon	D. M. Williams	J. L. L.	To strike off non-pros.
48		A. B. Weil	S. Frouthal	J. L. L.	To quash writ of distringas.
49	O'Neill	Lazarus Moyer	Jos. Casey et al	McGahren	To allow amendment.
50		Richard Jones	T. J. O'Malley	J. L.	To enter appeal nunc. pro tunc.
51		Honesdale Glass Co	R. B. Reiley et al	J. L.	To quash writ. &c.
52		William Murray	J. Stern		To strike off appeal.
53		C. Straw & Bro	Susquehanna Coal Co		To open judgment.
54	Powell, Payne	Use of McGahren	Borough of Pleasant Valley	McGahren	For assignment of \$1.50.
55	Ranck	Thomas Taylor	James Withers	Lenahan	To enter judgment for \$192.92.
56	D & A	Com. National Bank	Lunly A. Hollenback		To strike off appeal.
57		Mrs. D. O. Eroh	Joseph Terrett		To set aside judgment.
58		Simon Reynolds	Simon Reynolds		To enter judgment notwithstanding affidavit.
59		Charles D. LeGrand	John Bryson		To amend recognizance
60	Gates	D. F. Seybert	A. B. Davenport et al	F. M. N	To dissolve writ of estrepment.
61		Samuel Boyer	Samuel Winers et al	E. A. L., J. L. L.	To appeal without payment of costs.
62	R. & L.	Thompson & Kersey	Saffie H. Owen et al	O'Neill, C	To strike off judgment, &c.
63	R. & L.	Maris Street	K. R. Owen et al	McL. & J	To strike off judgment, &c.
64		Appointment of Trustees for	Mossville Burying Ground	Payne, Darlings, L	To restate rule.
65		W. M. Miller	W. L. Paine	Darte, Jr	To enter judg't, notwithstanding aff't of defense.
66	McCartney, B	Isaac Laubach	Lewis Landmesser	Bedford	To quash certiorari.
67	Gates	Anna Walter	Frederick Walter	L. Hahn	For alimony.
68	J. L.	James Pethick, Garnishee	Marcus Schnapp	C.	To quash certiorari.
69	Hahn, J. L.	C. L. McMillan, Assignee	Phoebe A. McNeilsh		To open judgment.
70	Ferris	George Gersale	Jacob Cease	Ricketts	Exceptions to Master's report.
71	Strauss	Jacob Bryant	Jacob Cease	Harding, McG	To strike off appeal.
72	Hahn, J. L.	James Pethick, Garnishee	Christian Kemmerer	C.	To quash certiorari.

ESTATE OF CHRISTIAN RUTH, LATE OF Butler township, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment and those indebted thereto will please make immediate payment to
ARIO RUTH,
SAMUEL BENNER,
 Administrators.

29-34

ESTATE OF ADAM STUPPI, LATE OF THE city of Wilkes-Barre, deceased.
 Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
ELIZABETH STUPPI,
JACOB BECKER, ad,
 Executors.

29-34

ESTATE OF MORRIS HUGHES, LATE OF West Pittston, deceased.
 Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to
ELIZABETH HUGHES,
WILLIAM J. HUGHES,
 Executors.

29-34

IN THE MATTER OF THE PARTITION OF
 the real estate of Philip Houpt, late of the city of
 Wilkes-Barre, Luzerne county, Pennsylvania, dec'd.
 The heirs and devisees of said decedent will take notice
 that in pursuance of an order of the Orphans' Court
 of Luzerne county, a writ of partition has issued from
 said court to the Sheriff of said county, returnable on
 Monday, the 3d day of September, 1883, at 2 o'clock
 P. M., and that the inquest will meet for the purpose
 of making partition of the real estate of said decedent
 on Friday, the 24th day of August, 1883, at 10 o'clock
 A. M. of said day, upon the premises, at which time
 and place you can be present if you see proper. The
 premises in question are described as follows, to wit:
 Two adjoining lots of land situate on the southwesterly
 side of Ross street, between Franklin and Main
 streets, in the city of Wilkes-Barre, Luzerne county,
 Pennsylvania; the first thereof being 50 feet front on
 Ross street, and about 210 feet deep, bounded on the
 southeast side by an alley, and on the northwest side
 by the lot hereinafter described, and containing about
 10,175 square feet of land, and having erected thereon
 a small brick dwelling and frame barn; and the second
 thereof being also 50 feet front on Ross street, and
 about 162 feet deep, bounded on the northwest side by
 land of M. B. Houpt, and on the southeast side by the
 lot hereinbefore described, and containing about 8,100
 square feet of land, and having erected thereon a two-
 story brick dwelling and small frame barn.

WILLIAM O'MALLEY,
 Sheriff.
 BENNETT & NICHOLS,
 Attorneys. 30-32

ORPHANS' COURT SALE.
 Estate of Philip Goss, deceased. By virtue
 of an order of the Orphans' Court of Luzerne county,
 there will be exposed to public sale, on the premises,
 in Huntington township, on Saturday, August 25, 1883,
 at 10 o'clock A. M., all that piece of land in Hunting-
 ton township, bounded on the north by land of John
 Metcalf, on the east by lands of Albert Wilkinson, on
 the south and west by lands of Dellell Wilkinson,
 containing 12 acres of land; all improved, with a frame
 house and frame barn thereon.

TERMS OF SALE—10 per cent of the purchase money
 on striking down of the property; the one-fourth, less
 the 10 per cent, at confirmation absolute; one-fourth
 in six months from confirmation nisi, and the balance
 in one year after confirmation nisi, with interest on
 each payment from that date; the installments to be
 secured by bond and mortgage on the premises.

WILLIAM KOONS,
 Administrator.
 J. G. MILLER,
 Attorney. 29-31

ESTATE OF DAVID KLINGER, LATE OF
 Salem township, deceased.

Letters of administration upon the above named
 estate having been granted to the undersigned, all per-
 sons having claims against the same will present them
 for payment, and those indebted thereto will please
 make immediate payment to

N. D. SMITH,
 Administrator. 46-31

ESTATE OF GEORGE FLOTUNG, LATE OF
 Hazleton, deceased.

Letters testamentary upon the above named estate
 having been granted to the undersigned, all persons
 having claims against the same will present them for
 payment, and those indebted thereto will please make
 immediate payment to

WILLIAM FLOTUNG,
 Executor.
 C. W. KLINE,
 Attorney. 30-35

ESTATE OF PETER HERRON, LATE OF
 Hazle township, deceased.

Letters of administration upon the above named
 estate having been granted to the undersigned, all per-
 sons having claims against the same will present them
 for payment, and those indebted thereto will please
 make immediate payment to

CON D. HERRON,
 Administrator. 30-35

ESTATE OF GEORGE H. HOCH, LATE OF
 Dorrance township, deceased.

Letters of administration upon the above named
 estate having been granted to the undersigned, all per-
 sons having claims against the same will present them
 for payment, and those indebted thereto will please
 make immediate payment to

MARY HOCH,
 Administratrix.
 T. R. MARTIN,
 Attorney. 26-31

ESTATE OF PATRICK BURKE, LATE OF
 Jenkins township, deceased.

Letters testamentary upon the above named estate
 having been granted to the undersigned, all persons
 having claims against the same will present them for
 payment, and those indebted thereto will please make
 immediate payment to

JAMES O'DONNELL,
 MICHAEL T. HOBAN,
 Executors.
 J. T. LENAHA,
 Attorney. 29-34

ESTATE OF SALLY ABBOTT, LATE OF
 Kingston township, deceased.

Letters testamentary upon the above named estate
 having been granted to the undersigned, all persons
 having claims against the same will present them for
 payment, and those indebted thereto will please make
 immediate payment to

CHARLES A. MINER,
 Executor.
 L. D. SHOEMAKER,
 Attorney. 26-31

ESTATE OF JOHN T. WILLIAMS, SR., LATE
 of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate
 having been granted to the undersigned, all persons
 having claims against the same will present them for
 payment, and those indebted thereto will please make
 immediate payment to

JOHN T. WILLIAMS,
 Executor.
 BENNETT & NICHOLS,
 Attorneys. 29-34

ESTATE OF CELIA A. DAILY, LATE OF
 Clinton county, State of Indiana, deceased.

Letters of administration upon the above named
 estate having been granted to the undersigned, all per-
 sons having claims against the same will present them
 for payment, and those indebted thereto will please
 make immediate payment to

WILLIAM E. KYTTLE,
 Administrator.
 M. CANNON,
 Attorney. 29-34

ESTATE OF R. C. SUTLIFF, LATE OF THE
 township of Huntington, deceased.

Letters of administration upon the above named
 estate having been granted to the undersigned, all per-
 sons having claims against the same will present them
 for payment, and those indebted thereto will please
 make immediate payment to

A. R. PENNINGTON,
 Administrator.
 I. P. HAND,
 Attorney. 29-34

CHAS. D. FOSTER,
 ATTORNEY AT LAW,
 WILKES-BARRE, PA.

W. S. PARSONS,
 ALDERMAN,
 MARKET STREET, WILKES-BARRE, PA.

CALVIN WADHAMS,
 ATTORNEY AT LAW AND NOTARY PUBLIC,
 WILKES-BARRE, PA.

McLEAN & JACKSON,
 ATTORNEYS AT LAW,
 WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

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FRIDAY, AUGUST 10, 1883.

No. 32.

Court of Common Pleas of Luzerne County.

SWEENEY *v.* LEHIGH VALLEY RAILROAD COMPANY.

New trial—Misconduct of counsel in argument to jury.

1. The authority of the court to grant a new trial for misconduct of counsel in arguing the case to the jury is well recognized.
2. It is the duty of the party prejudiced by the unwarranted statements of opposing counsel to object at once.
3. The general rule of practice, with one or two exceptions, is, that the party complaining of the misconduct of opposing counsel in his argument to the jury will not be permitted to hold his objections in reserve to be used in the event of an unfavorable verdict.

Rule for a new trial.

The opinion of the court was delivered December 11, 1882, by

RICE, P. J.—We are urged to grant a new trial because of the alleged misconduct of the plaintiff's counsel in his closing argument. It should be stated at the outset that some of the remarks alleged to have been made by the counsel were outside the evidence, and were not justified by anything in the cause. The authority of the court to grant a new trial for this cause is well recognized. The general rule is, that where counsel in the course of his argument comments on excluded testimony, or misstates the evidence, or makes statements outside the evidence, calculated to prejudice the minds of the jurors in favor of his own client, or against his adversary, the opposing party, or his counsel, may object; whereupon it becomes the duty of the court to interfere, to correct the misstatements, to caution the jury against them, to cause the counsel to desist from proceeding irregularly, and, in an extreme case, to withdraw a juror and stop the trial. If, however, after being admonished, the counsel still persists in

offending, or if, notwithstanding the cautions to the jury, the court is of the opinion that the statements were of such a nature as probably to render their efforts to overcome their prejudicial influence ineffectual, a new trial will be granted. The difficulty with the present application is, that the counsel for the defendant did not object at the time. The general rule of practice, with one or two exceptions, as, for example, where counsel states to the jury the result of a former trial before another tribunal, is, that the party complaining will not be permitted to hold his objections in reserve to be used in the event of an unfavorable verdict. Undoubtedly the court may, of their own motion, interfere to prevent misstatement of the evidence, or to correct counsel in an unwarrantable line of argument. But to impose the duty on the court of attending closely to the arguments of counsel to the jury, and of interrupting in every instance where they travel outside the evidence, without having their attention called to the objectionable statements, would, obviously, be impracticable. The only general rule which, after long trial, has been found to be practicable is the one we have stated. It is fully discussed and recognized, and supported by the citation of the authorities, in the recent opinion filed by Judge Elwell in this court in the case of *Monroe v. D. L. & W. R. R. Co.* It is urged, with great earnestness, against this rule by the defendants' counsel that it would have been useless for them to object at the time; that nothing that the court could have said would have overcome the injury wrought by the counsel's unwarranted arguments and assertions. This is by no means certain. If the objectionable statements had any appreciable effect in producing the verdict, it is possible that an immediate correction of the counsel might have destroyed the effect, and a different result might have been reached without the expense and delay of a retrial. We could, at least, have made the effort, and if, after that, we had felt that the jurors were so unmindful of their oaths as to render our instructions ineffectual, the court could still have prevented injustice by a new trial.

The rule is discharged.

John T. Lenahan, Esq., for plaintiff.

Hon. H. W. Palmer and J. V. Darling, Esq., for defendants.

Court of Common Pleas of Luzerne County.

KLINETOB v. ROTH.

Justice of the peace—Jurisdiction—Certiorari.

In an action before a justice, the plaintiff's demand was for "five dollars and twenty-five cents damages, by reason of defendant's not repairing plaintiff's gun as by him agreed to do, and receiving pay for it:" *Held*, that the justice had jurisdiction.

Rule to show cause why affirmance of proceedings entered November 9, 1875, shall not be stricken off, and the case reinstated for argument.

The opinion of the court was delivered March 6, 1882, by

RICE, P. J.—On the 7th of April, 1875, exceptions were filed to this record, and on the 9th of November following the proceedings were affirmed. May 18, 1876, this rule was granted. It is in the nature of an application for a reargument, upon the ground that the court erred in affirming the proceedings. The sole reason urged before us was, that the justice did not have jurisdiction of the cause of action.

It is asserted by the defendant's counsel that this matter was decided by the judge who granted the rule. This, however, is denied by the counsel for the plaintiff. In such a dispute we must necessarily rely entirely upon the record, and as the record shows no previous disposition of the rule, we must assume that the question has not been finally adjudicated.

The cause of action, of which the justice took jurisdiction, is thus stated in the transcript: "Plaintiff demands five dollars and twenty-five cents damages, by reason of defendant's not repairing plaintiff's gun as by him agreed to do, and receiving pay for it."

It is assumed by the defendant's counsel that the gist of the action, as thus stated in the transcript, was the failure to repair the gun in a workmanly manner; that this was a tort, and that a justice of the peace has no jurisdiction of such a cause of action, though it indirectly arose out of a contract. It was clearly decided in *Zell v. Arnold* (2 P. & W. 292) that an action to

recover damages for negligence in the execution of work, employment, trust, or duty, under a contract, is not cognizable before a justice of the peace. In the later case of *Conn v. Stumm* (7 C. 14) the plaintiff, on appeal, charged in his declaration that he "retained and employed" the defendant to iron his wagon, and the defendant "undertook and promised to do it with care and skill," and the breach assigned was, that "not regarding his promise and undertaking," he did not do it with proper care and skill. The court below, acting on the authority of *Zell v. Arnold*, dismissed the case for want of jurisdiction in the justice. This was held to have been error. It is certainly not easy to reconcile these two cases, nor, as we read this record, is it necessary to attempt to do so. The cause of action here set forth is not that the defendant failed to perform the work undertaken in a workmanly manner, but a failure to perform as he had agreed to do, and of this the justice had jurisdiction, as is shown by abundant authority. In the case of *Hunt v. Wynn* (6 W. 47), an action against a common carrier for not delivering goods intrusted to him, the declaration, on appeal, charged the defendant with negligence, and in a second count, generally, with not having delivered the goods according to contract. It was held that the action was within the jurisdiction of the justice. In the case of *McCahan v. Hirst* (7 W. 178), Mr. Justice Kennedy said: "The complaint of the plaintiff below substantially was, that the defendant, having become by contract the bailee of clover seed belonging to the plaintiff, did not take care of and account for it to the latter as he ought to have done. Contract, then, being the foundation of the duty imposed upon the defendant by his having become bailee, it is clear that a breach of duty thereby imposed, which is the real cause action here, must be regarded as arising out of contract, and therefore within the jurisdiction of the justice," etc. See, also, *Todd v. Figley*, 7 W. 542; *Livingston v. Cox*, 7 Barr, 360; *Seitzinger v. Steinberger*, 2 J. 380-1.

We have no other evidence of the cause of action in this case, than that furnished by the transcript, which shows that the plaintiff's demand was based on the defendant's *non-feasance* of a contract between them, and not on his *misfeasance* in the performance of a duty implied by that contract, and hence the justice had

jurisdiction, and there was no error in the affirmance of the proceedings.

The rule is discharged.

P. H. Campbell, Esq., for plaintiff.

A. Ricketts, Esq., for defendant.

Court of Common Pleas of Luzerne County.

RICHART *et ux.* *v.* WISNER *et al.*

Husband and wife—Duress—Undue influence—Deed—Acknowledgment of—Equity—Demurrer.

1. Where a married woman conveys her separate estate to creditors of her husband in payment of his debts under threats by the former that they would proceed by actions at law to recover it from her, her deed is not voidable on the ground of duress *per minas*.
2. The certificate of a justice to the acknowledgment of a deed by a married woman of her separate estate is a judicial act, and as to a *bona fide* vendee or mortgagee for value, without notice of fraud or imposition in the procurement of the execution of the instrument, is conclusive of every material fact expressed therein.
3. But as against a vendee or mortgagee with notice, it may be shown by parol, not only that the certificate itself is false, but also that, although all the forms of the statute were observed, the execution and acknowledgment were procured by fraud and imposition, or were made under compulsion.
4. A married woman conveyed her separate estate to creditors of her husband in payment of the latter's debts. She subsequently filed a bill to set aside the deed upon the ground "that she was unduly influenced thereto by the repeated and urgent requests, entreaties, importunities, and persuasion of her husband," and that the grantees took with notice of the fact: *Held*, that the decision of the case must depend on the proof as to the degree of undue influence exerted by the husband, and that the demurrer must be overruled.
5. Mere persuasion by a husband will not suffice to avoid the deed of a wife to a third person, if her will be not coerced.
6. Darlington's Appeal (5 Nor. 512) distinguished.

Demurrer.

The opinion of the court was delivered July 10, 1882, by

RICE, P. J.—In October, 1878, as averred in the bill, the plaintiffs delivered to the defendants a deed in fee simple for certain land, which was the separate estate of the wife. The formal execution and acknowledgment of the conveyance are not denied, and are therefore to be presumed. No consideration therefor moved directly to the wife, but it is fairly to be implied from the whole bill that it was made in satisfaction and payment of her

husband's debts. A cancellation of the deed and a reconveyance of the premises are here asked to be decreed upon two grounds.

1st. It is alleged that the defendants, "contriving and intending to coerce and compel her to convey the same to them in satisfaction and payment of her husband's debts aforesaid, in conjunction with other creditors of her said husband, made threats in the presence and hearing of divers persons, which were communicated to the said Mary B. Richart, that if she would not convey the same to them, the said defendants, in satisfaction and payment of her husband's debts as aforesaid, they would cause her to be entirely deprived of her said estate by suits at law in the several courts of the state and general government."

We do not think it can be seriously argued that these facts alone, even if uncontradicted, would be sufficient for the setting aside of this deed. They do not show duress *per minas* at law, and therefore not in equity. *Stouffer v. Latshaw*, 2 W. 168. "The constraint which takes away free agency, and destroys the power of withholding assent to a contract, must be one which is imminent, and without immediate means of prevention, and be such as would operate on the mind of a person of a reasonable firmness of purpose." *Miller v. Miller*, 18 Sm. 493. Clearly there was no such constraint here, nor would there have been had the threats been made directly to the plaintiff. As a person of sound judgment, she was bound to know that her property could not lawfully be taken to satisfy her husband's debts, and at the most the threat was only to contest her title in a court of law. The defendants' assertion that the result of the threatened legal proceedings would be to deprive her of her land could not reasonably be regarded as more than the affirmation of a matter resting in opinion, but even if it be regarded as the affirmation of a matter of fact, it was of a fact equally open to her knowledge and inquiry. If her title, as against her husband's creditors, was not valid, the threat by them to establish its invalidity by proceedings at law does not constitute duress. *Harris v. Tyson*, 12 H. 347. But if, as she alleges, her title was perfect, then she knew that in the end she must prevail, and that in the meantime her possession of the property would remain unchanged. When it is

remembered, further, that these alleged threats were not made to her, and that no conspiracy is alleged to have existed between the defendants and her husband and son, it is impossible to conclude, either that she was deceived and imposed upon by the declarations of the defendants, or that she was under such constraint as to make her deed voidable on the ground of duress. See *Fulton v. Hood*, 10 C. 371.

2d. As a further ground for the relief claimed, Mrs. Richart alleges that she executed the deed "under the constraint of the threats of said defendants, . . . and the undue influence over her actions in the premises caused by the persuasion and importunities of her said husband and son, of which the said defendants well knew." This averment is to be taken with what has gone before, and the undue influence here alleged in general terms is more particularly described in the preceding paragraph of the bill as consisting of "urgent requests and entreaties repeatedly and from time to time made upon her" by her husband and son to comply with the demands of the husband's creditors, and thus "to relieve him from his embarrassment and the said threatened legal proceedings against her and her said estate, . . . by making and delivering to the said defendants a deed of conveyance for her said property."

In considering this branch of the case several matters naturally and at once suggest themselves, the preliminary statement of which will relieve the real question presented of complication.

(a.) The consideration for the wife's conveyance was a perfectly valid and conscionable one.

(b.) It is not alleged that there has been a failure of consideration, or that the purpose for which the conveyance was made has not been effected.

(c.) The bill does not charge that the defendants resorted to any artifice, trick, deception, fraud, or persuasion to induce Mrs. Richart to execute the deed; nor does it charge that they were in combination or conspiracy with her husband and son.

(d.) It is not alleged that Mrs. Richart was not in full possession of all her mental faculties, nor that she was not fully aware of her legal rights, and of the nature of the conveyance, its purpose and effect.

(e.) It is not alleged that her husband and son, or either of them, made any false representations, or suppressed the truth in any material particular, in order to induce her to execute the deed. On the contrary, she knew that the purpose of the conveyance was to pay her husband's debts, and thus to relieve him from embarrassment, and at the same time to avoid threatened litigation regarding the identical property conveyed.

After the statement of these preliminary suggestions, the question raised by the demurrer may be fairly stated thus: Will a court of equity set aside the deed of a *feme covert*, executed and acknowledged in due form, conveying her separate real estate to her husband's creditors to satisfy and pay the former's debt, where it is shown that she was unduly influenced thereto by the repeated and urgent requests, entreaties, importunities, and persuasion of her husband, the grantee knowing the fact?

The certificate of a justice of the peace to the acknowledgment of a deed by a married woman of her separate estate is a judicial act, and as to a *bona fide* vendee or mortgagee for value, without notice of fraud or imposition in the procurement of the execution of the instrument, is conclusive of every material fact expressed therein. *Singer Mfg. Co. v. Rook*, 3 Nor. 445. But as against a vendee or mortgagee with notice, it may be shown by parol, not only that the certificate itself is false, but also that, although all the forms of the statute were observed, the execution and acknowledgment were procured by fraud and imposition, or were made under compulsion. *Schrader v. Decker*, 9 Barr, 14; *Loudon v. Blythe*, 4 H. 532; *Loudon v. Blythe*, 3 C. 22; *Michener v. Cavender*, 2 Wr. 334; *McCandless v. Engle*, 1 Sm. 309; *Hall v. Patterson*, Id. 289. In other words, the fact that the *feme covert* acknowledged the instrument in the form prescribed by the statute for the conveyance of her separate estate will not preclude proof of the fact that the declaration to the magistrate that she executed the deed freely, and without fear or coercion of her husband, was itself induced by fraud, or made under fear and compulsion. The relation existing between husband and wife are of so close and confidential a nature, and her condition is in general so dependant, that it has very recently been held, as a positive rule of law, that "the conveyance of a wife's estate for

her husband's use will be held void, unless it affirmatively appears from the attending circumstances, or otherwise, that it was her voluntary act, and not induced by his undue influence." *Darlington's Appeal*, 5 Nor. 512-521. The transaction is placed in the same category with gifts and contracts between guardian and ward, attorney and client, trustee and *cestui que trust*. But there are material points of difference between a conveyance directly to the husband, or for his use, and one to a third person to secure or pay the husband's debt. In the latter case the parties to the conveyance, in contemplation of law, deal at arms length, while in the former case they do not. In the latter case there is a valuable consideration moving from the grantee, while in the former case, as in *Darlington's Appeal*, there is not. To apply the same rule of proof to both cases would produce the most inconvenient results, in that it would tend to destroy the effect of the acknowledgment and the certificate thereof as *prima facie* evidence of the material facts contained therein. As to third persons, the rule of law remains the same, that the wife, in order to avoid her deed, must show, by affirmative proof, that there was fraud or compulsion, of which the grantee had notice, and the degree of undue influence which would be sufficient to set aside a deed from a wife to her husband would not be sufficient to set aside her deed to a third person. But while recognizing this distinction, we are not prepared to say that even in the latter case the husband may not exercise such a degree of undue influence, by urgent requests, entreaties, importunities, and persuasions, as would amount to fraud or moral coercion of her will. The husband may effect coercion without resorting to violence or positive threats and intimidation. "If he uses his influence and power in such manner as to control her unduly, or so as to make her act under his will, and not her own, the deed is void. I do not say that it will be vitiated by the mere fact that she yields to his persuasions, even when she does so against her better judgment. But there must be no imprisonment of her mind, and no unfair advantage taken of her weakness. She must act voluntarily, and not by compulsion, moral or physical." *Loudon v. Blythe*, 3 C. 25. If the view we have taken is the correct one, the decision of the question stated at the outset of this branch of the case must

depend on the proof as to the degree of undue influence exerted by the husband, and hence we cannot say that under no view of the question can the bill be sustained.

The demurrer is overruled, and the defendants are directed to answer within thirty days.

Hon. G. M. Harding and John McGahren, Esq., for plaintiffs.
G. S. Ferris and J. V. Darling, Esqs., for defendants.

Court of Common Pleas of Luzerne County.

HOUPT *v.* HENDLER.

New trial—Misconduct of juror—Waiver of irregularities in trial—Favor—Contempt.

1. If no challenge be interposed, the general character for sobriety of a juror cannot be inquired into after a trial on the merits, in which he has not been guilty of misconduct affecting the trial.
2. The fact that a juror, after he has been sworn, drinks intoxicating liquors is not held to be sufficient ground for a new trial, unless it is shown that he drank at the instance or expense of the winning party, or that he was thereby unfitted to listen to and remember, and to intelligently and impartially consider and weigh, the evidence.
3. A juror who, after being sworn in a cause, comes into court in an intoxicated condition is guilty of contempt, and may be fined.
4. Silence as to a known irregularity, or even misconduct, not directly affecting the verdict, and with which the winning party is not connected, is generally held to be equivalent to express assent that the trial may proceed.
5. Where it is known to a party, or his counsel, that, during an intermission in the trial of a civil case, a juror has drunk intoxicating liquor to excess, and the party does not object to proceeding when the temporary incapacity of the juror is removed, but takes the chance of a verdict in his favor, he cannot demand a new trial for that cause alone, unless the winning party is shown to have been in some way connected with the misbehavior.

Rule for a new trial.

The opinion of the court was delivered February 5, 1883, by

RIE, P. J.—After a full consideration of this application, and of the arguments urged in its support, we conclude that it must be refused.

The statute requires the jury commissioners to select sober, intelligent, and judicious persons to serve as jurors. Presumptively, the persons selected by them are qualified in these respects. Whether a juror may be challenged upon the ground that he is

a person of intemperate habits, we need not decide. It is clear that if no challenge be interposed, his general character for sobriety cannot be inquired into after a trial on the merits, in which he has not been guilty of misconduct affecting the trial.

The parties to a cause are entitled to the best judgment of the jurors on the evidence, but the fact that a juror, after he has been sworn, drinks intoxicating liquors is not held to be sufficient ground for a new trial, unless it is shown that he drank at the instance or expense of the winning party, or that he was thereby unfitted to listen to and remember, and to intelligently and impartially consider and weigh, the evidence. We are not satisfied that either of the jurors complained of were in that condition at any time while the trial was in actual progress in court, or while they were deliberating upon their verdict. In coming to this conclusion, we take into consideration, not only the evidence given upon direct and cross-examination of the witnesses sworn upon the rule, but also the strongly negative evidence furnished by the failure of the parties, the counsel, the other jurymen, and the trial judge to observe the alleged intoxication.

The evidence shows that on Tuesday evening, after the court had adjourned for the day, one of the jurors complained of became intoxicated. On Wednesday morning, it being observed that he was still in an unfit condition to properly consider and weigh the testimony, and the court having called the attention of counsel to the fact, the trial of the case was temporarily suspended, and the juror was severely reprimanded and fined. It appears, also, from the depositions, although it was not known to the court, nor were we informed of the fact until this motion was made, that on the same day (Wednesday) another jurymen became intoxicated. This was gross impropriety of conduct, which not only deserves the severest rebuke and condemnation, but which also constituted a contempt of court, for which they could be punished. The punishment inflicted on the first mentioned juror was none too severe; it is only to be regretted that the offence of the second named juror was not brought to our attention. But, gross as was the misbehavior of these jurors, we do not think it a sufficient reason for a new trial, under the circumstances of this case. The intoxication of the first mentioned

juror on Wednesday morning was brought to the attention of all the counsel, and no objection whatever was made to the temporary suspension of the trial until he should be in fit condition to proceed; nor were we asked to withdraw a juror, and to continue the cause altogether. As to the other juror, the depositions show that the fact that he had been drinking, and was intoxicated, was called to the attention of one of the counsel for the defendant on Wednesday. Another case was called for trial on Wednesday morning which occupied the whole day. The day following was Thanksgiving day, and hence the trial of the present case was not resumed until Friday morning. It is not alleged that the jurors referred to were not sober on that day, the facts as to the previous intoxication of the second juror were not called to our attention, and no objection was made to proceeding with the trial. Nothing was said to lead the court to suppose that it was not the wish of both parties to proceed. Under these circumstances, the defendant, having taken the chance of a favorable verdict, must be held to have waived the objection. We need hardly say that there is a plain distinction between misconduct directly affecting the verdict, as, for example, bribery, and misbehavior of this nature, or other irregularity, which might be ground for discharging the jury, if the objection were made to proceeding as soon as it became known to the party complaining. That the parties could agree to proceed with the trial, notwithstanding this misbehavior of the jurors during the intermission, and that such agreement would estop them from objecting after verdict, cannot be doubted. It is a rule of very frequent application in practice that silence as to a known irregularity, or even misconduct, not directly affecting the verdict, and with which the winning party is not connected, is equivalent to express assent that the trial may proceed.

In the case of *Spong v. Lesh* (1 Y. 326) a new trial was refused where a brother-in-law of one of the plaintiffs was sworn on the jury, and the plaintiffs' attorney, being informed of it, offered to waive the juror, provided the defendant would consent to swear another in his room, and go on with the trial, no injustice having been done by the verdict.

In the case of *McCorkle v. Binns* (5 Binn. 340) it was held

that if, after the jury are sworn, one of the parties learn that a juror has prejudged the case against him, he must make it known at once; he cannot take his chance of a verdict, and rely upon the prejudgment of the case by the juror for a new trial.

In the case of *Burton v. Ehrlich* (3 H. 236) it was held that where a person is called as a juror whose name is not in the *venire*, and a party suffers him to remain on the jury without objection, and takes his chance of a verdict, it is a waiver of the objection.

It is good cause of challenge that a juror has acted as such in a former trial of the same case, the evidence being the same. *Smith v. Wagonseller*, 9 H. 491.

In the trial of the case of *Eakman v. Shaffer* (12 Wr. 176) this objection to one of the jurors was discovered after the evidence was all in. The Supreme Court said upon this point: "If the counsel had objected to the juror the moment he discovered that he had sat on a former trial of the same cause, and the court had overruled his objection, he might possibly have had a case; but he took his chance of a verdict before making the objection, and then it was too late." In this court the same point was ruled in the same way in the case of *Freeman v. Wall* (3 Luz. L. Reg. 33).

It is held to be misconduct for counsel in their arguments to the jury to travel outside the evidence, to misstate the evidence, or comment on excluded evidence, and yet it is held, as a general rule, that if the opposing party makes no objection at the time, but takes his chance of a verdict, he cannot afterwards set up such misconduct as ground for a new trial. See *Sweeney v. Lehigh Valley R. R. Co.*, *ante* p. 223.

In the courts of other States it has been held that the interest, or partiality, or prejudgment of the case by a juror, or the fact that he has acted as such on a former trial, or that he is related to the opposite party, if known to the party or his counsel before trial, or if so made known during trial, must be made the ground of immediate objection, or the party will be presumed to have waived it by his silence. *Kent v. Charleston*, 2 Gray, 281; *Fox v. Hazleton*, 10 Pick. 275; *Arroch v. Comlth. Ins. Co.*, 21 Pick. 471; *Bourke v. James*, 4 Mich. 336; *Sleight v. Henning*, 12 Mich. 376.

The principle sustaining these decisions of the courts of this and other States requires us to hold, that where it is known to a party or his counsel that during an intermission in the trial of a civil case a juror has drank intoxicating liquors to excess, and the party does not object to proceeding when the temporary incapacity of the juror is removed, but takes the chance of a verdict in his favor, he cannot demand a new trial for that cause alone if the verdict goes against him, unless the winning party is shown to have been in some way connected with the misbehavior.

The rule is discharged.

Hon. G. M. Harding and John Lynch, Esq., for rule.

I. P. Hand, W. S. McLean, and L. H. Bennett, Esqs., *contra*.

Court of Common Pleas of Luzerne County.

BECKER v. HAMMES.

Fraud—Opening judgment.

If parties concoct a scheme to hinder, delay, and defraud creditors, and resort to a judgment to effect their object, both having in view the same thing, there is no fraud between them of which either can complain, or call on a court for relief against.

Rule to show cause why the judgment shall not be opened.

The opinion of the court was delivered September 12, 1881, by

RICE, P. J.—There can be but one conclusion from the defendant's testimony, and that is that this judgment was given, and the sheriff's sale was had thereon, in pursuance of a fraudulent confederation between him and the plaintiff to hinder and delay, if not to defraud, his creditors. It has served its unlawful purpose, and he now asks to have it opened upon the ground that he has paid the balance left unsatisfied by the sale. Aside from the fraudulent nature of the transaction, as alleged by the defendant, the evidence of payment is vague and unsatisfactory, and is denied by the plaintiff. The payments alleged consist of an open account against the plaintiff. The defendant furnishes no evidence of time, place, or circumstances when it was agreed that

these items, constituting this open account, should be applied to the payment of this judgment. He says, generally, "they were to be applied to the judgment," "it was understood that they were to be credited upon the judgment," and uses other expressions of like vague character. The evidence of the negotiations for the sale of the property to Mr. Lines does not put the defendant's case in any better light, for it is at the best only evidence of an unavailing attempt on the part of the plaintiff to get out of the business, and of offers which were never accepted. There were open accounts on both sides apart from the judgment, and controversies over them, a fact which indicates that the parties regarded them as applicable one to the other, rather than that the defendant's account should be applied to the judgment, and not to the plaintiff's open account, which the defendant admits the former will still have against him. If the case rested here, we think we would be justified in discharging the rule upon the ground that there is not sufficient evidence, in view of the positive denials of the plaintiff, to warrant the sending of an issue to a jury. *Kocher v. Rice*, 2 Luz. Leg. Reg. 24; *Philbin v. Davenger*, 1 Id. 507.

But, to go a step further, the defendant is compelled to admit, or rather assert, the fraudulent nature of the judgment and sheriff's sale before he can set up these payments. By the record the title to the property and the proceeds of the business after the sale belonged to the plaintiff. How, then, could the plaintiff's judgment be paid with his own property, or the defendant be permitted to deny that the property belonged to the plaintiff, without asserting that the judgment and sale were only for the purpose of defeating his creditors? But this the law will not permit the defendant to do. "If parties concoct a scheme to defraud others, and resort to a judgment to effect their object, both having in view the same thing, there is no fraud between them, assuredly, of which either can complain, or call on a court for relief. Courts will not move to change the condition of the parties more readily in such case than they would to enforce an executory contract, which, as a general rule, they will not do. . . . It should be remembered that the law will not lend its aid to relieve a party against the effect of his own fraud, any more

than it will aid to enforce fraudulent contracts. It leaves both as it finds them." *Blystone v. Blystone*, 1 Smith, 373. This is eminently a case for the application of this rule.

Before leaving this case, we feel called upon to protest against the imposition upon the court of the large mass of irrelevant testimony which appears in the depositions submitted by the defendant. The cross-examination of the plaintiff especially may have been pertinent to an issue between him and the defendant's creditors, but most of it was not pertinent in this proceeding.

The rule is discharged.

N. Taylor, Esq., for rule.

Hon. G. M. Harding and John McGahren, Esq., *contra*.

The meanest slight a girl can put upon an admirer is to use a postal card in refusing an offer of marriage. It proves that she doesn't actually care two cents for him.

A gentleman, whose custom it was to entertain very often a circle of friends, observed that one of them was in the habit of eating something before grace was asked, and determined to cure him. Upon a repetition of the offence, he said: "For what we are about to receive, and for what James Taylor has already received, the Lord make us truly thankful."

"Sister told me to come in and talk to you 'till she found her hair," said a little six-year-old girl to her big sister's beau. Do you like to have me talk to you? Sister says you sing like a screech owl. What is a screech owl? Won't you sing for me? Sister says you don't know beans. I know beans—a whole bag full. Sister says—why, you ain't going, are you? Oh, my, won't sister be mad, though.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, September 3d, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called the "Young Men's Christian Association of Pittston," the character and objects of which are the promotion of the religious, intellectual, and social welfare of young men.

32-34 **G. S. FERRIS,**
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, September 3d, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Rector, Church Wardens, and Vestrymen of Trinity Church of West Pittston," the character and objects of which are the worship of God according to the faith and discipline of the Protestant Episcopal Church in the United States of America.

32-34 **G. S. FERRIS,**
Solicitor.

ESTATE OF PETER HERRON, LATE OF Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

30-35 **CON D. HERRON,**
Administrator.

ESTATE OF MORRIS HUGHES, LATE OF West Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

29-34 **ELIZABETH HUGHES,**
WILLIAM J. HUGHES,
Executors.

ESTATE OF ADAM STUPPI, LATE OF THE city of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

29-34 **ELIZABETH STUPPI,**
JACOB BECKER, 2d,
Executors.

ESTATE OF CHRISTIAN RUTH, LATE OF Butler township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

29-34 **ARIO RUTH,**
SAMUEL BENNER,
Administrators.

ESTATE OF GEORGE FLOTUNG, LATE OF Hazleton, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. W. KLINE,
Attorney. **WILLIAM FLOTUNG,**
Executor.

30-35

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ESTATE OF PATRICK BURKE, LATE OF Jenkins township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES O'DONNELL,
MICHAEL T. HOBAN,
Executors.
J. T. LENAHAN,
Attorney.

29-34

ESTATE OF JOHN T. WILLIAMS, Sr., LATE of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN T. WILLIAMS,
Executor.
BENNETT & NICHOLS,
Attorneys.

29-34

ESTATE OF CELIA A. DAILY, LATE OF Clinton county, State of Indiana, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM E. KYTTLE,
Administrator.
M. CANNON,
Attorney.

29-34

ESTATE OF R. C. SUTLIFF, LATE OF THE township of Huntington, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

A. R. PENNINGTON,
Administrator.
I. P. HAND,
Attorney.

29-34

IN THE MATTER OF THE PARTITION OF the real estate of Philip Houpt, late of the city of Wilkes-Barre, Luzerne county, Pennsylvania, dec'd.

The heirs and devisees of said decedent will take notice that in pursuance of an order of the Orphans' Court of Luzerne county, a writ of partition has issued from said court to the Sheriff of said county, returnable on Monday, the 3d day of September, 1883, at 2 o'clock P. M., and that the inquest will meet for the purpose of making partition of the real estate of said decedent on Friday, the 24th day of August, 1883, at 10 o'clock A. M. of said day, upon the premises, at which time and place you can be present if you see proper. The premises in question are described as follows, to wit:

Two adjoining lots of land situate on the southwest side of Ross street, between Franklin and Main streets, in the city of Wilkes-Barre, Luzerne county, Pennsylvania: the first thereof being 50 feet front on Ross street, and about 210 feet deep, bounded on the southeast side by an alley, and on the northwest side by the lot hereinafter described, and containing about 10,175 square feet of land, and having erected thereon a small brick dwelling and frame barn; and the second thereof being also 50 feet front on Ross street, and about 162 feet deep, bounded on the northwest side by land of M. B. Houpt, and on the southeast side by the lot hereinbefore described, and containing about 8,100 square feet of land, and having erected thereon a two-story brick dwelling and small frame barn.

WILLIAM O'MALLEY,
Sheriff.
BENNETT & NICHOLS,
Attorneys.

30-33

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

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THE LUZERNE LEGAL REGISTER.

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FRIDAY, AUGUST 17, 1883.

No. 33.

Court of Common Pleas of Luzerne County.

BUTCHER *et al.* v. FERNAU *et al.*

Attachment—Act of March 17, 1869—Evidence—Delivery of bond.

1. The giving bond under section 3 of the act of March 17, 1869 (attachment), dissolves the attachment in so far as it binds the goods. A subsequent motion to dissolve, under section 6, ought not to be entertained, and, if entertained and allowed, it cannot have the effect of satisfying the condition of the bond.
2. Suit was brought on a bond given by defendant under section 3 of the act of March 17, 1869, (attachment) dated March 10, 1881. It was endorsed, "Approved, Thomas Munroe, Prot.," without date, and was filed June 10, 1881: *Held*, first, filing was not required to give the bond validity; second, there is a *prima facie* presumption of approval and delivery of the bond on the day it bears date, which is not rebutted by the fact that it was filed on a much later date.

Rule to show cause why compulsory non-suit shall not be taken off.

The opinion of the court was delivered June 4, 1883, by

RICE, P. J.—There are two ways in which a defendant, whose goods have been attached under the act of March 17, 1869 (P. L. 9), may proceed to have them released from the grasp of the attachment. 1st. He may give bond conditioned as prescribed in the third section of the act. 2d. He may file an affidavit, and move the court, or a judge thereof, to dissolve the attachment under the provisions of the sixth section. If he adopts the former method, or if, adopting the latter method, he succeeds in his motion, and if there is personal service of the writ, or if the defendant is a resident of the county, or if he appears to the action, the case proceeds, as in case of summons for debt regularly issued and duly served. If he fails in the latter method, he

may still give a bond; but if he gives a bond in the first instance, it seems clear that the attachment, in so far as it binds the goods, is dissolved *ipso facto*, and that a subsequent motion to dissolve, under section 6, ought not to be entertained, and, if entertained and allowed, it cannot have the effect of satisfying the conditions of the bond. Even if it be assumed that the lien of the attachment remains after the giving of bond, the subsequent action of the court in entertaining and allowing a motion to dissolve would only have the effect to dissolve the lien, and this would not satisfy the conditions of the bond to pay the debt and costs after the expiration of the stay of execution, or to surrender the property in as good condition as when attached to any officer having an execution against the defendant on any judgment rendered in the attachment.

This non-suit was allowed upon the theory that the bond was not approved and delivered until after the court had dissolved the attachment on the defendant's application, made under the provisions of the sixth section of the act. See *Butcher et al. v. Fernau et al.*, 1 Kulp, 401. When that motion was argued and decided, we had no knowledge whatever of the bond in question. This should be said in explanation.

The bond in question bears date March 10, 1881. It is endorsed, "Approved, Thomas Munroe, Prot.," and is marked filed June 10, 1881. The rule to dissolve was granted March 11, 1881, and was made absolute April 25, 1881. May 16, 1881, the plaintiffs entered judgment *sec. reg.*, and on June 10, 1881, they issued *fi. fa.*, which was returned *nulla bona*. The present action on the bond was instituted April 13, 1882, which was more than one year after the first day of the term to which the attachment was made returnable. There was no other evidence as to the delivery of the bond, nor as to the date of its approval by the prothonotary.

After a more careful consideration of the case than we were able to give upon the trial, we conclude that there was at least a *prima facie* presumption of the approval and delivery of the bond on the day that it bears date, and that this presumption was not rebutted by the fact that it was filed on a much later date, for while there was no impropriety in filing it in the office of the

prothonotary, such filing was not required by the act to give it validity. It follows that we erred in awarding the non-suit.

The rule is made absolute.

F. C. Sturges and C. L. Lamb, Esqs., for plaintiffs.

John Lynch and E. A. Lynch, Esqs., for defendants.

Court of Common Pleas of Luzerne County.

ANTHRACITE BUILDING AND LOAN ASSOCIATION *v.* LYONS.

Building association—Opening judgment—Burden of proof—Evidence—Fraud—Execution of paper by illiterate man.

1. Where, by the charter of a building association, the right to collect otherwise usurious interest, premiums, and fines was qualified by a *proviso*, "that such stockholder shall have signed an agreement containing the following words," etc., the association can only recover the actual amount loaned, with simple interest, if the borrowing stockholder has not signed the agreement referred to.
2. The question as to the burden of proof in opening a judgment considered.
3. The act of April 15th, 1869, does not require that the evidence of a party in interest, though the only evidence on his side, should be corroborated to make it effective.
4. If a party who can read will not read a deed put before him for execution, or if being unable to read will not demand to have it read or explained to him, he is guilty of supine negligence, which is not the subject of protection, either at law or equity.

Rule to open judgment.

The opinion of the court was delivered April 25, 1881, by

RICE, P. J.—The judgment, of which this is evidently a revival, was given by the defendant to secure the repayment of a loan made by him in June, 1871. The premium paid for the loan was \$101 on a share. The amount of the loan was \$1,000, and the premium being deducted the actual amount of cash received by him was \$495. On the whole amount of \$1,000 he paid interest at the rate of one-half of one per cent a month for several years, but very irregularly, and consequently he was fined on each default in payment of interest, and these fines were in many cases compounded. We make no allusion to the dues paid, nor the fines on the dues, for the reason that these payments were not on account of the loan, and until there is an application to withdraw,

or to have the stock or dues applied in payment of the loan, the association is certainly not bound to apply them, but if nothing else prevented would be entitled to have its judgment security kept in force for the full amount.

As the case now stands, the only question presented is, whether the premiums charged and deducted, the various sums paid as interest on the loan, and the various fines charged on default in payment of interest, and fines on such fines, are usurious? This question is raised by article v. of the charter, which provides that the premiums, fines, and charges that may be paid by stockholders shall not be deemed usurious, "provided that such stockholders shall have signed an agreement containing the following words, to wit: 'We, the stockholders and trustees of stock in the Anthracite Building and Loan Association, . . . whose names are hereunto subscribed, do hereby agree to, and bind ourselves, our heirs, executors, administrators, and assigns, to abide by the provisions of the charter of the association and such by-laws as are, or may be hereafter, adopted.'" This provision of the constitution is peculiar, but undoubtedly lawful, and if the defendant did not subscribe the agreement prescribed, then the payments alluded to are usurious, and should be deducted from the judgment, and no *laches* nor delay on his part can make them lawful. It appears from the depositions that the defendant is an illiterate man, and cannot write. He swears that he never subscribed his name to this agreement, and never authorized any other person to sign for him. On the part of the plaintiff it is shown that his name is subscribed with others under the agreement, which is entered in a book of the association called "Registry of Stockholders," but it is not claimed to be in the handwriting of the defendant. The agreement is on the first page of the book, and the name of the defendant is written on the seventh page, the intermediate pages, as would seem from the depositions, being taken up by the signatures of other stockholders. Mr. O'Neill testifies that he was attorney for the association; that at one of the meetings, held in the early part of 1871, he requested the members to come forward and sign their names to the book; that he made a personal request to the defendant to sign his name, and that the latter told the witness he could not write, and

that the witness should sign his name for him, and it would be all right; that at this time the regular business of the meeting was going on; that at the time when he requested the defendant to sign the book was open at the page where the latter's name was subscribed, and that he has no recollection of explaining to the stockholders or the defendant that the agreement prescribed by the charter preceded their or his signatures. It appears, also, in the testimony of J. J. Scanlon, the subscribing witness to each of the following papers, that at the time of the making of this loan the defendant made his mark to the following assignment in the transfer book:

"WILKES-BARRE, PA., *June 30, 1871.*

"I hereby transfer to the Anthracite Building and Loan Association five shares of certificate No. 101 in the said association as collateral security for the repayment of money loaned by them to me, and also of all interest, fines, dues on stock, or other charges which may accrue according to the charter.

"Attest:	his THOMAS X LYONS. mark.
"J. J. SCANLON, <i>Treas.</i> "	

And that at the same time he made his mark to the following receipt in another part of the book:

"WILKES-BARRE, PA., *June 30, 1871.*

"Received of the Anthracite Building and Loan Association one thousand dollars as a loan from the permanent fund, for the repayment of which, with all interest, fines, dues on stock, and other charges, I have given as collateral security five shares of certificate No. 101 in the said association and a judgment note for one thousand dollars.

"Attest:	his THOMAS X LYONS. mark.
"J. J. SCANLON."	

It is not alleged that either of these documents was read or explained to the defendant, and the execution of them is denied, certainly inferentially, by the defendant, who swears that he signed his name but once for the association, and that was when he exe-

cuted the note. It is argued that the payment of interest and fines for a series of years without objection is inconsistent with defendant's present allegation. We cannot so regard it. The mere payment of usury without objection furnishes no ground of estoppel, nor evidence that the defendant felt himself legally bound to pay it. We therefore dismiss this fact from our consideration. Neither do we regard the signing of the assignment and receipt as equivalent to the signing of the agreement prescribed by the constitution. If they have any weight, it is simply as corroboration. The questions presented for adjudication are, first, did the defendant authorize Mr. O'Neill to sign his name, as alleged by the plaintiff; and, second, if he did, are there any circumstances connected with the transaction which would warrant an inference that his signature was obtained by fraud, or fraudulent concealment of the contents of the instrument he was asked to sign. As to the first question suggested, it will be observed from the brief synopsis of the evidence which we have given that there is a direct and apparently irreconcilable conflict between the defendant and Mr. O'Neill.

A mere conflict, especially since the passage of the act of 1869, permitting parties to testify, will not warrant the granting of an issue. *Philbin v. Davenger*, 1 Luz. Leg. Reg. 507.

As a general rule, where a party has confessed a judgment to another, which has been entered of record, his own deposition alleging fraud and the like, but contradicted flatly by the deposition of the plaintiff, will not prevail to open the judgment. *Kocher v. Rice*, 2 Luz. Leg. Reg. 24.

