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By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

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WEEKLY LEGAL PUBLICATION.



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PHILIP D. BAKER, ESQ.;

ASSISTED BY  
S. W. SHADLE, ESQ.

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Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accomodat'n,	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy,	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.
EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,	4:10 a. m.	7:00 a. m.
Harrisburg Express,	5:00 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,	5:15 p. m.	7:30 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,	6:50	8:10	2:30
Lancaster—West King Street,	8:00	9:30	3:35
Lancaster—Upper Depot,	8:10	9:46	3:45
LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:46	5:30	8:00
Lancaster—West King Street,	9:55	5:40	8:10
Quarryville, (arrive)	11:00	7:00	9:15

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00	12:55	3:35
Lancaster—Upper Depot,	8:10	1:20	4:10
Lancaster Junction,	8:35	1:20	4:10
Reading, (arrive)	10:15	3:20	5:45
LEAVE.	GOING SOUTH.		
	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:21	1:35	7:35
Lancaster—Upper Depot,	9:46	2:00	8:00
Lancaster—West King Street,	9:55	2:00	8:10

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45
LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.  
On Saturday evening the 8:30 car will not leave until 9:30.  
Leave Millersville at 6, 8, 10 a. m., and 1, 3, 5, p. m.

**Official Directory.**

**Supreme Court of the United States.**

<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	Appointed.	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,		1858
Noah H. Swayne, of Ohio.		1862
Samuel F. Miller, of Iowa,		1862
Stephen J. Field, of California,		1863
William Strong, of Pennsylvania,		1870
Jos. P. Bradley, of New Jersey,		1870
Ward Hunt, of New York,		1872
<i>Attorney General</i> —Charles E. Bevens.		

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District—J. B. Sweltzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Phillip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

**THE LANCASTER BAR**

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**COURT CALENDAR--1877.**

**JUNE.**

8. Last day for issuing Writs to June Term.  
 9. Last day for setting down causes for Argument Court.  
 23. Calling Judgment Docket.

**JULY.**

21. Last day for filing Accounts to August Court.  
 28. Last day for setting down causes for trial for August Court.

**AUGUST.**

10. Last day for issuing Writs to August Term.

**SEPTEMBER.**

7. Last day for issuing Writs to September Term.  
 8. Last day for setting down causes for Argument Court.  
 8. Last day for setting down causes for trial for October 8 and 15.  
 15. Argument for Rules of Affidavit of Defense.  
 22. Calling Judgment Docket.  
 22. Last day for setting down causes for trial for October 22.

**OCTOBER.**

5. Last day for issuing Writs to October Term.

**INCORPORATION NOTICE.**

Notice is hereby given that "The Congregation of the United Brethren of Litiz and Vicinity" have, agreeably to the Act of Assembly providing for the "Amendment of Incorporations," approved October 13, 1840, applied to the Court of Common Pleas of Lancaster county for an amendment to their charter, which has been examined and approved by said Court, and will be presented for final confirmation and incorporation on MONDAY, JUNE 18th, 1877, at 10 o'clock a. m., prior to which time all persons objecting to such amendment, must file their objections.  
 J. F. FRUEAUFF, Solicitor,  
 ap28 No. 204 Locust street, Columbia, Pa.

**NOTICE.**

In the Estate of JAC. HENNE AND WIFE, Assigners. In the Court of Common Pleas of Lancaster Co., on the petition of Jac. H. Hershey, Assignee, for an order to reconvey the trust property to the Assignor.  
 And now, April 14, 1877, on the petition of Jacob H. Hershey, assignee in trust for the benefit of the creditors of Jacob Henne, praying for an order of court to reconvey the trust property to the assignor, the Court appoint the 18th day of JUNE, at 10 o'clock, a. m., for hearing said application, and direct that notice of the same and the time of hearing thereof be given to all parties interested in said trust by advertisement in the *Lancaster Examiner and Express*, *Intelligencer*, and *LANCASTER BAR*, three newspapers published in the county of Lancaster, once a week for four successive weeks prior to the hearing.  
 Attest, W. E. KREIDER, Dep. Prothonotary.  
 may19

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed MONDAY, JUNE 18th, 1877, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.  
 may26 JOHN W. MARCH.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, JUNE 18th, 1877, at 10 o'clock, a. m., at the Court House, in the City of Lancaster, for the hearing of the same, when and where you may attend if you please.  
 may26\* JACKSON RINEER.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, JUNE 23d, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.  
 je2\* GEORGE MULLIGAN.



tice, and would not be protected, yet an innocent purchaser from him, without notice, is subjected to the same injury as he would have suffered if he were without notice, and the cause of injury is the same, to wit: The omission to record the deed of the first purchaser. A purchaser at sheriff's sale, whose deed is properly acknowledged and entered in the record of the court of Common Pleas stands in the same relation as a second purchaser who has recorded his deed. He is, therefore, protected in the same manner, if without notice, actual or constructive. In the same way, while the first deed remains unrecorded, no matter through how many persons the title of the second purchaser may have passed, whenever it reaches the hands of one who is without notice, he is protected by the statute. There was no question of equitable estoppel in the case. The facts disputed have been acted upon by the jury.

Judgment affirmed.

#### Orphans' Court of Lancaster County.

##### ESTATE OF WM. DILLER, dec'd.

Exceptions to an auditor's report may be filed after the expiration of the time limited to file the same *nunc pro tunc*, where it plainly appears that the rules of equity or justice have been violated.

Exceptions to auditor's report, also rule to show cause why exceptions (filed Feb. 17, 1877,) to auditor's report should not be stricken off.

W. R. Wilson for rule.

A. J. Steinman contra.

Opinion delivered April 21, 1877. By PATERSON, A. L. J.

This case comes before us and to be first considered upon exceptions to the auditor's report, severally filed February 13, 1877. After deliberate investigation and reflection, we cannot do otherwise than express our entire concurrence in the conclusions and opinion of the learned auditor, who heard the arguments upon the exceptions filed to the account of this administrator. He certainly did right in allowing interest upon the mortgage due the theological seminary, and issued to it on the petition of the administrators by an order of the Orphans' Court, and in first allowing the payment of said interest, and the unpaid balance of the principal of said mortgage in full. The reasons advanced for that ruling are clearly conclusive. The commissions allowed the accountant, by the auditor, under all the facts of the case, we do not think unreasonable. The auditor found that it was a "confused and difficult estate" to settle. He did not allow commissions on the \$8,000 borrowed by the administrator by the order of this Court, and charged on the *debit* side of the accountant, but only on the amount obtained for the real estate at public sale, and the amount of proceeds of personal property thus charged; and the commissions thus allowed in the report only exceed the usual percentage on said sums, respectively of 2½ and 5 per cent., in the sum of eighty-four dollars and ninety-five cents. The other exceptions under consideration all involve questions of fact—issues which have been consid-

ered and determined by the auditor. And in conformity with the well settled law, he having thus found on the facts, and we not being able to say that he is clearly wrong or mistaken, the exceptions cannot be sustained.

As to the exceptions filed February 17, 1877, it remains to be said that they were not filed in time. The rule of this court as to filing exceptions to auditor's reports preclude their consideration. This court has power to make and adopt rules for regulating its own practice. Now, no injustice can arise from that rule, except it be produced by the culpable negligence of the parties interested in the estate. The counsel concerned admits he had the proper notice from the auditor of the filing of his report. In case there had been no such notice given, and it plainly appeared that the rules of equity and justice had been violated or overlooked, this Court may, in their discretion, afford an adequate relief by permitting the party aggrieved to file exceptions *nunc pro tunc*. But no order of the court appearing, nor asked for in this case, giving leave to file exceptions, and no such violation of the rules of equity and justice being made to appear to have taken place, from the face of the proceedings or otherwise, those exceptions filed must be stricken off or disregarded altogether. 7 Watts, 64; Mylin's Estate; 5 Whart., 576, Irwin's Appeal, and others.

The court cannot entertain said exceptions and they are stricken off, and all the other exceptions are accordingly dismissed and the auditor's report is now confirmed.

##### ESTATE OF JEREMIAH B. HAINES, dec'd.

It is the imperative duty of an administrator to proceed to collect all debts due to the estate without delay. Any loss occasioned to the estate through his lack of diligence, caution and prudence must be surcharged against him.

Exceptions to report of auditor appointed to pass upon exceptions to administration account.

N. Ellmaker for acceptants.

James Black and S. H. Reynolds contra.

Opinion delivered April 14, 1877, by LIVINGSTON, P. J.

A strict and careful examination of the accounts presented, the testimony taken, and the report of the learned auditor, has fully satisfied us that all the exceptions filed to the report, except the second, which relates to the claim against John K. Hutton, should be overruled.

The second exception to the report of the learned auditor is, in our judgment, well taken and must be sustained.

It was the plain and imperative duty of the administrator to proceed to collect the debts due the estate, without unnecessary delay, so that he might be able to settle his account, and distribute any balance remaining in his hands, after payment of debts, as the intestate laws in such cases require.

The decision or conclusion arrived at by the learned auditor, exonerating the administrator from accounting for this claim against

Hutton, cannot be sustained upon the facts he has found, under the law he has cited, without straining both facts and law to a point far beyond which either justice or equity will warrant, even when law and equity are most leniently administered.

We do not feel bound, nor do we propose to offer so large a premium as entire exoneration from all liability, for the negligence of an administrator, clothed with full power to collect all claims due a decedent's estate, who, for three years after the death of the decedent and after letters granted him, makes no effort, uses no diligence—not even ordinary skill, caution and prudence in regard to the collection of a claim due the estate. He must make an honest effort, in due time, to collect the debt. He must use proper diligence; if he does not, he will be held liable for the amount of the claim, lost through his negligence.

The learned auditor finds, as a fact, (and he could not do otherwise under the testimony presented,) that from the time letters of administration were granted to the accountant, up at least to the time of exhibiting his first account, and some two months prior to the voluntary judgment given by Hutton to the administrator, Hutton was the owner of real estate in his own right, according to all the testimony, worth \$6,000, and that the liens against it amounted to \$3,300, but little more than half its value; that the administrator never made any attempt to collect this claim by legal process; that he lay dormant, and saw that property generally was depreciating in value, and this property in particular, owing to the manner in which it was abused, and injured; and at the expiration of about three or three and a half years after he became administrator, without any effort on his part to collect this debt, the real estate of John K. Hutton was sold upon an execution issued by another creditor, for a sum which did not reach to pay the liens entered prior to the voluntary judgment given by Hutton to this administrator. Taking all these matters into consideration, we are not surprised that the learned auditor felt bound to say "that the accountant was particularly diligent in prosecuting this claim can scarcely be said." We are of opinion, that he might, with entire safety, have omitted the word "particularly"; nay more, that he should have said: "That the accountant has made any, even the slightest effort, or used any diligence whatever in prosecuting this claim, cannot with truth be said, and because he has made no effort, used no diligence—not even ordinary skill, caution and prudence, in regard to its collection, he must be surcharged with its amount." His failure to do this causes us in reviewing his report, to say that the second exception filed thereto, relating to the claim against Hutton, is fully sustained, and that the administrator must be surcharged with the full amount due on the claim of the estate of Jeremiah B. Haines against Frank K. Hutton.

The second exception is, therefore, sustained, and the first, third, fourth, fifth and sixth exceptions are overruled and dismissed.

Common Pleas of Bedford County.  
16TH JUDICIAL DISTRICT.

In the matter of the Assigned Estate of GEORGE W. GUMP.

1. Prior to Act of 17th February, 1876, a sale of real estate by an assignee for creditors could only be made subject to encumbrances.
2. Where, before that Act, an assignee of encumbered property incurred expenses in laying it out in lots, and attempting sales which he did not succeed in making, and after the Act, procured an order to sell divested of liens, he cannot charge the expenses to the fund as against lien creditors.
3. The trust was to sell and not to retain and rent. Any judgment creditor might have sold on execution. So far as the assignee did receive rents, they may go to pay the expenses.
4. Three per centum is the proper compensation for sale of real estate, unless there is extraordinary trouble.

Sur exceptions to the auditor's report.

Opinion by HALL, P. J. September 18th, 1876.

The assignor conveyed the real estate subject to the judgment liens, and the assignee received and held it, and could sell it only in the same way. A judgment lien on real property can be divested only by a sale under a decree of the court. No other transfer of the property affects it. If authority is wanted for this position it may be found in *Adams v. Humes*, 9 Watts, 305; *Shunk's and Freidley's Appeals*, 2 Barr, 304; *Galbraith v. Fisher*, 10 Harris, 406; *Ritter v. Brenlinger*, 8 P. F. Smith, 68.

As, therefore, the sale by the assignee prior to the Act of 17th February, 1876, could only make title subject to the encumbrances, his right to commissions and to compensation for expenses incurred in laying out the property in lots, &c., would have to be met by the fund arising from the sale subject to the liens. If no such sale could be made, there would be no fund. Neither Gump nor his assignee could make expenses to the detriment of the lien creditors, unless with their assent.

All this the assignee must be presumed to have known when he accepted the trust. There was no personal estate except that which was under actual levy by the sheriff on execution.

If the encumbrancers consented to the acts of the assignee, they may well be bound by their consent. If they induced him to lay the McVicker farm out in lots, and to hold public vendues, and incur expenses, under the promise of releasing their liens, they may be held to have postponed their right to the fund for distribution to his claim for trouble and expenses in the fruitless efforts to make sales, if the failure to complete them was owing to their bad faith in not releasing after they had agreed to do so.

A careful reading of the notes of testimony and the agreement of the 1st of May, 1875, has failed to indicate to my mind any evidence warranting the finding that the judgment creditors, Russell and Watson, (whose distributive proportions are, by the finding of the auditor, diminished by the whole amount of these expenses), either assented in advance

to, or afterwards sanctioned these expenditures.

The evidence shows that the assignee, acting probably under the idea that he had the right and power to do so, proceeded at once, without consulting the judgment creditors or attempting to get their assent, to lay out the lots and make sales in November and December, 1874. Afterwards the bidders refusing to take the lots on account of the encumbrances, in May, 1875, (and then for the first time as far as appears from the testimony), an effort was made to get the lien creditors to sign an agreement. To make this effective it was necessary that it should be signed by all. Any judgment creditor might have forced a sale by execution at any time prior to the order of court staying executions in March, 1876, unless he had tied his hands by some agreement or assent to what the assignee was attempting to do.

The construction claimed for that agreement by Messrs. Russell and Watson, seems to me to be the correct one. It amounted to nothing unless all the judgment creditors enumerated in it as parties of the second part joined in its execution. The agreement never was signed by Amanda Stuckey nor by Duncan McVicker, and no sale was made by virtue of it.

That the assignee acted on some verbal promise of Duncan McVicker, and that McVicker acted in bad faith towards the assignee, (if this be so) cannot affect Russell and Watson. If the assignee incurred expenses without having the agreement fully consummated, so as to make it effective for the purpose for which manifestly on its face it was designed, he did it at his own risk. It would be unjust to put these expenses, and others previously incurred, on judgment creditors who had done nothing except sign a paper which was not to take effect until other judgment creditors had executed it, (and which they refused to do), and under which no sale was ever made.

But, on the other hand, under the circumstances of this case, the assignee ought not to be charged with rents, nor with bark or timber taken off by S. W. Gump. His trust was to sell the property, not to retain it and rent it. So far as he did rent it and receive the rents, that may well go to pay *pro tanto* his expenses incurred in laying out the lots and attempting sales. Any judgment creditor might have proceeded to sell by execution and to stay waste. If he did not, the rents, &c., would have been lost as to him if the property had remained in the hands of the assignor.

It follows that the compensation to the assignee, and his counsel is to be fixed on the basis of the actual sale made under the order of court in pursuance of the Act of February, 1876.

The weight of authority seems to be that three per centum for the sale of real estate is the proper allowance, unless in cases attended with more than ordinary trouble: *Robb's Appeal*, 5 Wr., 49; *Snyder's Appeal*, 4 P. F. S., 67. There does not seem to have been any extraordinary trouble so far as the actual

sale in this case is concerned. And for professional services, apart from the effort to make sales prior to the order of court, \$100 would seem to be a fair fee. The services would embrace the preparation of the deed of assignment, petition for order of sale, return and confirmation of sale, filing account, and services before auditor and on exceptions in court.

The report is remitted to the auditor to be amended in accordance with this opinion, and thus amended is confirmed.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 2, 1877.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

The accounts of the following persons are filed in the Register's Office of Lancaster Co. for confirmation and allowance at any Orphans' Court, to be held in the city of Lancaster, on Monday, June 18, 1877, at 10 o'clock, a. m.

A. K. Witmer, guardian of Mahala Rhoads.

Benjamin M. Greider, guardian of Julia Schlegel.

W. C. Townsend, trustee in place of Amos Townsend, trustee named in the will of John Townsend.

L. W. Dobbins and Catharine Dobbins, administrators of Wilson Dobbins.

James McCaa, guardian of Susanna Spotts, (now Piersol), Hannah S. Spotts, (now Thomas), Wm. Spotts, (deceased), and Mary E. Spotts, (now Snyder).

Henry W. Eby, guardian of Annie M., Mary M., Isaac N., Henry F., Ella S. and Jacob A. Eby.

Christian R. Landis, guardian of Albert Roland.

Jacob Souder, executor of Henry Frey.

Franklin B. Musselman, assignee of Adam Herr, who was guardian of Alice Rebecca May, (now Brown).

Jacob Eaby, guardian of Christian Eckert.

Michael R. Shenk, guardian of Rebecca A. Rhoads.

Samuel M. Lehman, administrator of Jacob Brenner.

James A. Buyers, administrator of Sarah Jane Nixon.

Amos Dombach, John H. Dombach, Martin Dombach and Henry H. Dombach, administrators of Martin Dombach.

A. F. Kaul and C. J. Gillespie, administrators of Daniel Fagan.

John H. Groff, guardian of John M., Mary M., Henry M. and Susanna M. Landis.

Jacob M. Wissler, guardian of Susanna Eberly.

Benjamin P. Livingston, guardian of Anna J., John L. and Lavina M. Livingston.

Rudolph A. Fry, guardian of Joseph Williams.

Jonathan B. Rutter, executor of John Rutter.

Jacob S. Snyder and Dr. Geo. W. Bean, executors of Ann Martha Bean.

C. S. Hoffman, guardian of Laura J. Groff.

Joel L. Lightner, executor of Joseph S. Lefever.

Isaac Walker, administrator of James Livingston.

Jacob B. Brubaker and Christian B. Brubaker, executors of Christian Brubaker.

Henry B. Reist, guardian of Anna L. Moore.

B. F. Sides, guardian of Mary Emma Jefferies, (now Towson).



George Mowerer and Martin Reece, jr., administrators of Adam Mowerer.  
Henry K. Mellinger, administrator of Henry Kauffman.  
Henry K. Mellinger, administrator of Abraham Kauffman.  
C. C. Fralich, administrator of Mary Fralich.  
Phillip Moseman and Samuel Gehman, executors of Jacob Moseman.  
George Whitsou, administrator of Charlotte Thompson.  
John and David Kline, executors of John Kline, sr.  
James W. and John G. Hamilton, administrators of Mary Hamilton.  
Charles Ershick, administrator of Matthias Ershick.  
Joseph Summy and Levi H. Hershey, executors of Jacob Hershey.  
Jacob Hoffman, guardian of Lavina Hoover.  
Charles Peters, administrator of Christian Loucomer, deceased, who was guardian of Henry, Samuel and Jacob Stackhouse.  
Elizabeth Shuman, (now Brush), administratrix of Christian B. Shuman.  
Jacob Harnish, executor of Jacob Turner.  
Sarah Roth, administratrix of John Roth.  
Andrew Meixell, administrator of Casper Brunner.  
Baltzer Schnader, administrator of Isaac Renninger.  
Christian Umble and Christian Y. Blank, executors of Henry Umble sr.  
Christian Hackman, executor of Peter Creamer.  
Abraham Dinger, administrator of Peter Dinger.  
Philip D. Baker, administrator of Mary Sandoe.  
Wm. Parthener, guardian of Mary Ann Meckley.  
Christian H. Killheffer, administrator of David D. Nuding.  
Christian Coble, administrator of William Martin.  
Walter G. Evans, guardian of William Gregory and Mary Ann Hawkesworth.  
Christian Miller, guardian of Annie J., Susan M., Emma, Amanda, Cyrus and Jacob Bowers.  
Christian Miller, Peter Each and Christian Y. Blank, executors of Henry Umble, jr.  
Isaac Styer, administrator of Jacob Weller.  
Wm. McAfee, administrator of Samuel Lindsay.  
Joel L. Lightner, administrator of C. Y. Conyngnam.  
Sallinda Musser, (widow) surviving administrator of Henry M. Musser.  
Adam Laula, guardian of Sophia Kieffer.  
Daniel E. Mowrer, administrator of Daniel Mowrer.  
Isaac Moore, acting executor of Annie Moore.  
Samuel Boyd, administrator of James Barnett.  
Abraham T. Bean, administrator of Samuel Bean and Maria Bean.  
Joseph Habecker, guardian of Christian H. and Joseph H. Habecker.  
Henry S. Musser, executor of John Lindemuth.  
Henry S. Musser, executor of Margaret Lindemuth.  
Henry S. Musser, executor of Catharine Lindemuth.  
John and Martin Gerhart and Christian Kegernes, executors of Benjamin Gerhart.  
Henry W. Horst, guardian of Susan and Jacob Heisey.  
John and David Witmyer, administrators of Francis Witmyer.  
Elizabeth Denham and Samuel Hess, administrators of Henry K. Denham.  
Bernard Mann, (farmer) administrator of Christian Snyder.  
Benjamin Ressel, administrator of Samuel Ressel.  
John Garman, executor of Henry Garman.  
John Garman, administrator of Lydia Garman.  
Israel Leisey and Cyrus Ream, executors of Geo. Leisey.  
Thomas Stubbs, executor of Vincent Stubbs.

Benjamin and Henry M. Gish, executors of John J. Gish.  
James H. Pegan, surviving executor of James Pegan.  
Harriet Ober, administratrix of Michael Ober.  
Thomas McClure, administrator of Joshua Burton.  
Elizabeth Myres and Samuel Myres, administrators of David S. Myres.  
Eli K. and Martin K. Mylin, administrators of Elizabeth Snavely.  
Christian M. Eshleman, administrator of John B. Eshleman.  
B. B. Flickinger, administrator of John Strunk.  
B. B. Flickinger, administrator of Ann Maria Getz.  
Benjamin N. Barr, executor of Fanny Barr.  
Reuben H. Neiss, administrator of John Collins.  
William Hamilton, administrator of Elizabeth Hamilton.  
John W. Rich, administrator of C. Wm. Girod.  
Elizabeth Kauffman and Jacob Rohrer, administrators of Christian Kauffman.  
George R. Welchans, administrator of Joseph Welchans.  
Dr. John L. Shober, trustee of Geo. W. Engle.  
Joseph Haines and William Martin, executors of Mary Ann G. Lloyd.  
John M. Oechsle, administrator of Joseph Single.  
Martin Miller, guardian of Elizabeth and Rebecca Rineer.  
Benjamin Penrose, administrator of Phebe Ashton.  
Benjamin Penrose, administrator of Abigail Ashton.  
Johnathan Kauffman, guardian of Jonas Kauffman.  
David H. Huber, administrator of John G. Herr.  
James W. and John G. Hamilton, administrators of John Hamilton.  
Henry E. Landis, administrator of John Landis, who was guardian of Mary Hurst.  
Tobias Keylor, administrator of Ephraim M. Keylor.  
Isaac and Leander Groff, executors of Benjamin Groff.  
John Goss, guardian of Emma Keller and Anna Keller.  
Christian Lefever, administrator of John Mathiot.  
John R. Hunsacker, administrator of David Hunsacker.  
Abraham Hitz and John B. Livingston, executors of Caroline Haag.  
R. F. Rauch, executor of Samuel T. Beam.  
Carpenter W. Weaver, one of the administrators of Thomas Bryan.  
A. N. Diller, administrator of Nathaniel Diller.  
Shaefter Miller, executor of Elizabeth Bare.  
Phares Weaver, administrator of Mary Weaver.  
Lydia A. Ritz, administratrix of George M. Ritz.  
Elizabeth Stoner, administratrix of Reuben K. Stoner.  
Emanuel P. Keller, guardian of Walter A., Margaret A. and John F. Heintsh.  
William Binkley, administrator of Christian Binkley.  
Urias Fasnacht, administrator of Mary McQuade.  
John Stober, administrator of John Brubaker.  
Harrison Seibert, administrator of Daniel Brubaker.  
Isaac K. Lutz and Allen Hornberger, administrators of Phillip Lutz, jr.  
John B. Erb, surviving executor of Abraham Eby.  
Abraham M. Bruckhart, executor of Henry Bruckhart.  
John S. Frank, administrator of Kate Stoner.  
John S. Frank, guardian of Kate Stoner.  
Andrew A. and Jacob A. Zug, executors of John Zug, sr.  
Ephraim S. Lynch, executor of Elizabeth Youtz.  
Henry W. Wolf, administrator of Sarah Trump.  
John G. Hoerner, guardian of Ida Chapman.  
Levi Weller, trustee.  
William Bryan, one of the administrators of Thomas Bryan.

Andrew Mehafeey, administrator of Samuel Stauffer.  
John Yackley, administrator of Andrew Yackley.  
Jacob, Abraham and Henry Bausman, administrators of Andrew Bausman.  
Mary G. Rush, administratrix of Hettie R. Stoner.  
Benjamin and Jacob Herr, executors of Elizabeth Herr.  
Benjamin Hertzler, guardian of Willis and Elmira Hershey.  
Samuel Lehman and David Beck, executors of Samuel Lehman.  
John B. Ranck, administrator of Lucy Ranck.  
John D. and Jacob Ranck, executors of Jacob Ranck.  
B. F. Hiestand and Amos Bowman, executors of Henry Musselman.  
B. F. Hiestand and Amos Bowman, executors of Henry Musselman, who was trustee of Anna B. Musselman.  
W. F. Lochard, administrator of Samuel F. Lochard.  
W. F. Lochard, trustee named in the will of Charles Lochard.  
Jacob C. Pfahler, executor of John Sterline, sr.  
Harriet and William Spencer, executors of Robert P. Spencer.  
Christian Lefever, guardian of Frances Geiger (formerly Stoner).  
Christian Lintner, guardian of Lintner and Aldus Hershey.  
Charles A. Heintsh, administrator of Harriet Weakley.  
Richard N. Winters and Isaac D. Winters, trustees of Geo. W. Winters.  
George S. and Samuel S. Becker, executors of John Becker.  
Henry Krimes, administrator of Elizabeth Echternach.  
John K. Habecker, administrator of Sallie Scherb.  
Elias Weitzel and Henry Krimes, executors of Christian Echternach.  
Benjamin C. Eby, executor of Anna Eby.  
John M. Stehman and John B. Reist, executors of Jacob White.  
Jacob Weidler and Israel K. Mearig, administrators of Catharine Hiestand.  
Eliza Cooner, executor of John Cooner.  
H. B. Swarr and Edward T. Buchanan, trustees under the will of James Buchanan.  
David Eshleman, administrator of Elizabeth Kauffman.  
Elizabeth Bare and Elias R. Brown, administrators of Abraham E. Bare.  
Isaac L. Landis, guardian of Ida Hostetter.  
Isaac L. Landis, guardian of Henry L. and Fanny L. Hess.  
Levi K. Gruber, Emanuel Bohn and John S. Krick, Esqs., executors of Peter Krick.  
Edward Eberly, administrator of Michael Eberly.  
George Steiff, administrator of Isaac Steiff.  
Henry R. Erb, administrator of Christian Frederic.  
Anthony F. Kaul, executor of Daniel McCort.  
Edward McGovern, executor of Patrick Sheridan.  
Henry N. Breneman and Henry Musser, executors of George Bowman.  
William Leaman and John Murphy, administrators of Edward Leary.  
George Anment, one of the administrators of Benjamin Groff.  
A. C. Ilyus, executor of John H. Long.  
Jacob S. Hershey, guardian of Emma, Louisa, Elizabeth and Sarah A. Miller.  
Edward L. Kreider and Augustus W. Shober, executors of Christian Kreider.  
Christian Hess, guardian of Susan H. Landis.  
Benjamin L. Hess, guardian of Fanny H. Landis.  
Levi Bard, surviving executor of David S. Groff.  
A. O. Newpher, administrator of Christian Ranck.  
Daniel Rife, executor of Isaac Hoover.  
Daniel N. Lefever, guardian of Emma and Samuel Hostetter.

John Wanner and Jacob Martin, jr., administrators of David S. Martin, who was administrator of Annie Martin.

Jacob Bausman, executor of Benjamin Mooney.  
Caroline Bean, administratrix of David Bean.  
Daniel and John K. Esbenschade, administrators of Adam Esbenschade

John Hildebrand, administrator of Mary Ann Witmer.

Jacob M. Westheaffer and John Bubb, executors Sarah Landis.

E. Burkholder, executor of Jacob Busser.  
Angeline Dunbar, administratrix of Joseph L. Dunbar.

Wm. Brooks, administrator of Benjamin Brooks.  
Jonas Frederic, administrator of Benjamin Frederic.

A. P. McIlvain, executor of George Bower.  
A. J. Kauffman, administrator of Morgan Howells.  
Edward McGovern, administrator of John McGovern.

Geo. Brubaker, guardian of Alice Eberman,  
H. C. Martin, executor of Geo. Martin.

H. C. Martin, administrator of H. C. Eberman.  
H. C. Martin, administrator of Ann Martin.  
N. M. Wood, guardian of Sarah R., John Martin and Mary Malvinia Blaymakor.

Sarah Herr, administratrix of Daniel Herr, (farmer)  
Andrew Brubaker, executor of Magdalena Hershey.

Ambrose McConomy, executor of Peter McConomy, who was executor of James Coyle.

Elias H. Eberly, executor of Joseph Eberly, sr.  
Henry W. Harberger, administrator of Joseph L. Jones.

PROTHONOTARY'S OFFICE.

The accounts of the following named estates will be presented for confirmation on Monday, June 18, 1877:

Adam F. Bair and wife's assigned estate; Benj. Root, assignee.

Jacob Brubaker and wife's assigned estate; W. K. Seltzer, assignee.

Moses Brinton and wife's assigned estate; C. Blackburn, assignee.

Samuel Beaty and wife's assigned estate; F. Smith, assignee.

Alvin Brown and wife's assigned estate; Ephraim Blackburn, assignee.

Frederick Carson and wife's assigned estate; Dr. John Levergood, assignee.

James Carlin and wife's assigned estate; Samuel Slokom, assignee.

Henry Funk and wife's assigned estate; John Lander, assignee.

John George and wife's assigned estate; John B. Good, assignee.

John H. Gring and wife's assigned estate; John Lutz, assignee.

Samuel H. Gring and wife's assigned estate; A. R. Royer et al., assignees.

Jacob Hacker and wife's assigned estate; Geo Byrod, assignee.

Henry W. Horst and wife's assigned estate; John Huber et al., assignees.

John M. Keener and wife's assigned estate; Dr. L. L. Breeht et al., assignees.

Hiram Kinnard and wife's assigned estate; Geo. Whitson, assignee.

John Kilhefner's assigned estate; Jacob Hildebrand, assignee.

Abraham B. Good and wife's assigned estate; Jno. P. Good, assignee.

James A. McGuigan and wife's assigned estate; John J. Ritchie, assignee.

N. H. Nissley and wife's assigned estate; Benj. F. Eberly, assignee.

Ezekiel T. Painter's assigned estate; Richard C. Edwards, assignee.

Reisinger & Stibgen's assigned estate; John W. Rich, assignee.

John W. Hfelffer's assigned estate; Benj. Wartman, assignee.

C. S. Musselman's assigned estate; Daniel Rife, et al., assignees.

Henry Miller's assigned estate; H. N. Breneman, assignee.

Henry Ruhl and wife's assigned estate; Emanuel Keener, assignee.

Wm. Roberts and wife's assigned estate; Levi Myers, assignee.

David E. Shirk and wife's assigned estate; John B. Good, assignee.

Riley Shepler and wife's assigned estate; Emanuel Keener, assignee.

M. M. Strickler's assigned estate; J. H. Herr, assignee.

Henry Schmitt and wife's assigned estate; Jacob Bork, assignee.

Laberius Schutte's assigned estate; Jno. H. Zeller, assignee.

Jacob Souder and wife's assigned estate; Eml. E. Miller, assignee.

Noah Steffy and wife's assigned estate; Levi Weller, assignee.

John B. Aument and wife's assigned estate; Jacob Hildebrand, assignee.

Abraham R. Witmer's assigned estate; Levi Myers assignee.

Catharine L. Bear's trust estate; Harriet S. Bryan, trustee.

Albert F. Hartman's trust estate; Jno. I. Hartman, trustee.

Ann Hershey's trust estate; Christian K. Long, trustee.

Baltzer Lipp's trust estate; Jacob Hohn, trustee.

James H. Pownall's trust estate; John N. Phillips trustee.

Benj. Reiff's trust estate; Jonas Reiff, trustee.

Samuel Holl and wife's assigned estate; George Irwin et al., assignees.

Samuel Walker and wife's assigned estate; Jos. C. Walker, assignee.

Peter B. Hertzog and wife's assigned estate; Levi W. Mentzer, assignee.

Samuel Hertzog and wife's assigned estate; Levi W. Mentzer, assignee.

Samuel Binkley and wife's assigned estate; Benj. L. Landis, assignee.

Ezra Becker and wife's assigned estate; Samuel Nissley, assignee.

John O'Brian and wife's assigned estate; Daniel W. Stehman, assignee.

Samuel S. Haller and wife's assigned estate; Sam'l B. Foltz, assignee.

John Reidlinger and wife's assigned estate; Addison Eby, assignee.

Bare Hilhefner's assigned estate; E. G. Groff, assignee.

John Youtz's trust estate; Peter H. Summy, committee.

Peter S. Berat's assigned estate; John Gingrich, assignee.

Herr, Brackbill & Co., assigned estate; Isaac Phenegar, assignee.

A. K. Rohrer's assigned estate; Jacob M. Grider, assignee.

Elias N. Shirk and wife's assigned estate; E. Burkholder, assignee.

Henry Hess and wife's assigned estate; Samuel F. Gall, assignee.

Moses Nolt and wife's trust estate; Grabill Baer, trustee.

Henry Lorah and wife's assigned estate; Henry D. Bausman et al., assignees.

Peter W. Gorrecht and wife's assigned estate; Adam J. Eberly, assignee.

J. A. Schuh's assigned estate; P. D. Baker, assignee.

Phillip Deichler and wife's assigned estate; George W. Leman et al., assignees.

Auditors' Notices

Estate of ISAAC GREIST, late of Martic twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Thomas E. Ambler, administrator of said deceased, to and among those legally entitled to the same, will attend for that purpose on FRIDAY, the 15th day of JUNE, A. D., 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. O. NEWPHER, Auditor. may15

Assigned Estate of ADAM BERTSCH, of Lancaster City.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frank Pfeiffer, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 7th day of JUNE, 1877, at 2 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. C. DIEHL, Auditor. may5

Estate Notices.

Assigned Estate of HENRY G. STRAYER and WIFE, of Mount Joy twp., Lancaster Co.

Henry G. Strayer and wife, of Mount Joy twp., having by deed of voluntary assignment, dated May 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry G. Strayer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to je2 HENRY B. RABER, Assignee, J. HAY BROWN, Att'y. Mount Joy, Pa.

Assigned Estate of ABRAHAM H. BRENE-MAN and WIFE, of Manor township.

Abraham H. Breneman and wife, of Manor twp., having by deed of voluntary assignment, dated May 16th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham H. Breneman he therefore gives notice to all persons indebted to said assignor to makepayment to the undersigned without delay, and those having claims to present them to je2 BENJ. H. BRENE-MAN, Assignee, CHAS. DENUES, Att'y. Residing in Safe Harbor.

Estate of ANNA CATHARINE HART, late of Lancaster city, deceased.

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa. FRANK STAHL, B. C. KREADY, Att'y. [je2] Administrator, c. t. a.

Estate of JOSEPH HART, late of Lancaster city, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa. B. C. KREADY, Att'y. FRANK STAHL, je2 Administrator.

Assigned estate of JOHN STANTON and WIFE, of Drumore township, Lan. co.

John Stanton and wife, of Drumore township, having by deed of voluntary assignment, dated May 14, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Stanton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to DANIEL LEFEVER, (far.) DANIEL D. HESS, Assignees. W. M. FRANKLIN, Att'y. je2 Residing at Quarryville.

Estate of CATHARINE BAHILL, late of Mannheim twp., deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. J. M. BAHILL, HUGH R. FULTON, Att'y. Executor, may19\* Binkley's Bridge P. O., Lan. Co., Pa.

Estate of J. MORRIS JACKSON, late of Fulton township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. PHILIP D. BAKER, LEVI K. BROWN, may26\* Att'y. Administrator.

Estate of CATHARINE ELI, late of Salisbury township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. may26 WM. LANDIS, H. C. BRUBAKER, Att'y. Executor.

**Estate of THOMAS REDMAN, late of Providence twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
 may12\* JOHN STROHM, Jr.,  
 P. D. BAKER, Att'y. Executor.

**Estate of NANCY GILBERT, late of Columbia borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Columbia.  
 may12 AARON H. GILBERT,  
 JOHN A. GILBERT, Administrators.  
 Wm. B. GIVEN, Att'y, Columbia, Pa.

**Estate of DAVID FARMER, late of Mount Joy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rapho township.  
 may5 CATHARINE FARMER,  
 JOHN FARMER, Administrators.

**Estate of F. A. DIETZEL, late of Ephrata township, dec'd.**

Letters of administration *cum testamento anexo de bonis non* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to him without delay.  
 THOS. E. FRANKLIN, } Att'ys. ELIAS WOLF,  
 WALTER M. FRANKLIN, } Executor,  
 may5 Residing at Akron, Lancaster Co.

**Estate of SAMUEL DRABENSTADT, late of East Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
 may5 WM. WELCHANS,  
 B. C. KREADY, Att'y. WM. DRABENSTADT, Administrators.

**Assigned Estate of ADAM GUTFLEISCH and WIFE, of Lancaster City.**

Adam Gutfleisch and wife of Lancaster city, having by deed of voluntary assignment, dated April 26th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Adam Gutfleisch, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 HENRY WOLF, Cabinet Maker,  
 D. P. ROSENMILLER, Jr. Att'y. Assignee,  
 may5 40 East King street.

**Estate of ADAM THOMAS, late of Pequea twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
 may5 JOHN M. HARMAN,  
 THOS. E. FRANKLIN, Att'y. Administrator.

**Assigned Estate of TOBIAS HERR and WIFE, of Strasburg twp., Lancaster county.**

Tobias Herr and Wife, of Strasburg twp., having by deed of voluntary assignment, dated April 18th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Tobias Herr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 ABRAHAM HOSTETTER, Assignee,  
 ap28 P. D. BAKER, Att'y. Paradise township.

**Estate of CHRISTIANNA CURRY, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
 may5\* HENRY CARPENTER,  
 Executor.

**Estate of PETER NADES, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known to them without delay.  
 CHRISTIAN SCHAEFER,  
 B. C. KREADY, Att'y. Executor, Lancaster city.  
 ap28

**Estate of JOHN KOB, late of Conoy township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
 JACOB R. KOB, Conoy twp.,  
 SAM'L EBY, Elizabethtown bor.,  
 ap28 Executors.

**Estate of ANN LEECH, late of Salisbury twp., dec'd.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sadsbury twp.  
 P. D. BAKER, Att'y. W. M. COOPER,  
 ap21 Administrator *c. t. a.*

**Estate of DANIEL HEISEY, late of West Calico twp., Lancaster co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
 ADAM OBERLIN, Administrator,  
 ap21\* Cocalico P. O., Lancaster county.  
 A. J. EBERLY, Att'y, 49 Grant St., Lancaster, Pa.

**Estate of THOMAS PENNINGTON, late of Colerain twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Kirkwood, Lancaster co.  
 ap21 SIMON W. SWISHER,  
 M. BROSIUS, Att'y. Executor.

**Estate of SUSANNA ERB, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Warwick township.  
 ap21 HENRY E. RUDY,  
 H. C. BRUBAKER, Att'y. Executor.

**Estate of ELIZABETH LEECH, late of Salisbury twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Sadsbury twp.  
 P. D. BAKER, Att'y. W. M. COOPER,  
 ap21 Administrator.

**Estate of JAMES MANEY, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned all persons indebted thereto, are requested to make immediate settlement, and those having claims or demands against the estate of said decedent, to make known the same to her without delay.  
 SARAH MANEY,  
 B. C. KREADY, Att'y. [ap21] Administratrix.

**Assigned Estate of GEORGE HEISS and WIFE of the City of Lancaster, Lancaster co.**

George Heiss and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 7th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Heiss, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 GEORGE TOMLINSON, Assignee,  
 Residing in Manheim twp.  
 ap21

**Assigned Estate of ISAAC G. PFAUTZ, of Warwick twp., Lancaster co.**

Isaac G. Pfautz, of Warwick township, having by deed of voluntary assignment, dated April 14th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Isaac G. Pfautz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 JOHN W. HOLLINGER, Assignee.  
 ap21

**Assign'd estate of WILLIAM HOY, of Sadsbury twp., Lancaster co.**

William Hoy, of Sadsbury twp., having by deed of voluntary assignment, dated 31st March, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Hoy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims present them to  
 SAM'L SLOKOM,  
 ap21 Assignee, residing in Christiana.

**Assigned Estate of MICHAEL STERN, of Mt. Joy twp., Lancaster Co.**

Having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Michael Stern, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 WM. F. HAMILTON,  
 ap14 Assignee, Elizabethtown.  
 W. A. WILSON, Att'y, 32 1/2 South Duke street.

**Estate of ALEXANDER TURNER, late of Colerain township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township, Oxford Bor., Chester Co., Pa.  
 JAMES F. TURNER,  
 JAMES A. ANDREWS,  
 ap14\* Oxford P. O., Chester Co., Executors.

**Assigned Estate of ENGLE & BRANDT, of Elizabethtown, Lancaster Co.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Engle & Brandt, notice is hereby given to all persons indebted to said assignors, to make immediate payment to the undersigned without delay, and those having claims to present them to  
 ADDISON EBY,  
 ap14 Assignee, Elizabethtown.  
 W. A. WILSON, Att'y, 32 1/2 South Duke street.

**Estate of HENRY LEBER, late of Columbia borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Columbia.  
 SAM'L EVANS,  
 Wm. B. GIVEN, Att'y. Administrator.  
 ap14 Columbia, Pa.

**Estate of MARGARET BISHOP, (widow,) late of Mount Joy borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Elizabethtown.  
 D. G. BAKER, Att'y. ADDISON EBY,  
 ap14 Executor.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, JUNE 9, 1877.

No. 2.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger	4:50 a. m.	7:50 a. m.
Niagara Express	9:35 a. m.	10:40 a. m.
Hanover Accomodat'n	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy	11:20 a. m.	1:00 p. m.
No. 2, via Columbia	11:20 a. m.	1:25 p. m.
Sunday Mail	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.	6:10 p. m.	8:10 p. m.
Columbia Accom.	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express	7:25 p. m.	8:40 p. m.
Pittsburg Express	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express	4:10 a. m.	7:00 a. m.
Harrisburg Express	7:35 a. m.	10:00 a. m.
Columbia Accom.	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail	2:00 p. m.	5:00 p. m.
Johnstown Express	3:05 p. m.	6:00 p. m.
Day Express	5:18 p. m.	7:30 p. m.
Harrisburg Accom.	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville	6:50	8:10	2:30
Lancaster—West King Street	8:00	9:30	3:35
Lancaster—Upper Depot	8:10	9:46	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot	9:46	5:30	8:00
Lancaster—West King Street	9:55	5:40	8:10
Quarryville, (arrive)	11:00	7:00	9:15

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street	8:00		3:35
Lancaster—Upper Depot	8:10	12:55	3:45
Lancaster Junction	8:35	1:20	4:10
Reading, (arrive)	10:15	3:20	5:45

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading	7:35	11:40	6:05
		p. m.	
Lancaster Junction	9:31	1:35	7:35
Lancaster—Upper Depot	9:46	2:00	8:00
Lancaster—West King Street	9:55		8:10

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia	5:40	12:01	4:20
Arrive at Peachbottom	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom	7:15	2:05	5:55
Arrive at Columbia	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m., and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<small>Appointed.</small>	
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874	
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858	
Noah H. Swayne, of Ohio,	1863	
Samuel F. Miller, of Iowa,	1862	
Stephen J. Field, of California,	1863	
William Strong, of Pennsylvania,	1870	
Jos. P. Bradley, of New Jersey,	1870	
Ward Hunt, of New York,	1872	
<i>Attorney General</i> —Charles E. Bevans.		

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At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

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*Associate Judge*—John J. Libhart.  
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*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
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*Clerk*—John M. Grider.  
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*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
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**COURT CALENDAR.--1877.**

JUNE.

9. Last day for setting down causes for Argument Court.  
 23. Calling Judgment Docket.

JULY.

21. Last day for filing Accounts to August Court.  
 28. Last day for setting down causes for trial for August Court.

AUGUST.

10. Last day for issuing Writs to August Term.  
 18. Last day for filing Accounts to September Court.  
 18. Argument for Rules of Affidavit of Defense.  
 20. Last day for issuing Executions to August Term.  
 25. Calling Judgment Docket.

SEPTEMBER.

7. Last day for issuing Writs to September Term.  
 8. Last day for setting down causes for Argument Court.  
 8. Last day for setting down causes for trial for October 8 and 15.  
 15. Argument for Rules of Affidavit of Defense.  
 22. Calling Judgment Docket.  
 22. Last day for setting down causes for trial for October 22.

OCTOBER.

5. Last day for issuing Writs to October Term.  
 20. Calling Judgment Docket.  
 20. Last day for filing Accounts to November Court.  
 20. Argument for Rules of Affidavit of Defense.  
 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

9. Last day for issuing Writs to November Term.  
 16. Last day for filing Accounts to December Court.  
 17. Argument for Rules of Affidavit of Defense.  
 19. Last day for issuing Executions to November Term.  
 24. Calling Judgment Docket.

DECEMBER.

7. Last day for issuing Writs to December Term.  
 8. Last day for setting down causes for Argument Court.  
 15. Argument for Rules of Affidavit of Defense.  
 23. Last day for filing Accounts to January Court, 1878.  
 23. Calling Judgment Docket.  
 29. Last day for setting down causes for trial for January Court, 1878.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed MONDAY, JUNE 18th, 1877, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.  
 may 26

JOHN W. MARCH.

**NOTICE.**

In the Estate of  
**JAC. HENNE AND WIFE,**  
 Assignors.

In the Court of Common Pleas of Lancaster Co., on the petition of Jac. H. Hershey, Assignee, for an order to convey the trust property to the Assignor.

And now, April 14, 1877, on the petition of Jacob H. Hershey, assignee in trust for the benefit of the creditors of Jacob Henne, praying for an order of court to convey the trust property to the assignor, the Court appoint the 18th day of JUNE, at 10 o'clock, a. m., for hearing said application, and direct that notice of the same and the time of hearing thereof be given to all parties interested in said trust by advertisement in the *Lancaster Examiner and Express, Intelligencer,* and *LANCASTER BAR,* three newspapers published in the county of Lancaster, once a week for four successive weeks prior to the hearing.

Attest,  
 may 19

W. E. KREIDER,  
 Dep. Prothonotary.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 9, 1877.

## SUPREME COURT OF PENNSYLVANIA.

### JOHN M. BUYERS' APPEAL.

That an administrator *pendente lite* has no power to lease real estate in any manner, or for any time, can not be taken absolutely; this is often qualified by circumstances, when it is the basis of a collateral inquiry.

It is the duty of the plaintiff in error, or an appellant; to make the error he complains of plainly appear; the presumptions are always in favor of the proceedings in the court below.

Appeal from the decree of the Orphans' Court of Lancaster county, in the matter of the estate of John McCally, deceased.

H. M. North and Philip D. Baker for appellants.

N. Ellmaker, D. G. Eshleman and S. H. Reynolds, for appellees.

PER CURIAM.

Opinion delivered May 21st, 1877.