The rules declared in the two cases cited have been followed in many other cases in this court, and we do not propose to depart from them. They must not, however, be misapplied. As we understand the cases, they apply only where the conflict is over the equity which the defendant sets up as his ground for relief, and which he must establish, or be left where he has placed himself under the law. To extend the rule further, so as to hold that, in every instance, where there is a conflict between the plaintiff and the defendant, even though it be over a matter which is a part of the plaintiff's case in rebuttal of the defendant's equity or right to relief, the scales must be tipped to the plaintiff's

side would be a practical nullification of the act of 1869, as is abundantly shown in the late cases of *Ballentine v. White* (27 Sm. 20), *Prowattain v. Tindall* (30 Sm. 295), *Flattery's Appeal* (7 Nor. 27), and *Shaffer v. Clark* (9 Nor. 94).

Even the rule in equity, which has never been adopted in common law practice, that where the answer is responsive to the bill, and the evidence of only one person affirms what has been so negatived, then the court will neither make a decree, nor send it to a trial at law (2 Dan. Ch. 983*), would not be authority for such a general rule; for, in equity, where the answer of the defendant is not responsive to the bill, but sets up affirmative allegations in opposition to, or in avoidance of, the plaintiff's demand, and is replied to, the answer is of no avail in respect to such allegations, and the defendant is as much bound to establish the allegations so made by independent testimony as the plaintiff is to sustain his bill. Dan. Ch. 984 * note.

Assuming, then, that the defendant in a motion to open a judgment is the actor, and that the burden of proof, in the first instance, is on him, how does the case stand? He alleges that there is included in this judgment five hundred and five dollars which he never had, and that he has paid interest on this sum and interest or fines on this interest. His testimony would make a *prima facie* case of usury. The plaintiff association answers, not by denying these payments and the deduction of this premium, but by the affirmative allegation that they were authorized by the charter and properly chargeable, because the defendant signed the agreement prescribed by article v. of the constitution. When the issue is thus presented, it is plain to be seen that the burden of proof that he did not sign the agreement is not on the defendant, but is rather on the plaintiff of showing that he did, and in such an issue we therefore would not be justified in laying down a general rule that the oath of the plaintiff *per se* shall have greater weight than that of the defendant. In the disposition of this first question of fact, then, we are unassisted by the rules laid down in *Philbin v. Davenger* and *Kocher v. Rice* (*supra*), and it therefore becomes almost purely a question of credibility of the witnesses, and this must go to a jury. We suggested that the assignment of stock and receipt might furnish some corroboration

for the plaintiff. This would be so, provided their execution were satisfactorily established, but even as to that fact there is a conflict between Mr. Scanlon, the subscribing witness, and the defendant, and before we could treat it as corroborative we would have again to decide a fine question of credibility. It was urged quite strenuously for the defendant that even conceding that he signed the agreement, it was not shown that it was read or explained to him, and this raises the second question heretofore suggested. We need not enlarge upon this question, but we deem it proper to say that if the execution of the agreement were established (and as to this question of fact we express no opinion, as it must go to a jury), the simple fact that it was not read or explained to him would not, under the circumstances of this case, be sufficient to send an issue to a jury. It does not appear affirmatively that the defendant cannot read, nor does it appear that any misrepresentations were made to him of its contents, nor does it appear that he asked to have it read; therefore, assuming that he signed the agreement under the circumstances detailed by the plaintiff's witness, the case would come within the rule declared by Gibson, C. J., in *Greenfield's Estate* (2 H. 496): "If a party who can read will not read a deed put before him for execution, or if being unable to read will not demand to have it read or explained to him, he is guilty of supine negligence, which, I take it, is not the subject of protection, either at law or in equity." This rule was followed in its fullest extent in *Pennsylvania R. R. Co. v. Shay* (1 Nor. 198).

This rule is made absolute, and issue awarded, note to stand for a declaration, and the execution theory to be taken as admitted, the plea to be *nil debit*, payment, etc.

D. L. O'Neill, Esq., for plaintiff.

Messrs. Bennett & Nichols, for defendant.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, September 8, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1
Suit of Chas. Smith v. Hattie D. Geddis and Isabel M. Geddis.

474 January term, 1879. Debt, real, \$180.16. Pl. fi. fa. 71 October term, 1883. Foster, Att'y.

All that lot of land in the township of Exeter, beginning at a corner in line of Boston avenue 314 feet from the Tunkhannock road, thence 200 feet to a 25 feet alley, thence along said alley 100 feet to a corner, thence 200 feet to said Boston avenue, and thence along the same 100 feet to the place of beginning, being lots 54 and 56 on said Boston avenue, as laid down on map of the West Pittston Coal Company; all improved, and having erected thereon a two-story frame dwelling house, back kitchen attached, and other outbuildings.

2
Suit of George S. Mauser v. A. Donop.
201 March term, 1882. Debt, real, \$1,684.21. Pl. fa. 89 October term, 1883. Halsey, Att'y.

All those lots in the borough of Freeland, viz.:

1. A lot beginning 62 feet on Center street from corner of Center and Chestnut streets, thence along Center street north 31 feet to a corner, thence east at right angles to Center street 150 feet to a corner on an alley, thence along said alley south 43 feet to a corner, thence at right angles to Center street west 50 feet, thence parallel with Center street north 12 feet to a corner, thence at right angles to Center street 100 feet to beginning; all improved, with a new wood barn and granary, 27 feet by 39 feet on ground, and 14 feet high; excepting and reserving in front along Center street 6 feet for a side walk, and in rear 6 feet for an alley.

2. The following lots, situate as aforesaid, being Nos. 34, 35, 36, 37, and 38, in square "F," each lot being 31 feet in width, and from 121 to 124 feet in length; excepting and reserving 6 feet in front for side walk, and 6 feet in the rear for an alley.

3
Suit of Lydia Keithline v. Ellen Lutzey and Evan Stair.

190 October term, 1878. Debt, real, \$400. Pl. fa. 84 October term, 1883. C. B. Jackson, Att'y.

All that lot of land in Dorrance township, beginning at a corner of land now or formerly of J. B. Wennier estate and corner of Conrad Steine, thence 15 8-10 perches to a corner in line of land of G. H. Hock, thence by same 8 3/4 perches to a corner of land of C. Schlicher, thence by same and Enos Hontz's land 60 perches to a corner, thence by Hontz's 4 perches to a corner, thence 3 1/2 perches to a corner in line of said Wennier estate, thence 8 3/4 perches to place of beginning, containing 29 acres and 67 perches, more or less; on which are erected a frame dwelling house, barn, and outbuildings; good orchard on premises, and well watered. Excepting and reserving out of the same a piece of land now the property of J. C. Thomas, containing 16,200 feet of land. Reserving, also, a piece of land now or late the property of Alexander Stein, same being about 120 feet square, situate on north side of public road leading from C. Schlicher's store, formerly a part of the first described.

4
Suit of Peter Forve v. C. Kern.
1153 November term, 1876. Debt, \$447.37. Lev. fa. 59 October term, 1883. Ricketts, Att'y.

A lot of ground on the northwest side of Main street, in the city of Wilkes-Barre, upon which is erected a two-story brick building, 21 1/2 feet in length and 21 1/2 feet in width, with a one-story frame back building, 26 feet in length by 16 feet in depth.

5
Suit of George C. C. Kaiser v. H. E. Klein.
59 April term, 1881. Debt, real, \$14,200. Pl. fa. 33 October term, 1883. Willard, Att'y.

1. All the undivided seven-eighths interest of the

defendant in the surface of all the lots in Pittston township, described on Schlager & Tropp's map or plot of addition to the village of Heidleburg, and contained and designated in blocks Nos. 150 and 160 inclusive.

2. The right, title, and interest of the defendant in the surface of all lots in blocks Nos. 1, 10, and 19, and lots Nos. 2, 3, and 4, in block No. 11, as designated and laid out on Charles Schlager's map or plot of the village of Heidleburg.

Lots No. 1 and 2; in block No. 1, are improved with a two-story frame dwelling house, frame barn, and other outbuildings.

33-35

ESTATES TO BE AUDITED BY THE

Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. Cecelia B. Carey; B. F. Carey, Administrator; September 4, 1883.

2. Wm. Thompkins; David T. Richards, Executor; September 4, 1883.

3. A. C. Nicely; Elizabeth Nicely, Administratrix; September 5, 1883.

4. Catharine Smith; Hendrick B. Wright, Executor; September 5, 1883.

5. Lorenzo D. Flannigan; Emily Flannigan, Administratrix; September 6, 1883.

6. Nathan Dodson; P. C. Wadsworth, Executor; September 6, 1883.

7. Stewart Cornelison; Andrew Hunlock, Administrator; September 7, 1883.

8. Minerva Macartney; S. C. Jayne, Administrator; September 7, 1883.

9. Mary A. J. Ruggles; Geo. W. Wagner, Executor; September 10, 1883.

10. Mary Lawler; Patrick Lawler, Administrator; September 10, 1883.

11. B. F. Gardner; G. I. Newton, Administrator; September 11, 1883.

12. John Gardner; Bessie Gardner, Administratrix; September 11, 1883.

13. Reuben Seybert; Stephen Hill, Administrator; September 12, 1883.

14. James Mott; D. K. Morss, Executor; September 12, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,
Clerk O. C.

33-35

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and, unless exceptions are filed, will be presented for final approval on Monday, the 3d day of September, 1883:

John Briggs, George Brown, John Simmer, Samuel Ballet, Thomas C. Harkness, Samuel Vingst, A. C. Richard, George H. Hoch, and Andrew Belles, dec'd.

JOSEPH HENDLER,
Clerk O. C.

33-35

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 5 1/2, May term, 1883. Libel in divorce a vinculo matrimonii. Lavina Jones, by her next friend, Frank Craig, v. Joseph S. Jones. The alias subpoena in the above case having been returned non est inventus, you, the said Joseph S. Jones, are hereby notified to appear at said court, on Monday, the 1st of October, 1883, at 10 o'clock A.M., to answer the complaint therein filed.

W. H. HINES, Solicitor.
WILLIAM O'MALLEY, Sheriff.

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THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, SEPTEMBER 7, 1883.

No. 36.

Court of Quarter Sessions of Luzerne County.

OVERSEERS OF HUNTINGTON *v.* OVERSEERS OF FAIRMOUNT.

Poor—Order of removal—Evidence.

1. The vacation of an order of removal on appeal is only conclusive as between the two poor districts which are parties to the appeal.
2. Service alone, without hiring, will not gain a settlement; but to constitute a hiring it is not necessary that the consideration should be paid in money; an express agreement that the pauper should receive his victuals and clothes for his labor constitutes a hiring by which a settlement may be gained.
3. It seems that mere admissions or declarations by the parties after the termination of the service are not competent evidence to show a hiring in order to establish the legal settlement of a pauper.
4. But declarations of the parties made during the continuance of the service are admitted for the purpose of illustrating the character of the service, whether gratuitous or otherwise.
5. Up to about 1850 B. had a settlement in Huntington by payment of taxes, when he sold his land and moved to Fairmount, where he acquired a settlement by a hiring. In 1856-7 he removed to Ross, where he continued in service by hiring until 1874, thus acquiring a settlement in Ross. From the last named township he removed to Fairmount, where he continued without hiring until he was declared a pauper. The overseers of Fairmount issued an order of removal to Huntington, from which the latter appealed: *Held*, that the order must be vacated.

Appeal of the overseers of Huntington township from an order of removal issued upon complaint of the overseers of Fairmount township.

The opinion of the court was delivered June 19, 1882, by

RICE, P. J.—In September, 1880, when Benjamin Bonham was declared a pauper, he lived with the family of Henderson Monroe, in the township of Fairmount. In the following February, pursuant to an order of removal issued upon complaint of the overseers of Fairmount, he was removed to the township of Huntington. The latter township has appealed from this order. No objection was made on the argument to the regularity of the

proceedings; therefore, the only question before us is, whether, under the evidence now before us, the alleged pauper was last legally settled in the township of Huntington. The material facts are found by us to be substantially as follows:

I. Benjamin Bonham is now nearly seventy-nine years old. He was born in the State of New Jersey, and in early infancy came with his parents to the township of Huntington, where they both continued to reside until their death. He occupied the house in which his father and mother lived and died for several years after their death, and at one time, either through his father or his brother, inherited an interest in the premises. He also voted in the township for many years, and never voted elsewhere. It is shown that in the years 1850 and 1851 he was assessed as the owner of one cow, and in the years 1852, 1853, 1854, and 1857 was assessed as a single man. He testifies, and is not contradicted in this particular, that he paid taxes while he was a resident of the township, but whether he paid taxes levied in pursuance of the above assessments or not does not appear. About the year 1850, although the year is not certain, he removed from the township of Huntington, and it does not appear that, after his removal, he occupied the premises in that township again for any length of time, or that he voted or paid taxes in the township thereafter. About this time, as nearly as we can ascertain from the parol testimony, which is somewhat vague, he sold his interest in the Huntington premises for forty dollars.

II. Upon leaving Huntington, at about the time above indicated, he went to the township of Fairmount, and for two or three years lived with Joseph Bonham, a relative. No evidence is produced to show that during this period he acquired a settlement in the last named township.

III. From Joseph Bonham's he went to live with one John Meixell, in the same township, under an agreement to work for his victuals and clothes. The facts in relation to this period may be best stated by quoting the evidence of Robert Meixell, a son of John Meixell. "He lived with my father about three years. He helped him work a little occasionally when he was a mind to. He hunted some; had a dog and gun of his own. I know

what the agreement was when he came from Bonham's to my father's. He came there saying he had been turned out of house and home, and wanted a place to stop. My father said he could not hire a man, but if Bonham wanted to work for his victuals and clothes he could do so. He stayed all night. Next day he went away, and returned that same day or the next. He had some shirts tied up in a bundle. He went to work there. He stayed there about three years. Left in March or April, 1856. . . . My father gave him his victuals and clothes for the three or four years that he was there." As to the character of service rendered, Mr. Bonham says: "I did not do much of anything there. Cut a little wood; helped to thresh a little. They did not pay me anything, but got me a pair of boots. They boarded me and did my washing. Can't say whether they got my clothes. Was not sick while there. I was around helping the old man do one thing and another on the farm. Got no money. They did not promise me any. Stayed at Meixell's a little over two years." Our conclusions upon the effect of this testimony as establishing a legal settlement in Fairmount township will be stated hereafter.

IV. Upon leaving John Meixell's, Bonham returned to Huntington, and for a few months lived with John Seeley in the house of which he had formerly been part owner.

V. From there he went to live with Benjamin Vanhorn, a nephew, in Ross township. This was in 1856 or 1857. He continued to live with him until 1874. The weight of the testimony shows that during this period he was able to work, and did work for Mr. Vanhorn upon his farm and in clearing up the land. Occasionally he would go away for two or three weeks at a time, but had no other residence. Mrs. Vanhorn testifies that they ordered him to leave some years before 1874. The only evidence as to the terms upon which he lived at the Vanhorns is the testimony as to the declarations of Bonham and the Vanhorns during the period he was there. If this evidence is competent, it would seem to show that the agreement between them was that he should work for his board and clothes. This evidence is corroborated to some extent by the evidence that they did, at different times, buy clothing for him.

VI. From the year 1874, when Bonham left Mr. Vanhorn's, until February 16, 1881, when the order of removal issued, he lived with Henderson Monroe, in Fairmount township. An order of relief had issued in the previous September, after which time, until his removal, he was supported at Mr. Monroe's by the poor district. During this whole period there was no contract of hiring, either express or to be implied. So far as the evidence shows, the work he did, and the support Monroe gave him, were gratuitous. This is shown by the testimony of Mr. Monroe, which is not contradicted. He says: "He coaxed us to take him. I never paid him any money during the time he was with us. I took him out of charity. During the time he was there we got him a few clothes, and my woman" (a niece of Bonham), got him a coat and some other things by going around among the friends. When he came to our house there was no time set for him to stay. He was simply to stay there awhile. He was not there as a visitor. He did chores around, and when he was a mind to work he worked a little. The clothing he got we gave him as a present. . . . Vanhorn threatened to throw Bonham on the town. He did not want to go there, and came to our house to have us keep him. We took him. We had promises of help to take care of him. His brother's sons in Canada promised to help us, but never did."

Our conclusions from these facts are as follows:

1st. Benjamin Bonham had originally an undoubted legal settlement in Huntington township. But the statute authorizes the removal of a pauper "to the district or place where he was *last* legally settled." Act of June 13, 1836, P. L. 546, P. D. 1156, *pl.* 18. Therefore, notwithstanding this fact, if he subsequently gained a legal settlement in Ross or Fairmount, it becomes apparent that in either case Huntington is not the place or district where he was *last* legally settled, and the order of removal will have to be vacated. The vacation of the order of removal is only conclusive as between these two townships. In case it is vacated, it will then be the duty of the appellees to take charge of the pauper until they find his place of last legal settlement. *West Buffalo v. Walker Township*, 8 Barr, 177; *Moreland v. Davidson*, 21 Sm. 371.

2d. A settlement may be gained in any district by any unmarried person who shall be lawfully bound *or hired as a servant* within such district, and shall continue in such service during one whole year. Sec. 9, Act of June 13, 1836, P. L. 542, P. D. 1155, *pl.* 10. Service alone, without hiring, will not gain a settlement. Where a pauper is taken in by his relatives, without contract or agreement of any kind, although he does some work, and is given his victuals and clothes by such relatives, he will not thereby gain a settlement. Mere taking one in charity will not gain a settlement, and the evidence as to the terms upon which the alleged pauper lived at Henderson Monroe's proves nothing more. *Lewistown v. Granville*, 5 Barr, 283. We conclude, therefore, that no settlement was gained in Fairmount township during this period.

3d. The distinction between the service at Henderson Monroe's and that at John Meixell's is apparent. In the former case there was no contract of hiring, express or implied, while in the latter case there was an express agreement that the pauper should receive his victuals and clothes for his labor. This constituted a contract, for the breach of which the servant might have had his remedy by action. It was expressly decided in *Briar Creek Township v. Mount Pleasant Township* (8 W. 431) that service rendered under such a contract was sufficient to gain a settlement. It was there said: "To constitute a hiring it is not necessary that the consideration should be paid in money; it is sufficient if other valuable commodities are to be paid." The service at Mr. Meixell's, under this arrangement, having continued for more than a year, we feel bound to conclude that a settlement was thereby gained in Fairmount township after Bonham had abandoned his domicile in Huntington.

4th. As we have already suggested, we cannot conclusively decide in this proceeding whether or not there was a subsequent settlement gained in Ross township. It is, nevertheless, perfectly relevant to inquire whether, as between the parties to this appeal, and on the evidence now presented, such was the fact. "Our law seems to consider service alone as a meritorious cause, and to require that there should have been a contract for it, only as a proof that it was valuable, and distinguishable, in that respect,

from those feeble and trifling acts which are sometimes performed in requital of a gratuitous maintenance; in other words, to show that, instead of having been a benefit to the township, as a producer, the pauper had been a burthen to it, as a consumer, from the beginning." *Heidelberg v. Lynn*, 5 Wh. 433. If the value of the services rendered were the only test, we should have no hesitation in concluding from the testimony that the settlement alleged to have been gained in Ross township was more meritorious than that gained in Fairmount. It is true that Mr. Vanhorn was a nephew, but he was under no legal obligation to contribute to Bonham's support. Further, the latter was well able to work, and was by no means an object of charity. The period at Vanhorn's extended over a large number of years, from 1856 or 1857 to 1874, and while it appears that Bonham was indolent, and was away at times, yet these periods were inconsiderable in length, and not sufficient to break the continuity of the service, and the work that he did was of a substantial and valuable character. These circumstances go very far to rebut the inference that the service was gratuitous. But, it must be conceded, the law requires proof of a hiring, in which is implied a contract, and the question arises whether this may be shown by the admissions of the parties thereto. It seems to be decided that such mere admissions or declarations, made after the termination of the service, would not be competent. *West Buffalo v. Walker*, 7 W. 171. But it is a general principle that declarations which are the immediate accompaniments of an act are admissible as part of the *res gestae*; and so the declarations of the parties, made during the time when one has been in the service of the other, have been admitted for the purpose of illustrating the character of the service, whether gratuitous or otherwise. *Tioga v. Lawrence*, 2 W. 43; *Moreland v. Davidson*, 21 Sm. 371. It would seem, from these cases, that the testimony of Mr. Harvey and of Mr. Monroe as to the declarations of the parties during the time Bonham was at Vanhorn's, taken together with the other acts of the parties, would be admissible to rebut any inference that the service was gratuitous, and thus to show that there was an actual hiring. It is suggested that no settlement was gained because the Vanhorns ordered Bonham away. This is not conclusive, as was expressly

decided on a similar state of facts in the case of Briar Creek v. Mount Pleasant (8 W. 431). Mr. Justice Sergeant says: "The hiring virtually endured for three years, notwithstanding the occasional orders to go. . . . The hiring, in the first instance, may be indefinite—at the will of the parties; and if neither determine his will, but both continue the hiring, and act under it for a year, the letter and spirit of the act are complied with." We, therefore, conclude that upon the evidence here presented, and as between the parties to this appeal, the said Benjamin Bonham was last legally settled in the township of Ross. It follows that the order of removal must be vacated.

And now, June 19, 1882, the order of removal is vacated and discharged at the costs of the appellees.

C. D. Foster, Esq., for appeal.

E. S. Osborne, Esq., *contra*.

Court of Common Pleas of Luzerne County.

SCHMALTZ v. WHITLEY.

Vendor and vendee—Equitable ejection—New trial.

1. Where a vendor, after having received part of the purchase money, retakes possession of the land, without the consent of the vendee, and uses it, he is chargeable with the rents, issues, and profits so long as he holds and uses the same, to be applied to satisfy any balance of purchase money that may be due and unpaid, and he will not be allowed to give evidence of the value of the improvements made by him while in possession, which were not necessary to the occupation and profitable enjoyment of the land.
2. Where the amount awarded by a jury is excessive, the court may annex a condition that the excess be remitted to its refusal of a new trial.

Rule for new trial.

The opinion of the court was delivered April 23, 1883, by

RICE, P. J.—We have carefully examined the evidence furnished by the depositions, as well as our own notes taken on the trial, and are satisfied that the testimony of Thomas Bartleson would not have changed the result. In only one particular can we say that the verdict was erroneous. It was decided in Wykoff v. Wykoff (3 W. & S. 481) that where a vendor, after having

received part of the purchase money, retakes possession of the land, without the consent of the vendee, and uses it, he is chargeable with the rents, issues, and profits so long as he holds and uses the same, to be applied to satisfy any balance of purchase money that may be due and unpaid, and that he will not be allowed to give evidence of the value of the improvements made by him while in possession, which were not necessary to the occupation and profitable enjoyment of the land. The plaintiff concedes that we committed no error in rejecting evidence as to the improvements made by him after he had retaken possession. It is pretty evident, however, from all the testimony that the jury must have made some allowance on this account, and it also appears from the statement which they expressly refer to, and attempted to make part of their verdict, that seventy-five dollars were allowed on this account. This statement cannot, of course, be received to impeach their verdict, and we should give it no consideration did not the evidence satisfy us that the jury must either have erred in deciding as to the rental value of the premises and the amount of timber cut, or in making allowance to the plaintiff for the value of the improvements, which they must have guessed at. This can be cured by remitting the excess.

And now, April 23, 1883, upon condition that the plaintiff, within fifteen days from this date, remits seventy-five dollars of the verdict, the rule is ordered to be discharged; otherwise rule absolute.

· Hon. G. M. Harding and Gustav Hahn, Esq., for plaintiff.
E. Robinson and S. S. Winchester, Esqs., for defendant.

Man is very much like an egg—keep him in hot water and he is bound to become hardened.

“No,” said a Philadelphia belle, “no electric light for me. It can’t be turned down low enough.”

ORPHANS' COURT ARGUMENT LIST.

SATURDAY, SEPTEMBER 29, 1883.

<p>1 In Re Estate of E. V. Kidder, deceased</p> <p>2 In Re Estate of Abram Minnich, deceased</p> <p>3 In Re Estate of James Mott, deceased</p> <p>4 In Re Estate of Martin Guri, deceased</p>	<p>Exceptions to final account of Trustees.</p> <p>Exceptions to final account of Administratrix.</p> <p>Exceptions to report of Examiner.</p> <p>Exceptions to report of Examiner.</p>
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CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

MCLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
WILKES-BARRE, PA.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Joseph Phillips, and that said license will be asked for in the court aforesaid on Monday, September 17th, 1883, at 10 o'clock A. M.

G. L. HALSEY,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Levi Fisher, and that said license will be asked for in the court aforesaid on Monday, the 17th of September, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by David Mendlesohn, and that said license will be asked for in the court aforesaid on Monday, the 17th of September, 1883, at 10 o'clock A. M.

A. R. BRUNDAGE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Jos. Saltzberg, and that said license will be asked for in the court aforesaid on Monday, the 17th of September, 1883, at 10 o'clock A. M.

A. R. BRUNDAGE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Abram Jacobs, and that said license will be asked for in the court aforesaid on Monday, the 17th of September, 1883, at 10 o'clock A. M.

A. R. BRUNDAGE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Israel Mendlesohn, and that said license will be asked for in the court aforesaid on Monday, the 17th day of September, 1883, at 10 o'clock A. M.

P. H. CAMPBELL,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by David Mendlesohn, and that said license will be asked for in the court aforesaid on Monday, the 17th day of September, 1883, at 10 o'clock A. M.

A. R. BRUNDAGE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Jacob Gerhart, and that said license will be asked for in the court aforesaid on Monday, the 17th of September, 1883, at 10 o'clock A. M.

A. R. BRUNDAGE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Joseph Ellowitch, and that said license will be asked for in the court aforesaid on Monday, the 17th day of September, 1883, at 10 o'clock A. M.

S. J. STRAUSS,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Lewis Amolskey, and that said license will be asked for in the court aforesaid on Monday, the 17th day of September, 1883, at 10 o'clock A. M.

A. R. BRUNDAGE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Levi Fisher, and that said license will be asked for in the court aforesaid on Monday, the 17th of September, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by David Mendlesohn, and that said license will be asked for in the court aforesaid on Monday, the 17th of September, 1883, at 10 o'clock A. M.

A. R. BRUNDAGE,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Solomon Gerstein, and that said license will be asked for in the court aforesaid on Monday, the 17th day of September, 1883, at 10 o'clock A. M.

S. J. STRAUSS,
Solicitor.

35-36

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Jos. Silverman, and that said license will be asked for in the court aforesaid on Monday, the 17th day of September, 1883, at 10 o'clock A. M.

S. J. STRAUSS,
Solicitor.

35-36

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Louis I. Fisher, and that said license will be asked for in the court aforesaid on Monday, the 17th day of September, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

36-37

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Aaron Rosenthal, and that said license will be asked for in the court aforesaid on Monday, the 17th day of September, 1883, at 10 o'clock A. M.

D. L. O'NEILL,
Solicitor.

36-37

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county, No. 5½, May term, 1883. Libel in divorce a vinculo matrimonii. Lavina Jones, by her next friend, Frank Craig, v. Joseph S. Jones. The alias subpoena in the above case having been returned non est inventus, you, the said Joseph S. Jones, are hereby notified to appear at said court, on Monday, the 1st of October, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff.
W. H. HINES,
Solicitor.

33-36

ORPHANS' COURT SALE.
Estate of David Gordon, dec'd. In Partition. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, at the front door of the dwelling house on the premises, on Friday, the 28th day of September, 1883, at one o'clock P. M., the following real estate:

1. All that tract of land in the township of Lehman, containing about 57 acres, now or late occupied by S. A. Edwards; all improved, with one 1½-story frame house, one 2-story frame house, a frame barn, and a small blacksmith shop thereon.

2. Also, another tract of land in Lehman township, being a part of lot No. 33, certified Bedford, beginning at a corner between lots Nos. 32 and 33, thence in the line of lake township 100 perches to lot No. 34, thence 80 8-10 perches to a corner, thence 100 perches to a maple, thence 80 8-10 perches by lot No. 32 to the place of beginning, containing 50 acres, more or less.

The said two tracts constitute one farm, a plot thereof being attached to return of inquest for partition, recorded in Partition and Sales Docket No. 4, p. 405.

TERMS OF SALE—25 per cent cash on day of sale, 25 per cent on confirmation of sale, 25 per cent six months from day of sale, and the balance one year from day of sale; the deferred payments to be secured by bond and mortgage on the premises, and to draw interest from day of sale

GEO. K. POWELL,
Attorney.
H. B. PAYNE,
Trustee.

36-38

78

ORPHANS' COURT SALE.
Estate of Frederick Boddin, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the law office of C. W. Kline, in the borough of Hazleton, on Saturday, the 20th day of September, 1883, at 10 o'clock A. M., all the undivided five-thirteenth interest in that lot of ground on the north side of Washington avenue, in the town of West Hazleton, township of Hazle, beginning at a point on the south side of Washington avenue 16½ feet from a stake (corner of lands of Rosentock et al.), thence on and along Washington avenue 150 feet, thence by line at right angles with said Washington avenue 40 feet, thence by line parallel to said Washington avenue 150 feet, thence 40 feet to the place of beginning; improved by a bone mill.

TERMS OF SALE—\$200 cash on day of sale, and balance of purchase money on confirmation of sale and delivery of deed.
ANNA MARIA BODDIN,
C. W. KLINE,
Attorney. Executrix

36-38

ORPHANS' COURT SALE.
Estate of Ross C. Sutliff, deceased. By virtue of an order of the Orphans' Court of Luzerne county, I will expose to public sale, on the premises, on Saturday, September 29th, 1883, at 2 o'clock P. M., the following real estate in the township of Huntington, beginning at a corner in line of A. S. McDaniels, thence 24 perches to a corner, thence by balance of the tract of which this is a part 80 perches to a line of land now occupied by John Killian, thence along said line 24 perches to a corner, thence by lands of William Killian 80 perches to the place of beginning, containing 12 acres of land, strict measure; all improved, with a two-story frame house and barn thereon, both in good condition; also, well of good water.

TERMS OF SALE—\$100 down on the day of sale, one-half of the balance on the confirmation of the sale absolutely, and the remaining one-half in six months from day of sale; deferred payments to be secured by bond and mortgage on the premises, with interest.

A. R. PENNINGTON,
Administrator.
I. P. HAND,
Attorney.

36-38

ESTATE OF MICHAEL NALLON, LATE OF Pittston, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARTIN GERIGHTY,
MICHAEL TOOLE,
Executors.
D. S. KOON,
Attorney.

35-40

ESTATE OF THOMAS LYNN, LATE OF Pittston, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MICHAEL BOLIN,
F. C. MOSIER,
Attorney. Executor.

35-40

ESTATE OF PATRICK BURKE, LATE OF Jenkins township, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JAMES O'DONNELL,
MICHAEL T. HOBAN,
Executors.
J. T. LENAHAN,
Attorney.

29-34

I

ESTATE OF MARY CULVER, LATE OF THE
township of Ross, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELISHA CULVER,
DORRANCE & PRICE, Administrator.
Attorneys. 34-39

ESTATE OF PETER COLL, LATE OF THE
township of Hazle, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

DANIEL O'DONNELL,
B. McMANUS, Administrator.
Attorney. 34-39

ESTATE OF MATTHEW LARNER, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN A. COLLIER,
JOHN T. LENAHAN, Administrator.
Attorney. 35-40

ESTATE OF ELIZABETH BULKELY, LATE
of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JONATHAN E. BULKELY,
S. J. STRAUSS, Executor.
Attorney. 35-40

ESTATE OF DR. JOHN S. PFOUTS, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELIZABETH D. PFOUTS,
E. G BUTLER, Administratrix.
Attorney. 34-39

ESTATE OF HIRAM ROSENCRANS, LATE
of Hazleton, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY ROSENCRANS,
C. W. KLINE, Executrix.
Attorney. 34-39

ESTATE OF HENRY KOEPER, LATE OF
Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE KOEPER,
Executrix. 35-40

ESTATE OF DAVID MACKOWN, LATE OF
West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY E. MACKOWN,
Administratrix. 35-40

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, October 1st, 1883, at 10 o'clock A.M., for the charter of an intended corporation, to be called "The Second Welsh Congregational Church of Wilkes-Barre," the character and objects of which are the worship of God according to the faith and discipline of the Congregational Church in the United States of America.

GARRICK M. HARDING,
JOHN MCGAHREN,
Solicitors. 36-38

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, September 17, 1883, at 11 o'clock A.M., for the incorporation of an intended corporation, to be called "The Hazleton Liberty Cornet Band," the character and object whereof is social enjoyment and the culture of instrumental music, and for these purposes to have, possess, and enjoy all the rights, benefits, and privileges conferred by said Act of Assembly and its supplements.

C. W KLINE,
Solicitor. 35-37

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called the "Shickshinny Water Company," the character and objects of which are to provide for the supply of water to the public, and for holding lands by lease or otherwise necessary for the construction of the water works.

GEO. W. SEARCH,
JESSE BEADLE,
I. P. HAND,
Solicitor. 36-38

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, SEPTEMBER 14, 1883.

No. 37.

Supreme Court of Pennsylvania.

SHUPP *et al.* v. GAYLORD.

1. A bequest of a sum to be paid to the legatee annually for life out of the rents accruing under a lease named in the will, "if they fail not," does not authorize an executor to reserve or accumulate anything from the receipts of money in one year to pay the annuity of the next.
2. Such a legacy, however, will not be construed to be confined to the actual lease mentioned, unless that is the testator's plain intention. There being an evident desire to provide for the legatee for life, and no special reason for restricting her annuity to a fund received from a particular person, the language must be understood to indicate the *property* as the source of income, rather than the identical contract then in force.

Error to the Court of Common Pleas of Luzerne county.

[For opinion of court below, see 1 Kulp, 415; 10 Luz. Leg. Reg. 205.]

The opinion of the court was delivered May 25, 1883, by

STERRETT, J.—The questions involved in the case stated have been so elaborately discussed by the learned president of the Common Pleas that it is unnecessary for us to do more than affirm the judgment for the reasons so clearly and forcibly presented in his opinion.

In the language of the testator, the additional bequest of "five hundred dollars a year" to his wife is "to be paid to her yearly, in each and every year during her natural life, . . . out of the rents accruing under and from the lease of coal to the Wilkes-Barre Coal and Iron Company, if the said rents fail not to be paid; the same to depend upon the payment of rents under said lease sufficient at least to pay the legacies herein charged thereon, and not to be paid out of or charged on any other part of my estate." The coal referred to was then leased for a term of years ending January 1, 1914. The product of that coal property, in the shape of annually accruing rents, was manifestly the fund out of which the testator intended the annuity to be paid, and upon which, exclusively and in relief of every other part of his estate, it is by necessary implication charged. The then existing lease and the name of the lessee are mentioned merely as descriptive of the property whence the income was to be derived with which the annuity charged thereon should be paid; or, in the language

of the court below, "the lease of coal to the Wilkes-Barre Coal and Iron Company" must be regarded, not as in itself the object of the charge, but as descriptive only of the source from which the rents were to issue upon which the legacy was charged. The only contingencies in which the testator appears to have contemplated even a temporary suspension or cessation of the annuity, or any part thereof, are the failure of rents or income from that particular property, or such decrease in the amount of income as would render it insufficient to pay the legacies charged thereon. But, as has already been suggested, the reasons given in support of the judgment are entirely satisfactory, and need not be repeated.

Judgment affirmed.

Messrs. E. P. & J. V. Darling, and A. T. McClintock, Esq., for plaintiffs in error.

Geo. K. Powell, Esq., for defendant in error.

Supreme Court of Pennsylvania.

CHURCH'S APPEAL.

1. The court below may amend its record after a *certiorari* has issued to remove it to the Supreme Court.
2. When an attachment would lie against a party for non-performance of a decree in equity, it is also the proper remedy to enforce the payment of the costs. In such a case it is not in contravention of the act of July 12, 1842.

Appeal from decree of the Common Pleas of Luzerne county.

A bill was filed against Charlotte Church and Joseph Church, her husband, to have the former declared a trustee as to certain land. The husband had no interest. A decree was entered in favor of the plaintiffs, with costs, from which an appeal to the Supreme Court was taken by the defendants. After the *certiorari* had gone out, and before the return day, the decree was amended by the court below, and, being certified in this shape, was affirmed by the Supreme Court. The record was in due time remitted to the Common Pleas, and, about a year after, the costs not being paid, an order for an attachment for contempt was duly made against Joseph Church. His wife had died some time previously. This order was the subject of the assignment of error.

A. Ricketts, Esq., for the appellant, argued that the award of the attachment was an error:

1st. Because there was no valid decree in the case when it came before the Supreme Court. At the time of the issuing of the *certiorari*, the original decree was upon the record, but was vacated immediately after upon the motion of the plaintiffs themselves. The second decree could not properly be reviewed, for the reason that it was void, being entered after the removal of the record. 3 Bouv. Inst. 3366; Gardiner *v.* Murray, 4 Yeates, 560; Cox *v.* Henry, 12 Casey, 445; Martzinger *v.* Smith, 9 W. N. C. 274; Light's Appeal, 10 Harris, 449; Hallowell's Appeal, 8 Id. 215; Buckingham *v.* McLean, 13 How. 150.

2d. Because the process for the collection of money simply is fixed by rule lxxxiii. of the equity rules to be "by a writ of execution in the form used in the same court in suits at common law in actions of debt or *assumpsit*." The act of July 12, 1842, (P. L. 339) forbids imprisonment for the collection of money. Costs are a matter *ex contractu*. Lane *v.* Baker, 2 Gr. 424. The proper proceeding would be by a writ of *feri facias*. Scott *v.* Jailer, 1 Gr. 237.

I. P. Hand, Esq., and Messrs. Palmer, Dewitt & Fuller, for the appellee, argued:

1st. That the court below had a right to amend its record after the *certiorari* was issued. Shamburgh *v.* Noble, 30 P. F. S. 158; Berryhill *v.* Wells, 5 Binn. 60; Short *v.* Coffin, 5 Burrow, 2730; Burrows *v.* Heyshum, 1 Dall. 133; Spackman *v.* Byers, 6 S. & R. 385; Wampler *v.* Shissler, 1 W. & S. 370.

2d. The attachment was issued to compel obedience to an order of the court, not to collect a debt arising out of a contract, and is therefore within the exception of the act of 1842. The case of Scott *v.* Jailer (1 Gr. 237) is not an authority. Chew's Appeal, 8 Wr. 252; Beidler *v.* Howell, 8 Phila. 273.

The opinion of the court was delivered May 7, 1883, by

TRUNKEY, J.—From the final decree the respondents appealed, and filed the *certiorari* in the Court of Common Pleas on March 10, 1877. Afterwards, and before the return day of the writ, said decree was amended in the court below, and the record, setting forth the decree as amended, was certified and returned. That is the decree which was affirmed and remitted for enforcement,

and whether there had been irregularities in the procedure for the amendment is a matter of no concern in the execution. The alleged irregularities were prior to the final hearing and adjudication in the appellate court, and if it be conceded that the court below erred in making the amendment, the time for its correction was at or before that hearing. The decree, as affirmed, is valid until vacated by the court.

The bill was against Joseph Church and Charlotte, his wife, for a decree that they convey to the plaintiffs certain undivided interests in a tract of land, in accordance with an alleged trust created before and at the time the legal title to the land was vested in the said Charlotte. Joseph Church was a necessary party and it appears that he was an active party in contesting the plaintiffs' demand. The result was a decree that Charlotte Church held the legal title to the land; that the defendants should convey said interests to the equitable owners thereof, and that the defendants pay the costs.

The act of 1842 provides that no person shall be arrested or imprisoned on any civil process issued in any proceeding for the recovery of money due upon a judgment or decree founded upon contract, or due upon any contract, or for the recovery of damages for the non-performance of a contract. This suit was not for the recovery of money, but for the enforcement of a trust, and therefore without the statute. It may be that the trust grew out of a contract, and that the suit was akin to a proceeding for specific performance, yet it is not within the spirit of the statute, for breeches of duty by trustees are excepted out of its operation. *Chew's Appeal*, 44 Pa. St. Rep. 247.

Where the decree against a party is founded upon his *tort*, or upon his breach of duty as a trustee, the costs imposed upon him follow his wrongful acts. In an action for recovery of money founded upon a contract, the costs are of the same nature, and the defendant is not liable to arrest for either debt or costs. *Pierce v. Scott*, 40 Leg Intel. 320. But where the party is liable to arrest to enforce the payment of money, or the performance of a specific thing, he is, also, for the costs taxed against him in the judgment or decree.

The order awarding an attachment is affirmed, and appeal dismissed at the costs of appellant.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O' Malley, Sheriff of Luzerne county, on Saturday, October 6th, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1
Suit of the Wyoming Building and Loan Association of the Borough of Wilkes-Barre, No. 2, v. Peter Wallace and Phoebe Wallace, Administrators of Hannah Maria Wallace, deceased.

89 November term, 1882. Debt, \$750. Al. lev. fa. 115 October term, 1883.

All that lot in the city of Wilkes-Barre, beginning at a stone corner on Wood street, thence running back northeast along the line of Sanford E. Parsons 170 feet to a corner, thence along the line of Abraham Merrick and M. Woods southwest 40 feet to a corner, thence along the line of William E. Hoover northwest 110 feet to a corner on Wood street, thence along Wood street 45 feet to the place of beginning, containing about 5,275 square feet of land; improved, with a large 2½-storied dwelling house, barn, and other outbuilding, and fruit trees thereon, and an alley leading to the barn.

2
Suit of Dryfoos, Grier & Youngman, agents, assigned to Pardee & Markle, v. Patrick Walker.

70 February term, 1883. Debt, \$1,988.92. Vend. ex. 123 October term, 1883. Dickson & Atherton, Att'ys.

All that lot of ground on the north side of Spruce street, in the borough of Hazleton, it being lot marked No. 12, of square No. 4, commencing at the distance of 366½ feet westward from the northwesterly corner of the said Spruce and Cedar streets, containing in front or width 33½ feet, and extending of that width in depth northward 150 feet to Green street; improved with the following buildings: a 2-story frame dwelling with frame back building fronting on Pine street, a 1-story frame building attached, a 1-story brick building and frame outbuilding, also a 1½-story frame dwelling fronting on Green street, with a 1-story back building and a 1-story frame outbuilding, and other frame outbuildings.

2. All that lot of ground in Hazleton, on the east side of Wyoming street, commencing at a point 90 feet northward from the northeast corner of Wyoming avenue and Tamarack street, and running along said Wyoming street 30 feet, and extending of that width in depth eastward 190 feet to a 20 feet wide alley, said lot being known and numbered on the plan of the said borough of Hazleton as lot No. 9, of square No. 101; all improved, with a two-story frame dwelling house, frame kitchen, and other frame outbuildings thereon.

3
Suit of G. W. & L. Search v. Thomas Sink.

173 May term, 1883. Debt, \$66.84. Fi. fa. 107 October term, 1883. Evans, Att'y.

A lot of land in the borough of Shickshinny, beginning at the southwest corner of land owned by Thomas Senior, thence easterly along the line of said Senior 150 feet to line of land of G. W. & L. Search, thence southerly along said Search's land 75 feet to corner of land of Hiram Deitrick, thence westerly along said Deitrick's land 150 feet to Canal street, thence northerly along the easterly side of Canal street 75 feet to a corner, the place of beginning, containing 11,250 square feet of land, more or less; all improved, with a 2-story frame dwelling house, a frame stable, other outbuildings, and fruit trees thereon.

4
Suit of A. F. Peters & Son v. Ernest Schasel.

140 May term, 1882. Debt, \$159.00. Fi. fa. 116 October term, 1883. Halsey, Att'y.

All that lot of land in the township of Foster, near Freeland, beginning at a corner on the east side of Birbeck street, and about 331½ feet south of land now owned by Thomas Birbeck, thence on Birbeck street 92 feet to a corner, thence by land of Joseph Birbeck's estate 127½ feet to a corner in line of land belonging to Highland Coal Company, thence by same 92 feet to a corner, thence by land of Joseph Birbeck's estate 129½ feet to the place of beginning, containing 11,831 square feet of land, more or less; all improved, and

having erected thereon one two-story frame dwelling house, privy, stable, outbuildings, and fruit trees.

5
Suit of T. A. Miller v. Ada Harding.

Al. test. fi. fa. from Wyoming county. Debt, \$145.70. Phoenix, Att'y.

All that lot of land in Union township, bounded on the north by lands of Edward Lewis and Mary L. Thompson, on the east by lands of Joseph B. Dodson, on the south by lands of Philip H. Lamb, and on the west by lands of Jas. Woods and Mary L. Thompson, containing 40 acres of land, more or less; about 8 acres thereof improved.

6
Suits of Josiah Drum v. Benjamin Wartman and Daniel Walk.

682 and 694 September term, 1879. Debt, \$30 and \$125. Fi. fas. 103 and 104 October term, 1883.

1. The following lot of land in the township of Butler, bounded on the north by a public road known as the "Bridge Road," on the west by land of John W. Smith, on the south by public road leading from Hazleton to Wilkes-Barre, and on the east by lands of Susan Durst and the estate of Mrs. Washman, containing about 4 acres of land; all improved, with a frame hay shed thereon.

2. One undivided half interest in a lot of land in Butler township, beginning at a stone corner of land of Joshua Santee in line of land late of John Strunk, deceased, thence by land of Joshua Santee 338 perches to a stone corner, thence by land surveyed to Reuben Hayner, Jr., 47½ perches to a stone corner, thence by land of Thomas Snyder 338 perches to a stone corner, thence by land of Charles Benner and of said Strunk, deceased, 47½ perches to the place of beginning, containing 100 acres of land, more or less; unimproved, and no buildings thereon.

7
Suit of Henry E. Soldan v. Jacob Rosenstock.

205 June term, 1882. Debt, \$564.25. Fi. fa. 117 October term, 1883. Troutman, Att'y.

All that piece of land in Hazle township, beginning at a yellow pine at corner of land in the warrantee name of George C. Drake, thence by warrantee name of Mary Kunkle 1,424 feet to a yellow pine corner, thence by warrantee name of Joseph H. Clapman 363 feet to a stake, thence by land now or late of Hill et al. 1,557 feet to a stake in line of land in warrantee name of George C. Drake, thence by same 300 feet to beginning, containing 12 acres 86½ perches; net improvements consist of a large three-story frame hotel building with a large three-story back building, a large enclosure used as picnic grounds, with bars, large frame stable, frame barn, frame wagon house, shedding, and other frame outbuildings.

8
Suits of A. Bauman v. Solomon Sturmer.

261 September term, 1879, and 218 October term, 1883. Debt, \$162.75 and \$237.90. Fi. fas. 97 and 120 October term, 1883.

1. The following lots in the village of Sturmerville, township of Exeter, to wit: Nos. 12, 14, and 15, on Schooley street, measuring each 50 feet by 183 feet; Nos. 29, 30, 34, and 35, each 40 feet by 183 feet, on Schooley street; Nos. 18 and 21, each 50 feet by 183 feet; Nos. 25 and 27, each 50 feet by 156 feet, on Valley street, according to map of the village of Sturmerville.

2. A vacant lot in the township of Exeter, adjoining the line of the borough of Pittston, on the corner of Wyoming and Erie avenues, measuring 73 feet by 250 feet.

3. A vacant lot on the northerly side of Erie avenue, in the borough of Pittston, being 90 feet in front and 150 feet deep.

9
Suit of Aaron Brown v. John McDermott.

117 November term, 1881. Debt, \$535.22. Fi. fa. 127 October term, 1883.

All that lot of land in Kingston borough, bounded on the west by what is known as the back road leading through township, on the south by lands of George Corey, on the east by an alley, and on the north by an alley, containing about one-fifth of an acre of land,

more or less; all improved, and having erected thereon one 1½-story frame dwelling house, outkitchen, out-buildings, and fruit trees. 37-39

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and, unless exceptions are filed, will be presented for final approval on Monday, the 1st day of October, 1883:

Christian Ruth, Thomas Davis, R. C. Suthiff, and Anthony Schappert, deceased.

JOSEPH HENDLER,
Clerk O. C.

37-39

ESTATES TO BE AUDITED BY THE Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. Ellen E. Rutter; H. S. Rutter and E. P. Darling, Executors; October 2, 1883.
2. John L. Trasel; M. M. Pancoast, Administratrix; October 2, 1883.
3. George Beck; John B. Quick, Administrator; October 3, 1883.
4. Ann Middleton; Thomas H. Atherton, Trustee; October 3, 1883.
5. Henry Bach; Elizabeth Bach, Executrix; October 4, 1883.
6. Philip Weiss; Benjamin Evans, Administrator; October 4, 1883.
7. Olmstead Dickinson; C. B. Dickinson, Administrator; October 5, 1883.
8. William Keegan; John M. Ward, Administrator; October 5, 1883.
9. David Benschoter; W. J. and F. M. Benschoter, Administrators; October 8, 1883.
10. Anton Schappert; Peter Schappert and Henry Schappert, Executors; October 8, 1883.
11. Thomas McLaughlin; J. J. Williams, Administrator d. b. n. c. t. a.; October 9, 1883.
12. Robert M. Bonham; Ambrose Bonham, Administrator; October 9, 1883.
13. James P. Atherton; Sarah J. Atherton, Executrix; October 10, 1883.
14. Elizabeth Levers; Ira M. Kirkendall, Administrator; October 10, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,
Clerk O. C.

37-39

IN RE PARTITION OF THE ESTATE OF

John Davis, late of Jenkins township, Luzerne county, Pennsylvania, deceased. Now, June 30, 1883, upon filing petition and motion of counsel, court grant rule on heirs and all persons interested to appear and accept or refuse the real estate at the valuation, or make bids on the same, or show cause why the same shall not be sold on their neglect or refusal to accept the same. Notice of this rule to be given to parties interested resident within the county as directed by law, and to parties interested non-residents of the county by publication in a weekly newspaper published in Luzerne county and in the Luzerne Legal Register for three successive weeks, and a copy of each to be mailed to the last known place of abode of such non-resident parties. Returnable on Monday, October 8, 1883, at 10 A. M.

By THE COURT. In pursuance of the foregoing order of court, notice is hereby given to John P. Davis, of Harmony, Clay county, Indiana, and Thomas R. Davis, of Opaque City, Osage county, Kansas, to appear at the time above mentioned and for the purpose therein mentioned.

T. J. CHASE,
EDWARD A. LYNCH,
Solicitors.

37-40

ESTATE OF PHILIP HOUP, DECEASED.

In the Orphans' Court of Luzerne county, Pa. In Re Proceedings for partition of real estate of decedent. Sur petition for rule on heirs and devisees. Now, 14th September, 1883, upon consideration of the above petition, a rule is granted upon the devisees and heirs and other parties interested to appear in open court, on the 13th day of October, 1883, at 10 o'clock A. M., and accept or refuse the real estate at the valuation returned, or make bids on the same, or show cause why the same shall not be sold on their neglect or refusal to accept the same.

In pursuance of the above order, notice is hereby given to Charles Houpt, of New Philadelphia, Ohio, Ziba Houpt, Sallie Crane, and Bentley F. Crane, of Shalersville, Ohio, Barne Houpt, of White Pigeon, Michigan, Cornelius S. Robbins, of Dodgeville, Iowa, and Linda Raub and Edgar E. Raub, of Leadville, Colorado, and all other non-residents of this Commonwealth interested in said estate, to appear in Orphans' Court, on the 13th day of October, 1883, at 10 o'clock A. M., in accordance with said order of the Orphans' Court.

[SEAL] JOSEPH HENDLER,
38-40 Clerk O. C.

TRUSTEE'S SALE.

By virtue of an order of the Court of Common Pleas of Luzerne county, the undersigned, Trustee of Headley D. Benschoter, will expose to public sale, on the premises, on Friday, October 12, 1883, at 2 o'clock P. M., all that piece of land in the township of Union, beginning at a corner, running thence along land of Abram Wheeler 120½ perches to a corner, thence along land of David Benschoter 53 perches to a corner, thence by the same 39½ perches to a corner, thence by same 40 perches to a corner, thence along line of land of Samuel or William Martin 96 perches to a corner, thence 45 perches to a corner, thence 21 perches to a corner; thence along line of land of Sarah and Abram Gregory 32 perches to a corner, thence along same 14 perches to a corner, thence by the same 14 perches to a corner, thence on line of land of Adam Adleman or Peter Martin and Peter Hooper 133 perches to a corner, the place of beginning, containing 90 acres of land, more or less; all improved, with two orchards thereon, a large two-story frame dwelling house, a large barn, wagon shed, corn crib, and other smaller outbuildings.

TERMS OF SALE—One-third of the amount of bid to be paid down on day of sale, one-half of the balance to be paid on confirmation of sale and delivery of deed, and the balance to be paid in six months from date of sale, with interest on deferred payments; to be secured by bond and mortgage on the premises sold.

MICHAEL CANNON,
Trustee.

38-40

ORPHANS' COURT SALE.

Estate of John M. Stackhouse, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will offer at public sale, at the Arbitration room, Court House, city of Wilkes-Barre, on Tuesday, October 9th, 1883, at 10 o'clock A. M., the interest of the said decedent in the following described pieces of land:

1. The undivided one-third part of the surface of all that tract of land in the township of Salem, beginning at a point where the line of the borough of Shick-shinny crosses the William Sheer tract of land, thence 40 perches on the line of William Sheer tract to a corner, thence 348 perches, thence 82 perches along the rear line of the William Sheer tract, thence 292 perches along the various courses of the south branch of Shick-shinny creek to line of Isaac Teet tract, thence along the line of Shickshinny borough 94 perches to place of beginning, containing 208 and 121 perches; excepting such building lots as may have already been contracted to be sold; the above is unimproved.

2. The undivided one-half part of all that piece of land in the township of Conyngham, bounded on the north by lands of Wm. Ryman, on the east by lands of Jeremiah Hess, on the south by lands of Samuel Miller and others, and on the west by the Susquehanna

tiver, containing 180 acres of land, more or less; upon which there is saw timber, railroad and mine ties, etc.

3. The undivided one-half part of all that piece of land in the township of Salem, beginning at a stone corner on the line of the certified township of Salem, thence running along the same 187 perches, thence 11 perches, thence 22 perches, thence 134 perches to rock oak corner, thence 143 perches to a hickory, thence 324 perches to a chestnut, thence 110 perches to the place of beginning, containing 284 acres and 149 perches, more or less, with house and barn, and a good apple orchard thereon; about 50 acres of said land is cleared and raises crops.

4. The undivided one-half part of all that lot of land in the city of Wilkes-Barre, situate on the south side of Canal street, beginning at a point on Canal street and line of lot owned or formerly owned by Patrick Kiernan, thence along the said Kiernan's line about 150 feet to the line of the North Branch Canal, thence down the canal to the line of lands now or formerly owned by the estate of James McDonald, thence along the line of lands of said McDonald's estate about 150 feet to Canal street, and thence along Canal street about 28 feet the place of beginning; all improved, with a two-story frame dwelling house, about 30 feet front and 35 feet in depth, and outbuildings thereon.

5. All that tract of land in Salem township, beginning at a stone corner at a public road in line of lands of heirs of Joseph Lockhart, thence 32½ perches to a post, thence by land formerly of Andrew Courtright 368¾ perches to the Susquehanna river, thence down said river 31 perches to a post, thence by land formerly owned by John Gruver 125 8-10 perches to a public road at corner of school house lot, thence by same 14 perches, thence 16½ perches, thence 19 6-10 perches to line of lands formerly owned by John Gruver, thence by same 221 4-10 perches to the place of beginning, containing 70 acres and 95 perches, strict measure; all improved, with one large two-story dwelling house, one frame barn, with sheds and other outbuilding thereon.

6. All that tract of land in Salem township, adjoining the land formerly owned by John Gruver, bounded on the east by the Susquehanna river, on the south and west by Thomas Hicks, and on the north by lands formerly owned by John Gruver, containing 71 acres and 61 perches of land; all improved, with one large frame two-story dwelling house, one frame barn, wagon house, and other outbuildings thereon.

The two last described parcels of land are what comprised the homestead for the late John Gruver, and are under a high state of cultivation, which two tracts of land will be sold subject to a widow's dower of \$— the interest of which is to be paid on the first day of April each year to Elizabeth Gruver, widow of John Gruver, dec'd, and within thirty days after her death the principal to the heirs of said John Gruver.

TERMS OF SALE—One-fourth of the purchase money on the day of sale, one-fourth on the confirmation of the sale and delivery of deed, and the balance in six months from the day of sale; deferred payments to be secured by bond and mortgage on the premises, with interest from day of sale.

ISAAC P. HAND, Attorney.
JAMES POST, Administrator.
37-39

ORPHANS' COURT SALE.

Estate of Daniel Brown, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Friday, October 12, 1883, at 10 o'clock A. M., all that piece of land in the township of Sugarloaf, beginning at a post 159 perches to a post by lands of Solomon Yont, thence 28 perches to a post by land of Magdalena Kline Smith, thence 170 perches to a post by land of Nathan Beach, thence 56 perches to the place of beginning, containing 35 acres and 119 perches and allowance, be the same more or less.

TERMS OF SALE—Cash.
WILLIAM H. BROWN, Administrator d. b. n. c. t. a.

37-39

I

ORPHANS' COURT SALE.

Estate of Mary Riddall, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Friday, October 12th, 1883, at 10 o'clock A. M., all that lot of land in the township of Pitston, beginning at a corner on the northerly side of a public road, thence 8 perches to a corner, thence 55 feet to a corner of other lands of said Rob't Smith, thence along said lands 8 perches to a corner on the public road aforesaid, and thence along said public road 65 feet to the place of beginning, containing 30 square rods of land, more or less; subject to all the conditions, restrictions, and reservations contained in said deed; all improved, with a two-story frame house and back building attached, and other outbuildings thereon.

TERMS OF SALE—25 per cent of purchase down on day of sale, and balance of purchase money on confirmation of sale and delivery of deed.

T. R. MARTIN, Attorney.
JAMES McMILLAN, Administrator.
38-40

ORPHANS' COURT SALE.

Estate of John Louder, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, on the premises, on Friday, October 12th, 1883, at 10 o'clock A. M., the following real estate:

Purpart No. 1. In the Eleventh ward of the city of Wilkes-Barre, bounded northwesterly by land of F. D. Vose, deceased, northeasterly by land of Josiah Bennett, deceased, and I. E. Finch, southeasterly by land of John Wagner, and southwesterly by Ash street, said lot having a front on Ash street of 110 feet and a depth of 83 feet, containing 8,964 square feet of land; all improved, with one two-story frame dwelling house with addition, outbuildings, and fruit trees thereon.

Purpart No. 2. In the ward and city aforesaid, bounded northwesterly by lands of John Wagner, northeasterly by land of I. E. Finch, southeasterly by Cinderella street, and southwesterly by Ash street, said lot having a front on Ash street of 79 feet and a depth of 83 feet, containing 6,557 square feet of land; all improved, with one two-story dwelling house, one small 1½-story frame house, and fruit trees thereon.

TERMS OF SALE—75 per cent of the whole purchase money down at the time of sale, and 25 per cent on the confirmation of sale, and the balance, with interest from the confirmation, in six months from the day of confirmation.

W. S. McLEAN, Attorney.
B. F. LOUDER, Trustee.
38-40

ORPHANS' COURT SALE.

Estate of Julia Roberts, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, on Friday, the 12th day of October, 1883, at 10 o'clock A. M., all that lot of land in the borough of Hughestown, beginning at the southeast corner of Parsonage street and a new street, thence along said new street in an easterly direction 260 feet to a corner on an alley, thence along said alley in a westerly direction about 65 feet to a corner of land of Isaac Lovell, deceased, thence along said Lovell's land in a northwesterly direction 265 feet to a corner on Parsonage street aforesaid, and thence along Parsonage street in a northerly direction about 65 feet to the place of beginning, containing 16,000 square feet of land, more or less; all improved, with a 1½-story frame dwelling house fronting on Parsonage street, one 1½-story frame dwelling house fronting on new street, one 1½-story double tenement frame dwelling house fronting on alley, together with fruit trees, wooden barn, and other outbuildings on the above described premises.

TERMS OF SALE—\$300 down, and balance on confirmation of sale and delivery of deed.

ALFRED P. HOUSE, FRANCIS H. CHIVERS, Administrators.
F. C. MOSIER, Attorney.
37-39

95

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, October 8, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Pleasant Hill Academy Association," the character and objects of which are to establish and support an institution for educational purposes, and to purchase the necessary real estate and erect a suitable building or buildings thereon.

GEO. W. SHONK,
Solicitor.

37-37

NOTICE IS HEREBY GIVEN, AS REQUIRED by Act of Assembly, approved April 29th, 1874, that application will be made before one of the Law Judges of Luzerne county, on Monday, October 8th, 1883, at 10 o'clock A. M., for the incorporation of the "First Congregational Church," of Exeter, Penn'a, a society formed for the support of public worship.

F. C. MOSIER,
Solicitor.

37-39

AUDITOR'S NOTICE.

Estate of John Blanchard, deceased. In Re Proceedings in Partition. The undersigned, an Auditor, appointed by the Orphans' Court of Luzerne county to ascertain whether there are any liens or other incumbrances on the real estate taken in partition, and to marshal the same, also to ascertain and apportion owelty and the costs and expenses of partition, and also to state the amount of recognizances to be given, etc., will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Saturday, the 6th day of October, 1883, at 11 o'clock A. M., at which time and place all persons interested are hereby notified to attend and present their claims.

GEO. K. POWELL,
Auditor.

37-40

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Ellen Lutsey, will attend to the duties of his appointment, at his office, Harvey Buildings, Franklin street, in the city of Wilkes-Barre, on Saturday, the 13th of October, 1883, at 9 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

JOHN B. REYNOLDS,
Auditor.

38-41

ESTATE OF MICHAEL NALLON, LATE OF Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARTIN GERIGHTY,
MICHAEL TOOLE,
Executors.

D. S. KOON,
Attorney.

35-40

ESTATE OF ELIZABETH BULKELY, LATE of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JONATHAN E. BULKELY,
Executor.

S. J. STRAUSS,
Attorney.

35-40

ESTATE OF ROBERT MAJOR, LATE OF Lehman township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

THOMAS H. MAJOR,
A. R. BRUNDAGE,
Attorney.

39-44

ESTATE OF LEON SACKS, LATE OF THE borough of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

FANNY SACKS,
JOS. D. COONS,
Attorney.

39-44

ESTATE OF ZACHARIAS GINTHER, LATE of Hazleton, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

DOROTHEA GINTHER,
Hazleton, Pa.

39-44

ESTATE OF SAMUEL RODGERS, LATE OF Plymouth township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

WILLIAM RODGERS,
C. W. McALARNY,
Attorney.

39-44

ESTATE OF JOHN HART, LATE OF THE township of Black Creek, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN HART,
A. R. BRUNDAGE,
Attorney.

39-44

ESTATE OF JOHN E. LEWIS, LATE OF Plains township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

MARY ANN LEWIS,
C. H. WELLS & SON,
Attorneys.

39-44

ESTATE OF JOHN S. JENKINS, LATE OF Kingston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

HANNAH L. JENKINS,
DICKSON & ATHERTON,
Attorneys.

39-44

ESTATE OF NIKOLAUS HILDEBRANDT, late of Wright township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. C. HILDEBRAND,
Mountain Top, Pa.

39-44

ESTATE OF WILLIAM WITCRAFT, LATE
of White Haven, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

G. L. HALSEY, Attorney. **E. P. MORRIS,** Administrator. 37-42

ESTATE OF SAMUEL MOYER, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON, Attorney. **HOMER SMETHERS,** Administrator. 37-42

ESTATE OF LYDIA M. RABERT, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON, Attorney. **WESLEY RABERT,** Administrator. 37-42

ESTATE OF HENRY KOEPER, LATE OF
Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

35-40 **CATHARINE KOEPER,** Executrix. 37-42

ESTATE OF DAVID MACKOWN, LATE OF
West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

35-40 **MARY E. MACKOWN,** Administratrix. 37-42

ESTATE OF BARNEY HUNSINGER, LATE OF
Black Creek township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

37-42 **SAMUEL BENNER,** Administrator. 37-42

ESTATE OF EDWARD MORGAN, LATE OF
Parsons, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

37-42 **PATRICK COX,** Administrator. 37-42

ESTATE OF JAMES E. CLARKE, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

37-42 **MARY CLARKE,** Administratrix. 37-42

1

ESTATE OF MATTHEW LARNER, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN T. LENAHAN, Attorney. **JOHN A. COLLIER,** Administrator. 35-40

ESTATE OF DANIEL BRADER, LATE OF
Salem township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON, Attorney. **SARAH BRADER,** Executrix. 38-43

ESTATE OF JAMES VINCENT, LATE OF
Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

GEO. H. TROUTMAN, Attorney. **ELIZABETH VINCENT,** Administratrix. 38-43

ESTATE OF DANIEL BROWN, LATE OF
Sugarloaf township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

37-42 **WILLIAM H. BROWN,** Administrator d.b.n. c.t.a.

ESTATE OF JAMES CARR, LATE OF THE
borough of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

37-42 **JOHN O'BOYLE,** Administrator. 37-42

ESTATE OF LAURA MILLARD, LATE OF
Shickshinny, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

37-42 **I. P. HAND,** Administrator. 37-42

ESTATE OF CHARLES MOYER, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON, Attorney. **HOMER SMETHERS,** Administrator. 37-42

ESTATE OF THOMAS LYNN, LATE OF
Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

F. C. MOSIER, Attorney. **MICHAEL BOLIN,** Executrix. 35-40

97

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, OCTOBER 5, 1883.

No. 40.

Court of Quarter Sessions of Montour County.

DIRECTORS OF THE DANVILLE AND MAHONING POOR DISTRICT v. DIRECTORS OF THE SCRANTON POOR DISTRICT.

Evidence—Settlement—Lunacy of wife.

1. In a settlement case, proof may be made of assessment of taxes by a witness who produces before the examiner appointed to take the testimony the books of assessment from the proper office, and in the presence of the parties states in his deposition the items of the assessment in question as therein contained, no objection being made at the time to that mode of proof.
2. The duplicate issued to a collector containing taxes charged against a person, when returned by the collector to the treasurer marked "paid" opposite the tax, is *prima facie* evidence that it was paid by the person charged.
3. Jerry Coats having a settlement in Danville, resided there with his wife and family from 1855 to 1869. In the latter year his wife became insane, and was, with his knowledge, placed in a lunatic hospital by the directors of the poor of the Danville district, where she remained, at the expense of that district, until 1882, when an order was obtained for her removal to Scranton. In 1875 Coats abandoned his family and his residence in Danville, and went to Scranton, where he resided for seven years, during five of which in succession he was assessed with and paid his proportion of public taxes in the Scranton district: *Held*, that he gained a settlement in Scranton for himself and wife, notwithstanding the fact that she was during that time receiving relief from the Danville district.

Appeal by the directors of the Scranton poor district, late directors of the poor of Providence, from an order of removal of Rosanna Coats from Danville and Mahoning district to Scranton.

The opinion of the court was delivered September 17, 1883, by

ELWELL, P. J.—In 1855 Jerry Coats and Rosanna, his wife, were married, and from that time until 1869 lived together in Danville, in houses of the yearly value of more than ten dollars, leased by said Coats, the rent for which was paid by him. In 1869 Mrs. Coats became insane and a charge upon the Danville and Mahoning district, and was by the directors, with the knowledge and consent of her husband, removed to the State Hospital for the Insane, at Harrisburg, and from that time until the 16th

day of September, 1882, she was relieved, maintained, and kept by the Danville and Mahoning district. On the 16th day of September last she was removed by the order from which this appeal was taken to the Scranton district, which was adjudged to be her last place of settlement.

Her husband's settlement being hers, the important question for consideration is, whether he had acquired a settlement in Scranton. In respect to that, the facts appear to be, and are found, as follows:

When Rosanna Coats was removed to the hospital, the family of Jerry Coats consisted of himself, his wife, and several children. After that time he did nothing towards the support of his wife, and has not to this time paid any part of the expenses of maintaining her. In 1875 Coats abandoned his family, left Danville, and took up his residence in Scranton, and has continued to reside there from that time until now. Before he left Danville, the directors of the poor endeavored to obtain from him some portion of the expense of supporting his wife, but were not successful. After he left they had no knowledge of his whereabouts until some time in 1880. Application was made to him then to do something for her. Nothing was obtained but a promise, which was not fulfilled.

In order to show that Coats had acquired a settlement in the Scranton district, depositions were taken by the Danville district before a commissioner, under the rules of court.

M. T. Lavelle, the city clerk of the city of Scranton, produced before the commissioner assessment books for the years 1877 and 1878, and stated that Jerry Coats was assessed as a laborer, valuation thirty dollars for each year, and the same for 1879. The board of revision raised the valuation to fifty dollars, and the tax was levied on that sum.

W. W. Williams, one of the county commissioners of Lackawanna county, was sworn, and produced before the examiner the county assessments for the years 1879, 1880, and 1881, showing that Jerry Coats was in those years assessed as a laborer, valuation fifty dollars.

No objection was made before the examiner to this mode of proving the assessments. If objected to at the time certified or

sworn copies might have been obtained. By not objecting at the proper time, the appellant consented to that mode of proof. From the evidence it is found that Jerry Coats was assessed with his proportion of public taxes in the Scranton district for the years 1877 to 1881, inclusive.

In respect to the payment of taxes, evidence was given by B. R. Wade, collector of delinquent city and school taxes for Scranton for 1879 to 1882. He produced the books from the office of the city treasurer, showing the school and city taxes for the years 1879 to 1881, inclusive, by which it appears that Jerry Coats was charged with seventy-seven cents city tax and one dollar and ten cents school tax for each of these years. These taxes were not paid personally by Coats to the witness, but they were paid by the Lackawanna Iron and Coal Company out of the wages of Coats, he being engaged at labor for them. The witness does not remember the particulars of the payments, but finding on the margin of the books marked "paid" by himself, with the date, according to his usual practice, the proof is deemed sufficient to establish the fact of payment. The tax for 1879 was paid on January 7, 1880; the tax of 1880 was paid December 4 of that year, and the tax of 1881 was paid July 3, 1882.

In the year 1880 the name "Jerry Coats" appears on the duplicate in three different places, residence in each place different from the others. It does not appear that there was any other Jerry Coats in Scranton at any time. The Jerry Coats in question had resided there for six years. He was assessed with taxes from 1877. Inasmuch as but one person of that name could be found by the collector, and the tax of that one was paid by the company where this Jerry Coats worked, the presumption is strong that *he* was the person who was assessed and paid the taxes.

In respect to the taxes of 1877 and 1878, the evidence is, that the original books issued to the collector for those years were returned into the treasurer's office, and that those charged to Jerry Coats are marked "paid." The collector for 1877-8 was in the city of Scranton when the depositions of other witnesses were taken, but he was not called to testify by either party.

The books on which the taxes were charged were official records; they were, by permission of the treasurer, produced by

a witness before the examiner. The entry of the word "paid" by a collector opposite a charge of tax is evidence against him. It is, in fact, official evidence of payment, made by the proper officer, and by him placed as a charge against himself in the hands of the official to whom he must render account. Every presumption is in favor of the correctness of the return.

In the case of *Coxe v. Derringer* (78 Pa. St. Rep. 291) it was held that the words "paid before sale" on the treasurer's book were not evidence of such payment, being evidently an entry by the treasurer after sale. In *Auken v. Albright* (8 Harris, 157) the letters "pd" on the treasurer's book were held not to be evidence of themselves of payment of the taxes before sale, the treasurer having testified that the practice of his office was to so mark them after sale.

It often happens that taxes are paid to collectors when there is no receipt given, the taxpayer relying upon the marking of the tax "paid" on the duplicate. Such entry, unexplained, would be evidence against the collector, and between the taxpayer and the public is *prima facie* evidence of payment.

It is, therefore, found as a fact that Jerry Coats, husband of Rosanna Coats, was assessed with public taxes in the city of Scranton from 1877 to 1881, inclusive, which were paid by him. It is contended, however, by the appellant that even if this be so, he did not gain a settlement thereby, for the reason that during the same time his wife was receiving relief as a pauper from the Danville district.

It is argued in support of this position that it would be an unreasonable construction of the statute to hold that a person can gain a settlement by residence and paying taxes in a new district, if during the time either he or his wife, or any member of his family for whose support he is liable, receives support as a pauper in the town of his old settlement. That a settlement cannot be gained under such circumstances has never been decided by any court in this State. In Massachusetts and other Eastern States it has been the subject of frequent consideration, and the decisions have been uniform, that while a man is receiving relief as a pauper he cannot gain a settlement anywhere, and that relief afforded to a member of his family for whose support

he is liable is, as a rule, aid to him. *East Sudbury v. Waltham*, 10 Mass. 460; *Oakham v. Sutton*, 13 Metc. 192; *West Newbury v. Bradford*, 3 Metc. 428; *Brewster v. Dennis*, 21 Pick. 233; *Taunton v. Middleborough*, 12 Metc. 35.

In Massachusetts the statute provides that a settlement may be gained by ten years' residence and paying taxes for five of the years successively. It was held in *Charlestown v. Groveland* (15 Grey, 15) that a man having a settlement in the Commonwealth could not acquire a new settlement by residence and paying taxes, if his wife was committed to a lunatic hospital on his complaint, or with his knowledge, and is there supported without his paying the expense during the time necessary to give him a settlement.

The doctrine of the Massachusetts courts is adopted by the courts of New Hampshire (47 N. H. 179), Connecticut (*Norwich v. Saybrook*, 5 Conn. 384), Vermont (*Wilmington v. Somerset*, 35 Vt. 232), and Maine (*Clinton v. York*, 26 Maine, 167). But the courts of the last named State, while adopting as the law the decisions before stated as applicable to cases where a man has not abandoned his wife and family, hold that where that is the case a new settlement may be gained by him, notwithstanding his wife or other member of his family may at the same time be receiving pauper support in the town of his former settlement. *Hallowell v. Saco*, 5 Me. 143; *Raymond v. Harrison*, 11 Me. 190; *Eastport v. Lubber*, 64 Me. 244; *Bangor v. Wiscasset*, 71 Me. 535.

The case of *The Queen v. Sharington* (17 Adolph & Ellis, N. S. 48), cited by counsel for the appellant, is based upon an act of Parliament, which provides that relief given to children shall be considered as relief to the parent. In this State there is no statute upon the subject. Our act of 1836 (P. D. 1154) enacts that a settlement may be gained in any district "by any person who shall come to inhabit in the same, and who shall be charged with and pays his proportion of any public taxes or levies for two years successively." I think it better to adhere to the plain words of the statute than to interpolate qualifications and provisos to make it accord with what is held to be law elsewhere, or even with our own ideas of what should have been inserted in the act.

It is said that the reason why a settlement may be gained by performing the conditions named in the statute is, that the district receives the benefits from the labor, the renting of premises, the payment of taxes, or the fulfilling of the duties of a public officer, and therefore should support the citizen who does these acts, if he afterwards becomes disabled. If this reason is to be allowed any force in giving construction to the statute, it should operate against the appellant district. For seven years Jerry Coats has been a citizen of Scranton. He has borne his share of the public taxes, and has employed none of his earnings to support the wife and family residing elsewhere, whom he had during all that time abandoned. His unfortunate wife was provided for in a charitable institution under a statute of the State, which enacts that the constituted authorities having charge of the poor shall have authority to send to the asylum insane paupers under their charge. If the fact of her being there at the expense of the district where the husband had a settlement rendered him a pauper, or likely to become chargeable upon the district where he had taken up a new residence, the remedy for that district was by an order of removal to the district where he had a settlement. By permitting him to remain for seven years, and to perform all that the statute required to gain a new settlement, it is too late now for Scranton to object that such settlement was not gained. No fraud or collusion on the part of the authorities of Danville is alleged or proved. The case is simply that of a total and continued abandonment by a husband and father of his wife and family for seven years, during which time he resided in another and distant district, where he performed all acts necessary to acquire a settlement there.

A person's domicil depends, not upon the place where his moral or legal duties call him to reside, but upon the place where he actually does reside. *Hallowell v. Saco*, 5 Me. 144, in note.

Did Jerry Coats reside in Scranton during the years when he paid taxes there? He was personally there. He had no home elsewhere. It follows that according to the words of the statute his settlement is there.

We have great respect for the opinions of the able judges whose decisions are cited above contrary to the conclusions to

which we have arrived, and have been strongly inclined to follow the decisions of the Massachusetts courts, but have finally concluded to construe our statute to mean what its words import, and that if the doctrine of the cases relied upon by the counsel for the appellant is to be held here, the Supreme Court should be the first to announce it.

The several requests by counsel for the appellant to find matters of fact and conclusions of law as therein stated are refused for the reasons contained in this opinion, to which several rulings counsel for appellant except.

And now, September 17, 1883, it is adjudged that the order of removal be and the same is hereby affirmed, and that the costs and expenses be paid by the appellant.

Orphans' Court of Luzerne County.

ATEN'S ESTATE.

1. In the absence of any proof that a guardian has made proper use of a fund on an account of his administrator, his estate will be charged with interest from the date of its receipt until the date of his death.
2. In such case a guardian must be at least treated as a borrower of the fund from the date of its receipt.

Exceptions to account of guardian of Alfred H. Aten, as filed by the administratrix of the guardian.

The opinion of the court was delivered August 6, 1883, by

RHONE, P. J.—The guardian having died, his account was properly filed by his administratrix, and she could, of course, only state such an account as she could make up from memoranda left by the decedent. She, therefore, charged the decedent's estate with the sum of \$795.67, claiming \$49.00 credit for expenses, showing the guardian's estate indebted \$746.67. The exceptant claims that to this sum interest should be added from January 2, 1880.

The guardian received from the United States government January 2, 1880, a pension for the amount above stated. It is

not shown that he has either expended any part of this sum for the benefit of his ward, or that he has invested it for his benefit, or even that he had it on hand at the time of his death. It needs no argument or authority, then, to conclude that his estate is liable for interest from the time the money was received. He could not, if living, object to being treated as a borrower of the fund at least, although the law would call the transaction a crime, perhaps.

We, therefore, surcharge interest from January 2, 1880, to February 1, 1882, the date of the guardian's death, which amounts to \$93.33, which, added to \$746.67, amounts to \$840, for which sum we enter judgment against the estate of the decedent and in favor of the ward, with the costs of this proceedings.

Court of Common Pleas of Luzerne County.

SHULTZ v. HENDERSHOT *et al.*

1. Issue awarded where there is a conflict of testimony which the court is unable to decide.
2. Where the execution of the note is denied, the note itself does not go in the balance against the defendant, as it would in case of a mere allegation of fraud.

Rule to show cause why judgment shall not be opened, and William Jenkins, Sr., let into a defense.

The opinion of the court was delivered November 15, 1880, by

RICE, P. J.—This is peculiarly a case for a jury. William Jenkins, Sr., swears positively that he never signed the note in question, while P. F. Hendershot, the principal maker, swears that he did. There is here a conflict of testimony which we are unable to decide, and the execution of the note being solemnly denied, the note itself does not go in the balance against the defendant, as it would in case of a mere allegation of fraud.

The rule is made absolute, and issue directed between the plaintiff and William Jenkins, Sr., to determine the genuineness of the latter's signature, the note to stand as a declaration, and the said defendant to plead on five days' notice, all liens to be preserved meantime.

TRUSTEE'S SALE.

By virtue of an order of the Court of Common Pleas of Luzerne county, the undersigned, Trustee of Headley D. Bencoter, will expose to public sale, on the premises, on Friday, October 12, 1883, at 2 o'clock P. M., all that piece of land in the township of Union, beginning at a corner, running thence along land of Abram Wheeler 120 1/4 perches to a corner, thence along land of David Bencoter 53 perches to a corner, thence by the same 39 1/2 perches to a corner, thence by same 40 perches to a corner, thence along line of land of Samuel or William Martin 96 perches to a corner, thence 45 perches to a corner, thence 21 perches to a corner, thence along line of land of Sarah and Abram Gregory 32 perches to a corner, thence along same 14 perches to a corner, thence by the same 14 perches to a corner, thence on line of land of Adam Adleman or Peter Martin and Peter Hooper 133 perches to a corner, the place of beginning, containing 90 acres of land, more or less; all improved, with two orchards thereon, a large two-story frame dwelling house, a large barn, wagon shed, corn crib, and other smaller outbuildings.

TERMS OF SALE—One-third of the amount of bid to be paid down on day of sale, one-half of the balance to be paid on confirmation of sale and delivery of deed, and the balance to be paid in six months from date of sale, with interest on deferred payments; to be secured by bond and mortgage on the premises sold.

MICHAEL CANNON,
Trustee.

38-40

ESTATE OF PHILIP HOUPPT, DECEASED.

In the Orphans' Court of Luzerne county, Pa. In Re Proceedings for partition of real estate of decedent. Sur petition for rule on heirs and devisees. Now, 14th September, 1883, upon consideration of the above petition, a rule is granted upon the devisees and heirs and other parties interested to appear in open court, on the 13th day of October, 1883, at 10 o'clock A. M., and accept or refuse the real estate at the valuation returned, or make bids on the same, or show cause why the same shall not be sold on their neglect or refusal to accept the same.

In pursuance of the above order, notice is hereby given to Charles Houppt, of New Philadelphia, Ohio, Ziba Houppt, Sallie Crane, and Bentley F. Crane, of Shalersville, Ohio, Barney Houppt, of White Pidgeon, Michigan, Cornelius S. Robbins, of Dodgeville, Iowa, and Linda Raub and Edgar E. Raub, of Leadville, Colorado, and all other non-residents of this Commonwealth interested in said estate, to appear in Orphans' Court, on the 13th day of October, 1883, at 10 o'clock A. M., in accordance with said order of the Orphans' Court.

[SEAL]

JOSEPH HENDLER,
Clerk O. C.

38-40

IN RE PARTITION OF THE ESTATE OF

John Davis, late of Jenkins township, Luzerne county, Pennsylvania, deceased. Now, June 30, 1883, upon filing petition and motion of counsel, court grant rule on heirs and all persons interested to appear and accept or refuse the real estate at the valuation, or make bids on the same, or show cause why the same shall not be sold on their neglect or refusal to accept the same. Notice of this rule to be given to parties interested resident within the county as directed by law, and to parties interested non-residents of the county by publication in a weekly newspaper published in Luzerne county and in the Luzerne Legal Register for three successive weeks, and a copy of each to be mailed to the last known place of abode of such non-resident parties. Returnable on Monday, October 8, 1883, at 10 A. M.

By the Court.

In pursuance of the foregoing order of court, notice is hereby given to John F. Davis, of Harmony, Clay county, Indiana, and Thomas R. Davis, of Opaque City, Osage county, Kansas, to appear at the time above mentioned and for the purpose therein mentioned.

T. J. CHASE,
EDWARD A. LYNCH,
Solicitors.

37-40

I

ORPHANS' COURT SALE.

Estate of Mary Riddall, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, on Friday, October 12th, 1883, at 10 o'clock A. M., all that lot of land in the township of Pittston, beginning at a corner on the northerly side of a public road, thence 8 perches to a corner, thence 55 feet to a corner of other lands of said Robt' Smith, thence along said lands 8 perches to a corner on the public road aforesaid, and thence along said public road 65 feet to the place of beginning, containing 30 square rods of land, more or less; subject to all the conditions, restrictions, and reservations contained in said deed; all improved, with a two-story frame house and back building attached, and other outbuildings thereon.

TERMS OF SALE—25 per cent of purchase down on day of sale, and balance of purchase money on confirmation of sale and delivery of deed.

T. R. MARTIN,
Attorney.
JAMES McMILLAN,
Administrator.
38-40

ORPHANS' COURT SALE.

Estate of John Louder, deceased. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, on the premises, on Friday, October 12th, 1883, at 10 o'clock A. M., the following real estate:

Purpart No. 1. In the Eleventh ward of the city of Wilkes-Barre, bounded northwesterly by land of F. D. Vose, deceased, northeasterly by land of Josiah Bennett, deceased, and I. E. Finch, southeasterly by land of John Wagner, and southwesterly by Ash street, said lot having a front on Ash street of 110 feet and a depth of 83 feet, containing 8,964 square feet of land; all improved, with one two-story frame dwelling house with addition, outbuildings, and fruit trees thereon.

Purpart No. 2. In the ward and city aforesaid, bounded northwesterly by lands of John Wagner, northeasterly by land of I. E. Finch, southeasterly by Cinderella street, and southwesterly by Ash street, said lot having a front on Ash street of 79 feet and a depth of 83 feet, containing 6,557 square feet of land; all improved, with one two-story dwelling house, one small 1 1/2-story frame house, and fruit trees thereon.

TERMS OF SALE—25 per cent of the whole purchase money down at the time of sale, and 25 per cent on the confirmation of sale, and the balance, with interest from the confirmation, in six months from the day of confirmation.

W. S. McLEAN,
Attorney.
B. F. LOUDER,
Trustee.
38-40

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 109, February term, 1883. Libel in divorce a vinculo matrimonii. Margaret A. Seibert, by her next friend, Henry Klinger, v. W. G. Seibert. The alias subpoena in the above case having been returned non est inventus, you, the said W. G. Seibert, are hereby notified to appear at said court, on Monday, the 19th of November, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

E. P. KISNER,
Solicitor.
WILLIAM O'MALLEY,
Sheriff.
40-43

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 5 1/2, May term, 1883. Libel in divorce a vinculo matrimonii. Lavina Jones, by her next friend, Frank Craig, v. Joseph S. Jones. To Joseph S. Jones—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, October 13th, 1883, at 10 o'clock A. M.

W. H. HINES,
Solicitor.
40-41

99

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 232, May term, 1883. Libel in divorce a vinculo matrimonii. Francis Trumbower v. Sophia Trumbower. To Sophia Trumbower—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, the 20th of October, 1883, at 10 o'clock A. M.

M. E. WALKER,
Solicitor.

40-41

AUDITOR'S NOTICE.

Estate of John Blanchard, deceased. In Re Proceedings in Partition. The undersigned, an Auditor, appointed by the Orphans' Court of Luzerne county to ascertain whether there are any liens or other incumbrances on the real estate taken in partition, and to marshal the same, also to ascertain and apportion owelty and the costs and expenses of partition, and also to state the amount of recognizances to be given, etc., will attend to the duties of his appointment, at his office, in the city of Wilkes-Barre, on Saturday, the 6th day of October, 1883, at 11 o'clock A. M., at which time and place all persons interested are hereby notified to attend and present their claims.

GEO. K. POWELL,
Auditor.

37-40

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Ellen Lutsey, will attend to the duties of his appointment, at his office, Harvey Buildings, Franklin street, in the city of Wilkes-Barre, on Saturday, the 13th of October, 1883, at 9 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

JOHN B. REYNOLDS,
Auditor.

38-41

ESTATE OF HENRY KOEPER, LATE OF
Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

CATHARINE KOEPER,
Executrix.

35-40

ESTATE OF DAVID MACKOWN, LATE OF
West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY E. MACKOWN,
Administratrix.

35-40

ESTATE OF CATHARINE SMYTHE, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. E. WILLIAMS,
Wilkes-Barre, Pa.

40-45

ESTATE OF DANIEL WILLIAMSON, LATE
of West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ELISHA H. WILLIAMSON,
L. D. SHOEMAKER, Pittston, Pa.
Attorney.

40-45 39-44

ESTATE OF SAMUEL RODGERS, LATE OF
Plymouth township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

WILLIAM RODGERS,
C. W. MCALARNEY, Plymouth, Pa.
Attorney.

39-44

ESTATE OF JESSE HART, LATE OF THE
township of Black Creek, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN HART,
A. R. BRUNDAGE, Rock Glen, Pa.
Attorney.

39-44

ESTATE OF JOHN E. LEWIS, LATE OF
Plains township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

MARY ANN LEWIS,
C. H. WELLS & SON, Plains, Pa.
Attorneys.

39-44

ESTATE OF ROBERT MAJOR, LATE OF
Lehman township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

THOMAS H. MAJOR,
A. R. BRUNDAGE, Cease's Mill, Pa.
Attorney.

39-44

ESTATE OF LEON SACKS, LATE OF THE
borough of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

FANNY SACKS,
JOS. D. COONS, Pittston, Pa.
Attorney.

39-44

ESTATE OF JOHN S. JENKINS, LATE OF
Kingston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

HANNAH L. JENKINS,
DICKSON & ATHERTON, Wyoming, Pa.
Attorneys.

39-44

ESTATE OF ZACHARIAS GINTHER, LATE
of Hazleton, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

DOROTHEA GINTHER,
Hazleton, Pa.

39-44

ESTATE OF NIKOLAUS HILDEBRANDT,
late of Wright township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. C. HILDEBRAND,
Mountain Top, Pa.

40-45 39-44

ESTATE OF MATTHEW LARNER, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN A. COLLIER,
JOHN T. LENAHAN, Administrator.
Attorney. 35-40

ESTATE OF DANIEL BRADER, LATE OF
Salem township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SARAH BRADER,
C. B. JACKSON, Executrix.
Attorney. 38-43

ESTATE OF JAMES VINCENT, LATE OF
Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELIZABETH VINCENT,
GEO. H. TROUTMAN, Administratrix.
Attorney. 38-43

ESTATE OF DANIEL BROWN, LATE OF
Sugarloaf township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM H. BROWN,
Administrator d.b.n. c.t.a. 37-42

ESTATE OF JAMES CARR, LATE OF THE
borough of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN O'BOYLE,
Administrator. 37-42

ESTATE OF LAURA MILLARD, LATE OF
Shickshinny, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND,
Administrator. 37-42

ESTATE OF CHARLES MOYER, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HOMER SMETHERS,
C. B. JACKSON, Administrator.
Attorney. 37-42

ESTATE OF MICHAEL NALLON, LATE OF
Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARTIN GERIGHTY,
MICHAEL TOOLE, Executors.
D. S. KOON, Attorney. 35-40

ESTATE OF WILLIAM WITCRAFT, LATE
of White Haven, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

E. P. MORRIS,
G. L. HALSEY, Administrator.
Attorney. 37-42

ESTATE OF SAMUEL MOYER, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HOMER SMETHERS,
C. B. JACKSON, Administrator.
Attorney. 37-42

ESTATE OF LYDIA M. RABERT, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WESLEY RABERT,
C. B. JACKSON, Administrator.
Attorney. 37-42

ESTATE OF BARNEY HUNSINGER, LATE
of Black Creek township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SAMUEL BENNER,
Administrator. 37-42

ESTATE OF EDWARD MORGAN, LATE OF
Parsons, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PATRICK COX,
Administrator. 37-42

ESTATE OF JAMES E. CLARKE, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY CLARKE,
Administratrix. 37-42

ESTATE OF ELIZABETH BULKELY, LATE
of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JONATHAN E. BULKELY,
S. J. STRAUSS, Executor.
Attorney. 35-40

ESTATE OF THOMAS LYNN, LATE OF
Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MICHAEL BOLIN,
F. C. MOSIER, Executor.
Attorney. 35-40

THE LUZERNE LEGAL REGISTER.

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FRIDAY, OCTOBER 12, 1883.

No. 41.

Supreme Court of Pennsylvania.

HILL *et al.* v. PENNSYLVANIA MUTUAL FIRE INSURANCE COMPANY.

A covenant in an insurance policy that it shall be void if the property becomes incumbered by a judgment is violated by the entry of a warrant of attorney annexed to a bond in which the insured is an obligor, although the condition of the bond was never broken, and there was no time at which execution could have issued on the judgment. The question is simply whether the property was incumbered, without regard to whether it might be taken in execution.

Error to the Court of Common Pleas of Luzerne county.

The opinion of the court was delivered April 30, 1882, by

PAXSON, J.—We cannot reverse this case without making a new contract between the parties. The policy of insurance under which the plaintiffs claim to recover contains this clause: "If, after insurance, the risk shall be increased by any means whatsoever, or if the property . . . shall be encumbered by judgment, mortgage, or otherwise, . . . and the assured shall neglect or fail to give written notice thereof, and pay such additional premium as the company shall determine, and obtain written consent of the company to a continuance of the policy, such insurance shall be void and of no effect."

It was not denied that during the life of the policy a judgment was entered against the assured in the sum of eight thousand dollars. This judgment was an encumbrance upon the insured premises within the meaning of the policy. It was contended, however, that as the condition of the bond was to restore certain personal property which had been levied upon by the sheriff, or pay the amount of the execution, with costs, and said condition had never been broken, there was no point of time when execu-

tion could have been taken out on the judgment, and hence it was not such an encumbrance as was contemplated by the policy. This is arguing in a circle. It is not a question of execution, but of encumbrance. There was a judgment and a lien. That the condition of the bond was not broken is not material. A judgment for borrowed money may be upon record for years, and yet no right to an execution exist during all that time. This is always the case when the money is paid at maturity. In either case, an execution may issue upon breach, and not before. I am unable to distinguish this case from that of an ordinary judgment for borrowed money. The theory upon which the clause in the policy rests is, that encumbered property is not as safe a risk as property that is free from liens, and many companies require a higher rate of insurance in such cases. It is so with the defendant company, and it depends upon the ground that the assured has not paid the increased premium for the increased risk. That it was an increased risk is fixed by the terms of the policy and the agreement of the parties. It is not an open question for our consideration. The terms of the policy are not ambiguous, and do not need construction; hence *Butz v. The Insurance Co.* (6 Wr. 285) and other cases cited have no application.

The argument that the judgment was entered without the knowledge of the assured is without force. It was entered upon his confession, and he is chargeable with knowledge. A man who gives a judgment or mortgage knows that it may, and probably will, be placed on record. He may not have actual knowledge of the time of its entry; but the act is his, and he must be held responsible therefor.

I am aware that it has been held in *Green v. Homestead Fire Insurance Co.* (82 N. Y. 518), and other New York cases, that mechanics' liens are not encumbrances within the meaning of similar clauses in fire insurance policies. These cases, however, go upon the ground that the liens were not entered by the consent or procurement of the assured. These cases are not analogous, and do not apply.

If the assured here had notified the company defendant of the encumbrance, and had obtained its written consent to the continuance of the policy, that fact was peculiarly within his knowl-

edge, and should have been proved by him. As he did not do so, we may fairly presume the fact is not so.

This may be a hard case, but the less we say about that the better. Our province is to administer the law as we find it. Its proper administration will sometimes work individual hardship; but this is true of the application of all general rules. It is a much less evil than to construe the law to meet the supposed hardship of particular cases.

Judgment affirmed.

Q. A. Gates, Esq., for plaintiffs in error.

William S. McLean, Esq., for defendant in error.

Supreme Court of Pennsylvania.

ELEY'S APPEAL.

Testator died, leaving ten children. His estate consisted mostly of a tract of land valuable for agricultural purposes, but immeasurably more so for coal purposes. He gave to seven of his children each a tenth part of his estate absolutely. To each of the three others he gave the "interest or income" of a tenth part during their lives respectively, remainder over to children, vesting the estate in trust for that purpose. He authorized his executors, first having obtained the written consent of a majority of the beneficiaries, to sell the whole estate, or to lease the coal under the same. Executors, having complied with the directions of the will in this behalf, leased the coal. The fund accruing under the coal lease was brought into the court below for distribution. The life beneficiaries were awarded only the *interest* on their respective shares of the fund: *Held*, reversing the court below, that these beneficiaries were entitled to their respective shares of this fund *absolutely*.

Appeal from decree of the Orphans' Court of Luzerne county.

[For opinion of court below, see 12 Luz. Leg. Reg. 55.]

The opinion of the court was delivered October 1, 1883, by

STERRETT, J.—The fund for distribution accrued from the coal lease executed by the surviving executor of Jas. Eley, deceased, pursuant to the power contained in the last will and testament of said decedent; and the main question is, whether, under the provisions of the will hereinafter referred to, that part of the fund in which appellants are respectively interested is to be treated as capital or income.

In the body of his will the testator gave absolutely to each of

his nine children, except his son, John, and to the children of his deceased daughter, Jane, one-tenth of all his property, real, personal, and mixed. He also gave a like portion of his estate to the children of his son, John, to be equally divided among them at the death of their father; and further directed that the portion thus given to his grandchildren should be held in trust by his executors during the lifetime of his son, John S. Eley, to be paid to his son by the executors during his natural life. The testator authorized his executors "to sell and dispose of all" his real estate, "or to lease the coal upon or under the same, and to convey the same to the purchasers by good and sufficient instruments of writing;" provided, however, that before selling or leasing the same the executors shall first have "the written consent of owners of six-tenths of the premises;" and provided, also, that a specified portion of the surface shall not be sold for fifteen years after testator's death. By a codicil of his will, testator revoked the bequest to his daughter, Elizabeth Weaver, who in the meantime had intermarried with John Deitweiler, and in lieu thereof directed that portion of his estate which, in the body of his will, he had given to her to be held in trust by his executors during her natural life, "the interest or income arising" therefrom to be paid to her during her natural life. By a subsequent codicil, he also revoked the bequest to his son, Thomas, and in the same connection devised and bequeathed the same one-tenth part of his estate to Abraham Lines, in trust, nevertheless, to pay to testator's son, Thomas, "all the income arising from the said portion during the natural life of said Thomas, and upon his death to convey in fee the said portion to the proper heirs of said Thomas Eley."

At the time of his decease, the testator's estate consisted chiefly of a tract of land in the heart of the Wyoming coal field, valuable for agricultural, but vastly more so for coal mining purposes. It is very evident that the general purpose of the testator was to provide for his children by giving them an estate in the land, and in order that they might the better enjoy the same, he invested his executors, and the survivor of them, with power to sell and dispose of all or any part of the real estate, or to lease the coal upon or under the same, but not until the owners of six-tenths of

the premises gave their written consent thereto. The requisite majority of owners deeming it advisable to lease the coal, signified their election to do so by joining with the surviving executor in the lease, from which the money for distribution was realized. Seven of the ten shares were absolute gifts, and as to them, of course, no question arose. The other three were given to the executors, in trust for the benefit of appellants, respectively, during life; and, as already stated, the question is, whether the money accruing from the lease is to be considered *income* in the sense in which that word was employed by the testator, or *capital* to be invested, and only the interest thereof paid to appellants respectively. In seeking for the testator's intention, we derive little or no assistance from that class of cases in which it has been properly held that a lease of the exclusive right to mine and remove coal or other minerals, without limitation as to quantity or time, is practically a sale of the coal or other minerals in place, and consequently a sale of a portion of the land itself. The word *income* means the gain which accrues from property, labor, or business. In its ordinary and popular meaning, it is strictly applicable to the periodical payments, in the nature of rent, which are usually made under coal and other mineral leases, and we have no doubt it was used in that sense by the testator. In the absence of any provision, express or implied, that the payments, in the nature of rent, shall be accumulated for the ultimate benefit of those in remainder, it would be a strained and unnatural construction of the will to hold that he intended to give appellants only the annual interest on the installments of rent. The fact that they are tenants for life by virtue of the will of the owner, and not merely by operation of law, as in the case of tenants by the courtesy, etc., must not be lost sight of. In the latter case the right of the life tenant is absolutely fixed and determined by law, while in the former the extent of the rights appurtenant to the life estate must be determined by the will, construed in accordance with the intention of the testator. If testamentary life tenants are authorized by the will creating their estate to open and work new mines or quarries, or, what is the same thing, to lease the minerals for that purpose, the remainder men are necessarily without remedy for any injury that may be thus

done to their inheritance, because the will by which the life tenancy, with its incidents, was created is paramount, and they take subject to all the rights and privileges of the life tenant. The reason why tenants for life, as a general rule, cannot open and operate new mines is because it would be a lasting injury to the inheritance; but their right to operate previously opened mines, and work the same, even to exhaustion, cannot be questioned. *Neel v. Neel*, 7 Harris, 323; *Irwin v. Covode*, 12 Harris, 162; *Griffin v. Fellows*, 32 P. F. Smith, 114; *Westmoreland Coal Co.'s Appeal*, 4 Norris, 344. By empowering his executors, with the written consent of six-tenths of the owners, to lease the coal for mining purposes, the testator virtually gave appellants the same rights they would have had if the mines had been opened and operated in his lifetime. The instrument, by which their equitable life interest was created, authorized the leasing of the coal, and in the absence of any provision to the contrary, they are entitled, by virtue of their life interest, to participate in the proceeds or income accruing from the lease. As has already been observed, there is no provision for the investment of the proceeds of the lease for the benefit of those in remainder. In *Daly v. Beckett* (24 Beavan, 114) one of the questions was whether the power contained in the deed of settlement was sufficient to authorize the lease of unopened mines, and the other question was whether the tenant for life was entitled to the proceeds of the mines opened under the lease, or only the interest thereon. After deciding the first point in the affirmative, and sustaining the lease, the master of the rolls says: "With respect to the second point, as to how the produce of the mine is to be considered, I must treat it . . . as if this was an ordinary power to lease the mines and minerals, in which case all the authorities establish this, that the produce of the mines is made part of the annual profits of the estate, and that whether in royalties, or in whatever other way it is produced, it forms part of those profits," and it was accordingly held that "the royalty reserved by the lease was in the nature of rent, and was payable to the tenant for life, and did not form *corpus*." In any view that can reasonably be taken of the subject, we are satisfied the testator intended that appellants should each receive during their respective lives a full share of the proceeds of the

coal lease, and not merely the interest thereof. If, under the power contained in the will, the land, including the coal, had been sold, it will not be questioned that appellants would each have been entitled to the interest on one-tenth of the consideration money during the time of their natural lives respectively; and we think it equally clear that when the requisite number of the beneficiaries under the will elected to avail themselves of the power given them to lease the coal, they are each entitled to one-tenth of the proceeds or income derived from the lease. On their ordinary signification, and as the testator himself doubtless intended they should be understood, the expressions, "income arising from the same," "income arising from the tenth part of my estate," and "all the income arising from said portion," as applied to a lease like the one before us, mean the current proceeds of the lease, and not the interest which would accrue from the investment of the proceeds.