It has often been said that it is the duty of the plaintiff in error, or an appellant, to make the error he complains of plainly appear. It is not to be left in doubt, for the presumptions are always in favor of the proceedings in the court below. We are not to presume errors. Now, in this case we have not been furnished with a copy of the will of the decedent, nor of the lease existing at his death, or the bargain, the breach of which was the cause of compromise, and the payment of damages. Without these matters we cannot determine what the rights of the existing tenant were, either real or colorable. It is true the magistrate decided against the administrator, yet the terms may have been so colorable in favor of the administrators' claim to possession, that counsel might have earnestly advised them that they could recover; acting on the belief of this right they make a new lease, and failing to dispossess the old tenant they had to pay damages. Now it appears they acted under advice of counsel as to their rights as administrators *pendente lite*, and here we ought to have the will before us to determine whether there was any colorable ground for the advice. The auditor finds that the administrators *pendente lite* acted honorably and under advice. The court has sanctioned the fact. Now, under these circumstances, we are not able to say that the appellant has clearly convinced us of error; he rests his argument on the single position that in law an administrator *pendente lite* has no power to lease real estate in any manner, or for any time. But the law is so often qualified by circumstances that when it is the basis of a collateral inquiry, as this is, we cannot say that it is to be taken absolutely. Here the question is one of credit to be allowed, not directly on the power to lease, and it was the duty of the appellant to convince us that the circum-

stances afforded no protection to the administrators.

Decree affirmed, with costs to be paid by appellant, and appeal dismissed.

### PATTERSON AND McILVAIN'S APPEAL.

An issue of *devisavit vel non* is a proceeding at law. The legal costs of the issue can be recovered, but the fees of counsel and personal fees of the litigants are not allowed.

In chancery proceedings proper the rule is not absolute, and a court of equity may make a decree to suit the entire equity of the case.

Appeal from the decree of the Orphans' Court of Lancaster county, in the matter of the estate of John McCally, deceased.

N. Ellmaker, D. G. Eshleman and S. H. Reynolds for appellants.

H. M. North and Philip D. Baker for appellees.

PER CURIAM.

Opinion delivered May 21st, 1877.

The cases in this State support the decision of the auditor, affirmed by the court, striking out the expenses of the appellants in maintaining the will. The issue *devisavit vel non* is a proceeding at law, to determine a certain fact or facts involving the validity of the will. The legal costs of the issue can be recovered, but the fees of counsel and personal fees of the litigants are not allowed: Mumper's appeal, 3 W. & S., 441. In chancery proceedings proper, the rule is not absolute, and a court of equity which makes a decree to suit the entire equity of the case, as a part of its decree, may allow expenses. But we know of no proceedings at law where parties recover expenses beyond the legal costs—costs being a creation of the statute. The effect of allowing expenses, is to cast the entire loss upon the losing party whose contest may have been without blame.

Decree affirmed, with costs to be paid by the appellants, and appeal dismissed.

### HESLOP vs. HESLOP.

1. A charge to the jury that "where a party in a cause attempts to manufacture testimony, the jury are justified and warranted in presuming that his cause is not well founded" is error.
2. Defendant was married to plaintiff's husband, not knowing that he had ever been married before; on the husband's death, plaintiff brought an action of dower. Held, that evidence should have been admitted to show that at the time of the alleged second marriage the husband had no means, that the defendant had money which was invested in the property in which plaintiff claimed dower, that defendant was entirely ignorant of her husband's prior marriage to plaintiff, and never heard of it till after the death of her husband.

Error to the Court of Common Pleas of Cambria county.

Opinion by WOODWARD, J. January 2d, 1877.

In the charge to the jury the court instructed them that "where a party attempts to manufacture testimony, the jury are justified and warranted in presuming that his case is not well founded." This instruction is the subject of the third assignment of error. While the testimony offered on behalf of a

party whom the jury find have tampered with the witnesses, should be carefully and even suspiciously scrutinized, yet that testimony is not to be utterly disregarded and set aside, and the verdict be left to rest on a presumption arising from the party's misconduct, however flagrant and however clearly proved. It is manifest that the court did not intend to lay down a rule that would produce such a result, for in the same connection the jury were told to consider the testimony on this question, and give to it such weight as it might be entitled to. Still the effect of the rule which was stated, could easily have been to mislead the jury, and to induce a verdict against evidence which might have been found to be conclusive under a more guarded charge.

Under the peculiar circumstances of this case the evidence specified in the fourth assignment of error ought to have been received. Alice Heslop, the plaintiff below, sought to recover dower in lands of which Joseph Heslop, whom she claimed to have been her husband, died seized. By his will Joseph Heslop devised the land to Mary Heslop, the defendant below, during her life, and after her death, to their son, Joseph Heslop, Jr. The plaintiff alleges that she was married in 1828, and the fact of the marriage has been found by the verdict. The substance of the evidence offered by the defendant, which the court rejected, was that she was entirely ignorant that Joseph Heslop had ever been married to the plaintiff when she herself married him: that he had at the time no means of his own; that she had an estate of several thousand dollars, which he appropriated and invested in the property in which dower was claimed in this suit; and that she earned during her residence in Johnstown, considerable sums of money, which were applied towards the maintenance of Heslop's family. If Heslop was the husband of plaintiff, the defendant was clearly not his wife. The second marriage was a mockery and a fraud. It gave to Heslop no right to the possession of defendant's person, and no right to the possession of her property. Even if she gave him her estate, the gift was to a man who had imposed himself upon her as her husband, and his title to it was worse than worthless. She had the right to regain possession of it, wherever it was invested, so long as its identity could be traced, against any claimant under a legal title which he had so iniquitously acquired. Receiving it under the false pretence that he was her husband, he acquired no more right to it in any legal sense, than he could have acquired by any other form of fraud or crime. The fact that the defendant acquiesced in the provision made for her in Heslop's will, did not bar the right to claim the property for which her money paid. At his death she supposed herself to be his widow. The devise was to her and her son. She accepted it in the belief that she had been an actual, and not merely an apparent wife. She permitted her apparent husband to dispose of it by will, just as she had permitted the ownership to pass in his lifetime into his hands. Nor was she estopped from the assertion of her title by the proof of the will given at the trial. The

fact that Heslop made it was part of the general evidence, given to illustrate his relation to the two women who were the parties in the controversy. The proof of the marriage of the plaintiff failing, the defendant could claim only under Heslop's will. The marriage of the plaintiff being established, the defendant had the right to claim the property as her own, if it was bought with the proceeds of her estate. The rule that a wife cannot acquire property out of moneys earned by her, has no application to a case like this. If the defendant lived with Heslop in the false relation which is alleged as the very groundwork of the plaintiff's suit, her earnings were her own. The offer did not assert that they were applied to the purchase of the property, but it was competent to show that the defendant had not been a burden upon Heslop, and that she had provided for more than her own support.

There is nothing in the other errors assigned to require detailed discussion. The amendment of the record was one which the courts were empowered to allow by the express terms of the act of the 4th of May, 1852. The offer of the testimony of George Rick was properly received, for it alleged the participation of the defendant in the attempt to corrupt the plaintiff's witness. *Reed v. Elder*, 12 P. F. S., 317, would seem to be authority for the instruction complained of in the fifth assignment. All necessity for an inquiry into the question of alienage is obviated by the discovery of the record of Heslop's naturalization, a copy of which has been appended to the paper book of the defendant in error.

Judgment reversed and *venire facias de novo* awarded.

#### Common Pleas of Lancaster County.

##### HANZEN vs. KUMMER.

The notice served upon the defendant of the election of the plaintiff to allow the defendant to remain in possession of lands extended at the fixed rental must appear by the return of the sheriff, to the court out of which the writ issues, before the *venditioni exponas* can be issued. This can not be made appear in any other manner.

J. B. Amwake for rule.

A. J. Eber's contra.

Opinion delivered April 14th, 1877, by LIVINGSTON, P. J.

Rule to show cause why writ of *venditioni exponas* should not be set aside, for the following reasons:

FIRST. The defendant's real estate was extended by the inquest, and the rental value thereof assessed at four dollars per annum.

SECOND. The defendant never had notice by the sheriff, or any other person, to accept or refuse the property at the rental value thereof, as required by the law, and therefore the said *venditioni exponas*, issued in the above case, is irregular and unauthorized by law, until all the requisites are complied with in the above case.

In cases like the one now under consideration the law requires that after real estate of a defendant in a judgment is levied on by the

sheriff, he, the sheriff shall give at least five days' notice of the time and place of the holding of the inquisition thereon to the defendant in the execution, if he be found; if he be not found in the county, then to his attorney or agent, and if attorney or agent be unknown to him, then by handbills to be fixed upon the premises, &c.

After inquisition has been held, and the lands are extended and rental value assessed, the sheriff makes return thereof to the Court, and upon such return the plaintiff may have a writ of *liberari facias*, and have said real estate delivered to him at the valuation or rental assessed until his debt, interest and costs are paid. Or he may, at his election, instead of suing out a writ of *liberari facias*, permit the defendant or defendants, or any other person or persons, claiming under him or them, by demise or title subsequent to the judgment upon which the *feri facias* issued, to retain the possession of the real estate at the rental fixed by the inquest; and the plaintiff, or his attorney, shall signify his election, so to permit such defendant, or other person claiming under him, to retain the possession, &c., to the sheriff having the writ of *fi. fa.* This being done, it is the duty of the sheriff to notify the defendant, or person claiming under him, of such election on the part of the plaintiff. This notice is required to be in writing, signed by plaintiff or his attorney, and to be served by delivering a copy to the defendant, or person in possession of the real estate, or leaving the same at his residence, with an adult member of his family, and of which the sheriff is to make return to the Court out of which the writ issues. After the sheriff has served notice of plaintiff's election upon the defendant, it becomes the duty of the defendant to give notice to the sheriff of his willingness to retain possession under the rental valuation of the inquest, within thirty days from the time of the reception by him of the notice of plaintiff's election to allow him so to retain the same, and if he omit or neglect to do so the plaintiff may have a writ of *venditioni exponas* to cause a sale of the real estate so extended.

In the present case the records of the Court show that a judgment was obtained before a magistrate, in favor of Martin Hanzen against Augustus Kummer, for \$4.50; that an execution was issued by the magistrate, and returned "no goods," after which a transcript was taken and entered in the Court of Common Pleas, on July 16, 1875, to April Term 1875, No. 744. [On this a *fi. fa.* was issued July 16, 1875, to August Term, 1875, No. 144. August 13, 1875, defendant's real estate levied on, inquisition held and not condemned, and rent assessed at fifty dollars per annum. *Venditioni exponas* issued to January Term, 1877, No. 79. And thus ends the record. No return by the sheriff of the election of plaintiff to permit the defendant to retain possession of the real estate extended at the rental value. No return of the sheriff of service of notice of such election on the defendant as the law requires, nay, imperatively demands. It is true that in this case the

plaintiff has made an attempt to prove *aliunde*, such election on the part of the plaintiff, and service of notice of such election on the defendant, but his proof, beside having the presumption of law against it, is squarely contradicted by the testimony produced by defendant. And here we may be permitted to say that it appears to us somewhat strange that upon an examination of the records during the term of Amos Groff as sheriff, and of the term of the present sheriff thus far, we have been unable to find on the records a single return of a service of notice on defendant of the election of plaintiff to permit him to retain possession of the real estate extended, at its assessed rental value; and this too, in the face of an act of assembly which makes this duty on the part of the sheriff imperative, and makes such return as much a part of the record as the issuing of the writ or any other proceeding in the cause.

The record cannot be supplied in the manner here attempted. We must look to the record for evidence of the fact, and where the record does not show the service of notice on the defendant, as required by the act of assembly, the writ of *venditioni exponas* is left wholly without authority of law upon its own record. "For" (as CHURCH, Justice, in *Black vs. Aber*, 2 Grant, 208, in delivering the opinion of the Supreme Court, has said,) "the second section of this act (of 1840,) in very distinct and imperative terms, requires that all these notices, after inquisition and extension, shall be in writing, and duly served and returned, thus rendering them as much a part of the record as anything else in the cause. And whatever ought to appear of record, and does not, must be presumed not to have occurred." An inspection of the record here shows very palpably its irregularity, and for want of a complete and proper record to support it, this writ must fall. In issuing a *venditioni exponas* counsel should see that it is supported by a perfect record; and, if the record be imperfect have it perfected before issuing his writ. If he fail to do this he will have no right to complain if his writ of *venditioni exponas* be set aside by the court, required then to do what he should have done before thus proceeding.

The rule is therefore made absolute, and the *venditioni exponas* set aside.

##### GAKEL & CO. vs. BLETZ.

The oath necessary to be made upon an appeal from an award of arbitrators may be made before a justice of the peace. The recognizance of an appeal defective in the manner of taking it by the prothonotary may be afterwards perfected.

Rule to show cause why appeal should not be stricken off.

H. M. North for rule.

S. H. Reynolds contra.

Opinion delivered April 14, 1877, by PATTERSON, A. L. J.

This rule, it seems, was obtained on motion of plaintiff's attorney for alleged reasons appearing on the record. It is maintained that the appeal is not in form, as required by the act of assembly—indeed is no appeal at all, and therefore should not be

stricken off. Does the argument or the law make this out? This suit was brought to September Term, 1876, No. 77, and a rule taken to arbitrate, under which the arbitrators met, and made their award, in favor of plaintiff, for \$30,941.43, which was filed in the prothonotary's office November 28, 1876. The defendant took an appeal, which was filed December 16, 1876, within twenty days after the day of the entry of the award on the docket.

The 27th section of the act of 16 June, 1836, says: "either party may appeal, and the party appellant, his agent or attorney shall make oath or affirmation that it is not for the purpose of delay such appeal is entered, but because he firmly believes injustice has been done."

The provisions of the act of March 20th, 1845, which supplies sections 29 and 30 of the act of 1836, directing the form or condition of the recognizance to be given by the appellant, directs that in cases of appeal from the awards of arbitrators, the bail shall be absolute, in double the amount of costs accrued, &c., "with one or more sufficient sureties, conditioned, &c."

In the appeal in question the defendant made the oath or affirmation required by law (he being sick at the time) before a justice of the peace in and for the county of Lancaster. His sufficient security, Jacob Sneath, presented himself before the prothonotary of the Court on the 16th of December, 1876, having signed the recognizance (required in such appeal) and the prothonotary, the officer or clerk of the Court, instead of writing the proper form of words, to wit: "Taken, subscribed and acknowledged the 16th day of December, A. D. 1876, coram, me per Slaymaker, Dep. Prothonotary"; wrote the words as follows: "December 16, 1876, Jacob Sneath aff'd, coram, Pr. Slaymaker, Dept. Prothonotary."

There is no allegation that the costs were not paid, nor that the oath or affirmation required by the act of assembly is not in proper form—nor that the oath or affirmation was not made by appellant. It was administered to the appellant, it is true, by a justice of the peace in and for the county of Lancaster. But the Supreme Court have declared that the oath required to ground an appeal from an award of arbitrators, may be made in another county: 1st barr, *Duffie vs. Black*, page 388. Was not the oath or affirmation then in this case made in a legal mode? We think it was. The oath or affirmation was well administered by a justice of the peace in and for the county of Lancaster; for the alderman or justice had general power; and it is indifferent, not only in point of substance, what were the territorial limits of his jurisdiction, but it is absolutely necessary, in point of convenience, that a sick or infirm suitor be not compelled to travel, perhaps from Philadelphia to the shores of lake Erie, to find a competent magistrate." Such is the language of the Supreme Court. But it is urged in support of this rule, that the recognizance is not in proper form—not properly "taken." The recognizance is the usual printed form, used in all cases of appeal—the legal form of

words, and it is signed by the security, Jacob Sneath; and if not "taken" by the prothonotary or his deputy in the legal way, it is no fault of the appellant or his security.

By the Act of 14th April, 1834, the prothonotary is empowered, and it is thereby made his duty to exercise in the courts to which he belongs, and with full effect, in term, time and vacation, the powers, and authority there prescribed—one or which is "to take bail in civil actions, depending in the respective courts."

If that officer then "affirmed" the security, instead of recognizing him in the legal form, the appellant should not suffer by the officer's neglect to do what duty or law requires. Such defect should not render the recognizance irreparable, and cause the defendant to lose his appeal, and consequently his right of trial by jury—"a great constitutional right," as declared by Chief Justice GIBSON, in the case of *Means vs. Trout*, 16 S. & R., 349. The authorities, so far as we heard them in the argument of this rule, or so far as we could find them, do not support such a conclusion. If, even such omission or mistake of the prothonotary should render the recognizance in this instance bad, the court ought not to strike off the appeal in the first instance, but would first allow the party appellant to be called on by a rule to perfect it within a given time, the same as he would be allowed to perfect his bail when questioned as to ability by the adverse party.

The case of the First National Bank of Columbia vs. Bletz, cited by counsel in support of the rule to show cause, and decided by his Honor the President Judge in 1872, is not a similar case to that which we are now considering, but very dissimilar, and it is not at all affected or weakened by our conclusions in this case.

The rule to strike off the appeal is discharged.

#### Common Pleas of Luzerne County.

##### MORRISON vs. STUART.

A justice of the peace must reside and keep his office within the limits of the district for which he was commissioned.

In Equity.

Opinion by DANA, J.

Bartholemew Morrison was elected and commissioned, in 1869, an alderman in and for the second ward of the city of Carbondale. John Stuart was, at the same time elected and commissioned an alderman in and for the first ward. Mr. Stuart resides in the first ward, but, in accordance with a custom which seems to have prevailed for some time in that ward, keeps his office and transacts the business of it in the second ward.

Of this conduct Morrison, the plaintiff, complains as an act contrary to law, prejudicial to his interests, and prays that the defendant may be enjoined from the continuance of the same.

The question is presented upon the bill of the plaintiff for an injunction against the defendant keeping his office in the second ward and the answer and affidavit of the defendant.

The answer asserts, first, that Morrison was not a citizen of Carbondale at the time of his election, and is not legally entitled to hold the office of alderman.

That he has been commissioned, however, as asserted in the bill, is not denied, and is, therefore, taken as true. Back of this we could not go in this proceeding, were his right to the office the issue. But the question is not the plaintiff's right to the office, but the manner and place of the exercise of his office by the defendant.

The answer further denies that aldermen in the city of Carbondale are required by law to keep their offices in the ward for which they are elected; asserts a custom for several years' duration in the first and second wards; and that the defendant does not and has not interfered with or diverted business from the plaintiff.

The additional point was made on the argument, that the plaintiff's remedy for injuries, if he has suffered any, is by a *quo warranto*, and not by injunction.

The terms, justices of the peace or aldermen, in the constitution, are used as substantially synonymous, representing magistrates in all respects of the same authority and character. By the 28th section of the act of 1810 alderman in the city of Philadelphia shall in all cases exercise all the powers which any justice of the peace may exercise, and be under and subject to the same limitations and restrictions: P. D. 592, § 24. Aldermen are the creatures of corporations, and exist only within their bounds. Justices of the peace exercise the same authority in the county, usually beyond the limits of incorporated districts. Justices of the peace are judges of record, appointed by the king to be justices within certain limits, for the conservation of the peace: Dalton Ch., 2. A court is a place where justice is judicially administered, and a justice of the peace, being a judicial officer, must necessarily have his court or place of administering justice: Gibson, C. J., in *King vs. King's Ex.*, 1 Pa. R., 19.

The first section of the act of February 22, 1802, P. D., 592, § 25, enacts that no justice of the peace shall act as such, unless he shall reside within the limits of the district for which he was commissioned. The thirteenth section of the general act of June 21st, 1839, for the election of aldermen and justices of the peace, P. L., 376, P. D., 591, § 20, provides that "during their continuance in office they shall, respectively, keep their offices in the ward, borough or township for which they shall have been elected." By the seventh section, if any vacancy take place in any ward, borough, or township, it shall be supplied at the next election. The ninth section of the act of March 15th, 1851, incorporating the city of Carbondale, P. L., 166, provides that "at the first election, and once in five years thereafter, the citizens of each ward shall elect one citizen of the Commonwealth, who shall have been a resident within the city one year before the time of his election, for alderman of the respective wards." To the person thus elected, a commission issues as alderman of the ward for which he was elected.



The several laws relative to elections, including that last cited, being *in pari materia*, are to be read and construed in connection. The omission in the act incorporating Carbondale to refer in express terms to pre-existing exactments, neither repeals them nor excepts the city from their operation. An act supplying another usually contains a general clause repealing the act or section supplied; but when the act merely provides for the election of an officer in a district newly created without none, it is implied that he shall be elected, and discharge his duties in the manner, at the places, possess the rights, and be subject to the provisions and restrictions prescribed by existing laws.

It may not be essential with the present population and business, that the alderman for the first ward of Carbondale should keep his office there, but in general it is convenient, and hence has been required. Wards, although they may not be as remote from each other as boroughs and townships, are yet as distinct; they form separate districts and jurisdictions; and, if authorized to elect an alderman, are entitled to require that his office be in the ward. If needed by the ward, they are needed in the ward. The having an officer resident in the ward, but keeping his office in a remote ward, or in the townships of Fell or Greenfield, embraced within the city jurisdiction, would not fulfil the law, which gives to each ward an alderman, and, if a vacancy occur, the right to fill it.

We, therefore, hold the law to be, that an alderman should keep his office in the ward for which he was elected.

If this be the law, it cannot be changed by the very respectable affidavits that a contrary practice has prevailed, with some exceptions, since its organization as a city. If the people desire its sanction by law, their appeal should be made to the legislature. The courts cannot by decree, nor the citizens by acquiescence, change or dispense with statutory requirements.

As to the remaining point: It seems clear, under the authorities, that the question of the right to exercise the duties of an office must be tried under a writ of *quo warranto*, whilst an injunction is a writ adapted to control and regulate officers in the discharge of their functions, though not to try their right to hold and exercise their offices: *Hagner v. Heyberger*, 8 W. & S., 104-5; *In re School Directors of Morrisville*, 3 Phila. R., 186-7.

As the present proceeding is not intended to question Alderman Stuart's right to the office, but only his right to exercise it, and keep his office or place of business in another ward than that for which he was elected, and within a ward for which another alderman, the plaintiff, has been elected, commissioned, and is serving, a *quo warranto*, on which an adverse finding would be followed by judgment of ouster, could not be sustained. The mode and place of its exercise, rather than the right to the office, being the question, we know of no other remedy, if the conduct alleged be contrary to law, than by injunction. That it is contrary to law, we have endeav-

ored to show; that the plaintiff is otherwise remediless, entitles him to an injunction.

Upon the plaintiff's giving bond, with sufficient sureties, in the sum of one thousand dollars, to be approved according to law, let an injunction issue, until otherwise ordered, to enjoin and restrain the said John Stuart from keeping his office, for the performance of the functions and duties, and for the exercise of the powers of alderman, in the second ward of the city of Carbondale. Formal decree to be drawn up and submitted by counsel to the court.—*Luzerne Leg. Register*.

#### Common Pleas of Columbia County.

IN THE MATTER OF THE DISTRIBUTION OF THE PROCEEDS OF THE SHERIFF'S SALE OF THE PERSONAL PROPERTY OF WILLIAM PEIFFER.

1. Under the Act of Assembly of April 9th, 1872, known as the "Wages Act," the notice of the claim must be in writing, and delivered to the officer executing the writ before a sale takes place.
2. The notice must state the business in which the employer was engaged, the kind of service rendered by the claimant—whether as a clerk, miner, mechanic, or laborer, and the fact that a lien is claimed upon the property seized by the officer; also the particulars of the service and the amount claimed.

Opinion by ELWELL, P. J.

The wages Act of April 9, 1872, gives no lien in favor of clerks, miners, mechanics, or laborers, upon any property not used at or in connection with the mine or manufactory, or other lien is employed.

In considering cases under the act it is important to consider whether the business in which the owner or lessee of the property is engaged is such as entitles his employees to lien. The words of the statute used in defining the business are "Works, mines, manufactories, or other business, where clerks, miners, or mechanics are employed." Other kinds of business, such as keeping a hotel, are not included by these words: *Allen v. Fehl*, 35 Leg. Int. 366; *Sullivan's Appeal*, 27 P. F. Smith, 108.

It is also important to ascertain whether the property about to be sold upon an execution, or otherwise, was in and about the mine, manufactory, &c., or used in carrying on the business thereat, or in connection therewith.

And lastly, whether the claimant has rendered service entitling him to a lien, and has given the notice of his claim as required by the second section of the act.

In this case the auditor has found that Wm. Peiffer, the execution debtor, was engaged in mining and in building houses at the mines; he was also engaged in the business of hotel keeping, wholly independent from his mining business. The fund for distribution was raised by the sale of the personal property in and about the hotel. The auditor, therefore, rightly decided that the execution creditor was entitled to the proceeds of the sale, and the persons employed at the mines had no lien upon the property, or claim upon the fund.

The notices to the sheriff were so defective that the money could not have been legally awarded to the claimants if they had a lien.

The act requires that the notice of the claim shall be in writing, and shall be given to the officer executing the writ before sale. The writing should contain every element which goes to make up a claim under the statute. It ought to state the business in which the employer was engaged, the kind of service rendered by the claimant, whether as a clerk, miner, mechanic, or laborer, the fact that a lien is claimed upon the property seized by the officer, and the particulars of the service as to day's work, or work by the month, or other contract, and the amount claimed.

The court will not be hypercritical in scanning this species of claim, but they cannot disregard the requirements of the statute. As that requires the notice to be in writing, no part of it can be supplemented by parol evidence, but the writing itself must contain every essential to a valid claim, with reasonable certainty.

A notice which merely gives the name of the claimant and a sum opposite, without referring to the property and claiming a lien thereon, is invalid and worthless: *McMillen v. Bank*, 1 Weekly Notes, 55.

For the reasons given by the auditor, and for the further reason that the notices to the sheriff are not such as the statute requires, the auditor's report must be confirmed.

Exceptions overruled and report confirmed.

#### Abstracts of Recent Decisions.

##### GUARDIAN.

*Settlement of Account with Ward after Age.*—While a court of probate has jurisdiction of a guardian's account, and it may be advisable in many cases that a guardian should settle his account with that court, yet a settlement with the ward, after he becomes of age, if it be a fair one, is sufficient, and satisfies the bond: *Davenport vs. Olmstead*, 43 Conn.

The duty of a guardian is owing primarily to the minor rather than to the court of probate, and if it be neglected it may and should be enforced in the ordinary tribunals. A suit may be brought on the guardian bond, or an action of account, and if a court of law does not afford an adequate remedy a court of chancery would have jurisdiction: *Id.*

In any suit brought, all the transactions of of the guardian with the estate of the ward will be investigated and judgment rendered only for the amount justly due: *Id.*

A guardian having given bond in the court of probate with sureties, died during the minority of the ward. After the ward became of age he had a suit brought on the probate bond against the sureties. *Held*, that the defendants could show, not only expenditures of the guardian, in his lifetime for the benefit of the ward, but any such payments or advances for his benefit from the estate or by the sureties themselves, as would be a just charge against him and reduce the amount which he was equitably entitled to recover: *Id.*

B. was appointed guardian of his son W., and gave bond July 28th, 1856. At this time there was due to W. a sum of money upon a policy of insurance for his benefit on the life of his mother, who had died a few months before. B. had drawn on the insurance company for this sum in his own name on the 10th of July, to be paid on the 30th, and had got the draft discounted at bank on the 10th and received the money. The insurance company accepted the draft, payable at their office, and paid it on the 30th, after the appointment of B. as guardian and the giving of the bond, requiring before payment a receipt for the money signed by B. as guardian of W. *Held*, that the jury were justified upon this evidence in finding that B. received the money as guardian, and after the bond was given: *Id.*

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 9, 1877.

**THE MONTHLY JURIST:** The title of this publication, now in its fourth year, has been changed from "The Western Monthly Jurist" to "The Monthly Jurist." It is an excellent legal monthly—pamphlet form, edited by Thos. F. Tipton, James B. Black and Newton B. Reed, esqs. Published at Bloomington, Ills., and Indianapolis, Ind., by Wm. Hill & Co. Terms, \$4.00 per annum, in advance.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since May 26, 1877.

JOSEPH HART, dec'd, late of Lancaster city; Frank Stahl, administrator.

ANNA CATHARINE HART, dec'd, late of Lancaster city; Frank Stahl, administrator c. t. a.

ANDREW J. ELLIS, dec'd, late of Conoy twp.; W. S. Smith, administrator.

CHRISTIANA RAUCH, dec'd, late of Warwick twp.; F. W. Christ, administrator.

DR. JAMES R. WILSON, dec'd, late of Clay twp.; Lizzie D. Wilson, administratrix.

PETER EIDENMILLER, dec'd, late of Strasburg twp.; John Tweed and John Eitenmiller, administrators.

DAVID S. MARTIN, late of East Earl twp.; S. S. Martin, administrator.

ROBERT TWINWIT, dec'd, late of Paradise twp.; George Whitson, administrator.

CATHARINE TYSON, dec'd, late of Pequea twp.; John Nunemacher, administrator.

ALEXANDER McFADDEN, dec'd, late of Mount Joy bor.; Wm. C. F. Reed, administrator.

The following Wills have been admitted to probate since May 26, 1877:

JOHN SHERTZER, late of Manor twp.; Henry F. Herr and John S. Shertzer, executors.

MICHAEL WOLF, sr., late of Lancaster city; Henry Wolf, executor.

MICHAEL McCULLON, late of Lancaster city; Rosine McCullon, executrix.

ELIZABETH TAYLOR, late of Lancaster city; George N. Taylor, executor.

JACOB HERSHEY, late of East Lampeter twp.; Elias H. Hershey and Jacob Hershey, executors.

ESTHER HUBER, late of Lancaster city; Margaret Huston, executrix.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, JUNE 18th, 1877, at 10 o'clock, a. m., at the Court House, in the City of Lancaster, for the hearing of the same, when and where you may attend if you please.  
may26\* JACKSON RINEER.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, JUNE 23d, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.  
je2\* GEORGE MULLIGAN.

## INCORPORATION NOTICE.

Notice is hereby given that "The Congregation of the United Brethren of Litiz and Vicinity" have, agreeably to the Act of Assembly providing for the "Amendment of Incorporations," approved October 13, 1840, applied to the Court of Common Pleas of Lancaster county for an amendment to their charter, which has been examined and approved by said Court, and will be presented for final confirmation and incorporation on MONDAY, JUNE 18th, 1877, at 10 o'clock a. m., prior to which time all persons objecting to such amendment, must file their objections.  
J. F. FRUEAUFF, Solicitor,  
ap28 No. 204 Locust street, Columbia, Pa.

## Auditors' Notices.

### Assigned Estate of SAMUEL KEELER, of the City of Lancaster.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. K. Martin, assignee, will sit for the purpose of his appointment in the Library Room of the Court House, Lancaster, on THURSDAY, JUNE 21, 1877, at 10 o'clock, a. m., when all persons interested may attend.  
jun9 W. LEAMAN, Auditor.

### Estate of ISAAC GREIST, late of Martic twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Thomas E. Ambler, administrator of said deceased, to and among those legally entitled to the same, will attend for that purpose on FRIDAY, the 15th day of JUNE, A. D., 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. O. NEWPHER,  
may15 Auditor.

## Estate Notices.

### Estate of MICHAEL McCULLON, late of the City of Lancaster, Pa., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
ROSINE McCULLON, Executrix,  
S. P. EBY, { Atty's. No. 50 South Lime-st.,  
A. J. EBERLY, { [jun9] Lancaster, Pa.

### Estate of ROBERT TWINWIT, late of Paradise township, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart township.  
GEO. WHITSON, Administrator.  
P. D. BAKER, Att'y. [jun9]

### Assigned Estate of GEORGE RUSSELL, of Caernarvon twp., Lancaster co.

George Russell, of Caernarvon twp. having by deed of voluntary assignment, dated June 4, 1877, assigned and transferred all his estate and effect to the undersigned, for the benefit of the creditors of the said Geo. Russell, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
E. D. WHITE, Assignee,  
Residing in Churchtown, Lancaster co., Pa.  
A. W. SNADER, Att'y. jun9\*

### Estate of PETER EIDENMILLER, late of Strasburg township, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Providence twp.  
JOHN TWEED,  
JOHN EIDENMILLER,  
jun9\* Administrators.

### Assigned Estate of HENRY G. STRAYER and WIFE, of Mount Joy twp., Lancaster Co.

Henry G. Strayer and wife, of Mount Joy twp., having by deed of voluntary assignment, dated May 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry G. Strayer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
je2 HENRY B. RABER, Assignee,  
J. HAY BROWN, Att'y. Mount Joy, Pa.

### Assigned Estate of ABRAHAM H. BRENE-MAN and WIFE, of Manor township.

Abraham H. Breneman and wife, of Manor twp., having by deed of voluntary assignment, dated May 16th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham H. Breneman he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to  
je2 BENJ. H. BRENE-MAN, Assignee,  
CHAS. DENUES, Att'y. Residing in Safe Harbor.

### Estate of ANNA CATHARINE HART, late of Lancaster city, deceased.

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.  
FRANK STAHL,  
B. C. KREADY, Att'y. [je2] Administrator, c. t. a.

### Estate of JOSEPH HART, late of Lancaster city, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.  
B. C. KREADY, Att'y. FRANK STAHL,  
je2 Administrator.

### Assigned estate of JOHN STANTON and WIFE, of Drumore township, Lan. co.

John Stanton and wife, of Drumore township, having by deed of voluntary assignment, dated May 24, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Stanton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
DANIEL LEFEVER, (far.)  
DANIEL D. HESS,  
W. M. FRANKLIN, Att'y. Assignee,  
je2 Residing at Quarryville.

### Estate of CATHARINE BAHILL, late of Manheim twp., deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
J. M. BAHILL,  
HUGH R. FULTON, Att'y. Executor,  
may19\* Binkley's Bridge P. O., Lan. Co., Pa.

### Estate of J. MORRIS JACKSON, late of Fulton township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
PHILIP D. BAKER, LEVI K. BROWN,  
may26\* Att'y. Administrator.

### Estate of CATHARINE ELI, late of Salisbury township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
may26 WM. LANDIS,  
H. C. BRUBAKER, Att'y. Executor.

**Estate of THOMAS REDMAN, late of Providence twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
 may12\* JOHN STROHM, JR.,  
 P. D. BAKER, Att'y. Executor.

**Estate of NANCY GILBERT, late of Columbia borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Columbia.  
 AARON H. GILBERT,  
 JOHN A. GILBERT,  
 Administrators.  
 may12  
 Wm. B. GIVEN, Att'y, Columbia, Pa.

**Estate of DAVID FARMER, late of Mount Joy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rapho township.  
 CATHARINE FARMER,  
 JOHN FARMER,  
 Administrators.  
 may5

**Estate of F. A. DIETZEL, late of Ephrata township, dec'd.**

Letters of administration *cum testamento anexo de bonis non* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to him without delay.  
 THOS. E. FRANKLIN, } Att'ys. ELIAS WOLF,  
 WALTER M. FRANKLIN, } Executor,  
 may5 Residing at Akron, Lancaster Co.

**Estate of SAMUEL DRABENSTADT, late of East Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
 WM. WELCHANS,  
 WM. DRABENSTADT,  
 Administrators.  
 may5  
 B. C. KREADY, Att'y.

**Assigned Estate of ADAM GUTFLEISCH and WIFE, of Lancaster City.**

Adam Gutfleisch and wife of Lancaster city, having by deed of voluntary assignment, dated April 26th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Adam Gutfleisch, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 HENRY WOLF, Cabinet Maker, Assignee,  
 D. P. ROSENMILLER, JR. Att'y. 40 East King street.  
 may5

**Estate of ADAM THOMAS, late of Pequea twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
 JOHN M. HARMAN,  
 THOS. E. FRANKLIN, Att'y. Administrator.  
 may5

**Assigned Estate of TOBIAS HERR and WIFE, of Strasburg twp., Lancaster county.**

Tobias Herr and Wife, of Strasburg twp., having by deed of voluntary assignment, dated April 18th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Tobias Herr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 ABRAHAM HOSTETTER, Assignee,  
 ap28 P. D. BAKER, Att'y. Paradise township.

**Estate of CHRISTIANNA CURRY, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
 HENRY CARPENTER,  
 Executor.  
 may5\*

**Estate of PETER NADES, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known to them without delay.  
 CHRISTIAN SCHAEFER,  
 B. C. KREADY, Att'y. Executor, Lancaster city.  
 ap28

**Estate of JOHN KOB, late of Conoy township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
 JACOB R. KOB, Conoy twp.,  
 SAM'L EBY, Elizabethtown bor.,  
 Executors.  
 ap28

**Estate of ANN LEECH, late of Salisbury twp., dec'd.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sadsbury twp.  
 P. D. BAKER, Att'y. W. M. COOPER,  
 ap21 Administrator *c. t. a.*

**Estate of DANIEL HEISEY, late of West Cocalico twp., Lancaster co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
 ADAM OBERLIN, Administrator,  
 ap31\* Cocalico P. O., Lancaster county.  
 A. J. EBERLY, Att'y, 49 Grant St., Lancaster, Pa.

**Estate of THOMAS PENNINGTON, late of Colerain twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Kirkwood, Lancaster co.  
 SIMON W. SWISHER,  
 M. BROSIUS, Att'y. Executor.  
 ap31

**Estate of SUSANNA ERB, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Warwick township.  
 HENRY E. RUDY,  
 H. C. BRUBAKER, Att'y. Executor.  
 ap21

**Estate of ELIZABETH LEECH, late of Salisbury twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Sadsbury twp.  
 P. D. BAKER, Att'y. W. M. COOPER,  
 ap21 Administrator.

**Estate of JAMES MANEY, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned all persons indebted to said decedent, are requested to make immediate settlement, and those having claims or demands against the estate of said decedent, to make known the same to her without delay.  
 SARAH MANEY,  
 B. C. KREADY, Att'y. [ap21] Administratrix.

**Assigned Estate of GEORGE HEISS and WIFE of the City of Lancaster, Lancaster co.**

George Heiss and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 7th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Heiss, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 GEORGE TOMLINSON, Assignee,  
 Residing in Manheim twp.  
 ap21

**Assigned Estate of ISAAC G. PFAUTZ, of Warwick twp., Lancaster co.**

Isaac G. Pfautz, of Warwick township, having by deed of voluntary assignment, dated April 14th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Isaac G. Pfautz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 JOHN W. HOLLINGER, Assignee.  
 ap21

**Assign'd estate of WILLIAM HOY, of Sadsbury twp., Lancaster co.**

William Hoy, of Sadsbury twp., having by deed of voluntary assignment, dated 31st March, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Hoy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims present them to  
 SAM'L SLOKOM,  
 ap21 Assignee, residing in Christiana.

**Assigned Estate of MICHAEL STERN, of Mt. Joy twp., Lancaster Co.**

Having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Michael Stern, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 WM. F. HAMILTON,  
 ap14 Assignee, Elizabethtown.  
 W. A. WILSON, Att'y, 32½ South Duke street.

**Estate of ALEXANDER TURNER, late of Colerain township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township, Oxford Bor., Chester Co., Pa.  
 JAMES F. TURNER,  
 JAMES A. ANDREWS,  
 ap14\* Oxford P. O., Chester Co., Executors.

**Assigned Estate of ENGLE & BRANDT, of Elizabethtown, Lancaster Co.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Engle & Brandt, notice is hereby given to all persons indebted to said assignors, to make immediate payment to the undersigned without delay, and those having claims to present them to  
 ADDISON EBY,  
 ap14 Assignee, Elizabethtown.  
 W. A. WILSON, Att'y, 32½ South Duke street.

**Estate of HENRY LEBER, late of Columbia borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Columbia.  
 SAM'L EVANS,  
 Wm. B. GIVEN, Att'y. Administrator.  
 ap14 Columbia, Pa.

**Estate of MARGARET BISHOP, (widow,) late of Mount Joy borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Elizabethtown.  
 D. G. BAKER, Att'y. ADDISON EBY,  
 ap14 Executor.

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, JUNE 16, 1877.

No. 3.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE		ARRIVE
	LANCASTER.	HARRISBURG.	
Pacific Express,*	2:40 a. m.	4:05 a. m.	
Way passenger	4:50 a. m.	7:50 a. m.	
Columbia Accom.,	7:20 a. m.	COL. 8.00 a. m.	
Niagara Express,	9:35 a. m.	10:40 a. m.	
Mail Train via Mt. Joy	11:20 a. m.	1:00 p. m.	
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.	
Sunday Mail,	11:29 a. m.	1:30 p. m.	
Fast Line,*	2:05 p. m.	3:45 p. m.	
Frederick Accom.,	2:20 p. m.	COL. 2:50 p. m.	
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.	
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.	
Harrisburg Express,	7:25 p. m.	8:40 p. m.	
Pittsburg Express,	9:25 p. m.	10:50 p. m.	
Cincinnati Express,*	11:30 p. m.	12:45 a. m.	
EASTWARD.		LANCASTER.	
		PHILADELPHIA.	
Atlantic Express,*	1:10 a. m.	3:00 a. m.	
Harrisburg Express,	7:35 a. m.	10:00 a. m.	
Columbia Accom.,	9:28 a. m.	12:30 p. m.	
Pacific Express,*	1:20 p. m.	3:45 p. m.	
Sunday Mail,	2:00 p. m.	5:00 p. m.	
Philadelphia Express,	3:05 p. m.	6:00 p. m.	
Day Express,	5:18 p. m.	7:20 p. m.	
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.	

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:15 p. m., and runs to Frederick.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.			
	a. m.	a. m.	p. m.	
Quarryville,	6:50	8:10	2:30	
Lancaster—West King Street,	8:00	9:30	3:35	
Lancaster—Upper Depot,	8:10	9:46	3:45	
		GOING SOUTH.		
LEAVE.		a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:46	5:30	8:00	
Lancaster—West King Street,	9:55	5:40	8:10	
Quarryville, (arrive)	11:00	7:00	9:15	

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.			
	a. m.	p. m.	p. m.	
Lancaster—West King Street,	8:00	12:55	3:35	
Lancaster—Upper Depot,	8:10	12:55	3:45	
Lancaster Junction,	8:35	1:20	4:10	
Reading, (arrive)	10:15	3:20	5:45	
		GOING SOUTH.		
LEAVE.		a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05	
Lancaster Junction,	9:21	1:35	7:35	
Lancaster—Upper Depot,	9:46	2:00	8:00	
Lancaster—West King Street,	9:55	2:00	8:10	

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.			
	a. m.	p. m.	p. m.	
Columbia,	5:40	12:01	4:20	
Arrive at Peachbottom,	7:05	1:55	5:45	
		GOING NORTH.		
LEAVE.		a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55	
Arrive at Columbia,	8:40	4:00	7:20	

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m., and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Bevens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.

**Prothonotaries:**

Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburgh,  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Phillip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**COURT CALENDAR.--1877.**

JUNE.

9. Last day for setting down causes for Argument Court.  
 23. Calling Judgment Docket.

JULY.

21. Last day for filing Accounts to August Court.  
 28. Last day for setting down causes for trial for August Court.

AUGUST.

10. Last day for issuing Writs to August Term.  
 18. Last day for filing Accounts to September Court.  
 18. Argument for Rules of Affidavit of Defense.  
 20. Last day for issuing Executions to August Term.  
 25. Calling Judgment Docket.

SEPTEMBER.

7. Last day for issuing Writs to September Term.  
 8. Last day for setting down causes for Argument Court.  
 8. Last day for setting down causes for trial for October 8 and 15.  
 15. Argument for Rules of Affidavit of Defense.  
 22. Calling Judgment Docket.  
 22. Last day for setting down causes for trial for October 22.

OCTOBER.

5. Last day for issuing Writs to October Term.  
 20. Calling Judgment Docket.  
 20. Last day for filing Accounts to November Court  
 20. Argument for Rules of Affidavit of Defense.  
 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

9. Last day for issuing Writs to November Term.  
 16. Last day for filing Accounts to December Court  
 17. Argument for Rules of Affidavit of Defense.  
 19. Last day for issuing Executions to November Term.  
 24. Calling Judgment Docket.

DECEMBER.

7. Last day for issuing Writs to December Term.  
 8. Last day for setting down causes for Argument Court.  
 15. Argument for Rules of Affidavit of Defense.  
 23. Last day for filing Accounts to January Court, 1878.  
 22. Calling Judgment Docket.  
 29. Last day for setting down causes for trial for January Court, 1878.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed MONDAY, JUNE 18th, 1877, at 10 o'clock, a. m. in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.  
 may 26 JOHN W. MARCH.

**NOTICE.**

In the Estate of  
 JAC. HENNE AND WIFE,  
 Assignors.

In the Court of Common Pleas of Lancaster Co., on the petition of Jac. H. Hershey, Assignee, for an order to reconvey the trust property to the Assignor.

And now, April 14, 1877, on the petition of Jacob H. Hershey, assignee in trust for the benefit of the creditors of Jacob Henne, praying for an order of court to reconvey the trust property to the assignor, the Court appoint the 18th day of JUNE, at 10 o'clock, a. m., for hearing said application, and direct that notice of the same and the time of hearing thereof be given to all parties interested in said trust by advertisement in the *Lancaster Examiner and Express, Intelligencer*, and *LANCASTER BAR*, three newspapers published in the county of Lancaster, once a week for four successive weeks prior to the hearing.  
 Attest,  
 may 19 W. E. KREIDER,  
 Dep. Prothonotary.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 16, 1877.

## SUPREME COURT OF PENNSYLVANIA.

### MARY EBY'S APPEAL.

Land directed to be converted into money, or money into land, is to be regarded in equity as that species of property into which one or the other is so directed to be converted.

Under a bequest of money, resulting from the sale or conversion of realty to the heirs of the daughter of the testator, the husband of the daughter then deceased, takes as heir and not as administrator or representative of his wife.

Appeal from the decree of the Orphans' Court of Lancaster county.

Thomas E. Franklin and N. Ellmaker for appellants.

H. C. Brubaker for appellee.

Opinion delivered May 28th, 1877, by GORDON, J.

The main intent of the testator was to provide for the support and maintenance of his wife and two unmarried daughters, Elizabeth and Mary, for and during their several lives. For this purpose he set apart his plantation, adjoining John Becker and others, together with the furniture of his house, stock, farming utensils, &c., and should the property so set apart prove insufficient to afford the maintenance thus designated, he directed that it should be supplemented from other parts of his estate. Having in this manner, carefully provided for those whom he considered the most dependent upon his care and providence, he next proceeds to dispose of such of his estate as should remain after the death of these prime objects of his bounty. To this end he directs that the whole of his property, real and personal, thus remaining undisposed of shall be sold by his executor, and the proceeds thereof divided in the manner following, viz: "My son Christian, shall have no part of the money raised out of my real estate; that is to be divided among my three daughters; Esther, the wife of Abraham Shelley, and the heirs of Elizabeth and Mary, in equal shares, including such sums received by them previous to such settlement; From the foregoing it is apparent that the fund for distribution is strictly personal, and even the idea that any part of it sprang from real estate, is maintained only in order to indicate from what portion of that fund Christian shall be excluded. It follows that this matter must be governed by the ordinary rules applicable to the distribution of personal property. Such being the case, unless a contrary intent is indicated by the will, we must construe the word "heirs," as found in that will, as equivalent to "representatives" or "distributes." In such case the husband must be taken to be an "heir" of his wife as to her personal estate; and not only do our distribution acts so in effect provide, but this idea is sustained

by many decisions, commencing with Patter-son vs. Hawthorne, 12 S. & R., 113, and ending with McGill's appeal, 11 P. & S., 46.

This conclusion is objected to for the reason that, as this legacy did not vest in Mary, wife of John Gensemer, the appellee, but was limited directly to her heirs, the above cited cases do not apply inasmuch as the husband could not take as administrator or representative of his wife. But this seems to be the very point met in the case of Gibbons vs. Fairlamb, 2 Ca., 217, for the question therein arose whether the husband of a female legatee, who died before the time at which the bequest would have vested, was to be regarded as her "heir or representative" within the meaning of the will, and it was held that he must so be considered though he could not take as administrator. Regarding the matter from the standpoint of legal interpretation, we conclude that the decree of the court below must be sustained. Nor can we come to a different conclusion in seeking for the testamentary intent—without a single expression to the contrary. Why should we suppose that Jacob Shumaker intended that the words which he used should have a meaning different from that of their well known legal signification?

In the case of Esther, the wife of Abraham Shelley, the gift is absolute and unconditional, and yet the testator must have known that in the event of her death her husband would take as her representative. But if he did not intend to exclude the husband of Esther from the possibility of his bounty, we may reasonably infer that he did not intend to treat in a different manner the husband which Mary might choose. That he contemplated the possibility of her marriage is sufficiently obvious, from the fact that he limits the legacy to her heirs directly; whereas, had he considered it certain that she would die unmarried, it is more than probable that he would have provided for the distribution of this remainder of his estate among his own heirs and beneficiaries. If, however, he had her marriage in view, he must at the same time have had in view the relation which her husband would occupy to her personal property in case of her death.