We are not prepared to say there was error in refusing to hold that Thomas Eley, one of the appellants, took an estate in fee under his father's will. It is impossible to mistake the intention of the testator in revoking and changing his bequest to his son, Thomas, as he did in the codicil. Instead of giving him one share absolutely, as he had done in the body of the will, he devised the whole to a trustee, for the purpose of securing the payment of the income to Thomas during his natural life, and at his death the conveyance of the *corpus* to those who may then be his legal heirs. It is a mistake to suppose that the trust is not an active and continuing one. The legal title is vested in the trustee, and upon him are devolved active duties, such as the care and management of the estate, collecting and paying over rents, income, etc.

Decree reversed at the costs of the appellees, and it is ordered that the record be remitted with instructions to distribute the fund in accordance with this opinion.

Hon. G. M. Harding and John McGahren, Esq., for plaintiffs in error.

T. H. B. Lewis, Esq., and Messrs. Dickson & Atherton, for defendants in error.

Orphans' Court of Luzerne County.

ROSS' ESTATE.

1. As a general rule, nothing earned by a corporation can be regarded as profits until it shall have been declared to be so by the corporation itself, acting by its board of managers. The fact that a dollar has been earned gives no stockholder the right to claim it until the corporation decides to distribute it as profit. *Morris' Appeal* (2 *Norris*, 269) followed.
2. The income or dividend from bank stock was bequeathed to the testator's widow for life. She died June 23, and a dividend was declared on the 29th day of the same month: *Held*, that her estate was not entitled to any portion of the same.

Apportionment of dividends on stocks to legatees, etc.

The opinion of the court was delivered August 6, 1883, by

RHONE, P. J.—The testator bequeathed to trustees certain bonds, "and also one hundred shares of the stock of the Second National Bank of Wilkes-Barre, upon the express condition that they, the said trustees, shall collect and receive the interest, dividends, and profits to accrue upon the said bonds and stock as the same shall become payable, and pay over the same to my said wife, Ruth T. Ross, during the whole term of her natural life," and upon her death then the said trustees "shall have and hold the said bonds and stock absolutely, equally to be divided between them." The widow died June 23, 1882, and on the 29th day of the same month the said bank declared a semi-annual dividend on the said stock amounting to \$300.

The question now is whether the said dividend belongs to the estate of Mrs. Ross or to the said trustees. This question has been raised by counsel on citation to the trustees to account, and their answer that the dividend does not belong to the said estate, but to them personally under said will.

The bequest to the widow is not strictly an annuity, but is of the accruing income or dividends on the stock, and yet the rules of law relating to the rights of annuitants for life are to some extent applicable. We have come to the conclusion that the money does not belong to the estate of the widow. "As a general rule, nothing earned by a corporation can be regarded as

profits until it shall have been declared to be so by the corporation itself, acting by its board of managers. The fact that a dollar has been earned gives no stockholder the right to claim it until the corporation decides to distribute it as profit." Morris' Appeal, 2 Norris, 269. This case belongs with Biddle's Appeal (11 W. N. C. 244) and Vinton's Appeal (*ibid*, 246), and the cases there cited, which discuss the question of what is capital and what is income where there has been an increase in the value of stock, bequeathed in terms similar to those in hand. This class of cases seems to show that each one is decided on its peculiar circumstances, rather than on any broad, well settled rule of law. In Earp's Appeal (4 Casey, 374) Lewis, C. J., says "that there is a general rule of law which forbids apportionment, in respect of time, in cases of periodical payments becoming due at fixed intervals, but this rule is founded on convenience, and not on the equitable rights of parties in interest. It is, therefore," says he, "subject to exceptions wherever the purposes of justice require the correction of injuries arising from the uniformity of the law." He then cites several examples as exceptions to the rule, and adds, "In ordinary dividends on stock, periodically declared, the intervals between the time of payment are so brief, and the sums divided so small, that no great injustice can be done in following the rule of convenience, while, on the other hand, the necessity for it is usually very strong, arising from the difficulty of ascertaining the exact amount of profits during fractions of the period." An apportionment was made in that case only because of the long accrued income, and the same was done in McKeen's Appeal (6 Wright, 479) for the same reason.

As we have before said, in cases like this the dividend or income is not due at *fixed intervals*, nor does it accrue from day to day, so as to bring the widow within the exception to the general rule laid down in *Blight v. Blight* (1 Smith, 420) and cases there cited. That is to say, if the bequest to her had been a definite sum, payable at fixed intervals, or if it had been the income of a fund drawing a stated rate of interest, her estate would be entitled to such share of the same as had accrued to the day of her death, but under this will she was only to have such dividend as her trustees should collect when "payable,"

hence there was nothing ever due her until the dividend was declared. See *Stewart v. Swain*, 7 W. N. C. 407. For the statutory alteration of the common law rule, see *Williams on Executors*, Am. Ed. 1877, p. 906, *et seq.* See also note (n) p. 913.

The proceedings in this case are, therefore, dismissed at the costs of the petitioner.

Messrs. E. P. & J. V. Darling, for legatee.

Geo. R. Bedford, Esq., for estate.

Orphans' Court of Luzerne County.

CASNER'S ESTATE.

1. As a general rule, an administrator should sell immature crops on the ground, and not involve the estate and himself in a transaction which may, and most likely will, lead to dissatisfaction and loss; and if he continues the farming, the burden is upon him to show that the estate was benefited by his management.
2. Taxes assessed and levied before a decedent's death become a debt against his estate.

Exceptions to final account of administrator.

The opinion of the court was delivered August 6, 1883, by

RHONE, P. J.—The first exception relates to the charges of the administrator for services in gathering the crops. The decedent died in July, 1881, in the midst of haying and harvesting his grass and grain. The administrator, it seems, spent twelve days in gathering the wheat and rye and ten days in housing the hay. He also spent five days in gathering the oats. The vendue was on September 20, when the corn, potatoes, and buckwheat raised on decedent's farm were sold on the ground, there being no evidence that they were sold on condition that the administrator should gather them. Neither is it said whether these fall crops were sold by the bushel or in the lump. It was clearly the duty of the administrator to reap the grain already ripe and prepare it for the sale, and for this we must allow him for seventeen days at the undisputed wages of \$3 per day, in all \$51.

In a contest between the heir and the administrator, or the

decedent's creditors, growing grass is probably not assets of the estate, but here the grass was taken without objection, and sold as a part of the decedent's personal estate. This being the case, there can be no just reason why the administrator should not be allowed for gathering it. We, therefore, allow for this service ten days at \$3 for himself, team, etc., in all \$30.

We cannot allow the administrator anything for his services in gathering the fall crops for two reasons. 1st. There is no evidence that the sale was made on any such conditions. 2d. It was not the duty of the administrator to carry on the farming any longer than was necessary to put the crops in shape for market at an advantage. He should have shown that the estate was clearly benefited by his management. As a general rule, an administrator should sell immature crops on the ground, and not involve the estate and himself in a transaction which may, and most likely will, lead to dissatisfaction and loss. We, therefore, conclude not to allow the balance of his claim, namely, the sum of \$24.

The second and third exceptions were not pressed on argument, and are dismissed.

The fourth exception is not sustained, as it would seem that the taxes were undoubtedly assessed and levied before the decedent's death, in which case they became a personal charge against him. *Reed's Estate*, 4 Phila. Rep. 375; 1 Rhone's O. C. Prac. 657, *et seq.*

The fifth exception is sustained to the extent of allowing wages for only eighty-six weeks at \$1.50, in all \$129, less \$65 in goods and cash paid, as per the testimony of the lady who did the service. We, therefore, refuse a credit on this item to the amount of \$93.50.

The sixth exception was withdrawn on the argument, except as to the item of sewing machine, and as to this item there is no evidence of its value, to say nothing of the fact that, under the evidence, we are willing to pass it as a gift. This exception is dismissed.

On the whole, then, we reduce the credits claimed by the accountant as follows, viz.: Gathering fall crops, \$24; wages of Elizabeth, \$93.50; in all \$117.50; and we find the estate indebted

to the accountant only \$83.81, for which sum we enter judgment in his favor. The costs of this proceeding to be paid out of the estate.

Q. A. Gates, Esq., for exceptions.

Messrs. Dickson & Atherton, *contra*.

Next in the order of seniority as a member of the Luzerne county bar to the subject of our last preceding sketch comes Thomas Hart Benton Lewis. Mr. Lewis is a native Luzerne countian, having been born in Trucksville, Kingston township, February 22, 1835. He is consequently at this writing considerably more than forty-eight years of age. His father is James Rowley Lewis, a native of Petersburg, Rensselaer county, N. Y. He has practiced as a physician in this county over fifty-one years, and is now the oldest in years of our medical practitioners. His first wife was Janette H^{ill}, of Schoharie, N. Y. He was a teacher in Schoharie county, N. Y., until he removed to Pennsylvania over half a century ago. The mother of the subject of our sketch was Nancy, a daughter of Alexander Ferguson, who lived near Delaware Station, Warren county, N. J., where Mrs. Lewis was born, but who afterwards removed to Dallas, in this county, where he died. She was a lady of many virtues, and not a few mental endowments.

From such progenitors came one of the least pretentious, but one of the most painstaking and reliable attorneys on the roll of the courts of Luzerne. Mr. Lewis was prepared for college at Wyoming Seminary, in Kingston, where so many of our best and most successful citizens received their preliminary education. From here he entered the University at Lewisburg, from which he graduated with honors in the year 1858. His legal attainments were acquired in the office and under the tutelage of the late Charles Denison, than whom he could have had no more talented mentor. He was admitted to the bar August 22, 1860, soon achieving a creditable practice.

In the Centennial year Mr. Lewis, who had been a faithful fol-

lower of the Democratic party during all its ups and downs, was chosen a member of the State Legislature, as a Democrat, although from the Republican Second district. In this position, both as a committeeman and on the floor of the chamber, he did his party and his constituents all that it was possible for one man to do, being a Democrat in a Republican body, and showed himself possessed of many of the qualities and capacities of which statesmen are made. He has frequently been a member of the Town Council, and Secretary of that body, in our neighboring borough of Kingston, where he has long resided and still abides, and for whose advancement as a borough he has done signal service. He is at present a member of the School Board of that borough.

On May 17, 1865, he married Rosa M., a daughter of J. A. Atherton, of Bridgewater, Susquehanna county, Pa. Mr. and Mrs. Lewis have a family of six children, three sons and three daughters, the oldest being a son, now seventeen years of age.

Mr. Lewis is a leading Presbyterian, having been a ruling elder in the Kingston church of that denomination continuously since 1867, and was for five years superintendent of the Sabbath-school attached to the church.

Perhaps his most marked characteristic is his quietness of demeanor—his total lack of ostentation. He has, nevertheless, the quality of geniality, and to those who know him is always friendly and sociable. He is a pleasant companion, and, on those subjects which most interest him, a fluent and, at times, an animated conversationalist. As a lawyer, he is studious, industrious, religiously faithful to a client, and generally successful with his cases. He figures but little in the Quarter Sessions, but in the Common Pleas has realized a considerable practice, while in what is called office practice he does a paying and successful business. He is a man of ordinary height, of average build, and in many respects prepossessing in appearance.

Gustav Hahn was born near Stuttgart, in the Kingdom of Wirtemberg, now a part of the great German Empire, on the 23d of October, 1830. His primary education was acquired in the Lyceum at Reutlingen, from which he entered the University of Tubingen, where he graduated with honors. At the age of nineteen, under the law of Germany, he entered the army, and was exceptionally fortunate in being in the service but two years, graduating therefrom after a full military course. Being animated by the desire of so many of his countrymen, he decided to emigrate to a new land, and on September 22, 1854, reached the United States. Two months later he came to Wilkes-Barre, and immediately entered the printing office of Robert Baur, editor and proprietor of the *Democratic Waechter*, at that time the only German Democratic publication in this section of the country. He did chores for the office, served the paper to its comparatively numerous subscribers, and learned the art of type-setting, and subsequently came to be a writer for its columns of such consequence that what he wrote was feared by its enemies and venerated by its friends. In 1855 he entered the law office of ex-Judge E. L. Dana as a student of the law, and afterwards that of the present Additional Law Judge, Hon. Stanley Woodward, from which he was admitted to the bar, as a practitioner in the courts of Luzerne county, February 18, 1861. During most of this time, that is to say, from 1856 to 1860, Mr. Hahn was Professor of Modern Languages in Wyoming Seminary, at Kingston, and for six months preceding his admission as a lawyer he was a clerk in the office of the Prothonotary of the county, where he acquired a knowledge of the forms and methods of practice in the Common Pleas that has been of rare value to him ever since.

The enticements of the law, or of education, did not suffice, however, to drown in Mr. Hahn the elements of patriotism to the country of his adoption, and on April 20, 1861, he enlisted in the Wyoming Jaegers, a noted military company in that day, which marched to the State Capital the morning following, when Mr. Hahn was elected Second Lieutenant of the company, which

entered the service of Uncle Samdom as Co. G, Eighth Regiment Pennsylvania Volunteers. The company was sworn in for three months. During the Antietam and South Mountain campaign Mr. Hahn was Captain of Co. K, Nineteenth Regiment Pennsylvania Volunteers, with which company he remained in command until they were discharged, upon the retirement of the enemy. But for disability contracted in the army while in Germany, Mr. Hahn would have remained in the service. In 1864 he was appointed a United States Commissioner, which office he still honorably retains.

Mr. Hahn married, December 7, 1861, Mehetabel A. Munson, a descendant of Richard Monson, or Munson, an early Puritan of New Hampshire. The family afterwards removed to New Haven, and from there to Wallingford, Conn. The greatgrandfather of Mrs. Hahn was Wilmot Munson, of Wallingford, where he was born July 23, 1755. He was the son of Obadiah Munson. Wilmot Munson was one of the earliest Connecticut settlers at Wyoming, and occupied a farm on the banks of the Susquehanna river below Port Blanchard, but returned to Connecticut before the Massacre in 1778. Walter Munson, Mrs. Hahn's grandfather, remained in Connecticut until he reached manhood. After his marriage with Mehetabel Trowbridge, he removed to Dutchess county, N. Y., and from there to Greene county, and thence to Luzerne county, in 1807. The father of Mrs. Hahn is Salmon Munson, who was born on the homestead of his father, in Franklin township, December 13, 1808, and where he still resides. The mother of Mrs. Hahn was Ruhamah Hahn, *nee* Lewis, a native of Orange county, N. Y. Her father was Oliver Lewis. The late Revs. Oliver Lewis and George Lewis were her nephews, as are also Revs. Joshua S. Lewis and George C. Lewis, of the Wyoming Conference.

The Hahns are an old and distinguished German family, and the representative thereof, of whom we now write, is a bright and prosperous lawyer, besides being a popular citizen, who, as President of the Wilkes-Barre Saengerbund, and in other civic and military organizations, has earned a credit that cannot easily be overstated. He is a gentleman full of fun of a good-natured order, and nobody who thoroughly knows can dislike him.

Court of Common Pleas of Luzerne County.

EDWARDS *et ux.* *v.* JEREMY.

A writ of *certiorari* will not be quashed where it appears to have been issued within twenty days after execution. In such case we cannot say that the writ was improvidently issued.

Certiorari.

The opinion of the court was delivered November 20, 1882, by

WOODWARD, J.—The judgment before the alderman was entered on May 31, 1877, and the *certiorari* was not taken until April 3, 1882, although the defendants had notice and knowledge of the entry of the judgment. It is argued that the proper order would be to quash the writ, instead of affirming the proceedings, and to this question our attention has been particularly directed.

It seems that on March 27, 1882, an execution was issued by Alderman Parsons upon this judgment. The *certiorari* went out, as has been stated, on April 3, 1882, and this was within the twenty-day limit. The execution was returned "by order of the alderman as per *certiorari*, No. 244, May term, 1882." It cannot be said, therefore, that the writ itself was improvidently or illegally issued. The motion to quash the writ must, therefore, be denied.

The exceptions to the record must also be overruled. The questions raised are fully disposed of by Judge Rice in the case of Shupp *et al.* *v.* Ortz *et ux.* (Mss.), to which we refer.

The proceedings are affirmed.

Q. A. Gates, Esq., for plaintiffs.

E. D. Nichols, Esq., for defendant.

The average boy, when sent on an errand, develops wonderful "staying qualities."

A man never knows what genuine poverty is until he has to shave with soft soap.

ORPHANS' COURT ARGUMENT LIST.

SATURDAY, OCTOBER 27, 1883.

- 1 In Re Estate of Louis Nagle, deceased.
- 2 In Re Estate of David Hancock, deceased.
- 3 In Re Estate of Jacob Drupp, deceased.

- Powell, Cannon.
- Hand, Gates.
- Brundage, Kisner.

- Exceptions to final account of Guardian.
- Exceptions to partial account of Administrator.
- Exceptions to accounts of Executor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 232, May term, 1883. Libel in divorce a vinculo matrimonii. Francis Trumbower v. Sophia Trumbower. To Sophia Trumbower—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, the 26th of October, 1883, at 10 o'clock A. M.

M. E. WALKER,
Solicitor.

40-41

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 100, February term, 1883. Libel in divorce a vinculo matrimonii. Margaret A. Seibert, by her next friend, Henry Klinger, v. W. G. Seibert. The alias subpoena in the above case having been returned non est inventus, you, the said W. G. Seibert, are hereby notified to appear at said court, on Monday, the 19th of November, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

E. P. KISNER,
Solicitor.

WILLIAM O'MALLEY,
Sheriff.

40-43

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 95, May term, 1883. Libel in divorce a vinculo matrimonii. Lavina Jones, by her next friend, Frank Craig, v. Joseph S. Jones. To Joseph S. Jones—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, October 13th, 1883, at 10 o'clock A. M.

W. H. HINES,
Solicitor.

40-41

THE EXAMINER.

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For sample copies, terms to agents, etc., address

THE EXAMINER,
Box 3661, New York.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 24, May term, 1883. Libel in divorce a vinculo matrimonii. Ida A. Jones, by her next friend, William Anman, v. John Jones. The alias subpoena in the above case having been returned non est inventus, you, the said John Jones, are hereby notified to appear at said court, on Monday, November 19th, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

E. D. NICHOLS,
Solicitor.

WILLIAM O'MALLEY,
Sheriff.

43-44

IN THE COURT OF QUARTER SESSIONS of Luzerne county. No. 220, September sessions, 1883. In Re Additional Election District in Newport township. Notice is hereby given that the report of the Commissioners in the above stated case has been filed with the Clerk of the Court of Quarter Sessions, and was confirmed nisi by the court on the 5th day of October, 1883, and that said report will be confirmed absolutely by the court, unless exceptions thereto be filed not later than the third day of the next term of said court.

LOUIS K. STRENG,
Clerk Q. S.

41-43

ESTATE OF BARNEY HUNSINGER, LATE
of Black Creek township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SAMUEL BENNER,
Administrator.

37-42

ESTATE OF EDWARD MORGAN, LATE OF
Parsons, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PATRICK COX,
Administrator.

37-42

ESTATE OF JAMES E. CLARKE, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY CLARKE,
Administratrix.

37-42

ESTATE OF DANIEL BROWN, LATE OF
Sugarloaf township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM H. BROWN,
Administrator d.b.n. c.t.a.

37-42*

ESTATE OF JAMES CARR, LATE OF THE
borough of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN O'BOYLE,
Administrator.

37-42

ESTATE OF LAURA MILLARD, LATE OF
Shickshinny, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND,
Administrator.

37-42

ESTATE OF WILLIAM WITCRAFT, LATE
of White Haven, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

G. L. HALSEY,
Attorney.

E. P. MORRIS,
Administrator.

37-42

ESTATE OF SAMUEL MOYER, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
Attorney.

HOMER SMETHERS,
Administrator.

37-42

ESTATE OF DANIEL BRADER, LATE OF
Salem township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
Attorney.

SARAH BRADER,
Executrix.

38-43

ESTATE OF JAMES VINCENT, LATE OF
Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELIZABETH VINCENT,
Administratrix.

GEO. H. TROUTMAN,
Attorney.

38-43

ESTATE OF CHARLES MOYER, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HOMER SMETHERS,
Administrator.

C. B. JACKSON,
Attorney.

37-42

ESTATE OF LYDIA M. RABERT, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WESLEY RABERT,
Administrator.

A. R. BRUNDAGE,
Attorney.

37-42

ESTATE OF DANIEL WILLIAMSON, LATE
of West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ELISHA H. WILLIAMSON,
Pittston, Pa.

L. D. SHOEMAKER,
Attorney.

40-45

ESTATE OF CATHARINE SMYTHE, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. E. WILLIAMS,
Wilkes-Barre, Pa.

40-45

ESTATE OF ZACHARIAS GINTHER, LATE
of Hazleton, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

DOROTHEA GINTHER,
Hazleton, Pa.

39-44

ESTATE OF NIKOLAUS HILDEBRANDT,
late of Wright township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. C. HILDEBRAND,
Mountain Top, Pa.

39-44

ESTATE OF SAMUEL RODGERS, LATE OF
Plymouth township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

WILLIAM RODGERS,
Plymouth, Pa.
C. W. McALARNEY, Attorney. 39-44

ESTATE OF JESSE HART, LATE OF THE
township of Black Creek, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN HART,
Rock Glen, Pa.
A. R. BRUNDAGE, Attorney. 39-44

ESTATE OF JOHN E. LEWIS, LATE OF
Plains township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

MARY ANN LEWIS,
Plains, Pa.
C. H. WELLS & SON, Attorneys. 39-44

ESTATE OF ROBERT MAJOR, LATE OF
Lehman township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

THOMAS H. MAJOR,
Cease's Mill, Pa.
A. R. BRUNDAGE, Attorney. 39-44

ESTATE OF LEON SACKS, LATE OF THE
borough of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

FANNY SACKS,
Pittston, Pa.
JOS. D. COONS, Attorney. 39-44

ESTATE OF JOHN S. JENKINS, LATE OF
Kingston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

HANNAH L. JENKINS,
Wyoming, Pa.
DICKSON & ATHERTON, Attorneys. 39-44

ESTATE OF WILLIAM T. MERRITT, LATE
of Poughkeepsie, N. Y., deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

M. F. MERRITT,
R. P. MERRITT,
SCHUYLER MERRITT,
Poughkeepsie, N. Y.
A. T. McCLINTOCK, Attorney. 41-46

ESTATE OF HANNAH K. MERRITT, LATE
of Poughkeepsie, N. Y., deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

EDWARD MERRITT,
Brooklyn, N. Y.
A. T. McCLINTOCK, Attorney. 41-46

ESTATE OF JOHN W. GILLMAN, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JACOB GILLMAN,
Wilkes-Barre, Pa.
RYMAN & LEWIS, Attorneys. 41-46

ORPHANS' COURT SALE.

Estate of William Witrhaft, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, on the premises, on Friday, November 9th, 1883, at 10 o'clock A. M., all that lot of land on the north side of the extension of Berwick street, in White Haven, being No. 59 on said street, containing in front or breadth on said Berwick street 40 feet, and extending thence north 150 feet to an alley, bounded north by an alley, south by Berwick street, east by lot No. 57, and west by lot No. 61; all improved, with a two-story frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$200 of purchase down on day of sale, and balance of purchase money on confirmation of sale and delivery of deed.

G. L. HALSEY, Attorney. 41-43
E. P. MORRIS, Administrator.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Thomas Sink, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Saturday, November 3, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be debarred from coming in on said fund.

G. L. HALSEY, Auditor. 41-44

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Ellen Lutsey, will attend to the duties of his appointment, at his office, Harvey Buildings, Franklin street, in the city of Wilkes-Barre, on Saturday, the 13th of October, 1883, at 9 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in on said fund.

JOHN B. REYNOLDS, Auditor. 38-41

McLEAN & JACKSON,
ATTORNEYS AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, OCTOBER 19, 1883.

No. 42.

Supreme Court of Pennsylvania.

BUCHER *v.* COMMONWEALTH.

1. By "warehouseman, wharfinger, or other person," in the act of 24th of September, 1866, making warehouse receipts negotiable, is meant one whose business is to receive goods with a view to their return *in specie*, whether altered in form by manufacture or not.
2. For a receipt to be negotiable by that act, it must be issued by one who is, in fact, a warehouseman or wharfinger, or who is, like them, engaged in the business of bailee.
3. A warehouseman is one who receives and stores goods as a business for compensation or profit. One who receives grain on immediate purchase or for future sale on account of the owner is not a warehouseman.
4. If A. conveys his corn to B., a dealer in grain, and leaves it with him, not intending ever to remove it, unless he should fail to sell it to B. in a subsequent negotiation, B.'s later sale of it to C. will be deemed the exercise of his option to purchase from A., and he will not be amenable to the penalties of the act of 1866.
5. One indicted for parting with the possession of grain, for which he has issued a receipt, in form as follows: "Kingston Station, May 14, 1881. Received of J. Hettrick, per Kost, three hundred and sixty-six and 48-56 bushels corn on store. (Signed) R. A. Bucher," without return of the receipt, should, in the trial of an indictment therefor, be permitted to show that the receiptee had, for a number of years before the issue of the receipt, delivered large quantities of grain to the defendant, and always with the understanding that the grain so delivered was sold to the latter, paying such prices as might rule on the days on which a settlement should be called for, and that the corn, for which the receipt in question was issued, was received under the same arrangement.
6. A receipt, in fact, of a warehouseman, for goods received on deposit is within the operation of the act of 1866, whatever may be its form. But a receipt, in form, for a deposit, may, in a criminal proceeding, be shown to have been given by one not in the business of bailee, and not for articles bailed, and so excepted from the scope of that statute.
7. The purpose of that act is to protect third persons, and not the depositor; hence consent of the latter to a violation of it by the warehouseman would not exonerate him.

Error to the Court of Quarter Sessions of Cumberland county.
(Hon. D. Watson Rowe, holding special court.)

Robert A. Bucher was indicted under the act of September 24, 1866, entitled "An act relating to goods, wares, and merchandise

in store and in transit, and to make receipts and bills of lading therefor negotiable." The first count of the indictment charged that, being a warehouseman, and as such engaged in the purchase, shipping, and sale of wheat, rye, corn, etc., and the receipt thereof in store, he received from Jesse Hettrick, in store, corn of the value of \$274, issuing therefor a receipt (the form appears in the syllabus), and that he subsequently sold, shipped, transferred, and removed this corn beyond his control, the receipt not being returned to him, with intent to defraud Hettrick. Two other counts made similar charges with respect to wheat and oats.

At the trial, the fact of the issue of the receipt was established, and also that, Bucher having made an assignment for the benefit of creditors, not more than seventy-five bushels of corn were found at his place of business by his assignee. Hettrick, witness for the State, swore that Bucher "carried on a warehouse at Kingston Station, received grain, etc., in store," and that before the corn mentioned in the receipt above given was left by him with Bucher, he had made an arrangement with the latter "to put the grain there in store." The receipt was admitted in evidence, despite the objection that (1) Bucher had not been shown to be a warehouseman; (2) the receipt was not in form such as was contemplated by the act of 1866. In his own behalf, Bucher swore that his business was that of dealer in grain, coal, lumber; of buying and selling the same; that he was not a warehouseman, and had never taken a bushel of grain in store. He stated, in respect to the corn in question, that he had told Hettrick before he received it that he needed corn to fill contracts with third persons; that Hettrick objected to the price then ruling, and preferred waiting till after harvest, to see what the prices might then be; that he (Bucher) told him if he would let him have the corn to fill his contracts he might wait till after harvest, and fix the price by the rates then obtained, and that assenting to this proposition, he sent the corn to Bucher's place of business in bags got from Bucher, who instantly shipped it in cars standing there when the corn was bought. Bucher was then asked by counsel to say what his prior dealings with Hettrick had been, in order to show that for a series of years he had received grain from Hettrick under a similar arrangement to that just described. The

Commonwealth's objection that the written contract, *i. e.*, the receipt, could not be explained by prior general dealings, and that Bucher having stated an express contract with Hettrick as to the corn in question, prior dealing could not be relevant as explanation, was sustained, and the evidence excluded. This was the fifth error assigned.

The third point of the defendant asked the court to instruct the jury that, "unless the corn was received as a bailment, that is, with the understanding that the property remained in Hettrick, and was to be returned to him when demanded, the jury ought not to convict." It was declined.

W. F. Sadler, Esq., and Messrs. Stuart & Stuart, for plaintiff in error. Bucher must be shown to be a warehouseman. A warehouseman is a bailee. Bouvier, Abbott, *ad verb*; Edwards on Bailments. As to what is a bailee. Krause *v.* Comlth., 12 Norris, 421; Comlth. *v.* Cart, 2 Pittsb. 495; Comlth. *v.* Frantz, 8 Phila. 612. When the receiver has option to pay a price for the grain, or to return it or other grain, the transaction is a bailment. Story's Bailment, § 439; Jones' Bailment, § 102; Chase *v.* Washburne, 16 St. 244; Ewing *v.* French, 1 Blackf. Ind. 353; Buswell *v.* Bicknell, 17 Maine, 346; Holbrook *v.* Armstrong, 10 Maine, 31. A receipt to A. for wheat "left in store, to take the market price when he sees fit to sell," imports a sale. Ives *v.* Hartley, 51 Ill. 520; Lanergan *v.* Stewart, 55 Ill. 45. It must be affirmatively shown that the issuer of the receipt is a warehouseman. Shepherdson *v.* Cary, 29 Wis. 34. The prior dealing between the prosecutor and the defendant should have been admitted. Lelar *v.* Brown, 3 H. 215; Hursh *v.* North, 4 Wr. 240.

Samuel Hepburn, Jr., and J. W. Wetzell, Esqs., for the Commonwealth.

The opinion of the court was delivered October 1, 1883, by

GORDON, J.—No exception can be taken to the charge of the learned judge of the court below as a critical exposition of the act of September 24, 1866 (P. L. 1867, p. 1363).

We have no doubt that he was strictly correct in saying that the whole object of the act was to protect the transferee of what are technically known as warehouse receipts. This kind of

paper, together with bills of lading and receipts for goods in transit, are, by this act, made negotiable; hence for the protection of those persons to whom this kind of securities are passed, it is made a penal offence for any "warehouseman, wharfinger, or other person," to issue any such vouchers for goods, wares, etc., unless he shall have actually received them into store. Neither is such person or persons permitted to sell or incumber, "ship or transfer, or in any manner remove beyond his control, any goods, wares, merchandise, petroleum, grain, flour, or other produce or commodity, for which a receipt shall have been given by him as aforesaid, whether received for storage, shipping, grinding, manufacturing, or other purposes, without the return of such receipt."

Nor is the learned judge less correct in his definition of the intent of the act when he states that since the object of the statute is to protect advances made on the faith of the fact that the goods described in the receipt are actually in store, as may be stated in that paper, and not for the protection of the depositor, it follows that the consent of the persons storing the goods to the shipping of them, without a return of the receipt, does not relieve the warehouseman. He further well says "that the depositor has no right to consent to a violation of the statute, which was not made for his benefit, but for the security of the holder or transferee of the warehouse receipt; that the agreement of the bailor and bailee cannot so modify the act as to make lawful the shipping of the property whilst such receipt is outstanding."

But, conceding this to be a true exposition of the law, as it undoubtedly is, nevertheless it is clearly apparent that the law is dealing with that class of securities which it has made negotiable, and with none others. Moreover, as these vouchers, in the nature of things, must be like many others which are not negotiable, their character must depend altogether upon the business of the person who issues them. That person must be a warehouseman, or one who is engaged in a like business, for it will not do to say that the receipt of a farmer who takes a horse to pasture, or a mechanic who takes a wagon to mend, is negotiable paper under the act of 1866, and that the farmer could not return the horse, or the mechanic the wagon, without first lifting that receipt. Penal statutes must be construed strictly, and must

not be extended beyond the evident intention of the Legislature, as expressed upon their face. We must have regard to whom and to what the act is intended to refer, and to nothing else. It expressly indicates "warehousemen, wharfingers, and other persons," and by "other persons" we must, of course, understand those who are engaged in a like business, or who may connect the business of warehouseman or wharfinger with some other pursuit, such as shipping, grinding, or manufacturing. So the goods stored or deposited must be so stored or deposited with the intention that they shall be returned without change or substitution, or in a manufactured state, to the owner or his transferee. Such being the case, the depositee is strictly a bailee; hence the defendant's third point should have been affirmed. Unless the corn was received as a bailment, that is, with the understanding that the property was to remain in Hettrick, and to be returned to him when demanded, the jury ought not to have been allowed to convict the defendant.

Thus, in the application of the law and facts to the case in hand, we are brought to the question, first, what was Bucher's business? Was he a warehouseman? *Prima facie*, we would say no. A warehouseman is one who receives and stores goods as a business for compensation or profit. But Bucher made no charges; neither was he a shipper, miller, or manufacturer. If, then, he did not receive this grain merely for the purpose of storage, the second question is, for what purpose did he receive it? The answer from the evidence is, either for his own use as an immediate purchaser, or for future sale on account of the depositor, and certainly not for the purpose of holding it *in specie* until called for by the bailor or his transferee. As conclusive evidence of this, we need go no farther than the testimony of Hettrick himself. He says he never paid anything for storage; that he did not receive the receipt for the purpose of negotiation, and that he never intended to remove the corn, unless he could not sell it to Bucher. If this means anything, it means that Bucher had the option to purchase, and if he used the corn he must be regarded as having exercised that option, and therefore be treated as a purchaser. Moreover, this kind of dealing has been going on for years, and certainly Hettrick, and everybody

else in that neighborhood, knew the character of Bucher's business; hence the offer of evidence on the part of the defendant, as contained in the fifth assignment of error, ought to have been admitted.

The court was not trying an action on a contract, but a criminal charge, under which the character of the business was of prime importance, as giving character to the receipt issued by the defendant. In the court below much stress was laid on the form of this paper, though that particular had, in and of itself, but little significance. The act of Assembly prescribes no form. If the receipt is that of a warehouseman, it is negotiable, without regard to its form, and to destroy that negotiability notice to that effect must appear upon its face. On the other hand, unless it is in fact or effect a warehouse receipt, no form will make it such. The act was designed to meet a special business—a business that enters largely into the commerce of the country—and it was not designed to affect commission merchants, or any others, who, by contract, express or implied, have the right to sell or use the goods committed to their care. A receipt for such goods forms but part of the contract from which it originates, and, from its very nature, cannot become negotiable. Nor can we regard the case in hand as otherwise than remarkable in this, that Bucher and his customers should have gone on with this kind of dealing for a period of eight or nine years, they delivering grain to him, he disposing of it on his own contracts, and settling with them from time to time at the market price, and that only after his failure it should be discovered that he was in fact a warehouseman, and had no right thus to deal with the produce committed to his care. We must confess that we cannot comprehend this manner of treating a subject of so much gravity, and that to us it looks very much like an after thought, which has unwittingly been made effective in the court below for the punishment of an insolvent debtor, though a perversion of the act of 1866.

Judgment reversed, and it is ordered that the record be remanded to the court below for further proceedings.

COMMON PLEAS TRIAL LIST—NOVEMBER TERM, 1883.

FIRST WEEK—NOVEMBER 19, 1883.

NO.	PL'FFS' ATT'YS.	PLAINTIFFS.	DEFENDANTS.	DEF'TS' ATT'YS.	NO.	TERM.	YR.	ACTION.	PLEA.
1	J. L. L.	Jennie E. Fell	Red Ash Coal Co. (lim)	Opp.	202	Feb	1883	Appeal	Nil debit, set off.
2	J. L. L.	William Murray	Susquehanna Coal Co.	Darlings, B. & W	343	May	1883	Appeal	Non ass., pay't with leave, &c.
3	Shonk	John Becher	Abigail Barney, dec'd	Payne	604	Oct.	1883	Assumpsit	Non ass., pay't w leave, setoff, &c.
4	J. L. L.	Malachi Sullivan	Phoenix Coal Co	Ferris	651	Oct.	1883	Appeal	Non assumpsit, pay't with leave, &c.
5	J. L. L.	John Morrill	Lyman Card	Hines	719	Oct.	1883	Appeal	Nil debit, payment with leave, &c.
6	R. & C.	W. O. Ferrell et ux	S. R. Ferrell	Martin	113	May	1882	Interpleader	Usual plea.
7	McLean	Andrew Bryden	Shelic & Hill	F. C. S., Lamb	176	Jan	1883	Issue	Not guilty.
8	McLean	County of Luzerne	John T. Griffith	Halsey	242	Jan	1883	Issue	Not guilty.
9	Darte	Arnold Bertels et al	Franklin Coal Co	L. & A.	276	Feb	1873	Ejectment	Not guilty.
10	Hahn	Thomas Jordan	George D. Couch et al	Gates, Brundage	368	May	1877	Tre. vi et ar., &c	Not guilty.
11	G. & W., Powell	Charles Kedmer	James Duggan	L. & A.	368	May	1885	Appeal	Payment with leave, &c.
12	M.C. & J.	Enterprise B. & L. As	Jacob Falk	Osborne	348	Nov	1876	D. S. B.	Payment with leave, &c.
13	L. & P., R.	John F. Taylor	Susquehanna M. F. I. Co	Bedford	670	Jan	1878	Case	Non assumpsit, payment with leave.
14	Wright	Frank J. Bell et al	D. S. Webb Jones.	W., Darlings	724	Sept	1878	Debt	Nil debit, payment with leave, &c.
15	J. L. L.	John Griffiths	Pittston Coal Co	Ferris	302	Nov	1878	Ejectment	Non cul.
16	Ricketts	Samuel Heller	David J. Waller et al	Payne	373	April	1879	Case	Not guilty.
17	Hahn	F. N. Ruggles	John H. Prichard	O'Neill, Gates	373	April	1879	T. r. qua. cla. freg	Not guilty, accord and satisfaction.
18	Brundage	Adm'rs of J. Hess et al	Phillip Rockel et al	Hahn	513	Jan.	1880	Ejectment	Not guilty.
19	J. L. L.	James Flood et ux	City of Wilkes-Barre	Foster	103	Sept	1880	Case	Nulla bona.
20	B., R., D	T. P. Macfarlane	Charles Smith	Foster	103	Sept	1880	Case	Not guilty.
21	Payne	J. C. Wells	Leander J. Smith	Osborne	313	Sept	1880	Appeal	Non assumpsit.
22	Butler	Patrick Halsey et al	Turner Brothers	Darlings, B. & W	513	Sept	1880	Assumpsit	Non ass., pay't, w. leave, &c., setoff.
23	Harding, McG	Fredricka Volman	Pennsylvania Coal Co	McClintock	204	Jan	1881	Assumpsit	Non assumpsit, pay't with leave, &c.
24	Hahn	William Heinzelman	City of Wilkes-Barre	McClintock	372	April	1881	Case	Not guilty.
25	Kline, T	William Heinzelman	Hughes & Koenig	Harding, McG	75	May	1881	Case	Not guilty.
26	Jenkins	Ernest Thomas et al	Laurance Crogan et al	Darte	79	June	1881	Case	Not guilty.
27	Hahn	Joseph Stookey	Julia Westover et al	J. L. L.	87	Sept	1881	Ejectment	Not guilty.
28	Gates	J. B. Dodson et ux	J. B. Drake et al	Jenkins	82	Sept	1881	Sc't. fa. sur. judgt	Payment with leave, &c.
29	Ricketts	Michael M. Reading	Patrick McGraw	E. A. L.	153	Sept	1881	Case	Not guilty.
30					546	Oct.	1881	Assumpsit	Non ass t, pay't w. leave, &c., setc'ff.

SECOND WEEK—NOVEMBER 26, 1883.

1	C., N., Ricketts	Edward Laughlin	J. S. Miller	Gates	477	Feb	1875	D. S. B.	Nil debit, payment with leave, &c.
2	Palmer, Ricketts	A. Robertson	Township of Hazle	Hoyt, Brundage	443	April	1875	Assumpsit	Non assumpsit, pay't with leave, &c.
3	Gearhart, Powell	Scranton Sav. Bk., Assi	The Banner America	W. & H. et al	2767	Sept	1877	Assumpsit	Non ass., no partnership, w. l., &c.
4	T. H. B. L., Hals	Use W. D. & E. F. Brown	Nautilus Sluiter et al	Foster	597	Nov	1877	D. S. B.	Payment.
5	W. F. L	A. Watt & Co	O. B. Hart	R	991	Mar	1878	Appeal	Non assumpsit, pay't with leave, &c.
6	Strauss	A. B. Weill	Isaac Levy et al	Kline, Ricketts	345	Sept	1878	Replevin	Non capit property, &c.
7	McL. & J	William Younger	Hons Brothers	J. T. L.	134	Oct.	1878	Debt	Nil debucant.
8	Ferris	Miners Savings Bank	Comelius Donnelly	H. & B.	446	Nov	1879	Assumpsit	Non assumpsit, pay't with leave, &c.
9	Powell	John Davis	Abram Lines	T	197	April	1880	Appeal	Non assumpsit, pay't, statute of lim.
10		Henry Thomas	Jacob Edelstien et al	T	701	April	1880	Appeal	Non assumpscant.

SECOND WEEK—NOVEMBER 26, 1883—CONCLUDED.

NO.	PL'FFS' ATT'YS.	PLAINTIFFS.	DEFENDANTS.	DEFTS' ATT'YS.	NO.	TERM.	YR.	ACTION.	PLEA.
11	Gates	Joseph Monroe et ux	J. S. Koons	Miller	308	Sept	1880	Ejectment	Not guilty.
12	R. & A.	Margaret Bannan	James O'Donnell	J. T. L.	511	Sept	1880	Appeal	Not guilty.
13	H. & J.	E. M. Bishop	C. W. Mooers	F. A. L.	199	Nov	1880	Assumpsit	Non assumpsit, pay't with leave, &c.
14	McL. & J.	City of Wilkes-Barre	Patrick McGrath	McLean	12	April	1881	Sci. fa. sur mort	Payment with leave, &c.
15	J. Lewis, Butler	Christiana Thiel	City of Wilkes-Barre	J. L. L.	475	April	1881	Case	Not guilty.
16	D. & A.	S. M. Beard, Sons & Co	E. J. Mylotte et al	Darlings	269	May	1881	Replevin	Non cept and property.
17	Harding, McG	Fardee & Markle	Thomas John, dec'd	P. D. & F	84	June	1881	Case	Non assumpsit, pay't with leave, &c.
18	O'Neill, Opp	William Warne et ux	Borough of Nanticoke	Shonk, Hines	200	June	1881	Case	Non as., pay., pay. w. l., setoff, &c.
19	R.	H. Zeterburg	Dan Showlin	Cannon	504	Sept	1881	Case	Not guilty.
20	McAlamney	John Drew	Gaylor Coal Co	Payne	617	Sept	1881	Appeal	Not guilty.
21	Harding, McG	James S. Slocum	P. & N. Y. C. & R. R. Co	Darlings, Palmer	163	Oct.	1881	Case	Not guilty.
22	R.	Frank Maino	M. Jevons et al	Strauss	183	Nov	1881	Issue	Non assumpsit, pay't with leave, &c.
23	McL. & J.	A. M. Wasser	H. A. Ames et ux	Butler	301	Nov	1881	Appeal	Non assumpsit, coverture.
24	E. A. L.	Dorothea Kaufman	B. Burgunder	Harding, McG	169	Jan.	1882	Case	Not guilty.
25	O'Neill	William H. Sorber	Simon P. Croop et al	Osborne	227	Jan.	1882	Ejectment	Not guilty.
26	Gates	Lewisburg Nat. Bank	J. A. Brodhead	Harding, McG	294	Jan.	1882	Assumpsit	Non ass., pay't w. leave, setoff, &c.
27	D. & A.	Minerva Kitchen	G. L. Field	Farnham	361	Jan.	1882	Assumpsit	Non assumpsit, pay't with leave, &c.
28	Hill, Martin	Lucy J. Tuggle	Central Poor District	O'Neill	82	Feb	1882	Appeal	Non assumpsit.
29			J. E. Leath et ux et al.	McLean, McC	7	Mar	1882	For. att. in debt	Nul tiel record, &c.

QUARTER SESSIONS ARGUMENT LIST.

MONDAY, NOVEMBER 12, 1883.

1	In Re Commonwealth v. McGovern	Lenahan, Darte	For new trial.
2	In Re Commonwealth v. Frank Carey	J. L., J. T. L., A. Darte, Jr	For new trial.
3	In Re Road in Newport Township	McL. & J., Darlings, Hines	Exceptions to report of viewers.
4	In Re Streets and Alleys in Shickshinny	Walker	To strike off confirmation.
5	In Re Commonwealth v. Thomas Langan		To stay capias.
6	In Re Smith & Franz v. Commonwealth		Certiorari.
7	In Re Ross Street, Wilkes-Barre	Butler, Lenahan	To strike off confirmation.
8	In Re Commonwealth v. R. H. Holgate et al		To reinstate rule.
9	In Re Bernard Boyle, a lunatic	McLean	Why Hazle Township shall not be certified as legal settlement of lunatic.
10	In Re James Campbell, a lunatic	McClintock	Why Borough of Hazleton shall not be certified as legal settlement of lunatic.
11	In Re Road in Plains Township		Exceptions to report of viewers.
12	In Re Private Road in Kingston Township		Exceptions to report of viewers.
13	In Re Borough of Miners Mills		Exceptions to report of Grand Jury.
14	In Re Borough of Edwards		Exceptions to report of Grand Jury.
15	In Re Removal of Samuel Emery, Constable		Why vacancy shall not be filled.
16	In Re Road in Foster Township	E. A. I., Halsey	To take off confirmation.
17	In Re Petition of Pennsylvania & New York C. & R. Co		To appoint viewers, &c.
18	In Re Houghstown Borough School District		For decree dividing money, &c.
19	In Re Marcy Township School District		For decree dividing money, &c.

COMMON PLEAS CERTIORARI LIST.

MONDAY, NOVEMBER 12, 1883.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	
1	Lenahan	J. F. Donohue	S. L. Brown	McCartney	Certiorari.
2	Farnham	David Natrath	Daniel Mulherin . . . . .	. . . . .	Certiorari.
3	B. & N.	Wm. Moore & Co	Ira B. Wolfinger . . . . .	. . . . .	Certiorari.
4	Darlings, G. M. L	Joseph Rice et al	Charles Dugan . . . . .	. . . . .	Certiorari.
5	J. T. L.	Thomas Shea	P. F. McNulty, Agent . . . . .	. . . . .	Certiorari.
6	J. T. L.	Enos Royer et ux	James Dougherty . . . . .	. . . . .	Certiorari.
7	J. B. J.	Patrick Burke et ux	William O'Malley . . . . .	. . . . .	Certiorari.
8	Hahn, J. L.	George U. Sturdevant	A. A. Stierling . . . . .	. . . . .	Certiorari.
9	Hahn, J. L.	Jacob Stremmer	Christian Kenmerer . . . . .	. . . . .	Certiorari.
10	Hand	Sherman & Lathrop	W. Dodson . . . . .	. . . . .	Certiorari.
11	Strauss	Adam Lebert	James Cummings	J. L. L.	Certiorari.
12	. . . . .	Thomas H. Bond	John H. Hetler . . . . .	. . . . .	Certiorari.
13	. . . . .	B. C. T. Merritt	T. P. Morgan . . . . .	. . . . .	Certiorari.
14	. . . . .	Patrick McDonald et al	James S. Grey . . . . .	. . . . .	Certiorari.
15	. . . . .	John Keatey	Peter Wentall . . . . .	. . . . .	Certiorari.
16	J. L. L.	Ann Derrick	William J. Johnson	Strauss	Certiorari.
17	J. T. L.	Sarah Meehan	E. Edstein . . . . .	. . . . .	Certiorari.
18	J. T. L.	A. C. Watson	E. B. Mullison . . . . .	. . . . .	Certiorari.
19	J. L. L.	I. Reformat	William Bolinskee	McCartney	Certiorari.
20	Gates	W. K. Warman	Thomas R. Thomas . . . . .	. . . . .	Certiorari.
21	Hays	Mrs. Elizabeth Carey	Thomas R. Thomas . . . . .	. . . . .	Certiorari.
22	P.	John Lehr	Thomas R. Thomas	T.	Certiorari.
23	P.	Joseph Clifford, Sr., et al	Com. ex rel. Mary Breen . . . . .	. . . . .	Certiorari.
24	P. . . . .	. . . . .	. . . . .	. . . . .	Certiorari.
25	J. L. L. . . . .	. . . . .	. . . . .	. . . . .	Certiorari.

COMMON PLEAS ARGUMENT LIST.

TUESDAY, NOVEMBER 13, 1883.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
1	C. B. Jackson, Farnham	Seth B. Bowman	Daniel F. Seybert	Ricketts	For new trial.
2	Halsey	Louchheim Bros	A. Frauenthal	Brundage	For new trial.
3	J. L., McManus	Patrick Quinn	Linderman, Skeer & Co	Bedford, B., T	For new trial.
4	H. & P.	Hunt Bros	A. A. Chase et al	B.	For new trial.
5	Ricketts	William Hay	City of Wilkes-Barre	McLean	For new trial.
6	Halsey	John N. Edinger	Lehigh Coal and Nav. Co	D. & P.	For new trial.
7	Hahn	Maria Wolf	Peter Staub	R	For new trial.
8	Ricketts	Use of Samuel Heller	J. F. Hicks	Gates	For new trial.

TUESDAY, NOVEMBER 13, 1883—CONCLUDED.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
0	Farnham	In Re Assignment of	John Stuart	Robinson	Exceptions to Auditor's report.
10	Derr	Re Shiff's S. of R. E. of	George Lazarus	Robinson	Exceptions to Auditor's report.
11	Dean	In Re Assignment of	F. D. Naugle	Kulp	Exceptions to Auditor's report.
12	Powell	J. N. Warner	S. Frauenthal	T.	Exceptions to Auditor's report.
13	H. & P. Powell	Hunt Brothers	John L. Brown	Harding, McG., B	Exceptions to Referee's report.
14	Palmer, Dewitt & Fuller	E. V. Dewitt	The Times	Burns	Exceptions to Referee's report.
15	Palmer, Dewitt & Fuller	E. V. Dewitt	James Searloss	Hakes, B.	Exceptions to Referee's report.
16	D. & A.	Payne, Pettibone et ux et al	James Searloss	H. & B.	Exceptions to Referee's report.
17	Kulp, Payne	E. B. Yordy	Lighthouse Valley Coal Co. et al	A. T. McC., Darlings	Demurrer.
18	Ricketts	Joseph S. Frauenthal et al	County of Luzerne	McLean	Case stated.
19	F., D. & F	A. E. Weil	S. Frauenthal	Darlings, Strauss	Appeal from relaxation of costs.
20	Farnham	In Re Assignment of John	Henry Lowenstein	Ricketts	To open judgment.
21	Miller	W. P. Kirkendall	Stuart for ben't of creditors	Osborne	To open judgment as to all except \$30.
22	Darlings	Use of John M. Ward	W. H. Williams et al	T. F. W	On sequestrator to file account.
23	Connollys	Henry Lutz, assigned	Excelsior Building Asso	W. & P. Cordner	To strike off judgment.
24	Farnham	Patrick McCann	W. & P. Cordner	W. & P. Cordner	To open judgment as to \$20.
25	McG	Hugh O'Boyle, Assignee	Lyman H. Carle	McGahren	To set aside sale.
26	Richards	Howell & King	Catharine Showlin	McGahren	To dissolve attachment.
27	Hines	Elizabeth Haynes, Assignee	Henry Mooney et al	Troutman, Darte	To reinstate certiorari.
28	G., Halsey	Henry Mans et ux	Henry Bornstein	Jenkins	To open judgment.
29	Payne	Potsville Bank, Assignee	William Miller, dec'd	Hakes, J	To strike off claim No. 160.
30	Hines	W. C. Odell	William Jones et al	Brundage	To open judgment, &c.
31	Harding, McG	Lazarus Moyer, Assignee	A. Frauenthal	Bedford	To open judgment.
32	Halsey	Louchheim Brothers	I. Freeman & Co	Hakes	To strike off non-pros.
33	Foster	P. H. Tuska	W. L. Paine	McGahren	To quash writ of distringas.
34	Halsey	James V. Connor	D. M. Williams	J. L	To enter appeal nunc. pro tunc.
35	D., P.	H. C. Bacon		J. L	To quash writ. &c.
36				McGahren	To open judgment.

WEDNESDAY, NOVEMBER 14, 1883.

37		A. B. Weill	S. Frauenthal	McGahren	To quash writ of distringas.
38		William Jones	T. J. O'Malley	J. L	To enter appeal nunc. pro tunc.
39		Richard Jones	James Bevan	J. L	To quash writ. &c.
40	Powell, Payne	C. Straw & Bro	David Mace	McGahren	To open judgment.
41		Use of M. C. Earley	Borough of Pleasant Valley	McGahren	For assignment of \$150.
42	R. & L	Samuel Boyer	Samuel Winters et al	McL. & J	To appeal without payment of costs.
43	R. & L	Thompson & Kersey	Sallie H. Owen et al	Payne, Darlings, L	To strike off judgment, &c.
44	Gates	Maria Street	K. E. Owen et al	Payne, Darlings, L	To strike off judgment, &c.
45	Hahn, J. L	Anna Walter	Frederick Walter	Hahn	For alimony.
46	Ferris	James Pethick, Garnishee	Marcus Schnapp	C	To quash certiorari.
47	Franz, J. L	J. C. McMillan, Assignee	Phoebe A. McNeilsh	C	To open judgment.
48	Franz, J. L	James Pethick, Garnishee	Christian Kemmerer	C	To open judgment.
49	S. Hines	A. J. Norman	A. McI. Dewitt et al	C	To quash certiorari.
50	Jenkins	Use of C. B. Sharpe	John D. Rogers et al	Gearhart, Ferris	To open judgment.

51	Hahn	F. C. Pilger	John Jones	Martin	To open judgment.
52	Coughlin	Joseph F. Welter	J. W. Edwards	Foster	To open judgment.
53	H. B.	John Gallagher	A. J. Davis et al	B. & N.	To strike off lien.
54	H. B.	William Monaghan	A. J. Davis et al	B. & N.	To strike off lien.
55	H. B.	James Corcoran	A. J. Davis et al	B. & N.	To strike off lien.
56	H. B.	Thomas Eastice	A. J. Davis et al	B. & N.	To strike off lien.
57	H. B.	David Pickering	A. J. Davis et al	B. & N.	To strike off lien.
58	H. B.	Hugh Williams	A. J. Davis et al	B. & N.	To strike off lien.
59	H. B.	Frank Clark	A. J. Davis et al	B. & N.	To strike off lien.
60	H. B.	Thomas Thomas	A. J. Davis et al	B. & N.	To strike off lien.
61	H. B.	John Heron	A. J. Davis et al	B. & N.	To strike off lien.
62	H. B.	William Davis	A. J. Davis et al	B. & N.	To strike off lien.
63	H. B.	John H. Jones	A. J. Davis et al	B. & N.	To strike off lien.
64	H. B.	Richard Croddock	A. J. Davis et al	B. & N.	To strike off lien.
65	H. B.	John X. Davis	A. J. Davis et al	B. & N.	To strike off lien.
66	H. B.	Richard Bone	A. J. Davis et al	B. & N.	To strike off lien.
67	H. B.	Frank B. Sorber	A. J. Davis et al	B. & N.	To strike off lien.
68	H. B.	Richard Honeywell	A. J. Davis et al	B. & N.	To strike off lien.
69	H. B.	John W. Jones	A. J. Davis et al	B. & N.	To strike off lien.
70	W.	Use of William H. Smith	A. L. Lavenport et al	B. & N.	To open judgment.
71	O'Neill	David S. Pursel	I. M. Leach	Gates	To open judgment.

THURSDAY, NOVEMBER 15, 1883.

73	Sturges	Use of Pa. School Sup. Co	School Dist. of Denison Tp	Osborne	For attachment.
74	J. & S., Farnham	T. F. Craig	D. F. Seybert	Hand	To stay execution.
75	Butler	J. N. Landmesser et ux	Jacob Harzaak et al	Payne	For subrogation.
76	F. C. S	Use of Pa. School Sup. Co	School Dist. of Denison Tp	Osborne, Halsey	To stay mandamus execution.
77	F. C. S	Vincent Usecaridge et ux	Vincent Shelecoski	P. D. & F	To show cause of action, &c.
78	Kulp	W. W. Loomis	Executors of E. B. Harvey	Harvey	To strike off judgment.
79	Ryman	Malvina Talcott	Samuel D. Talcott	P. D. & F	For alimony, &c.
80	Mosier	In Re Lacey of	Truxton Benedict	Martin	For traverse.
81	J. L. L.	Chas. D. LeGrand	John Bryson	E. A. L., J. L. L.	For amendment.
82	C. M. L.	J. L. Benahan, Assignee	John Brady	Cannon	To open judgment.
83	Derr	A. K. Bacon	A. F. O'Malley	J. T. L.	To strike off award.
84	Derr	Use of D. P. Ayars	Continental Insurance Co	McGahren	To set aside judgment.
85	Derr	Use of D. P. Ayars	Continental Insurance Co	McGahren	To set aside judgment.
86	Derr	Use of D. P. Ayars	Continental Insurance Co	McGahren	To strike off judgment.
87	Derr	Use of D. P. Ayars	Continental Insurance Co	McGahren	To set aside judgment.
88	Halsey	Comlith. of Pennsylvania	James Higge et al	Harding, McG., Palmer	To open judgment.
89	Walker	John Blanchard, dec'd	Joseph Blanchard	Gates	To open judgment.
90	Cannon	Erza Starr, Assignee	Abraham Arnold et al	McGahren	For execution.
91	J. L. L.	Mrs. Samuel Clark	Patrick Quinn	McGahren	For offset.
92	Mosier	Charlotte Benedict, dec'd	John W. Benedict	McGahren	To open judgment.
93	J. L. L.	Poor Dist. of Jenkins T., &c	George Judge et al	McGahren	To stay execution.
94	J. L. L.	James Casey et ux	Pennsylvania Railroad Co	P. D. & F	To strike off appeal.
95	P. D. & F	John Shephard	Thomas Connel	Gates	To enter appeal nunc. pro tunc.
96	Gates	John Benesoter	J. C. Bonham et al	Rhone	To open judgment.
97	Kline	Use of Patrick Cox	Joseph Benson et al	K	To open judgment.
98		George Burt	Janet Burt	Hand	To set aside appointment of Examiner.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
99	G. M. L.	J. E. Patterson, assigned	Pitston Knitting Co	Ferris	To open judgment.
100	Pike	Orlando P. Hart et al	Hugh Connor et al	Shonk, Opp	For severance of defense.
101	B. & N.	Sarah D. Rellay	Michael Marr, dec'd	D. & A.	On Referee to take testimony.
102	R. & L.	G. S. Homet	B. Godfrie or Godfried	J. L., E. A. L., J. T. L.	Appeal from relaxation of costs.

LUZERNE COUNTY, ss:
 In the Court of Common Pleas of said county.
 No. 24, May term, 1883. Libel in divorce a vinculo matrimonii. Ida A. Jones, by her next friend, William Auman, v. John Jones. The alias subpoena in the above case having been returned on est inventus, you, the said John Jones, are hereby notified to appear at said court, on Monday, November 19th, 1883, at 10 o'clock A. M., to answer the complaint therein filed.
 WILLIAM O'MALLEY, Sheriff.
 41-44
 E. D. NICHOLS, Solicitor.

LUZERNE COUNTY, ss:
 In the Court of Common Pleas of said county.
 No. 109, February term, 1883. Libel in divorce a vinculo matrimonii. Margaret A. Seibert, by her next friend, Henry Klinger, v. W. G. Seibert. The alias subpoena in the above case having been returned non est inventus, you, the said W. G. Seibert, are hereby notified to appear at said court, on Monday, the 9th of November, 1883, at 10 o'clock A. M., to answer the complaint therein filed.
 WILLIAM O'MALLEY, Sheriff.
 40-43
 E. P. KISNER, Solicitor.

AUDITOR'S NOTICE.
 The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Thomas Sink, will attend to the duties of his appointment at his office, on Franklin street, in the city of Wilkes-Barre, on Saturday, November 3, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be debarred from coming in on said fund.
 G. L. HALSEY, Auditor.
 41-44

ESTATE OF WILLIAM MASTERSON, LATE of Hazle township, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
 Rrv. J. J. CUMMISKEY,
 D. W. CONNOLLY, Hazleton, Pa.
 Attorney.
 42-47

ESTATE OF OLIVER DAVENPORT, LATE of Plymouth, deceased.
 Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
 EDWIN DAVENPORT,
 JAMES H. DAVENPORT,
 J. A. OPP, Plymouth, Pa.
 Attorney.
 42-47

SHERIFF'S SALE.
 By virtue of a writ of al. fi. fa., issued out of the Court of Common Pleas of Wyoming county, and to me directed, there will be exposed to public sale, at the Court House, in the borough of Tunkhannock, Wyoming county, Pa., on Saturday, November 10th, 1883, at 1 o'clock P. M., the following described property, to wit: All the right, title, and interest of the defendant in and to the following described piece, parcel, and tract of land, situated in the township of Monroe, county of Wyoming, and State of Pennsylvania, a portion thereof being in the township of Dallas, county of Luzerne, and State of Pennsylvania, surveyed in the warrantee name of William Dunn, and known and described as the William Dunn tract, containing 438 acres of land, more or less; excepting and reserving 100 acres heretofore sold and conveyed to O. C. Bigelow. The land to be sold is well timbered and well adapted to lumbering, and has thereon erected one two-story frame dwelling house, 20 by 30 feet, and outhouse, one first-class steam saw mill in good condition and ready for immediate use.
 Seized and taken in execution at the suit of L. M. Smith v. James Garrahan.
 And will be sold for cash only, by
 OLIVER EASTON, Sheriff.
 42-44

SHERIFF'S SALE.
 By virtue of a writ of al. fi. fa., issued out of the Court of Common Pleas of Wyoming county, and to me directed, there will be exposed to public sale, at the Court House, in the borough of Tunkhannock, Wyoming county, Pa., on Saturday, November 10th, 1883, at 1 o'clock P. M., the following described property, to wit: All the right, title, and interest of the defendant in and to the following described piece, parcel, and tract of land, situated in the township of Monroe, county of Wyoming, and State of Pennsylvania, a portion thereof being in the township of Dallas, county of Luzerne, and State of Pennsylvania, surveyed in the warrantee name of William Dunn, and known and described as the William Dunn tract, containing 438 acres of land, more or less; excepting and reserving 100 acres heretofore sold and conveyed to O. C. Bigelow. The land to be sold is well timbered and well adapted to lumbering, and has thereon erected one two-story frame dwelling house, 20 by 30 feet, and outhouse, one first-class steam saw mill in good condition and ready for immediate use.
 Seized and taken in execution at the suit of L. M. Smith v. James Garrahan.
 And will be sold for cash only, by
 OLIVER EASTON, Sheriff.
 42-44

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, November 12, 1883, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "The Dallas Cemetery Association," the character and object whereof is the maintenance of a public cemetery, and for this purpose to have, possess, and enjoy all the rights, benefits, and privileges of said Act of Assembly and its supplements.
 WILLIAM P. RYMAN, Solicitor.
 42-44

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Edison Electric Illuminating Company," the character and objects of which are the manufacturing and supplying light, heat, and power to the citizens of Hazleton and vicinity, and for these purposes to have, possess, and enjoy the rights, benefits, and privileges conferred by said Act of Assembly and its supplements.
 ELLIOTT P. KISNER, Solicitor.
 42-44

THE EXAMINER.

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THE EXAMINER,
Box 3661, New York.

41

IN THE COURT OF QUARTER SESSIONS of Luzerne county. No. 220, September sessions, 1883. In Re Additional Election District in Newport township. Notice is hereby given that the report of the Commissioners in the above stated case has been filed with the Clerk of the Court of Quarter Sessions, and was confirmed nisi by the court on the 5th day of October, 1883, and that said report will be confirmed absolutely by the court, unless exceptions thereto be filed not later than the third day of the next term of said court.

LOUIS K. STRENG,
Clerk Q. S.

41-43

ESTATE OF SAMUEL RODGERS, LATE OF Plymouth township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

WILLIAM RODGERS,
C. W. McALARNEY, Plymouth, Pa.
Attorney. 39-44

ESTATE OF JESSE HART, LATE OF THE township of Black Creek, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN HART,
A. R. BRUNDAGE, Rock Glen, Pa.
Attorney. 39-44

2

ESTATE OF HANNAH K. MERRITT, LATE of Poughkeepsie, N. Y., deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

EDWARD MERRITT,
A. T. McCLINTOCK, Brooklyn, N. Y.
Attorney. 41-46

ESTATE OF JOHN W. GILLMAN, LATE OF Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JACOB GILLMAN,
RYMAN & LEWIS, Wilkes-Barre, Pa.
Attorneys. 41-46

ESTATE OF JOHN E. LEWIS, LATE OF Plains township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

MARY ANN LEWIS,
C. H. WELLS & SON, Plains, Pa.
Attorneys. 39-44

ESTATE OF ROBERT MAJOR, LATE OF Lehman township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

THOMAS H. MAJOR,
A. R. BRUNDAGE, Cease's Mill, Pa.
Attorney. 39-44

ESTATE OF LEON SACKS, LATE OF THE borough of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

FANNY SACKS,
JOS. D. COONS, Pittston, Pa.
Attorney. 39-44

ESTATE OF JOHN S. JENKINS, LATE OF Kingston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

HANNAH L. JENKINS,
DICKSON & ATHERTON, Wyoming, Pa.
Attorneys. 39-44

ESTATE OF WILLIAM T. MERRITT, LATE of Poughkeepsie, N. Y., deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

M. F. MERRITT,
R. P. MERRITT,
SCHUYLER MERRITT,
A. T. McCLINTOCK, Poughkeepsie, N. Y.
Attorney. 41-46

13

ESTATE OF BARNEY HUNSINGER, LATE
of Black Creek township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

SAMUEL BENNER,
Administrator.

37-42

ESTATE OF EDWARD MORGAN, LATE OF
Parsons, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

PATRICK COX,
Administrator.

37-42

ESTATE OF JAMES E. CLARKE, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

MARY CLARKE,
Administratrix.

37-42

ESTATE OF DANIEL BROWN, LATE OF
Sugarloaf township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WILLIAM H. BROWN,
Administrator d.b.n. c.t.a.

37-42

ESTATE OF JAMES CARR, LATE OF THE
borough of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

JOHN O'BOYLE,
Administrator.

37-42

ESTATE OF LAURA MILLARD, LATE OF
Shickshinny, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

I. P. HAND,
Administrator.

37-42

ESTATE OF WILLIAM WITCRAFT, LATE
of White Haven, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

G. L. HALSEY,
Attorney.

E. P. MORRIS,
Administrator.

37-42

ESTATE OF SAMUEL MOYER, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
Attorney.

HOMER SMETHERS,
Administrator.

37-42

ESTATE OF DANIEL BRADER, LATE OF
Salem township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

C. B. JACKSON,
Attorney.

SARAH BRADER,
Executrix.

38-43

ESTATE OF JAMES VINCENT, LATE OF
Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

ELIZABETH VINCENT,
Administratrix.

GEO. H. TROUTMAN,
Attorney.

38-43

ESTATE OF CHARLES MOYER, LATE OF
Nescopeck township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

HOMER SMETHERS,
Administrator.

C. B. JACKSON,
Attorney.

37-42

ESTATE OF LYDIA M. RABERT, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons having claims against the same will present them for payment, and those indebted thereto will please make immediate payment to

WESLEY RABERT,
Administrator.

A. R. BRUNDAGE,
Attorney.

37-42

ESTATE OF DANIEL WILLIAMSON, LATE
of West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ELISHA H. WILLIAMSON,
Pittston, Pa.

L. D. SHOEMAKER,
Attorney.

40-45

ESTATE OF CATHARINE SMYTHE, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. E. WILLIAMS,
Wilkes-Barre, Pa.

40-45

ESTATE OF ZACHARIAS GINTHER, LATE
of Hazleton, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

DOROTHEA GINTHER,
Hazleton, Pa.

39-44

ESTATE OF NIKOLAUS HILDEBRANDT,
late of Wright township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. C. HILDEBRAND,
Mountain Top, Pa.

39-44

GENERAL ELECTION PROCLAMATION.

Pursuant to an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act relating to the elections in the Commonwealth," approved the 2d day of July, 1839, and also the Act approved the 30th day of January, 1874, and the amended Constitution, it is made the duty of every county within the Commonwealth to give notice of the time of holding general elections, and in such notice to enumerate, First—The officers to be elected;

Second—Designating the places at which the elections are to be held; therefore,
I, Wm. O'Malley, High Sheriff of Luzerne county, in the Commonwealth of Pennsylvania, do hereby make known and give notice to the electors of the county aforesaid that an election will be held in said county of Luzerne, on Tuesday, November 6, 1883, at which time persons will be voted or by ballot, at the several election districts established by law in said county, to fill the following offices:

One person to fill the office of State Treasurer for this Commonwealth.

One person to fill the office of Auditor General for this Commonwealth.

One person to fill the office of Sheriff for the county of Luzerne

One person to fill the office of Recorder for the county of Luzerne.

One person to fill the office of Coroner for the county of Luzerne.

One person to fill the office of Surveyor for the county of Luzerne.

POLLING PLACES.

ASHLEY.

First ward—At the new school house.

Second ward—At the hotel of M. A. McCarty.

Third ward—At the house of C. B. Stivers.

BEAR CREEK TOWNSHIP.

At the house occupied by J. Pursel.

BLACK CREEK TOWNSHIP.

At the house now occupied by Aaron Wolf.

BUCK TOWNSHIP.

At the house of William Tucker.

BUTLER TOWNSHIP.

At the house of George Drum.

Upper I chigh Election district—At Butler township school house, No. 8.

CONYNGHAM TOWNSHIP.

At the office of John Fenstermacher.

DALLAS TOWNSHIP.

At the Goss school house, in said township.

DALLAS.

At the hotel of Andrew Raub.

DENISON TOWNSHIP.

At school house No. 5, near Brader & Brown's saw mill.

DORRANCE TOWNSHIP.

At the Greenwood school house.

EXETER TOWNSHIP.

North district—At the school house in district No. 6, known as the Courtright school house

South district—At the Polen school house.

FAIRMOUNT TOWNSHIP.

West district—At the house of B. P. Smith.

East district—At the Bethel school house.

FRANKLIN TOWNSHIP.

At Labar's Hotel.

FREELAND.

At the Freeland Hall.

FOSTER TOWNSHIP.

Northern district—At the Woodside school house, in Herberton.

Southern district—At the school house in Eckley.

East district—At Ripple's school house.

Sandy Run district—At school house in Sandy Run.

HANOVER TOWNSHIP.

South district—At the house lately occupied by W. J. Belding.

North district—At the house of Michael Biglin.

HAZLE TOWNSHIP.

First district—At public school house at Old Jeddo.

Second district—At public school house at Ebervale.

Third district—At public school house at Milnesville.

Fourth district—At public school house at Harleigh.

Fifth district—At public school house at Hazleton Mines.

Sixth district—At public school house at Humboldt.

Seventh district—At public school house at Beaver Brook.

Eighth district—At public school house at Jeanville.

Ninth district—At public school house at Laurel Hill.

Tenth district—At public school house at Stockton.

Eleventh district—At Odd Fellows' Hall, village of Drifton.

Twelfth district—At school house No. 1, at Lattimer.

HAZLETON.

East ward—First district—At the northwest room of the Poplar street school house.

Second district—At the southwest room of the Poplar street school house.

Third district—At the southeast room of the Poplar street school house.

West ward—First district—In the old brick school house on Green street.

Second district—At the northeast room of the brick school house on Walnut street.

Third district—At the lower west room of the old brick school house on Green street.

HOLLENBACK TOWNSHIP.

At the hotel now or lately kept by Solomon Spade, in the village of Hobbie.

HUNLOCK TOWNSHIP.

North district—At the house of D. S. Whitsell.

South district—At the house of Andrew Croop.

HUNTINGTON TOWNSHIP.

North district—At the Pine Creek school house.

South district—At the house of A. P. Watson, in the village of Waterton.

Middle district—At the house of Amos Howard.

HUGHESTOWN.

At the house of Henry Maytrott.

JACKSON TOWNSHIP.

At the Rome school house.

JEDDO.

At the public house of Henry Reichart, at the old Jeddo Hotel.

JENKINS TOWNSHIP.

North district—At brick school house at Sebastopol.

South district—At school house No. 8.

Third division—At brick school house in the village of Port Griffith. [Description.—Beginning at a point on the Susquehanna river, between Jenkins and Pittston townships; thence along said line, south 56½ degrees, about 70 perches to center of plank road; thence south 15½ degrees west, 114 perches to stack of No. 7 shaft of Pennsylvania Coal Company; thence south 80 degrees west, 211 perches to stack of No. 1 plane; thence south 56 degrees west, 384 perches to line between Jenkins and Plains townships, striking the left hand corner of barn of the Pennsylvania Coal Company farm, occupied by D. W. Breaning; thence along said line, north 56½ degrees west, about 100 perches to the Susquehanna river; thence along the Susquehanna river to the place of beginning. The above described territory is composed of a portion of the North and South districts of Jenkins township, lying along the Susquehanna river, and to be known as the Third division of Jenkins township.]

KINGSTON TOWNSHIP.

Northeastern district—At the new brick school house in the village of Wyoming.

Southwest district—At the East Boston school house.

South district—At the school house at Forty Fort.

Malby district—At the school house on Shoemaker lane.

North district—At the northwest corner of the stone building of J. P. Rice, at Trucksville.

KINGSTON.

At the house of Henry Lines.

LAKE TOWNSHIP.

North district—At the store of Hamilton Kocher.

South district—At the Durling school house.

LEHMAN TOWNSHIP.

Northeast district—At the Central school house. [Description.—All that portion of said township lying northeast of Harvey's creek.]

Southwest district—At the house of Samuel Barry. [Description.—All that portion of said township lying northwest of said Harvey's creek.] the line run by Commissioners through said township east and west.]

LAUREL RUN.

At the Mountain House Hotel.

LUZERNE.

At the Island school house.

MARCY TOWNSHIP.

North district—At school house No. 2.

South district—At school house No. 3.

NANTICOKE.

First ward—At the hotel of John A. Gruver.

Second ward—At hotel corner of Main and Slope streets.

Third ward—At the house of John Noble.

Fourth ward—At Red school house.

Fifth ward—At Shea's Hotel.

Sixth ward—At hotel of X. Wernet.

Seventh ward—At hotel of L. J. Vandermark.

Eighth ward—At the storehouse of the Lehigh and Wilkes-Barre Coal Co., Hanover Station.

NESCOPECK TOWNSHIP.

East district—At the house of Michael Schloyer.

West district—At the house of Samuel Williams

NEW COLUMBUS.

At the school house.

NEWPORT TOWNSHIP.

At the Town Hall in the village of Wanamie.

PARSONS.

At the public school house.

PITTSBURGH TOWNSHIP.

South district—At the Morgan lane school house.

North district—At the school house on Scotch Hill

East district—At the school house on Spring Brook.

PITTSBURGH.

First ward—At the office of Riley Nichols.

Second ward—At the Central Hotel.

Third ward—At George Shellenberger's Hotel.

Fourth ward—First district—At the Town Hall.

Second district—At the house of Anthony Boos.

Fifth ward—First district—At the Pine street school house.

Second district—At the northern room of the Pine street school house.

Sixth ward—First district—At the school house on Welsh Hill.

Second district—At the Oregon school house.

PLAINS TOWNSHIP.

First district—At the Plainsville school house.

Second district—At the hotel of John Gildea.

Third district—At the school house on Mill Creek.

PLEASANT VALLEY.

South district—At the office of John Mead.

North district—At the house of A. B. Curly.

PLYMOUTH.

First ward—At the public school house, Vine street.

Second ward—At the house of John E. Halleck, on Main street.

Third ward—At the public house of G. P. Richards, known as Castle Garden.

Fourth ward—At the school house on Willow street.

Fifth ward—At the house known as the Old Detrick Hotel, on Willow street.

Sixth ward—At the public house of Samuel Van Loon, on Main street.

Seventh ward—At the public house of Wm. Clark, on Main street.

Eighth ward—In the building occupied by J. T. Smith, on Main street

PLYMOUTH TOWNSHIP.

East district—First district—At the Morgantown school house.

Second district—At the Boston school house.

Third district—At the Welsh Hill school house.

West district—First district—At the Temperance Hill school house.

Second district—At the Avondale school house.

Third district—At the Harvey school house.

RANSOM TOWNSHIP.

At the house of John Holgate.

ROSS TOWNSHIP.

North district—At the Kytle school house. [Description.—All that portion of said township lying north of

East district—At the house of Thomas A. Long [Description.—All that portion of said township lying east of the line run by Commissioners, beginning at a point on the line between Union and Ross townships, and running thence north to the line run by Commissioners east and west through said Ross township.]

West district—At the store of A. W. Sutliff. [Description.—All that portion of said township lying west of said line running north and south.]

SALEM TOWNSHIP.

North district—At the Walton school house.

South district—At the house of J. Hess.

SHICKSHINNY.

First ward—At the Brown school house, on Main street.

Second ward—At N. B. Cray's building, near corner Union and Main streets.

Third ward—At the hotel of C. W. Yaple, on Union street.

Fourth ward—At the office of James Post, on Canal street.

SLOCUM TOWNSHIP.

At the house of Philip Myers.

SUGARLOAF TOWNSHIP.

At the house of Abram Hetler.

SUGAR NOTCH.

First district—At the Town Hall.

Second district—At Plumb's reading room.

UNION TOWNSHIP.

At the house of S. H. House.

WEST PITTSBURGH.

First district—At the Town Hall.

Second district—At the office of James Helme, on Wyoming street.

WHITE HAVEN.

North ward—At the White Haven Hotel, now kept by Theodore Smith.

South ward—At J. C. Fields' Hotel.

WILKES-BARRE.

First ward—At the hotel of W. P. Gardner.

Second ward—At the house of John Mundy.

Third ward—First district—At the house of Neal McCabe.

Second district—At the house of D. O. Johns.

Fourth ward—At the Luzerne House.

Fifth ward—At the Exchange Hotel.

Sixth ward—At the house formerly occupied by Jas. Peoples, on Market street.

Seventh ward—At the Washington Hotel.

Eighth ward—At the Old Fell House.

Ninth ward—At the Mt. Pleasant House, on Northampton street.

Tenth ward—At the house formerly kept by M. Andes, on River street.

Eleventh ward—At the Engine House, on Cinderella street.

Twelfth ward—At the house of John Gæckle, on Main street.

Thirteenth ward—At the Charter House.

Fourteenth ward—First district—At the hotel of P. McCaffrey, corner of Hazle and Blackman streets.

Second district—At the Parrish street school house.

Fifteenth ward—At the Van Leer Hotel.

WILKES-BARRE TOWNSHIP.

Middle district—At the hotel of Thomas Caffrey.

South district—At the house of James Kane.

North district—At the office of breaker No. 2 of the Delaware and Hudson Canal Company.

WRIGHT TOWNSHIP.

North district—At the house of N. S. Houser.

South district—At the house of Nicholas Hilderbrandt.

YATTSVILLE.

At the public school house.

I also make known and give notice, as by law directed, that the following Act of Assembly, regulating the mode of voting in the Commonwealth of Pennsylvania, was passed March 30, 1866, and reads thus:

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the qualified

voters of the several counties of this Commonwealth, at all general, township, borough, and special elections, are hereby hereafter authorized and required to vote by tickets printed or written, or partly printed and partly written, severally classified as follows: One ticket shall embrace the names of all Judges of courts voted for, and labeled outside "Judiciary;" one ticket shall embrace names of all State officers, and be labeled "State;" one ticket shall embrace the names of all county officers voted for, including Senator and members and members of Assembly, if voted for, and members of Congress, if voted for, and be labeled "County;" one ticket shall embrace the names of all township officers voted for, and be labeled "Township;" one ticket shall embrace the names of all borough officers voted for, and be labeled "Borough;" and each class shall be deposited in separate ballot boxes.

Also, that a further supplement to the election laws of this Commonwealth was passed the 4th day of June, 1866, and reads as follows:

WHEREAS, By the Act of the Congress of the United States, entitled "An Act to amend the several Acts heretofore passed to provide for the enrolling and calling out the national forces, and for other purposes," and approved March 3d, 1865, all persons who have deserted the military or naval service of the United States, and who have not been discharged or relieved from the penalty or disability therein provided, are deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship, and their rights to become citizens, and are deprived of exercising any rights of citizens thereof:

AND WHEREAS, Persons not citizens of the United States are not, under the constitution and laws of Pennsylvania, qualified electors of this Commonwealth.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That in all elections hereafter to be held in this Commonwealth, it shall be unlawful for the Judges or Inspectors of any such election to receive any ballot or ballots from any person or persons embraced in the provisions and subject to the disability imposed by the said Act of Congress, approved March 3, 1865, and it shall be unlawful for any such person to offer to vote any ballot or ballots.

Sec. 2. That if any such Judge and Inspectors of Election, or any one of them, shall receive, or consent to receive, any such unlawful ballot or ballots from any such disqualified person, he, or they, so offending shall be guilty of a misdemeanor, and upon conviction thereof in any Court of Quarter Sessions of this Commonwealth, he shall, for each offense, be sentenced to pay a fine of not less than one hundred dollars, and to undergo an imprisonment in the jail of the proper county for not less than sixty days.

Sec. 3. That if any person deprived of citizenship, and disqualified as aforesaid, shall, at any election hereafter to be held in this Commonwealth, vote, or tender to the officers thereof, and offer to vote a ballot or ballots, any person or persons so offending shall be deemed guilty of a misdemeanor, and on conviction thereof in any Court of Quarter Sessions of this Commonwealth, shall, for each offense, be punished in like manner, as is provided in the preceding section of this act, in the case of officers of election receiving such unlawful ballot or ballots.

Sec. 4. That if any person shall hereafter persuade or advise any person or persons deprived of citizenship and disqualified as aforesaid to offer any ballot or ballots to the officers of any election hereafter to be held in this Commonwealth, or shall persuade or advise any such officer to receive any ballot or ballots from any person deprived of citizenship and disqualified as aforesaid, such person so offending shall be guilty of a misdemeanor, and upon conviction thereof in any Court of Quarter Sessions in this Commonwealth, shall be punished in like manner, as is provided in the second section of this act, in the case of officers of such election receiving such unlawful ballot or ballots.

I also further make known and give notice, as in and by section 13 of the Act of July 2, 1839, I am directed, that every person, excepting Justices of the Peace, who shall hold any office or appointment of profit or

trust under the government of the United States, or of this State, or any city or incorporated district, whether a commissioned officer or otherwise, a subordinate officer or agent, who is or shall be employed under the legislative, judiciary, or executive departments of this State or the United States, or of any city or incorporated district, and also that every member of Congress and the State Legislature, and of the Select and Common Council of any city, Commissioner of any incorporated district, is by law incapable of holding or exercising, at the same time, the office or appointment of Judge, Inspector, or Clerk of any election of this Commonwealth, and that no Inspector or Judge or other officer of any election shall be eligible to any office then to be voted for.

Also, that in the 4th section of the Act of Assembly, entitled "An Act relating to elections, and for other purposes," approved April 16, 1840, it is enacted that the aforesaid 13th section "shall not be so construed as to prevent any military officer or borough officer from serving as Judge, Inspector, or Clerk at any general or special election in this Commonwealth."

Also, that in the 5th section of the Act of January 30, 1874, it is enacted that "every general and special election shall be opened at seven o'clock in the forenoon, and shall continue without interruption or adjournment until seven o'clock in the evening, when the polls shall be closed."

Also, that where a Judge, by sickness or unavoidable accident, is unable to attend such meeting of Judges, then the certificate of return aforesaid shall be taken charge of by one of the Inspectors or Clerks of the election of said district, who shall do and perform the duties required of said Judges unable to attend.

Given under my hand, at my office, at Wilkes-Barre, this 10th day of October, in the year of our Lord one thousand eight hundred and eighty-three, in the one hundred and seventh of the Independence of the United States.

God save the Commonwealth.

WILLIAM O'MALLEY,
Sheriff.

42-44

SHERIFF'S SALE.

By virtue of a writ of al. fi. fa., issued out of the Court of Common Pleas of Wyoming county, and to me directed, there will be exposed to public sale, at the Court House, in the borough of Tunkhannock, Wyoming county, Pa., on Saturday, November 10th, 1883, at 1 o'clock P. M., the following described property, to wit: All the right, title, and interest of the defendant in and to the following described piece, parcel, and tract of land, situated in the township of Monroe, county of Wyoming, and State of Pennsylvania, a portion thereof being in the township of Dallas, county of Luzerne, and State of Pennsylvania, surveyed in the warrantee name of William Dunn, and known and described as the William Dunn tract, containing 438 acres of land, more or less; excepting and reserving 100 acres heretofore sold and conveyed to O. C. Bigelow. The land to be sold is well timbered and well adapted to lumbering, and has thereon erected one two-story frame dwelling house, 20 by 30 feet, and outhouse, one first-class steam saw mill in good condition and ready for immediate use.

Seized and taken in execution at the suit of L. M. Smith v. James Garrahan.

And will be sold for cash only by
OLIVER EASTON,
Sheriff.

42-44

ESTATE OF JOHN R. WALTERS, LATE OF Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

DANIEL B. LEWIS,
Plymouth, Pa.
GEO. W. SHONK,
Attorney.

42-47

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, November 17, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1

Suit of Sylvester Dana v. Arnold Bertels.
112 May term, 1881. Debt, \$5,164. 2d. pl. lev. fa.
21 November term, 1883. Bennett & Nichols, Att'y's.

All that piece of land in the city of Wilkes-Barre, beginning at the west corner of Dennis Quillan's lot, on the southeast side of Main street, at a point nearly opposite the intersection of Sullivan with said Main street, thence along said Quillan's land 202 feet, thence 19 feet, thence 131 feet to the Wyoming canal, thence along said canal 86½ feet, thence 292 feet to said Main street, thence along said Main street 50 feet to the place of beginning, containing 18,000 square feet of land, more or less; all improved, and having erected thereon one two-story frame dwelling house, one frame barn, and outbuilding.

2

Suit of Henry H. Welles, Assignee, v. John Davis.
139 October term, 1883. Debt, real, \$4,914. Vend. ex. 40 November term, 1883.

Fisher and Wheaton, Att'y's.

All that lot of land in the city of Wilkes-Barre, beginning at the southerly corner of Main and Ash streets, thence southwesterly along Main street about 80 feet to land of Dennis McQuillan, thence along the same southeasterly about 186 feet to a corner, thence northeasterly about 75 feet to said Ash street, thence northwesterly along the same about 186 feet to the beginning; together with a three-story brick house, with storeroom, frame barn, and other outbuildings thereon.

3

Suit of John M. Caffrey, Administrator of Bart Caffrey, deceased, v. Patrick McGuire.
331 April term, 1881. Debt, \$104.28. Vend. ex. 9 November term, 1883. Harding & McGahren, Att'y's.

The following piece of land in the borough of Nanticoke, being lot No. 94, adjoining lots of W. W. Campbell and J. O'Brien; said lot No. 94 being 50 feet in front and 130 feet in depth, with a frame dwelling house thereon.

4

Suit of Thomas McCann v. Hugh Cunnin and Ellen Cunnin.
146 March term, 1883. Debt, \$538.68. Al. lev. fa.
20 November term, 1883. E. A. Lynch, Att'y.

All that lot of ground on the northeast corner of Pine and Beech streets, in the borough of Hazleton, being lot No. 10, of square No. 183, beginning at a point in the southeast corner of said Pine and Beech streets, thence northwardly 30 feet to lot No. 9, thence eastwardly 190 feet to an alley, thence southwardly 30 feet to Beech street aforesaid, thence westwardly 190 feet to the place of beginning; all improved, with a frame dwelling house, 30x32, and 2½ stories high, and other outbuildings thereon.

5

Suit of Harriet E. Lewis v. George W. Nichols, Administrator of Henry Fisher, deceased.
267 October term, 1883. Debt, \$579.37. Lev. fa.
23 November term, 1883. Miller, Att'y.

A piece of land in the borough of Ashley, beginning at a corner of lots designated as lots Nos. 21 and 22 in map of town lots as made by the Lehigh and Susquehanna Coal Company, said corner being on the southeast side of Ross street, thence by line of lot No. 21 110 feet to lands of Mrs. Jane Bennett, thence along line of said Jane Bennett's land 60 4-10 feet to a street, thence by said street 110 3-10 feet to a corner on said Ross street, thence along said Ross street 52 feet to the place of beginning, containing 6,215 square feet of land, more or less; excepting and reserving all coal and other minerals; all improved, and having erected thereon a large two-story frame house, with basement, and back buildings attached.

6

Suit of John G. Wood v. Lafayette Lippincott.
320 October term, 1883. Debt, \$365.67. Vend. ex.
153 October term, 1883. E. D. Nichols, Att'y.

All that lot of land in the city of Wilkes-Barre, beginning at a corner of land contracted to Pat. Manley, thence 124 feet along the Auble road to an alley, thence along said alley 97 feet to land of F. A. Ellis, thence along said land 80 feet to land of ——— Clark, thence along said Clark's land 50 feet to the line of John G. Wood, thence 44 feet to land of Pat. Manley, thence 47 feet to Auble road and place of beginning; all improved, and having erected thereon one frame dwelling house and outbuildings; coal and minerals reserved.

7

Suit of Lazarus Moyer v. John Pope.
127 March term, 1883. Debt, \$98.95. Vend. ex.
11 November term, 1883. O'Neil, Att'y.

All that lot of ground in the township of Kingston, beginning at a corner on the main road leading from Mill Hollow to Blindtown, thence by lot of Devrua 19 1-10 rods to a corner, thence by lands of the heirs of Thomas Pringle, deceased, 4 2-10 rods to a corner, thence by lands of William Bryden 19 1-10 rods to a corner on said street in road, thence by said street in road 4 2-10 rods to a corner, the place of beginning, containing 86 perches of land; all improved, with a cellar wall and fruit trees thereon.

8

Suit of Albert Gabriel v. Jas. Garraban and Thos. Garraban.

258 October term, 1882. Debt, \$1,550. Al. fi. fa.
15 November term, 1883. Payne, Att'y.

1 All that lot of land in Dallas borough, beginning at a post, a corner of land of Chester White and land of William Frances' heirs, thence 4¼ perches to a corner in the creek, now corner of barn wall, thence 6 9-10 perches to a corner on the north side of the public road leading through Dallas borough and on east side of Toby's creek, thence along said road to a post, the north end of a picket fence, about 66 feet, thence a northeasterly course to the place of beginning, containing about 28 square perches; together with a frame storehouse, barn, shed, and ice house.

2 All that lot of land in Dallas borough, beginning at a corner, the beginning corner of the first described piece of land, thence 5¼ perches along land of William Frances' estate to a post at the alley leading from said estate to the public road, thence along the north side of the alley aforesaid 7 perches to a point on the public road leading through Dallas borough, thence along the said road to a post 36¼ feet from the southwest corner of the stone, thence along the first described lot to the place of beginning, containing about one-fourth of an acre of land; together with a two-story frame dwelling, barn, and outbuildings thereon.

3 All that lot of land in Dallas township, beginning at a post on the public road leading from Dallas to Bowman's creek and a corner of John Isaacs' land, thence along said Isaacs' land 39 perches to a post, thence along land of said Isaacs and land of Jacob Rice 305 perches to a stone corner, thence 111¼ perches to a stone corner, a corner of Henry Anderson's land in Aaron Christian's line, thence along land of Henry Anderson and Levi M. Hoyt 275 perches to a corner in the public road aforesaid, thence along the said road 28½ perches, thence 72 perches to the place of beginning, containing 208½ acres of land, about 50 acres cleared.

4 All that lot of land in the borough of Dallas, beginning at a corner of the M. E. Parsonage lot, on the south side of the public road leading from Hantsville to Dallas village, thence along the south side of said road an easterly course 5 perches to a corner on west side of an alley leading from the public road aforesaid to E. Newton's, thence along the west side of said alley about 12 rods to a corner of land of E. W. Newton, thence along said Newton's land a westerly course about 5 rods to a corner of the parsonage lot aforesaid, thence along said lot a northerly course about 12 perches to the place of beginning, containing about 60 perches of land, be the same more or less; together with one frame two-story dwelling house, one frame barn, and outbuildings.

PARTITION NOTICE.

In Re Partition of the Real Estate of Thomas Seybert, late of Salem township, Luzerne county, Pa. deceased. Now, September 3, 1883, inquest is awarded as prayed for; returnable last Saturday of November term, at 10 o'clock A. M. Service of notice on non-residents of the State to be published in one newspaper, published in Wilkes-Barre, Pa., for three successive weeks, and a copy of each mailed to the last known residence, and in the LUZERNE LEGAL REGISTER for the same time.

To Sallie Hagenbuch, Thomas Frey, Rosa Zehnder, Joseph Hicks, Lizzie S. Jackson, and Deborah Doak, of Berwick, Pa., J. B. Seybert, Freas Frey, and J. W. Frey, of Philadelphia, Pa., Lillie Campbell and Anna Frey, of Williamsport, Pa., W. T. Hicks, of Kansas, and all other parties interested—You will please take notice that in pursuance of the above order of the Orphans' Court of said county, a writ of partition has been issued from the said court to the Sheriff of Luzerne county, returnable on the last Saturday of November term, at 10 o'clock A. M., and that the inquest will meet for the purpose of making partition on Tuesday, November 27, 1883, at 8 o'clock A. M. of the said day, upon the premises, in the township of Salem, Luzerne county, Pa., at which time and place you can be present, if you see proper.

The premises in question are described as follows: The following piece or parcel of land, situate in Salem township aforesaid, bounded and described as follows, to wit: Beginning at a point at low water mark on the bank of the Susquehanna river, at a corner of lands now or late of Franklin Stewart; thence along the said river, north 32½ degrees west, 40 perches to a corner; thence along the said river, north 10 degrees west, 36 perches to a corner; thence along said river, north 6 degrees east, 46 2-10 perches to a corner; thence by same, north 1¼ degrees east, 100 perches to a corner; thence along line of lands of Christian Smethers, north 85½ degrees east, 48 perches to a stone; thence along land of C. Smethers, south 1 degree and 47 minutes west, 39 perches to a stone corner, thence along other lands of said C. Smethers, north 83 degrees and 13 minutes east, 178 perches to a stone corner; thence along line of lot No. 44, now or late of A. Jamison, south 3 degrees west, 137 perches to a stone; thence by land of A. Jamison's estate, south 1 degree and 17 minutes west, 22 perches to a stone corner; thence by line of land of Frank and Lee Stewart, south 83 degrees west, 146 perches to a stone corner; thence north 29 degrees west, 15 perches to a stone corner; thence south 83 degrees west, 11 perches to a stone corner; thence south 29 degrees east, 15 perches to a stone corner; thence south 64 degrees and 27 minutes west, 56 perches to the place of beginning; containing 234 acres and 140 perches, more or less; on which are erected a brick two-story dwelling house, stable, and outbuildings.

WILLIAM O'MALLEY,

C. B. JACKSON,

Attorney.

Sheriff.

42-44

ORPHANS' COURT SALE.

Estate of Philip Houpt, dec'd. In Partition. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, on the premises, on Saturday, November 10th, 1883, at 10 o'clock A. M., all those three lots or pieces of land, situate in the city of Wilkes-Barre, bounded as follows:

1. Beginning at a point on the southwesterly side of Ross street, between Franklin and Main streets; thence along Ross street, south 32 degrees 20 minutes east, 60 feet; thence south 57 degrees 40 minutes west, 162 feet; thence north 37 degrees 20 minutes west, 60 feet; thence north 57 degrees 40 minutes east, 162 feet to the place of beginning; containing 9,750 square feet of land, and having erected thereon a brick dwelling and frame barn; being purpart No. 1 in the partition of said estate.

2. Beginning at a point on the southwesterly side of Ross street, in the southeasterly line of purpart No. 1; thence along line of Ross street, south 32 degrees 20 minutes east, 40 feet to an alley; thence along said alley, south 57 degrees 40 minutes west, 140 feet to the

northeasterly line of purpart No. 3; thence along the same, north 32 degrees 20 minutes west, 40 feet to line of purpart No. 1; thence along same, north 57 degrees 40 minutes east, 140 feet to the place of beginning; containing 5,600 square feet of land, and having erected thereon a small brick dwelling; being purpart No. 2 in the partition of said estate.

3. Beginning at a point on the northwest side of the alley aforesaid, in the southwest line of purpart No. 2; thence south 57 degrees 40 minutes west, 55½ feet; thence north 49 degrees 15 minutes west, 52½ feet; thence north 57 degrees 40 minutes east, 48 feet; thence south 32 degrees 20 minutes east, 10 feet; thence north 57 degrees 40 minutes east, 22 feet to line of purpart No. 2; thence south 32 degrees 20 minutes east, 40 feet to the place of beginning; containing 2,917 square feet, and having erected thereon a small frame barn; being purpart No. 3 in the partition of said estate.

TERMS OF SALE—The sum of \$6,000, on which the widow, Susan Houpt, has elected to receive interest during life in lieu of dower thirds or other rights in said land, and of her life estate therein, to be and remain a lien on the premises during her life, as follows: \$3,800 on lands described in purpart No. 1, \$2,000 on lands described in purpart No. 2, and \$200 on land described in purpart No. 3, the interest thereof to be paid semi-annually from and after the date of confirmation to said widow during her life, and the principal thereof to be paid at her death to the parties legally entitled thereto. Ten per cent of the whole purchase money down at the time of sale, and the balance, not secured for the widow as aforesaid, on confirmation of sale. Payments to be made after death of widow to be secured by bond and mortgage on the premises.

L. H. BENNETT,

Trustee.

42-44

ORPHANS' COURT SALE.

Estate of David Hershberger, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, on the premises, on Saturday, November 10, 1883, at 4 o'clock P. M., all the surface of that lot of land in Plymouth borough, beginning at a corner of land of Philip Keller, on the south side of Bead street, thence along land of said Philip Keller 220 feet to River street, thence along River street 50 feet to corner of land of Mrs. Brandon, thence along said land 220 feet to Bead street, thence along Bead street 50 feet to the place of beginning, containing about 11,000 square feet of surface, more or less; all improved, with one two-storied double frame dwelling house, a barn, fruit trees, and outbuildings thereon; the coal reserved to John J. Shonk, his heirs and assigns.

TERMS OF SALE—\$500 down, 50 per cent of balance on confirmation of sale and delivery of deed, and the balance in six months from confirmation of sale, with interest thereon from confirmation of sale; deferred payments to be secured by bond and mortgage on the premises.

WILLIAM I. HERSHBERGER,

GEO. W. SHONK,

Administrator.

Attorney.

42-44

ORPHANS' COURT SALE.