Decree affirmed.

### PEARSOL & GEIST'S APPEAL.

The ball of an absconding trustee should pay over, to the successor appointed, the moneys of the estate forthwith; and in default will be charged interest.

Appeal of John H. Pearsol and J. M. W. Geist, sureties of James H. Horton, assignee of Jacob B. Long, from the decree of the Court of Common Pleas of Lancaster county.

Geo. M. Kline and A. C. Reinöhl for appellants.

George Nauman, D. G. Baker and H. M. North for appellee.

PER CURIAM.

When James H. Horton was discharged as assignee, his duties in relation to the assigned estate ceased, and he was bound to settle an account of his trust immediately. When an assignee or trustee was appointed in his place the duty to pay over the money in his hands became immediate, and no matter whether it

was in his hands personally or in those of his sureties, the duty to pay over to the subsequent assignee was absolute. Neither he nor they could pay it out to creditors, for being no longer the trustee he could exercise no discretion or determine who was entitled to it as a creditor. There was but one place to pay and one duty to perform, that is to pay it to the successor in the trust. This being the case, it is clear the money was due and payable, and, after a reasonable time to seek out and pay over, it bore interest. It is not like the case of a trustee accounting for money in his hands as trustee, and having a right to retain it as such until legally disposed of. If any error was committed it was in allowing interest for too short a time.

Decree affirmed, with costs to be paid by the appellants, and the appeal is dismissed.

## Common Pleas of Lancaster County.

### HAVERSTICK vs. SWARR, Assignee.

On the distribution of moneys arising from the sale of real estate, under order of the Court of Common Pleas, by virtue of the act of assembly of February 17th, 1876; interest will be allowed on liens up to the date the assignee receives the money from the purchaser.

Case stated.

N. Ellmaker for plaintiff.

W. W. Brown for defendant.

Opinion delivered Jan'y 13th, 1877, by LIVINGSTON, P. J.

By the case stated it appears that Henry Haverstick is a lien creditor of Jacob Kohr, holding against him the two judgments set forth in the case stated. That subsequent to the entry of these judgments Jacob Kohr, the defendant therein, made a deed of voluntary assignment to H. B. Swarr, esq., in trust for the benefit of his creditors. Mr. Swarr, esq., the assignee, finding the personal estate insufficient for the payment of the debts, and the real estate encumbered with liens to such an extent as to render it difficult to determine whether the same could be sold for enough to pay all the liens, applied to the court, under the provisions of the act of 17th February, 1876, for an order to sell the assigned real estate, as in said act prescribed, free from liens, &c., as in said act and his petition set forth. The court granted the order as prayed for—the sale to be held on December 7, 1876—the purchase money to be paid April 1, 1877. The real estate, as appears by the sale, confirmed nisi December 18, 1876, was sold for a sum more than sufficient to pay the liens or judgments of Henry Haverstick, but not sufficient to pay and discharge all the liens against said real estate. Under this state of facts the question presented is: up to what time is Haverstick, the judgment creditor, entitled to interest—to the day of sale, or the time fixed by the court for the payment of the purchase money—the sale having been held December 7, 1876, and the time fixed for the payment of the purchase money being the first of April, 1877.

In case of sheriff's sale of real estate the lien creditors, as has been held by the courts, are entitled to interest on their respective liens

up to the day of the sale by the sheriff only; and this is entirely proper and comes as near doing equal and exact justice as any other rule that could have been adopted perhaps, because the sheriff, by the writ directed to him by the court, is commanded to have the money, the proceeds of sale, in court at the return of the writ, and he advertises and holds his sales usually but a few days prior to said return day, so that by the confirmation of the sale on the Saturday succeeding the return day, the money is in the hands of the sheriff and ready to be paid to the lien creditors.

In the case of an Orphans' Court sale for the payment of the debts of a decedent, it is also held that interest on claims is only to be computed up to the day of sale, and this is as near correct, perhaps, as it would be possible to make a general rule in such cases, and yet it works hardship in cases where the court grants an order for the sale of a decedent's real estate, returnable say at November or December term, or perhaps earlier, and makes the purchase money payable on the first of April following. In such case, under the rule, the lien creditor loses the interest on his money for some five or six months. The rule laid down by the courts is therefore not strictly and exactly correct, for no reason has been adduced, nor can be given, why a man loaning money on interest to another should not receive interest for his money until paid, and provided the borrower has estate sufficient to make such payment, no matter how such estate is sold. But like the lien creditor where the real estate is sold by the sheriff, the lien creditor where a decedent's real estate is sold under an order of the Orphans' Court for payment of debts, has, perhaps, little cause of complaint; for, although he has a judgment, he cannot reap the fruits of it, and if he has a mortgage he cannot get a judgment on it, nor collect it without the trouble of bringing in the widow and heirs by *sci. fa.*, and thus considerable time would be lost and delay occasioned.

But the case before us is different. The assignee is not a purchaser for value—he is the mere agent of the assignor. He has full power and authority to sell and dispose of the whole estate of the assignor, real and personal. He needs no other power or authority than that contained in the deed to enable him to sell and make as good title to the real estate as the assignor could have done. But, as stated in the preamble to the act of February 17, 1876, Pam. L., 1876, p. 4: "It frequently occurs in assignments for the benefit of creditors, where the assignor is the owner of a number of tracts of land encumbered to such an extent that it is impossible to ascertain definitely whether a sufficient amount can be realized to discharge all the liens, whereby the titles made by the assignees are regarded as doubtful, and the assignees are thereby unable to make advantageous sales of said real estate; therefore, be it enacted," &c.:

1st. That assignees may apply to the Courts of Common Pleas for an order to sell the real estate discharged from liens, except those specified in the act.

2d. That the proceeds arising from such sales shall be appropriated to liens extinguished thereby according to their priority.

3d. That notice shall be given to lien creditors.

4th. That the court may stay execution and may extend any order of sale granted or award an *alies* or *pluries* order of sale.

5th. Provides proceedings to obtain possession of the real estate sold, and provides that mechanics' liens shall not be invalidated by the act authorizing the granting of such such order or sale.

The act of 1876 is an enabling act, enabling the court to authorize assignees to sell the assigned real estate, and make good title to the purchaser, who takes the same clear, divested of and free from all liens, except those therein specifically excepted, even though the purchase money be not sufficient to fully pay and satisfy said liens, but makes no change in the mode or manner of distribution; and no one ever supposed that the interest on a judgment being a lien on assigned real estate stopped or ceased to accumulate on the day of the sale of such real estate by the assignee.

Since the passage of the act of 1876 we have granted orders of sale, which were made returnable to the next term, the purchase money payable on April 1, 1877, some five or six months after the day of sale. This was done believing it to be for the benefit of all, and especially the later lien creditors, and it would appear to be doing injustice to prior lien creditors to prevent them from making their money by execution, and stop interest running on their claims for six months before we have directed the purchaser to pay the proceeds of sale to the assignee. And as it is not possible to fix a uniform time or credit to be given to the purchaser in all cases of sale by assignees, and as it may become necessary for us, for the sake of convenience and uniformity, to fix a time when interest should cease in cases like that now before the court, upon a full consideration of the subject we are of opinion that justice will be more likely to be done to all parties by fixing the day on which the court, by the terms of the order granted in each case, shall direct the purchase money of the property sold to be paid to the assignee.

In the case now before us the purchase money is to be paid to the assignee on April 1, 1877, and we think that is the time when interest on the liens mentioned in the case stated should cease.

We therefore direct judgment to be entered on the case stated for plaintiff for the sum of \$122.70.

#### Common Pleas of Venango County.

SIMON RAW et al. vs. S. STEPHENSON et al.

On a writ of *habere facias* issued upon a judgment in ejectment, the sheriff cannot put out of possession of the premises persons not being nor holding under the defendant, but by paramount title, although they came into possession subsequently to the issuing of the writ of ejectment.

The duty of the sheriff in the service of a writ of *hab. fac.* discussed.

No. 8, April Term, 1877.

In Equity. Venango county.

Motion for preliminary injunction.

Opinion by TRUNKEY, P. J. April, 1877.

S. Stevenson recovered judgments before a justice of the peace for interest due on bonds, secured by mortgage, of the Cranberry Coal Company. He admits in his affidavit, that he gave the constable directions to serve the writs of summons on the ticket agent at the depot. The evidence quite clearly shows that he knew said agent was not an agent or clerk of the defendant. In fact he never was the agent of said company. Upon these judgments real estate of the Cranberry Coal Company was seized and sold at sheriff's sale to S. Stevenson, the plaintiff in the executions. No notice was given to the trustees named in the mortgage before the sheriff's sale. After obtaining the sheriff's deed he brought suits in ejectment against the Cranberry Coal Co., and against M. H. Collins and others, who composed a firm doing business as Collins, Pool & Co. On February 26, 1877, he recovered judgment in default of appearance against Collins, Pool & Co., and soon after verdicts and judgments were rendered against him in favor of the Cranberry Coal Co.

Writs of *hab. fa. pos.* have been issued against Collins, Pool & Co., and Stevenson demands of the sheriff that he turn out all persons found upon the premises and deliver to him full possession.

The property of the Cranberry Coal Co. was covered by two mortgages, given to trustees, to secure bonds of the company. Stevenson's bonds were of those secured by the first mortgage. By *scire facias* on the mortgage, judgment was recovered on June 27, 1876; and by virtue of a *levari facias* the property was sold to Raw on September 29, 1876, and deed duly executed by the sheriff. Proceedings on the second mortgage resulted in judgment and a sheriff's sale of the property to Simon Raw, on January 24, 1876. Immediately after his purchase under the second mortgage, Raw commenced proceedings to recover possession of the premises from Collins, Pool & Co. under the Act of June 16, 1836, and was put in possession by the sheriff, by virtue of the warrant of the justices, on the 13th May, 1876. He was in possession at the time of his purchase under the first mortgage. Raw avers that he purchased and holds the property in trust for the creditors of the Cranberry Coal Co. Each mortgage included the lands in controversy.

Stevenson and Raw both claim under the Cranberry Coal Company, neither claims under Collins, Pool & Co. Each has a sheriff's deed, on its face apparently valid. Stevenson's is the older, and *prima facie* vests in him the title. Raw avers it was obtained by fraud and cannot be set up to the injury of the creditors of the Cranberry Coal Company; and, as to Stevenson, he is to be treated as holding title under a void judgment. Raw claims to hold possession given to him in due course of law. Stevenson claims such possession was acquired by the abuse of legal process and should not avail to defeat his judgments in ejectment. Raw was neither party nor privy to the action in ejectment.

Neither his title nor right of possession has been adjudicated. Nor has Stevenson's. The one having good title has right of possession. Stevenson does not stand as an innocent third person. If the constable made such return on his process that the justice's judgment is not void, Stevenson told him to serve it on one who was not an agent of the defendant. The acts of April 8, 1851, and March 17, 1856, provide for service of process on corporations. A plaintiff may not always be the gainer by directing the officer to serve process on a person not within the statutes. Nor should he disregard the provision for actual notice of sale to the trustees, contained in the act of April 10, 1867. Enough appears to show that Raw's claim is not the pretext of a mere intruder. It cannot, in this proceeding, be determined which of these parties has the better title. But it is manifest that a trial in an action at law is necessary to settle the question.

It is the duty of the sheriff under a writ of *hab. fa. pos.* to remove the defendant or any one claiming under him. But if any other person—one not claiming under the defendant, but by and under a different title—be in possession, the officer cannot remove him from the premises under such writ. No tenant who was in possession of the premises anterior to the commencement of the action can be dispossessed upon a judgment and writ of possession to which he is not a party. If a tenant whose possession is distinct from that for which the action was brought, be turned out, he may have a writ of restitution. Herman on Executions, 532-3; Clark vs. Parkinson, 10 Allen (Mass.) 133. In this case, HOAR, J., after alluding to the general expressions of text books and digests, as to the removal of all persons, says: "But these expressions must be construed *secundum subjectam materiam*, and as referring to the tenant or persons in privity with the tenant, or mere strangers or intruders. No case has been cited in which it was decided that one in possession before the commencement of the suit could be lawfully dispossessed upon an execution issuing upon a judgment in a suit between third persons." In the same case the court say: "It is apparent that the judgment of the court in the real action, although it may determine as against the tenant that he held unlawful possession of the premises at the time of bringing the suit, cannot decide this as against any person not privy in estate with him. The judgment may be recovered upon default, which is taken as the confession of the tenant, and can bind no one but himself and those claiming under him. If it be the result of a trial, there is no good reason why it should be held more conclusive upon the possession than upon the title. In either case it is a judgment between the parties, upon such a case as they have chosen or have been able to present."

Why should not this doctrine apply to one claiming a distinct title from the defendant his title to him and the plaintiff, who lawfully comes into possession pending the action? If the land be unoccupied the owner may go into possession. Why should he be

turned off because of a suit by a claimant against a stranger to his title? If a purchaser at judicial sale obtains possession against the occupant by legal process, why should he be expelled because another purchaser has chosen a different mode of expelling the tenant and fails to affect it, or to entitle himself by judgment to affect it until long after? Of course if there were any trick in obtaining possession, or abuse of legal proceedings, he should be treated as an intruder. But if it be clear that his claim of title is in good faith, and his conduct has been fair, he is entitled to hold his possession until his right shall be adjudged, as well as one who was in possession anterior to the suit.

"When the premises are in possession of a stranger to the action, claiming by a title paramount to that of the defendant, the plaintiff must resort to other proceedings to obtain possession of the the land. When there is any doubt as to how or by what claim of right a person intrudes upon land, the sheriff cannot be compelled, without the direction of the court, to remove him. In all such cases of doubt, the officer should, before removing the party, require that the plaintiff first apply to the court, on notice to such person, for an order directing the sheriff to remove him." Herman on Executions, 533. "No doubt it is the right of the court to set aside the service of a writ of *hab. fa.* and award a writ of restitution, when the sheriff has ejected a party in possession, who is no party to the judgment directly or indirectly, and could not legally be affected by it." Per LOWRIE, C. J., 8 Wright, 466, Johnston vs. Fulerton. Whenever restitution would be awarded, or a court would refuse to direct the sheriff to eject a tenant who was not a party to the suit, in case of irreparable injury likely to ensue from executing the writ as against such tenant, the execution ought to be restrained. If circumstances require, the court will interfere before execution of the writ, and restrain the lessor from taking possession of more than he is entitled: 2 T. & H. 350. For good reason the same power should be recognized to restrain the ejecting of one whose right has not been passed upon.

Raw and his tenent are engaged in mining coal, and running a railroad from the mines to Oil City. To throw them out of possession of all the lands described in the writ will stop their business. Part of the land in Oil City is necessary for the use of the railroad; of this there is no question. Perhaps the whole of the lots are necessary, but of this the testimony is conflicting. The mining of coal is on the large tract of land. The tract of sixty acres, at present, is unnecessary for mining or the use of the railroad. Ordinarily a party should be left to his remedy in courts of law for trespass threatened or committed in the execution of process from the courts. In Pennsylvania there is seldom necessity for interference by a court of equity with execution process from the law courts. Were it not for the special circumstances of this case, the stopping of mining and railroad business, which would be likely to cause irreparable injury, the preliminary injunction would be de-

denied. The damages resulting from suspension of their business would be difficult to ascertain. If Stevenson's title shall be found good he will be entitled to mesne profits. He occupies a quite different position from one who could not use his railroad to carry on his business if the writ be executed against him. He is injured by refusal to give him the property; but not by suspension of his present business.

The other case argued at the same time with this is different. In that we are not of the opinion that the injury would be irreparable. If wrongfully thrown out the occupants may recover the damage done them.

It is due to the sheriff to say that we have discovered nothing on his part but a desire to do his duty. One party claiming that he is bound to give full possession by ejecting every occupant of the premises; the other that he has no right to expel one who was not a defendant, nor under a defendant, but claims to hold by a distinct and paramount title. Fortunately he is not required at his peril to judicially determine different questions on which able counsel differ. At the argument he requested us to say, in case the motion should be denied, if before turning a stranger out, he could require indemnity from the plaintiff. We cannot now decide this, as the question is not before us for decision. But it will not be amiss to refer to the practice. In Clark vs. Parkinson, above cited, it is said: "The officer who serves the writ may take a bond of indemnity, and the English text books all state that it is the usual practice to do so. This may dispose of the objection that he is required by his precept to do a precise thing, and that he should not have to determine at his peril whether he is thereby committing a trespass." "The sheriff executes the writ under the direction of the plaintiff or his attorney, and he may demand indemnity from the plaintiff previous to the execution of the writ." Herman on Executions, 530. "It is usual for the lessor of the plaintiff to give the sheriff an indemnity for executing it." Tidde's Pr., 1080.—Pitts. Leg. Journal.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 16, 1877.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since June 9, 1877.

HUGH M. PENNY, dec'd, late of Drumore twp.; John J. Penny, administrator.

SARVE M. BUYERS, dec'd, late of Salisbury twp.; James A. Buyers, administrator.

JACOB SMITH, dec'd, late of Warwick twp.; John Smith and Jacob Kemper, administrators.

The following Wills have been admitted to probate since May 26, 1877:

FREDERICK KOSER, late of Rapho twp.; Rebecca Koser and Frederick Y. Koser, executors.

MARY ECKERT, late of Leacock twp.; Peter C. Eckert and Elmira Eckert, executors.

GEORGE A. SHREINER, late of Rapho twp.; Susanna Shreiner, executrix.

PHILIP SHREINER, late of Columbia bor.; Clara R. Shreiner and Rebecca Shreiner, executors.



COMMON PLEAS ARGUMENT LIST.

Commencing Monday, June 18th, 1877.

<i>A. J. Kauffman.</i> 1 <i>Amwake, Good.</i>	BRUNNER & BRO. <i>vs.</i> E. BILLINGFELT et al.	} Nov. Term, 1876. No. 59. Rule to strike off judgment.
<i>Same.</i> 2 <i>W. M. Franklin, Given.</i>	JAMES WATSON'S use <i>vs.</i> WASHINGTON COLE.	} April Term, 1877. No. 69. Ex. Doc. Rule to show cause, &c.
<i>Reynolds, Shenk, Leaman.</i> 3 <i>P. D. Baker, Newpher.</i>	CASPER HILLER, ex'or, <i>vs.</i> MICHAEL KREIDER.	} April Term, 1877. No. 29. Ex. Doc. Rule to show cause, &c.
<i>Same.</i> 4 <i>Same.</i>	SAME PLAINTIFF <i>vs.</i> LEVI GOOD.	} April Term, 1877. No. 30. Ex. Doc. Rule to show cause, &c.
<i>Same.</i> 5 <i>Same.</i>	SAME PLAINTIFF <i>vs.</i> JOHN STROHM.	} April Term, 1877. No. 31. Ex. Doc. Rule to show cause, &c.
<i>H. C. Brubaker.</i> 6 <i>Reynolds.</i>	HENRY S. STAUFFER <i>vs.</i> HENRY H. NISSLEY.	} Nov. Term, 1876. No. 49. Ex. Doc. Rule to open judgment.
<i>7</i> <i>B. F. Davis.</i>	COMM. OF PENNA. <i>vs.</i> FREDERICK FLETTERER.	} Trust Book. No. 6, p. 350. Rule to have benefit of Insolvent laws.
<i>B. F. Davis.</i> 8 <i>Amwake.</i>	JACOB MYERS <i>vs.</i> HENRY TROOP.	} May Term, 1876. No. 114. Rule to strike off appeal.
<i>Ellmaker, Kline.</i> 9 <i>North.</i>	JOHN BECKER <i>vs.</i> HENRY M. WATTS et al.	} Feb. Term, 1873. No. 60. Rule to strike off additional count to narr.
<i>Eshleman.</i> 10 <i>Ellmaker.</i>	FRANCES KREADY <i>vs.</i> B. HERSHEY'S ex'ors.	} May Term, 1877. No. 85. Case stated.
<i>Atlee.</i> 11 <i>P. D. Baker, North Given.</i>	SELTZER & MILLER <i>vs.</i> HENRY MILLER et al.	} April Term, 1877. No. 25. Ex. Doc. Rule to set aside sheriff's sale.
<i>Kaufman, McMullen.</i> 12 <i>Davis.</i>	BERNARD SHORT <i>vs.</i> BENJAMIN CHARLES.	} June Term, 1875. No. 2. Rule for a new trial.
<i>Same.</i> 13 <i>Same.</i>	SAME PLAINTIFF <i>vs.</i> JAMES CARROLL.	} June Term, 1876. No. 3. Rule for a new trial.
<i>Davis.</i> 14 <i>P. D. Baker.</i>	JOHN WINTERS <i>vs.</i> C. F. BINKLEY et al.	} April Term, 1877. No. 24. Certiorari. Rule to perfect bail.
<i>Same.</i> 15 <i>Same.</i>	H. H. DEITRICH <i>vs.</i> JOHN AND BARBARA BUNTEMAN.	} April Term, 1877. No. 65. Ex. Doc. Rule to open judgment.
<i>Puffer.</i> 16 <i>North.</i>	D. A. ALTICK & SON <i>vs.</i> THE PENNA. R. R. CO.	} Sept. Term, 1874. No. 97. Rule to strike off judgment.
<i>Ellmaker.</i> 17 <i>Johnson.</i>	MARY R. CONKLIN <i>vs.</i> JOHN B. ESHLEMAN adm'or.	} Mar. Term, 1876. No. 25. Rule for a new trial.

<i>Reynolds, Steinmetz.</i> 18 <i>North.</i>	MARKUS NATHAN <i>vs.</i> THE PENNA R. R. CO.	} Feb. Term, 1873. No. 34. Rule to strike off non suit.
<i>Eshleman, Hensel.</i> 19 <i>Reynolds.</i>	FIRST NAT. BANK OF STRASBURG <i>vs.</i> DAVID GRAHAM.	} Feb. Term, 1876. No. 60. Rule for a new trial.
<i>Ellmaker.</i> 20	DAVID CONYNGHAM'S trust estate.	} Trust Book, No. 6, p. 11. Exceptions to auditor's report.
<i>Brown, Price.</i> 21 <i>Eshleman.</i>	COMM. OF PENNA. <i>vs.</i> JOHN ERISMAN et al.	} Aug. Term, 1874. No. 50,51 Appeal from taxation of costs.
<i>North, Martin.</i> 22 <i>Atlee, Franklin.</i>	SAM'L ELDER & CO. <i>vs.</i> SHENK, BAUSMAN & CO.	} Sept. Term, 1869. No. 63. Rule for a new trial.
<i>Ellmaker.</i> 23 <i>Eshleman, W. S. Amcey.</i>	DAVID CONYNGHAM'S trust estate.	} Trust Book, No. 5, p. 11. Rule to dismiss trustee.
<i>Smith, Eshleman, Kline, Reynolds, Brosius.</i> 24 <i>North.</i>	JEREMIAH BROWN et al. <i>vs.</i> COLUMBIA AND PORT DEPOSIT R. R. CO.	} Trust Book, No. 7, p. 130. Rule to appoint viewers.
<i>Swarr.</i> 25 <i>A. J. Kauffman.</i>	JOHN D. HENDERSON'S use <i>vs.</i> JOHN SHERTZER.	} Nov. Term, 1875. No. 291. Rule to open judgment, &c.
<i>Eberly.</i> 26 <i>Rosenmiller.</i>	LAN. AG'L PARK ASSOCIATION <i>vs.</i> HENRY COPELAND.	} May Term, 1877. No. 117. Certiorari.
<i>Reynolds, J. Hay, Brown, McMullen.</i> 27 <i>North, Leaman, Johnson.</i>	S. H. REYNOLDS, assignee, use. <i>vs.</i> JOHN W. JACKSON.	} May Term, 1873. No. 45. Rule for a new trial.
<i>Reynolds.</i> 28	A. C. WALKERS' assigned estate.	} Trust Book, No. 7, p. 191. Exceptions to assignee's sale of real estate.
<i>Franklin.</i> 29 <i>North, Yundt.</i>	B. B. GONDER & SON <i>vs.</i> R. W. MORTON.	} Dec. Term, 1874. No. 67. Exceptions to report of referee.
<i>Johnson.</i> 30 <i>J. Hay Brown</i>	ROSKAM, GERSTLEY & CO. <i>vs.</i> HENRY LEE.	} Nov. Term, 1876. No. 68. Ex. Doc. Exceptions to aud'rs rep't.
<i>Wilson.</i> 31 <i>Amwake, Yundt, Eby, Swope, Eberly.</i>	GEO. B. SHOBER <i>vs.</i> JOHN B. SNYDER et al.	} May Term, 1876. No. 57. Rule for a new trial.
<i>North, Sellers, Kline, Franklin.</i> 32 <i>Reynolds, Slaymaker.</i>	CLEMENT B. GRUBB <i>vs.</i> A. BATES GRUBB.	} Equity Doc. No. 2, p. 84. Exceptions to master's report.
<i>Eshleman.</i> 33 <i>Kline, P. D. Baker.</i>	TERRY, BENNETT & CO. <i>vs.</i> J. A. SPRENGER et al.	} March Term, 1877. No. 78. Rule to enter judgment for want of sufficient affid't of defence.
<i>Atlee.</i> 34 <i>Ellmaker.</i>	HIRAM HORTING'S Assigned Estate.	} Trust Book No. 6, p. 278. Rule to confirm \$300 appraisal, &c.

**ORPHANS' COURT ARGUMENT LIST.**

*Estate of Susanna Journey, dec'd.* Wm. Journey vs. B. F. Rowe. In the matter of disposition to be made of estate of said dec'd, in hands of B. F. Rowe, her guardian, she having died before attaining her majority, and leaving surviving her husband and one child. Case stated. J. L. Steinmetz for plaintiff. T. J. Davis for defendant.

*Estate of Abraham Greenwalt, dec'd.* Exceptions to report of Auditor. N. Ellmaker for exceptants. Thos. E. Franklin contra.

*Estate of Philip Smith, sr., dec'd.* Citation to show cause why a decree should not be made directing Charlotte Edwards to pay to Jacob Smith fifty dollars due and charged upon lands devised to her by said Philip Smith, sr., dec'd. A. J. Eberly for citation.

*Estate of Jeremiah Bauman, dec'd.* Exceptions to report of auditor. W. Aug. Atlee and H. R. Fulton for exceptants. N. Ellmaker contra.

*Estate of Christian Barr, dec'd.* Exceptions to report of auditors. R. W. Shenk and Wm. Leman for exceptants. P. D. Baker and A. C. Reinohl contra.

*Estate of John Schwilke, dec'd.* Exceptions to report of auditor. P. D. Baker for exceptants. Geo. Nauman contra.

*Estate of Isaac R. Kuhns, dec'd.* Rule to show cause why decree of Court confirming guardian account should not be opened. Thos. E. Franklin and Geo. Brubaker for rule. N. Ellmaker contra.

*Estate of John Greybill, dec'd.* Citation to Jacob Greybill, executor, to show cause why he should not pay to John B. Greybill \$2,000 in accordance with the will of said deceased, with interest from Nov. 30, 1876. A. Herr Smith for citation. Geo. Brubaker contra.

*Estate of Mary Ann Heiss, dec'd.* Exceptions to inquisition held on real estate of said dec'd. A. Herr Smith, contra.

*Estate of Mary Ann Heiss, dec'd.* Application or petition of Mary A. Richardson and her husband, John E. Richardson, to prove last will and testament of Mary Ann Heiss, dec'd, &c. W. R. Wilsen for application. A. Herr Smith contra.

*Estate of Jacob Ranck, dec'd.* Citation to administrators to file an account. E. H. Yundt for citation. N. Ellmaker contra.

*Estate of John Whiteside, dec'd.* Exceptions to auditor's report. S. H. Reynolds for exceptants. H. B. Swarr contra.

**QUARTER SESSIONS ARGUMENT LIST.**

*West Donegal Township Road.* Exceptions to report of viewers. J. B. Amwake for exceptants.

*Earl Township Road.* Exceptions to report of viewers. D. G. Eshleman and E. H. Yundt for exceptants. M. Brosius contra.

*Commonwealth vs. James E. Pannel.* Murder. Rule to show cause why a new trial should not be granted. S. H. Reynolds and Wm. Aug. Atlee for rule. J. W. Johnson contra.

*Commonwealth vs. Frederick Stolls.* Selling liquor on Sunday and to minors. Rule on sheriff to show cause why costs should not be paid. J. W. Johnson for rule. J. L. Steinmetz contra.

*Commonwealth vs. H. W. Diffenbaugh.* Perjury. Motion to quash indictment. H. C. Brubaker and Wm. Aug. Atlee for motion. J. W. Johnson and E. Franklin contra.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, JUNE 18th, 1877, at 10 o'clock, a. m., at the Court House, in the City of Lancaster, for the hearing of the same, when and where you may attend if you please.

may26\* JACKSON RINEER.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, JUNE 23d, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

je2\* GEORGE MULLIGAN.

**INCORPORATION NOTICE.**

Notice is hereby given that "The Congregation of the United Brethren of Litiz and Vicinity" have, agreeably to the Act of Assembly providing for the "Amendment of Incorporations," approved October 13, 1840, applied to the Court of Common Pleas of Lancaster county for an amendment to their charter, which has been examined and approved by said Court, and will be presented for final confirmation and incorporation on MONDAY, JUNE 18th, 1877, at 10 o'clock a. m., prior to which time all persons objecting to such amendment, must file their objections.

J. F. FRUEAUFF, Solicitor,  
ap28 No. 204 Locust street, Columbia, Pa.

**Auditors' Notices.**

*Estate of ISRAEL BUCKWALTER, late of Paradise township, dec'd.*

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Susan Buckwalter and Jacob R. Buckwalter, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JULY 7, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. J. KAUFFMAN,  
je16 Auditor.

**Assigned Estate of SAMUEL KEELER, of the City of Lancaster.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. K. Martin, assignee, will sit for the purpose of his appointment in the Library Room of the Court House, Lancaster, on THURSDAY, JUNE 21, 1877, at 10 o'clock, a. m., when all persons interested may attend.

jun9 W. LEAMAN, Auditor.

**Estate Notices.**

**Estate of SARAH M. BUYERS, late of Salisbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Salisbury twp.

je16\* JAMES A. BUYERS,  
PHILIP D. BAKER, Att'y. Administrator.

**Estate of HUGH M. PENNY, late of Drumore township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Liberty Square, said County.

GEO. NAUMAN, } Att'ys. JOHN J. PENNY,  
J. HAY BROWN, } SAM'L M. LONG,  
je16 Administrators.

**Assigned Estate of GEORGE RUSSELL, of Caernarvon twp., Lancaster co.**

George Russell, of Caernarvon twp., having by deed of voluntary assignment, dated June 4, 1877, assigned and transferred all his estate and effect to the undersigned, for the benefit of the creditors of the said Geo. Russell, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. D. WHITE, Assignee,  
Residing in Churchtown, Lancaster co., Pa.  
A. W. SNADDER, Att'y. jun9\*

**Estate of MICHAEL McCULLON, late of the City of Lancaster, Pa., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

ROSINE McCULLON, Executrix,  
S. P. EBY, } No. 50 South Lime-st.,  
A. J. EBERLY, } Att'ys. [jun9] Lancaster, Pa.

**Estate of ROBERT TWINWITH, late of Paradise township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart township.

GEO. WHITSON, Administrator.  
P. D. BAKER, Att'y. [jun9]

**Assigned Estate of HENRY G. STRAYER and WIFE, of Mount Joy twp., Lancaster Co.**

Henry G. Strayer and wife, of Mount Joy twp., having by deed of voluntary assignment, dated May 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry G. Strayer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

je2 HENRY B. RABER, Assignee,  
J. HAY BROWN, Att'y. Mount Joy, Pa.

**Assigned estate of JOHN STANTON and WIFE, of Drumore township, Lan. co.**

John Stanton and wife, of Drumore township, having by deed of voluntary assignment, dated May 14, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Stanton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL LEFEVER, (far.)  
DANIEL D. HESS,  
W. M. FRANKLIN, Att'y. Assignees,  
je2 Residing at Quarryville.

**Estate of PETER EIDENMILLER, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Providence twp.

JOHN TWEED,  
JOHN EIDENMILLER,  
Administrators.  
jun9\*

**Assigned Estate of ABRAHAM H. BRENE-MAN and WIFE, of Manor township.**

Abraham H. Breneman and wife, of Manor twp., having by deed of voluntary assignment, dated May 16th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham H. Breneman he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to the undersigned, residing in Safe Harbor.

BENJ. H. BRENEMAN, Assignee,  
CHAS. DENCES, Att'y.

**Estate of ANNA CATHARINE HART, late of Lancaster city, deceased.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.

FRANK STAHL,  
B. C. KREADY, Att'y. [je2] Administrator, *c. t. a.*

**Estate of JOSEPH HART, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.

B. C. KREADY, Att'y. [je2] Administrator.

**Estate of CATHARINE BAHILL, late of Manheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

J. M. BAHILL,  
HUGH R. FULTON, Att'y. Executor,  
may19\* Binkley's Bridge P. O., Lan. Co., Pa.

**Estate of J. MORRIS JACKSON, late of Fulton township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, LEVI K. BROWN,  
may26\* Att'y. Administrator.

**Estate of CATHARINE ELI, late of Salisbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

WM. LANDIS,  
H. C. BRUBAKER, Att'y. Executor.

**Assigned Estate of GEORGE HEISS and WIFE of the City of Lancaster, Lancaster co.**

George Heiss and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 7th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Heiss, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to the undersigned, residing in Manheim twp.

GEORGE TOMLINSON, Assignee,  
Residing in Manheim twp.  
ap21

**Estate of THOMAS REDMAN, late of Providence twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

JOHN STROHM, Jr.,  
P. D. BAKER, Att'y. Executor.

**Estate of NANCY GILBERT, late of Columbia borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Columbia.

AARON H. GILBERT,  
JOHN A. GILBERT,  
Administrators.  
may12  
WM. B. GIVEN, Att'y. Columbia, Pa.

**Estate of DAVID FARMER, late of Mount Joy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rapho township.

CATHARINE FARMER,  
JOHN FARMER,  
Administrators.

**Estate of F. A. DIETZEL, late of Ephrata township, dec'd.**

Letters of administration *cum testamento annexo de bonis non* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

THOS. E. FRANKLIN, ELIAS WOLF,  
WALTER M. FRANKLIN, Att'ys. Executor,  
may5 Residing at Akron, Lancaster Co.

**Estate of SAMUEL DRABENSTADT, late of East Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

WM. WELCHANS,  
WM. DRABENSTADT,  
Administrators.  
may5  
B. C. KREADY, Att'y.

**Assigned Estate of ADAM GUTFLEISCH and WIFE, of Lancaster City.**

Adam Gutfleisch and wife of Lancaster city, having by deed of voluntary assignment, dated April 26th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Adam Gutfleisch, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to the undersigned, residing in said township.

HENRY WOLF, Cabinet Maker,  
D. P. ROSENMILLER, Jr. Att'y. Assignee,  
may5 40 East King street.

**Estate of ADAM THOMAS, late of Pequea twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

JOHN M. HARMAN,  
THOS. E. FRANKLIN, Att'y. Administrator.

**Assigned Estate of TOBIAS HERR and WIFE, of Strasburg twp., Lancaster county.**

Tobias Herr and Wife, of Strasburg twp., having by deed of voluntary assignment, dated April 18th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Tobias Herr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to the undersigned, residing in said township.

ABRAHAM HOSTETTER, Assignee,  
ap28 P. D. BAKER, Att'y. Paradise township.

**Estate of CHRISTIANNA CURRY, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

HENRY CARPENTER,  
Executor.  
may5\*

**Estate of PETER NADES, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known to them without delay.

CHRISTIAN SCHAEFER,  
B. C. KREADY, Att'y. Executor, Lancaster city.  
ap28

**Estate of JOHN KOB, late of Conoy township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

JACOB R. KOB, Conoy twp.,  
SAM'L EBY, Elizabethtown bor.,  
Executors.  
ap28

**Estate of ANN LEECH, late of Salisbury twp., dec'd.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Salisbury twp.

P. D. BAKER, Att'y. W. M. COOPER,  
Administrator *c. t. a.*  
ap21

**Estate of DANIEL HEISEY, late of West Cocalico twp., Lancaster co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

ADAM OBERLIN, Administrator,  
A. J. EBERLY, Att'y, 49 Grant St., Lancaster, Pa.  
ap21\* Cocalico P. O., Lancaster county.

**Estate of THOMAS PENNINGTON, late of Colerain twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Kirkwood, Lancaster co.

SIMON W. SWISHER,  
M. BROSIUS, Att'y. Executor.  
ap21

**Estate of SUSANNA ERB, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Warwick township.

HENRY E. RUDY,  
H. C. BRUBAKER, Att'y. Executor.  
ap21

**Estate of ELIZABETH LEECH, late of Salisbury twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Salisbury twp.

P. D. BAKER, Att'y. W. M. COOPER,  
Administrator.  
ap21

**Estate of JAMES MANEY, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned all persons indebted to said decedent, are requested to make immediate settlement, and those having claims or demands against the estate of said decedent, to make known the same to her without delay.

SARAH MANEY,  
B. C. KREADY, Att'y. [ap21] Administratrix.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, JUNE 23, 1877.

No. 4.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES.

—AT—

No. 18 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5-CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 18 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 18 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## COMMISSIONER OF DEEDS

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ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,

LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE No. 25 NORTH DUKE STREET,

LANCASTER, PA.

## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

	WESTWARD.		EASTWARD.	
	LANCASTER.	HARRISBURG.	LANCASTER.	PHILADELPHIA.
Pacific Express,*	2:40 a. m.	4:05 a. m.	1:10 a. m.	3:00 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.	7:35 a. m.	10:00 a. m.
Columbia Accom.,	7:20 a. m.	COL. 8:00 a. m.	9:25 a. m.	12:30 p. m.
Niagara Express,	9:35 a. m.	10:40 a. m.	2:00 p. m.	5:00 p. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.	3:05 p. m.	6:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.	5:18 p. m.	7:30 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.	5:50 p. m.	8:00 p. m.
Fast Line,*	2:05 p. m.	3:45 p. m.	8:00 p. m.	9:00 p. m.
Frederick Accom.,	2:20 p. m.	COL. 2:50 p. m.		
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.		
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.		
Harrisburg Express,	7:25 p. m.	8:40 p. m.		
Pittsburg Express,	9:25 p. m.	10:50 p. m.		
Cincinnati Express,*	11:30 p. m.	12:45 a. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:15 p. m., and runs to Frederick.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

	GOING NORTH.			GOING SOUTH.		
	LEAVE.	a. m.	p. m.	LEAVE.	a. m.	p. m.
Quarryville,	6:50	8:10	2:30	Lancaster—Upper Depot,	9:46	5:30
Lancaster—West King Street,	8:00	9:30	3:35	Lancaster—West King Street,	9:55	5:40
Lancaster—Upper Depot,	8:10	9:46	3:45	Quarryville, (arrive)	11:00	7:00

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

	GOING NORTH.			GOING SOUTH.		
	LEAVE.	a. m.	p. m.	LEAVE.	a. m.	p. m.
Lancaster—West King Street,	8:00	12:01	3:35	Reading,	7:35	11:40
Lancaster—Upper Depot,	8:10	12:55	3:45	Lancaster Junction,	9:21	1:35
Lancaster Junction,	8:35	1:20	4:10	Lancaster—Upper Depot,	9:46	2:00
Reading, (arrive)	10:15	3:20	5:45	Lancaster—West King Street,	9:55	3:10

### Columbia and Port Deposit Railroad.

	GOING SOUTH.			GOING NORTH.		
	LEAVE.	a. m.	p. m.	LEAVE.	a. m.	p. m.
Columbia,	5:40	12:01	4:20	Peachbottom,	7:15	2:05
Arrive at Peachbottom,	7:05	1:55	5:45	Arrive at Columbia,	8:40	4:00

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1868
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Bevens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

*Prothonotaries:*

Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District.—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrer, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
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**COURT CALENDAR--1877.**

JULY.

- 21. Last day for filing Accounts to August Court.
- 28. Last day for setting down causes for trial for August Court.

AUGUST.

- 10. Last day for issuing Writs to August Term.
- 18. Last day for filing Accounts to September Court.
- 18. Argument for Rules of Affidavit of Defense.
- 20. Last day for issuing Executions to August Term.
- 25. Calling Judgment Docket.

SEPTEMBER.

- 7. Last day for issuing Writs to September Term.
- 8. Last day for setting down causes for Argument Court.
- 8. Last day for setting down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 22. Last day for setting down causes for trial for October 22.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket,
- 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 23, 1877.

THE LATE HON. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster, delivered very many and able opinions. The same are nicely collated in a volume of about five hundred pages, in his own handwriting, which is now the property of the Lancaster Law Library Association. These cases are of particular interest, being of our own courts. It has been the desire of the attorneys to have these cases printed so as to be within the ready reach of all. THE BAR will hereafter contain one or more of these opinions, beginning at the first and giving regularly every opinion, in the order prepared by his Honor, until all are published, whereby our patrons will then be in possession of copies in full of the "Hayes Opinions."

## HAYES' OPINIONS.

### Common Pleas of Lancaster County.

#### ISAAC HEINEY vs. JAMES ANDERSON.

A bond taken in a larger sum than was due is in itself evidence of fraud; but the circumstance may be explained. The explanation, however, should be clear, and by independent testimony.

The statute of 13 Elizabeth, c. 5, does not prohibit a judgment to secure a *bona fide* debt, if the judgment be not for more than the debt, though other creditors be thereby defeated.

But if a man take a judgment for more than is due to delay, hinder or defraud other creditors, or as a secret shield to favor the debtor, it is fraudulent and absolutely void. It will not protect him for what is justly due.

If the jury find the fact of fraud, the avoidance of the deed is the consequence of the law upon such finding.

Indemnity to a surety for responsibilities incurred is a good consideration of a bond, but such bond cannot protect future advancements against the claims of creditors.

James Anderson executed a bond to Isaac Heiney, dated the 15th of August, 1814, with a warrant of attorney to confess judgment. It was in the penal sum of five thousand dollars, and the condition was for the payment of two thousand five hundred dollars on demand. On the same day judgment was entered upon this bond, in the Court of Common Pleas of Lancaster County, to April term, 1814, No. 249.

It was moved by Mr. Porter, on the 31st of December, 1816, that John McGlaughlin and Samuel Hunsecker, two of the defendant's creditors, should be let into a trial of the bond—the judgment to remain as a security, and the rule upon that motion was afterwards made absolute. The trial followed at the September term, 1820, when the jury found for the plaintiff \$2,508.49 debt, with costs, etc.

This verdict being set aside by the court, a new trial took place February 12th, 1821, which resulted in a verdict for the defendant.

Mr. Rodgers for plaintiff.

Mr. Hopkins and Mr. Porter for defendant.

The court, at the request of the plaintiff, on the second trial sealed a bill of exceptions to their charge, which was as follows, (per SMITH, P. J.):

The bond is in the penal sum of \$5,000, conditioned for the payment of \$2,500 on demand, with interest, as if for a real debt to that amount. The date is the 15th of August, 1814, and judgment was immediately entered thereon. I lay out of the case, with respect to any operation on my mind, the circumstance of Anderson paying the fees for entering the judgment, although it may be a circumstance which may be considered by a jury. The act itself is equivocal. If the judgment were for a real debt, he would eventually be liable for it, and he might choose, for convenience sake, to pay it in the first instance; or the creditor might insist on it as a term of indulgence, and to save himself from any further advancement of money. I know it has been frequent in practice, and no very strong inference can be drawn from it.

Upon the suggestion of fraud, and on reasonable ground being laid, the Common Pleas directed the creditors to be let into a trial as to the validity of this bond and judgment. It was alleged that the bond was given for a greater sum than was ever pretended to be due, and was therefore fraudulent as against creditors. That the bond was taken in a much greater sum than was due seems to be beyond a doubt—but the fraudulent intention is denied. This is a fit question for the jury to decide. The fact itself is clearly evidence of fraud and from which the jury may be justified in finding the bond fraudulent and void.

In most cases fraud is a blended question of law and fact. The jury must decide from the evidence, and the situation and circumstances of the parties, with respect to the intention and criminality of the act. Whether done with a fraudulent intent or not is a question for the jury upon the whole evidence. Although it is always imprudent and suspicious, and furnishes strong evidence of fraud, if a bond be taken for more than is due, especially from a sinking debtor, yet it may have been innocently done; but then it must be satisfactorily explained. And if the jury are satisfied that the fraudulent intent is wanting they have a right to say so. It must be made out by clear proof, and not from the mouth of the party. The creditors have a right to the highest proof; they cannot know the secret transactions of the parties. It is for this reason, when a probable ground is once laid, the burthen of proof is thrown upon the plaintiff. He must prove the full consideration clearly; and it differs from the common case, where the burthen of proof is upon the party alleging payment, or a failure or want of consideration. A man, therefore, who takes too large a bond puts himself at once into difficulties, and is at great risk; and if he do not furnish a good account of it fraud and favor between him and the debtor, as it regards other creditors, will and ought to be presumed. If, upon the first suggestion or inquiry, he should disclose the transaction

and account well for it, by reason of mistake, or other innocent reason for it, which might be hard to do, and claim no more than is *bona fide* due, it might be favorable to him. But if he keeps such bond on foot, and presumes to claim the whole of it, and contends against the other creditors, and the fact should be manifest, it would appear to me that the evidence of fraudulent intention would be conclusive and invincible.

The words of the statute of 13 Elizabeth, c. 5, are remarkably strong; and it is now well understood that the common law, independent of the statute, would have attained the same end. It speaks of feigned, covenous and fraudulent bonds, judgments, etc., devised of malice, fraud, covin, collusion, or guile, to the end, purpose and intent to delay, hinder, or defraud creditors or others of their just and lawful actions, suits, debts, etc., not only to the let or hindrance or the due course or execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevisance; and it declares all such bonds, judgments, etc., against such person or persons, and every of them, whose actions, suits, debts, etc., by such guileful, covenous, or fraudulent devices and practices are, shall or might be in any wise disturbed, hindered, delayed or defrauded, to be clearly and utterly void, frustrate and of none effect; any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding. The words of the statute are very broad and powerful.

But neither the statute nor the common law prohibit a man from obtaining a judgment to secure to him a debt really and *bona fide* due, though other creditors may thereby be defeated of their remedies. A debtor may prefer one creditor to another, and may give a judgment, though he may thereby defeat an expected execution on a suit previously pending, even though there be an intent to defeat the execution of the particular creditor, if it be for a *bona fide* debt, and not for more than is due, or to favor the debtor upon such badges and circumstances of fraud as governed Twine's case. This has repeatedly been decided and the principle is recognized in 4 Wheat. 507. And a judgment to affect real estate, and thereby to obtain a preference over other creditors, if for a *bona fide* debt, though the executions of other creditors are thereby defeated, is unquestionably valid. But if he obtain a judgment for more than is due, to delay, hinder or defraud creditors, or to favor the defendant as a secret shield to him, in the whole or in part, it is fraudulent and absolutely void. It will not protect him even for what is justly due. It is the punishment for his criminal intent and he shall lose his debt. The statute is grounded on this fraudulent intent; and if the jury find the fact of fraud the avoidance of the deed is the consequence of law upon their finding.

Then as to the facts of this case, as they appeared in evidence; and admitting, for the sake of argument, without prejudicing or deciding the fact, which I have no right to do, that immediately before the execution of the bond, according to the declarations of the

plaintiff to the witness, there were about three hundred dollars due, yet he procures a judgment bond from an involved defendant, after being apprised that other creditors were uneasy about their demands, for the sum of \$2,500, payable on demand, with interest, as for a real debt, being for the sum of \$2,200 more than was due.

But, on the part of the plaintiff, the argument goes further; and they contend that at the time of the execution of the bond the plaintiff was an endorser for the defendant, at the Farmers' Bank of Lancaster; upon notes, amounting together to the sum of \$800, for which he might eventually be liable; and, therefore, part of this bond was an indemnification against this eventual liability.

Without doubt indemnity is a good and valuable consideration, and if this had been so expressed in the condition of the bond, stating the amount, and that it was to protect him against loss, no one could have complained of it. And if the condition of the bond had been in round numbers, though it ought not to have been so, it would then have amounted to about \$1,100, and any consequential loss would have been covered by the penalty. But the bond was taken for the payment of \$1,400 more than all this.

Now, not to let too much rest upon mere form, and taking into view the practice of the country amongst unskillful men, I am not prepared to say that a bond in round numbers, without a special condition given for the protection of a surety, would, on that account, be void; and that the true consideration might not be shown. Whether this was in the contemplation of the parties was mere matter of fact. It must not come from the mouth of the party interested, but must be made out by clear proof. But I can discover no such proof, except the apologies and declarations made by the plaintiff himself, to account for the size of the bond; and if even it were so the great question in the case still remains open.