Estate of William Witcraft, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, on the premises, on Friday, November 9th, 1883, at 8 o'clock A. M., all that lot of land on the north side of the extension of Berwick street, in White Haven, being No. 59 on said street, containing in front or breadth on said Berwick street 40 feet, and extending thence north 150 feet to an alley, bounded north by an alley, south by Berwick street, east by lot No. 57, and west by lot No. 61; all improved, with a two-story frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$200 of purchase down on day of sale, and balance of purchase money on confirmation of sale and delivery of deed.

E. P. MORRIS,

G. L. HALSEY,

Attorney.

Administrator.

41-43

Hunt, beginning at a corner on said plank road, being also a corner of lot No. 75, owned by Frank Dinsmore, thence along said plank road about 55 feet to corner of lot No. 77, formerly owned by W. G. Stout, thence along line of said lot No. 77 about 156 feet to corner of land owned by Miner, Kulp & Chase, thence along said land about 55 feet to corner of lot No. 75, thence along the same about 156 feet to the plank road aforesaid, containing 8,580 square feet of land, more or less; coal and other minerals reserved.

TERMS OF SALE—One-fourth down on each lot on the day of sale, one-fourth on the confirmation of the sale and delivery of the deed, and the remaining two-fourths in six months from the day of sale, with interest; the deferred payments to be secured by bond and mortgage on the premises.

I. P. HAND, Attorney. **W. S. PARSONS,** Administrator. 43-45

LUZERNE COUNTY, ss:
Common Pleas. In Equity. Of October term, 1876, No. 6. *W. N. Monies et al. v. A. D. King.* Now, October 19, 1883, it appearing to the court that the fifth and partial account of George Bishop, the Receiver appointed by the court in the above entitled cause, has this day been duly filed, it is ordered that the Prothonotary give notice of the filing and exhibition of the said account by publication for two successive weeks in the *LUZERNE LEGAL REGISTER* and the *Wilkes-Barre Record*, setting forth in such notice that the said account will be allowed on the 12th day of November, 1883, unless cause be shown why such account should not be allowed. And it is further ordered that the Receiver have leave to pay into court the sum of \$1,402.53, as specified in his said account, to abide such further order as the court shall make in the premises. **CHAS. E. RICE,** Pres't Judge.

In pursuance of the above order of court, notice is hereby given that the said account will be allowed by the court on Monday, November 12, 1883, unless cause be shown why such account should not be allowed.

JAMES M. NORRIS, Prothonotary. **E. P. & J. V. DARLING,** Solicitors. 43-44

AUDITOR'S NOTICE.
The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Jacob Rosenstock, will attend to the duties of his appointment, at his office, in the Markle Bank Building, Hazleton, on Wednesday, November 28th, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in upon said fund.

PHILIP V. WEAVER, Auditor. 43-46

AUDITOR'S NOTICE.
The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Thomas Sink, will attend to the duties of his appointment, at his office, on Franklin street, in the city of Wilkes-Barre, on Saturday, November 3, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be debarred from coming in on said fund.

G. L. HALSEY, Auditor. 41-44

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county. No. 24, May term, 1883. *Libel in divorce a vinculo matrimonii.* *Ida A. Jones, by her next friend, William Anman, v. John Jones.* The alias subpoena in the above case having been returned non est inventus, you, the said John Jones, are hereby notified to appear at said court, on Monday, November 19th, 1883, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff. **F. D. NICHOLS,** Solicitor. 41-44

ESTATE OF ANNA E. MEIKRANTZ, LATE of Hazleton, deceased

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

T. R. MARTIN, Wilkes-Barre, Pa. 43-48

ESTATE OF PATRICK MALOY, LATE OF Hazle township, deceased

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

TIMOTHY MALOY, Hazleton, Pa. **JOHN D. HAYES,** Attorney. 43-48

ESTATE OF REUBEN DRESHER, LATE OF Butler township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN D. HAYES, Freeland, Pa. 43-48

ESTATE OF OBED B. FEAR, LATE OF THE township of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOSIAH T. FEAR, Pittston, Pa. **GEO. S. FERRIS,** Attorney. 44-49

ESTATE OF MARGARET COOK, LATE OF Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. S. FERRIS, Pittston, Pa. 44-49

ESTATE OF ELIZA JANE MILFORD, LATE of Chicago, Cook county, Illinois, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

W. S. MCLEAN, Attorney. **W. R. GIBBONS,** Wilkes-Barre, Pa. 44-49

ESTATE OF ANTHONY GALLAGHER, LATE of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHARLES McCARRON, Hazleton, Pa. **JOHN LYNCH,** Attorney. 44-49

ESTATE OF WILLIAM GALLAGHER, LATE of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHARLES McCARRON, Hazleton, Pa. **JOHN LYNCH,** Attorney. 44-49

ESTATE OF OLIVER DAVENPORT, LATE
of Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

EDWIN DAVENPORT,
JAMES H. DAVENPORT,

J. A. OPP, Plymouth, Pa. 42-47
Attorney.

ESTATE OF JOHN W. GILLMAN, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JACOB GILLMAN,

RYMAN & LEWIS, Wilkes-Barre, Pa. 41-46
Attorneys.

ESTATE OF JOHN E. LEWIS, LATE OF
Plains township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

MARY ANN LEWIS,

C. H. WELLS & SON, Plains, Pa. 39-44
Attorneys.

ESTATE OF ROBERT MAJOR, LATE OF
Lehman township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

THOMAS H. MAJOR,

A. R. BRUNDAGE, Cease's Mill, Pa. 39-44
Attorney.

ESTATE OF LEON SACKS, LATE OF THE
borough of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

FANNY SACKS,

JOS. D. COONS, Pittston, Pa. 39-44
Attorney.

ESTATE OF JOHN S. JENKINS, LATE OF
Kingston township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

HANNAH L. JENKINS,

DICKSON & ATHERTON, Wyoming, Pa. 39-44
Attorneys.

ESTATE OF WILLIAM T. MERRITT, LATE
of Poughkeepsie, N. Y., deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

M. F. MERRITT,

R. P. MERRITT,

SCHUYLER MERRITT,

A. T. McCLINTOCK, Poughkeepsie, N. Y. 41-46
Attorney.

ESTATE OF WILLIAM MASTERSON, LATE
of Hazle township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

Rrv. J. J. CUMMISKEY,

D. W. CONNOLLY, Hazleton, Pa. 42-47
Attorney.

ESTATE OF HANNAH K. MERRITT, LATE
of Poughkeepsie, N. Y., deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

EDWARD MERRITT,

A. T. McCLINTOCK, Brooklyn, N. Y. 41-46
Attorney.

ESTATE OF SAMUEL RODGERS, LATE OF
Plymouth township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

WILLIAM RODGERS,

C. W. McALARNEY, Plymouth, Pa. 39-44
Attorney.

ESTATE OF JESSE HART, LATE OF THE
township of Black Creek, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN HART,

A. R. BRUNDAGE, Rock Glen, Pa. 39-44
Attorney.

ESTATE OF DANIEL WILLIAMSON, LATE
of West Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ELISHA H. WILLIAMSON,

L. D. SHOEMAKER, Pittston, Pa. 40-43
Attorney.

ESTATE OF CATHARINE SMYTHE, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. E. WILLIAMS,

40-45
Wilkes-Barre, Pa.

ESTATE OF ZACHARIAS GINTHER, LATE
of Hazleton, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

DOROTHEA GINTHER,

39-44
Hazleton, Pa.

ESTATE OF NIKOLAUS HILDEBRANDT,
late of Wright township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. C. HILDEBRAND,

39-44
Mountain Top, Pa.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, November 24, A. D. 1883, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

Suit of Jacob Crouse v. E. K. Shellhammer and Augustus Crouse, Administrators of Samuel Shellhammer, deceased.

425 October term, 1883. Debt, \$465.55. Fi. fa. 13 November term, 1883. Payne, Att'y.

1. All that tract of land in Black Creek township, beginning at a pitch pine, thence by land of Peter Smoyer 207 perches to a stone corner on line of Wm. Shellhammer, thence by land of Wm. Shellhammer and Peter Roberts 6 $\frac{1}{2}$ perches to a corner on land of David Shellhammer, thence by said David Shellhammer's land 88 $\frac{1}{2}$ perches to a corner, thence 12 perches to corner in land of John Hart, thence by land of said Hart 82 perches to stones, thence 45 3-10 perches to corner, thence 14 8-10 perches to stones corner, thence by land of E. K. Shellhammer 52 4-10 perches to stones on land of Abram Smith, thence by said Smith's land 100 perches to the place of beginning, containing 106 acres and 35 perches; about 65 acres improved, with two two-story wood dwelling houses, a wood barn, one saw mill, wagon shed and corn crib, and other outbuildings thereon; also two apple orchards.

2. All that tract of land in Black Creek township, beginning at a pitch pine corner on land of David Shellhammer, running thence by said David Shellhammer's land 101 perches to a pitch pine corner, thence 41 perches to a maple corner, thence by land of William Keagan 118 perches to stones, thence 15 perches to corner on land of Samuel Shellhammer, thence by said Shellhammer's land 52 4-10 perches to stone corner, thence 14 8-10 perches to stones, thence 18 6-10 perches to a hemlock, thence 10 perches to stones, thence 11 9-10 perches to a corner common to lands of John Hart and Samuel Shellhammer, thence by land of John Hart 49 perches to a walnut, thence 18 3-10 perches to a stone, thence 62 perches to land of Perry Boone, thence by said Boone's land 69 perches to the place of beginning, containing 87 acres and 130 perches; about 25 acres improved, with two 2-storied wood dwelling houses, one wood barn, one wagon shed, one wood stable, one bone mill, one apple orchard.

Suit of Emma Barsh v. John Keller.

Suit of Panthie Keller v. John Keller.

Suit of Ann Keller v. John Keller.

Suit of Louisa Virginia Poole v. John Keller.

3, 4, 5, and 6 February term, 1881. Debt, \$3,000, \$3,000, \$3,000, and \$3,000. Fi. fas. 56, 57, 58, and 59 November term, 1883. Harding & McGahren, Att'ys.

1. All the following piece of land in the borough of Kingston, beginning at a corner on the road leading from the Lackawanna and Bloomsburg Railroad to Wilkes-Barre, about 73 $\frac{1}{2}$ feet from the corner of Page street, thence about 207 feet to a lot of Oliver Turner, thence 75 feet to a corner of lot of said Turner, thence about 207 feet to a corner on said road leading from the depot to Wilkes-Barre, thence 75 feet to the place of beginning, containing 15,525 square feet of land, more or less; all improved, and having erected thereon one frame dwelling house and outbuildings.

2. The following piece of land in Kingston borough, beginning on street leading from depot of Lackawanna and Bloomsburg Railroad to Wilkes-Barre, at a corner of lot sold by said Goodwin to Mrs. Coon, thence about 207 feet to a corner of lot belonging to Oliver Turner, thence 65 feet to a corner, thence about 207 feet to a corner in line of above named street, thence 65 feet to the place of beginning, containing 13,455 square feet of land, more or less; all improved, and having erected thereon a frame dwelling house and other outbuildings.

3. All that piece of land in Plymouth township, beginning at a corner on the road leading from Blindtown to the Hollow, thence by land of John Karok 10 perches to a corner, thence by land of Jacob Apple 3 $\frac{1}{2}$ perches to a corner, thence by other land of John Laird 10 perches to the aforesaid road, thence along

said road 3 $\frac{1}{2}$ perches to the place of beginning, containing 32 $\frac{1}{2}$ perches of land; excepting and reserving all coal; all improved, and having erected thereon one frame dwelling house and outbuildings.

4. All that lot of land in the borough of Kingston, beginning at a corner on College street of the lot now owned by William Reddy, thence along said street in a southwesterly direction 50 feet to a corner, thence southeasterly in a line parallel to line of Wm. Reddy's lot and nearly parallel to the line of Cornelius Robbins' lot about 107 feet to land of Abram Goodwin, thence along said Goodwin's land northeasterly about 23 feet to a corner in line of said Reddy's land, thence along said line northwesterly about 5 feet to a corner, thence northeasterly by land of said Reddy about 21 feet to a corner, and thence by land of said Reddy northwesterly about 100 feet to the place of beginning, containing about 5,174 square feet of land; all improved, and having erected thereon one frame dwelling house and outbuildings.

5. All that lot of land in the borough of Kingston, bounded on the northwest by Chestnut street, on the northeast by lands now or late of Samuel Hoyt, on the southeast by lands now or late of Harvey Tuttle, and on the southwest by lands of Mrs. Abram Nesbitt, being 70 feet in front on said Chestnut street and 180 feet in depth; all improved, and having erected thereon one frame dwelling house and outbuildings.

6. All that lot of land in the borough of Kingston, beginning at the corner of Page street and the street leading to the depot of Lackawanna and Bloomsburg Railroad, thence about 207 feet to corner of the lot of Oliver Turner, thence about 73 feet to a corner of lot formerly owned by Mrs. Comfort Coon, thence about 207 feet along said lot formerly owned by Mrs. Coon to a corner on the street leading to the depot, and thence about 73 feet to the place of beginning, containing 15,111 square feet of land; all improved, and having erected thereon one brick building, used as a store and dwelling, and outbuildings.

7. All the surface of the following lot in the township of Plymouth, being the northeasterly corner of the John Gould farm, beginning at the junction of the back road leading to the village of Plymouth and a road leading to the borough of Kingston, near the house of the aforesaid John Keller, thence along the road leading to Plymouth 14 perches to corner, thence 20 $\frac{1}{2}$ perches to a corner, thence 16 perches to a corner, thence 15 7-10 perches, thence 5 2-10 rods along the road leading to Kingston and to the place of beginning, containing 2 acres, strict measure; all improved, and having thereon an apple orchard.

8. All the following tracts of land in the township of Plymouth, viz.:

(a) Containing part of lot No. 41 of the third division of lots, a part of lot No. 3 of the mountain tier of lots of said township, and a part of an eight rod road lying between those divisions of lots, beginning at a corner on the road leading from the township of Kingston to the township of Jackson, and running thence by land of Wm. Pace 24 1-10 perches to a corner in the center of said eight rod road, thence along the center of said road 11 6-10 perches to a corner, thence by a part of said eight rod road and on the line between Nos. 2 and 3 of the mountain tier of the third division 13 2-10 perches to a corner, thence by other lands of the estate of Henry Pace, deceased, 19 4-10 perches to the first mentioned road, thence along said road 18 7-10 perches, thence 22 9-10 perches, and thence 8 3-10 perches to the place of beginning, containing 3 acres 138 perches of land, more or less.

(b) Being a part of the aforesaid lot No. 41 of the third division of lots, and separated from the above described piece by the aforesaid road, beginning at a corner on the south side of said road, and being the westerly corner of lot No. 41, thence on the line of Nos. 41 and 40, 20 2-10 perches to a corner, thence by part same lot owned by the heirs of Darius Williams, deceased, 16 7-10 perches to a corner on said road, and thence along said road 9 3-10 perches, thence 18 4-10 perches to the beginning, containing one acre of land, more or less.

All the stone coal in the last two described pieces of land is reserved in the estate of Henry Pace, dec'd;

all improved, and having erected thereon three dwelling houses, one barn, and one shop.

9. All the following piece of land in the township of Plymouth, being part of lot No. 41 in the third division of lots in said township, beginning at the west corner thereof in line of land of John Gould, thence along land of said Keller 16 7-10 perches, thence $1\frac{1}{2}$ perches, thence along the road leading from Kingston to Blindtown 4 4-10 perches to a corner of a part of the same lot which, in the division of the estate of Darius Williams, deceased, fell to the heir or heirs of Phoebe Bark, formerly Phoebe Williams, thence along the same 82 perches to land of John Gould, thence along said land 20 perches to a corner, thence along land of John Gould 82 perches to the place of beginning, containing 10 acres and 41 perches of land, be the same more or less.

3
Suit of Spencer Hunt, assigned to G. W. Kirdendall, v. Garner A. Parks.

123 January term, 1880. Debt, \$500. Vend. ex. 60 November term, 1883. Foster, Att'y.

All that lot of land in Lehman, being part of the undivided portion of and lately belonging to Amos Parks, bounded on the southeast by land now or formerly owned by Isaac Elston, on the southwest by lands of Daniel J. Whiteman, on the northwest by lands of David Ide, on the northeast by lands of David Ide and others, containing 104 acres, more or less, with one two-story frame or plank house, one barn, one shed, one wagon house, one pig pen, one orchard; also one frame house and one barn on the back end of the farm, and other outbuildings and fruit trees.

4
Suit of the use of R. D. Lacoe and J. B. Shiffer v. John Taher.

148 November term, 1883. Debt, \$103.08. Fi. fa. 37 November term, 1883. Ferris, Att'y.

All that lot of land in Pleasant Valley borough, beginning at a corner of lot of William Lyons in line of Pittston avenue, thence 72 4-10 feet along said Lyons' lot to a corner, thence 120 feet along lands of the Pennsylvania Coal Company to a corner, thence 63 7-10 feet to a corner, and thence $118\frac{1}{2}$ feet along Pittston avenue to the place of beginning, containing 8,620 square feet of surface land, more or less; coal reserved; all improved; no buildings.

5
Suit of R. D. Lacoe and J. B. Shiffer v. Edward Murdock.

149 November term, 1883. Debt, \$255.59. Fi. fa. 38 November term, 1883. Ferris, Att'y.

All that lot of land in Pleasant Valley borough, beginning at a corner of lot contracted to John Allen in line of Cross alley, thence 180 feet along said Allen's lot to a corner, thence 82 77-100 feet along McAlpine street to a corner, thence 180 feet to a corner, thence 82 77-100 feet along Cross alley to the place of beginning, containing 14,328 square feet of surface land, more or less; coal reserved; all improved, with a two-story frame dwelling house and outbuildings thereon.

6
Suit of Olin F. Harvey, assigned to John G. Wood, v. F. M. Jones.

506 September term, 1879. Debt, \$442.70. Fi. fa. 149 October term, 1883. Espy, Att'y.

1. All that piece of land in the city of Wilkes-Barre, beginning at a corner of land of William How on Franklin street, and running along said Franklin street 50 feet to land of H. Pease, thence southeasterly by said Pease's land about 122 feet to land of W. W. Neier, thence by said Neier's line 50 feet to land of William How aforesaid, thence northwesterly by said How's line 122 feet to the place of beginning, containing 6,100 square feet, more or less.

2. All that piece of land in the city of Wilkes-Barre, beginning at a corner of land of Omer B. Smith and W. W. Neier, thence by land of said Neier 27 8-10 feet to a corner, thence by lands of W. S. Parsons 100 feet to a corner in range with line between lots of Pease and Neier, thence along line of land of said Pease 27 8-10 feet to a corner in line between said lots of Neier and Pease, thence 100 feet to the place of beginning, being all that piece of land lying between lands of W.

W. Neier et al.; all improved, and having erected thereon one frame house and barn.

7
Suit of Abram Nesbitt, Assignee, v. P. D. Edwards and James Crockett, Executors of Joseph M. Sutliff, deceased.

121 November term, 1883. Debt, \$26.20. Fi. fa. 45 November term, 1883. Dewitt, Att'y.

All that tract of land in the township of Koss, bounded on the north by land of Alanson White, on the east by lands of Geo. Wesley and Wm. Wandell, on the south by lands of Palmer Shaw's estate, and on the west by lands of Joseph Hautz, Jasper Hautz, and Jacob Hautz, containing about 143 acres; mostly improved, with a frame dwelling house, frame barn, and orchards thereon.

8
Suit of John Peters and A. A. Pursel, Executors of the estate of Peter Pursel, deceased, v. George E. Bachman and M. L. Bachman.

82 October term, 1883. Debt, \$1,034.69. Fi. fa. 59 November term, 1883. Darlings, Att'y.

All that lot of land on the westerly side of Towanda street, in the borough of White Haven, numbered in the plan thereof No. 29, containing in front or breadth on Towanda street 33 feet, and extending thence westwardly to that width between lines at right angles with said Towanda street in length or depth 150 feet to Chemung street; all improved, with a two-story frame double dwelling house and outbuildings thereon.

9
Suit of N. & P. Pearson v. C. W. Thompson.

291 1/2 November term, 1882. Debt, \$152.93. Vend. ex. 55 November term, 1883. Butler, Att'y.

1. All that lot in Jenkins township, on the main road leading from Wilkes-Barre to Pittston, bounded on the north and west by land of the Pennsylvania Coal Co., on the south by land late of Thomas Armstrong, and on the east by the main road, being about 60 feet in width and about 120 feet in depth, and about 84 feet in width at the rear; all improved, with a large two-story frame dwelling house, with brick basement, and other outbuildings thereon.

2. All that lot in Jenkins township, on the west side of the said main road, bounded on the north by lands late of Thomas Armstrong, on the west and south by lands of the Pennsylvania Coal Co., and on the east by said main road, being about 66 feet in width and 124 feet in depth, and about 18 feet in width at the rear; all improved.

3. All that lot in Jenkins township, on the west side of said main road, bounded on the north and west by lands of the Pennsylvania Coal Co., on the south by lands of Cornelius Jones, and on the east by the main road aforesaid, being about 60 feet in width and about 180 feet in depth; all improved, with a two-story frame dwelling house, with a one-half storied frame addition, and outbuildings thereon.

10
Suit of Wells & Smith v. Patrick Jennings.

595 October term, 1883. Debt, \$310.75. Lev. fa. 49 November term, 1883. Butler, Att'y.

A lot of ground at Miners, Plains township, beginning at a corner on Union street, running in a northerly course 50 feet to lands of J. C. Harough, thence in a westerly course 175 feet to a street, thence southerly along said street 50 feet to lands of J. Griffith, thence easterly along said lands 170 feet to place of beginning, and having erected on rear of lot a two-storied frame building, with an ell addition.

11
Suit of J. G. Miller v. Owen L. Hughes.

216 October term, 1878. Debt, real, \$1,449.50. AL. fi. fa. 54 November term, 1883. Butler, Att'y.

All that lot of land in the township of Wilkes-Barre, beginning at a corner in the southeast line of the Lehigh and Susquehanna Railroad, and also in the line dividing certified lots Nos. 31 and 32, thence along the same 180 7-10 feet to a corner, thence 1,007 feet to a corner, thence 125 7-10 feet to the line of said railroad, and thence a northeasterly course along the line of said railroad about 920 feet to the place of beginning, containing 3 acres, more or less; all improved, with a double two-story frame dwelling house, barn, and other

notbuildings, and fruit trees thereon, with a road running from the Wilkes-Barre and Easton turnpike to the said house, affording access to the said property. 44-46

ESTATE OF JOHN R. WALTERS, LATE OF
Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

DANIEL B. LEWIS,
GEO. W. SHONK, Plymouth, Pa. 42-47
Attorney.

ESTATE OF JOHN W. GILLMAN, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JACOB GILLMAN,
RYMAN & LEWIS, Wilkes-Barre, Pa. 41-46
Attorneys.

ESTATE OF WILLIAM MASTERSON, LATE OF
Hazel township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

REV. J. J. CUMMISKEY,
D. W. CONNOLLY, Hazelton, Pa. 42-47
Attorney.

ESTATE OF HANNAH K. MERRITT, LATE OF
Poughkeepsie, N. Y., deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

EDWARD MERRITT,
A. T. McCLINTOCK, Brooklyn, N. Y. 41-46
Attorney.

ESTATE OF HENRY MISSETT, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

RICHARD MISSETT,
GEO. S. FERRIS, Pittston, Pa. 45-50
Attorney.

ESTATE OF SAMUEL F. SHAY, LATE OF
Fairmount township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ADALINE SHAY,
O. J. HARVEY, Harveyville, Pa. 45-50
Attorney.

ESTATE OF WILLIAM T. MERRITT, LATE OF
Poughkeepsie, N. Y., deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

M. F. MERRITT,
R. P. MERRITT,
SCHUYLER MERRITT,
A. T. McCLINTOCK, Poughkeepsie, N. Y. 41-46
Attorney.

ESTATE OF ANNA E. MEIKRANTZ, LATE OF
Hazelton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

T. R. MARTIN,
Wilkes-Barre, Pa. 43-48

ESTATE OF PATRICK MALOY, LATE OF
Hazel township, deceased

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

TIMOTHY MALOY,
JOHN D. HAYES, Hazelton, Pa. 43-48
Attorney.

ESTATE OF REUBEN DRESHER, LATE OF
Butler township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN D. HAYES,
Freeland, Pa. 43-48

ESTATE OF OBED B. FEAR, LATE OF THE
township of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOSIAH T. FEAR,
GEO. S. FERRIS, Pittston, Pa. 44-49
Attorney.

ESTATE OF MARGARET COOK, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. S. FERRIS,
Pittston, Pa. 44-49

ESTATE OF ELIZA JANE MILFORD, LATE OF
Chicago, Cook county, Illinois, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

W. R. GIBBONS,
W. S. McLEAN, Wilkes-Barre, Pa. 44-49
Attorney.

ESTATE OF ANTHONY GALLAGHER, LATE OF
Hazelton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHARLES McCARRON,
JOHN LYNCH, Hazelton, Pa. 44-49
Attorney.

ESTATE OF WILLIAM GALLAGHER, LATE OF
Hazelton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHARLES McCARRON,
JOHN LYNCH, Hazelton, Pa. 44-49
Attorney.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Philip Brenner, and that said license will be asked for in the court aforesaid, on Monday, December 3, 1883, at 10 o'clock A. M.

46-47

A. RICKETTS,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Samuel Rotstein, and that said license will be asked for in the court aforesaid, on Monday, the 3d day of December, 1883, at 10 o'clock A. M.

45-46

D. L. O'NEILL,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by J. M. Heller, and that said license will be asked for in the court aforesaid, on Monday, the 3d of December, 1883, at 10 o'clock A. M.

45-46

WILLIAM S. McLEAN,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by Peter Schlawga, and that said license will be asked for in the court aforesaid, on Monday, the 3d day of December, 1883, at 10 o'clock A. M.

45-46

JOHN T. LENAHAN,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by John Brown, and that said license will be asked for in the court aforesaid, on Monday, the 3d of December, 1883, at 10 o'clock A. M.

45-46

B. McMANUS,
Solicitor.

AUDITOR'S NOTICE.

In the Common Pleas of Luzerne county. In Equity. No. 6, October term, 1876. Wm N. Monies et al., Executors, v. A. D. King. The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to examine the fifth partial account of George Bishop, Receiver of the late firm of Howell and King, and to ascertain what proportion of the fund now in his hands may be safely distributed, and to make distribution of the same, hereby gives notice that he will attend to the duties of his appointment, at his office, on Franklin street, in Wilke-Barre, on Saturday, December 8, 1883, at 10 o'clock A. M., at which time and place all parties interested are notified to appear and present their claims, or else be debarred from coming in on said fund.

46-49

THOMAS H. ATHERTON,
Auditor.

AUDITOR'S NOTICE.

The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute the fund arising from the Sheriff's sale of the real estate of Jacob Rosenstock, will attend to the duties of his appointment, at his office, in the Markle Bank Building, Hazleton, on Wednesday, November 28th, 1883, at 10 o'clock A. M., at which time and place all persons having claims against said fund are notified to present the same, or be forever debarred from coming in upon said fund.

43-46

PHILIP V. WEAVER,
Auditor.

The Sun

NEW YORK, 1884.

About sixty million copies of *The Sun* have gone out of our establishment during the past twelve months.

If you were to paste end to end all the columns of all *The Suns* printed and sold last year you would get a continuous strip of interesting information, common sense wisdom, sound doctrine, and sane wit long enough to reach from Printing House square to the top of Mount Copernicus in the moon, then back to Printing House square, and then three-quarters of the way back to the moon again.

But *The Sun* is written for the inhabitants of the earth; this same strip of intelligence would girdle the globe twenty-seven or twenty-eight times.

If every buyer of a copy of *The Sun* during the past year has spent only one hour over it, and if his wife or his grandfather has spent another hour, this newspaper in 1883 has afforded the human race thirteen thousand years of steady reading, day and night.

It is only by little calculations like these that you can form any idea of the circulation of the most popular of American newspapers, or of its influence on the opinions and actions of American men and women.

The Sun is, and will continue to be, a newspaper which tells the truth without fear of consequences, which gets at the facts no matter how much the process costs, which presents the news of all the world without waste of words and in the most readable shape, which is working with all its heart for the cause of honest government, and which, therefore, believes that the Republican party must go, and must go in this coming year of our Lord, 1884.

If you know *The Sun*, you like it already, and you will read it with accustomed diligence and profit during what is sure to be the most interesting year in its history. If you do not yet know *The Sun*, it is high time to get into the sunshine.

TERMS TO MAIL SUBSCRIBERS.

The several editions of *The Sun* are sent by mail, postpaid, as follows:

DAILY—50 cents a month, \$6 a year; with Sunday edition, \$7.

SUNDAY—Eight pages. This edition furnishes the current news of the world, special articles of exceptional interest to everybody, and literary reviews of new books of the highest merit. \$1 a year.

WEEKLY—\$1 a year. Eight pages of the best matter of the daily issues; an agricultural department of unequalled value, special market reports, and literary, scientific, and domestic intelligence make *The Weekly Sun* the newspaper for the farmer's household. To clubs of ten with \$10, an extra copy free.

Address, I. W. ENGLAND, Publisher,
46-51 *The Sun*, New York City.

ESTATES TO BE AUDITED BY THE
Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. Isaac S. Osterhout; Andrew T. McClintock, P. M. Osterhout, Lewis C. Paine, H. B. Payne, and Andrew H. McClintock, Executors; November 20th, 1883.
2. Jacob Nulton; Mary Nulton and Jacob Nulton, Administratrix and Administrator; November 20th, 1883.
3. George Harmon; Chester Cope, Administrator; November 21st, 1883.
4. Celia A. Dailey; Wm. E. Kytte, Administrator; November 21st, 1883.
5. Samuel Freas; Russell Freas, Administrator; November 22d, 1883.
6. Martha E. Moore; Calvin Parsons, Administrator; November 22d, 1883.
7. David Bencotter; F. M. Bencotter and W. J. Bencotter, Administrators; November 23d, 1883.
8. Abram Minich; Mary Minich, Administratrix; November 23d, 1883.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,
Clerk O. C.

44-46

NOTICE IS HEREBY GIVEN THAT AN
application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved April 29, 1874, and the supplements thereto, on Monday, December 3, 1883, at 10 o'clock A.M., for the charter of an intended corporation, to be called "The Young Men's Hebrew Association," of the city of Wilkes-Barre, the character and objects of which are the improvement of the mental, moral, and social condition of all who desire to become members, and for this purpose to establish and maintain a hall and library.

S. J. STRAUS,
Solicitor.

45-47

NOTICE IS HEREBY GIVEN THAT AN
application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Saturday, December 1, 1883, at 10 o'clock A.M., for the incorporation of an intended corporation, to be called "The Swedish Evangelical Lutheran Trinity Church," located in the city of Wilkes-Barre, Pa., the character and object whereof is the support of public worship, and for this purpose to have, possess, and enjoy all the rights, benefits, and privileges of said Act of Assembly and its supplements.

D. M. JONES,
Solicitor.

45-47

NOTICE IS HEREBY GIVEN THAT AN
application will be made to the Governor of the State of Pennsylvania, under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, for the charter of an intended corporation, to be called "The Forty Fort Ferry Company," the character and object whereof is the establishment and maintenance of a ferry at Forty Fort, in Luzerne county, and for these purposes to have, possess, and enjoy the rights, benefits, and privileges of said Act of Assembly and its supplements.

DICKSON & ATHERTON,
Solicitors.

45-47

ESTATE OF NABBY HAGERTY, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

PATRICK B. HARRISON,
JAS. L. LENAHAN, Wilkes-Barre, Pa.
Attorney. 46-51

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and, unless exceptions are filed, will be presented for final approval on Monday, the 19th day of November, 1883:

James Vincent, Daniel Williamson, Barney Hunsinger, James E. Clark, Robert Major, and Josiah R. Gregory, deceased.

JOSEPH HENDLER,
Clerk O. C.

44-46

L UZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 47, October term, 1882. Libel in divorce a vinculo matrimonii. Sarah D. Day, by her next friend, Jonah Howell, v. R. Emory Day. The alias subpoena in the above case having been returned non est inventus, you, the said R. Emory Day, are hereby notified to appear at said court, on Monday, January 7, 1884, at 10 o'clock A.M., to answer the complaint therein filed.

WILLIAM O'MALLEY, Sheriff.
B. McMANUS, Solicitor. 46-49

WILLIAM S. McLEAN,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
WILKES-BARRE, PA.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, NOVEMBER 23, 1883.

No. 47.

Court of Common Pleas of Luzerne County.

COMMONWEALTH *ex rel.* STERN *v.* WILKES-BARRE GAS CO.

1. Duties of corporation springing out of contract relation cannot be enforced by mandamus.
2. The duty of a gas company to supply all persons in a city with gas does not arise, like the duty of common carriers, from the single fact that it is engaged in the business, however necessary gas may be to the public. Such a duty can only arise from its charter.
3. Whether a declaration in the charter that a corporation is created for the purpose of supplying a certain community with gas is alone sufficient to impose such duty, *quare*.
4. A general grant of eminent domain, *e. g.*, to enter upon the streets and on private lands to lay pipes, etc., does impose a public duty, which an individual, who is willing to comply with the reasonable rules of the company, may enforce by mandamus.

Motion to quash writ of alternative mandamus.

The opinion of the court was delivered October 29, 1883, by

RICE, P. J.—This is a proceeding to compel the respondent to supply and furnish gas to the relator for the illumination of his dwelling. The motion to quash is in the nature of a demurrer, and has been so treated. The reason assigned in its support is, that the averments contained in the writ fail to show or establish a duty on the part of the respondent to supply the relator with gas, or any right belonging to the relator to enforce a supply by mandamus.

Duties imposed upon a corporation, not by virtue of express law, or by the conditions of its charter, but arising out of contract relations, will not be enforced by mandamus, since the use of the writ is limited to the enforcement of obligations imposed by law. High on Extr. Leg. Rem. 228.

The petition contains certain averments as to expenses which the plaintiff's landlord has incurred in fitting up the house for gas illumination and for work done by the respondent in connecting the house pipes with its mains, and from these facts and other acts of the respondent, not necessary to mention here, it is argued that the latter is estopped from denying its duty to continue the supply of gas so long as the relator is ready and willing to pay for the same, and to submit to all reasonable regulations of the company. Whether these alleged facts standing alone would establish a right of action in the relator for the deprivation of a further supply, need not be decided here. [For cases bearing upon this question, see *McKune v. Norwich City Gas Co.*, 30 Conn. 521; *The Huddesdon Gas Co. (limited) v. Haselwood*, 6 C. B. (N. S.) 239; s. c. 95 E. C. L. & Eq.; *Paterson Gas Light Co. v. Brady*, 3 Dutch. (N. J.) at p. 249.] For, if his right and the respondent's duty rest on these facts alone, they are certainly of no higher nature than a right and duty arising from an express contract, and hence his remedy for their enforcement, if any, would be by action, and not by mandamus.

The question, then, arises whether it is the legal duty of the respondent, within the limits of their manufacture and production of gas, upon the line of its mains, and within the limits to which the same extend, to supply gas to a resident of the city for illuminating purposes who desires the same, and who is ready and willing to pay for it, and to comply with all reasonable rules of the company? It is contended by the relator that such duty is imposed by the conditions of the charter; while, on the other hand, it is asserted by the respondent that its duty in this regard is the same as, and no greater than, that of the vender of any other commodity, and that, in the absence of contract, it may refuse to furnish gas to any person, or may discontinue the supply without assigning any reason therefor.

The Wilkes-Barre Gas Company was incorporated by act of April 20, 1854 (P. L. 780). Its purpose is thus stated in section 2: "That the corporation hereby created is so created for the purpose, and for such purpose shall have authority, of supplying with gas light the borough and township of Wilkes-Barre, . . . and such individuals residing therein and the immediate vicinity as

may desire a supply of the same, and for distributing and selling gas for the production of artificial light, and for making and erecting the necessary apparatus for manufacturing and introducing the same, and constructing the requisite buildings and machinery," etc., etc.

If this clause of the charter stood alone, it might be possible so to construe it as not to impose the duty on the corporation of selling and supplying its manufacture to any and every individual who might desire. It might then be said with much force that it should be regarded as simply declaratory of the authority and general purpose of the corporation, and that for neglect or failure to carry out this general purpose and object the remedy would be, possibly, by process to annul and revoke the franchise, but not by mandamus upon the information of any private individual to whom the corporation might have refused to furnish gas. Giving the clause this construction, the respondent, like any other manufacturing or trading corporation, could choose its customers, and would be under no legal obligation to any individual to supply him with gas, and he could acquire no right to the same, except by contract, express or implied. The purpose of the corporation would then be purely private, namely, the manufacture and sale of gas for its own gain and profit solely, and to such individuals as it might choose. The use of gas for illuminating purposes in large towns and cities has become very common, and there it has come to be regarded almost as a necessity, but it has not been distinctly held, so far as we can find, that the doctrine upon which the duty to the public of common carriers and innkeepers rests applies to companies organized or incorporated for the manufacture and sale thereof. Their duty to the individual, so far as he can enforce its performance, in the absence of contract, must be shown by their charter. *McKune v. Norwich City Gas Co.*, 30 Conn. 521; *Commonwealth v. Lowell Gas Light Co.*, 12 Allen (Mass.), 76; *Paterson Gas Light Co. v. Brady*, 3 Dutch. (N. J.) 245; *The Huddesdon Gas Co. (limited) v. Haselwood*, 6 C. B. (N. S.) 239; s. c. 95 E. C. L. & Eq.

But while this clause of the charter taken by itself may not be imperative in terms, the context clearly shows that the Legislature intended to impose a duty, as well as to confer authority. Any

ambiguity in the grant to a corporation is to be construed against it, and in favor of the public. *Comrs. v. Gas Co.*, 2 Jones, 320.

When a statute confers upon a corporation a power to be exercised for the public good, the exercise of the power is not discretionary, but imperative, and the words "power" and "authority" in such case may be construed "duty" and "obligation." *Com. of Ann Arundel County v. Duchett*, 20 Md. 468.

In the construction of statutes it is frequently held that permissive language is to be understood as mandatory and imperative where the public interests and rights are concerned, and where the public or third persons have a right to have a granted power exercised. *Commonwealth v. Pittsburg Councils*, 10 C. 513; *Norwegian Street*, 31 Sm. 349, 353. See, also, cases cited in *Commonwealth v. Marshall*, 3 W. N. C. 185.

The grant by the Legislature to a private corporation of the exclusive privilege to supply the inhabitants of a particular town or city with an article in such common use as illuminating gas would imply a duty also, and a corresponding right in the citizen, upon compliance with all reasonable regulations and upon proper conditions, to have his dwelling connected with its mains, which right he could enforce, even though the grant were unaccompanied by mandatory words. *Shephard v. Milwaukee Gas Light Co.*, 6 Wis. 533.

Here, it is true, no exclusive privileges are granted by the charter, and while it is argued that the respondent's privileges are practically so by reason of the fact that a charter to no other company has been granted, yet there is nothing in the act, nor on the face of the petition, to warrant us in assuming this fact at the present time. There are, however, other features of the charter which quite as unmistakably indicate the legislative intent as would a grant of exclusive privileges, or the use of imperative terms. For the purpose heretofore declared, namely, to supply "with gas light the borough and township of Wilkes-Barre, and such individuals residing therein as may desire a supply of the same," the corporation is given authority "to enter upon any of the public streets, lanes, alleys, and sidewalks in the borough and township of Wilkes-Barre and vicinity, for the purpose of laying pipes for the distribution of gas, as the company may deem neces-

sary, and may enter into such lands and enclosures as may be necessary, and dig trenches through and across them for the same purpose, doing as little damage as possible to private property, and paying for whatever injury may be done by them." In case the parties cannot agree upon the amount of damages, it is provided that they shall be assessed by three viewers or appraisers, to be appointed by this court upon the application of either party. The privileges of the company are not confined to the first taking, but extend to and include the relaying, taking up, and repairing of the pipes as often as the same may be necessary. By these provisions the right of eminent domain is granted in its fullest extent, and the effect of this grant, as indicating the intent of the Legislature in the preceding clauses of the charter, cannot be avoided by saying that the injury to the private land-owner will be slight. In other words, the justification for the grant of this right must be found, if at all, in the use for which the property may be taken, and cannot be made to depend upon the quantity of interest acquired by, nor upon the extent of the injury which may result from, nor upon the conditions and restrictions annexed to, its exercise. Whether the right to take private property without the consent of the owner is given for the purpose of laying railroad tracks on the surface, or gas pipes beneath the surface, it cannot be taken for a merely private use, no matter what may be the comparative injury in each case. But upon what principle can the grant of this extraordinary privilege be justified, if, as the respondent contends, the company is under no legal obligation to supply gas to any inhabitant of the city, unless it chooses to do so? If its legal obligation in this regard is no greater than that of the manufacturer and vender of any other commodity, and if the sole purpose of its incorporation was its own gain and profit, what right has the State to authorize it to take the property of the citizen, and use it for its own private purposes, against his consent? Clearly none. As well might the State grant this right for the encouragement of any other useful trade or manufactory. The fact that incidental benefits may be received by the public is not enough to sustain the grant, if the public have no rights, and can acquire none, in the use to which the property is applied.

Says Thompson, C. J., with regard to the lateral railroad law, which is, perhaps, as extreme a case as any in this State in which the right of eminent domain has been exercised, "had it not been for provisions contained in it, that the public might use such roads when made on conforming to certain regulations and paying tolls, together with the reserved right of the State to take such improvements at any time on reimbursing the cost of construction, the act never could have been sustained." *Keeling v. Griffin*, 6 Sm. 306.

The private road law is sustained upon analogous principles. With regard to that class of cases, principally in Massachusetts, which sustain the grant of this power for the erection of mill dams and condemnation of mill sites, Judge Cooley says: "It is quite possible that in any State in which this question would be entirely a new one, and where it would not be embarrassed by long acquiescence, or by either judicial or legislative precedents, it might be held that these laws are not sound in principle, and that there is no such necessity, and consequently no such imperative reasons of public policy, as would be essential to support an exercise of the right of eminent domain." *Cooley on Con. Lim.* *536.

But, without further digression, we have no doubt that the supplying of the city in its municipal capacity, and such inhabitants thereof as may desire the same, with gas or water, is a public purpose for which, from the necessity of the case, the Legislature may grant the privilege to a private corporation to exercise the right of eminent domain. But the difference between such a grant and the grant which the respondent claims to have by its charter is manifest. In the one case the purpose of the appropriation of private property is to supply such of the inhabitants constituting the general public in the community as may desire the same, while in the other case the purpose would be to supply only such persons as the company, in its discretion, or, possibly, in its caprice, might choose. In the one case the purpose is a public one, although all of the individuals constituting the public might not choose to take advantage of their privilege, while in the other case the purpose would be as purely private as that of a mining company or an ice company. It is argued that one of the

declared purposes of the incorporation of the respondent is to furnish gas to the city and township in their municipal capacity, and that this is enough to sustain the delegation of the right of eminent domain without inferring a duty to supply individuals. This argument is based on a false premise; for, by the terms of the charter, the duty of the respondent to the city is made no more compulsory than is its duty to the relator, or any other resident, under the same circumstances.

Finally, it is argued that the most that can be said is, that the delegation of this right of eminent domain was invalid, and that, if this be conceded by the respondent, the rest of the act can stand, and should be construed by itself. We cannot concur with the counsel in so viewing the case. As we have already stated, no constitutional objection can be made to any part of the act when the whole is considered together, and its purpose properly understood. And we are required to so construe the act as to give effect to all of its provisions, if possible. We are not authorized to reject any single provision of the act as invalid in order to avoid its effect upon the construction of other provisions. When, therefore, the respondent was incorporated for the express purpose of supplying gas to the city, and such individuals residing therein as might desire the same, and for this purpose was given the right of eminent domain, we conclude that the Legislature had a public purpose in view beyond, but not inconsistent with, the respondent's gain and profit; and that from the nature of the declared purpose for which it was created, taken together with, and explained by, the nature of the extraordinary privileges which were granted to carry out that purpose, a legal duty is implied; and further, that a resident of the city, coming within the conditions of the question stated at the outset, has such a right as can be enforced by mandamus.

And now, to wit, October 29, 1883, the motion to quash is overruled, and the respondent is directed to make return within ten days.

S. J. Strauss, Esq., for relator.

H. A. Fuller, Esq., for respondent.

Court of Common Pleas of Luzerne County.

SMYTHE v. MORGAN.

Certiorari—Justice of the peace—Short summons.

A summons issued on the 23d, returnable on the 27th of the month, and was returned served on the 23d by leaving a copy at the dwelling house of the defendant in presence of another: *Held*, that upon this state of the record the issuing of a short summons was irregular.

Certiorari.

The opinion of the court was delivered September 17, 1883, by

RICE, P. J.—The summons in this case issued on April 23, 1883, and was returnable on April 27, 1883. There is nothing on the face of the transcript, nor in the precept, to indicate that the defendant below was a non-resident of the county. Indeed, the return to the summons indicates the contrary. It reads as follows: "Served the within summons the 23d day of April, 1883, by leaving a copy of it at the dwelling house of the defendant, James Smythe, in presence of Mrs. C. M. Steele." Clearly, this was not a case for a short summons, and, therefore, the proceedings must be reversed. *Ferris v. Zeidler*, 5 Phila. 529. If the defendant below was, in fact, a non-resident of the county, it should have appeared either on the transcript or the precept. We also suggest that the return itself does not follow the statute as strictly as it should.

The proceedings are reversed and set aside.

Thos. H. Atherton, Esq., for plaintiff in error.

D. M. Jones, Esq., for defendant in error.

"Have you had your ears pierced?" asked a young lady of her chum, who lived next door. "I should think so," was the crushing reply, "hearing you sing every day." There is now a great gulf of coldness between them.

The Sun

NEW YORK, 1884.

About sixty million copies of *The Sun* have gone out of our establishment during the past twelve months.

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Address, I. W. ENGLAND, Publisher,
46-51 The Sun, New York City.

ESTATE OF NABBY HAGERTY, LATE OF

Wilkes-Barre, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

PATRICK B. HARRISON,
JAS. L. LENAHAU, Wilkes-Barre, Pa.
Attorney. 46-51

ESTATE OF NATHAN HONTZ, LATE OF

Slocum township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

STEPHEN HONTZ,
D. O. COUGHLIN, Slocum, Pa.
Attorney. 45-50

ESTATE OF PATRICK McDONALD, LATE

of Union township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JAMES McDONALD,
D. L. O'NEILL, Wilkes-Barre, Pa.
Attorney. 45-50

ESTATE OF HENRY MISSETT, LATE OF

Pittston, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

RICHARD MISSETT,
GEO. S. FERRIS, Pittston, Pa.
Attorney. 45-50

ESTATE OF SAMUEL F. SHAY, LATE OF

Fairmount township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ADALINE SHAY,
O. J. HARVEY, Harveyville, Pa.
Attorney. 45-50

ESTATE OF ANNA E. MEIKRANTZ, LATE

of Hazleton, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

T. R. MARTIN,
43-48 Wilkes-Barre, Pa.

ESTATE OF REUBEN DRESHER, LATE OF

Butler township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN D. HAYES,
43-48 Freeland, Pa.

ESTATE OF MARGARET COOK, LATE OF

Pittston, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. S. FERRIS,
44-49 Pittston, Pa.

ESTATE OF JOHN KENNEDY, LATE OF
the borough of Hazleton, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEORGE H. TROUTMAN,
Hazleton, Pa.

47-52

ESTATE OF CHARLOTTE WESLEY, LATE OF
Ross township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JONATHAN O. IDE,
Lehman, Pa.

48-1

ESTATE OF DAVID R. HOWELL, LATE OF
Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

LEVI HOWELL,
Kingston, Pa.
E. S. OSBORNE,
Attorney.

47-52

ESTATE OF WILLIAM LINDEN, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

F. E. BROCKWAY,
Beach Haven, Pa.
C. B. JACKSON,
Attorney.

48-1

ESTATE OF WILLIAM McLAUGHLIN, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

MARY HANEHAN,
Wilkes-Barre, Pa.
JAS. L. LENAHAN,
Attorney.

48-1

ESTATE OF JAMES R. LEWIS, LATE OF
Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

NANCY F. LEWIS,
Trucksville, Pa.
T. H. B. LEWIS,
Attorney.

48-1

ESTATE OF ELIZA JANE MILFORD, LATE OF
Chicago, Cook county, Illinois, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

W. R. GIBBONS,
Wilkes-Barre, Pa.
W. S. McLEAN,
Attorney.

44-49

ESTATE OF WILLIAM GALLAGHER, LATE OF
Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHARLES McCARRON,
Hazleton, Pa.
JOHN LYNCH,
Attorney.

44-49

ESTATE OF MARY ANN DUFFY, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

FRANK TRACY,
WILLIAM KEATING,
Pittston, Pa.
JOHN T. LENAHAN,
Attorney.

47-52

ESTATE OF PATRICK MALOY, LATE OF
Hazle township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

TIMOTHY MALOY,
Hazleton, Pa.
JOHN D. HAYES,
Attorney.

43-48

ESTATE OF QBED B. FEAR, LATE OF THE
township of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOSIAH T. FEAR,
Pittston, Pa.
GEO. S. FERRIS,
Attorney.

44-49

ESTATE OF ANTHONY GALLAGHER, LATE OF
Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHARLES McCARRON,
Hazleton, Pa.
JOHN LYNCH,
Attorney.

44-49

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county.

No. 24, May term, 1883. Libel in divorce a vinculo matrimonii. Ida A. Jones, by her next friend, William Anman, v. John Jones. To John Jones—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, the 10th of December, 1883, at 10 o'clock A. M.

E. D. NICHOLS,
Solicitor.

47-48

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county.

No. 460, October term, 1883. Libel in divorce a vinculo matrimonii. John Leinbach v. Mary Alice Leinbach. The alias subpoena in the above case having been returned non est inventus, you, the said Mary Alice Leinbach, are hereby notified to appear at said court, on Monday, January 7th, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff.
GEO. H. TROUTMAN,
Solicitor.

47-50

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county.

No. 47, October term, 1882. Libel in divorce a vinculo matrimonii. Sarah D. Day, by her next friend, Jonah Howell, v. R. Emory Day. The alias subpoena in the above case having been returned non est inventus, you, the said R. Emory Day, are hereby notified to appear at said court, on Monday, January 7, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff.
B. McMANUS,
Solicitor.

46-49

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 109, February term, 1883. Libel in divorce a vinculo matrimonii. Margaret A. Seibert, by her next friend, Henry Klinger, v. W. G. Seibert. To W. G. Seibert—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, December 15, 1883, at 10 o'clock A. M.

ELLIOTT P. KISNER,
Solicitor.

48-49

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 576, October term, 1883. Libel in divorce a vinculo matrimonii. Watkins Winston v. Elizabeth Winston. The alias subpoena in the above case having been returned non est inventus, you, the said Elizabeth Winston, are hereby notified to appear at said court, on Monday, January 14th, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Sheriff.
Q. A. GATES,
Solicitor.

48-51

AUDITOR'S NOTICE.

In the Common Pleas of Luzerne county. In Equity. No. 6, October term, 1876. Wm. N. Monies et al., Executors, v. A. D. King. The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to examine the fifth partial account of George Bishop, Receiver of the late firm of Howell and King, and to ascertain what proportion of the fund now in his hands may be safely distributed, and to make distribution of the same, hereby gives notice that he will attend to the duties of his appointment, at his office, on Franklin street, in Wilkes-Barre, on Saturday, December 8, 1883, at 10 o'clock A. M., at which time and place all parties interested are notified to appear and present their claims, or else be debarred from coming in on said fund.

THOMAS H. ATHERTON,
Auditor.

46-49

ORPHANS' COURT SALE.

Estate of Elizabeth B. Ashelman, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, Wilkes-Barre, on Saturday, December 22, 1883, at 10 o'clock A. M., the surface of all that piece of land in the borough of West Pittston, beginning at a corner on Luzerne avenue, thence along said avenue 51 feet to a corner on line of lands of J. S. Carpenter, thence along said lands 216 feet to a corner on line of other lands of said J. S. Carpenter, thence along said lands 43 1/2 feet to a corner on line of lands of one Sickler, and thence along said lands 216 feet to the place of beginning; all improved, with a two-storied frame dwelling house thereon; excepting and reserving all coal and other minerals.

TERMS OF SALE—\$200 down, and balance on confirmation of sale and delivery of deed.

PETER ASHELMAN,
Executor.
E. D. NICHOLS,
Attorney.

48-50

ORPHANS' COURT SALE.

Estate of Samuel Wolfe, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, on the premises, on Wednesday, December 19, 1883, at 10 o'clock A. M., the following real estate in Union township, surveyed in the name of David McCormick, lying on west side of a public road, beginning at a corner now or formerly of lands of Ezra Dodson, thence along said line to a corner in lands of Wesley Dodson, thence to said public road, thence along same to beginning, containing 2 acres, more or less; improved.

TERMS OF SALE—One-half cash at sale, and balance on confirmation of sale and delivery of deed.

BENJAMIN GREGORY,
Administrator.
S. M. RHONE,
Attorney.

47-49

ORPHANS' COURT SALE.

Estate of Sarah Budd, deceased. In Partition. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, Pa., on Friday, December 14, 1883, at 3 o'clock P. M., the equal undivided half part of that certain tract of land, situate in the township of Jenkins, Luzerne county, Pa., being designated as lot No. 23 in the third tier of lots of the second division of the certified township of Pittston, bounded and described as follows: Beginning at a corner of lots Nos. 24 and 23; thence south 25 1/2 degrees west, 46 perches to a corner of lot No. 22; thence along the line of lot No. 22, south 61 degrees west, 532 perches to a corner of lot No. 22; thence north 40 degrees east, 45 3-10 perches to a corner of lot No. 24 aforesaid; thence along the line of said lot No. 24, south 61 degrees east, 520 3-10 perches to a corner, the place of beginning; containing 140 acres and 33 perches, be the same more or less; all improved. Supposed to be in whole or in part within the coal measures.

TERMS OF SALE—10 per cent down at time of sale, and balance on confirmation of the sale and delivery of the deed.

W. W. AMSBRY,
Trustee.
ANDREW H. MCCLINTOCK,
Attorney.

47-49

NOTICE IS HEREBY GIVEN THAT AN

application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Parrish Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding of real estate connected therewith.

J. A. OPP,
Solicitor.

48-50

NOTICE IS HEREBY GIVEN THAT AN

application will be made to one of the Judges of the Court of Common Pleas of Luzerne county under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved April 29, 1874, and the supplements thereto, on Monday, December 17, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Freeland Citizens Hose Company," the character and objects of which are the extinguishing of fires, and to have for that purpose hose, engines, ladders, trucks, etc.

JOHN D. HAYES,
Solicitor.

48-50

WILLIAM S. McLEAN,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BAR

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MUNN & CO., of the SCIENTIFIC AMERICAN, continue to act as Solicitors for Patents, Caveats, Trade Marks, Copyrights, for the United States, Canada, England, France, Germany, etc. Hand Book about Patents sent free. Thirty-seven years' experience. Patents obtained through MUNN & CO. are noticed in the SCIENTIFIC AMERICAN, the largest, best, and most widely circulated scientific paper. \$3.20 a year. Weekly. Splendid engravings and interesting information. Specimen copy of the Scientific American sent free. Address MUNN & CO., SCIENTIFIC AMERICAN Office, 311 Broadway, New York.

THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, DECEMBER 7, 1883.

No. 49.

Court of Common Pleas of Luzerne County.

HOOVER *et ux.* v. VAN LOON.

1. In a suit before a justice of the peace against a husband and wife upon a contract for necessaries, it must appear affirmatively that the claim and the proof show that the debt was contracted for articles necessary for the support of the family of the said husband and wife.
2. A claim simply for "family necessaries" does not give jurisdiction against the wife, for the articles may have been for some other family.
3. Such a record may be *certiorari*d after twenty days for want of jurisdiction.

The opinion of the court was delivered September 12, 1881, by

RICE, P. J.—In order to make a married woman liable upon a contract or claim of the kind alleged in this record, it must not only be alleged, but proved, that the debt sued for was contracted by the wife, and was incurred for articles necessary for the support of the family of the said husband and wife. *Murray v. Keyes*, 11 C. 384; *Parker v. Kleeber*, 1 Wr. 251; *O'Malley v. Dempsey*, 2 Luz. Leg. Reg. 77; *Ingham v. Sickler*, Id. 105; *Linker v. Feist*, 6 Id. 116.

If the record of the claim as made before the justice showed his jurisdiction affirmatively, this *certiorari* would have been taken too late. *Shupp v. Orts*, 1 Kulp, 303; 10 Luz. Leg. Reg. 44.

But if his jurisdiction does not affirmatively appear, the want of it may be alleged on *certiorari*, even though the twenty days have expired before the writ was sued out. (See cases cited above.) *Lacock v. White*, 7 H. 498; *Paine v. Godshall*, 1 Luz. Leg. Reg. 3.

The defect in this record is that it does not affirmatively appear,

but is left to inference, which does not exclude all other inferences, that the "family necessities," for which the debt was contracted, were "articles necessary for the support and maintenance of the family of the husband and wife." The terms "family necessities" are descriptive terms, which might apply to articles bought for any other family than that of the defendant. They do not amount to an averment of the fact which the statute makes necessary and indispensable in order to give jurisdiction.

The proceedings are reversed.

John T. Lenahan, Esq., for plaintiffs in error.

Charles Pike, Esq., for defendant in error.

Court of Common Pleas of Luzerne County.

CHURCH, *assigned*, v. CITY OF SCRANTON.

Practice—Local action—County—Division of—Effect on local actions—Municipal corporation—Action against—Judgment—Exemplification of.

1. An action against a municipal corporation is local, and must be brought and tried in the court of the proper county.
2. An action against the city of Scranton (now in Lackawanna county) cannot be tried in the court of Luzerne county since the division of the county, though the same was pending and at issue at the time of the division.

Rule to strike off judgment on verdict.

The opinion of the court was delivered March 18, 1882, by

RICE, P. J.—When this case was called for trial, no appearance was made for the defendant, and on the case made out by the plaintiff the verdict went against her. The grounds upon which this rule is based are, that the action, being against a municipal corporation, is local, and that the court had not jurisdiction to try it. The material dates, as shown by the record, are as follows:

May 15, 1878—Summons. *Exit.*

June 1, 1878—Defendant pleads *non assumpsit*, etc.

June 8, 1881—Verdict for plaintiff.

June 13, 1881—Judgment on the verdict.

November 15, 1881—Rule to strike off judgment.

It is to be observed that between the dates of the plea and verdict the county of Lackawanna was erected out of the county of Luzerne, and from that time on it does not appear that anything was done by the defendant to recognize the jurisdiction of this court to proceed further in the case.

It was expressly decided in *Lehigh County v. Kleckner* (5 W. & S. 181), that actions against public municipal corporations are not transitory, but local, and must be brought in the court of the proper county.

This well considered case was followed in *Oil City v. McAboy* (24 Sm. 249), and it was there held, that judgment can be confessed by such corporation only in the court of the proper county, because consent cannot confer jurisdiction against the laws of the State. "The reasons," says Mr. Justice Agnew, "are founded in the convenience and policy of the State, and the limited remedy for the payment of debts."

It is needless to repeat what is said in these cases as to the remedy for the enforcement of judgments against such corporations. It is enough to say that both cases unequivocally decide that the sole remedy is by mandamus, which can be issued only by the court of the county in which the public corporation defendant exists. As to the exclusiveness and applicability of this remedy to judgments against cities, see *Monaghan v. Philadelphia*, 4 C. 207, and *Parke v. Pittsburg*, 1 Pitts. Rep. 218.

It is suggested, however, that the judgment may be transferred by exemplification to Lackawanna county, and enforced by mandamus there. The new county legislation makes no specific provision for the removal or transfer of final judgments obtained after the division of the county, and, therefore, such removal or transfer must be under the act of April 16, 1840 (P. L. 410; P. D. 821, *pl.* 14).

The same argument, based on the remedy given by the act of 1840, was made in the case of *Lehigh County v. Kleckner* (*supra*). The court, however, did not deem the argument worthy of special consideration, doubtless for the reason that the remedy for enforcement of judgments transferred by exemplification under that act is by execution, etc., "as prescribed by the act of June 16, 1836," and the latter act excepts from its provisions counties,

townships, and other public corporate bodies. Act of June 16, 1836, § 72, P. L. 774. There would be force in the argument, based on the fact that the jurisdiction of this court had once attached, if the effect of the division of the county, in ousting the jurisdiction of this court to enter judgment, were to compel the plaintiff to abandon his action, and to begin *de novo* in the new county. But such is not the effect. The act of April 22, 1879 (P. L. 26, § 1), exactly meets the case, and removes all grounds for argument in favor of overturning the well decided cases cited. It is there provided that "all local actions originally commenced in the county from which said new county shall have been taken, but which, after the division, appertain and belong to the territory embraced within said new county, shall, upon the application of any of the parties thereto, and the order of the court, or of a judge thereof, be removed to the said new county," etc. It is unnecessary to decide whether or not the removal of every local action is made compulsory by this act. It is enough to say that under the authority of the decided cases, it provides a complete, and the only, mode of procedure by which a plaintiff can obtain a judgment in a suit against a municipal corporation, the payment of which he can enforce. See *Fabrigas v. Mostyn*, Cowp. 176-177, 1 Ch. Plead. 266-267.

It follows that the reasons against the jurisdiction of this court to try the case and enter judgment, based on the inability of the court to issue any process to enforce its payment, are as applicable and forcible here as they were to prevent the court from taking jurisdiction in the first instance in the cases cited.

The rule is made absolute.

Hon. D. W. Connolly, for plaintiff.

I. H. Burns, Esq., for defendant.

NEW YORK, 1884.

About sixty million copies of *The Sun* have gone out of our establishment during the past twelve months.

If you were to paste end to end all the columns of all *The Sun*s printed and sold last year you would get a continuous strip of interesting information, common sense wisdom, sound doctrine, and sane wit long enough to reach from Printing House square to the top of Mount Copernicus in the moon, then back to Printing House square, and then three-quarters of the way back to the moon again.

But *The Sun* is written for the inhabitants of the earth; this same strip of intelligence would girdle the globe twenty-seven or twenty-eight times.

If every buyer of a copy of *The Sun* during the past year has spent only one hour over it, and if his wife or his grandfather has spent another hour, this newspaper in 1883 has afforded the human race thirteen thousand years of steady reading, day and night.

It is only by little calculations like these that you can form any idea of the circulation of the most popular of American newspapers, or of its influence on the opinions and actions of American men and women.

The Sun is, and will continue to be, a newspaper which tells the truth without fear of consequences, which gets at the facts no matter how much the process costs, which presents the news of all the world without waste of words and in the most readable shape, which is working with all its heart for the cause of honest government, and which, therefore, believes that the Republican party must go, and must go in this coming year of our Lord, 1884.

If you know *The Sun*, you like it already, and you will read it with accustomed diligence and profit during what is sure to be the most interesting year in its history. If you do not yet know *The Sun*, it is high time to get into the sunshine.

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Address, I. W. ENGLAND, Publisher,
46-51 The Sun, New York City.

ESTATE OF NATHAN HONTZ, LATE OF
Slocum township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
STEPHEN HONTZ,
D. O. COUGHLIN, Slocum, Pa.
Attorney. 45-50

ESTATE OF PATRICK McDONALD, LATE
of Union township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
JAMES McDONALD,
D. L. O'NEILL, Wilkes-Barre, Pa.
Attorney. 45-50

ESTATE OF HENRY MISSETT, LATE OF
Pittston, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
RICHARD MISSETT,
GEO. S. FERRIS, Pittston, Pa.
Attorney. 45-50

ESTATE OF SAMUEL F. SHAY, LATE OF
Fairmount township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
ADALINE SHAY,
O. J. HARVEY, Harveyville, Pa.
Attorney. 45-50

ESTATE OF JOHN KENNEDY, LATE OF
the borough of Hazleton, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
GEORGE H. TROUTMAN,
47-52 Hazleton, Pa.

ESTATE OF NABBY HAGERTY, LATE OF
Wilkes-Barre, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
PATRICK B. HARRISON,
JAS. L. LENAHAN, Wilkes-Barre, Pa.
Attorney. 46-51

ESTATE OF CHARLOTTE WESLEY, LATE
of Ross township, deceased.
Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
JONATHAN O. IDE,
48-1 Lehman, Pa.

ESTATE OF MARGARET COOK, LATE OF
Pittston, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
GEO. S. FERRIS,
44-49 Pittston, Pa.

ESTATE OF AMANDA E. LANING, LATE
of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEORGE C. SMITH,
E. P. DARLING,
Wilkes-Barre, Pa.

49-2

ESTATE OF MINERVA STURDEVANT,
late of Peckville, Lackawanna county.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. J. STURDEVANT,
Wilkes-Barre, Pa.

49-2

ESTATE OF SARAH GUNTON, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JAMES C. DRIESBACH,
WM. S. McLEAN,
Attorney, Wilkes-Barre, Pa.

49-2

ESTATE OF LOUIS EMORY, LATE OF THE
city of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. P. DARLING,
Wilkes-Barre, Pa.

49-2

ESTATE OF OBED B. FEAR, LATE OF THE
township of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOSIAH T. FEAR,
GEO. S. FERRIS,
Attorney, Pittston, Pa.

44-49

ESTATE OF ANTHONY GALLAGHER, LATE
of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHARLES McCARRON,
JOHN LYNCH,
Attorney, Hazleton, Pa.

44-49

ESTATE OF ELIZA JANE MILFORD, LATE
of Chicago, Cook county, Illinois, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

W. R. GIBBONS,
W. S. McLEAN,
Attorney, Wilkes-Barre, Pa.

44-49

ESTATE OF WILLIAM GALLAGHER, LATE
of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHARLES McCARRON,
JOHN LYNCH,
Attorney, Hazleton, Pa.

44-49

ESTATE OF MARY ANN DUFFY, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

FRANK TRACY,
WILLIAM KEATING,
JOHN T. LENAHAH,
Attorney, Pittston, Pa.

47-52

ESTATE OF DAVID R. HOWELL, LATE OF
Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

LEVI HOWELL,
E. S. OSBORNE,
Attorney, Kingston, Pa.

47-52

ESTATE OF WILLIAM LINDEN, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

F. E. BROCKWAY,
C. B. JACKSON,
Attorney, Beach Haven, Pa.

48-1

ESTATE OF WILLIAM McLAUGHLIN, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

MARY HANEHAN,
JAS. L. LENAHAH,
Attorney, Wilkes-Barre, Pa.

48-1

ESTATE OF JAMES R. LEWIS, LATE OF
Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

NANCY F. LEWIS,
T. H. B. LEWIS,
Attorney, Trucksville, Pa.

48-1

ORPHANS' COURT SALE.

Estate of Sarah Budd, deceased. In Partition. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, at the Arbitration room, in the Court House, at Wilkes-Barre, Pa., on Friday, December 14, 1883, at 3 o'clock P. M., the equal undivided half part of that certain tract of land, situate in the township of Jenkins, Luzerne county, Pa., being designated as lot No. 22 in the third tier of lots of the second division of the certified township of Pittston, bounded and described as follows: Beginning at a corner of lots Nos. 24 and 23; thence south 25½ degrees west, 46 perches to a corner of lot No. 22; thence along the line of lot No. 22, south 61 degrees west, 532 perches to a corner of lot No. 22; thence north 40 degrees east, 43 3-10 perches to a corner of lot No. 24 aforesaid; thence along the line of said lot No. 24, south 61 degrees east, 520 3-10 perches to a corner, the place of beginning; containing 140 acres and 33 perches, be the same more or less; all improved. Supposed to be in whole or in part within the coal measures.

TERMS OF SALE—10 per cent down at time of sale, and balance on confirmation of the sale and delivery of the deed.

W. W. AMSBRY,
ANDREW H. McCLINTOCK,
Trustees, Attorney.

47-49

ORPHANS' COURT SALE.

Estate of Reuben Kisner, dec'd. In Partition. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, at the homestead farm, late the residence of said decedent, in Salem township, on Thursday, December 27, 1883, at 10 o'clock A. M., the following five tracts of land, situated in Salem township, viz.:

Purpart No. 1. Beginning at a chestnut post, a corner in line between lots 16 and 17 of the second division of Salem township, thence by lots 15 and 14, 73 8-10 perches to stone in line between lots 17 and 18, thence on said line by land of Henry Garrison 209 2-10 perches to stone, thence 14 perches to post, thence 16 perches to ash, thence 16 perches to hickory, thence 27 7-10 perches to post in line between lots 17 and 16, thence on said line 204 8-10 perches by land of D. F. Seybert to the place of beginning, containing 93 acres and 12 perches, neat measure, and being part of lot No. 17 in second division of Salem township; having thereon a frame dwelling house and stable.

Purpart No. 2. Beginning at a corner in line between lots 16 and 17 in the southern boundary line of said lots, thence by lands of George Seybert 42 36-100 perches to stone in line between lots 7 and 8, thence on said line by lands of George Seybert 123 2-10 perches to stone, thence 70 perches to stone in line between lots 7 and 8, thence on said line by land of J. F. Hicks 141 4-10 perches to stone, thence by land of Henry Garrison 39 perches to point in line between lots 17 and 18, thence on said line by land of Henry Garrison 30 15-100 perches to stone, thence by purpart No. 1, 14 perches to post, thence by same 16 perches to ash, thence by same 16 perches to hickory, thence by same 27 7-10 perches to post in line between lots 16 and 17, thence on said line 43 8-10 perches to the place of beginning, containing 75 acres and 93 perches, neat measure, and being part of lots 7, 17, and 18 of second division of Salem township; having erected thereon a large brick dwelling house, frame dwelling house, bank barn, wagon shed, and other outhouses.

Purpart No. 3. Beginning at a point in line between lots 6 and 7 of the second division of Salem township, thence by southern boundary line of purpart No. 2, 70 perches to stone in line between lots 7 and 8, thence on said line 137 4-10 perches to corner, thence by Susquehanna river 71 3-10 perches to corner in line between lots 6 and 7, thence by land of Mansfield and J. F. Hicks 132 6-10 perches to the place of beginning, containing 58 acres and 155 perches, neat measure, and being part of lot No. 7 in the second division of Salem township.

Purpart No. 4. Beginning at a corner at the Lackawanna and Bloomsburg Railroad in the line of land of D. F. Seybert, thence along the same 69 6-10 perches to corner, thence along lands of George B. Seybert 72 2-10 perches to western line of purpart No. 2, thence along the same 70 2-10 perches to Lackawanna and Bloomsburg Railroad, thence along the same 73 4-10 perches to place of beginning, containing 23 acres and 17 perches, and being part of lot No. 8 in the second division of Salem township.

Purpart No. 5. Beginning at a corner of land late of Wallace Seybert, thence 240 perches, thence 95 1-10 perches, thence 240 perches, thence 95 1-10 perches to place of beginning, containing 130 acres, more or less, and being lot No. 12 in the third division of Salem township.

TERMS OF SALE—The amount set apart to secure widow's interest to be charged proportionately upon purparts Nos. 2, 3, and 4, the interest thereof to be paid to her semi-annually from and after the date of confirmation during her life, and the principal thereof to be paid at her death to the parties legally entitled thereto. In case of purpart No. 1, 10 per cent of purchase money to be paid on day of sale, 15 per cent on confirmation of sale, 25 per cent in one, two, and three years from the day of confirmation, with interest from confirmation; deferred payments to be secured by bond and mortgage on the premises. In the case of purpart No. 5, 25 per cent to be paid on day of sale, 25 per cent on confirmation of sale, and the balance, with interest from confirmation, six months from day of confirmation; deferred payment to be secured by bond,

with one sufficient surety, and mortgage on the premises. In case of purparts Nos. 2, 3, and 4, 10 per cent of the purchase money to be paid on day of sale, 15 per cent on confirmation of sale, and such portion of the balance not required to be set apart to secure the widow's interest, with interest thereon from the day of confirmation, to be paid in two equal annual payments from and after the confirmation. The amount of the two said annual payments and the amount to be set apart to secure the widow's interest to be determined at the audit of the said decedent's estate, and payment of the same, interest and principal, to be secured by proper recognizances.

CORDILLA KISNER,
C. N. KISNER,
Administrators.
ELLIOTT P. KISNER,
Attorney. 49-51

ORPHANS' COURT SALE.

Estate of Elizabeth B. Ashelman, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, Wilkes-Barre, on Saturday, December 22, 1883, at 10 o'clock A. M., the surface of all that piece of land in the borough of West Pittston, beginning at a corner on Luzerne avenue, thence along said avenue 51 feet to a corner on line of lands of J. S. Carpenter, thence along said lands 216 feet to a corner on line of other lands of said J. S. Carpenter, thence along said lands 43 1/2 feet to a corner on line of lands of one Sickler, and thence along said lands 216 feet to the place of beginning; all improved, with a two-storied frame dwelling house thereon; excepting and reserving all coal and other minerals.

TERMS OF SALE—\$200 down, and balance on confirmation of sale and delivery of deed.

PETER ASHELMAN,
Executor.
E. D. NICHOLS,
Attorney. 48-50

ORPHANS' COURT SALE.

Estate of Samuel Wolfe, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be sold at public sale, on the premises, on Wednesday, December 19, 1883, at 10 o'clock A. M., the following real estate in Union township, surveyed in the name of David McCormick, lying on west side of a public road, beginning at a corner now or formerly of lands of Erra Dodson, thence along said line to a corner in lands of Wesley Dodson, thence to said public road, thence along same to beginning, containing 2 acres, more or less; Improved.

TERMS OF SALE—One-half cash at sale, and balance on confirmation of sale and delivery of deed.

BENJAMIN GREGORY,
Administrator.
S. M. RHONE,
Attorney. 47-49

AUDITOR'S NOTICE.

In the Common Pleas of Luzerne county. In Equity. No. 6, October term, 1876. Wm. N. Monies et al., Executors, v. A. D. King. The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to examine the fifth partial account of George Bishop, Receiver of the late firm of Howell and King, and to ascertain what proportion of the fund now in his hands may be safely distributed, and to make distribution of the same, hereby gives notice that he will attend to the duties of his appointment, at his office, on Franklin street, in Wilke-Barre, on Saturday, December 8, 1883, at 10 o'clock A. M., at which time and place all parties interested are notified to appear and present their claims, or else be debarred from coming in on said fund.

THOMAS H. ATHERTON,
Auditor. 46-49

C. F. BOHAN,
a student at law in the office of Hon. G. M. Harding and John McGahren, Esq., will apply for admission at January term, 1884, to practice as an attorney in the several courts of Luzerne county. 49-51

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Parrish Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding of real estate connected therewith.

J. A. OPP,
Solicitor.

48-50

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved April 29, 1874, and the supplements thereto, on Monday, December 17, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Freeland Citizens Hose Company," the character and objects of which are the extinguishing of fires, and to have for that purpose hose, engines, ladders, trucks, etc.

JOHN D. HAYES,
Solicitor.

48-50

L UZERNE COUNTY, ss :
In the Court of Common Pleas of said county. No. 11, March term, 1883. Libel in divorce a vinculo matrimonii. Elizabeth Rees, by her next friend, Wm. Schaule, v. Jacob Rees. To Jacob Rees—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, the 22d of December, 1883, at 10 o'clock A. M.

GARRICK M. HARDING,
JOHN McGAHREN,
Solicitors.

49-50

L UZERNE COUNTY, ss :
In the Court of Common Pleas of said county. No. 576, October term, 1883. Libel in divorce a vinculo matrimonii. Watkins Winston v. Elizabeth Winston. The alias subpoena in the above case having been returned "that the said Elizabeth Winston cannot be found in Luzerne county," you, the said Elizabeth Winston, respondent, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Q. A. GATES, Sheriff.
Solicitor. 48-51

L UZERNE COUNTY, ss :
In the Court of Common Pleas of said county. No. 4, October term, 1883. Libel in divorce a vinculo matrimonii. Moses Miller v. Lephy Louisa Miller. The alias subpoena in the above case having been returned "that the said Lephy Louisa Miller cannot be found in Luzerne county," you, the said Lephy Louisa Miller, respondent, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
Solicitor. 49-50

49-50

L UZERNE COUNTY, ss
In the Court of Common Pleas of said county. No. 109, February term, 1883. Libel in divorce a vinculo matrimonii. Margaret A. Seibert, by her next friend, Henry Klinger, v. W. G. Seibert. To W. G. Seibert—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, December 15, 1883, at 10 o'clock A. M.

ELLIOTT P. KISNER,
Solicitor.

48-49

L UZERNE COUNTY, ss :
In the Court of Common Pleas of said county. No. 460, October term, 1883. Libel in divorce a vinculo matrimonii. John Leinbach v. Mary Alice Leinbach. The alias subpoena in the above case having been returned non est inventus, you, the said Mary Alice Leinbach, are hereby notified to appear at said court, on Monday, January 7th, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
GEO. H. TROUTMAN, Sheriff.
Solicitor. 47-50

L UZERNE COUNTY, ss :
In the Court of Common Pleas of said county. No. 47, October term, 1882. Libel in divorce a vinculo matrimonii. Sarah D. Day, by her next friend, Jonah Howell, v. R. Emory Day. The alias subpoena in the above case having been returned non est inventus, you, the said R. Emory Day, are hereby notified to appear at said court, on Monday, January 7, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,
B. McMANUS, Sheriff.
Solicitor. 46-49

W. S. PARSONS,
ALDERMAN,
WILKES-BARRE, PA.

WILLIAM S. McLEAN,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

PATENTS

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THE LUZERNE LEGAL REGISTER.

VOL. XII.

FRIDAY, DECEMBER 14, 1883.

No. 50.

Court of Common Pleas of Luzerne County.

BROWN *v.* PETERS.

1. Where a lease has the name of A. as lessee in the body of the paper, and is signed by A., and also by B., with the word "ball" added to his name, it is a joint undertaking by both.
2. As between themselves, they are principal and surety; in favor of the lessor, they are both principals.

Rule for a new trial.

The opinion of the court was delivered October 29, 1883, by

RICE, P. J.—In the body of the lease, upon which this action was brought, only the names of James S. Brown, as lessor, and Benjamin F. Warner, as lessee, appear, but is signed and sealed not only by them, but also by Owen A. Peters, in front of whose name appears the word "bail." We charged the jury that the defendant could not be held as a joint lessee, nor as a surety or guarantor, and left it to them to say whether the defendant had collected the rent from Warner and had not paid it over, as testified to by the plaintiff.

After a more careful examination of authorities, which were not cited to us upon the trial, we are satisfied that in thus charging as to the defendant's liability upon the written instrument we erred. The case of *Fidler v. Hershey* (9 Nor. 363) seems to be in point. That was an action to recover rent. In the body of the lease the name of Householder alone appeared, but Spangler and Fidler signed as securities. The action was defended by Fidler alone, and upon writ of error taken by him the court said:

"The evidence tended to show, and the jury found, that there was a lease signed by Householder, Spangler, and Fidler. As between themselves, Householder was principal, and Spangler and Fidler his sureties, and though Hershey" (the lessor) "had knowledge of that relation, they were jointly liable to him." The case of *Kleckner v. Klapp* (2 W. & S. 44) is still more to the point. It was an action to recover rent. In the body of the lease *Kleckner* and Charles are named as lessor and lessee respectively. It was signed by them, and also by Klapp, who added to his signature the word "surety." The court, in holding that he was liable, said: "This is exactly the case of *Croddock v. Armor*, in which such a marginal annexation to the name of one of the parties was not allowed to change his character of promissor to that of guarantor." In the case of *Klapp v. Kleckner* (3 W. & S. 519) the instrument was held to be a joint and several obligation. In the case of *Croddock v. Armor* (10 W. 258) the surety annexed to his signature to the note in suit the words, "security for the fulfilment of the above." The court said: "They are not technically words in a contract of guarantee, and the juxtaposition of the signature, as well as the absence of apt words to indicate a contingent responsibility, shows that the parties intended to be jointly bound." See, also, upon the question raised as to the statute of frauds, *Paine v. Stackhouse*, 2 Wr. 302-306. These authorities clearly show that there was error in our instructions upon this point. We are not satisfied that there was any mistake in our instructions as to the repairs made by the defendant.

The rule is made absolute.

E. A. Lynch, Esq., for plaintiff.

James Bryson, Esq., for defendant.

Court of Common Pleas of Luzerne County.

COMMONWEALTH *ex rel.* BUTLER v. WHITAKER *et al.*

Sheriff—Action against—Former recovery.

1. The remedies against a sheriff by personal action and by suit on his official recognizance are cumulative, and a recovery without satisfaction in the former is not a bar to the latter.
2. *It seems* that a judgment against the sheriff in a personal action is not conclusive, as to the damages at least, against the purchaser of land bound by the lien of the recognizance in a subsequent suit upon the recognizance.

Case stated.

The opinion of the court was delivered August 29, 1881, by

RICE, P. J.—This is a *scire facias* issued on the recognizance of the defendant, late sheriff of the county. More than five years having elapsed, the writ was issued against him alone, with notice to Theodore Smith, *terre tenant*. There has previously been a recovery and judgment against the defendant in a personal action for the same cause of action. Two questions were raised on the argument which require consideration.

1. Is the judgment in the personal action referred to evidence, either conclusive or *prima facie*, in the present action, as against the *terre tenant*, who became a purchaser of the land bound by the lien of the recognizance? It would seem that the judgment is not conclusive, as to the damages at least, for the *terre tenant* was not a party to that action, nor did he have notice of it. Comlth. v. Duncan, 8 Barr, 93; Carmach *et al.* v. Comlth., 5 Binney, 184 But, independently of the judgment, the cause of action and the amount of damages are admitted and agreed to by the terms of the case stated, and, therefore, we need not further discuss this question. We refer to the question because it was raised on the argument.

2. The second inquiry is, whether the judgment in the personal action extinguished, or is a bar to, the right of action by *scire facias* on the recognizance? There seems to be here little room for argument, for almost precisely the same question was raised

and decided in the negative in *Carmach et al. v. Commonwealth* (5 Binney, 183). In that case it appeared that an action of trover had been prosecuted to judgment against the sheriff, and subsequently a suit was brought on the recognizance against him and his sureties for the same cause of action. It was urged by the defendants that the judgment in the action of trover was an extinguishment of the recognizance, as to the sheriff at least, and, therefore, a bar to the suit against *him* and the sureties. Chief Justice Tilghman, in disposing of this contention, said it was neither an extinguishment of the recognizance, nor a bar to the suit. "An extinguishment it cannot be, because it was not an action on the recognizance, and nothing but a judgment on the recognizance could operate as an extinguishment. Neither is it a bar, because no satisfaction has been received. A man may have two securities or two remedies for the same debt, and pursue both till satisfaction obtained. The common security for money lent is by bond and mortgage; yet it was never supposed that judgment, without satisfaction on the bond, was a bar to a suit on the mortgage." Many analogous cases might be cited, but we will only refer to one, because it is not encumbered by any question growing out of a difference in the parties to the actions. In the case of *Powell v. Wyoming Valley Mfg. Co.* (8 W. N. C. 293; 1 Kulp, 92) it was held, that where the owner and contractor were the same person, a recovery in a personal action against him for materials furnished was no bar to a subsequent suit on the mechanic's lien. In principle, we can see no distinction between the cases. We conclude that the remedies against the defendant by personal action and by suit on his official recognizance are cumulative, and that a recovery without satisfaction in the former is not a bar to the latter.

And now, August 29, 1881, in accordance with the stipulation of the case stated, judgment is entered for the plaintiff against A. Whitaker, defendant, and Theodore Smith, *terre tenant*, for the sum of \$205.98, with interest from May 25, 1881; amount to be computed by prothonotary.

G. Mortimer Lewis and E. G. Butler, Esqs., for plaintiff.
Messrs. Coons and Shortz, for defendants.

COMMON PLEAS TRIAL LIST—JANUARY TERM, 1884.

FIRST WEEK—JANUARY 14, 1884

NO.	PL'FFS' ATT'YS.	PLAINTIFFS.	DEFENDANTS.	DEFTS' ATT'YS.	NO.	TERM.	YR.	ACTION.	PLEA.
1	Hines	Use of W. H. Hines.	Charles Parrish & Co	P., D. & F	659	Oct.	1882	Appeal	Non ass., pay't w. leave, setoff, &c.
2	J. L. L.	Malachi Sullivan	Phoenix Coal Co	Ferris	651	Oct.	1883	Appeal	Non assumpt, pay't with leave, &c.
3	J. L. L.	John Martin	C. Strauser et al	Gates	397	Nov	1883	Appeal	Nil debit.
4	J. L. L.	Edward Sweeney	Paul Suchorski et al	Gates	368	Nov	1883	Appeal	Nil debit.
5	Kyman, Bennet	Summer, Reed, W. & Co	George S. Homet	Strauss, McL. & J	81	Jan.	1882	Interpleader	Usual plea.
6	J. T. L.	Bertha Codrill	County of Luzerne	Harding, R. & L	513	May	1882	Interpleader	Usual plea.
7	Harding, McG	Arnold Whitaker et al	Franklin Coal Co	D. & A.	276	Feb	1877	Fel. issue in debt	Nil debit, payment with leave, setoff.
8	Osborne, Woodw	Arnold Berreis et al	Frank Turner	Palmer	372	Sept	1877	Ejectment	Not guilty.
9	P., D. & F	Schoolley & Casterline.	R. Davis	Darlings	1065	Sept	1878	Appeal	Non ass., pay't w. leave, setoff, &c.
10	E. A. L	John Gallagher	John H. Pritchard	H. & B.	380	Sept	1879	Case	Not guilty.
11	Hahn	F. N. Kuesels	Thompson Derr & Bro	O'Neill, Gates	32	Jan.	1886	Ejectment	Not guilty.
12	R. T.	Samuel Frauenthal	Marrin McFadden et al	Harding, Derr, P	239	Jan.	1886	Case	Not guilty.
13	Ferris	M. Bolin & Co	Hiram Croop	Darlings	106	April	1880	Sci. fa. sur judgment	Nil debit, payment with leave, setoff.
14	Powell, Payne	Harrison Brandon	Turner Brothers	Osborne	478	Sept	1880	Tresp. vi et armis	Non assumpt, pay't with leave, &c.
15	Butler	John C. Wells	Butler Coal Co	Darlings, B. & W	294	Jan.	1881	Appeal	Not guilty.
16	Payne	G. B. Rommel	Butler Coal Co	Darlings	181	April	1881	Appeal	Not guilty.
17	E. A. L	James S. Brown	O. A. Peters	J. B.	414	May	1881	Appeal	Not guilty.
18	Lewis, Butler	S. M. Beard, Sons & Co	E. J. Mylotte et al	J. B.	269	May	1881	Appeal	Non cepit and property.
19	Jenkins	Evans, Thomas et al	Lawrence Croghan et al	Darte	97	June	1881	Ejectment	Not guilty.
20	P., D. & F.	Patrick Lenahan	Bernard Frauenthal	Harding, McG	18	Sept	1881	Ejectment	Not guilty.
21	Jenkins	James B. Drake	Fletcher B. Dodson et al	Gates, Brundage	453	Sept	1881	Ejectment	Not guilty.
22	O'Neill, Opp	Wm. Warnock et ux.	Borough of Nanticoke	Shook, Hines	504	Sept	1881	Trespas	Not guilty.
23	R	Michael M. Keading	Patrick McGraw	E. A. L	158	Oct.	1881	Case	Not guilty.
24	Payne, McG	James S. Shocum	P. & N. Y. C. & R. R. Co	Darlings, Palmer	17	Nov	1881	Assumpsit	Non ass., pay't w. l., &c., setoff, &c.
25	McCartney, Bedf	A. B. Rommel	Neal Sweeney et al	Powell, Gates	165	Nov	1881	Assumpsit	Non assumpt, pay't with leave, &c.
26	Hakes	A. M. Wases	John Sweeney et al	Gates	44	Nov	1881	Ejectment	Not guilty.
27	D. & A.	Francis Scarfoss	H. A. Ames et ux.	Butler	398	Jan.	1882	Appeal	Non assumpt, coverture.
28	Hill, Martin	John Elliott	Asa Gregory et al	P. H. C	58	Feb	1882	Appeal	Non assumpt, pay't with leave, &c.
29		Lucy J. Tuggle	Central Poor District	O'Neill	82	Feb	1882	Appeal	Non assumpt.
30			J. E. Leath et al	McLean, McC	7	Mar	1882	For. att. in debt.	Nul tiel record, &c.

SECOND WEEK—JANUARY 21, 1884.

1	Ricketts	Edward Laughlin	J. S. Miller	Gates	477	Feb	1871	D. S. B.	Nil debit, payment with leave, &c.
2	Ricketts, Palmer	Use of A. Robertson	Township of Hazle	Hoyt, Brundage	443	April	1875	Assumpsit	Non assumpt, pay't with leave, &c.
3	Ricketts	John H. Wilson	A. E. Bury	R	1026	Nov	1877	Case	Not guilty.
4	Ricketts	Samuel Heller	David J. Waller et al	Rayne	373	April	1879	Tr. qua. cla. frag	Not guilty.
5	Hahn	John Henscoter	J. C. Bonham et al	Phony	64	Sept	1879	Issue	Not guilty, accord and satisfac., &c.
6	Darlings, B. & W	Use of W. J. Romig	W. H. & B	W. H. & B	158	Jan.	1880	Appeal	Non assumpt, pay't with leave, &c.
7	Payne	Rice & Bro	Dry, Grier & Youngman	D. & A.	268	Jan.	1880	Debt	Nil debit, payment with leave, &c.
8	R. F. H., B.	Margaret Bannon	Charles Smith	Foster	351	Sept	1880	Appeal	Not assumpt.
9	M. L. & J.		James O'Donnell	J. T. L.	12	April	1881	Appeal	Not guilty.
10		City of Wilkes-Barre	Patrick McGrath	E. A. L.	12	April	1881	Sci. fa. sur mort	Payment with leave, &c.

SECOND WEEK—JANUARY 21, 1884—CONCLUDED.

NO.	PL'FFS' ATT'YS.	PLAINTIFFS.	DEFENDANTS.	DEF'TS' ATT'YS.	NO.	TERM.	YR.	ACTION.	PLEA.
11	Harding, McG	Patrick Haley et al	Pennsylvania Coal Co.	McClintock	373	April	1881	Case	Not guilty.
12	Hahn	Frederika Vollman	City of Wilkes-Barre	McLean	15	May	1881	Case	Not guilty.
13	Kline, T	Wm. Heintzleman	Hughes & Koening	Harding, McG	79	June	1881	Case	Not guilty.
14	Harding, McG	E. L. Underwood	Geo. W. Lueder	McL. & J.	129	June	1881	Trover and conv	Not guilty.
15	Gates	Henderson Bonham	Borough of Plymouth.	McAlarney	50	Sept	1881	Case	Not guilty.
16	Hahn	Dr. P. Yost	E. W. Miller	Harding, McG	494	Sept	1881	Appeal	Non ass, pay't w. leave, &c., setoff.
17	K	H. Zetterberg	Dan Showlin	Cannon	617	Sept	1881	Appeal	Nil debit, payment, &c.
18	McAlarney	John Drew	Gaylord Coal Co	Payne	163	Oct	1881	Case	Not guilty.
19	Harding, B.	Frank Malino	Jeddo Coal Co	McClintock	92	Nov	1881	Assumpsit	Non assumpsit, with leave, &c.
20		Jacob Lewis	M. Jevons et al	Payne	183	Nov	1881	Assumpsit	Non assumpsit, pay't with leave, &c.
21		Dorothea Kaufman	Philip Keller	Harding, McG	288	Nov	1881	Appeal	Not guilty.
22	McL. & J.	Henry Cohen	B. Burgunder	E. P. D. R	169	Jan	1882	Case	Not guilty.
23	McCartney	Geo. S. Plouts et ux	City of Wilkes-Barre	McL. & J.	81	Feb	1882	Assumpsit	Not guilty, setoff, pay't with l., &c.
24	McCartney	Samuel Crow, dec'd	Hanover Township	Harding, McG	122	Feb	1882	Case	Not guilty.
25	Hines	John M. Maxfield	Joseph Hendler	Shonk	617	Mar	1882	Case	Non cul.
26	T. L.	L. C. Darte	F. D. McCarty	Harding, Hines	132	Mar	1882	Debt	Non ass., payment with leave, setoff.
27	Darte	Henry Bone	Jacob Shellhammer	Payne	224	Mar	1882	Debt	Nil debit, payment with leave, setoff.
28	Harding, McG	George Hughes	John Fernau et al		218	May	1882	Appeal	Non ass., payment with leave, setoff.
29	Sturges	Wash Butcher's Sons			353	May	1882	Debt	Nil debit.

ORPHANS' COURT ARGUMENT LIST.

SATURDAY, DECEMBER 29, 1883.

1	In Re Estate of Jacob Drum, deceased	Brundage, Kisner	Exceptions to accounts of Executor.
2	In Re Estate of John Peters, deceased	McGahren, Lemahan, Brundage	Exceptions to report of audit.
3	In Re Estate of Thomas Lewis, deceased	Gates	Exceptions to report of Examiner.
4	In Re Estate of A. C. Nicely, deceased	McLean, Walker	Exceptions to report of audit.
5	In Re Estate of Philip Weiss, deceased	Brundage	Exceptions to report of audit.
6	In Re Estate of William Santee, deceased	O'Neill, Hand	Exceptions to final account of Administrator.
7	In Re Estate of Keuben Seybert, deceased	R., Gates	Exceptions to report of audit.
8	In Re Estate of Gwennie Davis, deceased	Connolly, Davis, Wells	Exceptions to partial account of Executor.

W. S. PARSONS,
ALDERMAN,
WILKES-BARRE, PA.

WILLIAM S. MCLEAN,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

QUARTER SESSIONS ARGUMENT LIST.

MONDAY, JANUARY 7, 1884.

1	In Re Road in Newport Township	McL. & J., Darlings, Hines
2	In Re Commonwealth v. R. H. Holgate et al.	Why Holgate and Ridgway shall not be discharged from payment of costs.
3	In Re Road in Plains Township	McClintock
4	In Re Private Road in Kingston Township	Exceptions to report of viewers.
5	In Re Removal of Samuel Emery, Constable.	Exceptions to report of viewers.
6	In Re Smith & Franz v. Commonwealth	Why vacancy shall not be filled. Why prosecutor shall not be exonerated from payment of costs.

COMMON PLEAS CERTIORARI LIST.

MONDAY, JANUARY 7, 1884.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.
1	Lenahan	J. F. Donohue	S. L. Brown	McCartney
2	Farnham	David Natrath	Daniel Mintherin	Certiorari.
3	B. & N.	Wm. Moore & Co	Ira B. Wolfinger	Certiorari.
4	Hines	Thomas H. Bond	John H. Hettler	Certiorari.
5	E. A. L.	P. C. Trescott	T. P. Morgan	Certiorari.
6	J. L. L.	John Keeley	Peter Wentzell	Certiorari.
7	J. T. L.	Ann Derrick	William J. Johnson	Certiorari.
8	Gates	A. C. Watson	E. B. Mallison	Certiorari.
9	Hayes	I. Reforwich	William Lakessee	Certiorari.
10	P.	W. K. Warman	Thomas R. Thomas	Certiorari.
11	P.	Mrs. Elizabeth Carey	Thomas R. Thomas	Certiorari.
12	McG	John Lehr	Thomas R. Thomas	Certiorari.
13	D. & A.	W. Hayes et al	The Commonwealth	Certiorari.
14	D. & A.	S. N. Stetler & Co	Michael Regan	Certiorari.
15	J. T. L.	S. W. Boyd	City of Wilkes-Barre	Certiorari.
16	J. T. L.	Charles Parrish	Thomas McGlynn	Certiorari.
17	Strauss	B. Breakstone et al	Isaac Rice	Certiorari.
18	J.	Benjamin Armstrong	George Sager	Certiorari.
19	Trouman	Samantha Crevelling et al	Henry Kendig	Certiorari.
20	J.	Jefferson Arnold	Ephraim Gregory	Certiorari.
21	Ryman	John S. Compton	David L. Davis	Certiorari.

COMMON PLEAS ARGUMENT LIST.

TUESDAY, JANUARY 8, 1884.

NO.	PLAINTIFFS' ATTORNEYS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
1	C. B. Jackson, Farnham	Seth B. Bowman	Daniel F. Seybert	For new trial.
2	Halsey	Louchheim Bros	A. Frauenthal	Brundage
3	J. L., McManus	Patrick Quinn	Linderman, Skeer & Co.	For new trial.
4	Halsey	John N. Edinger	Lehigh Coal and Nav. Co.	For new trial.
5	Hahn	Maria Wolf	Peter Staub	R
6	Ferris	Andrew Bryden	Shable & Hill	For new trial.
7	J. L. L.	William Murray	Susquehanna Coal Co.	For new trial.
8	Darte	Thomas Jordan	George D. Couch et al	For new trial.
9	L.	A. Watt & Co.	T. B. Hart	For new trial.
10	Hannah	E. M. Bishop	G. W. Mooers	R
11	Farnham	In Re Assignment of	John Stuart	Exceptions to Auditor's report.
12	Derr	In Re Shiff's S. of R. E. of	George Lazarus	Exceptions to Auditor's report.
13	Powell	S. D. Vest	John Treffison	Exceptions to Auditor's report.
14	Payne	S. D. Vest	John L. Brown	Exceptions to Referee's report.
15	Palmer, Dewitt & Fuller	Luther Curtis	William Wiley	Exceptions to Referee's report.
16	Martin	Grace Gribben	Plymouth Coal Co	Exceptions to Referee's report.
17	Harding, McG	J. C. Coon	County of Luzerne	Exceptions to Referee's report.
18	Kulp, Payne	E. B. Yordy	County of Luzerne	Exceptions to Referee's report.
19	McLean	Luzerne County	Galland Bros. & Co	Case stated.
20	D. & A.	Payne Pettebone et ux et al	Lehigh Valley Coal Co. et al	Case stated.
21	Coons, S., P	Trustees of Propri. Sch. Fd	W. H. Jessup, Trustee	Demurrer.
22	Hines, B.	William Case	Adam Scheldel	Exceptions to Master's report.
23	Hines, B.	John W. Fenner et al	Clyde Spring Water Co	Bill and answer.
24	Farnham	In Re Assignment of John	Stuart for ben t of creditors	Demurrer.
25	Miller	W. F. Kirkendall	Henry Zeigler et al	To open partial account of Assignee, &c.
26	Darlings	Use of John M. Ward	W. H. Williams et al	To open judgment.
27	Connollys	Henry McCann	Excelsior Building Asso	To open judgment as to all except \$30.
28	Farnham	Henry Lutz, assigned	W. & P. Cordiner	On sequestrator to file account.
29	Hines	Elizabeth Haynes, Assignee	Patrick Mooney et al	To strike off judgment.
30	Hines	W. C. Odell	William Jones et al	To dissolve attachment.
31	Harding, McG	Lazarus Moyer, Assignee	W. K. Warman	To strike off claim No. 160.
32	Halsey	Louchheim Brothers	A. Frauenthal	To open judgment.
33	Foster	P. H. Tuska	Is Freeman & Co	To open judgment, &c.
34	Halsey	James V. Connor	W. L. Paine	To open judgment.
35	Halsey	William Jones	T. J. O'Malley	To open judgment.
36				To enter appeal nunc. pro tunc.
37	Powell, Payne	Richard Jones	James Bevan	To quash writ &c.
38	Halsey	C. Straw & Bro	David Mace	To open judgment.
39		Use of M. C. Earity	Borough of Pleasant Valley	For assignment of \$150.
40		Samuel Boyer	Samuel Winters et al	To appeal without payment of costs.
			McL. & J.	

WEDNESDAY, JANUARY 9, 1884.