For the bond could not protect future advancements. It would be to lock up the defendant's real estate and leave his other creditors remediless under color of this judgment; and to enable the debtor to waste the funds which ought to go to the payment of his just debts—to enable him from time to time to call for supplies of money to spend and feed his extravagance, and to laugh at his creditors—it would be a manifest fraud, and the plaintiff would be a party to it. It would be calculated entirely to hinder, delay and defeat creditors, and, if this were the object, the bond is clearly fraudulent and void.

It is in evidence that one of the creditors called on the plaintiff to know how much the defendant owed him, and he told him about three hundred dollars, but it might be a little more, as they had had no final settlement; and the plaintiff shortly after obtained the bond and judgment now in question. The creditor, alarmed at this, called on the plaintiff again, complained of his misrepresentation of his debt being little more than three hundred dollars, and threatened to sue defendant. The plaintiff advised him not—that he thought

he could help him to one thousand dollars of the money. He afterwards called on him again, and expressed his apprehensions that the defendant was going to break up, and that he could not get his money from him. The plaintiff then said he could not be as good as his word, and could not give him as much as he expected, but that he might secure him five hundred dollars. He called a third time, shortly afterwards, when the plaintiff informed him he could not do anything for him, as defendant had got him to endorse notes for him at the bank.

At the time of the promise to secure to the witness one thousand dollars, there was a large sum in the bond, beyond any real or pretended liability of the plaintiff, and knowing the situation of the creditors, I can not see how it was justifiable in the plaintiff to furnish the defendant with other means, or how it could be covered under the precedent bond. If these are the facts, which the jury must determine, it would be difficult to say the bond is not fraudulent and void. There is a creditor *delayed, hindered and defeated*, and true and plain dealing overthrown. It would be a case without the very words and spirit of the statute.

A writ of error was sued out by the plaintiff and the judgment in this case was affirmed by the Supreme Court on the 5th of June, 1821.]

#### BENJAMIN BOWER vs. ALBAN HALL.

A party cannot be allowed, in the absence of fraud or mistake, to vary or explain a contract in writing. The written agreement speaks the language of the parties; and proof of previous conversations which may have led to it is inadmissible, except to explain a mistake or reach a fraud.

#### Action of ejectment.

Certain articles of agreement having been given in evidence, the plaintiff's counsel offered to prove that at the time of making the bargain it was fully made known by Bower to Hall that some of the distribution shares were unpaid. That they belonged to persons unknown, and residing at a great distance; that Bower was willing to warrant and defend against these, but that he could not give a clear title, and that in consequence the article which was drawn for a clear title at first was altered into the way in which it now stands, and that the erased part of it was for a clear title.

But this was not allowed for by SMITH, P. J. The agreement between the parties speaks their language, and the contract must appear upon it and by it, and cannot be explained or varied, unless a clear mistake has occurred, or in case of fraud. The article itself must otherwise explain the intention of the parties, and when reduced to writing is their solemn act; and proof of previous conversations which led to it is not admissible, except to explain a mistake or to reach a fraud. But proof may be given of the defendant's actual knowledge of a particular fact at the time—this being collateral to and independent of the article.

*Mr. Hopkins* for plaintiff.

*Mr. Buchanan* for defendant.

#### SUPREME COURT OF PENNSYLVANIA.

POTTS et al. vs. WRIGHT et al.

1. The title of a purchaser at an Orphans' Court sale, cannot be impeached in a collateral proceeding, except for fraud or want of jurisdiction. The evidence of fraud must be clear and explicit. It cannot be established by showing some irregularities and then making a general allegation of fraud.

2. Where possession was given, as shown by the sheriff's return on the writ and corroborated by the sheriff's testimony, the running of the statute of limitations is stopped and its validity is not impaired by the defendant having returned to the occupancy of the premises on the following day.

Error to the District Court of Cambria county.

Opinion by MERCUR, J. January 2d, 1877.

Both parties claimed under John Hershberger, who died testate in September, 1850. The will was duly proved before the register, in April, 1851. The executor having renounced an administrator with the will annexed was duly appointed. On his application the Orphans' Court ordered the sale of the land in question for the payment of debts. It was sold to the plaintiffs on the 5th of June, 1854. The sale was confirmed by the court. The purchase-money was paid by the purchasers, and the deed was acknowledged and delivered by the administrator to them. One Isaac Haws who was either married to a daughter of Hershberger, or lived with her as her husband, went on to the premises a short time before the death of Hershberger, and by the latter's sufferance he continued in possession. In July, 1856, the plaintiffs, as purchasers, instituted proceedings against him before two justices of the peace to obtain possession under the act of 9th April, 1849. The jury found all the facts required by the statute, and the justices adjudged the possession to the plaintiffs on the 18th of July, 1856. On the same day a writ of possession issued to the sheriff, who returned it on the 21st day of July, 1856, that he had given possession of the premises to the plaintiffs. The present action of ejectment was commenced on the 15th of June, 1874.

The numerous assignments of error involve the consideration of two questions; one the validity of the title acquired by the plaintiffs at the administrator's sale; the other the defendant's rights under the statute of limitations.

1. In the petition of the administrator asking for the sale, he averred under oath that the decedent had no personal property to appraise so far as he could find, and he gave a just and true account of all the debts of the decedent which had come to his knowledge. It is true, the record does not show the filing of a bond as directed by the act of assembly, but the purchaser's title is not invalidated thereby: *Lockard vs. John*, 7 Barr, 137. It was but an irregularity cured by the confirmation of the sale.

The Orphans' Court is a court of record. It has all the incidents and qualities of a court of record at common law. Its proceedings and decrees, in all matters within its

jurisdiction cannot be reversed or avoided collaterally in any other court: 2 Pur. Dig. 1103, pl. 4. Its judgments and decrees, like those of any other court of record, are final and conclusive. They cannot be questioned in a collateral suit, except for want of jurisdiction appearing on the record, or for fraud: *Kennedy vs. Wachsmuth*, 12 S. & B. 171; *Lockhard vs. John*, supra; *Merklein vs. Traperell et al.*, 10 Casey 42; the president of the Orphans' Court of Dauphin county vs. Groff et al., 14 S. & B. 181; *Gilmore vs. Rodgers et al.*, 5 Wright, 120.

The petition shows debts of the decedent and no personal estate with which they could be paid. It was a substantial compliance with the requirements of the statute. The court accepted it as a full compliance. It gave to the court jurisdiction of the subject matter and authorized a sale for the payment of debts.

The sale was ordered; it was made and then confirmed by the court; jurisdiction is thus shown by the records, and all irregularities are cured. The purchase money was paid and the deed delivered. It is true some of the earlier cases prior to the act of 1834 held the title which a purchaser acquired at an Orphans' Court sale might be questioned in ejectment; yet the latter cases hold it cannot be done, except for fraud or want of jurisdiction: *McPherson vs. Cunliff et al.*, 11 S. & B. 422; *Painter vs. Henderson*, 7 Barr, 48. A sale under the order of an Orphans' Court is a judicial sale: *Moore vs. Shultz*, 1 Harris, 98; *Vandever vs. Baker*, Id., 121. It may nevertheless be impeached for fraud; but the evidence of the fraud must be clear and explicit. It cannot be established by showing some irregularities, and then making a general allegation of fraud. The irregularities were cured, and distinct acts of fraud must be proved to affect the title of the purchaser. This is not an attempt to set aside a sale by the court which ordered it, before confirmation, but an effort to impeach it collaterally, in another court, twenty years thereafter, and after the purchasers had been put in possession by legal process. We have carefully examined the testimony in this case. We cannot find any evidence of fraudulent conduct on the part of the purchasers. The allegation rests mainly on the fact that one of the plaintiffs was counsel for the administrator, and prepared the writings connected with the sale. In the absence of any proof showing notice of some specific fraudulent conduct of the administrator, it would be a harsh rule to charge the counsel with implied notice. We, however, see no evidence of fraudulent conduct of the administrator in making the sale. Neither the fact that he sold it the third time before he found a purchaser, who would comply with his bid, nor the other fact that the deed is dated on the day the sale was confirmed, creates any presumption of fraud. The case is barren of any facts to submit to the jury to find fraud in the purchase of the plaintiffs: *Howard Express Co. vs. Wile*, 14 P. F. Smith, 201; *Philadelphia & Reading R. R. Co. vs. Seager*, 23 Id., 121. The decree, therefore, of the Orphans' Court, con-

firning a sale made under its order for the payment of debts, is conclusive evidence that the title of the decedent was legally transferred to the purchasers: *Iddings vs. Cains et al.*, 2 Grant, 88. The learned judge was not sufficiently careful to submit facts only to the jury. He inadvertently blended them with questions of law and conclusions of law. As a whole, the general effect of the charge was calculated to mislead the jury as to their powers and duties. Thus, in the second assignment, they were told to determine the question, whether the settlement of the estate was done in such a manner as was required by law? In the sixth, it was left to determine "whether there was such a delivery to and possession by the plaintiff as is contemplated by law." In the seventh, it was left to them to find "whether the proceedings were regular and in accordance with the act of assembly." In the point covered by the fourth assignment, the defendants requested the court to charge the jury if there was any fraud, legal or actual, their verdict should be for the defendants. In answer to this, and ignoring all distinctions between legal or actual fraud, or indicating what constituted either, the court said "if the testimony satisfies you that there was fraud and collusion in the sale and purchase of this land by the administrator and James Potts, it avoids the sale and renders the contract null and void. It is a question for you to determine."

The court did not instruct the jury what duty any act of assembly or any law imposed on the administrator. The jury were not informed what acts were necessary to make the sale legal, nor what would make it illegal. They were told what acts and conduct the defendants alleged were fraudulent, and then the court submitted to them to say whether those acts constituted fraud. They were not informed whether those acts were evidence of actual or legal fraud, or what constituted either. Whether the record showed a valid confirmation of the sale was for the court to decide. It was error to submit it to the jury. The testimony consisted of record, documentary, and parol evidence. It was manifest error to throw it all into the jury-box together, and say, as in the twelfth assignment, it was for them "to determine whether or not, upon all the evidence, the verdict be for the plaintiffs or the defendants."

2. If possession of the premises was given to the plaintiffs, as shown by the sheriff's return on the writ, and corroborated by the testimony of the sheriff and the plaintiffs, it stopped the running of the statute; and it was error to charge substantially that it was necessary for the purchaser to have put a tenant in possession under them. If no person was in the house when the sheriff went with the plaintiffs to deliver possession to them, and the sheriff removed the goods from the house—if he then and there proclaimed that he gave them possession of the premises, and they accepted the same and took possession, the delivery was full and complete. Its validity was not impaired by the defendants having returned to the occupancy of the house on the day following, and

continuing in the possession thereof. Hence, if the defendants claimed title under the will of John Hershberger, they could not have acquired title under the statute of limitations.

As an abstract proposition, we cannot say that there is error in the answer covered by the eleventh assignment. The plaintiffs' fourth point assumes certain facts to exist, which are for the jury to pass upon, so we are unable to say there is positive error covered by the eighth assignment. The other assignments are substantially sustained, and the judgment must be reversed.

Judgment reversed and a *venire facias de nova* awarded.—*Luz. Law Times*.

#### Common Pleas of Mercer County.

##### GRIFFITH vs. THOMAS.

The act of March 23d, 1877—the new stay law—does not affect a sheriff's sale upon a judgment entered on a note waiving stay of execution.

Opinion by MCDERMOT, P. J. April 10, 1877.

The petition in this case is, in effect, an application for a mandamus on A. P. Pew, sheriff, to proceed and sell real estate on the *alias fi. fa.* The material facts are:

1. The defendant, on the 29th day of September, 1874, gave the plaintiff a note, due in one year, in the sum of \$484. In this note he waived the stay of execution, inquisition, condemnation, etc. Judgment was confessed on it the day it was given.

2. On the 19th day of February, 1877, the *alias fi. fa.* was issued, and was returnable on the second Monday of April following.

3. By virtue of it, the sheriff levied on fifty-four acres of land, more or less, and duly advertised the same for sale on the second Monday of April, on which latter day he refused selling the same on the ground that he could not do so since the passage of the Act March 23d, 1877.

4. On the same day this mandamus was prayed, an injunction was prayed for in another case, the counsel concerned in which, Hon. E. W. Jackson, made an argument applying to both cases, and the only one made in either of them in favor of said act being in all its parts constitutional.

The counsel for both plaintiffs contended that the act in question was unconstitutional as to judgments based on contracts waiving the stay of execution. It was pressed with great zeal and ability that the courts below should sustain the act, and let the court of last resort pass on its constitutionality.

To this argument our views are so clearly enunciated by the Hon. Ellis Lewis, subsequently chief justice of the State, that he, not we, shall express them. He says: "In considering the constitutionality of this act, we are met at the threshold of the case with the suggestion that courts of original jurisdiction ought not to investigate constitutional questions, but should, without scruple, execute every act of the legislature, however unjust and unconstitutional, and thus leave the injured party to seek his remedy, as best he may, by an application to the Supreme Court. There are so many proceedings in our courts,



which the legislature has not thought proper to place under the control of the Supreme Court, that the result of this course of judicial action would be, in many cases, a violation of acknowledged constitutional right, without any remedy whatever, and in all cases a vexatious delay of that justice which courts are enjoined to administer without denial or delay. \* \* The truth is that the rule is directly the reverse of that suggested. The courts of original jurisdiction should regularly dispose of all questions which arise before them; and the court of review, in its appellate jurisdiction, should not interpose until the decision has been pronounced by the court below. The conceit which inverts this order of proceeding belongs to a sickly brood of judicial fancies, which are destined to be short-lived. Their weakness would insure contempt, but for the influence of those who give them countenance; their folly would be amusing, but for their mischievous tendency; and their constitutional infirmity would excite their commiseration, but for the criminal abandonment of official duty to which they tend. But it is not necessary, at this enlightened period in the history of constitutional liberty, to adduce arguments to prove what all regulated minds concede—that all the judicial tribunals are bound to administer justice according to law; that the constitution is not only a part of the law, but the paramount law; that an act of assembly which contravenes its provisions is no law; and that a judge, whose oath of office binds him to support the constitution, cannot knowingly violate its provisions, even at the bidding of legislative power, without degrading the judicial character, and staining his conscience with the hues of official perjury.” *Martin v. Bear*, P. L. Journal (5 Clark), p. 17.

The principles deducible from all the decisions on the questions involved is, that while the legislature is prohibited from impairing the obligations of a contract, it may yet alter or abridge the remedy for a breach of the contract, provided the alteration be not so great and unreasonable as to amount to a substantial impairing of the contract obligations: 3 Grant, 243.

In the absence of evidence to the contrary, the legal presumption is, that in a contract waiving the stay of execution, such waiver was at least a part consideration for the credit obtained. If the legislature gives a stay on such contract, no legal acumen can convince me that its obligation has not been greatly and unreasonably impaired.

The rule is for the lower courts to sustain legislation, and it is only where they are satisfied that it is “clearly, plainly, and palpably” unconstitutional that they should so declare it. When so satisfied, they must so decide. If, under this act, the sheriff cannot be compelled to sell on this *fi. fa.*, it is worse than vain to say that it does not give him a stay of execution, which he contracted not to claim.

The act, so far as it gives a stay of execution on contracts waiving it, is “clearly, plainly and palpably” a violation of the tenth section of the first article of the constitution

of the United States, and of the seventeenth section of the first article of the constitution of this State. Under these sections of said articles, the legislature is prohibited from passing an *ex post facto* law impairing the obligations of a contract. We regard the case of *Billmeyer v. Evans*, 4 Wright, 324, and *Lewis v. Lewis*, 11 Wright, 127, as directly in point. In the first of these the court, *inter alia*, says: “So when these defendants stipulated for twelve months’ credit, and agreed that there should be no stay of execution beyond that limit, can the legislature say there shall be a stay beyond that limit without impairing the obligation of the contract? How would it be possible more directly to impair a contract? What is it but setting aside the contract made by the parties, and substituting a different one for it? To say that a contract which waives a stay of execution is not impaired by a law which gives a stay, is to talk language which is unintelligible. If the legislature may do this, the constitutional provisions are a vain parade of words, a mere theoretical rule, without any force or value.”

As there is neither exception nor proviso in the act exempting any class of contracts from its operation, the sheriff was justified in refusing to sell without a preceptory mandate from the court, for surely if the lower courts do only in very clear cases declare a law unconstitutional, it is more than a sheriff should do in any case.

And now, April 10th, 1877, after a full and exhaustive argument, the sheriff is directed, enjoined, and commanded to sell the premises levied upon under said *fi. fa.* the same as though the Act of March 23d, 1877, had never been passed.

#### SUPREME COURT OF WISCONSIN.

JANUARY TERM, 1877.

BOGIE vs. BOGIE, et al.

*Deed from parent to child—Agreement to provide for parent—Failure to support—Equity will cancel such conveyance—Demand of parent for necessaries—Pleading—Sale of land by son—Fraudulent conveyance.*

Abstract of opinion by LYON, J.

A. deeded land to B., and on the same day both parties executed a sealed instrument, which recites the fact of such conveyance, and declares that B. agrees to maintain A. during his natural life, furnishing him food, clothing, medicine, nursing while sick and medical services, &c., and to pay, six months after A’s decease, certain sums to certain named persons; and it is declared that “the covenants herein contained shall bind the parties mutually, and their respective heirs, executors, administrators and assigns.” *Held*, that, construing this instrument and the deed together as one transaction, they do not create any condition subsequent, failure of which will work a forfeiture of title in B.

Courts of equity have power, in proper cases, to rescind conveyances and agreements, and will grant such relief when necessary to prevent a fraud upon the party seeking it: and will especially protect in this manner

aged and infirm persons who have conveyed property to their children in consideration of support and maintenance, where the grantees neglect to perform their duty in that respect.

It is alleged, in substance, that plaintiff, being infirm in health and advanced in age, &c., conveyed lands to his son, in consideration of the promise of the latter to make provision for plaintiff during his natural life, and pay certain sums to plaintiff’s other children, as stated in the agreement above described; that the son entered upon and has continued in possession of the lands under the deed, but “has utterly failed to perform in whole or in part, any and all” of his said covenants, “by failing and neglecting in all respects to support and provide food and clothing, and medicine and medical attendance when sick” for the plaintiff. *Held*, that a cause of action is stated for a rescission of the conveyance and agreement; and it is not necessary in such a case to allege a demand of food, medicine, etc.

One who took a conveyance from the son of a portion of said land, with knowledge of plaintiff’s equities and without paying any consideration, has no greater rights than his grantor, against the relief sought.—*Monthly Jurist*.

THE late John B. Felton, of California, is reported to have received a large professional income. His fees were in many cases enormous; what is known as “the city slip suit,” in San Francisco, bringing him \$200,000, while he received as counsel in the celebrated Mariposa land suit over \$1,000,000 in money and lands, and in several other cases his fees ranged between \$50,000 and \$150,000. He was attorney for the late James Lick, and managed the change in trustees of the property which that philanthropist made just before his death, receiving therefor \$100,000; and during the past twenty years he is believed to have received nearly \$2,600,000 in fees for professional services:

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 23, 1877.

### WEEKLY SUMMARY.

REGISTER’S OFFICE.

Letters of administration have been granted by the Register on the following estates since June 16, 1877.

MICHAEL GIBBEL, dec’d, late of Rapho twp.; M. G. Gibble and Benj. G. Gibble, administrators.

MARY RICE, dec’d, late of Philadelphia, Pa.; E. D. Rice, administrator.

The following Wills have been admitted to probate since June 16, 1877:

PHILIP SHREINER, late of Columbia bor.; Rebecca Shreiner and Clara R. Shreiner, executors.

JAMES MCCAA, late of Caernarven twp.; Wm. J. McCaa, Annie E. McCaa and Dr. D. J. McCaa, executors.

JOHN REIST, Sr., late of Penn twp.; H. B. Reist, John B. Reist and Henry S. Nissley, executors.

LYDIA NISSLEY, late of Mt. Joy twp.; Henry H. Nissley, executor.

JAMES LEWIS, late of Little Britain twp.; William Lewis, executor.

**Auditors' Notices.**

**Assigned estate of SAMUEL H. GRING and WIFE, of the township of East Cocalico, Lancaster county.**

The undersigned auditors appointed to distribute the balance remaining in the hands of A. R. Royer and John Lutz, assignees, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 2d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. W. DENLINGER,  
S. W. SMADLE,

je23 Auditors.

**Estate of SUSANNA BACHMAN, late of Litiz, Lancaster county, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Francis M. Bachman, administrator, to and among those legally entitled to the same, will attend for that purpose on TUESDAY, JULY 10th, 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

OWEN P. BRICKER,  
Auditor.

je23

**Assigned estate of JACOB HACKERT and WIFE, of Mount Joy twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Byrod, assignee of said Jacob Hacker and wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 13th day of JULY, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. O. NEWPHER,  
Auditor.

je23

**Estate of BENJAMIN MOONEY, late of Manor township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bausman, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 11th day of AUGUST, 1877, at 2 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

EMLÉN FRANKLIN,  
Auditor.

je23

Weekly Examiner and Intelligencer copy.

**Assigned estate of DR. A. K. ROHRER, of West Hempfield township, Lancaster Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Greider, assignee for the benefit of the creditors of said estate, as shown by his 2d account, will sit for that purpose on FRIDAY, the 10th day of AUGUST, 1877, at 10 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. SLAYMAKER,  
J. W. F. SWIFT,

je23

Auditors.

**Assigned estate of BAIR KILHEFNER and WIFE, of East Earl twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. G. Groff, assignee of Bair Kilhefner and Wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 19th day of JULY, A. D., 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.

C. S. HOFFMAN,  
Auditor.

je23

**Estate of CHRISTIAN BINKLEY, late of East Hempfield township, Lancaster co., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of William Binkley, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 27th day of JULY, A. D., 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

B. C. KREADY,  
M. N. BRUBAKER,

je23

Auditors.

**Estate of ISRAEL BUCKWALTER, late of Paradise township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Susan Buckwalter and Jacob R. Buckwalter, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JULY 7, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. J. KAUFFMAN,  
Auditor.

je16

**Estate Notices.**

**Estate of PHILIP SHREINER, late of Columbia Bor., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said Borough.

REBECCA SHREINER,  
CLARA R. SHREINER,

PHILIP D. BAKER, Att'y. je23 Executors.

**Assigned estate of JOHN AMMON and WIFE, of Salisbury twp., Lancaster co.**

John Ammon and Wife, of Salisbury township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Ammon, they therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL LEE,  
HENRY AMMON,

PHILIP D. BAKER, Att'y. Assignees.  
je23 Residing in Salisbury twp.

**Assigned estate of HENRY MAULICK and WIFE, of Lancaster City, Lancaster co.**

Henry Maulick and Wife, of Lancaster city, having by deed of voluntary assignment, dated June 20, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Henry Maulick, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

H. K. BURKHOLDER, Assignee,  
Residing in Lancaster City.

B. F. ESHLEMAN, Att'y. je23

**Assigned estate of DAVID G. STEACY and WIFE, of Bart township, Lancaster Co.**

David G. Steacy and wife, of Bart township, having by deed of voluntary assignment, dated June 18, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David G. Steacy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL SLOKOM, Assignee,  
Christiana, P. O.

je23

**Estate of JOHN REIST, SEN., late of Penn township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

H. B. REIST, Mt. Joy twp.,  
JOHN B. REIST, Penn twp.,  
H. S. NISSLEY, East Donegal twp.

H. C. BRUBAKER, Att'y. [je23] Executors.

**Estate of JAMES MCCA, Esq., late of Caernarvon township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

Dr. D. J. MCCA,  
Residing in Ephrata;  
WM. J. MCCA,  
ANNA E. MCCA,  
Residing in Churchtown,

je23\* W. K. SELTZER, Att'y, Ephrata. Executors.

**Estate of JOHN AMMON, late of Salisbury township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY AMMON, Executor.

PHILIP D. BAKER, Att'y. je23

**Estate of SARAH M. BUYERS, late of Salisbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Salisbury twp.

je16\* JAMES A. BUYERS.

PHILIP D. BAKER, Att'y. Administrator.

**Estate of HUGH M. PENNY, late of Drumore township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Liberty Square, said County.

GEO. NAUMAN, } Att'ys. JOHN J. PENNY,  
J. HAY BROWN, } SAM'L M. LONG,

je16

Administrators.

**Assigned Estate of GEORGE RUSSELL, of Caernarvon twp., Lancaster co.**

George Russell, of Caernarvon twp., having by deed of voluntary assignment, dated June 4, 1877, assigned and transferred all his estate and effect to the undersigned, for the benefit of the creditors of the said Geo. Russell, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. D. WHITE, Assignee,  
Residing in Churchtown, Lancaster co., Pa.  
A. W. SNADDER, Att'y. jun9\*

**Estate of MICHAEL McCULLON, late of the City of Lancaster, Pa., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

ROSINE McCULLON, Executrix,  
S. P. EBY, } Att'ys. No. 50 South Lime-st.,  
A. J. EBERLY, } [jun9] Lancaster, Pa.

**Estate of ROBERT TWINWITH, late of Paradise township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart township.

GEO. WHITSON, Administrator.

P. D. BAKER, Att'y. [jun9

**Assigned Estate of HENRY G. STRAYER and WIFE, of Mount Joy twp., Lancaster Co.**

Henry G. Strayer and wife, of Mount Joy twp., having by deed of voluntary assignment, dated May 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry G. Strayer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

je2 HENRY B. RABER, Assignee,  
J. HAY BROWN, Att'y. Mount Joy, Pa.

**Assigned estate of JOHN STANTON and WIFE, of Drumore township, Lan. co.**

John Stanton and wife, of Drumore township, having by deed of voluntary assignment, dated May 14, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Stanton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL LEFEVER, (far.)  
DANIEL D. HESS,

W. M. FRANKLIN, Att'y. Assignees.  
je2 Residing at Quarryville.

**Estate of PETER EIDENMILLER, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Providence twp.

JOHN TWEED,  
JOHN EIDENMILLER,  
Administrators.  
jun9\*

**Assigned Estate of ABRAHAM H. BRENE-MAN and WIFE, of Manor township.**

Abraham H. Breneman and wife, of Manor twp., having by deed of voluntary assignment, dated May 16th, 1877, assigned and transferred all their estate and effects to be undersigned, for the benefit of the creditors of the said Abraham H. Breneman he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

BENJ. H. BRENEMAN, Assignee,  
CHAS. DENVERS, Att'y. Residing in Safe Harbor.

**Estate of ANNA CATHARINE HART, late of Lancaster city, deceased.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.

FRANK STAHL,  
B. C. KREADY, Att'y. [je3] Administrator, *c. t. a.*

**Estate of JOSEPH HART, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.

B. C. KREADY, Att'y. FRANK STAHL,  
je2 Administrator.

**Estate of CATHARINE BAHILL, late of Manheim twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

J. M. BAHILL,  
HUGH R. FULTON, Att'y. Executor,  
may19\* Binkley's Bridge P. O., Lan. Co., Pa.

**Estate of J. MORRIS JACKSON, late of Fulton township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, LEVI K. BROWN,  
may26\* Att'y. Administrator.

**Estate of CATHARINE ELI, late of Salisbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

WM. LANDIS,  
H. C. BRUBAKER, Att'y. Executor.

**Assigned Estate of GEORGE HEISS and WIFE of the City of Lancaster, Lancaster co.**

George Heiss and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 7th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Heiss, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEORGE TOMLINSON, Assignee,  
Residing in Manheim twp.  
ap21

**Estate of THOMAS REDMAN, late of Providence twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

may13\* JOHN STROHM, Jr.,  
P. D. BAKER, Att'y. Executor.

**Estate of NANCY GILBERT, late of Columbia borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Columbia.

AARON H. GILBERT,  
JOHN A. GILBERT,  
Administrators.  
may12  
Wm. B. GIVEN, Att'y, Columbia, Pa.

**Estate of DAVID FARMER, late of Mount Joy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rapho township.

CATHARINE FARMER,  
JOHN FARMER,  
Administrators.  
may5

**Estate of F. A. DIETZEL, late of Ephrata township, dec'd.**

Letters of administration *cum testamento annexo de bonis non* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

THOS. E. FRANKLIN, } Att'ys. ELIAS WOLF,  
WALTER M. FRANKLIN, } Executor,  
may5 Residing at Akron, Lancaster Co.

**Estate of SAMUEL DRABENSTADT, late of East Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

WM. WELCHANS,  
WM. DRABENSTADT,  
Administrators.  
may5  
B. C. KREADY, Att'y.

**Assigned Estate of ADAM GUTFLEISCH and WIFE, of Lancaster City.**

Adam Gutfleisch and wife of Lancaster city, having by deed of voluntary assignment, dated April 26th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Adam Gutfleisch, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

HENRY WOLF, Cabinet Maker,  
D. P. ROSENMILLER, Jr. Att'y. Assignee,  
may5 40 East King street.

**Estate of ADAM THOMAS, late of Pequea twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

JOHN M. HARMAN,  
THOS. E. FRANKLIN, Att'y. Administrator.

**Assigned Estate of TOBIAS HERR and WIFE, of Strasburg twp., Lancaster county.**

Tobias Herr and Wife, of Strasburg twp., having by deed of voluntary assignment, dated April 18th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Tobias Herr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

ABRAHAM HOSTETTER, Assignee,  
ap28 P. D. BAKER, Att'y. Paradise township.

**Estate of CHRISTIANNA CURRY, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

may5\* HENRY CARPENTER,  
Executor.

**Estate of PETER NADES, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known to them without delay.

CHRISTIAN SCHAEFER,  
B. C. KREADY, Att'y. Executor, Lancaster city.  
ap28

**Estate of JOHN KOB, late of Conoy township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

JACOB R. KOB, Conoy twp.,  
SAM'L EBY, Elizabethtown bor.,  
Executors.  
ap28

**Estate of ANN LEECH, late of Salisbury twp., dec'd.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sadsbury twp.

P. D. BAKER, Att'y. W. M. COOPER,  
ap21 Administrator *c. t. a.*

**Estate of DANIEL HEISEY, late of West Calico twp., Lancaster co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

ADAM OBERLIN, Administrator,  
ap21\* Calico P. O., Lancaster county.  
A. J. EBERLY, Att'y, 49 Grant St., Lancaster, Pa.

**Estate of THOMAS PENNINGTON, late of Cole-rain twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Kirkwood, Lancaster co.

SIMON W. SWISHER,  
M. BROSIUS, Att'y. Executor.  
ap21

**Estate of SUSANNA ERB, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Warwick township.

HENRY E. RUDY,  
H. C. BRUBAKER, Att'y. Executor.  
ap21

**Estate of ELIZABETH LEECH, late of Salisbury twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Sadsbury twp.

P. D. BAKER, Att'y. W. M. COOPER,  
ap21 Administrator.

**Estate of JAMES MANEY, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned all persons indebted to said decedent, are requested to make immediate settlement, and those having claims or demands against the estate of said decedent, to make known the same to her without delay.

SARAH MANEY,  
B. C. KREADY, Att'y. [ap21] Administratrix

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, JUNE 30, 1877.

No. 5.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES.

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

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THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE No. 25 NORTH DUKE STREET,

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way passenger	.....	4:50 a. m.	7:50 a. m.
Columbia Accom.,	.....	7:30 a. m.	COL. 8:00 a. m.
Niagara Express,	.....	9:35 a. m.	10:40 a. m.
Mail Train via Mt. Joy,	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	.....	11:20 a. m.	1:25 p. m.
Sunday Mail,	.....	11:29 a. m.	1:30 p. m.
Fast Line,*	.....	2:05 p. m.	3:45 p. m.
Frederick Accom.,	.....	3:20 p. m.	COL. 3:50 p. m.
Harrisburg Accom.,	.....	6:10 p. m.	8:10 p. m.
Columbia Accom.,	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	.....	7:35 p. m.	8:40 p. m.
Pittsburg Express,	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.
EASTWARD.		LANCASTER.	PHILADELPHIA.
Atlantic Express,*	.....	1:10 a. m.	3:00 a. m.
Harrisburg Express,	.....	7:35 a. m.	10:30 a. m.
Columbia Accom.,	.....	9:35 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,	.....	2:00 p. m.	5:00 p. m.
Philadelphia Express,	.....	3:05 p. m.	6:00 p. m.
Day Express,	.....	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:15 p. m., and runs to Frederick.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:10	2:30
Lancaster—West King Street,..	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:46	3:45
LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	5:30	8:00
Lancaster—West King Street,..	9:55	5:40	8:10
Quarryville, (arrive).....	11:00	7:00	9:15

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,..	8:00		3:35
Lancaster—Upper Depot,.....	8:10	12:55	3:45
Lancaster Junction,.....	8:35	1:20	4:10
Reading, (arrive).....	10:15	3:30	5:45
LEAVE.	GOING SOUTH.		
	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:21	1:35	7:35
Lancaster—Upper Depot,.....	9:46	2:00	8:00
Lancaster—West King Street,..	9:55		8:10

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom,.....	7:05	1:55	5:45
LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:25

### Lancaster and Millersville Railroad.

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On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1 p. m.

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<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Bevens.	

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**JULY.**

- 21. Last day for filing Accounts to August Court.
- 28. Last day for setting down causes for trial for August Court.

**AUGUST.**

- 10. Last day for issuing Writs to August Term.
- 18. Last day for filing Accounts to September Court.
- 18. Argument for Rules of Affidavit of Defense.
- 20. Last day for issuing Executions to August Term.
- 25. Calling Judgment Docket.

**SEPTEMBER.**

- 7. Last day for issuing Writs to September Term.
- 8. Last day for setting down causes for Argument Court.
- 8. Last day for setting down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 22. Last day for setting down causes for trial for October 22.

**OCTOBER.**

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

**NOVEMBER.**

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

**DECEMBER.**

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 30, 1877.

## HAYES' OPINIONS.

### Common Pleas of Lancaster County.

DANIEL BURKMAN vs. JOHN ALBERT, surviving executor of the last will and testament of BILLY BURKMAN, deceased.

It is no ground for a new trial that the verdict involved a decision of a question of construction upon the doubtful signification of certain words in a will, submitted as evidence to the jury, especially when the court is not satisfied that such decision works injustice.

A party having any matter of defence, which he does not choose to bring forward at the trial, shall not avail himself of it on a motion for a new trial, though there may be some excuse for the omission, when the plaintiff, being bound by the pleadings, to produce his whole case, reserves a part of it until the conclusion of the trial.

After argument on the grounds originally laid for a new trial it is too late to present other reasons.

The court, convinced that injustice would be done by the verdict, may yet allow it to stand, if the plaintiff will relinquish the undue advantages it would yield him; otherwise may set it aside.

Executors, suffering the fund out of which legacies are payable to be idle without cause, or using it themselves, are chargeable with interest; otherwise, where they are obliged to retain it unemployed in daily expectation of a demand.

Interest is not, of course, chargeable on a residuary legacy which is payable only after the debts are discharged and the administration account is settled.

There can be no inflexible rule applicable to all such cases.

This was an action for a residuary legacy, bequeathed by the testator to his brothers and sisters, of whom some were of the whole and others of the half blood. The plaintiff was one of the latter.

There were £600 bequeathed to the widow; but defendant neglected to notice this in his administration account—neither was it adverted to on the trial, nor considered in the verdict. The jury found for the plaintiff his share of the residue of testator's estate, including these £600, with interest from the expiration of a year after his death.

Mr. Hopkins, for the defendant, moved for a rule to show cause why there should not be a new trial:

1. Because the verdict was against the law, evidence, and charge of the court.

2. Because, as there was no demand proved of the legacy, there could be no interest given, but from the time of the refunding bond tendered, which was not shown, and then only from the actual entry of the suit.

Mr. Porter for the plaintiff.

After argument, by the counsel of this rule, the following opinion was delivered by SMITH, P. J.:

Whether the German words used in this will with respect to the disposition of the residue, are to be restricted to one set of heirs or

not was the great question in this case, and the attention of the court and jury was directed solely to this part of the case. It is said to be a question of law. Wherever technical words are used in a will, which have received a settled construction, it will be presumed that the testator uses them in their technical sense, and no evidence will be received to the contrary. But with respect to other words not purely technical, which may be used in a deed or will, the rule is not so strict, for *jus et norma loquendi* may be governed by usage. General expressions are frequently restrained by the context; and the intention of the party may be shown from the whole instrument. The words in this will, as translated, are "my other brothers and sisters shall have the residue in equal shares." Now, there is no ambiguity patent in these words, and if there were no evidence could be admitted to explain them. If there be an ambiguity, it is a latent one, and in all such cases the ambiguity must first be raised by evidence, and then evidence may be admitted to explain the ambiguity. Recourse has, therefore, been had to the original words as used by the testator; and the construction must arise upon them, and not on the language of the translator, however capable, as he certainly was in this case. And, if the words had a single and defined meaning, there might, perhaps, be little difficulty. But on this point there is a variance in the glossaries themselves; some of them applying the words to brothers and sisters of the same parents, that is, of the whole blood; others, to brothers and sisters of the same parent or parents, that is of the whole and half blood. And the witnesses also differ in the same way. Two respectable gentlemen inclining to the first construction; another has declared that the words, as generally used, apply to both sets of relations, and that when it is intended to restrict their general application the word *halb* or half is prefixed, not only among the Germans in this country, but in Germany; and that the usual and common acceptation embraces as well brothers and sisters of the whole as of the half blood; and the jury, who were mostly Germans, have applied the most general use of the terms, understanding them so themselves.

It does not appear to me, upon reflection, to be so much a case of latent ambiguity as a mere question as to the correct construction and application of the language used; and if it be a case of latent ambiguity, yet, although they have raised the fact of their being two sets of brothers and sisters, they have left this fact unexplained, and having merely proved the situation of the family—have failed to give any evidence as to intention, but have left it altogether to presumption and conjecture. But these are not sufficient for me to act upon, however much I have been perplexed with it, after a decision by a jury who understood the language, and heard all that was said by the witnesses respecting the sense of the terms, and all the arguments elaborately pressed upon the subject. Under such circumstances, therefore, and unable to say that the jury were wrong in the construction they have given to the original German words of

the will, I do not feel warranted in setting aside the verdict on this ground, merely to give a random chance of obtaining a contrary verdict, the justice of which might be equally uncertain.

There are, however, two other matters of considerable moment, and which seriously affect the justice of the case. The general rule laid down in the books is that a legacy devised generally carries interest from the expiration of the year after the testator's death; but if the legatee, being of full age, neglects to demand it at that time, he cannot have interest but from the time of the demand. But if the legatee be an infant, he is entitled to interest without a demand, as there can be no laches, and executors are not permitted to suffer the fund to lie idle; and if they do not put it out, they are chargeable for the neglect; and so if they make use of it themselves, they shall pay interest. It may be otherwise when they are obliged to retain the fund unemployed in daily expectation of a demand. If they are ready to pay when the demand is made, they would not be charged with interest; yet if they make interest they shall account for it. And if on a demand made, where there is no controversy as to the right, the money refused or not forthcoming, it would be evidence of the employment of the money, and they should be chargeable with interest from the time the legacy was payable, unless a satisfactory explanation could be given; as that no demand being made for a length of time, they afterwards employed the money and then interest might be given only from the time it was employed. These are general principles, yet there is much of equity in these cases; and they are varied according to the circumstances.

The present case is, however, not the case of a specific legacy; but a general devise of a residue, which can not be known, till the debts are paid, and the account settled; and, I take it, interest is not of course, unless there be unreasonable delay and vexation in paying over the balance. It may be out on securities, bearing interest; and it that case, the parties interested gain the accumulated fund, and there may be losses and difficulties in bringing in the fund without the laches or fault of the executors. Each case must depend upon circumstances, on general principles, not on any fixed or inflexible rule applying to all cases. In this case also, the right of the plaintiff to a share of the residue, was the principal question, and although generally speaking a defendant is bound to know the law, and shall be answerable in damages for a wanton vexatious litigation, and a plaintiff must recover on his own right, and a defendant must defend at his peril. Yet here the defendant was not blameable in submitting the construction of this will to a jury. It was a very doubtful case, arising out of the circumstances of the family, and more a question of fact and intention; than of law. He had a right to protect himself by a decision on the merits. It does not appear to be vexatious, and as the fund must necessarily be suspended during the litigation, it would be hard to make him pay interest out of his

own pocket. He must have it in readiness to meet the result. I think it is that kind of case, that if depending in equity, the chancellor would neither decree interest nor costs.

It is justly said that where a party has a defence and does not choose to make it, he shall not afterwards be permitted to say on a motion for a new trial, that if he had insisted on certain other matters the verdict would have been different. He must bring forward his whole defence; but after he has taken his chance of a verdict in his favor, and it happens to be against him, he shall not, by choosing to insist on any matter, make that a reason for a new trial. But in a case where the attention of the court throughout has been drawn to a principal question of great importance, and minor incidental points have been inadvertently omitted to be mentioned, or observed upon, it would be unjust to insist on retaining a verdict, where the whole merits have not been fairly gone into, and no design is discoverable, I think there is at least one precedent in Pennsylvania to this effect. Besides, in this case the plea is *nil debet*; and it was incumbent on the plaintiff to make out his whole case, and show his right to interest upon his share of the residue; but it formed no part of the controversy. There was no evidence of any demand previous to the suit, nor anything said about it till the very close of the plaintiff's argument to the jury, when the calculation was sent out. If it had been made a point I think I should have felt myself bound to direct the jury not to give the interest; and the omission to bring the question before the court was not the fault of the defendant. I think the verdict wrong in this respect.

The last reason assigned would, in common cases, be attended with great difficulty. Similar cases have been so often raised and overruled, and the authorities are so strong that they cannot easily be departed from. Even in cases where a party has been surprised by a defence which he was not prepared to encounter new trials have been refused. A party must be prepared; and if he suffers by his own negligence, and omits to bring forward his whole case, the court will not assist him. For the reasons already given the mischief would be incalculable, and the court could never know when it was done with a cause.

This is not the case of newly discovered evidence, and that must be very clearly and satisfactorily made out; but here the very defence was apparent on the face of the will itself, which was part of the evidence. It was mere negligence in the defendant not to exhibit it. He ought to have brought it forward: it was in his power. He was entitled to credit in his account for the £600 bequeathed to the widow, yet he omitted it in his account; and the plaintiff, claiming a share of the residue, had only to look to the official paper to ascertain the balance that the defendant admitted to be in his hands. It was no fault in the plaintiff; and admitting that it was mere ignorance and mistake in the defendant in not apprizing his counsel of the circumstance, when the mistake could have

been so easily rectified; yet if this were admitted as a reason for a new trial the same reason might be alleged in every case, and it would break down all rules wisely adopted for the administration of justice and to put an end to litigation.

Wherever a party has the evidence in his power, and with due diligence might have produced it, if he omit to do it he shall not obtain a new trial. I have said thus much to show my reluctance to depart from settled practice. There is but one thing to be said, which has been already said, that the attention of the court and jury was entirely drawn to the principal question, which was distinct and independent, the right of the plaintiff to recover at all.

And no doubt injustice has been done in the amount for which the verdict has been given. And the plaintiff ought not in equity to claim it; and as I think the verdict clearly wrong with respect to the interest, I would take hold of that to do justice without making any use of this latter point, which was also brought forward too late—not until the argument had closed on the grounds originally laid for a new trial, and the court had deliberated and would have given its judgment at the following term. But as the counsel for the plaintiff has consented that the court shall decide upon equitable principles, if the plaintiff's counsel will deduct the £600 from the general balance on the administration account, and waive the interest, the verdict will stand for the due proportion of the net balance; otherwise a new trial to be awarded.

#### Orphans' Court of Lancaster County.

ESTATE OF HUSTON GOSHEN, dec'd.

A bequest composed of certain rights and privileges to the widow, on a farm devised, from which she voluntarily withdraws, will not entitle her to an equivalent in money. However, when the enjoyment of the bequest is not inseparable from the real estate, then an equivalent may be decreed upon the failure or refusal of the devisee to perform.

Each case must furnish its own rule, and hence it is properly a matter for the Orphans' Court.

Petition, citation, answer, &c.

George Brubaker for citation.

Samuel H. Price contra.

Opinion delivered April 14th, 1877, by LIVINGSTON, P. J.

In this case the petition sets forth that the will of Huston Goshen gives to his dear wife, Christiana, for and during her natural life, or as long as she remains my widow, "her house, home and widow seat, in that end of the house she may choose; and also the general and common use and privilege of the kitchen, bake oven, celler, spring and spring house, and stable, and a suitable portion and part of the garden, and yearly a suitable potato patch, and as much of apples and other kind of fruit, as are growing on my premises, such a reasonable share thereof as may be sufficient for her use; and also a sufficiency of fire wood, made small and put in a convenient place for her in the yard; the choice of one of the cows, and the choice of two of my hogs—which cow of hers shall pasture and be fed in winter with the cows of

the owner and possessors of my land and premises, and stabling and bedding for her cow be found; and also, her part of the garden and potato patch to be yearly sufficiently manured in proper season for her. She shall have the privilege of raising and keeping yearly on the premises two hogs, and a suitable stable shall always be kept in sufficient repair for her hogs by the owner or possessor of my land and premises; and also the part of the house occupied by my said wife shall always be kept under good roof, and in sufficient repair for her to live therein comfortably." These, as appear by the petition, are the provisions made by Huston Goshen, in and by his last will, for his widow, Christiana Goshen.

It also appears by the petition that from the time of the decease of Huston Goshen, his wife lived in and occupied the east end of the house, on the real estate of said decedent, up until the month of January, 1872, when she left the premises of her own accord, voluntarily, on account of her own old age and infirmity.

The answer of Joseph Kuser, the present owner of the real estate, late of Huston Goshen, deceased, to the citation issued on the petition of decedent's widow, admits the death of Huston Goshen, and that he made provision in his will for his widow, as stated in her petition for a citation; and, admitting this, states that he always has been and is now willing to comply with all the conditions and stipulations embraced in said will and made in her favor, but that he is unable to do so by reason of her withdrawal from the domicile or home left her on the premises, late of her deceased husband, now owned by the respondent, and that he has frequently urged and requested her to return to her home on his property, and enjoy the privileges and allowances granted her by the will of her husband; and that she absolutely, and persistently refuses so to do. There being no replication denying the facts set forth in the answer they must be taken to be true. In addition to the facts stated in the answer, it is shown, by the testimony produced by the petitioner, that the widow did not leave the house or property by reason of its being out of repair, but because she was too poor to keep a housekeeper, although the house did need repairing. That in January, 1872, she left the property, and went to reside with her daughter, the wife of Esaias Weaver, where she remained about two years, and then removed to the residence of her son, where she has since remained. That the respondent, at different times, desired and requested her to return and live on the premises, so that she might receive and enjoy the rights and privileges granted her by the will of her husband, and that she has constantly refused so to do. That up to about the middle of October, 1876, she retained the key and possession of the portion of the house she had occupied, and that it was used by her son for the purpose of storing and curing tobacco. Some time in October, 1876, however, she gave the key to her grandson, and directed him to deliver it to Kuser, who refused to receive it but by his grandmother's order he left the key there, and under these facts we are now asked

to make an order compelling Joseph Kuser, the owner of the real estate, to pay to Christiana Goshen a certain sum as an equivalent for the privileges and allowances devised and bequeathed to her by the will of her husband, and hereinbefore enumerated.

While it is true the Orphans' Court is the proper place for her to apply for redress of her grievances, if any she has, a careful review of her own petition and testimony satisfies us that she has no cause or ground of complaint, either in law or equity against the respondent, which we can relieve.

We are referred to several cases to sustain her petition and the position taken by her counsel, that the respondent is bound to pay her an equivalent, &c.

FIRST. 9 Watts, 19; in which the bequest was: "My beloved wife, Mary Bleakney, shall have a good and comfortable living, as long as she remains my widow, off the said farm."

SECOND. 1 Casey, 191; in which the bequest was in reference to testator's daughter, Mary, and it was ordered that she should "in case of need be supported in a comfortable manner off the proceeds of my land, so long as she shall live."

THIRD. 11 Wr., 437; in which the bequest was: "My wife, Hannah, to be furnished with a comfortable room and sufficient maintenance during her natural life, to be furnished by my two sons, Daniel and Gilbert, and chargeable on the message, tenement and tract or tracts of land devised to them."

FOURTH. 14 Smith, 473; in which the testator gave and bequeathed to his wife all his household goods and kitchen furniture, one cow, the use and occupancy of his dwelling house during life, or so long as she may choose to occupy the same herself, the small room, &c., stable room in the barn for her cow, and hay and straw room, and also, the use of the half part of the garden, &c.; and also during the time aforesaid hay, straw and pasture sufficient for her cow; and yearly, and every year, one fat hog, weighing not less than two hundred pounds, one hundred pounds of beef, nine bushels wheat, nine bushels rye, and eight bushels potatoes, and fuel as much as she needs. He then devised his real estate to his two sons, and directed that each of them should furnish his wife the fat hog, beef, wheat, rye, potatoes, hay, &c., alternately, annually during life. These were specific articles directed to be delivered to her annually during life.

In the first three cases it will be observed that the real estate devised was, in each case made subject to and charged with the sufficient maintenance and the furnishing of a comfortable living to the widow, or daughter, and in each case the court held that in order to obtain the benefit of the provisions of the will, it was not necessary that the party entitled thereto should reside on the premises devised. In the last case cited there were certain privileges on the farm, in the garden, &c., given in addition to certain specific articles necessary for the maintenance of the widow. In this instance the widow recovered and was entitled to the

specific articles bequeathed or their market value; but nothing for the use of the garden, &c., which, by her removing from the premises, she had abandoned.

Huston Goshen gave nothing specifically to his widow, which was to be furnished by the owner of his land, excepting firewood; this should be furnished her annually in the manner, and at the place designated in the will; if she desires to use it elsewhere she can remove and use it where she chooses. The other portion of the bequest is composed of certain rights and privileges on the farm owned by the respondent, the right and privilege of using part of the dwelling house, kitchen, cellar, spring house, stable, and a suitable portion of the garden, a suitable potato patch, a reasonable share, sufficient for her use, of apples and other fruit as grows on the premises, a cow to be pastured in summer, and fed with his cattle in winter, with stabling and bedding found; her garden and potato patch manured in proper season, and the privilege of raising and keeping annually on the premises two hogs. All these things the answer and the testimony show the respondent has at all times been ready and willing to accord, grant and furnish to her as directed by the will, and that she has declined to exercise or use these rights and privileges, and demands an equivalent therefor in money. This we cannot, in the face of the answer, and of the testimony produced by herself, decree to be given her. Of course, by removing from the house and premises, she, during her absence, deprives herself voluntarily of the use and privileges of it, but she does not necessarily deprive herself of the privilege of having her cow kept on the farm, of having and keeping her two hogs there, of having her potato patch, and her garden privileges—for she can have her garden worked and her potatoes planted and raised for her use by others. She does not lose her right to apples and fruit if any grow, nor to her firewood. It is not necessary for her proper enjoyment of these that she should reside on the premises; and until the owner of the real estate declines and refuses to comply with the provisions of the will on his part, and to furnish and permit her to use, exercise and enjoy the rights and privileges given her, he is in no default, and cannot be made to respond in damages, or to pay to her an equivalent in money therefor.

The citation is therefore dismissed—each party, petitioner and respondent, to pay the costs incurred by them respectively in this proceeding.

Common Pleas of Wyoming County.

ENTERPRISE MANUFACTURING CO. vs. WALTMAN.

A defendant is liable for costs if execution is issued within the thirty days allowed for stay of execution.

Rule to show cause why the *fi. fa.* issued in the above stated case shall not be set aside at costs of plaintiff.

Opinion by INGRAM, P. J.

The facts are that a judgment was obtained on the 2d of October, 1876. *Fi. fa.* thereon issued the same day, and on the 17th

of same month defendant entered bail for stay of execution.

The act of June 16th, 1836, section 1, provides that execution may be had of any judgment at any time within a year and a day from the first day of the term at which it was rendered. To this general provision there is an exception in favor of special verdict judgments on demurrer and case stated, made by act of March 11th, 1809. The act of April 16th, 1845, section 4, extends the time from a year and a day to five years, but leaves the law that execution may issue at any time within that limit. In *Jones vs. McQuewan*, 3 Casey, 197, Justice WOODWARD, says: "A plaintiff having a judgment ripe for it, has a vested right to execution process, with all the legal incidents of such process." In *Erie City Bank vs. Compton*, 3 Casey, 196, Chief Justice LEWIS says: "A stay of execution is a privilege in derogation of the common law rights of the plaintiff, and the party claiming the privilege must bring himself strictly within the statute granting it." The act providing for stay of executions, as originally passed in 1836, allowed the defendant, upon entering security in the nature of special bail, to have a stay of execution during thirty days from the rendition of a judgment. The act of July 12th, 1842, abolishing imprisonment for debt, abolished special bail in cases of this kind, and rendered ineffective that part of the act of 1836, leaving it in substance, that if a defendant in any judgment (within the terms of the act) shall, within thirty days from the rendition of such judgment, give security, to be approved by the court, or by a judge thereof, for the sum secured, together with interest and costs, he shall be entitled to the stay of execution provided in the case of a person owning real estate. The act gives the defendant no right to any stay of execution until he has given the required security, and if he does not at once avail himself of the privilege to give such security, he is liable to pay the costs which may in the meantime be made on an execution.

The *fi. fa.* in this case is set aside at the cost of the defendant.—*Luz. Leg. Register.*

SUPREME COURT OF PENNSYLVANIA.

RANCK vs. WHITAKER.

Errors and appeals—What a final judgment—Striking off award of arbitrators.

The making absolute a rule to strike off an award of arbitrators in favor of the defendant is not a final judgment upon which a writ of error can be founded.

Error to the Common Pleas of Luzerne County.

Case by Whitaker against Ranck to recover the difference between defendant's bid at a sheriff's sale, and the price realized by a resale of the property. A rule for a compulsory arbitration having been entered, and a time and place of meeting appointed, at which the plaintiff did not appear, the arbitrators rendered an award in favor of the defendant. Subsequently the plaintiff took a rule to strike off this award, which, after argument, was made absolute. The defendant



took a writ of error, assigning for error the striking off of the award.

*J. C. M. Ranck, P. P.*, for the plaintiff in error.

To allow a party who has failed to appear before the arbitrators, to come in after an award against him, is but offering a premium to parties to set at defiance and treat with contempt the law and powers of the Courts.

*H. W. Palmer*, contra, asked that the writ of error be quashed because there was no final judgment, and cited—*Erie Bank vs. Brawley*, 8 Watts, 530. *Straub vs. Smith*, 2 S. & R., 382.

March 19. **THE COURT.** There being no final judgment in this case, the writ of error is quashed at the costs of the plaintiff in error.

PER CURIAM.—*Weekly Notes of Cases.*

#### Homicide--Evidence of Uncommunicated Threats--The Recent Doctrine.

The case of *Wiggins vs. The People*, (4 Cent. Law Journal, 346,) just announced by the Supreme Court of the United States, is an important case in criminal jurisprudence. It involves the much disputed question of the right to give in evidence the threats made by the deceased, but which were unknown to the accused at the time of the killing. The court, per *MILLER, J.*, says: "Although there is some conflict of authority as to the admission of threats of the deceased against the prisoner in a case of homicide, where the threats had not been communicated to him, there is a modification of the doctrine in more recent times, established by the decisions of courts of high authority which is very well stated by Wharton in his work on Criminal Law, § 1027. 'Where the question is, as to what deceased's attitude was at the time of the fatal encounter, recent threats may become relevant to show that this attitude was one hostile to the defendant, even though such threats were not communicated to defendant. The evidence is not relevant to show *quo animo* of the defendant; but it may be relevant to show that at the time of the meeting the deceased was seeking defendant's life.' *Stokes vs. The People*, 53 N. Y., 174; *Keener vs. The State*, 18 Ga., 104; *Campbell vs. The People*, 16 Ill., 18; *Haller vs. The State*, 37 Ind., 57; *People vs. Arnold*, 15 Cal., 476; *People vs. Scroggins*, 37 Ib., 676." To the opinion of the court Mr. Justice CLIFFORD dissented, and in an opinion held that the evidence of uncommunicated threats were inadmissible; citing among others the following authorities. *Atkins vs. The State*, 16 Ark., 584; *Pitman vs. The State*, 22 Ark., 357; *Haller vs. The State*, 37 Ind., 61; *Wharton on Homicide*, 407; *State vs. Collins*, 32 Iowa, 38; *Newcomb vs. State*, 37 Miss., 400; *Bohamman vs. Com.*, 8 Bush., 488; *People vs. Scroggins*, 37 Cal., 683.

THE judgment in a very recent leading case in the Court of Exchequer concludes as follows: "In the result we come to the conclusion that the case of the plaintiff, so far as it relies on authority, fails in precedent; and, so far as it rests on principle, fails in reason."

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JUNE 30, 1877.

#### WEEKLY SUMMARY.

REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since June 23, 1877.

ABAGAIL HAWTHORN, dec'd, late of Pike county, Indiana; Hon. A. Herr Smith, administrator.

MARY TRAFZER, dec'd, late of Pike county, Indiana; Hon. A. Herr Smith, administrator.

MARIA LEHMAN, dec'd, late of Rapho twp.; Jacob Pautz, administrator.

MARTIN SHREINER, dec'd, late of Lancaster city; Henry M. Shreiner and Charles M. Gibbs, administrators *c. t. a.*

ABRAHAM HOGENTGLER, dec'd, late of Columbia bor.; Winnie Hogentogler, administratrix.

The following Wills have been admitted to probate since June 23, 1877:

JOHN MCGOWEN, late of Bart twp.; Lewis Pickel, executor.

#### DIVORCE NOTICE.

PETER DAGUE } Alias Subpoena for Divorce,  
vs. } to June Term, 1877.  
CAROLINE R. DAGUE. } No. 34.

To CAROLINE R. DAGUE: You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Peter Dague should not be divorced from the bonds of matrimony contracted with you. H. N. BRENNEMAN,  
je30 Sheriff.

Sheriff's Office, Lancaster, June 26, 1877.

### Auditors' Notices.

Estate of JOSEPH HERSHEY, late of Penn twp., Lancaster county, dec'd.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Joseph Summy and Levi H. Hershey, executors, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JULY 25th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

L. ELLMAKER,  
JOHN M. ENSMINGER.

je30 Auditors.

Estate of HENRY K. DENHAM, late of East Hempfield twp., dec'd.

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to distribute the balance remaining in the hands of Elizabeth Denham and Samuel Hess, administrators of said deceased, (after having first ascertained and fixed the widow's dower in said estate) to and among those legally entitled to the same, will sit for that purpose on THURSDAY, JULY 26th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend.

FRED. S. PYFER,  
Auditor.

je30

Estate of E. T. CONYNGHAM, late of Lancaster City, dec'd, (trust account.)

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to pass on exceptions filed to said account, and to distribute the balance remaining in the hands of Joel L. Lightner, administrator with will annexed of said deceased, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend.

FRED. S. PYFER,  
Auditor.

je30

Assigned Estate of JOHN H. GRING and WIFE, of East Cocalico twp., Lan. Co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of John Lutz, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

CHAS. DENUES,  
J. W. DENLINGER,  
Auditors.

je30

Assigned Estate of SAMUEL HOLL and WIFE, of Earl twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Irwin and Levi Sensenig, assignees of Samuel Holl and Wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JULY 21, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

C. S. HOFFMAN,  
Auditor.

je30

Assigned Estate of RILEY SHEPLER and WIFE, of Penn twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel Keener, assignee of Riley Shepler and Wife, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 1st day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

SAMUEL H. PRICE,  
Auditor.

je30

Assigned estate of MOSES BRINTON and Wife, of Colerain twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cromwell Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 7, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

M. BROSIUS,  
Auditor.

je30

Assigned estate of SAMUEL HALLER and Wife, of East Earl twp., Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel B. Foltz, Assignee of Samuel Haller and wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JULY 21, at 9 o'clock a. m., at the house of Lazarus Wolf, in Fairville, said township, where all persons interested in said distribution may attend.

H. B. BECKER,  
Auditor.

je30

Assigned Estate of EZEKIEL T. PAINTER, of Drumore twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Richard C. Edwards, assignee of Ezekiel T. Painter, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 8th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. W. F. SWIFT,  
Auditor.

je30

Assigned Estate of HENRY H. HESS and WIFE, of Willow Street.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of the assignee of said estate, to and among those legally entitled to the same, will sit for that purpose on MONDAY, AUGUST 6th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

M. BROSIUS,  
J. F. FULTON,  
Auditors.

je30

Estate of ISRAEL BUCKWALTER, late of Paradise township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Susan Buckwalter and Jacob R. Buckwalter, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JULY 7, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. J. KAUFFMAN,  
Auditor.

je18

**Assigned estate of SAMUEL H. GRING and WIFE, of the township of East Cocalico, Lancaster county.**

The undersigned auditors appointed to distribute the balance remaining in the hands of A. R. Royer and John Lutz, assignees, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 2d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. W. DENLINGER,  
S. W. SHADLE,  
Auditors.  
je23

**Estate of SUSANNA BACHMAN, late of Litiz, Lancaster county, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Francis M. Bachman, administrator, to and among those legally entitled to the same, will attend for that purpose on TUESDAY, JULY 10th, 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

OWEN P. BRICKER,  
Auditor.  
je23

**Assigned estate of JACOB HACKERT and WIFE, of Mount Joy twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Byrod, assignee of said Jacob Hackert and wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 13th day of JULY, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. O. NEWPHER,  
Auditor.  
je23

**Estate of BENJAMIN MOONEY, late of Manor township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bausman, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 11th day of AUGUST, 1877, at 2 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

EMLIN FRANKLIN,  
Auditor.  
je23  
Weekly Examiner and Intelligencer copy.

**Assigned estate of DR. A. K. ROHRER, of West Hempfield township, Lancaster Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Greider, assignee for the benefit of the creditors of said estate, as shown by his 2d account, will sit for that purpose on FRIDAY, the 10th day of AUGUST, 1877, at 10 o'clock a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. SLAYMAKER,  
J. W. F. SWIFT,  
Auditors.  
je23

**Assigned estate of BAIR KILHEFNER and WIFE, of East Earl twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. G. Groff, assignee of Bair Kilhefner and Wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 19th day of JULY, A. D., 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.

C. S. HOFFMAN,  
Auditor.  
je23

**Estate of CHRISTIAN BINKLEY, late of East Hempfield township, Lancaster co., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of William Binkley, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 27th day of JULY, A. D., 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

B. C. KREADY,  
M. N. BRUBAKER,  
Auditors.  
je23

**Estate Notices.**

**Estate of FREDERICK KOSER, late of Rapho township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Rapho twp., Lan. Co.

REBECCA KOSER,  
FREDERICK Y. KOSER,  
Executors.  
je20  
D. McMULLEN, Att'y.

**Assigned Estate of AMOS ALTHOUSE, of East Cocalico twp., Lancaster co.**

Amos Althouse, of East Cocalico township, having by deed of voluntary assignment, dated June 23, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Althouse, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN B. REINHOLD,  
JOHN S. LUTZ, Assignees.  
A. J. EBERLY, Att'y,  
49 Grant st., Lancaster. Stevens P. O., Lan. co.  
je20

**Assigned estate of JOHN AMMON and WIFE, of Salisbury twp., Lancaster co.**

John Ammon and Wife, of Salisbury township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Ammon, they therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL LEE,  
HENRY AMMON,  
Assignees.  
PHILIP D. BAKER, Att'y.  
Residing in Salisbury twp.  
je23

**Assigned estate of HENRY MAULICK and WIFE, of Lancaster City, Lancaster co.**

Henry Maulick and Wife, of Lancaster city, having by deed of voluntary assignment, dated June 20, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Henry Maulick, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

H. K. BURKHOLDER, Assignee,  
Residing in Lancaster City.  
B. F. ESHELMAN, Att'y.  
je23

**Assigned estate of DAVID G. STEACY and WIFE, of Bart township, Lancaster Co.**

David G. Steacy and wife, of Bart township, having by deed of voluntary assignment, dated June 18, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David G. Steacy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL SLOKOM, Assignee,  
Christiana, P. O.  
je23

**Estate of JOHN REIST, SEN., late of Penn township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

H. B. REIST, Mt. Joy twp.,  
JOHN B. REIST, Penn twp.,  
H. S. NISSLEY, East Donegal twp.  
H. C. BRUBAKER, Att'y. [je23] Executors.

**Estate of JAMES MCCA, ESQ., late of Caernarvon township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

Dr. D. J. MCCA,  
Residing in Ephrata;  
WM. J. MCCA,  
ANNA E. MCCA,  
Residing in Churchtown,  
Executors.  
je23\*  
W. K. SELTZER, Att'y, Ephrata.

**Estate of PHILIP SHREINER, late of Columbia Bor., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said Borough.

REBECCA SHREINER,  
CLARA R. SHREINER,  
PHILIP D. BAKER, Att'y. je23 Executors.

**Estate of JOHN AMMON, late of Salisbury township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY AMMON, Executor.  
PHILIP D. BAKER, Att'y. je23

**Estate of SARAH M. BUYERS, late of Salisbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Salisbury twp.

JAMES A. BUYERS,  
PHILIP D. BAKER, Att'y. Administrator.  
je16\*

**Estate of HUGH M. PENNY, late of Drumore township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Liberty Square, said County.

GEO. NAUMAN, JOHN J. PENNY,  
J. HAY BROWN, Att'ys. SAM'L M. LONG,  
Administrators.  
je16

**Assigned Estate of GEORGE RUSSELL, of Caernarvon twp., Lancaster co.**

George Russell, of Caernarvon twp., having by deed of voluntary assignment, dated June 4, 1877, assigned and transferred all his estate and effect to the undersigned, for the benefit of the creditors of the said Geo. Russell, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. D. WHITE, Assignee,  
Residing in Churchtown, Lancaster co., Pa.  
A. W. SNADER, Att'y. jun9\*

**Estate of ROBERT TWINWITH, late of Paradise township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart township.

GEO. WHITSON, Administrator.  
P. D. BAKER, Att'y. [jun9

**Assigned Estate of HENRY G. STRAYER and WIFE, of Mount Joy twp., Lancaster Co.**

Henry G. Strayer and wife, of Mount Joy twp., having by deed of voluntary assignment, dated May 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry G. Strayer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

HENRY B. RABER, Assignee,  
J. HAY BROWN, Att'y. Mount Joy, Pa.  
je2

**Assigned estate of JOHN STANTON and WIFE, of Drumore township, Lan. co.**

John Stanton and wife, of Drumore township, having by deed of voluntary assignment, dated May 14, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Stanton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL LEFEVER, (far.)  
DANIEL D. HESS,  
W. M. FRANKLIN, Att'y. Assignees,  
Residing at Quarryville.  
je2

**Estate of MICHAEL McCULLON, late of the City of Lancaster, Pa., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

ROSINE McCULLON, Executrix,  
S. P. EBY, } No. 50 South Lime-st.,  
A. J. EBERLY, } Atty's. [Jun9] Lancaster, Pa.

**Estate of PETER EIDENMILLER, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Providence twp.

JOHN TWEED,  
JOHN EIDENMILLER,  
Administrators.  
jun9\*

**Assigned Estate of ABRAHAM H. BRENE- MAN and WIFE, of Manor township.**

Abraham H. Breneman and wife, of Manor twp., having by deed of voluntary assignment, dated May 16th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham H. Breneman he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to the undersigned, residing in Safe Harbor.

BENJ. H. BRENEMAN, Assignee,  
CHAS. DENNIS, Att'y.

**Estate of ANNA CATHARINE HART, late of Lancaster city, deceased.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.

FRANK STAHL,  
B. C. KREADY, Att'y. [je2] Administrator, *c. t. a.*

**Estate of JOSEPH HART, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.

B. C. KREADY, Att'y. FRANK STAHL,  
je2 Administrator.

**Estate of CATHARINE BAHILL, late of Manheim twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

J. M. BAHILL,  
HUGH R. FULTON, Att'y. Executor,  
may19\* Binkley's Bridge P. O., Lan. Co., Pa.

**Estate of J. MORRIS JACKSON, late of Fulton township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, LEVI K. BROWN,  
may26\* Att'y. Administrator.

**Assigned Estate of GEORGE HEISS and WIFE of the City of Lancaster, Lancaster co.**

George Heiss and wife, of Lancaster City, having by deed of voluntary assignment, dated April 7th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Heiss, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to the undersigned, residing in Manheim twp.

GEORGE TOMLINSON, Assignee,  
Residing in Manheim twp.  
ap21

**Estate of CATHARINE ELI, late of Salisbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

may26 WM. LANDIS,  
H. C. BRUBAKER, Att'y. Executor.

**Estate of THOMAS REDMAN, late of Providence twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

may13\* JOHN STROHM, JR.,  
F. D. BAKER, Att'y. Executor.

**Estate of NANCY GILBERT, late of Columbia borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Columbia.

AARON H. GILBERT,  
JOHN A. GILBERT,  
Administrators.  
may13  
Wm. B. Given, Att'y, Columbia, Pa.

**Estate of DAVID FARMER, late of Mount Joy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rapho township.

CATHARINE FARMER,  
JOHN FARMER,  
Administrators.  
may5

**Estate of F. A. DIETZEL, late of Ephrata township, dec'd.**

Letters of administration *cum testamento annexo de bonis non* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

THOS. E. FRANKLIN, } Att'y. ELIAS WOLF,  
WALTER M. FRANKLIN, } Executor,  
may5 Residing at Akron, Lancaster Co.

**Estate of SAMUEL DRABENSTADT, late of East Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

WM. WELCHANS,  
WM. DRABENSTADT,  
Administrators.  
may5  
B. C. KREADY, Att'y.

**Assigned Estate of ADAM GUTFLEISCH and WIFE, of Lancaster City.**

Adam Gutfleisch and wife of Lancaster city, having by deed of voluntary assignment, dated April 26th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Adam Gutfleisch, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to the undersigned, residing in said township.

HENRY WOLF, Cabinet Maker,  
D. P. ROSENMILLER, JR. Att'y. Assignee,  
may5 40 East King street.

**Assigned Estate of TOBIAS HERR and WIFE, of Strasburg twp., Lancaster county.**

Tobias Herr and wife, of Strasburg twp., having by deed of voluntary assignment, dated April 18th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Tobias Herr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to the undersigned, residing in said township.

ABRAHAM HOSTETTER, Assignee,  
ap28 P. D. BAKER, Att'y. Paradise township.

**Estate of ADAM THOMAS, late of Pequea twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

may5 JOHN M. FARMAN,  
THOS. E. FRANKLIN, Att'y. Administrator.

**Estate of CHRISTIANNA CURRY, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

may5\* HENRY CARPENTER,  
Executor.

**Estate of PETER NADES, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known to them without delay.

CHRISTIAN SCHAEFER,  
B. C. KREADY, Att'y. Executor, Lancaster city.  
ap23

**Estate of JOHN KOB, late of Conoy township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

JACOB R. KOB, Conoy twp.,  
SAM'L EBY, Elizabethtown bor.,  
Executors.  
ap23

**Estate of ANN LEECH, late of Salisbury twp., dec'd.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sadsbury twp.

P. D. BAKER, Att'y. W. M. COOPER,  
ap21 Administrator *c. t. a.*

**Estate of DANIEL HEISEY, late of West Cocalico twp., Lancaster co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

ADAM OBERLIN, Administrator,  
ap21\* Cocalico P. O., Lancaster county.  
A. J. EBERLY, Att'y, 49 Grant St., Lancaster, Pa.

**Estate of THOMAS PENNINGTON, late of Cole- rain twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Kirkwood, Lancaster co.

ap31 SIMON W. SWISHER,  
M. BROSIUS, Att'y. Executor.

**Estate of ELIZABETH LEECH, late of Salisbury twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Sadsbury twp.

P. D. BAKER, Att'y. W. M. COOPER,  
ap21 Administrator.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, AUGUST 18th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

je31 SAMUEL S. NISSLEY.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, JULY 7, 1877.

No. 6.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation; or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way passenger	.....	4:50 a. m.	7:50 a. m.
Columbia Accom.,	.....	7:30 a. m.	COL. 8.00 a. m.
Niagara Express,	.....	9:35 a. m.	10:40 a. m.
Mail Train via Mt. Joy,	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	.....	11:20 a. m.	1:25 p. m.
Sunday Mail,	.....	11:29 a. m.	1:30 p. m.
Fast Line,*	.....	2:05 p. m.	3:45 p. m.
Frederick Accom.,	.....	2:20 p. m.	COL. 2:50 p. m.
Harrisburg Accom.,	.....	6:10 p. m.	8:10 p. m.
Columbia Accom.,	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	.....	7:25 p. m.	8:40 p. m.
Pittsburg Express,	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.

  

EASTWARD.		LEAVE LANCASTER.	ARRIVE PHILADELPHIA.
Atlantic Express,*	.....	1:10 a. m.	3:00 a. m.
Harrisburg Express,	.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,	.....	9:38 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,	.....	2:00 p. m.	5:00 p. m.
Philadelphia Express,	.....	3:05 p. m.	6:00 p. m.
Day Express,	.....	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:15 p. m., and runs to Frederick.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,	6:50	8:10	2:30
Lancaster—West King Street,	8:00	9:30	3:35
Lancaster—Upper Depot,	8:10	9:46	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:46	5:30	8:00
Lancaster—West King Street,	9:55	5:40	8:10
Quarryville, (arrive)	11:00	7:00	9:15

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:35	1:20	4:10
Reading, (arrive)	10:15	3:20	5:45

  

LEAVE.	GOING SOUTH.		
	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:21	1:35	7:35
Lancaster—Upper Depot,	9:46	2:00	8:00
Lancaster—West King Street,	9:55		8:10

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45

  

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not run until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Bevans.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Philip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrows.  
*Street Commissioner*—Charles Schwebel.

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**COURT CALENDAR--1877.**

JULY.

- 21. Last day for filing Accounts to August Court.
- 28. Last day for setting down causes for trial for August Court.

AUGUST.

- 10. Last day for issuing Writs to August Term.
- 18. Last day for filing Accounts to September Court.
- 18. Argument for Rules of Affidavit of Defense.
- 20. Last day for issuing Executions to August Term.
- 25. Calling Judgment Docket.

SEPTEMBER.

- 7. Last day for issuing Writs to September Term.
- 8. Last day for setting down causes for Argument Court.
- 8. Last day for setting down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 23. Last day for setting down causes for trial for October 22.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 23. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, AUGUST 18th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.  
 je31 SAMUEL S. NISSLEY.

**DIVORCE NOTICE.**

PETER DAGUE } Alias Subpoena for Divorce,  
 vs. } to June Term, 1877.  
 CAROLINE R. DAGUE. } No. 34.  
 To CAROLINE R. DAGUE: You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Peter Dague should not be divorced from the bonds of matrimony contracted with you.  
 je30 H. N. BRENNEMAN, Sheriff.  
 Sheriff's Office, Lancaster, June 26, 1877.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET  
 LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE No. 34 NORTH DUKE STREET,  
 LANCASTER, PA.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JULY 7, 1877.

## HAYES' OPINIONS.

### Common Pleas of Lancaster County.

THE PRESIDENT, MANAGERS and COMPANY for erecting a bridge over the Susquehanna river, in the County of Lancaster, at or near the town of Columbia, endorsees of JOHN SWAR, against JACOB MILLER, HENRY BEAR and JOHN SWAR.

When a statement expressed that the suit was brought on a promissory note that J. M. made "at Columbia," and the note offered in evidence purported to be drawn at the "Conestoga mill," the plaintiff was allowed to amend the statement by striking out the words "at Columbia," it being immaterial where the note was made.

But it is requisite that the note on which the action is brought be truly described; and, therefore, it being stated that on this note J. M. promised to pay to the order of H. B. "at the Columbia bridge office," the sum, etc., when the note produced ran—"to pay H. B., or order, at the office of the Susquehanna Bridge Company, at Columbia, etc., the plaintiff was not allowed to amend the statement by striking out the words "at the Columbia bridge office;" for this is a failure in the description of the instrument itself, and the variance is fatal.

The Act of Assembly (21st March, 1806, Sec. 6,) was not intended to substitute one cause of action for another, to meet the evidence already given, though the writ be general, and in the first instance either might have been counted on.

The following statement was filed in this case, viz: This suit is brought on a promissory note that Jacob Miller, at Columbia, in the county of Lancaster, on the 16th of September, 1819, made under his hand of that date for value received, and promised to pay to the order of Henry Bear, at the Columbia bridge office, the sum of \$1,700, in sixty days after the date; and the said Henry Bear afterwards, to wit, on the same day and year aforesaid, indorsed the same note in writing to John Swar, who, by his indorsement in writing, ordered the contents thereof to be paid to plaintiffs, according to the tenor of the said note of which the said Jacob Miller then and there had notice, and thereby became liable to plaintiffs; said note was regularly protested for non-payment, after it became due, and legal notice of such non-payment was given to the indorsers on the 19th of November, 1819, by which they became liable.

The following is a copy of the note imperfectly described in the statement:

"CONESTOGA MILL, Sept. 16, 1819.

"Sixty days after date I promise to pay Henry Bear, or order, at the office of the Susquehanna Bridge Company, at Columbia, seventeen hundred dollars, without defalcation, for value received.

"JACOB MILLER.

"\$1,700—for the use of the drawer.

"HENRY BEAR,

"JOHN SWAR."

(Indorsed by the said Henry Bear and John Swar.)

The jury being sworn, the plaintiffs offered this note in evidence, which was objected to as not corresponding to the statement. The court gave no opinion on this objection; but the plaintiffs offered to amend the statement by striking out of it the words "at Columbia, in the county of Lancaster," in the second line, and also by striking out the words "at the Columbia bridge office" in the fourth line. This offer was objected to by the defendants, and the question argued by—

Mr. Champneys and Mr. Rogers for the plaintiffs; and,

Mr. Porter and Mr. Wright for the defendants.

After which the court admitted the first proposed amendment, but disallowed the second, explaining the reasons of the decision in the following opinion: SMITH, P. J.

Under the act of assembly all matters of mere form are amendable; and so they were before the passing of the act, and if not made would be cured by verdict. If the act went no further it would indeed be very useless. It is not, therefore, confined to mere informality. The legislature does not appear to have had correct ideas as to the force or extent of the language they have used. They clearly meant more than curing mere form. They meant to prevent parties from being turned round or non-suited upon technical exceptions; and to aid the want of skill in drawing up a declaration or statement. In many cases material averments are necessary; and, if omitted, it would be a defect of substantial matter, for which, if not supplied, the plaintiff must fail. Wherever, therefore, a good cause of action is laid, whatever is necessary to be spread upon the record to bring such case to trial upon its merits may be supplied. If, by such amendment, it should appear that additional proof would be necessary, which might not be necessary upon the original declaration or statement, the party might be said to be taken by surprise; but if it manifestly appears that such amendment could not alter the nature of the proof, I take it the court has a discretion to refuse to continue the cause. So in this case, an amendment has already been permitted as to the averment of notice, which was material and necessary to be proved by the plaintiffs to support the ground of action or claim upon the defendants which they have spread upon the record.\* It does not alter the cause of action as stated. But I take it there are many amendments which may be made before trial, and even counts added, which cannot be done after a jury is sworn; and counts may, even after the jury sworn, be added if consistent with the original cause of action, and to introduce averments which may be considered necessary to bring the case fairly before the jury under different aspects, all referring to the same cause of action or gravaman, or the allegation of other breaches upon the same covenant, subject to the privilege allowed in such cases to the other side. But it strikes me the act never was intended to substitute one

\*Before the jury were sworn—by inserting after the word "notice," in the last line but one, the words "non-payment was given to."

cause of action for another to meet the evidence already given, though the writ may be general, and in the first instance either may have been counted upon. I think that point has been fully decided. The amendment cannot possibly go to the ground of action itself, but only to matters to bring that identical ground of action, stripped of all formal or technical objections, and with all proper and necessary averments, to trial fairly on the merits.

But if you declare on one special contract, and your evidence will not support it, you must fail. I do not think the act will, and the common law never did, authorize you to change it into another distinct and independent contract, and such as would be supported by the evidence; and yet I find applications are made to go the whole length.

In this way you might introduce a new cause of action which might be barred by the act of limitations, if you are for the first time to bring a suit upon it; and it would be unjust to permit this to be done in lieu of the contract upon which you have gone to trial, to the great disadvantage of the defendant. So if you declare upon one bond, one bill of exchange, or one promissory note, I do not think you can, by an amendment, introduce another bond, another bill of exchange or another promissory note. If you fail in the description of the instrument itself I think it is fatal. The amendment then would be to give you a new action on a contract of a different description, and not to enable you, by proper amendments of the declaration, to try the merits of the action you have brought. It strikes me as subversive of all correct legal principles. There may be such a note as you have declared on. You cannot, therefore, abandon that and declare upon a note of a different description. And it is clear that the note on which you count must be accurately described, so as to enable the defendant to plead the recovery in bar, if a new action should be brought on the same contract. In this stage of the cause I think such an amendment cannot be made.

There is a great difference between mere averments *dehors* the instrument or contract and matter of description of the very contract. It is true in *Bristow vs. Wright*, Douglass 664, it was held that where you state matters which need not have been stated, you must prove them as stated, or you will be non-suited. Your proof must tally with your allegations. This strictness has, however, been since much relaxed, even in England, and in the United States the doctrine is not applicable for the reason given, which I do not take time to state at large. And it has been held in 3 Cranch 208-9, that there is no reason for requiring the proof of a perfectly immaterial averment, unless that averment be descriptive of a written instrument, which by being untruly described, may, by possibility, mislead the opposite party. But where the averment in a *narr.* is a fact *dehors* the written instrument or contract, which fact is in itself immaterial, the party making the averment is not bound to prove it; as where the plaintiff avers in his declaration that the assignment of the note was for value received, it is an immateria

avertment and need not be proved: 3 Cranch 93. So here, where the note is averred to be made at *Columbia*, that is an immaterial averment, and need not be proved; it matters not where the note was made; it may, therefore, be struck out of the declaration. But yet the note or contract must be truly described. Thus where the plaintiff averred that defendant made his certain promissory note, by which he promised to pay, etc., for value received, and the note produced at the trial did not contain the words *value received*, it was held that these words were merely descriptive of the contract and not an averment, and that there was, therefore, a variance between the contract declared on and that given in evidence: 10 Johns, 418.

If, then, you strike out the very description of the contract itself, you strike out the very ground of the action; and if you supply it with a new description, you change the cause of action and in effect give a new action to the plaintiff. I think such power is not given by the act of assembly, and there is no pretence to say it could be done at common law.

#### SUPREME COURT OF PENNSYLVANIA.

WM. M. WILEY'S EXECUTORS vs. GEO. CALDER, JR., ET AL.

The Act of February 24, 1834, which gives to the Orphans' Court jurisdiction to decree specific performance, does not divest the jurisdiction of equity in the settlement of partnership transactions, in which questions of title and specific performance of agreements in relation to real estate are frequently involved.

The Orphans' Court has no power, expressly or by implication, to take cognizance of partnership dealings, and state an account between the surviving partner and the personal representatives of the deceased.

The fact that the executors of a deceased partner, were able to adjust and settle their accounts amicably, so far as to ascertain the interest of each partner, did not oust the jurisdiction of the proper court.

Appeal from decree from Court of Common Pleas of Lancaster County in Equity.

*Geo. W. Biddle* and *Wm. Aug. Atlee* for appellants.

*Amos Slaymaker* for appellee.

Opinion delivered June 26, 1877, by STERRETT, J.

The only question raised by the demurrer, in the court below as well as here, is one of jurisdiction. The learned judge of the Common Pleas dismissed the plaintiffs' bill on the ground that the facts therein presented brought the case within the provisions of the act of February 24, 1834, which gives to the Orphans' Court jurisdiction to decree specific performance, "whenever any person shall, by a bargain or contract in writing, bind himself to sell and convey any real estate in this Commonwealth, and shall die seized and possessed of such real estate without having made any sufficient provision for the performance of such bargain and contract;" and, consequently, that the proper Orphans' Court had exclusive jurisdiction.

The substance of the plaintiffs' bill is that the testator, Wm. M. Wiley, and George Calder, Jr., one of the defendants below, asso-

ciated themselves, as partners, in the business of manufacturing cotton goods, for the term of five years from the first of October, 1870; and, in their articles of partnership, agreed that if either should die during the term, the survivor should take the real estate, mill and machinery, at a valuation of sixty thousand dollars, and pay to the heirs or assigns of the deceased partner the amount of his interest therein, in five equal annual installments, with interest, to be secured by bond and mortgage on the mill property; and take the personal property of the firm at a fair valuation.

The real estate was conveyed to them as partners, to be held, as specified in the deed, "on such parts and proportions as that when the interest hereby conveyed is added to the share or interest already owned by said parties of the second part respectfully, they shall each be seized and possessed of and in such parts and proportions of said premises, and subject to such conditions, restrictions and limitations as are provided for in the articles of partnership;" and, by subsequent writing, it was declared that they held the same "as partners in equal interest, shares and parts." Upon the decease of Mr. Wiley, during the term, the surviving partner went into the sole possession of the real estate, under the articles of partnership, and has so continued ever since.

In pursuance of the authority contained in the will of the deceased partner, his executors united with Mrs. Wiley in executing and tendering a deed to the survivor for the "real estate, mill and machinery," and requested him to give a mortgage as provided in the articles of partnership; but, he declined to accept the deed or give the mortgage, and thereupon they filed their bill, praying specific performance of the contract of partnership, including the payment of all moneys due the estate, and the execution and delivery of the mortgage for the amount not then due by the terms of the articles.

Had the Orphans' Court exclusive jurisdiction of the subject? We think not.

As was said in *Brinker vs. Brinker*, 7 Barr 55, the draftsman of the act of 1834, had in his eye the case of an ordinary bargain and sale of real estate; and, whenever it appears that the parties entered into a written contract for the purpose of selling and conveying real estate, and either has died without having made provision for its performance, there can be no doubt as to the exclusive jurisdiction of the Orphans' Court—but it is limited to the class of cases specified in the act.

It was never intended by the framers of the act of 1834 to divest the jurisdiction of equity in the settlement of partnership transactions, in which questions of title and specific performance of agreements in relation to real estate are very frequently involved. In such case a Court of Equity is the proper forum.

The articles of partnership in this case cannot be regarded as a contract for the sale of land within the meaning of the Orphans' Court act. The object of the parties was to provide an easy and convenient mode of settling the partnership business in the event

of the death of either partner during the term; and, in carrying the agreement into effect, it was essential that there should be a settlement of the partnership accounts, and a valuation of the personal property. It was not contemplated that the survivor should purchase and pay for the real estate a specified sum without regard to the partnership accounts. On the contrary, it was provided that he should at once succeed to the sole ownership of the real estate, mill and machinery; and, in settlement of the partnership, be charged with the same at the valuation agreed upon by themselves, and the net interest of the deceased partner therein should be secured by the mortgage. The amount of the mortgage could be determined only by a settlement of the partnership business, and accounts between the partners. The personal property, in like manner, was to be taken and paid for by him at a valuation to be fixed thereon. In short, a full and final settlement of the partnership affairs is necessarily involved in carrying out the agreement.

The decease of Mr. Wiley, during the term, determined absolutely that which before was uncertain and contingent; and, in the absence of an amicable settlement, the intervention of a Court of Equity was required to state an account between the survivor and the personal representatives of the deceased partner, and decree that the surviving partner shall accept the real estate, and give the mortgage for the amount due thereon according to the articles of partnership. The Orphans' Court has no power, expressly or by implication, to take cognizance of partnership dealings, and state an account between the surviving partner and the personal representatives of the deceased. The fact that the executors and the surviving partner, in this case, were able to adjust and settle their accounts amicably, so far as to ascertain the interest of each partner, did not oust the jurisdiction of the proper court. It facilitated to that extent the settlement which was necessarily required; but, owing to a difference of opinion as to the mode of conveying title, they failed to effect a full and final settlement as contemplated by the articles of partnership, and hence it became necessary to invoke the equitable powers of the court.

We are of opinion that the Court of Common Pleas is the proper forum, and that its decree will invest the surviving partner with a good and sufficient title, such as was contemplated by the agreement.

Decree reversed and demurrer overruled, and it is ordered that the defendants plea or answer, within such time as may be fixed by the court below, and the record is remitted for further proceedings. The costs of this appeal to be paid by the appellee, George Calder, Jr.

#### ROYER ET AL. vs. THE KEYSTONE NATIONAL BANK.

When a person to whom a note is given to be discounted for the benefit of the maker delivers it to another as security for an antecedent debt, the taker is not a holder for value, and cannot recover against the maker so defrauded.

A note given in renewal of the former, for which no consideration is given, stands in the same position

Error to Common Pleas No. 1 of Philadelphia county.

Opinion by MERCUR, J. Feb. 12th, 1877.

This action was against the makers of a promissory note. Judgment was taken for want of a sufficient affidavit of defence. The affidavit avers that the original note was put in the hands of one Young for the purpose of getting it discounted for the mutual benefit of the makers and of the endorser; but, instead of getting it discounted, he passed it over to the defendant in error, as security for an antecedent debt, due by him to the bank, and that neither the makers nor the endorser ever received any consideration for the note; that when the note became due, the note now in controversy was given in renewal of the former, and no consideration was given therefor.

Assuming, as we must for all present purposes, these alleged facts to be true, they show Young perpetrated a fraud upon the makers and the endorser. In clear disregard of his duty, and unmindful of the trust reposed in him, he appropriated the note to his own use, and fraudulently pledged it as security for his own debt. It is very clear, then, that none but a purchaser in good faith, and for a valuable consideration, could recover on the original note. Is the bank such a purchaser? We understand the affidavit substantially to declare that the bank took the note merely as collateral security. It was not taken as a payment. It did not agree to extend the time for payment of the existing indebtedness. It relinquished no right. It parted with nothing.

While cases may be found in the conflicting decisions of our sister States, and in the United States court, which declare that such an acquisition constitutes the holder a purchaser for a valuable consideration, without his having paid anything therefor, yet the rule in our State is well settled otherwise. Commencing with *Peters v. Clarke*, 11 S. & R. 377, it has been followed by *Hartman v. Dowal*, 1 Rawle 279; *Walker v. Gresser*, 4 Whar. 258; *Depaugh v. Wadding*, 6 Id. 20; *Trotter v. Shippen*, 2 Barr 358; *Appleton v. Donaldson*, 3 Id. 381; *Kirkpatrick v. Muirhead*, 4 Harris 117; *Lord v. Ocean Bank*, 8 Id. 384; *Stitgreaves v. Bank*, 13 Wright 359; *Lenheim v. Wilmarding*, 5 P. F. S. 73; *Ash-ton's Appeal*, 23 Id. 153; *Pratt's Appeal*, 27 Id. 378.

It follows, therefore, that no recovery could be had against the makers on the original note.

How as to the present note? Does it occupy any higher ground? The affidavit declares that it was in renewal of the former, and no consideration was given. If no consideration was given the equities of the holder were not increased. A failure of the holder to recover on this note leaves the bank in as good condition as it occupied before. Its former rights and its former remedies remain unimpaired. It is contended, however, that a valuable consideration is to be implied from the mere renewal. The case of *Kirkpatrick v. Muirhead* declares the contrary. In that case the renewal was by giving two notes, each for one-half the amount of the original

note, yet it was held that no consideration for the new notes was implied, and that the same defence could be made to them as to the former note. It follows, therefore, that the facts averred, and the conclusions deduced therefrom, ought to have been submitted to a jury, and the learned judge erred in entering judgment.

Judgment reversed and a *procedendo* awarded. — *Pitts. Leg. Jour.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JULY 7, 1877.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since June 30, 1877.

JOHN CHRISTIAN BUCHER, dec'd, late of Columbia bor.; Frederick Bucher, administrator.

ISAAC WEILER, dec'd, late of Providence twp.; John Strohm, Jr., administrator.

JOHN W. BOWERS, dec'd, late of Marietta bor.; Amos Bowman, administrator.

C. C. P. GROSH, dec'd, late of Marietta bor.; Amos Bowman, administrator.

ELIZABETH MILLER, dec'd, late of West Donegal twp.; William Miller, administrator.

### Auditors' Notices.

Assigned Estate of LABORUS H. SHUTTE, of Mount Joy twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, Esq., assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

WM. D. WEAVER,  
Auditor.

Estate of MICHAEL EBERLY, late of West Cocalico twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Edward Eberly, administrator of Michael Eberly, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, A. D., 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

B. B. FLICKINGER,  
Auditor.

Assigned Estate of SAMUEL HERTZOG and WIFE, of West Cocalico twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Montzer, assignee of Samuel Hertzog and wife, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 1½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

W. K. SELTZER,  
Auditor.

Estate of JOHN BRUBAKER, late of West Cocalico twp., Lan. Co., dec'd

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Stober, administrator of John Brubaker, deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 11th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

JACOB G. GARMAN,  
Auditor.

Estate of MATTHIAS ERSHICK, late of Ephrata township, dec'd.

The undersigned Auditor, appointed to pass on exceptions, and distribute the balance remaining in the hands of Charles Ershick, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

SIMON P. EBY,  
Auditor.

Estate of JACOB RANCK, late of Earl township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John D. Ranck and Jacob Ranck, executors of the will of the said Jacob Ranck, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 22, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

GEO. NAUMAN,  
Auditor.

Estate of ADAM ROTHARMEL, late of the City of Lancaster, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Rotharmel, administrator *d. b. n. c. t. a.*, of the said Adam Rotharmel, deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 17, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

GEORGE NAUMAN,  
Auditor.

Assigned Estate of PETER B. HERTZOG and WIFE, of West Cocalico twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Peter B. Hertzog and Wife, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

W. K. SELTZER,  
Auditor.

Estate of SARAH LANDIS, late of Lancaster City, dec'd.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Westhaeffer and John Bubb, executors, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

H. R. FULTON,  
WM. D. WEAVER,  
Auditors.

Assigned Estate of PETER W. GORRECHT and WIFE, of Lancaster City.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Adam J. Eberly, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 7th, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy5

PHILIP D. BAKER,  
D. McMULLEN,  
WM. D. WEAVER,  
Auditors.

Estate of ISAAC RENNINGER, late of Brecknock twp., dec'd.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Baltzer Schneder, administrator, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 17th day of AUGUST, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7

E. C. DIEHL,  
F. G. MUSSER,  
Auditors.



**Assigned Estate of JOHN O'BRIEN and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel W. Stehman, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

HUGH R. FULTON,  
Auditor.

jy7

**Estate of ELIZABETH ECHTERNACHT, late of East Cocalico twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Krimes, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 4th day of AUGUST, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. B. AMWAKE,  
Auditor.

jy7

**Estate of JOHN HAMILTON, late of Rapho township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James W. Hamilton and John G. Hamilton, administrators, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 16th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. C. DIEHL,  
Auditor.

jy7

**Estate of BENJAMIN FREDERICK, late of Upper Leacock twp., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jonas Frederick, administrator of said dec'd, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. BURKHOLDER,  
Auditor.

jy7

**Estate of GEORGE LEISEY, late of East Cocalico township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cyrus Ream and Israel Leisey, executors of said dec'd, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, the 16th day of AUGUST, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JOHN H. FRY,  
Auditor.

jy7

**Assigned Estate of EZRA BECKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Nissly, Esq., assignee of said Ezra Becker and Wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. B. GOOD,  
Auditor.

jy7

**Estate of JOSEPH WELCHANS, late of Lancaster City, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Dr. George R. Welchans, administrator, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. D. WEAVER,  
Auditor.

jy7

**Assigned Estate of JACOB BRUBAKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of W. K. Seltzer, assignee of Jacob Brubaker and Wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10, A. D., 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. J. EBERLY, Auditor.

jy7

**Assigned Estate of HENRY LORAH and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Diller P. Herr and Henry D. Bausman, assignees, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

HUGH R. FULTON,  
Auditor.

jy7

**Assigned Estate of A. R. WITMER, of West Hempfield twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi Myers, assignee, by deed of voluntary assignment for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. R. WILSON,  
Auditor.

jy7

**Estate of MARY ANN WITMER, late of Providence twp., Lan. co., deceased.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John Hildebrand, administrator of said estate, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 15th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. R. WILSON,  
Auditor.

jy7

**Assigned Estate of ELIAS M. SHIRK and WIFE, of East Earl township.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. D. WEAVER,  
Auditor.

jy7

**Assigned Estate of WILLIAM ROBERTS and WIFE, of West Hempfield twp., Lan. co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of Levi Myers, assignee by deed of voluntary assignment, for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. R. WILSON,  
Auditor.

jy7

**Assigned Estate of "REISSINGER & STIBGEN," of Marietta, Lancaster co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John W. Rich, assignee by deed of voluntary assignment for the benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. R. WILSON, Auditor.

jy7

**Estate of CHRISTIAN ECHTERNACHT, late of East Cocalico twp., Lancaster co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Elias Weitzel and Henry Krimes, executors of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 4th day of AUGUST, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. B. AMWAKE,  
Auditor.

jy7

**Estate of JAMES BARNETT, late of Drumore township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Boyd, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. F. SHENCK,  
Auditor.

jy7

**Assigned Estate of H. H. NISSLEY and WIFE, of Mount Joy Borough.**

The undersigned Auditor, appointed to pass upon the exceptions filed to the account of Benjamin F. Eberle, assignee, &c., and to distribute the balance remaining in the hands of said assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

THOS. B. COCHRAN,  
Auditor.

jy7

**Assigned Estate of ALBIN BROWN and WIFE, of Little Britain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Ephraim Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

C. N. SPROUL,  
Auditor.

jy7

**Assigned Estate of SAMUEL B. SENSENIG and WIFE, of Brecknock twp.**

The undersigned Auditors, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Jacob G. Garman, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 8th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. L. STEINMETZ,  
C. N. SPROUL,  
Auditors.

jy7

**Assigned Estate of JOHN GEORGE and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John B. Good, assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

S. M. SENER,  
Auditor.

jy7

**Assigned Estate of HENRY SCHMITT and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bork, assignee, to and among those legally entitled to the same, will attend for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JOHN H. FRY,  
Auditor.

jy7

**Estate of CHRISTIAN SNYDER, late of Washington borough, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Barnherd Mann, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, 4th of AUGUST, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

W. S. AMWEG,  
Auditor.

jy7

**Assigned Estate of SAMUEL BEATTY and WIFE, of Conoy twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frederick Smith, assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JOHN M. MAST,  
Auditor.

jy7

**Assigned Estate of HENRY MILLER and WIFE, of West Lampeter twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of H. N. Breneman, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
B. F. ESHLEMAN,  
jy7 Auditor.