41	R. & L.	Thompson & Kersey	Sallie H. Owen et al	Payne, Darlings, L	To strike off judgment, &c.
42	R. & L.	Maria Street	K. R. Owen et al	Payne, Darlings, L	To strike off judgment, &c.
43	Gates	Anna Walter	Frederick Walter	Hahn	For alimony.
44	Ferris	C. L. McMillan, Assignee	Phoebe A. McNeish		To open judgment.
45	S. N. R.	A. J. Norman	A. McL Dewitt et al	Gearhart, Ferris	To open judgment.
46	Jenkins	Use of C. B. Sharps	John D. Rogers et al	Brundage	To open judgment.
47	Hahn	F. C. Pilger	John Jones	Martin	To open judgment.
48	Coughlin	Joseph F. Welter	J. W. Edwards	Foster	To open judgment.
49	F. C. S.	Use of Pa. School, Sup. Co	School Dist. of Demison Tp	Osborne, Halsey	To stay mandamus execution.
50	J. & S.	T. F. Craig	D. F. Seybert	Hand	To stay execution.
51	J. T. L.	J. N. Landmesser et ux	Jacob Harriman et al	Payne	For subrogation.
52	Mosier	Vincent Ueacridge et ux	Vincent Shellcupaki	P. D. & F	To show cause of action, &c.
53	J. L. L.	In Re Lunacy of	Truxton Benedict	Martin	For traverse.
54	C. M. L.	A. R. Bacon	John Brady	Cannon	To open judgment.
55	Derr	Use of D. P. Ayars	A. P. O'Malley	T. L.	To strike off award.
56	Derr	Use of D. P. Ayars	Continental Insurance Co	McGahren	To set aside judgment.
57	Derr	Use of D. P. Ayars	Continental Insurance Co	McGahren	To set aside judgment.
58	Derr	Use of D. P. Ayars	Continental Insurance Co	McGahren	To strike off judgment.
59	Halsey	Comith. of Pennsylvania	James Higgs et al	McGahren	To set aside judgment.
60	Walker	John Blanchard, dec'd	Joseph Blanchard	Gates	To open judgment.
61	J. L. L.	Mrs. Samuel Clark	Patrick Quinn	McGahren	To open judgment.
62	Mosier	Charlotte Benedict, dec'd	John W. Benedict	P. D. & F	To open judgment.
63	J. L. L.	James Casey et ux	Pennsylvania Railroad Co	K	To strike off appeal.
64	J. L. L.	Use of Patrick Cox	Joseph Benson et al	Hand	To open judgment.
65	Kline	George Burt	Janet Burt	Ferris	To set aside appointment of Examiner.
66	G. M. L	J. E. Patterson, assigned	Pittston Knitting Co	McG	To open judgment.
67	Lamb	E. L. Dieffenderfer	Owen Cadfrey, dec'd		To strike off appeal.
68	E. A. L., McManus	E. C. Treskett	Thomas P. Morgan, dec'd	Kline, R	For setoff.
69	McAlarney	Monroe Curtis	L. J. Vandermark	Hakes	To open judgment.
70	Lamb	J. C. Morris	George Sickler	Gates	To open judgment.
71	McCartney	W. M. Miller	Frederick G. Black	J. L., J. T. L.	To strike off appeal.
72					To set aside bill of costs.

THURSDAY, JANUARY 10, 1884

73	Martin	Joseph Hess	Robert Shore	Hayes	To dismiss appeal.
74	Espy	F. B. Sheerer	May E. Sheerer	Gates	For alimony, &c.
75	J. & Son	Katie McAnany	Henry Saunders et al		To open judgment.
76	J. T. L.	Henry Kindig	Samantha Creveling et al	Troutman	To open judgment.
77	J. T. L.	L. J. Fogle & Co	John R. Davis	Opp	To permit appeal nunc. pro tunc.
78	D & A.	William Bayless	Reginald T. Hylton	Osborne	To open judgment as to all except \$84.
79	D & A.	Use of First Nat. Bank, P	Alva Tompkins	Osborne	To open judgment, &c.
80	Kisner, Troutman	Hazleton B. L. & T. Asso	Nicholas Bornelsen et al	Foster	To enter judgment for want of affidavit of defense.
81	Foster	G. W. Kirkendall, Assignee	Garner A. Parks	Robinson	To set aside execution to all except \$133.
82	J. Slosson Harding	Thomas Harris	S. P. Johnson	Phoenix	To enter judgment notwithstanding affidavit of defense.
83	McLean	County of Luzerne	T. C. Mullally et al	J. T. L.	To open judgment as to P. Jennings, Sr., et al.
84	J. L. L.	Simson R. King	William Wall	Gates	To strike off appeal.
85	Harding, McG	Joseph O'Donnell	Matthew Dalton	J. T. L.	To discharge upon common bail.
86	B	Com. of Pa. ex rel. Rowe	M. McNetrney		For quo warranto.
87	Ryman	George K. Hess	Charles Erb		To enter appeal nunc. pro tunc.
88		First Nat. Bank, Bath, N.Y	Lindsay & Norris	Bedford	To open judgment.

THURSDAY, JANUARY 10, 1884—CONCLUDED.

NO.	PLAINTIFFS' ATTORNEYS.	PLAINTIFFS.	DEFENDANTS.	DEFENDANTS' ATTORNEYS.	RULE.
89	Kisner	West Hazleton B. & L. As	I. B. Remman et al	W	For subrogation For subrogation. To set aside execution.
90	McL. & J., P. & Son	Calvin Hallock, dec'd.	W. O. Ferrell et al	Martin	
91	Edwards	William Maddock	William Gore et al		

66

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county. No. 46, October term, 1883. Libel in divorce a vinculo matrimonii. John Leimbach v. Mary Alice Leimbach. The alias subpoena in the above case having been returned non est inventus, you, the said Mary Alice Leimbach, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.
WILLIAM O'MALLEY, Sheriff.
47-1
GEO. H. TROUTMAN, Solicitor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county. No. 576, October term, 1883. Libel in divorce a vinculo matrimonii. Elizabeth Winston v. Elizabeth Winston. The alias subpoena in the above case having been returned "that the said Elizabeth Winston cannot be found in Luzerne county," you, the said Elizabeth Winston, respondent, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.
WILLIAM O'MALLEY, Sheriff.
48-51
Q. A. GATES, Solicitor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county. No. 4, October term, 1883. Libel in divorce a vinculo matrimonii. Moses Miller v. Lephy Louisa Miller. The alias subpoena in the above case having been returned "that the said Lephy Louisa Miller cannot be found in Luzerne county," you, the said Lephy Louisa Miller, respondent, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.
WILLIAM O'MALLEY, Sheriff.
49-53

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county. No. 47, October term, 1884. Libel in divorce a vinculo matrimonii. Sarah D. Day, by her next friend, Jonah Howell, v. R. Emory Day. The alias subpoena in the above case having been returned non est inventus, you, the said R. Emory Day, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.
WILLIAM O'MALLEY, Sheriff.
46-1
B. McMANUS, Solicitor.

LUZERNE COUNTY, ss:
In the Court of Common Pleas of said county. No. 11, March term, 1883. Libel in divorce a vinculo matrimonii. Elizabeth Rees, by her next friend, Wm. Schaule, v. Jacob Rees. To Jacob Rees—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Saturday, the 22d of December, 1883, at 10 o'clock A. M.
GARRICK M. HARDING, JOHN MCGAHREN, Solicitors.
49-50

NOTICE IS HEREBY GIVEN THAT AN application will be made under the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29th, 1874, and the supplements thereto, for the incorporation of an intended corporation, to be called "The Parrish Coal Company," the character and objects of which are the mining, preparing, shipping, selling, purchasing, and otherwise dealing in anthracite coal, and also the leasing, purchasing, and holding of real estate connected therewith.
J. A. OPP, Solicitor.
48-50

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporation," approved April 29, 1874, and the supplements thereto, on Monday, December 17, 1883, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Freeland Citizens Hose Company," the character and objects of which are the extinguishing of fires, and to have for that purpose hose, engines, ladders, trucks, etc.
JOHN D. HAYES, Solicitor.
48-50

ESTATE OF NATHAN HONTZ, LATE OF Slucum township, deceased.
Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to
STEPHEN HONTZ, Slucum, Pa.
D. O. COUGHLIN, Attorney.
45-50

PATENTS

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2

C. F. BOHAN,
a student at law in the office of Hon. G. M. Harding and John McGahren, Esq., will apply for admission at January term, 1884, to practice as an attorney in the several courts of Luzerne county. 49-51

ESTATE OF AMANDA E. LANING, LATE
of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**GEORGE C. SMITH,
E. P. DARLING,**
Wilkes-Barre, Pa.

49-2

ESTATE OF SARAH GUNTON, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**JAMES C. DRIESBACH,
WM. S. McLEAN,**
Attorney, Wilkes-Barre, Pa.

49-2

ESTATE OF MARY ANN DUFFY, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**FRANK TRACY,
WILLIAM KEATING,
JOHN T. LENAHAH,**
Attorney, Pittston, Pa.

47-52

ESTATE OF DAVID R. HOWELL, LATE OF
Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**LEVI HOWELL,
E. S. OSBORNE,**
Attorney, Kingston, Pa.

47-52

ESTATE OF WILLIAM LINDEN, LATE OF
Salem township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**F. E. BROCKWAY,
C. B. JACKSON,**
Attorney, Beach Haven, Pa.

48-1

ESTATE OF WILLIAM McLAUGHLIN, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**MARY HANEHAN,
JAS. L. LENAHAH,**
Attorney, Wilkes-Barre, Pa.

48-1

ESTATE OF JAMES R. LEWIS, LATE OF
Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**NANCY F. LEWIS,
T. H. B. LEWIS,**
Attorney, Trucksville, Pa.

48-1

ESTATE OF JOHN KENNEDY, LATE OF
the borough of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEORGE H. TROUTMAN,
Hazleton, Pa.

47-52

ESTATE OF CHARLOTTE WESLEY, LATE OF
Ross township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JONATHAN O. IDE,
Lehman, Pa.

48-1

ESTATE OF LOUIS EMORY, LATE OF THE
city of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. P. DARLING,
Wilkes-Barre, Pa.

49-2

ESTATE OF MINERVA STURDEVANT,
late of Peckville, Lackawanna county.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. J. STURDEVANT,
Wilkes-Barre, Pa.

49-2

ESTATE OF PATRICK McDONALD, LATE OF
Union township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**JAMES McDONALD,
D. L. O'NEILL,**
Attorney, Wilkes-Barre, Pa.

45-50

ESTATE OF HENRY MISSETT, LATE OF
Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**RICHARD MISSETT,
GEO. S. FERRIS,**
Attorney, Pittston, Pa.

45-50

ESTATE OF JOHN BOONE, LATE OF THE
township of Black Creek, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**ANNIE BOONE,
GEO. H. TROUTMAN,**
Attorney, Rock Glen, Pa.

50-3

ESTATE OF NABBY HAGERTY, LATE OF
Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**PATRICK B. HARRISON,
JAS. L. LENAHAH,**
Attorney, Wilkes-Barre, Pa.

46-51

ORPHANS' COURT SALE.

Estate of Reuben Kisner, dec'd. In Partition. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will expose to public sale, at the homestead farm, late the residence of said decedent, in Salem township, on Thursday, December 27, 1883, at 10 o'clock A. M., the following five tracts of land, situated in Salem township, viz.:

Purpart No. 1. Beginning at a chestnut post, a corner in line between lots 16 and 17 of the second division of Salem township, thence by lots 15 and 14, 73 8-10 perches to stone in line between lots 17 and 18, thence on said line by land of Henry Garrison 209 2-10 perches to stone, thence 14 perches to post, thence 16 perches to ash, thence 16 perches to hickory, thence 27 7-10 perches to post in line between lots 17 and 16, thence on said line 204 8-10 perches by land of D. F. Seybert to the place of beginning, containing 93 acres and 12 perches, neat measure, and being part of lot No. 17 in second division of Salem township; having thereon a frame dwelling house and stable.

Purpart No. 2. Beginning at a corner in line between lots 16 and 17 in the southern boundary line of said lots, thence by lands of George Seybert 42 36-100 perches to stone in line between lots 7 and 8, thence on said line by lands of George Seybert 123 2-10 perches to stone, thence 70 perches to stone in line between lots 7 and 8, thence on said line by land of J. F. Hicks 141 4-10 perches to stone, thence by land of Henry Garrison 39 perches to point in line between lots 17 and 18, thence on said line by land of Henry Garrison 30 15-100 perches to stone, thence by purpart No. 1, 14 perches to post, thence by same 16 perches to ash, thence by same 16 perches to hickory, thence by same 27 7-10 perches to post in line between lots 16 and 17, thence on said line 43 8-10 perches to the place of beginning, containing 75 acres and 93 perches, neat measure, and being part of lots 7, 17, and 18 of second division of Salem township; having erected thereon a large brick dwelling house, frame dwelling house, bank barn, wagon shed, and other outhouses.

Purpart No. 3. Beginning at a point in line between lots 6 and 7 of the second division of Salem township, thence by southern boundary line of purpart No. 2, 70 perches to stone in line between lots 7 and 8, thence on said line 137 4-10 perches to corner, thence by Susquehanna river 71 3-10 perches to corner in line between lots 6 and 7, thence by land of Mansfield and J. F. Hicks 132 6-10 perches to the place of beginning, containing 38 acres and 155 perches, neat measure, and being part of lot No. 7 in the second division of Salem township.

Purpart No. 4. Beginning at a corner at the Lackawanna and Bloomsburg Railroad in the line of land of D. F. Seybert, thence along the same 6j 6-10 perches to corner, thence along lands of George B. Seybert 73 2-10 perches to western line of purpart No. 2, thence along the same 70 2-10 perches to Lackawanna and Bloomsburg Railroad, thence along the same 73 4-10 perches to place of beginning, containing 32 acres and 27 perches, and being part of lot No. 8 in the second division of Salem township.

Purpart No. 5. Beginning at a corner of land late of Wallace Seybert, thence 240 perches, thence 95 1-10 perches, thence 240 perches, thence 95 1-10 perches to place of beginning, containing 130 acres, more or less, and being lot No. 12 in the third division of Salem township.

TERMS OF SALE—The amount set apart to secure widow's interest to be charged proportionately upon purparts Nos. 2, 3, and 4, the interest thereof to be paid to her semi-annually from and after the date of confirmation during her life, and the principal thereof to be paid at her death to the parties legally entitled thereto. In case of purpart No. 1, 10 per cent of purchase money to be paid on day of sale, 15 per cent on confirmation of sale, 25 per cent in one, two, and three years from the day of confirmation, with interest from confirmation; deferred payments to be secured by bond and mortgage on the premises. In the case of purpart No. 5, 25 per cent to be paid on day of sale, 25 per cent on confirmation of sale, and the balance, with interest from confirmation, six months from day of confirmation; deferred payment to be secured by bond,

with one sufficient surety, and mortgage on the premises. In case of purparts Nos. 2, 3, and 4, 10 per cent of the purchase money to be paid on day of sale, 15 per cent on confirmation of sale, and such portion of the balance not required to be set apart to secure the widow's interest, with interest thereon from the day of confirmation, to be paid in two equal annual payments from and after the confirmation. The amount of the two said annual payments and the amount to be set apart to secure the widow's interest to be determined at the audit of the said decedent's estate, and payment of the same, interest and principal, to be secured by proper recognizances.

CORDILLA KISNER,
C. N. KISNER,
ELLIOTT P. KISNER, Administrators.
Attorney. 49-51

ORPHANS' COURT SALE.

Estate of Elizabeth B. Ashelman, deceased. By virtue of an order of the Orphans' Court of Luzerne county, there will be exposed to public sale, at the Arbitration room, in the Court House, Wilkes-Barre, on Saturday, December 22, 1883, at 10 o'clock A. M., the surface of all that piece of land in West Pittston, Luzerne county, beginning at a corner on Luzerne avenue, thence along said avenue 51 feet to a corner on line of lands of J. S. Carpenter, thence along said lands 216 feet to a corner on line of other lands of said J. S. Carpenter, thence along said lands 43 3/4 feet to a corner on line of lands of one Sickler, and thence along said lands 216 feet to the place of beginning; all improved, with a two-storied frame dwelling house thereon; excepting and reserving all coal and other minerals.

TERMS OF SALE—\$200 down, and balance on confirmation of sale and delivery of deed.
PETER ASHELMAN,
E. D. NICHOLS, Executor.
Attorney. 48-50

ORPHANS' COURT SALE.

Estate of John R. Walters, dec'd. By virtue of an order of the Orphans' Court of Luzerne county, the undersigned will sell at public sale, on the premises, on Saturday, the 29th day of December, 1883, at 4 o'clock P. M., all that lot of land in the borough of Plymouth, beginning at a corner on the west side of Gardner street, thence along land of Thomas Jones 125 feet to a corner on line of land late of estate of Samuel Wadhams, deceased, thence along said Wadhams' line 50 feet to a corner, thence along line of land retained by the widow of said decedent 126 feet to a corner, thence along Gardner street 50 feet to the place of beginning, containing 6300 feet of land, more or less; the coal is owned by Henderson Gaylord's estate; all improved, with a two-storied frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$100 down, 50 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, in six months from confirmation of sale; deferred payments to be secured by bond and mortgage on the premises.

DANIEL B. LEWIS,
GEO. W. SHONK, Administrator.
Attorney. 50-52

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle with a horse and wagon has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by M. H. Mantanye, and that said license will be asked for in the court aforesaid, on Monday, January 28th, 1884, at 10 o'clock A. M.

L. W. DEWITT,
Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application for a license to peddle on foot has been filed in the office of the Clerk of the Court of Quarter Sessions of Luzerne county by A. Simons, and that said license will be asked for in the court aforesaid, on Monday, the 28th day of January, 1884, at 10 o'clock A. M.

G. L. HALSEY,
Solicitor.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, January 5th, A. D. 1884, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

1
Suit of Morris & Walsh v. Samuel Price, Administrator of William Collins, deceased.

73 April term, 1879. Debt, \$202.13. Vend. ex. 40 January term, 1884. E. G. Butler, Att'y.

All that tract of land in the township of Pittston, beginning at a corner of land now or late in possession of N. Lampman in warrantee line between Jonathan Hancock and David Young warrantees, thence south 220 rods to the Jonathan Large warrantee line, thence along the said Jonathan Large line west 54 rods to a corner, thence north 220 rods to a corner, and thence east 54 rods to the place of beginning, containing about 75 acres, being parts of the Jesse Fell and David Young warrantees; all improved, and having erected thereon a 2-story frame dwelling house, frame barn, and other outbuildings; also a fruit orchard.

2
Suit of Morris & Walsh v. M. W. Morris, Executor of Sally Ann Collins, deceased.

25 November term, 1882. Debt, \$146.59. Fi. fa. 39 January term, 1884. E. G. Butler, Att'y.

All the following lot of land in the township of Pittston, beginning at the southeasterly corner of lands in possession of Truxton Benedict in line of the Jonathan Large warrant, thence along said Large warrant line east 347 perches to a line of Wm. Parker's lot, thence along the same north 225 perches to a corner of land now or late of Norman Lampman, thence along his line and line of land sold to R. D. Lacey west 411 perches to the Pittston certified township line, thence along the same 127 perches to a corner of said Benedict's possession, thence along the line of the same 121 perches to a corner, thence along another line of said Benedict's possession south 119 perches to the place of beginning, containing 527 acres and 122 perches, be the same more or less, being part of Jesse Fell, Jonathan Hancock, and David Young warrantee; all improved, with three two-story dwelling houses, two barns, other outbuildings, and a fruit orchard thereon.

3
Suit of Caroline M. Pettibone v. Ellen M. Reese, defendant, and Mary C. Pringle and Nelson G. Pringle, terre tenants

15 October term, 1883. Debt, \$707.65. Lev. fa. 51 January term, 1884. Dickson & Atherton, Att'ys.

All the following tract of land in the borough of Kingston, beginning at a corner on the main road leading through said borough, thence by lands of Thos. Wambold 36 feet, thence 162 feet to a corner, thence by lands formerly owned by Thomas Myers 60 feet, thence by lands owned by Dr. R. H. Tubbs 195 7-10 feet to a post on said main road, thence along said road 68 feet to the place of beginning, containing 48 perches of land, more or less; all improved, with two 2-story frame dwellings, frame barn, fruit trees, and well.

4
Suit of the Executors of A. C. Laning, deceased, v. Sylvester V. Ritter.

164 January term, 1884. Debt, real, \$5,000. Fi. fa. 44 January term, 1884. Darlings, Wheaton, Att'ys.

All that piece of land in the city of Wilkes-Barre, beginning at the south corner of Hancock and Northampton streets, thence along Northampton street 80 feet, thence 200 feet, thence 80 feet, thence 200 feet to the place of beginning, containing 16,000 square feet; all improved, with one two-story and French roof brick dwelling house, one frame house, barn, and other outbuildings thereon, together with fruit trees thereon.

5
Suit of Ella H. Emery v. Byron Shoemaker.

548 January term, 1879. Debt, \$3,150. Lev. fa. 38 January term, 1884. Darling, Wheaton, Att'ys.

All that tract of land in the city of Wilkes-Barre, on River street, below Ross street, beginning at a corner of land of Elizabeth D. Dennis on River street, thence along the line of said land at right angles to said River

street 258 feet, more or less, to a corner in the line of land belonging to the Home for Friendless Children, thence by said land 50 feet to a corner, thence along land of Charlotte Butler at right angles to said River street 248 feet, more or less, to said River street, and thence along said street 50 feet to the place of beginning, containing about 12,400 square feet of land, more or less; all improved, with a two-story frame dwelling house, with one-story building attached to rear, fruit trees, and other outbuildings thereon.

6
Suit of Henry H. Welles, Assignee, v. John Davis.

139 October term, 1883. Debt, real, \$4,914. Alias vend. ex. 36 January term, 1884. Fisher, Wheaton, Att'ys.

All that lot of land in the city of Wilkes-Barre, beginning at the southerly corner of Main and Ash streets, thence southwesterly along Main street about 80 feet to land of Dennis McQuillan, thence along the same southeasterly about 186 feet to a corner, thence northeasterly about 75 feet to said Ash street, thence northwesterly along same about 186 feet to the beginning, together with a three-story brick house with store room, a frame barn, and other outbuildings.

The above described property will be sold in four parcels, as follows:

1. A parcel fronting upon Main street, being the corner of Main and Ash streets, and the lot upon which is the brick building above described, being 32 feet in front and rear, and 141 feet in depth.

2. A parcel adjoining said parcel one, and also fronting upon Main street, being 24 feet in front and rear, and 141 feet in depth.

3. A parcel adjoining said parcel two on the one side and lands now of F. J. Helfrich on the other side, also fronting upon Main street, being 24 feet in front and rear, and 141 feet in depth.

4. A parcel fronting upon Ash street, upon which is the barn above described, said parcel being 45 feet in front and rear, and 80 feet in depth.

7
Suit of A. Nesbitt v. Jefferson Arnold.

392 September term, 1880. Debt, \$5,000. Fi. fa. 47 January term, 1884. Gates, Att'y.

1. All that lot of land in Union township, beginning at a stone corner, thence along land of Ephraim Gregory 60 perches to a stake and stone corner, thence 136 perches to a stake and stone corner, thence by land late of Caleb Benscoter 60 perches to a corner, thence 136 perches to the place of beginning, containing 51 acres, more or less; all improved, with one two-story frame house, barn, shed, outbuildings, fruit trees, etc.

2. All that lot of land in Union township, beginning at a corner in line of land of Stephen Hartman, thence 39 perches to a corner, thence 34 perches to a corner, thence 156 perches to land of Peter Hoppes, thence 47 perches to corner in line of Jefferson Arnold's land, thence 53 4-10 perches to corner in line of land of Solomon Beer, thence 133 perches to place of beginning, containing 61 acres and 120 perches, more or less; excepting thereout about 44 acres sold to Jacob Hoppes; all improved.

3. All that lot of land in Union township, beginning at a corner in line of Ephraim Gregory's land, thence 59-10 perches, thence 27 perches to a corner, thence 59-10 perches, thence 27 perches to the place of beginning, containing 1 acre of improved land, more or less.

The three above described tracts adjoining each other, and making one farm.

8
Suit of Jefferson Arnold, assigned to A. Nesbitt, v. J. M. Holmes.

706 October term, 1882. Debt, \$55.40. Vend. ex. 27 January term, 1884. Gates, Att'y.

1. All that lot of land in the township of Ross, beginning at a corner in line of the warrantee surveys of John Murray and Joseph Moss, thence 81 perches to a corner, thence 79 perches along lands of Jacob Battles to a corner, thence along the William Connolly survey 81 perches to the Jos. Moss survey, thence 79 perches to the place of beginning, containing 39 acres and 159 perches of land, more or less; improved, with a two-story frame house, orchard, outbuildings, etc., thereon.

2. A lot of land in the township of Fairmount.

bounded on the north by lands of A. Nicholson, on the east by the public road leading from Harveyville to North Mountain, on the south by lands of the heirs of Jas. Laycock, and on the west by lands late of Shadrach Laycock, containing about 57 perches of land, more or less; improved, with a two-story frame dwelling house with kitchen attached, fruit trees, and out-buildings thereon.

Suit of Myers Elston v. J. Matthias Hollenback. 124 May term, 1883. Debt, \$264.25. Vend. ex. 33 January term, 1884. Kulp, Att'y.

All that lot of land in the township of Plains and the city of Wilkes-Barre, Luzerne county, Pa., bounded northerly by lands of J. W. Hollenback, easterly by estate of J. B. Wood and others, southerly by lands of E. H. Chase and others, westerly by J. W. Hollenback, containing 35 acres, more or less, being same land lately covered with water, and known as the Hollenback mill dam, or Mill creek.

Suit of Sturdevant & Goff, assigned to Edward W. Sturdevant in trust for Leah Sturdevant, v. William G. Stout.

7 November term, 1883. Debt, real, \$1,820. Vend. ex. 35 January term, 1884. Powell, Att'y.

All that lot of ground in the city of Wilkes-Barre, on the west side of Hazle street, beginning at a stake in the west side of said Hazle street, distant about 179 feet southward from the south rail of the present main track of the Lehigh Valley Railroad, thence along said Hazle street 50 feet to a corner of the lot deceded to Michael J. Philbin, thence 100 feet to a 12-foot alley, thence along said alley 50 feet to a corner, and thence 100 feet to the place of beginning; all improved, with one two-story frame building, used as a shop, out-buildings, and other improvements thereon.

Suit of L. D. Shoemaker v. Edmund Russell, John Russell, and Thomas Russell.

12 November term, 1883. Debt, \$1,093.13. Lev. fa. 9 January term, 1884. Shoemaker, Att'y.

A piece of land in the borough of Plymouth, beginning at a corner on Main street, thence along land sold to Samuel Snyder 147 3-10 feet to a corner, thence 35 feet to a corner, thence along land sold to Wm. Davis 147 3-10 feet to a corner, thence along said Main street 35 feet to the beginning, containing 15,155 square feet of surface or soil, be the same more or less; all improved, with one large two-story frame building, used and occupied as a saloon and dwelling, and other out-buildings thereon.

ESTATE OF MARTIN T. MITCHELL, LATE of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

LEWIS COHEN, Pittston, Pa. Attorney. 50-3

ESTATE OF WILSON W. WEBB, LATE OF Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ELIZABETH WEBB, Wilkes-Barre, Pa. Attorney. 50-3

ESTATE OF ISABELLA MITCHELL, LATE of Plains township, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

R. C. MITCHELL, Plainsville, Pa. Attorney. 50-3

E. P. & J. V. DARLING, Attorneys. 50-3

ESTATE OF DAVID R. HOWELL, LATE OF Franklin township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

LEVI HOWELL, Kingston, Pa. Attorney. 47-52

ESTATE OF AMANDA E. LANING, LATE of Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEORGE C. SMITH, E. P. DARLING, Wilkes-Barre, Pa. 49-2

ESTATE OF SARAH GUNTON, LATE OF Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JAMES C. DRIESBACH, Wilkes-Barre, Pa. Attorney. 49-2

ESTATE OF JOHN KENNEDY, LATE OF the borough of Hazleton, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEORGE H. TROUTMAN, Hazleton, Pa. Attorney. 47-52

ESTATE OF CHARLOTTE WESLEY, LATE of Ross township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JONATHAN O. IDE, Lehman, Pa. 48-1

ESTATE OF LOUIS EMORY, LATE OF THE city of Wilkes-Barre, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. P. DARLING, Wilkes-Barre, Pa. Attorney. 49-2

ESTATE OF MINERVA STURDEVANT, late of Peckville, Lackawanna county.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

E. J. STURDEVANT, Wilkes-Barre, Pa. Attorney. 49-2

ESTATE OF JAMES R. LEWIS, LATE OF Kingston township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

NANCY F. LEWIS, Trucksville, Pa. Attorney. 48-1

ESTATE OF JOHN MITCHELL, LATE OF
Plains township, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**JOHN L. MITCHELL,
W. W. AMSBRY,**

E. P. DARLING, Plains, Pa. 50-3
Attorney.

ESTATE OF MARY ANN DUFFY, LATE OF
Pittston, deceased.

Letters of administration upon the above named state having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

**FRANK PRACY,
WILLIAM KEATING,**

JOHN T. LENAHAH, Pittston, Pa. 47-52
Attorney.

ESTATE OF WILLIAM LINDEN, LATE OF
Salem township, deceased.

Letters of administration upon the above named state having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

F. E. BROCKWAY,

C. B. JACKSON, Beach Haven, Pa. 48-1
Attorney.

ESTATE OF WILLIAM McLAUGHLIN, LATE
of Wilkes-Barre, deceased.

Letters of administration upon the above named state having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

MARY HANEHAN,

JAS. L. LENAHAH, Wilkes-Barre, Pa. 48-1
Attorney.

ESTATE OF JOHN BOONE, LATE OF THE
township of Black Creek, deceased.

Letters of administration upon the above named state having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ANNIE BOONE,

GEO. H. TROUTMAN, Rock Glen, Pa. 50-3
Attorney.

ESTATE OF JOSEPH B. KELLEY, LATE OF
Plymouth township, deceased.

Letters of administration upon the above named state having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ELBERT C. DOUGLAS,

GEO. W. SHONK, Lovelton, Pa. 51-4
Attorney.

ESTATE OF ANN HARTLAND, LATE OF
Wilkes-Barre, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

OBIDIAH HARTLAND,

11-4 Wilkes-Barre, Pa. 51-1

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 460, October term, 1883. Libel in divorce a vinculo matrimonii. John Leinbach v. Mary Alice Leinbach. The alias subpoena in the above case having been returned non est inventus, you, the said Mary Alice Leinbach, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,

GEO. H. TROUTMAN, Sheriff. 47-1
Solicitor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 47, October term, 1882. Libel in divorce a vinculo matrimonii. Sarah D. Day, by her next friend, Jonah Howell, v. R. Emory Day. The alias subpoena in the above case having been returned non est inventus, you, the said R. Emory Day, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,

B. McMANUS, Sheriff. 46-1
Solicitor.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 4, October term, 1883. Libel in divorce a vinculo matrimonii. Moses Miller v. Lephy Louisa Miller. The alias subpoena in the above case having been returned "that the said Lephy Louisa Miller cannot be found in Luzerne county," you, the said Lephy Louisa Miller, respondent, are hereby notified to appear at said court, on Monday, January 14, 1884, at 10 o'clock A. M., to answer the complaint therein filed.

WILLIAM O'MALLEY,

49-52 Sheriff.

LUZERNE COUNTY, ss:

In the Court of Common Pleas of said county. No. 252, May term, 1882. Libel in divorce a vinculo matrimonii. Emma Harvey, by her next friend, Edward Enterline, v. C. S. Harvey. To C. S. Harvey—Please take notice that the court has granted a rule on you to show cause why a divorce a vinculo matrimonii shall not be made and entered in favor of the libellant, service of the subpoena having failed on account of your absence. Returnable on Monday, January 7th, 1884, at 10 o'clock A. M.

ALEXANDER FARNHAM,

51-52 Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, January 14, 1884, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Pleasant Hill Academy Association," the character and objects of which are to establish and support an institution for educational purposes, and to purchase the necessary real estate and erect a suitable building or buildings thereon.

GEO. W. SHONK,

51-1 Solicitor.

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Wednesday, January 16th, 1884, at 10 o'clock A. M., for the charter of an intended corporation, to be called "The Leek Cornet Band," of Pittston, Pa., the character and objects of which are the practice and promotion of instrumental music.

F. C. MOSIER,

51-1 Solicitor.

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, January 12th, A. D. 1884, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are numbered, to wit:

1
Suit of Isaac Rice v. Julia Cantwell, as Mrs. Thomas Cantwell, now Julia Donnelly, and Peter Donnelly. 215 January term, 1884. Debt, \$400.00. Fi. fa. 56 January term, 1884. Payne, Att'y.

The following lot of land on Pringle Hill, Kingston township, beginning at a corner on South street, thence in a southerly direction along the line of lands owned by Philip Hynes to land owned by the heirs of Samuel Hoyt, deceased, thence in a westerly direction along said Hoyt's land 75 feet to a corner, thence in a line parallel with the line of said Philip Hynes in a northerly direction to said South street, thence in an easterly direction in a line along said South street 75 feet to beginning; excepting and reserving all the coal and other minerals; all improved, with one two-story wood dwelling house and outbuildings thereon.

2
Suit of Michael Bradley v. Thomas L. Morgan and John J. Morgan, as Morgan & Son. 99 October term, 1883. Debt, \$3,034.66. Vend. ex. 76 November term, 1883. Ryman, Att'y.

All the surface of the following lots of land in Plymouth township, viz.:

1. Bounded on the west by Plymouth street, on the north by land of David Pritchard, on the east by an alley, and on the south by a street between this lot and land of Thomas McGowan, being 60 feet in front and 48 feet deep; all improved, with three dwelling houses, fruit trees, and outhouses thereon.

2. Bounded on the east by Hunlock street, on the south by land now or formerly of John T. Davis, on the west by an alley, and on the south by land formerly of Lewis Samuels, being 60 feet in front and 140 feet in depth; all improved, with two dwelling houses thereon. 51-1

COMMISSIONERS' SALE OF UNSEATED LAND.

BEAR CREEK TOWNSHIP.			
150	Benson, Peter.	138	Brown, John.
487	Capp, John.	400	Day, Benjamin.
424	Downing, Reuben.	400	Doyle, William.
400	Jackson, Silas.	60	Lynch, Edward.
40	Stembach, Mary.	100	Thomas, Daniel.
415	Tuttle, Stephen.	230	Twaddle, John.
BUCK TOWNSHIP.			
400	Brown, Joseph.	200	Brown, Jonathan.
449	Brown, Joseph.	441	Dunwoody, John.
400	Dyer, Jesse.	400	Fish, John.
400	Gardner, Richard.	300	Graefee, John.
418	Reed, John.	241	Reese, John.
400	Terwilliger, C. L.	300	Terwilliger, C. L.
401	Thomas, Jonathan.	400	Wright or Wigton, J.
BLACK CREEK TOWNSHIP.			
403	Blair, Samuel.	424	Davis, James.
363	Irwin, John.	200	Neidlinger, John.
400	Seward, William.		
BLAKELY TOWNSHIP.			
111½	Bell, Hannah.	380	Weaver, Constance.
CARBONDALE TOWNSHIP.			
13	Rider, Samuel.		
COVINGTON TOWNSHIP.			
400	Richards, Mary.		
DENISON TOWNSHIP.			
115	Morris, William.		
DORRANCE TOWNSHIP.			
368	Bower, Feather.	49	Catlin, Putnam.
FAIRMOUNT TOWNSHIP.			
310	Affick, Thomas.	34	Armat, Thomas.
438	Barnes, Thomas.	400	Beach, Susannah.
200	Bump, Isaac.	429	Cope, Thomas P.
400	Compton, Adam J.	438	Crevling, Isaiah.
124	Delap, Henry.	300	Gibbs, Benjamin.
113	Goodheart, Jas. F.	170	Goodheart, Elisha.
400	Goodheart, Abner.	190	Jackson, Jeremiah.
160	Kerr, George A.	300	Lukins, John or Jesse.

237	Middleton, Edwards.	402	Thomas, William
300	Whitehall, Joseph.	200	Whitford, Wilcox
185 5-7	Whitford, Jacob Geo.	400	Whitford, George

PELL TOWNSHIP.			
60	Lee, Peter.		
FOSTER TOWNSHIP.			
175	Schrader, Michael.		
HANOVER TOWNSHIP.			
29	Lot No. 11, 3d Div. 116	Lot No. 15, 3d Div.	
HAZLE TOWNSHIP.			
425½	Kunkle, Mary.		
HOLLENBACK TOWNSHIP.			
100	Beach, Nathan.	237	Hays, John.
JEFFERSON TOWNSHIP.			
200	*Carey, Miner, Est., 220	*Chapman, James	
	P. B. Carey, own.	85	*Conrad, Matthew
62	*Conrad, Mary.	400	*Hoyt, Samuel.
165	*Irwin, Robert.	490	*Stephens, A. P.
60	*Singer, Elizabeth.		

JENKINS TOWNSHIP.			
424	Nagle, Peter.	75	Lot 26, Cert. Pitts
LACKAWANNA TOWNSHIP.			
105	*Levi, Daniel.		
LAKE TOWNSHIP.			
474	Bailey, Amos.	400	Bower, Jacob.
LEHMAN TOWNSHIP.			
296	Not 25, Cer. Bedford.	95	Lot 27, Cer. Bedford
MADISON TOWNSHIP.			
200	*Bronson, Rebecca.	100	*Drinker, Lydia.
14	*Paxton, Timothy.		

NEWTON TOWNSHIP.			
40	*Gardner, Abel.	419	*King, John or James
PITTSBURGH TOWNSHIP.			
35½	Gray, Robert.	68	Young, David.
PLYMOUTH TOWNSHIP.			
49	Lot No. 42, 2d Tier, 4th Division.		
RANSOM TOWNSHIP.			
36	*Turner, Daniel.		
ROARING BROOK TOWNSHIP.			
100	*Hill, Henry.		

ROSS TOWNSHIP.			
84	Beach, Nathan.	150	Bowman, Joseph.
435	Bump, Aaron.	166	Bump, Isaac.
409	Bump, Nathan.	401	Bump, William.
390	Doway, Joseph.	92	Hazlehurst, George
150	McLaughlin, John.	203	Miller, John.
106	Morris, William.	110	Paschalls, Thomas.
50	Roberts, Owen.	50	Samson, William.
400	Sheaf, Henry.		

SPRING BROOK TOWNSHIP.			
103	*Benedict, Benjah.	200	*Bennett, Ishmael.
205	*Bennett, Charles.	104	*Bennett, Andrew.
444	*Baldy, Paul.	424	*Baab, Matthias.
424	*Brownson, Timothy.	35½	*Christ, John.
212	*Dundass, Thomas.	444	*Hall, Charles.
276	*Heacock, Benjamin.	200	*Heacock, Daniel.
435	*Hill or Thiel, Henry.	50	*Meehan, John O.
308	*Millet, Andrew.	306	*Millet, John.
400	*Richards, David.	300	*Richards, Sarah.
100	*Scott, Abraham.	100	*Scott, Elias.
429	*Starr, Thomas.	350	*Starr, Nathan.
429	*Widner, Jacob.	424	*Young, John.
400	*Young, Samuel.		

SUGARLOAF TOWNSHIP.			
425	Allen, John.		
UNION TOWNSHIP.			
133	McNeal, James.		
WRIGHT TOWNSHIP.			
130	Cryder, John.	100	Diller, Adam.
398	Hazlehurst, Samuel.		

*Now in Lackawanna county.
We, the undersigned, Commissioners of the county of Luzerne, do hereby give public notice that we will sell the above mentioned tracts and parts of tracts of unseated lands at public sale, at the Arbitration room in the Court House, in the city of Wilkes-Barre, on Monday, February 4th, 1884, at 10 o'clock A. M., the time of redemption having expired.

HENRY VAN SCOY,
CASPER OBERDORFER,
THOS. W. HAINES,
Commissioners.
H. W. SEARCH,
Clerk. 51-1

SHERIFF'S SALES.

Abstract of property to be sold by Wm. O'Malley, Sheriff of Luzerne county, on Saturday, January 19th, A. D. 1884, at 10 o'clock A. M., at the Arbitration room, in the Court House, Wilkes-Barre, who will proceed with the different properties in the order in which they are number, to wit:

1

Suit of G. R. Bedford, Trustee, v. Calvin Wadhams. 283 November term, 1883. Debt, \$24,079.16. Lev. fa. 60 January term, 1884. Bedford, Att'y.

1. Being two equal undivided third parts of the surface of all the following piece of land not heretofore sold by Calvin Wadhams et al., in the city of Wilkes-Barre, beginning at a corner on the main road, formerly in the township of Wilkes-Barre, now Main street, in said city of Wilkes-Barre, thence by land of the estate of Alexander McLean, deceased, 214 6-10 perches to a corner, thence 33 3-10 perches to a corner in line of Hanover township, thence along said township line 214 6-10 perches to a stones corner on the main road, and thence by the same 33 3-10 perches to the place of beginning, containing about 43 acres of land, more or less, being part of lot No. 31 in the third division of lots in certified Wilkes-Barre township, and known as the Lockhart property.

2. The two-thirds part undivided of the surface of all that piece of land in the township of Plymouth, beginning at a corner in line of tract of land in bed of the Susquehanna river, surveyed to George Bolden, thence by land of Samuel Hoyt and Abram Nesbitt (course 1848) 197 4-100 perches to the line of tract in the bed of the river surveyed to Edward Hopper, thence by same 37 1-10 perches, thence 44 38-100 perches to the line of the Geo. Bolden tract, thence by same 48 82-100 perches, thence 34 66-100 perches, thence 29 34-100 perches to the beginning, containing 33 acres and 88 perches of land, being lot No. 41, river tier of meadow lots, certified township of Plymouth, which is part island, known as Richards' island.

3. The surface of a lot in the township of Wilkes-Barre, bounded on the northeast by Blackman street, and on the other three sides by land of the Franklin Coal Company, being about 87½ feet in front on said street, and about 145 feet deep.

4. All the right, title, and interest of the said Calvin Wadhams in the following lots remaining unsold on the Mayer & Wadhams plot of lots, known as Davis property, all of which is in said city of Wilkes-Barre, each one being (lots Nos. 3, 4, 5, and 6 situate on Hazle avenue) 50 feet in front on said street, and 150 feet deep. Lot No. 29, on the Auble road, in said city, and being 50 feet in front on said street, and 150 feet deep. Lots Nos. 30 and 31, on said Auble road, in said city, each one being 43¼ feet in front on said street, and 150 feet deep.

5. All that tract of land in the city of Wilkes-Barre, beginning at a corner in the center of the Pennsylvania canal in line between the certified townships of Wilkes-Barre and Hanover, thence along said township line in the center of a road 127 20-100 perches to a corner of land of George Shannon, thence by same 32 perches, thence 8½ perches to a corner in line of land certified to Jesse Fell, thence 32 74-100 perches to a corner in line of land of J. W. Horton and Sarah S. Bennett, thence along said land 15-100 perches to the center of Franklin street, thence 30 0-10 perches to the center of Horton street, thence along the center of said street 40 perches to the Pennsylvania canal, thence along the center of said canal 16 37-100 perches, thence 12 37-100 perches, thence 19 88-100 perches, thence 26 6-100 perches, thence 18 3-10 perches, thence 18 8-100 perches, thence 9 32-100 perches, thence 10 24-100 perches, and thence 12 6-10 perches to the place of beginning, containing 55 acres, more or less, and being part of lots Nos. 13, 14, and 15 in first division of certified township of Wilkes-Barre. Excepting and reserving out of and from this mortgage all the coal underlying said last described bed tract, which has heretofore been sold. Also excepting and reserving out of land from same the following pieces of surface designated on the map of Raymond Place as lots Nos. 18, 19, 20, 21, 22, on Franklin street; Nos. 30, 31, 32, 58, 63, 79, and 20 feet of west side of 80 from 84, and 90, on Regent street;

2

also 92, 127, 10 feet of east side of 136, 137, 139, 140, 155, 156, 159, 161, on Barney street, and 210 on Waller street, all of which have heretofore been sold.

Suit of Robert V. Thomas, to use of Catharine Evans, Administratrix, etc., v. David E. Morris. Suit of the Empire Building and Loan Association v. David E. Morris.

Suit of Wells & Smith, Assignees, v. David E. Morris.

16 February term, 1883, 292 January term, 1881, and 559 May term, 1881. Debt, \$159.18, \$400, and \$234.60. F. fas. 63, 61, and 62 January term, 1884.

D. S. Bennet, Att'y.

All that lot of land on Meade street, city of Wilkes-Barre, bounded westerly by land now or late of J. C. Wells and G. D. Morgan, southerly by an alley, easterly by land of James Welsh, and northerly by Meade street, being 40 feet front on Meade street, and about 190 feet in depth; improved, with a double two-story frame dwelling house, with basement of stone, and double outkitchen attached thereto, together with out-buildings and fruit trees thereon.

52-2

ESTATES TO BE AUDITED BY THE

Orphans' Court of Luzerne county. Notice is hereby given that accounts have been filed and confirmed absolutely by the court in the following estates:

1. Ruth T. Ross; Geo. S. Bennett and R. J. Flick, Executors; 15th January, 1884.

2. Edward Ide; Solomon P. Ide, Administrator; 15th January, 1884.

3. Ziba Major; Kate Major, Administratrix; 16th January, 1884.

4. S. S. Winchester; George K. Powell, Administrator; 16th January, 1884.

5. George Auble; John B. Quick, Administrator; 17th January, 1884.

6. William Brace; Myrtle W. Brace and Fisher Gay, Executors; 17th January, 1884.

7. John M. Clark; J. E. Halleck, Executor; 18th January, 1884.

8. Levi C. Lewis; Joshua S. Lewis, Administrator; 18th January, 1884.

9. Maria Powell; Griffith Thomas, Administrator; 18th January, 1884.

10. Thomas Stocker; F. V. Rockafellow, Administrator; 21st January, 1884.

11. Catharine Stocker; F. V. Rockafellow, Administrator; 21st January, 1884.

12. Edger W. Mandeville; Francis A. King, Trustee; 22d January, 1884.

13. Margaret Hughes; Jas. W. Delaney, Executor; 22d January, 1884.

14. Patrick Burke; James O'Donnell and Michael Hoban, Executors; 23d January, 1884.

15. Almira Santee; B. D. Koons, Administrator; 23d January, 1884.

16. John W. Davis; W. W. Amsbry, Executor; 24th January, 1884.

17. Hiram George; Wilham H. George and Amanda George, Administrators; 24th January, 1884.

The accounts enumerated and designated in the above list will be audited by the court, in the Court House, in the Orphans' Court room, during the session of court on the days set forth opposite the name of each estate, at which time all persons interested shall attend, if they see fit, and present their claims against said estate, or forever thereafter be debarred from coming in upon said fund.

JOSEPH HENDLER,

Clerk O. C.

52-2

ESTATE OF WM. B. HARROWER, LATE OF Ashley, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

ALICE T. HARROWER,
ANDREW HUNLOCK, Ashley, Pa.

Attorney.

52-5

81

ESTATE OF GARNER H. SNYDER, LATE
of Plymouth, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

GEO. W. SHONK,
Plymouth, Pa.

52-5

ESTATE OF CATHARINE WILLIAMS, LATE
of Pittston, deceased.

Letters testamentary upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

JOHN J. POWELL, Pittston, Pa.
GEO. S. FERRIS, Attorney.

52-5

ESTATE OF JANE PRICE, LATE OF THE
borough of Pittston, deceased.

Letters of administration upon the above named estate having been granted to the undersigned, all persons indebted to said estate are requested to make payment, and those having claims or demands to present the same, without delay, to

CHAS. H. FOSTER, Pittston, Pa.
E. P. & J. V. DARLING, Attorneys.

52-5

WIDOWS' APPRAISEMENTS.

Notice is hereby given to all persons concerned, that widows' appraisements in the following estates have been approved nisi by the Orphans' Court of Luzerne county, and, unless exceptions are filed, will be presented for final approval on Monday, the 14th day of January, 1884:

Daniel Hartman, Reuben Drescher, Peter Habel, John S. Jenkins, John R. Edwards, Peter Foy, and Jonas Brader, deceased.

JOSEPH HENDLER,
Clerk O. C.

52-2

NOTICE IS HEREBY GIVEN THAT AN application will be made to one of the Judges of the Court of Common Pleas of Luzerne county, under the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, on Monday, January 14th, 1884, at 10 o'clock A. M., for the incorporation of an intended corporation, to be called "The German Evangelical Protestant Christ Church," located in Hazleton, Pa., the character and object whereof is to worship God according to the faith, doctrines, discipline, and usages of the German Evangelical Lutheran Church and the German Reformed Church, and for these purposes to have, possess, and enjoy all the rights, benefits, and privileges of said Act of Assembly and its supplements.

C. W. KLINE,
Solicitor.

52-2

ORPHANS' COURT SALE.

Estate of John R. Walters, dec'd. By virtue of an order of the Orphans' Court of Luzerne county the undersigned will sell at public sale, on the premises, on Saturday, the 5th day of January, 1884, at 4 o'clock P. M., all that lot of land in the borough of Plymouth, beginning at a corner on the west side of Gardner street, thence along land of Thomas Jones 126 feet to a corner on line of land late of estate of Samuel Wadhams, deceased, thence along said Wadhams' line 50 feet to a corner, thence along line of land retained by the widow of said decedent 126 feet to a corner, thence along Gardner street 50 feet to the place of beginning, containing 6300 feet of land, more or less; the coal is owned by Henderson Gaylord's estate; all improved, with a two-storied frame dwelling house and outbuildings thereon.

TERMS OF SALE—\$100 down, 50 per cent of balance on confirmation of sale and delivery of deed, and the balance, with interest from confirmation, in six months from confirmation of sale; deferred payments to be secured by bond and mortgage on the premises.

DANIEL B. LEWIS, Administrator.
GEO. W. SHONK, Attorney.

52-5

AUDITOR'S NOTICE.

In the Common Pleas of Luzerne county. In Equity. No. 6, October term, 1876. Wm. N. Moore et al., Executors, v. A. D. King. The undersigned, an Auditor, appointed by the Court of Common Pleas of Luzerne county to distribute to and among the parties entitled thereto the sum of \$1,402.03, paid in court in the above case by Geo. Bishop, the Receiver by order of court, dated October 19, 1883, hereby gives notice that he will attend to the duties of his appointment, at his office, on Franklin street, in Wilkes-Barre, on Friday, January 18th, 1884, at 10 o'clock A. M., at which time and place all parties interested are notified to appear and present their claims, or else be debarred from coming in on said fund.

THOS. H. ATHERTON,
Auditor.

51-2

CHAS. D. FOSTER,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

WILLIAM S. McLEAN,
ATTORNEY AT LAW,
WILKES-BARRE, PA.

W. S. PARSONS,
ALDERMAN,
WILKES-BARRE, PA.