**Estate of GEORGE BOWMAN, late of Strasburg township, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Henry Musser and H. N. Breneman, executors of the will of George Bowman, deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. H. YUNDT,  
H. C. BRUBAKER,  
E. F. ESHLEMAN,  
jy7 Auditors.

**Estate of JOSEPH HERSHEY, late of Penn twp., Lancaster county, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Joseph Summy and Levi H. Hershey, executors, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JULY 25th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
L. ELLMAKER,  
JOHN M. ENSMINGER,  
je30 Auditors.

**Estate of HENRY K. DENHAM, late of East Hempfield twp., dec'd.**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to distribute the balance remaining in the hands of Elizabeth Denham and Samuel Hess, administrators of said deceased, (after having first ascertained and fixed the widow's dower in said estate) to and among those legally entitled to the same, will sit for that purpose on THURSDAY, JULY 26th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend.  
FRED. S. PYFER,  
je30 Auditor.

**Estate of E. Y. CONYNGHAM, late of Lancaster City, dec'd, (trust account.)**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to pass on exceptions filed to said account, and to distribute the balance remaining in the hands of Joel L. Lightner, administrator with will annexed of said deceased, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend.  
FRED. S. PYFER,  
je30 Auditor.

**Assigned Estate of JOHN H. GRING and WIFE, of East Cocalico twp., Lan. Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of John Lutz, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
CHAS. DENUES,  
J. W. DENLINGER,  
je30 Auditors.

**Assigned Estate of SAMUEL HOLL and WIFE, of Earl twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Irwin and Levi Sensewig, assignees of Samuel Holl and Wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JULY 21, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
C. S. HOFFMAN,  
je30 Auditor.

**Assigned Estate of RILEY SHEPLER and WIFE, of Penn twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel Keener, assignee of Riley Shepler and Wife, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 1st day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
SAMUEL H. PRICE,  
je30 Auditor.

**Assigned estate of MOSES BRINTON and Wife, of Colerain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cromwell Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 7, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
M. BROSIUS,  
je30 Auditor.

**Assigned estate of SAMUEL HALLER and Wife, of East Earl twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel B. Foltz, Assignee of Samuel Haller and wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JULY 21, at 9 o'clock a. m., at the house of Lazarus Wolf, in Fairville, said township, where all persons interested in said distribution may attend.  
H. B. BECKER,  
je30 Auditor.

**Assigned Estate of EZEKIEL T. PAINTER, of Drumore twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Richard C. Edwards, assignee of Ezekiel T. Painter, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 8th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
J. W. F. SWIFT,  
je30 Auditor.

**Assigned Estate of HENRY H. HESS and WIFE, of Willow Street.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of the assignee of said estate, to and among those legally entitled to the same, will sit for that purpose on MONDAY, AUGUST 6th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
M. BROSIUS,  
J. F. FULTON,  
je30 Auditors.

**Estate of ISRAEL BUCKWALTER, late of Paradise township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Susan Buckwalter and Jacob R. Buckwalter, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JULY 7, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. J. KAUFFMAN,  
je16 Auditor.

**Assigned estate of SAMUEL H. GRING and WIFE, of the township of East Cocalico, Lancaster county.**

The undersigned auditors appointed to distribute the balance remaining in the hands of A. R. Royer and John Lutz, assignees, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 2d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
J. W. DENLINGER,  
S. W. SHADLE,  
je23 Auditors.

**Estate of SUSANNA BACHMAN, late of Litiz, Lancaster county, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Francis M. Bachman, administrator, to and among those legally entitled to the same, will attend for that purpose on TUESDAY, JULY 10th, 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
OWEN P. BRICKER,  
je23 Auditor.

**Assigned estate of JACOB HACKERT and WIFE, of Mount Joy twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Byrod, assignee of said Jacob Hacker and wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 13th day of JULY, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. O. NEWPHER,  
je23 Auditor.

**Estate of BENJAMIN MOONEY, late of Manor township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bausman, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 11th day of AUGUST, 1877, at 2 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
EMLEN FRANKLIN,  
je23 Auditor.

**Estate of FREDERICK KOSER, late of Rapho township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Rapho twp., Lan. Co.  
REBECCA KOSER,  
FREDERICK Y. KOSER,  
je30 Executors.  
D. McMULLEN, Att'y.

**Assigned estate of BAIR KILHEFNER and WIFE, of East Earl twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. G. Groff, assignee of Bair Kilhefner and Wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 19th day of JULY, A. D., 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.  
C. S. HOFFMAN,  
je23 Auditor.

**Estate of CHRISTIAN BINKLEY, late of East Hempfield township, Lancaster co., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of William Binkley, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 27th day of JULY, A. D., 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
B. C. KREADY,  
M. N. BRUBAKER,  
je23 Auditors.

**Estate Notices.**

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator,  
jy7 Lancaster Pa.

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator,  
jy7 Lancaster Pa.

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.  
LEWIS PICKEL,  
jy7 Executor.

**Assigned estate of DR. A. K. ROHRER, of West Hempfield township, Lancaster Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Greider, assignee for the benefit of the creditors of said estate, as shown by his 2d account, will sit for that purpose on FRIDAY, the 10th day of AUGUST, 1877, at 10 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. SLAYMAKER,  
J. W. F. SWIFT,  
Auditors.

Je23

**Assigned Estate of AMOS ALTHOUSE, of East Cocalico twp., Lancaster co.**

Amos Althouse, of East Cocalico township, having by deed of voluntary assignment, dated June 23, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Althouse, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN B. REINHOLD,  
A. J. EBERLY, Att'y, JOHN S. LUTZ, Assignees.  
49 Grant st., Lancaster. Stevens P. O., Lan. co.

**Assigned estate of JOHN AMMON and WIFE, of Salisbury twp., Lancaster co.**

John Ammon and Wife, of Salisbury township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Ammon, they therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL-LEE,  
HENRY AMMON,  
Assignees.  
PHILIP D. BAKER, Att'y. Residing in Salisbury twp.  
Je23

**Assigned estate of HENRY MAULICK and WIFE, of Lancaster City, Lancaster co.**

Henry Maulick and Wife, of Lancaster city, having by deed of voluntary assignment, dated June 20, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Henry Maulick, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

H. K. BURKHOLDER, Assignee,  
Residing in Lancaster City.  
B. F. ESHLEMAN, Att'y. Je23

**Assigned estate of DAVID G. STEACY and WIFE, of Bart township, Lancaster Co.**

David G. Steacy and wife, of Bart township, having by deed of voluntary assignment, dated June 18, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David G. Steacy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL SLOKOM, Assignee,  
Christiana, P. O.  
Je23

**Estate of JOHN REIST, SEN., late of Penn township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

H. B. REIST, Mt. Joy twp.,  
JOHN B. REIST, Penn twp.,  
H. S. NISSLEY, East Donegal twp.  
H. C. BRUBAKER, Att'y. [Je23] Executors.

**Estate of JAMES MCCA, Esq., late of Caernarvon township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

Dr. D. J. MCCA,  
Residing in Ephrata;  
WM. J. MCCA,  
ANNA E. MCCA,  
Residing in Churchtown,  
Je23\* Executors.  
W. K. SELTZER, Att'y, Ephrata.

**Estate of PHILIP SHREINER, late of Columbia Bor., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said Borough.

REBECCA SHREINER,  
CLARA R. SHREINER,  
PHILIP D. BAKER, Att'y. Je23 Executors.

**Estate of JOHN AMMON, late of Salisbury township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY AMMON, Executor.  
PHILIP D. BAKER, Att'y. Je23

**Estate of SARAH M. BUYERS, late of Salisbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Salisbury twp.

JAMES A. BUYERS,  
PHILIP D. BAKER, Att'y. Administrator. Je23

**Estate of HUGH M. PENNY, late of Drumore township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Liberty Square, said County.

JOHN J. PENNY,  
SAM'L M. LONG,  
GEO. NAUMAN, } Att'ys. Administrators.  
J. HAY BROWN, } Je16

**Assigned Estate of GEORGE RUSSELL, of Caernarvon twp., Lancaster co.**

George Russell, of Caernarvon twp., having by deed of voluntary assignment, dated June 4, 1877, assigned and transferred all his estate and effect to the undersigned, for the benefit of the creditors of the said Geo. Russell, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. D. WHITE, Assignee,  
Residing in Churchtown, Lancaster co., Pa.  
A. W. SNADER, Att'y. Jun9\*

**Estate of ROBERT TWINWITH, late of Paradise township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart township.

GEO. WHITSON, Administrator.  
P. D. BAKER, Att'y. [Jun9]

**Assigned Estate of HENRY G. STRAYER and WIFE, of Mount Joy twp., Lancaster Co.**

Henry G. Strayer and wife, of Mount Joy twp., having by deed of voluntary assignment, dated May 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry G. Strayer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

HENRY B. RABER, Assignee,  
J. HAY BROWN, Att'y. Mount Joy, Pa. Je2

**Assigned estate of JOHN STANTON and WIFE, of Drumore township, Lan. co.**

John Stanton and wife, of Drumore township, having by deed of voluntary assignment, dated May 14, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Stanton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL LEFEVER, (far.)  
DANIEL D. HESS,  
W. M. FRANKLIN, Att'y. Assignees,  
Je2 Residing at Quarryville.

**Estate of MICHAEL McCULLON, late of the City of Lancaster, Pa., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

ROSINE McCULLON, Executrix,  
S. P. EBY, No. 50 South Lime-st.,  
A. J. EBERLY, } Att'y's. [Jun9] Lancaster, Pa.

**Estate of PETER EIDENMILLER, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Providence twp.

JOHN TWEED,  
JOHN EIDENMILLER,  
Administators. Jun9\*

**Assigned Estate of ABRAHAM H. BRENE-MAN and WIFE, of Manor township.**

Abraham H. Breneman and wife, of Manor twp., having by deed of voluntary assignment, dated May 16th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham H. Breneman he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

BENJ. H. BRENE-MAN, Assignee,  
CHAS. DENUES, Att'y. Residing in Safe Harbor. Je2

**Estate of ANNA CATHARINE HART, late of Lancaster city, deceased.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.

FRANK STAHL,  
B. C. KREADY, Att'y. [Je2] Administrator, c. t. a.

**Estate of JOSEPH HART, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa.

FRANK STAHL,  
B. C. KREADY, Att'y. Administrator. Je2

**Estate of CATHARINE BAHILL, late of Manheim twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

J. M. BAHILL,  
HUGH R. FULTON, Att'y. Executor,  
may19\* Binkley's Bridge P. O., Lan. Co., Pa.

**Estate of J. MORRIS JACKSON, late of Fulton township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, LEVI K. BROWN,  
may26\* Att'y. Administrator.

**Estate of CATHARINE ELL, late of Salisbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

WM. LANDIS,  
H. C. BRUBAKER, Att'y. Executor. may26

# The Lancaster Bay.

Vol. IX.

LANCASTER, PA., SATURDAY, JULY 14, 1877.

No. 7.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy,	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	3:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,	6:50	7:50	3:30
Lancaster—West King Street,	8:00	9:16	3:35
Lancaster—Upper Depot,	8:10	9:36	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:36	5:30	6:03
Lancaster—West King Street,	9:45	5:40	6:10
Quarryville, (arrive)	10:50	7:00	9:15

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:37	1:20	4:10
Reading, (arrive)	10:20	3:20	5:45

  

LEAVE.	GOING SOUTH.		
	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:13	1:20	7:40
Lancaster—Upper Depot,	9:36	2:00	8:03
Lancaster—West King Street,	9:45		8:10

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:29
Arrive at Peachbottom,	7:05	1:55	5:45

  

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio.	1863
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*,—J. B. Switzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.

At Harrisburg, commencing 1st Monday in May.

At Pittsburgh, commencing 1st Monday in October.

At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.

*Additional Law Judge*—David W. Patterson.

*Associate Judge*—John J. Libhart.

*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.

*Deputy*—Wm. E. Kreider.

*Clerks*—P. E. Slaymaker and Thos. B. Hartman.

*Register*—Harrison Ross.

*Deputies*—W. M. Slaymaker and C. H. Fasnacht.

*Recorder*—Samuel S. Martin.

*Deputy*—Benj. Bauman.

*Clerks*—Geo. R. Sensesig and M. O. Sensesig.

*Sheriff*—Henry N. Breneman.

*Deputies*—Jno. D. Wilson and G. W. Benedict.

*Clerk of Orphans' Court*—Samuel L. Kauffman.

*Clerk of Quarter Sessions*—Stephen S. Clair.

*Deputy*—B. F. W. Urban.

*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.

*Clerk*—John M. Grider.

*County Solicitor*—J. Hay Brown.

*County Treasurer*—Henry S. Eberly.

*Clerk*—Amaziah C. Barr.

*Coroner*—Amos Groff.

*County Surveyor*—M. N. Brubaker.

*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.

*Solicitor*—Robert M. Agnew.

*Recorder*—Walter G. Evans.

*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.

*Chief of Police*—Philip L. Sprecher.

*Treasurer*—Edw. Welchans.

*Civil Engineer*—Francis S. Burrowes.

*Street Commissioner*—Charles Schwebel.

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COURT CALENDAR--1877.

JULY.

- 21. Last day for filing Accounts to August Court.
- 28. Last day for setting down causes for trial for August Court.

AUGUST.

- 10. Last day for issuing Writs to August Term.
- 18. Last day for filing Accounts to September Court.
- 18. Argument for Rules of Affidavit of Defense.
- 20. Last day for issuing Executions to August Term.
- 25. Calling Judgment Docket.

SEPTEMBER.

- 7. Last day for issuing Writs to September Term.
- 8. Last day for setting down causes for Argument Court.
- 8. Last day for setting down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 22. Last day for setting down causes for trial for October 22.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court.
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 10. Last day for filing Accounts to December Court.
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 23. Last day for filing Accounts to January Court, 1878.
- 23. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, AUGUST 18th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

je31 SAMUEL S. NISSLEY.

DIVORCE NOTICE.

PETER DAGUE } Alias Subpoena for Divorce,  
 vs. } to June Term, 1877.  
 CAROLINE R. DAGUE. } No. 34.

To CAROLINE R. DAGUE: You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Peter Dague should not be divorced from the bonds of matrimony contracted with you.

H. N. BRENEMAN, Sheriff.  
 je30 Sheriff's Office, Lancaster, June 26, 1877.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET  
 LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE No. 34 NORTH DUKE STREET,  
 LANCASTER, PA.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JULY 14, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JESSE SIDWELL, executor of JOSEPH SIDWELL, dec'd, against ISRAEL REYNOLDS.

All matters of form are amendable of course; and, by the act of 21st March, 1806, all matters of substance in the allegation of the particular contract or cause of action.

If it be necessary in an action to state precisely forbearance to sue as the consideration of a contract, it is substance, and may be amended under the act; because it is only setting out correctly upon the record the contract upon which the suit is brought.

But this does not authorize an amendment which would substitute a new suit in a different contract; and, therefore, when a new count is offered by way of amendment, which introduces another distinct cause of action, or changes the nature of the suit, it is inadmissible.

The first declaration or statement in this cause, which was filed August 24, 1819, sets out that "this suit is brought upon the promise of the defendant, made to the plaintiff, by which the defendant promised the plaintiff that he would pay unto the plaintiff a certain debt of \$600, due and owing to the plaintiff by a certain Joseph Reynolds, the brother of defendant, in consideration that he, the plaintiff, would give time and forbear to sue the said Joseph, and the plaintiff avers that he did forbear, etc., etc., nevertheless, etc.

A second declaration or second count was filed February 7, 1821, containing the following: "The said Israel Reynolds, brother of the said Joseph Reynolds, who stood indebted to the said Joseph Sidwell in the sum of £157, to wit—£74 10s. on a single bill and £82 10s. on book account—making together the sum of £157—in consideration that the said Joseph Sidwell would forbear to sue the said Joseph Reynolds for the said several sums of money, and accept the said Israel for the said debt at the special instance of the said Israel, he the said Israel undertook and then and there, etc., promised to pay, etc., as soon as Joseph Reynolds would sign over a tract of land, etc., avers that he did forbear, etc., and did accept, etc., and that Joseph Reynolds did sign over, etc., nevertheless," etc.

On the trial the plaintiff, not having proved that forbearance formed any part of the contract, moved to amend by adding the following third count: "Joseph Reynolds, brother of the said Israel Reynolds, was justly indebted to the said Joseph Sidwell in the sum etc., he, the said Israel Reynolds, then and there proposed and promised to the said Joseph Sidwell that he, the said Israel, would

pay unto him, the said Joseph Sidwell, the said two several debts of his brother Joseph Reynolds, if his brother Joseph Reynolds would convey to him, the said Israel, a certain tract of land that he was bargaining for with the said Joseph Reynolds near the brick meeting house, if he, the said Joseph Sidwell, would accept him for his debtor in the place of the said Joseph Reynolds; and the said Joseph Sidwell avers that he did then and there agree to the said proposal," etc.

This motion being opposed by the defendant, the court, after argument by Mr. Buchanan and Mr. Hopkins for the plaintiff, and Mr. Frazer and Mr. Jenkins for the defendant, overruled it—disallowing the amendment, for the reasons assigned in the opinion which follows: SMITH, P. J.

This is an application to add a new count to the declaration in this cause, and it is high time that the power or discretion of the court under the act of assembly should be fixed and ascertained by the highest tribunal in the State.

Before the act of assembly, the amendment proposed could not be allowed, and the question is whether it can be introduced under the authority of that law.

The original suit, as appears by the declaration, is a special assumpsit to pay the debt of a third person, in consideration of forbearance to sue that third person, and it is accompanied with an additional conditional consideration, which is called a distinct consideration. It is, however, one entire special contract, "in consideration that Joseph Sidwell would forbear to sue Joseph Reynolds, the brother of Israel Reynolds, the said Israel Reynolds promised to pay the debt, provided Joseph Reynolds would convey to him a tract of land." It is a collateral undertaking to pay the debt of a third person on a condition annexed; and, if the consideration on which such conditional promise is founded, viz: the contract or consideration of forbearance, the conditional promise itself falls to the ground. There is a variance between the contract alleged and the contract proved which in matters of contract is fatal.

All matters of form would, of course, be amended; and, by the act of assembly, all matters of substance in the allegation of the particular contract or cause of action. If, in an action of forbearance, it be necessary to state the forbearance precisely, so as to show that it would be either a benefit to the defendant, or a detriment or loss to the plaintiff, it is matter of substance; but, under the act of assembly, it would be amended, because it would be nothing more than to set out the contract, upon which the suit is brought, correctly upon the record.

But will the act authorize us to substitute a new suit on a different contract? If it goes to this extent its force, to be sure, is unbounded.

An action on the contract is brought—the writ is general, and there is a declaration for money had and received, and upon the evidence given it should appear to be a case in trover—which I can see might happen—will

the act of assembly authorize a count in trover? And a number of other instances might be put. A collateral undertaking may, if the evidence fail in part, be converted into a direct special contract. Why? Because, upon the evidence being given, the whole case cannot be made out, and you will take the part you have and shape a declaration to meet it upon only part of the evidence, which it is possible, nay most probable, embraces but half the history of the transaction between the parties. This would be a most dangerous power in the court; and, in my opinion, in most cases would lead to the most manifest injustice. It would confound everything like the forms of actions.

If slander be brought the writ is general. Why not convert it into an action for a malicious prosecution? Yet this has been denied by the Supreme Court.

The count now offered changes the entire nature of the suit in my judgment, but it will be filed for the judgment of abler men and greater lawyers than I am. I have a high respect for the opinions of both the counsel for the plaintiff, but I must be governed by my own judgment. I think it not within the act of assembly, and to admit this amendment would be pregnant with mischief.

## SUPREME COURT OF PENNSYLVANIA.

EVANS' Adm'r. vs. REED.

The testimony of a deceased interested party, duly taken in his lifetime, being received as evidence on the trial, does not make the surviving adverse party competent as a witness to testify in his own behalf.

Error to the Common Pleas of Lancaster County.

*E. Champeys* and *M. Brosius* for plaintiff in error.

*Geo. M. Kline* and *D. G. Baker* for defendant in error.

Opinion by MÉRCEUR, J. June 26, 1877.

This record presents a single question; that is whether the defendant was competent to testify to matters which transpired during the lifetime of the original plaintiff. That he was incompetent is clearly ruled by Pratt vs. Patterson, 3 W. N. of Cases 161. That case is very similar to the present one. There, in a former suit, in the lifetime of both parties, each party had testified and the testimony had been reduced to writing. The verdict was set aside and the suit discontinued. A second suit between the same parties was brought for the same subject matter. Before the trial the defendant died, and his executors were substituted. On the trial at *nisi prius*, before our late brother WILLIAMS, the plaintiff was offered as a witness to testify in regard to matters which occurred in the lifetime of the defendant. The witness was rejected. On the case being certified to this court for review we affirmed that ruling.

The statute provides a method by which the evidence of a party competent to testify may be perpetuated. Each party stands on an equal footing. The deposition of each party may be taken, subject to cross-examination by the opposite party. If the case be

tried in the life of both parties, the testimony taken on the trial may afterwards be treated as a deposition. If a party neglects or omits to take, at a proper time, the steps necessary to secure and perpetuate his testimony, he must suffer the loss resulting to him therefrom.

It by no means follows that because the testimony of the deceased party, duly taken in his lifetime, was given in evidence on the trial, therefore the surviving party is made competent to go on the stand to testify in his own behalf.

When the testimony of the party, since deceased, was taken, he was a competent witness. He was subject to cross-examination by the opposite party. The lips of the survivor were not then closed. He could then have offered himself as a witness to explain or contradict the testimony of the opposite party. If he did so he thereby perpetuated his own testimony and it is now available. If he then failed to perpetuate it, there is no equality in now permitting him, after the death of his adversary, to go on the stand to testify to any thing which transpired during the life of the opposite party. The lips now closed in death, cannot prompt any cross-examination nor explain or contradict the testimony thus given.

As a matter of fact, in this case the testimony of the survivor was actually taken in the lifetime of the opposite party. Yet he withholds that testimony and claims the right to now testify generally. The learned judge erred in admitting the testimony.

Judgment reversed and a *venire facias de novo* awarded.

#### MINNIG'S APPEAL.

*Equity—Injunction—When not granted—Threatened trespass—Removal of boundary fence.*

A preliminary injunction will not be awarded except in a clear case of right, and where no doubt exists as to the claim of the complainant to the remedy he invokes. Where the proof of the right is so equally balanced as to leave it in doubt, the injunction should be refused until the rights of the parties are ascertained at law, except in cases of strong necessity and extraordinary mischief.

A Court of Equity will only interfere in a case of trespass to prevent irreparable mischief, or a multiplicity of suits, and not when the trespass is temporary and adequate compensation in damages can be obtained in an action at law.

S. filed a bill praying for an injunction to restrain M., the owner of an adjacent lot, from removing the boundary fence between the properties to the distance of two feet upon his (S.'s) land. M. set up title to the two feet of land, and the Master to whom the case was referred reported that such title was proved by the evidence. The Court below, nevertheless, enjoined M. from removing the fence until the determination of an action of ejectment, which, after the filing of the bill, had been instituted by M. against S. for the strip of land in dispute.

*Held*, (reversing the decree of the Court below), that the facts did not give the Court jurisdiction to grant an injunction.

*Jarden vs. Railroad Company*, 3 Whart., 502, distinguished.

Appeal from the Common Pleas of Erie Co.

Bill in Equity filed by E. E. Stuerznickel against Jacob Minnig, setting forth:—

That the complainant and defendant were the owners of adjacent lots in the City of Erie, which lots have been separated by a fence that had been standing undisputed for more than twenty-five years, and was to the best of complainant's knowledge and belief the true boundary line between the two properties. That the defendant, having lately purchased his property, now disputed the boundary line, and had repeatedly threatened to remove the fence, and had given notice to the complainant that he would within three days after such notice tear down and remove the fence to the distance of eighteen inches upon the complainant's land. That the fence being valuable, great and irreparable damage would be done to the complainant if the defendant should carry his threats into execution. The bill prayed for an injunction to restrain defendant from tearing down and removing the fence, or in any manner interfering with the same.

The defendant in his answer denied that he made the threats complained of, and averred that he did give notice to the complainant that he would remove the fence, an unsightly structure, to the true boundary line, eighteen inches in the direction of complainant's lot. He also, in a supplemental answer, set forth his whole claim of title up to the line claimed by him, and contradicted the other material allegations in the complainant's bill.

Complainant filed a replication denying the averments of the answer.

The Master to whom the case was referred, reported that it had been clearly shown to him that the fence, claimed by the complainant to be the true boundary line, was in reality nearly two feet upon the land of the defendant or his wife; he was, therefore, of opinion "that a perpetual injunction ought not to issue to restrain the defendant from moving the fence, and if he sees proper placing one on the true centre line," and that the preliminary injunction already granted ought to be dissolved.

To this report the complainant filed exceptions.

Meanwhile the defendant had instituted an action of ejectment against the complainant for the recovery of the two feet of land claimed by him.

THE COURT (VINCENT, P. J.) sustained the exceptions, set aside the Master's report, and entered a decree continuing the injunction until the final decision in the ejectment suit above mentioned should be given, the Judge saying *inter alia*:—

"If the respondent were to tear down this fence in the manner threatened, he would assert his rights, by violence and a strong hand, instead of by the peaceable mode pointed out by the law.

"To do this would be, on his part, an act contrary to law, and such an act we have the right to restrain, especially *pendente lite*, for the express object of an injunction is to preserve the rights of the parties in *statu quo*, until they are established on final hearing, either at law or in equity.

"The owner of the land adjoining the complainant, and claimant of that on which the fence stands, has brought an action of ejectment for the disputed strip, and the rights of the respective parties will in that suit be determined where they should be, in a court of law; but in the meantime we have the power, and under the complaint in this case it is our duty to prevent any violence upon the claimed rights or property of the complainant, in the interests of both peace and justice."

From this decree the defendant appealed, assigning for error, *inter alia*: (2) That the Court erred in not dissolving the injunction on the motion of defendant; and (3) That the Court erred and had no power to continue the special injunction after the report of the Master, showing and reporting that the complainant had no ground or cause of complaint, and no right to equitable relief.

The right of the complainant was here doubtful, was denied under oath, and the injury anticipated could be repaired in damages. Under such circumstances a Court of Equity will never make use of the extraordinary and kingly power of injunction; certainly not until after the trial at law: *Heiskell vs. Gross*, 7 Phila., 319; *Rhea vs. Forsyth*, 1 Wr., 506; *Rhodes vs. Dunbar*, 7 Sm., 274.

The finding of the Master is of equal validity and force with a verdict of a jury.

The complainant by his occupancy for more than twenty-one years got no title to the adjacent strip of land in dispute: *Comegys vs. Carley*, 3 W., 280.

The Act of 1836 gave to the Courts of Equity jurisdiction to restrain by injunction all unlawful attempts to destroy by force the property of another, or to oust him from his just rights. The act complained of came clearly within its meaning: *Purd. Dig.*, p. 591; *Brightly's Eq.*, § 295; *Hilliard on Injunctions*, 320; *Jarden vs. Railroad*, 3 Whart., 502.

Jan. 2, 1877. THE COURT. This bill charged that appellant threatened to tear down a fence standing on the line between adjacent lots of the parties, and to remove it eighteen inches on to another line claimed by the appellant to be the true boundary line. It prayed for a special injunction then, and before final hearing that the defendant be perpetually enjoined from tearing down or interfering with the fence. The special injunction was granted. The answer denied making the threats, but alleged the fence to be about two feet over on the land of the appellant's wife. It admitted that he had notified the complainant to remove it to the true line, and on his failing so to do, that he, the appellant, would remove it.

The case was referred to a Master, who also acted as examiner. He found it was clearly shown that the fence claimed by the plaintiff below to be the boundary line between them, was two feet upon the defendant's land, or his wife's land. The Master, therefore, was of the opinion "that a perpetual injunction ought not to issue to restrain the defendant from removing it, and if he sees proper placing a fence on the true centre line," and that the preliminary injunction ought to be dissolved.

On exceptions filed, the Court below set aside the Master's report, and continued the injunction until the final decision in the action of ejectment brought by appellant and wife, after bill filed, for the land in dispute. From the decree granting the special injunction, and continuing the same, this appeal was taken. Several errors were assigned, but the argument was substantially confined to the third assignment.

The correctness of the decree depends on whether the right of the appellee was established with sufficient certainty, and the injury threatened was irreparable.

1. A preliminary injunction is emphatically the strong arm of the Court, and is never awarded except in a clear case of right, and where no doubt exists as to the claim of the plaintiff to the remedy he invokes. (Brightly's Eq., 303; Biddle vs. Ash, 2 Ashmead, 211.) Where the proof as to the right is so equally balanced as to leave it in doubt, the injunction should be refused until the rights of the parties are ascertained and settled. (Mammoth Vein Coal Co.'s Appeal, 4 P. F. Smith, 183; Brown's Appeal, 12 Id., 17.) Unless it be a strong and mischievous case of pressing necessity, or the right has been previously established at law, a party cannot ask a Court of Equity to enjoin. (Gardner vs. The Village of Newbury, 2 Johns. Ch. R., 164; Van Bergen vs. Van Bergen, 3 Id., 286.) Where the plaintiff's right has been established at law, or is not clear, but is questioned on every ground on which he puts it, not only by the answer of the defendant but by proofs in the cause, he is not entitled to remedy by injunction. (Rhea vs. Forsythe, 1 Wr., 503.)

2. A Court of Equity may interfere in a case of trespass to prevent irreparable mischief, and to prevent multiplicity of suits; but if the trespass be fugitive and temporary, and adequate compensation can be obtained in an action at law, there is no ground to justify the interposition of a Court of Equity. (Brightly's Eq., § 295.) As a general rule, mischief which is susceptible of compensation in damages is not irreparable. (Brown's Appeal, supra.) No decree should be made to be followed by an injunction unless irreparable injury be clearly established. (Clark's Appeal, 12 P. F. Smith, 447.) Hence, when the owner of a hotel filed a bill to restrain the removal from it of a cooking-range set in brickwork, a hot-water reservoir connected by cast-iron pipes running through the brickwork to the range, a carving table nailed to the floor, and other fixtures of a permanent character for a hotel, it was held the bill would not lie, as they were articles of convenience only, and not of necessity, and there was an adequate remedy at law, therefore a Court of Equity had no jurisdiction. (Id.) It is there further said it was never intended to take away the common law right of trial by jury where a wrong done by a party could be redressed by it. In support of this view, the learned Chief Justice cited numerous cases. So in 7 Johns. Ch., 330, in an opinion by Chancellor KENT, it was held that for a naked trespass, for which compensation could be made in money, the party must resort to his action of trespass. That an injunction will not be granted unless there was an intention to actually destroy the subject in dispute, and not merely to injure it.

Jarden vs. Phila., Wil. and Balt. R. R. Co. (3 Whart., 502) was urged as sustaining the bill. That, however, was the case of a bill to enjoin a corporation from taking permanent possession of land, before a performance of the conditions which preceded its right to possession. The street was to be opened, and the damages were to be paid. Neither had been done. The case is not analogous to the one under consideration.

Looking at the facts found by the Master, the evidence not only fails to establish the right of the appellee in the fence or in the

ground on which it stands, but it shows the right to both to be in the appellant. Furthermore, if the latter should remove the fence without right, the trespass would be temporary only, and could be compensated in damages. The damages recovered would replace it.

While the fence was probably convenient for the complainant, it was not as necessary to the enjoyment of his lot as the fixtures were to the enjoyment of the hotel in Clark's Appeal, supra. Considering the whole case, we do not think the facts gave the Court jurisdiction to grant an injunction, and the learned judge erred in making the decree.

Decree reversed, and bill dismissed at the costs of the appellee, with prejudice.

Opinion by MERCUR, J.—*Weekly Notes of Cases.*

### Auditors' Notices.

Assigned Estate of JOHN W. PFEIFFER, of Warwick township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benjamin Workman, assignee of said John W. Pfeiffer, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 GEO. NAUMAN, Auditor.

Assigned Estate of M. M. STRICKLER and WIFE, of Columbia Borough, Lan. Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. Haldeman Herr, assignee of M. M. Strickler and wife, to and among those legally entitled to the same, will sit for that purpose on MONDAY, AUGUST 13th 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 A. J. KAUFFMAN, Auditor.

Assigned estate of JOHN REIDINGER and WIFE, of West Donegal twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Addison Eby, assignee, for the benefit of creditors of said estate, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 22d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 E. H. YUNDT, Auditor.

Assigned Estate of AARON SHERTZER, of Washington Borough.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. W. Deshong and Wm. Shertzer, assignees, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 PHILIP D. BAKER, Auditor.

Estate of MAGDALENA HERSHEY, late of Millersville, Lancaster Co., dec'd.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Andrew Brubaker, executor, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 17th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 W. W. BROWN, AND M. FRANTZ, Auditors.

Estate of JOHN BECKER, late of Rapho twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George S. Becker and Samuel S. Becker, executors, as per 2d account, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 18, 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 SIMON P. EBY, Auditor.

Assigned Estate C. S. MUSSELMAN and WIFE, of Earl twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel Rife and Jacob R. Musser, assignees of C. S. Musselman and wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 C. S. HOFFMAN, Auditor.

Assigned Estate of LABORIUS H. SHUTTE, of Mount Joy twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, Esq., assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 23d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 WM. D. WEAVER, Auditor.

Estate of MICHAEL EBERLY, late of West Cocalico twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Edward Eberly, administrator of Michael Eberly, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, A. D., 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 B. B. FLICKINGER, Auditor.

Assigned Estate of SAMUEL HERTZOG and WIFE, of West Cocalico twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Samuel Hertzog and wife, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 1½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 W. K. SEITZER, Auditor.

Estate of JOHN BRUBAKER, late of West Cocalico twp., Lan. Co., dec'd

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Stober, administrator of John Brubaker, deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 11th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 JACOB G. GARMAN, Auditor.

Estate of MATTHIAS ERSHICK, late of Ephrata township, dec'd.

The undersigned Auditor, appointed to pass on exceptions, and distribute the balance remaining in the hands of Charles Ershick, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 SIMON P. EBY, Auditor.

Estate of JACOB RANCK, late of Earl township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John D. Ranck and Jacob Ranck, executors of the will of the said Jacob Ranck, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 22, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 GEO. NAUMAN, Auditor.

jy7 SIMON P. EBY, Auditor.



**Estate of ADAM ROTHARMEL, late of the City of Lancaster, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Rotharmel, administrator *d. b. n. c. t. a.*, of the said Adam Rotharmel, deceased, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 17, 1877, at 2 o'clock, p. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**GEORGE NAUMAN,**  
Auditor.

jy7

**Assigned Estate of PETER B. HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Peter B. Hertzog and Wife, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**W. K. SELTZER,**  
Auditor.

jy7

**Estate of SARAH LANDIS, late of Lancaster City, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Westhaeffer and John Bubb, executors, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 9th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**H. R. FULTON,**  
**WM. D. WEAVER,**  
Auditors.

jy7

**Assigned Estate of PETER W. GORRECHT and WIFE, of Lancaster City.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Adam J. Eberly, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 7th, 1877, at 3 o'clock, p. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**PHILIP D. BAKER,**  
**D. McMULLEN,**  
**WM. D. WEAVER,**  
Auditors.

jy5

**Estate of ISAAC RENNINGER, late of Brecknock twp., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Baltzer Schneider, administrator, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, the 17th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. C. DIEHL,**  
**F. G. MUSSER,**  
Auditors.

jy7

**Assigned Estate of JOHN O'BRIEN and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel W. Stehman, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**HUGH R. FULTON,**  
Auditor.

jy7

**Assigned Estate of A. R. WITMER, of West Hempfield twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi Myers, assignee, by deed of voluntary assignment for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

jy7

**Estate of JOHN HAMILTON, late of Rapho township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James W. Hamilton and John G. Hamilton, administrators, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, the 16th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. C. DIEHL,**  
Auditor.

jy7

**Estate of BENJAMIN FREDERICK, late of Upper Leacock twp., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jonas Frederick, administrator of said dec'd, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 3d, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. BURKHOLDER,**  
Auditor.

jy7

**Estate of GEORGE LEISEY, late of East Cocalico township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cyrus Ream and Israel Leisey, executors of said dec'd, to and among those legally entitled to the same, will attend for that purpose on **THURSDAY, the 16th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**JOHN H. FRY,**  
Auditor.

jy7

**Assigned Estate of EZRA BECKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Nissly, Esq., assignee of said Ezra Becker and Wife, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. GOOD,**  
Auditor.

jy7

**Estate of JOSEPH WELCHANS, late of Lancaster City, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Dr. George R. Welchans, administrator, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. D. WEAVER,**  
Auditor.

jy7

**Assigned Estate of JACOB BRUBAKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of W. K. Seltzer, assignee of Jacob Brubaker and Wife, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10, A. D. 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**A. J. EBERLY,** Auditor.

jy7

**Assigned Estate of HENRY LORAH and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Diller P. Herr and Henry D. Bausman, assignees, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**HUGH R. FULTON,**  
Auditor.

jy7

**Estate of ELIZABETH ECHTERNACHT, late of East Cocalico twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Krimes, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 4th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. AMWAKE,**  
Auditor.

jy7

**Estate of MARY ANN WITMER, late of Providence twp., Lan. co., deceased.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John Hildebrand, administrator of said estate, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 15th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

jy7

**Assigned Estate of ELIAS M. SHIRK and WIFE, of East Earl township.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. D. WEAVER,**  
Auditor.

jy7

**Assigned Estate of WILLIAM ROBERTS and WIFE, of West Hempfield twp., Lan. co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of Levi Myers, assignee by deed of voluntary assignment, for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

jy7

**Assigned Estate of "REISSINGER & STIBGEN," of Marietta, Lancaster co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John W. Rich, assignee by deed of voluntary assignment for the benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,** Auditor.

jy7

**Estate of CHRISTIAN ECHTERNACHT, late of East Cocalico twp., Lancaster co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Elias Weltzel and Henry Krimes, executors of said deceased, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 4th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. AMWAKE,**  
Auditor.

jy7

**Assigned Estate of H. H. NISSLEY and WIFE, of Mount Joy Borough.**

The undersigned Auditor, appointed to pass upon the exceptions filed to the account of Benjamin F. Eberle, assignee, &c., and to distribute the balance remaining in the hands of said assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**THOS. B. COCHRAN,**  
Auditor.

jy7

**Assigned Estate of SAMUEL B. SENSENIG and WIFE, of Brecknock twp.**

The undersigned Auditors, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Jacob G. Garman, assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 8th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. L. STEINMETZ,**  
**C. N. SPROUL,**  
Auditors.

jy7

**Estate of JAMES BARNETT, late of Drumore township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Boyd, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **A. F. SIENCK,**  
jy7 Auditor.

**Assigned Estate of ALBIN BROWN and WIFE, of Little Britain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Ephraim Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **C. N. SPROUL,**  
jy7 Auditor.

**Assigned Estate of JOHN GEORGE and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John B. Good, assignee, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 2d, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **S. M. SENNER,**  
jy7 Auditor.

**Assigned Estate of HENRY SCHMITT and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bork, assignee, to and among those legally entitled to the same, will attend for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **JOHN H. FRY,**  
jy7 Auditor.

**Estate of CHRISTIAN SNYDER, late of Washington borough, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Barnherd Mann, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, 4th of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **W. S. AMWEG,**  
jy7 Auditor.

**Assigned Estate of SAMUEL BEATTY and WIFE, of Conoy twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frederick Smith, assignee, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **JOHN M. MAST,**  
jy7 Auditor.

**Assigned Estate of HENRY MILLER and WIFE, of West Lampeter twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of H. N. Breneman, assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21, 1877, at 2 o'clock, p. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **B. F. ESHLEMAN,**  
jy7 Auditor.

**Estate of GEORGE BOWMAN, late of Strasburg township, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Henry Musser and H. N. Breneman, executors of the will of George Bowman, deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **E. H. YUNDT,**  
**H. C. BRUBAKER,**  
**P. F. ESHLEMAN,**  
jy7 Auditors.

**Estate of JOSEPH HERSHEY, late of Penn twp., Lancaster county, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Joseph Summy and Levi H. Hershey, executors, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, JULY 25th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **L. ELLMAKER,**  
**JOHN M. ENSMINGER,**  
je30 Auditors.

**Estate of HENRY K. DENHAM, late of East Hempfield twp., dec'd.**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to distribute the balance remaining in the hands of Elizabeth Denham and Samuel Hess, administrators of said deceased, (after having first ascertained and fixed the widow's dower in said estate) to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, JULY 26th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend. **FRED. S. PYFER,**  
je30 Auditor.

**Estate of E. Y. CONYNGHAM, late of Lancaster City, dec'd, (trust account.)**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to pass on exceptions filed to said account, and to distribute the balance remaining in the hands of Joel L. Lightner, administrator with will annexed of said deceased, to and among those legally entitled to the same, will attend for that purpose on **THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend. **FRED. S. PYFER,**  
je30 Auditor.

**Assigned Estate of JOHN H. GRING and WIFE, of East Cocalico twp., Lan. Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of John Lutz, assignee, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 9th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **CHAS. DENUES,**  
**J. W. DENLINGER,**  
je30 Auditors.

**Assigned Estate of SAMUEL HOLL and WIFE, of Earl twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Irwin and Levi Sensenig, assignees of Samuel Holl and Wife, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, JULY 21, 1877, at 10 o'clock, a. m.**, in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **C. S. HOFFMAN,**  
je30 Auditor.

**Assigned Estate of RILEY SHEPLER and WIFE, of Penn twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel Keener, assignee of Riley Shepler and Wife, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 1st day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **SAMUEL H. PRICE,**  
je30 Auditor.

**Assigned estate of SAMUEL H. GRING and WIFE, of the township of East Cocalico, Lancaster county.**

The undersigned auditors appointed to distribute the balance remaining in the hands of A. R. Royer and John Lutz, assignees, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 2d, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **J. W. DENLINGER,**  
**S. W. SHADLE,**  
je23 Auditors.

**Assigned Estate of EZEKIEL T. PAINTER, of Drumore twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Richard C. Edwards, assignee of Ezekiel T. Painter, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 8th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **J. W. F. SWIFT,**  
je30 Auditor.

**Assigned Estate of HENRY H. HESS and WIFE, of Willow Street.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of the assignee of said estate, to and among those legally entitled to the same, will sit for that purpose on **MONDAY, AUGUST 6th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **M. BROSIUS,**  
**J. F. FULTON,**  
je30 Auditors.

**Assigned estate of SAMUEL HALLER and Wife, of East Earl twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel B. Foltz, Assignee of Samuel Haller and wife, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, JULY 21, at 9 o'clock a. m.**, at the house of Lazarus Wolf, in Fairville, said township, where all persons interested in said distribution may attend. **H. B. BECKER,**  
je30 Auditor.

**Assigned estate of MOSES BRINTON and Wife, of Colerain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cromwell Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 7, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **M. BROSIUS,**  
je30 Auditor.

**Estate of BENJAMIN MOONEY, late of Manor township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bausman, executor, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 11th day of AUGUST, 1877, at 2 o'clock p. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **EMLIN FRANKLIN,**  
je23 Auditor.

**Estate of FREDERICK KOSER, late of Rapho township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Rapho twp., Lan. Co. **REBECCA KOSER,**  
**FREDERICK Y. KOSER,**  
je30 Executors.  
**D. McMULLEN, Att'y.**

**Assigned estate of BAIR KILHEFNER and WIFE, of East Earl twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. G. Groff, assignee of Bair Kilhefner and Wife, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, the 19th day of JULY, A. D., 1877, at 10 o'clock, a. m.**, in one of the Jury Rooms of the Court House in the City of Lancaster, where all persons interested in said distribution may attend. **C. S. HOFFMAN,**  
je23 Auditor.

**Estate of CHRISTIAN BINKLEY, late of East Hempfield township, Lancaster co., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of William Binkley, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, the 27th day of JULY, A. D., 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **B. C. KREADY,**  
**M. N. BRUBAKER,**  
je23 Auditors.

Estate Notices.

Estate of ADIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to A. HERR SMITH, Administrator, Lancaster Pa.

Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to A. HERR SMITH, Administrator, Lancaster Pa.

Assigned estate of DR. A. K. ROHRER, of West Hempfield township, Lancaster Co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Greider, assignee for the benefit of the creditors of said estate, as shown by his 2d account, will sit for that purpose on FRIDAY, the 10th day of AUGUST, 1877, at 10 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend. A. SLAYMAKER, J. W. F. SWIFT, Auditors.

Assigned Estate of AMOS ALTHOUSE, of East Cocalico twp., Lancaster co.

Amos Althouse, of East Cocalico township, having by deed of voluntary assignment, dated June 23, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Althouse, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JOHN B. REINHOLD, JOHN S. LUTZ, Assignees, 49 Grant st., Lancaster. Stevens P. O., Lan. co.

Assigned estate of JOHN AMMON and WIFE, of Salisbury twp., Lancaster co.

John Ammon and Wife, of Salisbury township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Ammon, they therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to DANIEL LEE, HENRY AMMON, Assignees, Residing in Salisbury twp.

Estate of JAMES MCCA, Esq., late of Caernarvon township, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Churchtown, Pa. DR. D. J. MCCA, WM. J. MCCA, ANNA E. MCCA, Executors.

Assigned estate of HENRY MAULICK and WIFE, of Lancaster City, Lancaster co.

Henry Maulick and Wife, of Lancaster city, having by deed of voluntary assignment, dated June 20, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Henry Maulick, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to H. K. BURKHOLDER, Assignee, Residing in Lancaster City.

Estate of JOHN M. GOWEN, late of Bart township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O. LEWIS PICKEL, Executor.

Assigned estate of DAVID G. STEACY and WIFE, of Bart township, Lancaster Co.

David G. Steacy and wife, of Bart township, having by deed of voluntary assignment, dated June 18, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David G. Steacy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to SAMUEL SLOKOM, Assignee, Christiana, P. O.

Estate of JOHN REIST, SEN., late of Penn township, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. H. B. REIST, Mt. Joy twp., JOHN B. REIST, Penn twp., H. S. NISSLEY, East Donegal twp. H. C. BRUBAKER, Att'y. Executors.

Estate of PHILIP SHREINER, late of Columbia Bor., deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said Borough. REBECCA SHREINER, CLARA R. SHREINER, PHILIP D. BAKER, Att'y. Executors.

Estate of JOHN AMMON, late of Salisbury township, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. HENRY AMMON, Executor. PHILIP D. BAKER, Att'y.

Estate of SARAH M. BUYERS, late of Salisbury township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Salisbury twp. JAMES A. BUYERS, Administrator. PHILIP D. BAKER, Att'y.

Estate of HUGH M. PENNY, late of Drumore township, Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Liberty Square, said County. GEO. NAUMAN, JOHN J. PENNY, J. HAY BROWN, Att'ys. SAM'L M. LONG, Administrators.

Assigned Estate of GEORGE RUSSELL, of Caernarvon twp., Lancaster co.

George Russell, of Caernarvon twp., having by deed of voluntary assignment, dated June 4, 1877, assigned and transferred all his estate and effect to the undersigned, for the benefit of the creditors of the said Geo. Russell, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to E. D. WHITE, Assignee, Residing in Churchtown, Lancaster co., Pa. A. W. SNADER, Att'y.

Estate of ROBERT TWINWITH, late of Paradise township, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart township. GEO. WHITSON, Administrator. P. D. BAKER, Att'y.

Assigned Estate of HENRY G. STRAYER and WIFE, of Mount Joy twp., Lancaster Co.

Henry G. Strayer and wife, of Mount Joy twp., having by deed of voluntary assignment, dated May 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry G. Strayer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to HENRY B. RABER, Assignee, J. HAY BROWN, Att'y. Mount Joy, Pa.

Assigned estate of JOHN STANTON and WIFE, of Drumore township, Lan. co.

John Stanton and wife, of Drumore township, having by deed of voluntary assignment, dated May 14, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Stanton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to DANIEL LEFEVER, (far.) DANIEL D. HESS, Assignees, W. M. FRANKLIN, Att'y. Residing at Quarryville.

Estate of MICHAEL McCULLON, late of the City of Lancaster, Pa., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned. ROSINE McCULLON, Executrix. S. P. EBY, A. J. EBERLY, Att'ys. No. 50 South Lime-st., Lancaster, Pa.

Estate of PETER EIDENMILLER, late of Strasburg township, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Providence twp. JOHN TWEED, JOHN EIDENMILLER, Administrators.

Assigned Estate of ABRAHAM H. BRENE-MAN and WIFE, of Manor township.

Abraham H. Breneman and wife, of Manor twp., having by deed of voluntary assignment, dated May 16th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham H. Breneman he therefore gives notice to all persons indebted to said assignor to makepayment to the undersigned without delay, and those having claims to present them to BENJ. H. BRENEMAN, Assignee, CHAS. DENUES, Att'y. Residing in Safe Harbor.

Estate of ANNA CATHARINE HART, late of Lancaster city, deceased.

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa. FRANK STAHL, B. C. KREADY, Att'y. Administrator, c. t. a.

Estate of JOSEPH HART, late of Lancaster city, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lebanon, Leb. co., Pa. B. C. KREADY, Att'y. FRANK STAHL, Administrator.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, JULY 21, 1877.

No. 8.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES.

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	3:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy,	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	3:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:25 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	3:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:15 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,	6:50	7:50	2:30
Lancaster—West King Street,	8:00	9:16	3:35
Lancaster—Upper Depot,	8:10	9:36	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:36	5:30	8:03
Lancaster—West King Street,	9:45	5:40	8:10
Quarryville, (arrive),	10:50	7:00	9:15

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:37	1:20	4:10
Reading, (arrive),	10:20	3:20	5:45

  

LEAVE.	GOING SOUTH.		
	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,		p. m.	
Lancaster—Upper Depot,	9:13	1:20	7:40
Lancaster—West King Street,	9:36	2:00	8:03
Lancaster—West King Street,	9:45		8:10

### Columbia and Port Deposit Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:29
Arrive at Peachbottom,	7:05	1:55	5:45

  

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio.	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharwood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judges*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Philip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

**THE LANCASTER BAR**

**BOOK AND JOB PRINTING OFFICE.**

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**COURT CALENDAR--1877.**

JULY.

21. Last day for filing Accounts to August Court.  
 28. Last day for setting down causes for trial for August Court.

AUGUST.

10. Last day for issuing Writs to August Term.  
 18. Last day for filing Accounts to September Court.  
 18. Argument for Rules of Affidavit of Defense.  
 20. Last day for issuing Executions to August Term.  
 25. Calling Judgment Docket.

SEPTEMBER.

7. Last day for issuing Writs to September Term.  
 8. Last day for setting down causes for Argument Court.  
 8. Last day for setting down causes for trial for October 8 and 15.  
 15. Argument for Rules of Affidavit of Defense.  
 22. Calling Judgment Docket.  
 23. Last day for setting down causes for trial for October 22.

OCTOBER.

5. Last day for issuing Writs to October Term.  
 20. Calling Judgment Docket.  
 20. Last day for filing Accounts to November Court  
 20. Argument for Rules of Affidavit of Defense.  
 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

9. Last day for issuing Writs to November Term.  
 16. Last day for filing Accounts to December Court  
 17. Argument for Rules of Affidavit of Defense.  
 19. Last day for issuing Executions to November Term.  
 24. Calling Judgment Docket.

DECEMBER.

7. Last day for issuing Writs to December Term.  
 8. Last day for setting down causes for Argument Court.  
 15. Argument for Rules of Affidavit of Defense.  
 22. Last day for filing Accounts to January Court, 1878.  
 23. Calling Judgment Docket.  
 29. Last day for setting down causes for trial for January Court, 1878.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, AUGUST 18th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.  
 je31 SAMUEL S. NISSLEY.

**DIVORCE NOTICE.**

CHRISTINE SOPHIA WIRTH, } Alias Subpoena  
 by her next friend Michael Schaibley, } for Divorce,  
 vs. } To June Term,  
 JACOB WIRTH. } 1877, No. 7.  
 To JACOB WIRTH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Christine Sophia Wirth should not be divorced from the bonds of matrimony contracted with you.  
 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, July 16, 1877.

**DIVORCE NOTICE.**

PETER DAGUE } Alias Subpoena for Divorce,  
 vs. } to June Term, 1877.  
 CAROLINE R. DAGUE. } No. 34.  
 To CAROLINE R. DAGUE: You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Peter Dague should not be divorced from the bonds of matrimony contracted with you.  
 H. N. BRENEMAN, Sheriff.  
 je30 Sheriff's Office, Lancaster, June 26, 1877.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JULY 21, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

CHRISTIAN SHENK against BARBARA SHENK, CHRISTIAN SHENK, JR., and JOHN SHENK.

What is the proper evidence of title in general considered?

A son who enters upon a farm of his father, with his consent, as a tenant—and pays no rent, but builds and makes improvements with the rents and profits, has no pretense of title.

To constitute a title in the son, without deed, there must be an actual gift, and the evidence of it must be unequivocal, or must depend on such facts and circumstances as are inconsistent with any other state of things than that of absolute ownership, and such as would make it a fraud in the father to assume the land.

This was an action of ejectment in which the plaintiff claimed title, as one of the heirs of his father, against the defendants, children of his brother, who held on the ground of a parol gift of the land from their grandfather to their father. The general law upon this important subject was discussed and explained in the following charge of the court to the jury.

Mr. Hopkins for plaintiff.

Mr. Frazer and Mr. Wright for the defendants.

SMITH, P. J. By an act of assembly no titles to real estate can pass without a written deed. A title cannot pass by word of mouth. It is against public policy, public convenience and moral fitness. A title to real estate ought never to depend upon the uncertain recollection of witnesses. The transactions of past times pass like a shadow over the human mind. Faint impressions remain of deeds and things which have long since passed by, but most frequently, if not generally, stripped of their most material concomitant circumstances. Hence it is that the visions of fancy too often succeed the recollections of the true facts, of which only the feeblest traces remain. The legislature has, therefore, wisely provided against a course of things in the transactions among men which would introduce perjuries and frauds. The evidence of property ought to rest upon written documents; upon deeds, entered upon the public records, which do not change—which always, unimpaired by the lapse of time, speak the same language. The legislature have guarded real estates still more; as even records themselves may decay or be destroyed, and all human testimony may perish, an actual uninterrupted possession for twenty-one years cures such loss of testimony.

There are exceptions, it is true, to this rule. But these exceptions are only such as are

necessary to prevent the act of assembly itself from being made the instrument of fraud, which it was intended to prevent.

Therefore, if the parties enter into a contract, without writing, for the sale and purchase of a tract of land, and this is in part executed as if the purchaser is put into actual possession, which is a fact of public notoriety, and pays parts of the purchase money, or exercises acts of ownership and expends his labor and money upon it, so that it would be a fraud upon him to rescind the contract—the seller shall not claim it, but shall be compelled to perform his contract and make a deed to the purchaser.

Another case is that of a verbal gift of land to a son. Upon circumstances this will also make a title. But there must be circumstances; because it can never be contended, in either a court of law or equity, that if a father puts his son on one of his tracts of land, to farm it as a means of support merely, without other circumstances, whatever may be his future intentions, that this would give a title. There must be an actual gift, and the evidence of it must be unequivocal, or must depend on such facts and circumstances as are inconsistent with any other state of things than that of absolute ownership, and such as would make it a fraud in the father to resume the land.

Thus, if a father tells his son to go upon a tract of land and make it his own, and he does so, and makes extensive and valuable improvements, expends his money and labor upon it—acts which no man in his senses would do but upon principles of ownership; here are circumstances—and in such case the father shall not resume the land, merely because he had not made a deed. It would be a fraud upon his child, and it would be perverting the act of assembly into an instrument of fraud.

But, without doubt, the son may have possession of land consistent with the existing title of the father. I have, therefore, said there must be unequivocal acts, and it is not to rest upon conjecture or naked presumption unsupported by facts and circumstances.

Now this case being a mere matter of fact it is exclusively for the consideration of the jury. I have nothing more to do than to state the principles of the law.

It is true parents do sometimes give their children land by word of mouth and put them into possession as owners, meaning to give a deed at a future day—perhaps to confirm it by will; practice by no means to be commended. Parents are unwise to leave such important matters to the chapter of accidents, and lay up a nest-egg as a subject of future bitter lawsuits among his children, and to destroy all that peace and harmony that ought to prevail among the descendants of the same parents. It is also notorious that it is a custom among the respectable Germans of this county, who by their industry have acquired two or more plantations, to place their children upon them, as they marry or come of age, at low or nominal rents; and, if convenient improvements are necessary, to permit them to be made out of the rents and

profits—holding the control over it as owner, intending, by his will, to give it upon his death either absolutely, or upon payments to be made out of it, as his circumstances may enable him with regard to equal justice to his other children. When there is such an understanding between a parent and child there can be no pretense that it will make a title; and, if merely upon that kind of possession the son, after his father's death, should set up a title by gift, all proof being absent by reason of the natural confidence which does and ought to exist between a father and a child, this would, on the other hand, be a fraud upon his father and upon the children he has left behind him who were equally entitled to his bounty and regard. It is, therefore, I have said and I repeat it, if a verbal gift is set up, the law requires that there should be unequivocal evidence of the fact, or if not express declarations, such strong circumstances necessarily arising out of the case as would render the presumption of the principal fact unavoidable, irresistible and conclusive. And if you are of opinion that there is such conclusive evidence of a gift in this case you will, of course, find for the defendants. But if you believe the evidence given by the plaintiff, that John Shenk went on the premises as a tenant, or upon rent with a full understanding of the limited nature of his possession; and if he so declared himself; and his improvements were made to be compensated by the accruing rents and profits which were applied to them, and not paid in coin, then there can be no pretense of title in the defendants, and you will, of course, find for the plaintiff.

## Common Pleas of Chester County.

PRICE vs. BEALE ET AL.

1. Section 8 of act of April 1st, 1834 (not digested in Brightly's Pardon), is yet in force.
2. The burgess is entitled to participate in the deliberations of the town council of a borough incorporated under the general laws of the Commonwealth, and to preside at all its sessions.

### In Equity.

The case arose on a petition for an injunction. The plaintiff had been elected burgess, and the defendants members of the town council of the borough of Coatesville. At a regular meeting of the town council a president was elected by them, who took upon himself and performed the duties of presiding officer of the town council, against the protest and to the exclusion of the burgess. The council so organized then proceeded to the election of a secretary, treasurer, and water commissioner, and to the general transaction of the business of the corporation, without the concurrence of the burgess, against his protest, and in disregard of his presence and existence as a corporate officer. The provisions of the eighth section of the act of April 1st, 1834, are as follows: \* \* "And the meetings of the said town council shall be held at such times and places as the majority of them may appoint, and the burgess shall be president of the town council, and shall have and exercise all the rights and privileges of a member thereof; but in case of the absence of the burgess, the members

present may elect one of their number to preside for the time being." \* \*

Opinion by BUTLER, P. J. April 16, 1877.

The borough of Coatesville was incorporated by the court, in pursuance of the act of assembly of 1834, as altered and amended by the subsequent act of 1851. If the case presented by the bill and answer depended on the latter act alone, we would still hold that the burgess is entitled to participate in the deliberations of the council. He certainly falls within the class of officers designated by the second section "to make laws, ordinances, regulations, lay out streets," &c., who, by the third section, are required to meet at stated periods, preserve full records of their proceedings, appoint officers, &c. But we might in such case, have difficulty in finding authority for the position that the burgess is entitled to *preside* at such meetings. The case, however, does not, in our judgment, depend alone on this act. The original act of 1834 is still in force, except to the extent that its provisions are inconsistent with those of the act of 1851. And the eighth section of the former act (1834, P. L. 166,) expressly provides, not only that the burgess shall participate in the deliberations of the town council, but that he shall also *preside* over its sessions. Very singularly this section is omitted from the recent digest of statutes. Whether this occurred from accident or design we cannot know. We do not, however, find anything to justify a belief that it is not in force. The act of 1851 must be treated as a supplement to the act of 1834; and its repealing clause is expressly limited to such provisions of the original act as are inconsistent with those of the supplement. It is true, the act of 1851 is not called a supplement in the title; but this is unimportant. It clearly is a supplement; as clearly as if it had been so called. It is but part of the general system provided by the act of 1834 for the incorporation and government of boroughs, and must be construed and administered in connection with that act. It being silent on the subject of organizing the council, the eighth section of the earlier act is in force and governs. We do not attach much weight to the fact that the legislature in 1871 (Brightly's Purdon, 170, pl., 56,) passed an act providing that the burgess may be authorized to act as a member of the town council and preside. Statutory provisions are frequently duplicated through want of information or misunderstanding in the mover; and with the omission from the digest, before referred to, it is not singular that such misunderstanding should have occurred in the instance before us, even with the most careful person.

The defendant, Beale, will therefore, be restrained and enjoined from assuming and exercising the powers and duties of presiding officer of the town council of the borough of Coatesville, and the defendants from exercising the powers and duties of corporate officers of the said borough, to the exclusion of the plaintiff.—*Legal Intelligencer.*

MR. W. H. SMITH stated in the English House of Commons that the total expenses of the Tichbourne prosecution amounted to £60,075, or about \$300,375.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JULY 21, 1877.

### LISTS OF JURORS.

Names of 24 Grand Jurors, to serve in a Court of Quarter Sessions of the Peace commencing Monday, August 20th, 1877:

Valentine Andes, machinist, Upper Leacock.  
Reuben Bowman, farmer, East Lampeter.  
C. Rine Baer, printer, 6th ward, City.  
Jeremiah Brown, farmer, Fulton.  
Henry F. Benedict, plasterer, 2d ward, City.  
Jacob Bertz, trader, 9th ward, City.  
George Byrod, justice of peace, Elizabethtown Bor.  
Jacob Eaby, grain dealer, Manheim Bor.  
Thomas Edwards, furnace, Columbia.  
Leonard Eckman, cigarmaker, 5th ward, City.  
Benjamin Furniss, farmer, Little Britain.  
John S. Given, merchant, Columbia.  
Jacob Greenawalt, farmer, 8th ward, City.  
William Gerfen, blacksmith, East Hempfield.  
H. W. Greybill, lumber and coal, East Hempfield.  
John F. Herr, farmer, Strasburg Twp.  
Edward J. Knox, farmer, Sadsbury.  
Edward H. Kauffman, drover, Manheim Twp.  
Samuel Patterson, merchant, Marietta.  
John Shenk, farmer, East Donegal.  
Thomas R. Torr, gentleman, 4th ward, City.  
George Ulrich, carpenter, Ephrata.  
Harry Way, cabinetmaker, Mount Joy Bor.  
Jacob S. Young, forkmaker, Rapho.

Names of 48 Petit Jurors, to serve in a Court of Quarter Sessions of the Peace commencing Monday, August 20th, 1877:

Henry Arndt, merchant, Manheim Bor.  
William S. Amweg, jr., carpenter, Paradise.  
I. O. Brunner, lumber merchant, East Lampeter.  
Amos Benedict, carpenter, Conestoga.  
Franklin Bear, farmer, Manor.  
David Bricker, merchant, Warwick.  
Jacob B. Brubaker, farmer, Manor.  
Jacob A. Buch, lumber merchant, Warwick.  
John Berkey, farmer, Salisbury.  
William Crouse, combmaker, West Coacalico.  
Henry Deltrich, merchant, West Lampeter.  
Henry Eckert, gentleman, Leacock.  
Benjamin Eckman, farmer, Strasburg Twp.  
John W. Eshleman, miller, West Lampeter.  
Walter P. Fryberger, merchant, Marietta.  
Stephen Grissinger, farmer, Rapho.  
Christian Herr, farmer, Manor.  
Phillip Hathaway, drover, Sadsbury.  
Taylor St. John, lastmaker, 6th ward, City.  
William S. Jackson, farmer, Fulton.  
William Kline, farmer, Clay.  
John R. Kauffman, carpenter, East Donegal.  
Jacob Kepperling, mason, Providence.  
Levi Lefever, farmer, Strasburg Twp.  
Isaac W. Leidig, tanner, Paradise.  
Abner Miller, farmer, Conestoga.  
L. W. May, grocer, Columbia.  
Franklin G. Musser, scrivener, Brecknock.  
John M. Martin, farmer, Manor.  
Thomas Masterson, butcher, Penn.  
H. K. Miller, merchant, East Hempfield.  
John H. Miller, shoemaker, Clay.  
Jacob Nisley, cooper, Rapho.  
John Prescott, blacksmith, West Donegal.  
E. D. Roath, justice of peace, Marietta.  
John M. Read, grocer, Columbia.  
Phares G. Reinhold, merchant, Ephrata.

George Shreiner, butcher, Warwick.  
W. Seiple, pilot, Washington.  
William F. Stuber, farmer, West Coacalico.  
Isaac Spong, plasterer, Warwick.  
Henry E. Shimp, manufacturer, Manheim Bor.  
Jacob Staman, sawmiller, Washington Bor.  
Jerome Shimp, manuf'r and miller, Manheim Bor.  
Emanuel Weldman, innkeeper, Elizabeth Twp.  
W. T. Youart, innkeeper, Lancaster Twp.  
Abraham Young, shoemaker, Manor.  
Phillip Zecher, coachmaker, 9th ward, City.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas commencing on Monday, August 27th, 1877:

J. W. Byrne, merchant, 9th ward, City.  
John B. Breneman, painter, Rapho.  
Charles C. Brinton, farmer, Salisbury.  
Jacob Bernhard, engineer, 8th ward, City.  
Michael Barry, gentleman, 2d ward, City.  
Edward Becker, coachsmith, Columbia.  
A. Brunner, lumber merchant, Columbia.  
Christian H. Bomberger, farmer, Warwick.  
Henry Becktold, jr., clerk, 5th ward, City.  
Henry Bowman, farmer, Providence.  
W. W. Busser, teacher, Earl.  
John Cox, innkeeper, Carnarvon.  
Adam Doerstler, farmer, Manor.  
Reese H. Davis, tobaccoist, East Earl.  
Charles W. Eckert, grocer, 2d ward, City.  
Dana Graham, combmaker, 9th ward, City.  
Samuel Grove, shoemaker, Columbia.  
William D. Hoar, carpenter, Salisbury.  
Robert Hogg, farmer, Colerain.  
John Z. Hertzler, farmer, Carnarvon.  
John H. High, merchant, East Earl.  
Henry F. Hostetter, farmer, Warwick.  
John Hull, cigarmaker, 5th ward, City.  
Ezra Herr, farmer, West Lampeter.  
Henry Hershey, carriagemaker, Columbia.  
Abraham Hitz, printer, 3d ward, City.  
James Leece, innkeeper, Columbia.  
David Leib, plasterer, Mount Joy Bor.  
Jacob Lindemuth, innkeeper, Columbia.  
Abraham Martin, farmer, East Donegal.  
John S. Miller, farmer, East Donegal.  
William Millar, jeweler, 1st ward, City.  
Jacob Musser, farmer, West Hempfield.  
Samuel H. Nissley, carpenter, Mount Joy Bor.  
William Palm, millwright, Elizabeth Twp.  
Phillip Pyle, laborer, 9th ward, City.  
James F. Ricksecker, cabinetmaker, 3d ward, City.  
Joseph F. Shirk, tailor, West Coacalico.  
J. Guilford Summy, auctioneer, Rapho.  
Pierce Sample, blacksmith, Carnarvon.  
John Trissler, butcher, 9th ward, City.  
Jacob B. Urban, cabinetmaker, Conestoga.  
John Wolgemuth, farmer, West Donegal.  
Christian Weaver, farmer, East Earl.  
Samuel L. Weaver, farmer, East Earl.  
William Witman, farmer, Carnarvon.  
Nelson Wolfskill, constable, East Coacalico.  
H. Z. Walter, miller, Ephrata.  
Silas Wright, innkeeper, 1st ward, City.  
H. M. Weiler, hardware, Earl.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas commencing on Monday, September 3d, 1877:

J. Arment, blacksmith, 8th ward, City.  
Edwin B. Brubaker, miller, Elizabeth twp.  
David Buch, laborer, Penn.  
Phares S. Brubaker, coal and lumber, Warwick.  
William H. Bunn, merchant, Salisbury.  
Thomas H. Collins, farmer, Colerain.  
James C. Carpenter, civil engineer, 2d ward, City.  
Samuel F. Eberlin, coachpainter, Columbia.  
John P. Franke, justice of peace, Columbia.  
Daniel Forry, farmer, Manor.  
John Gibson, furnaceman, 7th ward, City.

Amos Girvin, laborer, Paradise.  
 Samuel Gensemer, gentleman, West Cocalico.  
 George W. Haldeman, merchant, Columbia.  
 Peter B. Herzog, carpenter, West Cocalico.  
 William J. Hoyt, machinist, Columbia.  
 Henry W. Harberger, machinist, 4th ward, City.  
 Frederick Hoster, restaurant, East Donegal.  
 Jacob Hanlen, peddler, Marietta.  
 Daniel Habecker, merchant, Warwick.  
 Jacob F. Kantz, coal dealer, 4th ward, City.  
 E. L. Killian, farmer, East Cocalico.  
 Jacob Keneagy, clerk, 4th ward, City.  
 Jacob D. Kohr, farmer, Manheim Twp.  
 Abraham E. Long, farmer, East Lampeter.  
 William McGlaughlin, farmer, Martic.  
 Benjamin Masterson, farmer, East Donegal.  
 B. J. McGrann, banker, Manheim twp.  
 Edwin C. Musselman, farmer, Strasburg.  
 George W. Mehaffey, gentleman, Marietta.  
 Peter Maurer, farmer, Manheim Twp.  
 Edward Nagle, supervisor, Ephrata.  
 Wm. M. Overly, clerk, Ephrata.  
 Martin Overholser, farmer, Salisbury.  
 William Patton, gentleman, Columbia.  
 John B. Reist, farmer, Penn.  
 Christian Risser, farmer, Elizabeth Twp.  
 E. M. Stouffer, farmer, Rapho.  
 Christ. Schaeffer, merchant, 1st ward, City.  
 Israel Shaeffer, farmer, East Donegal.  
 Henry Shreiner, farmer, Manheim Twp.  
 Preston Shoemaker, carpenter, 6th ward, City.  
 John M. Stehman, gentleman, East Hempfield.  
 R. R. Tshudy, justice of peace, Warwick.  
 Harrison L. Usner, shoemaker, West Cocalico.  
 James White, cabinetmaker, Manheim Bor.  
 Ertion Witmer, lumber dealer, Paradise.  
 William Wright, gentleman, 4th ward, City.  
 Abraham Wenger, coachmaker, Rapho.  
 Henry Wolf, confectioner, Marietta.

**WEEKLY SUMMARY.**

Letters of administration have been granted by the Register on the following estates since July 14, 1877.

THOMAS WYNN, dec'd, late of Sadsbury twp.; Mary Wynd, administratrix.  
 KATE BOWERS, dec'd, late of West Lampeter twp.; Conrad Bowers, administrator.  
 JACOB F. SWORDS, dec'd, late of Mt. Joy bor.; Fanny B. Swords, administratrix.  
 EMANUEL HARNISH, dec'd, late of Pequea twp.; Barbara Harnish and Abm. Harnish, administrators.  
 JACOB NEFF, dec'd, late of West Hempfield twp.; H. N. Kehler, administrator with will annexed.  
 ANNA M. WHITE, dec'd, late of Manheim bor.; Jonas White, administrator.  
 AMOS TOWNSEND, dec'd, late of Sadsbury twp.; Ann W. Townsend, administratrix.  
 JACOB MARTIN, dec'd, late of Lancaster city; Mary M. Martin, administratrix.  
 ELIZABETH GROFF, dec'd, late of Paradise twp.; George Groff and Jacob E. Groff, administrators.

The following Wills have been admitted to probate since July 14, 1877:

ANNA SHOPP, late of Manor twp.; Christian Shopf, executor.  
 BENJAMIN GOOD, late of Conestoga twp.; Andrew Good and Maria Good, executors.  
 JACOB C. BECKER, late of Upper Leacock twp.; Mary Becker and Solomon H. Myer, executors.  
 BENJAMIN LANDIS, late of Manor twp.; John S. Landis and David Landis, executors.

**Auditors' Notices.**

Estate of DANIEL MOURER, late of the township of Providence, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel E. Mourer, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21st, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy21 JACOB HILDEBRAND, Auditor.

Assigned Estate of HERR, BRACKBILL & Co.

The undersigned Auditor, appointed to pass upon exceptions and to distribute the balance remaining in the hands of J. Phenegar, assignee of Herr, Brackbill & Co., to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 16th, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy21 DANIEL G. BAKER, Auditor.

Assigned estate of ADAM F. BAIR and WIFE, of West Hempfield twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benjamin Reot, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy21 L. ELLMAKER, Auditor.

Estate of CATHARINE LINDEMUTH, late of East Donegal twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy21 L. ELLMAKER, Auditor.

Assigned Estate of JOHN M. KEENER and WIFE, of Rapho township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Metzler and Henry Shelly, assignees, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 11th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy21 L. ELLMAKER, Auditor.

Assigned Estate of JACOB SOUDER and WIFE, of East Hempfield twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel E. Miller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy21 L. ELLMAKER, Auditor.

Estate of MARGARET LINDEMUTH, late of East Donegal twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy21 WILLIAM LEAMAN, Auditor.

Estate of JOHN LINDEMUTH, late of East Donegal twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Husser, executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy21 OWEN P. BRICKER, Auditor.

Assigned Estate C. S. MUSSELMAN and WIFE, of Earl twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel Rife and Jacob R. Musser, assignees of C. S. Musselman and wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy14 C. S. HOFFMAN, Auditor.

Assigned Estate of M. M. STRICKLER and WIFE, of Columbia Borough, Lan. Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. Haldeman Herr, assignee of M. M. Strickler and wife, to and among those legally entitled to the same, will sit for that purpose on MONDAY, AUGUST 13th 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy7 A. J. KAUFFMAN, Auditor.

Assigned estate of JOHN REIDINGER and WIFE, of West Donegal twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Addison Eby, assignee, for the benefit of creditors of said estate, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 22d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy14 E. H. YUNDT, Auditor.

Assigned Estate of AARON SHERTZER, of Washington Borough.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. W. Deshong and Wm. Shertzer, assignees, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy14 PHILIP D. BAKER, Auditor.

Estate of MAGDALENA HERSHEY, late of Millersville, Lancaster Co., dec'd.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Andrew Brubaker, executor, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 17th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy14 W. W. BROWN, AND. M. FRANTZ, Auditors.

Estate of JOHN BECKER, late of Rapho twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George S. Becker and Samuel S. Becker, executors, as per 2d account, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 18, 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy14 SIMON P. EBY, Auditor.

Assigned Estate of JOHN W. PFEIFFER, of Warwick township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benjamin Workman, assignee of said John W. Pfeiffer, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy7 GEO. NAUMAN, Auditor.

Assigned Estate of LABORIUS H. SHUTTE, of Mount Joy twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, Esq., assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy7 WM. D. WEAVER, Auditor.

Estate of MICHAEL EBERLY, late of West Cocalico twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Edward Eberly, administrator of Michael Eberly, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, A. D., 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jy7 B. B. FLICKINGER, Auditor.



**Estate of ADAM ROTHARMEL, late of the City of Lancaster, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Rotharmel, administrator *d. b. n. c. t. a.*, of the said Adam Rotharmel, deceased, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 17, 1877, at 2 o'clock, p. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**GEORGE NAUMAN,**  
Auditor.

**Assigned Estate of PETER B. HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Peter B. Hertzog and Wife, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**W. K. SELTZER,**  
Auditor.

**Estate of SARAH LANDIS, late of Lancaster City, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Westhaeffer and John Bubb, executors, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 9th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**H. R. FULTON,**  
**WM. D. WEAVER,**  
Auditors.

**Assigned Estate of PETER W. GORRECHT and WIFE, of Lancaster City.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Adam J. Eberly, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 7th, 1877, at 2 o'clock, p. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**PHILIP D. BAKER,**  
**D. McMULLEN,**  
**WM. D. WEAVER,**  
Auditors.

**Estate of ISAAC RENNINGER, late of Brecknock twp., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Baltzer Schneider, administrator, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, the 17th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. C. DIEHL,**  
**F. G. MUSSER,**  
Auditors.

**Assigned Estate of JOHN O'BRIEN and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel W. Stehman, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**HUGH R. FULTON,**  
Auditor.

**Assigned Estate of A. R. WITMER, of West Hempfield twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi Myers, assignee, by deed of voluntary assignment for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

**Estate of JOHN HAMILTON, late of Rapho township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James W. Hamilton and John G. Hamilton, administrators, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, the 16th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. C. DIEHL,**  
Auditor.

**Estate of BENJAMIN FREDERICK, late of Upper Leacock twp., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jonas Frederick, administrator of said dec'd, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 3d, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. BURKHOLDER,**  
Auditor.

**Estate of GEORGE LEISEY, late of East Cocalico township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cyrus Ream and Israel Leisey, executors of said dec'd, to and among those legally entitled to the same, will attend for that purpose on **THURSDAY, the 16th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**JOHN H. FRY,**  
Auditor.

**Assigned Estate of EZRA BECKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Nissly, Esq., assignee of said Ezra Becker and Wife, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. GOOD,**  
Auditor.

**Estate of JOSEPH WELCHANS, late of Lancaster City, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Dr. George R. Welchans, administrator, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. D. WEAVER,**  
Auditor.

**Assigned Estate of JACOB BRUBAKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of W. K. Seltzer, assignee of Jacob Brubaker and Wife, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10, A. D., 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**A. J. EBERLY,** Auditor.

**Assigned Estate of HENRY LORAH and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Diller P. Herr and Henry D. Bausman, assignees, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**HUGH R. FULTON,**  
Auditor.

**Estate of ELIZABETH ECHTERNACHT, late of East Cocalico twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Krimes, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 4th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. AMWAKE,**  
Auditor.

**Estate of MARY ANN WITMER, late of Providence twp., Lan. co., deceased.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John Hildebrand, administrator of said estate, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 15th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

**Assigned Estate of ELIAS M. SHIRK and WIFE, of East Earl township.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. D. WEAVER,**  
Auditor.

**Assigned Estate of WILLIAM ROBERTS and WIFE, of West Hempfield twp., Lan. co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of Levi Myers, assignee by deed of voluntary assignment, for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

**Assigned Estate of "REISSINGER & STIBGEN," of Marietta, Lancaster co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John W. Rich, assignee by deed of voluntary assignment for the benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,** Auditor.

**Estate of CHRISTIAN ECHTERNACHT, late of East Cocalico twp., Lancaster co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Elias Weitzel and Henry Krimes, executors of said deceased, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 4th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. AMWAKE,**  
Auditor.

**Assigned Estate of H. H. NISSLEY and WIFE, of Mount Joy Borough.**

The undersigned Auditor, appointed to pass upon the exceptions filed to the account of Benjamin F. Eberly, assignee, &c., and to distribute the balance remaining in the hands of said assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**THOS. B. COCHRAN,**  
Auditor.

**Assigned Estate of SAMUEL B. SENSENIG and WIFE, of Brecknock twp.**

The undersigned Auditors, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Jacob G. Garman, assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 8th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. L. STEINMETZ,**  
**C. N. SPROUL,**  
Auditors.

**Estate of JAMES BARNETT, late of Drumore township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Boyd, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **A. F. SHENCK,**  
jy7 Auditor.

**Assigned Estate of ALBIN BROWN and WIFE, of Little Britain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Ephraim Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **C. N. SPROUL,**  
jy7 Auditor.

**Assigned Estate of JOHN GEORGE and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John B. Good, assignee, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **S. M. SENNER,**  
jy7 Auditor.

**Assigned Estate of HENRY SCHMITT and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bork, assignee, to and among those legally entitled to the same, will attend for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **JOHN H. FRY,**  
jy7 Auditor.

**Estate of MATTHIAS ERSCHICK, late of Ephrata township, dec'd.**

The undersigned Auditor, appointed to pass on exceptions, and distribute the balance remaining in the hands of Charles Erschick, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m.,** at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **SIMON P. EBY,**  
jy7 Auditor.

**Estate of JACOB RANCK, late of Earl township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John D. Ranck and Jacob Ranck, executors of the will of the said Jacob Ranck, dec'd, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 22, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **GEO. NAUMAN,**  
jy7 Auditor.

**Assigned Estate of SAMUEL HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Samuel Hertzog and wife, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 1 1/2 o'clock, p. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **W. K. SELTZER,**  
jy7 Auditor.

**Estate of JOHN BRUBAKER, late of West Cocalico twp., Lan. Co., dec'd**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Stober, administrator of John Brubaker, deceased, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, AUGUST 11th, 1877, at 10 1/2 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **JACOB G. GARMAN,**  
jy7 Auditor.

**Estate of JOSEPH HERSHEY, late of Penn twp., Lancaster county, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Joseph Summy and Levi H. Hershey, executors, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, JULY 25th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **L. ELLMAKER,**  
**JOHN M. ENSMINGER,**  
je30 Auditors.

**Estate of HENRY K. DENHAM, late of East Hempfield twp., dec'd.**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to distribute the balance remaining in the hands of Elizabeth Denham and Samuel Hess, administrators of said deceased, (after having first ascertained and fixed the widow's dower in said estate) to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, JULY 26th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend. **FRED. S. PYFER,**  
je30 Auditor.

**Estate of E. Y. CONYNGHAM, late of Lancaster City, dec'd, (trust account.)**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to pass on exceptions filed to said account, and to distribute the balance remaining in the hands of Joel L. Lightner, administrator with will annexed of said deceased, to and among those legally entitled to the same, will attend for that purpose on **THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend. **FRED. S. PYFER,**  
je30 Auditor.

**Assigned Estate of JOHN H. GRING and WIFE, of East Cocalico twp., Lan. Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of John Lutz, assignee, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 9th, 1877, at 10 1/2 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **CHAS. DENUES,**  
**J. W. DENLINGER,**  
je30 Auditors.

**Assigned Estate of RILEY SHEPLER and WIFE, of Penn twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel Keener, assignee of Riley Shepler and Wife, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 1st day of AUGUST, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **SAMUEL H. PRICE,**  
je30 Auditor.

**Assigned estate of SAMUEL H. GRING and WIFE, of the township of East Cocalico, Lancaster county.**

The undersigned auditors appointed to distribute the balance remaining in the hands of A. R. Royer and John Lutz, assignees, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 2d, 1877, at 10 1/2 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **J. W. DENLINGER,**  
**S. W. SHADLE,**  
je23 Auditors.

**Estate of GEORGE BOWMAN, late of Strasburg township, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Henry Musser and H. N. Breneman, executors of the will of George Bowman, deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **E. H. YUNDT,**  
**H. C. BRUBAKER,**  
**B. F. ESHLEMAN,**  
jy7 Auditors.

**Estate of CHRISTIAN SNYDER, late of Washington borough, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Barnherd Mann, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, 4th of AUGUST, 1877, at 10 1/2 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **W. S. AMWEG,**  
jy7 Auditor.

**Assigned Estate of SAMUEL BEATTY and WIFE, of Conoy twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frederiek Smith, assignee, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **JOHN M. MAST,**  
jy7 Auditor.

**Assigned Estate of HENRY MILLER and WIFE, of West Lampeter twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of H. N. Breneman, assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21, 1877, at 2 o'clock, p. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **B. F. ESHLEMAN,**  
jy7 Auditor.

**Assigned Estate of EZEKIEL T. PAINTER, of Drumore twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Richard C. Edwards, assignee of Ezekiel T. Painter, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 8th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **J. W. F. SWIFT,**  
je30 Auditor.

**Assigned Estate of HENRY H. HESS and WIFE, of Willow Street.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of the assignee of said estate, to and among those legally entitled to the same, will sit for that purpose on **MONDAY, AUGUST 6th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **M. BROSIUS,**  
**J. F. FULTON,**  
je30 Auditors.

**Assigned estate of MOSES BRINTON and Wife, of Colerain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cromwell Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 7, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **M. BROSIUS,**  
je30 Auditor.

**Estate of BENJAMIN MOONEY, late of Manor township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bausman, executor, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 11th day of AUGUST, 1877, at 3 o'clock p. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **EMLIN FRANKLIN,**  
je23 Auditor.

**Estate of CHRISTIAN BINKLEY, late of East Hempfield township, Lancaster co., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of William Binkley, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, the 27th day of JULY, A. D., 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **B. C. KREADY,**  
**M. N. BRUBAKER,**  
je23 Auditors.

**Estate Notices.**

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, JOHN STROHM, Jr.,  
Att'y. Administrator.

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

BARBARA HARNISH, widow,  
ABRAHAM HARNISH,  
PHILIP D. BAKER, Att'y. Administrators.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

ANN W. TOWNSEND, widow,  
PHILIP D. BAKER, Att'y. Administratrix.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [jy21]

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to

A. HERR SMITH, Administrator,  
Lancaster Pa. [jy7]

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to

A. HERR SMITH, Administrator,  
Lancaster Pa. [jy7]

**Estate of FREDERICK KOSER, late of Rapho township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Rapho twp., Lan. Co.

REBECCA KOSER,  
FREDERICK Y. KOSER,  
D. McMULLEN, Att'y. Executors. [je30]

**Assigned estate of DR. A. K. ROHRER, of West Hempfield township, Lancaster Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Greider, assignee for the benefit of the creditors of said estate, as shown by his 2d account, will sit for that purpose on FRIDAY, the 10th day of AUGUST, 1877, at 10 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. SLAYMAKER,  
J. W. F. SWIFT,  
Auditors. [je23]

**Assigned Estate of AMOS ALTHOUSE, of East Cocalico twp., Lancaster co.**

Amos Althouse, of East Cocalico township, having by deed of voluntary assignment, dated June 23, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Althouse, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN B. REINHOLD,  
A. J. EBERLY, Att'y, JOHN S. LUTZ, Assignees.  
49 Grant st., Lancaster. Stevens P. O., Lan. co. [je30]

**Assigned estate of JOHN AMMON and WIFE, of Salisbury twp., Lancaster co.**

John Ammon and Wife, of Salisbury township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Ammon, they therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL LEE,  
HENRY AMMON,  
PHILIP D. BAKER, Att'y. Assignees.  
Residing in Salisbury twp. [je23]

**Estate of JAMES MCCA, Esq., late of Caernarvon township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned

DR. D. J. MCCA,  
Residing in Ephrata;  
WM. J. MCCA,  
ANNA E. MCCA,  
Residing in Churchtown,  
Executors. [je23\*]  
W. K. SELTZER, Att'y, Ephrata.

**Assigned estate of HENRY MAULICK and WIFE, of Lancaster City, Lancaster co.**

Henry Maulick and Wife, of Lancaster city, having by deed of voluntary assignment, dated June 20, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Henry Maulick, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

H. K. BURKHOLDER, Assignee,  
Residing in Lancaster City.  
B. F. ESHLEMAN, Att'y. [je23]

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.

LEWIS PICKEL,  
Executor. [jy7]

**Assigned estate of DAVID G. STEACY and WIFE, of Bart township, Lancaster Co.**

David G. Steacy and wife, of Bart township, having by deed of voluntary assignment, dated June 18, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David G. Steacy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL SLOKOM, Assignee,  
Christiana, P. O. [je23]

**Estate of JOHN REIST, SEN., late of Penn township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

H. B. REIST, Mt. Joy twp.,  
JOHN B. REIST, Penn twp.,  
H. S. NISSLEY, East Donegal twp.  
H. C. BRUBAKER, Att'y. [je23] Executors.

**Estate of PHILIP SHREINER, late of Columbia Bor., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said Borough.

REBECCA SHREINER,  
CLARA R. SHREINER,  
PHILIP D. BAKER, Att'y. [je23] Executors.

**Estate of JOHN AMMON, late of Salisbury township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY AMMON, Executor.  
PHILIP D. BAKER, Att'y. [je23]

**Estate of SARAH M. BUYERS, late of Salisbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Salisbury twp.

JAMES A. BUYERS,  
PHILIP D. BAKER, Att'y. Administrator. [je16\*]

**Estate of HUGH M. PENNY, late of Drumore township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Liberty Square, said County.

JOHN J. PENNY,  
SAML M. LONG,  
J. HAY BROWN, } Att'ys. Administrators. [je16]

**Assigned Estate of GEORGE RUSSELL, of Caernarvon twp., Lancaster co.**

George Russell, of Caernarvon twp., having by deed of voluntary assignment, dated June 4, 1877, assigned and transferred all his estate and effect to the undersigned, for the benefit of the creditors of the said Geo. Russell, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. D. WHITE, Assignee,  
Residing in Churchtown, Lancaster co., Pa.  
A. W. SNADER, Att'y. [jun9\*]

**Estate of ROBERT TWINWITH, late of Paradise township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart township.

GEO. WHITSON, Administrator. [jun9]  
P. D. BAKER, Att'y.

**Estate of MICHAEL McCULLON, late of the City of Lancaster, Pa., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

ROSINE McCULLON, Executrix,  
S. P. EBY, } Att'y's. No. 50 South Lime-st.,  
A. J. EBERLY, } [jun9] Lancaster, Pa.

**Estate of PETER EIDENMILLER, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Providence twp.

JOHN TWEED,  
JOHN EIDENMILLER,  
Administrators. [jun9\*]

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, JULY 28, 1877.

No. 9.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE		ARRIVE
	LANCASTER.	HARRISBURG.	
Pacific Express,*	3:40 a. m.	4:05 a. m.	
Way passenger†	4:50 a. m.	7:50 a. m.	
Niagara Express,...	9:35 a. m.	10:40 a. m.	
Hanover Accom.,...	9:40 a. m.	COL. 10.10 a. m.	
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.	
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.	
Sunday Mail,...	11:29 a. m.	1:30 p. m.	
Fast Line,*	3:10 p. m.	3:25 p. m.	
Frederick Accom.,...	3:15 p. m.	COL. 2:45 p. m.	
Harrisburg Accom.,...	6:10 p. m.	8:10 p. m.	
Columbia Accom.,...	7:20 p. m.	COL. 8:00 p. m.	
Harrisburg Express,...	7:25 p. m.	8:40 p. m.	
Pittsburg Express,...	9:25 p. m.	10:50 p. m.	
Cincinnati Express,*	11:30 p. m.	12:45 a. m.	

  

EASTWARD.	LANCASTER.		PHILADELPHIA.
	LANCASTER.	PHILADELPHIA.	
Atlantic Express,*	12:30 a. m.	3:00 a. m.	
Philadelphia Express,†	4:10 a. m.	7:00 a. m.	
Harrisburg Express,...	7:35 a. m.	10:00 a. m.	
Columbia Accom.,...	9:35 a. m.	12:30 p. m.	
Pacific Express,*	1:20 p. m.	3:45 p. m.	
Sunday Mail,...	3:00 p. m.	5:00 p. m.	
Johnstown Express,...	3:05 p. m.	6:00 p. m.	
Day Express,*	5:18 p. m.	7:20 p. m.	
Harrisburg Accom.,...	5:50 p. m.	9:00 p. m.	

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,.....	6:50	7:50	2:30
Lancaster—West King Street,...	8:00	9:16	3:35
Lancaster—Upper Depot,.....	8:10	9:36	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:36	5:30	8:03
Lancaster—West King Street,...	9:45	5:40	8:10
Quarryville, (arrive).....	10:50	7:00	9:15

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.			
	a. m.	p. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00			3:35
Lancaster—Upper Depot,.....	8:10	12:55		3:45
Lancaster Junction,.....	8:37	1:20		4:10
Reading, (arrive).....	10:20	3:20		5:45

  

LEAVE.	GOING SOUTH.			
	a. m.	a. m.	p. m.	p. m.
Reading, .....	7:35	11:40		6:05
Lancaster Junction,.....			p. m.	
Lancaster—Upper Depot,.....	9:13	1:20		7:40
Lancaster—West King Street,...	9:36	2:00		8:03
Lancaster—West King Street,...	9:45			8:10

### Columbia and Port Deposit Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING SOUTH.			
	a. m.	p. m.	p. m.	p. m.
Columbia,.....	5:40	12:01		4:20
Arrive at Peachbottom, .....	7:05	1:55		5:45

  

LEAVE.	GOING NORTH.			
	a. m.	p. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05		5:55
Arrive at Columbia,.....	8:40	4:00		7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Deveus.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweitzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrer, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Phillip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

THE LANCASTER BAR

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**COURT CALENDAR..1877.**

AUGUST.

- 10. Last day for issuing Writs to August Term.
- 18. Last day for filing Accounts to September Court.
- 18. Argument for Rules of Affidavit of Defense.
- 20. Last day for issuing Executions to August Term.
- 25. Calling Judgment Docket.

SEPTEMBER.

- 7. Last day for issuing Writs to September Term.
- 8. Last day for setting down causes for Argument Court.
- 8. Last day for setting down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 22. Last day for setting down causes for trial for October 22.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

**DIVORCE NOTICE.**

CHRISTINE SOPHIA WIRTH, } Alias Subpoena  
 by her next friend Michael Schaubley, } for Divorce,  
 vs. } To June Term,  
 JACOB WIRTH. } 1877, No. 7.

To JACOB WIRTH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Christine Sophia Wirth should not be divorced from the bonds of matrimony contracted with you.

H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, July 16, 1877.

**DIVORCE NOTICE.**

PETER DAGUE } Alias Subpoena for Divorce,  
 vs. } to June Term, 1877.  
 CAROLINE R. DAGUE. } No. 34.

To CAROLINE R. DAGUE: You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Peter Dague should not be divorced from the bonds of matrimony contracted with you.

H. N. BRENEMAN, Sheriff.  
 je30 Sheriff's Office, Lancaster, June 26, 1877.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,  
 OFFICE—No. 25 NORTH DUKE STREET,  
 LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,  
 OFFICE—No. 34 NORTH DUKE STREET,  
 LANCASTER, PA.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JULY 28, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JOHN WEAVER *against* JACOB BUSHONG, Esq. Jurors are not entitled to mileage on views. It is not given by law and the court cannot allow it. The sheriff is not entitled to mileage for summoning jurors to attend upon a view, nor to any fee for his own attendance.

There was a struck jury and view in this case. The cause was ended at December term, 1822, when a bill of costs was filed in which were the following items, viz.:

"James M. Quigg, 2 days, - - -	\$2.00
"Mileage, 17, - - - - -	2.12½
(And so on for ten other viewers.)	
"Attendance and mileage, 2 days, \$	4.12
"Summoning jurors as per annexed bill, - - - - -	14.52

To which bill the following exceptions were filed by plaintiff's attorney, viz.:

"1. No mileage is allowed to jurors on views; and, if allowed, can only be taxed against the county.

"2. That the sheriff's bill is not part of the costs of the term.

"3. That the mileage and service charged by the sheriff (to wit, the last item in the above bill,) is chargeable only to the county and not to the party."

Mr. Buchanan and Mr. Slaymaker for plaintiff.

Mr. Porter and Mr. Rogers for the defendant.

After argument the following opinion was given by—

SMITH, P. J. I am of opinion that jurors on views are not entitled to mileage. Formerly jurors were entitled to no compensation; and the act of assembly which gives the compensation, though it allows mileage to jurors while attending court, allows none to jurors attending a view; and the court cannot allow any *quantum meruit*, or anything not especially provided by act of assembly, but they are entitled to one dollar for each day's attendance, to be paid by the party.

If the service of the sheriff is separate, and not at the time of the general summons of the jury, (which is to be paid by the county,) he is entitled to his fees for the special summoning the jurors to attend a view, at twenty-five cents for each juror, but the act allows him no mileage. And as he is not entitled to mileage, but is expressly excluded on summoning jurors to attend court, the inference is conclusive that he is not entitled to mileage on views; and summoning twelve jurors on a view would be three dollars and no more, and this corresponds with the fees allowed for summoning a jury or inquiry, which is three dollars and no more. But such fees of the

sheriff are part of the costs of the term and must be allowed if demanded.

The item marked thus +, if for the sheriff's attendance on the view, cannot be allowed. There is no provision in the act to authorize it; and though it be a burden, yet he takes the office with all its burdens and many profits.

The bill must be amended agreeably to the above.

## SUPREME COURT OF PENNSYLVANIA.

WOLBACH *et ux.* vs. THE LEHIGH BUILDING ASSOCIATION.

*Husband and wife—Building Associations—Incapacity of wife to become a member, or to bind herself for premiums, fines or dues—Act 12 April, 1859—Not applicable to married women—Mortgage to secure money borrowed for the improvement of wife's separate estate—Right of recovery thereon.*

A married woman cannot become a member of a building association, nor bind herself to them by bond and mortgage for the repayment of a loan, together with premiums, fines and dues. If she attempts so to do, all that the building association can recover on the mortgage is the actual amount of money advanced to and used by her in the improvement of her separate estate, with legal interest.

The Act of 12 April, 1859, providing that the premium and fines accruing to a building association should not be deemed usurious, does not apply to a loan by such association to a married woman.

W. and wife gave a bond and mortgage to a building association by which, in consideration of a sum of money loaned for the improvement of the wife's separate estate, they bound themselves to pay a larger sum, the wife assigning to the association as collateral security certain shares of their stock held by her, and agreeing to pay the dues thereon, or in default thereof certain fines to the association. On a *sci. fa.* upon the mortgage:

Held (reversing the Court below), that the wife was bound only to the extent of the actual money received by her, together with legal interest.

Error to the Common Pleas of Northampton county.

*Scire facias sur mortgage*, dated October 29, 1874, for \$1800 and accrued interest, fines and dues, by the above Building Association, a corporation chartered under the act of April 12, 1859 (Purd. Dig. 183), against Peter Wolbach and Catharine, his wife.

By recitals in the mortgage and accompanying bond, and by the affidavit and supplemental affidavit of claim filed by the corporation plaintiff, it appeared that the money to secure which the mortgage was given was borrowed from the plaintiff by Mrs. Wolbach for the improvement of her separate real estate situate in Northampton county, and applied to that use.

It further appeared that at the time of the loan Catharine Wolbach subscribed to nine shares of stock in the building association. The bond was conditioned for the payment of \$9 a month by the said Catharine on these shares, which were thereby transferred to the association as collateral security, until they should reach the value of \$200 each; for the payment of interest to the amount of \$9 a month on the loan; and for the payment of all fines levied in accordance with the consti-

tution and by-laws; with the proviso that if the said payment on the shares, or of interest or of fines, should be neglected by the said Catharine for the space of six months, the principal sum of \$1800, and all interest accrued thereon, should become immediately payable. The plaintiff's affidavit suggested a neglect for more than six months to pay the said dues, interest and fines, which together amounted to \$447.01. It declared the shares forfeited, and, allowing credit for the payment of \$266.90 on account of the dues, interest and fines, claimed the balance, or \$210.11, in addition to the principal sum, \$1800.

The defendants' affidavit averred that the defendants had received a loan of only \$1300 from the plaintiff corporation, and claimed that they were liable only for that sum, with legal interest, less the above payments of \$266.90.

The court below granted a rule to show cause why judgment should not be entered for the full amount of the mortgage, which, after argument, was made absolute, and judgment was entered in favor of the plaintiff for \$1932.56, being the \$1800 with interest from the date of the loan, less the amount of interest paid on account.

The defendants took out this writ, assigning for error the entry of judgment for the plaintiff in the above sum.

*Edw. J. Fox*, for the plaintiffs in error.

Can a married woman's subscription for stock, and her agreement to pay the dues required to be paid, and in default thereof to pay fines, be enforced against her as a contract? This Court has settled what contracts of a married woman are valid, and has declared all others void.

Though a married woman may contract for necessaries for the use of the family, her bond given for such a debt is void: *Caldwell vs. Walters*, 10 H. 380.

The act of 1848 does not clothe a married woman with the powers of a *feme sole*. In general she is still incapable of contracting debts. Her capacity and liability are exceptional cases. *Mahon vs. Gormley*, 12 H. 82; *Berger vs. Clark*, 29 Sm. 343.

A wife may bind her estate for her husband's debt, but cannot bind it to pay the expenses of collection. *Magaw vs. Stevenson*, 1 Grant 404.

*H. W. Scott*, contra.

By necessary implication, from the act of 1848, a married woman must be able to borrow money on a mortgage for the improvement of her separate estate. If the contract with the association was good for the money actually received, it was good for the bonus, which represented a premium, and for the fines and dues, which, under the act of 12th April, 1859 (Purd. Dig., 183, pl. 6), were not usurious. See—*Jarrett vs. Cope*, 18 Sm. 67; *Seldon vs. Building Association*, 2 *Weekly Notes* 481.

In the last case it was held that the excess of the mortgage debt over the money loaned was presumptively premium.

In *Magaw vs. Stevenson*, cited by the plaintiff in error, the bond was conditioned

for the payment of a certain sum and interest; the mortgage was to secure the payment of the debt, with additional clause, not contained in the bond, authorizing the payment of costs of collection.

A married woman may mortgage her separate property for her husband's debts, and may covenant for a writ of *scire facias* immediately upon default: *Black vs. Galway*, 12 H. 18.

When the conditions of waiver are part of the contract itself, and of the consideration, a married woman is bound thereby: *Miner vs. Graham*, 12 H. 491; *Patterson vs. Robinson*, 1 C. 82.

If this is the wife's contract, the allegation in the affidavit of claim that the money was borrowed for the improvement of her separate estate, and that it was actually so applied, is sufficient to support the judgment of the court below, entered upon the mortgage given to secure not only the debt but the premium, which, under sec. 6 of the act of 1859, already cited, was not usurious.

But if the bond is not valid as against the wife, it is valid as against the husband. Being void as to her, it was his bond singly: *Shallcross vs. Smith*, 2 *Weekly Notes*, 435.

May 7, 1877. THE COURT. The mortgage in this case having been executed by the plaintiffs in error and duly acknowledged in the form prescribed by the act of assembly, it cannot be questioned that it is, in form, a valid pledge of the separate property of the wife; but it is contended that under the admitted facts the mortgagee is not entitled to recover the full amount of the mortgage debt. The question then is, whether the defendant in error is entitled to recover the whole or only a portion of the debt.

The supplemental affidavit of claim and recitals in the mortgage show that it was not intended as security for the debt of the husband for money loaned to him; on the contrary, it is distinctly averred that it was given to secure a loan to the wife for the improvement of her separate estate, and that it was so applied. It appears that she undertook, as a member of the association, to borrow, on her stock, to an amount authorized by the charter, and according to the affidavit of defense the net amount received was \$1300. The bond secured by the mortgage is conditioned for the payment of \$1800, with interest, monthly, until each share of stock shall be worth \$200, at which time the principal will be due and payable; with the proviso, that, if she suffers the monthly payments of interest on the loan, or the monthly dues on her stock, or the fines imposed in accordance with the constitution and by-laws of the association, to be and remain unpaid for the space of six months, then and in either event the principal shall become due and payable immediately.

By assuming to become a member of the association she undertook to pay the monthly dues on her stock and subject herself to the payment of fines; and when she procured the loan she further undertook to pay; or, what is the same thing, allow the association to retain and deduct, from the nominal loan,

the bonus of \$500 and to pay interest on the whole. In addition to this she assigned her stock as collateral security for the monthly dues.

To sum up the result of the transaction in its financial aspect, she became connected with the association in October, 1874; received from it \$1300; paid in on account of fines, dues, and interest, \$266.90; and when suit was brought in April, 1876, after her stock had been forfeited to the association, she was still indebted, according to the affidavit of claim, in the sum of \$2,010.11.

From the facts thus briefly stated, the connection of Mrs. Wolbach with the transaction out of which the mortgage arose, and the purpose for which it was given, are readily understood.

It must be manifest that it was intended to secure the performance of her undertaking as a shareholder and debtor of the association.

It cannot be pretended, simply because her husband is a party to the bond, that the mortgage was given to secure his individual indebtedness. It is not claimed that he received any of the money.

All that was paid was received by her and applied to the improvement of her separate estate. His relation to the bond is not that of principal, but rather in the nature of surety for her.

Regarding the mortgage then as a security for the undertaking of the wife as a shareholder and debtor of the building and loan association, how far has it the right to enforce the security against her separate property? It will not be questioned that it may do so to the full extent of her liability, legal or equitable, but beyond this it has no right to go. The questions then arise, what was the extent of the wife's indebtedness; how far was it competent for her to bind herself, and to what extent did she make herself liable by assuming to become a member of the association and afterwards a borrower on the terms and conditions above indicated? The principles of law in relation to the power of a *feme covert* to make contracts and incur liabilities must furnish the answer to these inquiries.

In general, she is incapable of contracting debts and incurring liabilities. Her capacity and liability are exceptional cases, and whoever seeks to charge her or her separate estate must bring his case within one of the exceptions. Some of these exceptional cases have their foundation in the act of 1848; others arise by necessary implication from her right to own, use and enjoy her separate property. While the act of 1848 was a great innovation upon the common law, "its purpose was to secure the wife in the use and enjoyment of her separate property, not to enable her to make contracts she could not have made before. There is nothing in it which expressly removes her common law disability to contract," unless it be in the position which authorizes her to purchase necessaries for the use of herself and family and thus render her separate estate liable for the claim in case it cannot be collected from her husband, (Bren-

ner's appeal, 11 Wright 73); but her separate estate cannot be charged for necessaries furnished upon the joint contract of herself and husband. (*Berger vs. Clark*, 29 P. F. Smith 343.) If, in purchasing land, she gives a judgment bond, or a mortgage executed by herself, to secure the purchase-money, the land alone is bound, while she herself incurs no personal liability. (*Patterson vs. Robinson*, 1 Casey 82; *Glass vs. Warwick*, 4 Wright 145.)

In such cases the securities against the land are upheld and enforced on equitable grounds, to prevent the gross injustice of permitting her to withhold the price and retain the land. When it is necessary for the preservation and enjoyment of her separate estate, she may, from the very nature and exigency of the case, contract for its repair and improvement (*Lippencott et ux., vs. Hopkins*, 7 P. F. Sm. 328; *Lippencott vs. Leeds*, 27 Id. 420); but, her bond given for such a debt is void; nor is she liable for money borrowed or a debt contracted for the avowed purpose of improving her separate estate, unless it is shown that the money or material has been so applied. (*Heugh vs. Jones*, 8 Casey 432.)

These cases, and many others that might be cited, clearly show, as remarked by the Chief Justice in *Berger vs. Clark*, *supra*, that the endeavor of the court has been to so construe the act as to advance its true purpose, and not, to make the wife's condition less favorable by an interpretation that endangers her real interests. "Hence, in interpreting the special clauses relating to the debts for which she may be held liable, the cases show that they have been so construed as to limit them strictly to the purpose of protection, and not loosely so as to expand her contract capacity and liability." The whole course of decisions on the subject shows that this rule of construction has been rigidly adhered to, and it would be a wide departure from it, indeed, to hold that a married woman may assume liabilities such as were undertaken in this case. Mrs. Wolbach's contract engagements with the association, to which we already referred, are entirely outside of the principles on which any of the exceptional cases rest.

To hold otherwise would be to greatly expand the contract capacity and liability of the wife, and instead of being a protection to her interests would prove to be a snare. The present case is an illustration of the disastrous consequences to which it would lead. In less than three years after she became a member, we find the association seeking to enforce against her separate estate a claim for over \$2000, the net consideration for which was but little over half that sum.

We might with equal propriety hold that she could unite with others in entering into a contract to build a railroad or any other adventure or speculation, and pledge her separate property for the payment of her portion of the outlays and losses.

From what has been said we are justified in concluding that Mrs. Wolbach was incapable of incurring the liabilities she undertook to assume by becoming a member of the association; but it does not follow that she is

wholly exempt from all responsibility under the mortgage. Having received, for the purpose of improving her separate estate, the sum of \$1300, which was applied to that object, her separate property is liable, on the principles above stated, for this amount and interest thereon, less the payments made by her.

It may be claimed that, inasmuch as the premiums, fines, and interest on premiums are by the act of 1859, not deemed usurious, she is also liable for these. This would be so, perhaps, if she were *sui juris*, capable of acquiring membership and assuming the obligations incident thereto. If she was incapable, as we hold she was, by reason of coverture, she could not be liable.

The provisions of the law under which the defendant in error was incorporated, show that such associations are not chartered for the purpose of loaning money generally. It is a mistake to suppose that they have any such power. The fourth section of the act of 1859 makes it their duty to offer, at stated times, the money in the treasury, and loan it in open meeting to the stockholders who shall bid the highest premium; and, in declaring that premiums and fines shall not be deemed usurious, the act evidently refers to those paid by members only. It was intended to regulate the dealings between them and the association, and not between it and those who are not members or incapable of acquiring membership.

The judgment is, therefore, reversed and *procedendo* awarded.

Opinion by STERRETT, J. MERCUR, J. dissensts. SHARWOOD, J. absent.—*Weekly Notes of Cases.*

In a recent case in Philadelphia, *Roserie vs. Kiralfy Brothers*, reported 34 Leg. Int., 185, it was held that, where theatrical managers engage a dancer in a certain position, but afterwards they give her a lower position, she cannot be compelled to take the part, but may consider the contract forfeited, and sue the managers for whatever loss she may have sustained.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JULY 28, 1877.

### WEEKLY SUMMARY.

Letters of administration have been granted by the Register on the following estates since July 21, 1877.

ELIZABETH STIBGEN, dec'd, late of Warwick, twp.; George Steiger, administrator.

JOHN GREINER, dec'd, late of Penn twp.; Henry Plasterer, administrator.

The following Wills have been admitted to probate since July 21, 1877:

LAZARUS FRY, late of Lancaster city; Peter Kautz, executor.

### PROTHONOTARY'S OFFICE.

The accounts of the following named estates will be presented for confirmation on Monday, August 20th, 1877:

D. Kenports and son's assigned estate, E. S. Royer, assignee.

Mary Forster's trust estate, Benj. Grosh, trustee.

Agnes M. Leader's trust estate, Henry Shaffner, trustee.

Henry Kautz and wife's assigned estate, Christian Weidman, assignee.

John Crawford and wife's assigned estate, Valentine Gardner, assignee.

William Koring and wife's assigned estate, John Levergood, assignee.

John H. Weber and wife's assigned estate, Sam'l H. Zahm, assignee.

Charles A. Hook and wife's assigned estate, D. A. Altick, assignee.

Elizabeth Lesh and husband's assigned estate, Jacob Gable, assignee.

Isaac B. Sweigart and wife's assigned estate, Uriah Bitzer, assignee.

R. H. Hindale's assigned estate, Thomas J. Davis, assignee.

### COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN AUGUST, (the 20th,) 1877.

In pursuance of which precept *public notice is hereby given* to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of July 1877.

HY 28 H. N. BRENEMAN, Sheriff.

### INSOLVENT NOTICE.

Notice is hereby given that Godfried Ripple has made application for his discharge under the insolvent laws and that a hearing will be held on SATURDAY, AUGUST 18th, 1877, at 10 o'clock, a. m.

HY 28 GODFRIED RIPPLE.

### INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, AUGUST 18th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

JE 31 SAMUEL S. NISSLEY.

### Auditors' Notices.

Estate of DANIEL MOURER, late of the township of Providence, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel E. Mourer, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21st, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JY 21 JACOB HILDEBRAND, Auditor.

Assigned Estate of HERR, BRACKBILL & Co.

The undersigned Auditor, appointed to pass upon exceptions and to distribute the balance remaining in the hands of J. Phenegar, assignee of Herr, Brackbill & Co., to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 16th, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JY 21 DANIEL G. BAKER, Auditor.

Assigned estate of ADAM F. BAIR and WIFE, of West Hempfield twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benjamin Root, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JY 21 L. ELLMAKER, Auditor.

Estate of CATHARINE LINDEMUTH, late of East Donegal twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.

JY 21 L. ELLMAKER, Auditor.

Assigned Estate of JOHN M. KEENER and WIFE, of Rapho township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Metzler and Henry Shelly, assignees, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 11th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JY 21 L. ELLMAKER, Auditor.

Assigned Estate of JACOB SOUDER and WIFE, of East Hempfield twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel E. Miller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JY 21 L. ELLMAKER, Auditor.

Estate of MARGARET LINDEMUTH, late of East Donegal twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JY 21 WILLIAM LEAMAN, Auditor.

Estate of JOHN LINDEMUTH, late of East Donegal twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JY 21 OWEN P. BRICKER, Auditor.

Assigned Estate C. S. MUSSELMAN and WIFE, of Earl twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel Rife and Jacob R. Musser, assignees of C. S. Musselman and wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JY 14 C. S. HOFFMAN, Auditor.



**Estate of ADAM ROTHARMEL, late of the City of Lancaster, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Rotharmel, administrator *d. b. n. c. t. a.*, of the said Adam Rotharmel, deceased, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 17, 1877, at 2 o'clock, p. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**GEORGE NAUMAN,**  
Auditor.

**Assigned Estate of PETER B. HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Peter B. Hertzog and Wife, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**W. K. SELTZER,**  
Auditor.

**Estate of SARAH LANDIS, late of Lancaster City, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Westhaeffer and John Bubb, executors, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 9th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**H. R. FULTON,**  
**WM. D. WEAVER,**  
Auditors.

**Assigned Estate of PETER W. GORRECHT and WIFE, of Lancaster City.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Adam J. Eberly, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 7th, 1877, at 2 o'clock, p. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**PHILIP D. BAKER,**  
**D. McMULLEN,**  
**WM. D. WEAVER,**  
Auditors.

**Estate of ISAAC RENNINGER, late of Brecknock twp., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Baltzer Schneider, administrator, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, the 17th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. C. DIEHL,**  
**F. G. MUSSER,**  
Auditors.

**Assigned Estate of JOHN O'BRIEN and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel W. Stehman, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**HUGH R. FULTON,**  
Auditor.

**Assigned Estate of A. R. WITMER, of West Hempfield twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi Myers, assignee, by deed of voluntary assignment for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

**Estate of JOHN HAMILTON, late of Rapho township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James W. Hamilton and John G. Hamilton, administrators, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, the 16th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. C. DIEHL,**  
Auditor.

**Estate of BENJAMIN FREDERICK, late of Upper Leacock twp., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jonas Frederick, administrator of said dec'd, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 3d, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**E. BURKHOLDER,**  
Auditor.

**Estate of GEORGE LEISEY, late of East Cocalico township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cyrus Ream and Israel Leisey, executors of said dec'd, to and among those legally entitled to the same, will attend for that purpose on **THURSDAY, the 16th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**JOHN H. FRY,**  
Auditor.

**Assigned Estate of EZRA BECKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Nissly, Esq., assignee of said Ezra Becker and Wife, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. GOOD,**  
Auditor.

**Estate of JOSEPH WELCHANS, late of Lancaster City, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Dr. George R. Welchans, administrator, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. D. WEAVER,**  
Auditor.

**Assigned Estate of JACOB BRUBAKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of W. K. Seltzer, assignee of Jacob Brubaker and Wife, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10, A. D. 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**A. J. EBERLY,** Auditor.

**Assigned Estate of HENRY LORAH and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Diller P. Herr and Henry D. Bausman, assignees, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**HUGH R. FULTON,**  
Auditor.

**Estate of ELIZABETH ECHTERNACHT, late of East Cocalico twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Krimes, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 4th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. AMWAKE,**  
Auditor.

**Estate of MARY ANN WITMER, late of Providence twp., Lan. co., deceased.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John Hildebrand, administrator of said estate, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 15th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

**Assigned Estate of ELIAS M. SHIRK and WIFE, of East Earl township.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 10th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. D. WEAVER,**  
Auditor.

**Assigned Estate of WILLIAM ROBERTS and WIFE, of West Hempfield twp., Lan. co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of Levi Myers, assignee by deed of voluntary assignment, for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,**  
Auditor.

**Assigned Estate of "REISSINGER & STIBGEN," of Marietta, Lancaster co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John W. Rich, assignee by deed of voluntary assignment for the benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**WM. R. WILSON,** Auditor.

**Estate of CHRISTIAN ECHTERNACHT, late of East Cocalico twp., Lancaster co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Elias Weitzel and Henry Krimes, executors of said deceased, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 4th day of AUGUST, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. B. AMWAKE,**  
Auditor.

**Assigned Estate of H. H. NISSLEY and WIFE, of Mount Joy Borough.**

The undersigned Auditor, appointed to pass upon the exceptions filed to the account of Benjamin F. Eberly, assignee, &c., and to distribute the balance remaining in the hands of said assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**THOS. B. COCHRAN,**  
Auditor.

**Assigned Estate of SAMUEL B. SENSENIG and WIFE, of Brecknock twp.**

The undersigned Auditors, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Jacob G. Garman, assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 8th, 1877, at 10½ o'clock, a. m.**, in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**J. L. STEINMETZ,**  
**C. N. SPROUL,**  
Auditors.

**Assigned Estate of M. M. STRICKLER and WIFE, of Columbia Borough, Lan. Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. Haldeman Herr, assignee of M. M. Strickler and wife, to and among those legally entitled to the same, will sit for that purpose on MONDAY, AUGUST 13th 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. J. KAUFFMAN, Auditor. jy7

**Assigned estate of JOHN REIDINGER and WIFE, of West Donegal twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Addison Eby, assignee, for the benefit of creditors of said estate, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 22d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. H. YUNDT, Auditor. jy14

**Assigned Estate of AARON SHERTZER, of Washington Borough.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. W. Deshong and Wm. Shertzer, assignees, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

PHILIP D. BAKER, Auditor. jy14

**Estate of MAGDALENA HERSHEY, late of Millersville, Lancaster Co., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Andrew Brubaker, executor, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 17th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

W. W. BROWN, AND. M. FRANTZ, Auditors. jy14

**Estate of JOHN BECKER, late of Rapho twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George S. Becker and Samuel S. Becker, executors, as per 2d account, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 18, 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

SIMON P. EBY, Auditor. jy14

**Assigned Estate of JOHN W. PFEIFFER, of Warwick township.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benjamin Workman, assignee of said John W. Pfeiffer, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEO. NAUMAN, Auditor. jy7

**Assigned Estate of LABORIUS H. SHUTTE, of Mount Joy twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, Esq., assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. D. WEAVER, Auditor. jy7

**Estate of MICHAEL EBERLY, late of West Cocalico twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Edward Eberly, administrator of Michael Eberly, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, A. D., 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

B. B. FLICKINGER, Auditor. jy7

**Estate of JAMES BARNETT, late of Drumore township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Boyd, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. F. SHENCK, Auditor. jy7

**Assigned Estate of ALBIN BROWN and WIFE, of Little Britain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Ephraim Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

C. N. SPROUL, Auditor. jy7

**Assigned Estate of JOHN GEORGE and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John B. Good, assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

S. M. SENER, Auditor. jy7

**Assigned Estate of HENRY SCHMITT and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bork, assignee, to and among those legally entitled to the same, will attend for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JOHN H. FRY, Auditor. jy7

**Estate of MATTHIAS ERSHICK, late of Ephrata township, dec'd.**

The undersigned Auditor, appointed to pass on exceptions, and distribute the balance remaining in the hands of Charles Ershick, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

SIMON P. EBY, Auditor. jy7

**Estate of JACOB RANCK, late of Earl township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John D. Ranck and Jacob Ranck, executors of the will of the said Jacob Ranck, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 22, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEO. NAUMAN, Auditor. jy7

**Assigned Estate of SAMUEL HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Samuel Hertzog and wife, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 1 1/2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

W. K. SELTZER, Auditor. jy7

**Estate of JOHN BRUBAKER, late of West Cocalico twp., Lan. Co., dec'd**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Stober, administrator of John Brubaker, deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 11th, 1877, at 10 1/2 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JACOB G. GARMAN, Auditor. jy7

**Estate of CHRISTIAN SNYDER, late of Washington borough, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Barnherd Mann, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, 4th of AUGUST, 1877, at 10 1/2 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

W. S. AMWEG, Auditor. jy7

**Assigned Estate of SAMUEL BEATTY and WIFE, of Conoy twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frederick Smith, assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JOHN M. MAST, Auditor. jy7

**Assigned Estate of HENRY MILLER and WIFE, of West Lampeter twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of H. N. Breneman, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21, 1877, at 3 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

B. F. ESHLEMAN, Auditor. jy7

**Assigned Estate of EZEKIEL T. PAINTER, of Drumore twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Richard C. Edwards, assignee of Ezekiel T. Painter, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 8th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. W. F. SWIFT, Auditor. je30

**Assigned Estate of HENRY H. HESS and WIFE, of Willow Street.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of the assignee of said estate, to and among those legally entitled to the same, will sit for that purpose on MONDAY, AUGUST 6th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

M. BROSIUS, J. F. FULTON, Auditors. je30

**Assigned Estate of JOHN H. GRING and WIFE, of East Cocalico twp., Lan. Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of John Lutz, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 10 1/2 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

CHAS. DENUES, J. W. DENLINGER, Auditors. je30

**Assigned Estate of RILEY SHEPLER and WIFE, of Penn twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel Keener, assignee of Riley Shepler and Wife, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 1st day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

SAMUEL H. PRICE, Auditor. je30

**Estate of E. Y. CONYNGHAM, late of Lancaster City, dec'd, (trust account.)**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to pass on exceptions filed to said account, and to distribute the balance remaining in the hands of Joel L. Lightner, administrator with will annexed of said deceased, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend.

FRED. S. PYFER, Auditor. je30

**Assigned estate of SAMUEL H. GRING and WIFE, of the township of East Cocalico, Lancaster county.**

The undersigned auditors appointed to distribute the balance remaining in the hands of A. R. Royer and John Lutz, assignees, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 2d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. W. DENLINGER,  
S. W. SHADLE,  
Auditors.

je23

**Estate of GEORGE BOWMAN, late of Strasburg township, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Henry Musser and H. N. Broneman, executors of the will of George Bowman, deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. H. YUNDT,  
H. C. BRUBAKER,  
B. F. ESHLEMAN,  
Auditors.

je7

**Assigned estate of MOSES BRINTON and Wife, of Colerain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cromwell Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 7, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

M. BROSIUS,  
Auditor.

je30

**Estate of BENJAMIN MOONEY, late of Manor township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bausman, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 11th day of AUGUST, 1877, at 2 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

EMLLEN FRANKLIN,  
Auditor.

je23

**Estate Notices.**

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, JOHN STROHM, JR.,  
Att'y. Administrator.

je21\*

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

BARBARA HARNISH, widow,  
ABRAHAM HARNISH,  
PHILIP D. BAKER, Att'y. Administrators.

je21\*

**Estate of JAMES MCCA, ESQ., late of Caernarvon township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

Dr. D. J. MCCA,  
Residing in Ephrata;  
WM. J. MCCA,  
ANNA E. MCCA,  
Residing in Churchtown,  
Executors.

je23\*

W. K. SELTZER, Att'y, Ephrata.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

ANN W. TOWNSEND, widow,  
Administratrix.  
[je21\*]  
PHILIP D. BAKER, Att'y.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [je31]

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to

A. HERR SMITH, Administrator,  
Lancaster Pa.

je7

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to

A. HERR SMITH, Administrator,  
Lancaster Pa.

je7

**Estate of FREDERICK KOSER, late of Rapho township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Rapho twp., Lan. Co.

REBECCA KOSER,  
FREDERICK Y. KOSER,  
Executors.  
je30  
D. McMULLEN, Att'y.

**Assigned estate of DR. A. K. ROHRER, of West Hempfield township, Lancaster Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Greider, assignee for the benefit of the creditors of said estate, as shown by his 2d account, will sit for that purpose on FRIDAY, the 10th day of AUGUST, 1877, at 10 o'clock a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. SLAYMAKER,  
J. W. F. SWIFT,  
Auditors.

je23

**Assigned Estate of AMOS ALTHOUSE, of East Cocalico twp., Lancaster co.**

Amos Althouse, of East Cocalico township, having by deed of voluntary assignment, dated June 23, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Althouse, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN B. REINHOLD,  
A. J. EBBRLY, Att'y, JOHN S. LUTZ, Assignees.  
49 Grant st., Lancaster. Stevens P. O., Lan. co.

**Assigned estate of JOHN AMMON and WIFE, of Salisbury twp., Lancaster co.**

John Ammon and Wife, of Salisbury township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Ammon, they therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

DANIEL LEE,  
HENRY AMMON,  
Assignees.  
PHILIP D. BAKER, Att'y. Residing in Salisbury twp.  
je23

**Assigned estate of HENRY MAULICK and WIFE, of Lancaster City, Lancaster co.**

Henry Maulick and Wife, of Lancaster City, having by deed of voluntary assignment, dated June 20, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Henry Maulick, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

H. K. BURKHOLDER, Assignee,  
Residing in Lancaster City.

B. F. ESHLEMAN, Att'y.

je23

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.

LEWIS PICKEL,  
Executor.

je7

**Assigned estate of DAVID G. STEACY and WIFE, of Bart township, Lancaster Co.**

David G. Steacy and wife, of Bart township, having by deed of voluntary assignment, dated June 18, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David G. Steacy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL SLOKOM, Assignee,  
Christiana, P. O.

je23

**Estate of JOHN REIST, SEN., late of Penn township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

W. B. REIST, Mt. Joy twp.,  
JOHN B. REIST, Penn twp.,  
H. S. NISSLEY, East Donegal twp.

H. C. BRUBAKER, Att'y. [je23] Executors.

**Estate of PHILIP SHREINER, late of Columbia Bor., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said Borough.

REBECCA SHREINER,  
CLARA R. SHREINER,

PHILIP D. BAKER, Att'y. je23 Executors.

**Estate of JOHN AMMON, late of Salisbury township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY AMMON, Executor.

PHILIP D. BAKER, Att'y.

je23

**Estate of SARAH M. BUYERS, late of Salisbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Salisbury twp.

JAMES A. BUYERS,  
Administrator.

je16\*

PHILIP D. BAKER, Att'y.

**Estate of HUGH M. PENNY, late of Drumore township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Liberty Square, said County.

GEO. NAUMAN, JOHN J. PENNY,  
J. HAY BROWN, Att'ys. SAM'L M. LONG,  
Administrators.

je16

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, AUGUST 4, 1877.

No. 10.

## The Lancaster Bar.

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JNO. H. BARNES,

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PHILIP D. BAKER, EDITOR.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	4:50 a. m.	7:50 a. m.
Niagara Express	9:35 a. m.	9:35 a. m.	10:40 a. m.
Hanover Accom.	9:40 a. m.	9:40 a. m.	COL. 10.10 a. m.
Mall Train via Mt. Joy	11:20 a. m.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia	11:20 a. m.	11:20 a. m.	1:25 p. m.
Sunday Mail	11:29 a. m.	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	2:10 p. m.	3:25 p. m.
Frederick Accom.	2:15 p. m.	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.	6:10 p. m.	6:10 p. m.	8:10 p. m.
Columbia Accom.	7:20 p. m.	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express	7:25 p. m.	7:25 p. m.	8:40 p. m.
Pittsburg Express	9:25 p. m.	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	11:30 p. m.	12:45 a. m.
EASTWARD.		LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	4:10 a. m.	7:00 a. m.
Harrisburg Express	7:35 a. m.	7:35 a. m.	10:00 a. m.
Columbia Accom.	9:38 a. m.	9:38 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	1:20 p. m.	3:45 p. m.
Sunday Mail	2:00 p. m.	2:00 p. m.	5:00 p. m.
Johnstown Express	3:05 p. m.	3:05 p. m.	6:00 p. m.
Day Express,*	5:15 p. m.	5:15 p. m.	7:20 p. m.
Harrisburg Accom.	5:50 p. m.	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville	6:10	7:50	2:10
Lancaster—West King Street	7:20	9:10	3:15
Lancaster—Upper Depot	7:30	9:30	3:25
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot	10:16	5:30	8:33
Lancaster—West King Street	10:25	5:40	8:45
Quarryville, (arrive)	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street	7:20		3:15
Lancaster—Upper Depot	7:30		3:25
Lancaster Junction	7:57		3:51
Reading, (arrive)	10:20		5:50
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading	7:35		6:05
Lancaster Junction	9:53		8:15
Lancaster—Upper Depot	10:10		8:33
Lancaster—West King Street	10:25		8:45

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia	5:40	12:01	4:29
Arrive at Peachbottom	7:05	1:55	5:45
GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom	7:15	2:05	5:55
Arrive at Columbia	8:40	4:00	7:30

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

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Official Directory.

Supreme Court of the United States.

Appointed. Chief Justice—Morrison R. Waite, of Ohio, 1874 Justices—Nathaniel Clifford, of Maine, 1858 Noah H. Swayne, of Ohio, 1862 Samuel F. Miller, of Iowa, 1862 Stephen J. Field, of California, 1863 William Strong, of Pennsylvania, 1870 Jos. P. Bradley, of New Jersey, 1870 Ward Hunt, of New York, 1872 Attorney General—Charles E. Devens.

Supreme Court of Pennsylvania.

Chief Justice—Daniel Agnew. Associate Justices—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret. Attorney General—George Lear.

Prothonotaries:

Eastern District—Benj. E. Fletcher, Philadelphia. Western District,—J. B. Sweitzer, Pittsburgh. Middle District—Robert Snodgrass, Harrisburg. Northern District—J. A. J. Cummings, Montandou, Northumberland county. Reporter—A. Wilson Norris.

Places and time for holding Court:

At Philadelphia, commencing 1st Monday in January. At Harrisburg, commencing 1st Monday in May. At Pittsburgh, commencing 1st Monday in October. At Sunbury, commencing 3d Monday in September.

Second Judicial District.

President Judge—John B. Livingston. Additional Law Judge—David W. Patterson. Associate Judge—John J. Libhart. District Attorney—J. W. Johnson.

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Prothonotary—Lewis S. Hartman. Deputy—Wm. E. Kreider. Clerks—P. E. Slaymaker and Thos. B. Hartman. Register—Harrison Ross. Deputies—W. M. Slaymaker and C. H. Fasnacht. Recorder—Samuel S. Martin. Deputy—Benj. Bauman. Clerks—Geo. R. Sensenig and M. O. Sensenig. Sheriff—Henry N. Breneman. Deputies—Jno. D. Wilson and G. W. Benedict. Clerk of Orphans' Court—Samuel L. Kauffman. Clerk of Quarter Sessions—Stephen S. Clair. Deputy—B. F. W. Urban. Commissioners—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller. Clerk—John M. Grider. County Solicitor—J. Hay Brown. County Treasurer—Henry S. Eberly. Clerk—Amaziah C. Barr. Coroner—Amos Groff. County Surveyor—M. N. Brubaker. County Auditors—N. N. Hensel, A. Konigmacher and H. S. Kerns.

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COURT CALENDAR--1877.

AUGUST.

- 10. Last day for issuing Writs to August Term. 18. Last day for filing Accounts to September Court. 18. Argument for Rules of Affidavit of Defense. 20. Last day for issuing Executions to August Term. 25. Calling Judgment Docket.

SEPTEMBER.

- 7. Last day for issuing Writs to September Term. 8. Last day for setting down causes for Argument Court. 8. Last day for setting down causes for trial for October 8 and 15.

DIVORCE NOTICE.

CHRISTINE SOPHIA WIRTH, by her next friend Michael Schaibley, vs. JACOB WIRTH. Alias Subpoena for Divorce, To June Term, 1877, No. 7.

To JACOB WIRTH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Christine Sophia Wirth should not be divorced from the bonds of matrimony contracted with you.

H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, July 16, 1877.

DIVORCE NOTICE.

PETER DAGUE vs. CAROLINE R. DAGUE. Alias Subpoena for Divorce, to June Term, 1877, No. 34.

To CAROLINE R. DAGUE: You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Peter Dague should not be divorced from the bonds of matrimony contracted with you.

H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, June 26, 1877.

INSOLVENT NOTICE.

Notice is hereby given that Godfried Ripple has made application for his discharge under the insolvent laws and that a hearing will be held on SATURDAY, AUGUST 18th, 1877, at 10 o'clock, a. m. jy28 GODFRIED RIPPLE.

INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, AUGUST 18th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper. je31 SAMUEL S. NISSLEY.

COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN AUGUST, (the 20th,) 1877.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of July 1877: jy28 H. N. BRENEMAN, Sheriff.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., AUG. 4, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—ED.]

## HAYES' OPINIONS.

CHRISTIAN SCHNADER, administrator of SOLOMON BITZER, dec'd, against JOHN BITZER, executor of JOHN BITZER, dec'd.

On an execution against an executor, returned by the sheriff *nulla bona* and *devastavit*, a *fi. fa. de bonis propriis* against the executor is regular both by the English practice and our own.

If an executor issues for the amount really due, though less than the sum mentioned in the judgment, it will not be set aside for that cause, when the *precept* referred to the judgment by its number and term. The court may permit the execution to be amended by the *precept* so as to conform to the judgment.

The representative of a deceased plaintiff may suggest the death on the record, and substitute himself without motion, to the court. But if he be not, in truth, the legal representative, the court may stay the execution, if he has issued one, and order an amicable *scire facias*, in which the defendant may plead the alleged wrongful administration.

But when there is a contest respecting the right to letters of administration, and an appeal pending from a decree of the register's court concerning the right, this court will not suspend proceedings on execution by the administrator *de facto*, nor order an amicable *sci. fa.* to issue to determine who is the legal administrator.

THOMPSON, J. This suit was originally brought by Christian Schnader, as guardian of Solomon Bitzer, deceased, to recover from the defendant, John Bitzer, the amount of a legacy left to Solomon by John Bitzer, his father. On the 18th June, 1825, a verdict and judgment were given for the plaintiff for the sum of \$2,500; the plaintiff to give security, if his ward died under age and without issue, to refund \$1,600 to be applied to the uses directed by the testator's will, if the plaintiff should die under age and without issue.

On the 1st July, 1825, a bond was filed pursuant to the terms of the judgment. On the 18th August, 1825, a *feri facias* issued, returnable to September term, on which the sheriff returned *nulla bona* and *devastavit*. On the 28th November following, the death of Solomon Bitzer, the plaintiff, was suggested on the record, and C. Schnader, the administrator, substituted. On the 20th December, 1825, the letters of administration to C. Schnader were revoked by the register's court. On the 16th January, 1826, letters of administration were again granted to C. Schnader, and on the 23d of the same month he was again substituted plaintiff on the record. The substitution took place in the office of the prothonotary without any application to the court. On the 3d of February following an *alias fi. fa.* and *fi. fa. de bonis propriis* were

issued for the whole amount of the judgment. On the 8th of the same month Mr. Hopkins for the defendant, moved for a rule to show cause why the return to the *fi. fa.* and *alias fi. fa.* and the *fi. fa. de bonis propriis* should not be set aside. This motion was argued at the June term last, and the court set aside *alias fi. fa.* and *fi. fa. de bonis propriis* on the ground that the plaintiff having died under age and without issue, the executions ought not to have been issued to collect more than \$900 and interest, being the balance of the judgment after deducting \$1,600 which were to be refunded on the happening of that contingency. On the 21st June the plaintiffs issued a *pluries fi. fa.* and an *alias fi. fa. de bonis propriis* for \$900, the balance of the judgment, as before mentioned; on which the sheriff, to September term, returns that he had made the money.

The court is now moved to set aside these last mentioned writs and to restore the money made to the defendants on the following grounds:

1. Because it is alleged the practice in the State does not warrant the issuing of a *fi. fa. de bonis propriis* against an executor on the return of the sheriff of a *devastavit*.

2. Because the executions are only for \$900 and the judgment is for \$2,500.

3. And as the administrator was substituted without motion to the court, and there being a contest as to who ought to have the administration, the court is requested to order an amicable *sci. fa.*, or an issue in the nature of it, to ascertain who is the rightful administrator, and to stay the proceedings in the meantime.

In relation to the first point, it is admitted that these proceedings have been according to the course of practice in the courts of common law in England. There, there are two modes of proceeding, one by a return of *nulla bona testatoris* and a *devastavit*, on which a *fi. fa. de bonis propriis* immediately issues; the other where the sheriff returns *nulla bona testatoris* without the *devastavit*, in which the plaintiff may either proceed by *scire fieri* inquiry or by action of debt on the judgment suggesting a *devastavit*: 2 Archt. Practice 134-5. The proceedings by return of *devastavit* is founded on the principle that the judgment is a conclusive admission of assets, which the defendant is not permitted to controvert. On a judgment *de bonis testatoris si, etc.*, and *si non quando acciderint*, this proceeding can not be had, because there is no admission of assets. But the plaintiff must resort to his *sci. fa.* of the judgment, suggesting that since its rendition assets have come to the hands of the executor: 2 Archt. Prac. 85, 132. In the case now under consideration the suit was for a legacy. *Plene administravit* was not pleaded. The verdict and judgment are general, and are, therefore, conclusive admission of assets: *Hussey vs. White*, 10 Sergt. & R. 346; 11 Vez. 313. *Toller's Executors*, 18. Upon such a judgment the sheriff may, if there be no goods of the testator shown by the defendant, return a *devastavit*: Cro. Eliz. 102; 4 Sergt. & Rawle 396. On this return being made, the plaintiff may immediately sue out his *fi.*

*fa. de bonis propriis*. This is the course of the English practice. Either this practice prevails here, or some other different one has been introduced in its stead. The cases in which this subject has come under consideration in the supreme court, so far from warranting the opinion, that the English practice has not been adopted by our courts, go to establish a contrary position. I can see no reason, either from the nature of things, or from any peculiarity in the situation of this country, to determine that the principles of the common law, so far as they affect the case now under consideration, shall not be considered as the rules on which our practice ought to proceed. The judgment being general, and therefore a conclusive admission of assets, and the return of a *devastavit* on a *fi. fa. de bonis propriis* being warranted by the common law and not abolished by any act of assembly, or practice peculiar to Pennsylvania, I am of opinion that there is no irregularity in the executions on this ground. The court, however, go no further than the facts of this case require. They do not decide whether the return of a *devastavit* is in this State conclusive evidence of that fact incontrovertible, except in a suit against the sheriff.

What power the court has, in a case of fraud or mistake, to set aside the return, or in a case of false return, clearly made out, accompanied with proof of the insolvency of the sheriff who made it, or other facts strong-ly appealing to the conscience of the court, to give relief by some other process, is not now necessary or proper to determine.

The second objection is, that the executions do not follow the judgment, having issued for a less sum. Though these executions may not be quite formal, in not reciting the facts appearing on the record which render it proper they should issue for \$900 only, yet I do not think they ought, on that ground, be set aside. The *precept* refers to the judgment by its number and term, and the executions have been issued for the sum actually due by the terms of the judgment and the facts subsequently appearing on the record. The court, therefore, have authority to permit the *fi. fa.* to be amended by the judgment: *Black vs. Wistar*, 4 Dall. 267. The *precept* being part of the record, and referring to this judgment, and this mandate being not in opposition to, but in accordance with the terms of the judgment, this point is clear of difficulty.

The third point is of considerable importance in practice. In the case of *Deiser vs. Sterling*, 10 Sergt. & R. 119, the supreme court have recognized the principle that the representative of a deceased plaintiff may suggest the death on the record and substitute himself without motion to the court.

Judge GIBSON, however, in delivering the opinion says, that if the person substituted be not in truth the legal representative, the court will, on reasonable ground being laid, stay the execution where one has issued, and order the parties to appear to an amicable *sci. fa.* to give the defendant an opportunity to plead the matter alleged. It is manifestly

not the intention of the supreme court to declare that it is the duty of the inferior tribunal to stay proceedings and order an amicable *scire facias* for every cause that may be alleged. It must be a reasonable cause; that is, it must be such a one as if pleaded and admitted, or found by a jury to be true, would, in law, justify the court in pronouncing that the person substituted is not the legal representative of the deceased plaintiff. The facts alleged in the case are, that on the 14th September, 1825, letters of administration were issued to Christian Schnader, who claimed to have them as a creditor of the deceased. That on the 20th December, following, these letters were vacated by the register's court, on a citation issued at the request of John Bitzer, the defendant in this cause, who claims the right to have the letters granted to him as next of kin; that the register's court, in these letters, ordered that the grant of new letters should be suspended until notice was given of the application of John Bitzer. It appears further that in pursuance of this order the register issued a citation to the next of kin to appear on the 16th January, 1826, to show cause why letters should not be granted to John Bitzer; that on the day the parties appeared some of them protested against granting letters to John Bitzer, and that letters were again granted to Christian Schnader at the request of a majority of the heirs; that on the 22d March following, these letters were again revoked by the register's court, and an order made that letters should issue to John Bitzer; that on the 27th of the same month, Christian Schnader appealed from the decree of the register's court to the supreme court; that this appeal has not yet been heard; and that on the 3d April, following, letters of administration were granted by the register to John Bitzer. On these facts it is contended the court ought to interfere, suspend the execution and order an amicable *sci. fa.*, to try who is, in truth, the administrator of Solomon Bitzer.

By the 18th section of the act of 1791, Purd. D. 477, it is enacted that no appeal from the decree of the said register's court, concerning the validity of a will, or the right to administer, shall stay proceedings or prejudice the act of any executor or administrator, pending the same. In the case of *Shauffer vs. Stoever*, administrator of Stroh, the defendant pleaded that the administrator had been dismissed from his trust by the register's court, and the letters of administration which had been fraudulently and surreptitiously obtained, revoked, and that the court had decreed that new letters should issue to another person. The court charged the jury that a decree of the register's court, revoking letters of administration and directing them to another person, from which an appeal had been taken by the administrator, did not, while the appeal was pending in the supreme court, suspend the power to proceed in the recovery of the debts due to the intestate. The supreme court affirmed this judgment, and gave it as their opinion that pending the appeal the letters of administration granted by the register were in force. I am clearly of opinion that this act and the judi-

cial construction that has been put upon it in this case are conclusive on this question. While the appeal is depending, the subject is so entirely under the control of another and a superior tribunal, that this court cannot interfere with it. If the facts in this case were submitted to a jury in an amicable *sci. fa.* to inquire who is the legal representative of Solomon Bitzer, I am clear that the law would enjoin it on the court, as their duty to charge the jury that the letters of administration granted to C. Schnader, are of force till the decree of the register's court revoking them is affirmed in the supreme court, and if a verdict were formed contrary to their charge, it would be equally their duty to set it aside. Why, then, should the court stay the proceedings in the case and occupy the time of the jury in trying facts which, when they are admitted, the law has adjudged incompetent to afford the defendant the relief he desires? I am, therefore, of opinion the defendant has not laid such ground as will authorize the court to compel the plaintiff to plead to an amicable *sci. fa.* to try whether C. Schnader is legally the administrator of Solomon Bitzer, deceased, and that the rule to show cause should be discharged.

Mr. Reigart for the plaintiff.

Mr. Hopkins for defendant.

#### SUPREME COURT OF PENNSYLVANIA.

SCHRACK vs. McKNIGHT.

1. An agent constituted for a particular purpose and under a limited power, cannot bind his principal if he exceeds that power.
2. A subsequent ratification by a principal of the unauthorized act of his agent, may have the same effect as previous authority.
3. The principal is bound to disavow the unauthorized act of his agent as soon as that fact comes to his knowledge; otherwise, as to third persons, he makes the act his own. But as between him and his agent the rule is not so stringent. In the latter case he is not bound to disavow the act until he has such information of the facts and circumstances as will enable him to act understandingly.

Error to the Court of Common Pleas of Berks county.

Opinion by MERCUR, J. May 7, 1877.

We discover no substantial error in the fifth, sixth, and ninth assignments. All the other assignments relate to questions of agency, and will be considered together.

Three rules in regard to the liability of a principal for the acts of one professing to be his agent are pretty well established.

1. An agent constituted for a particular purpose and under a limited power, cannot bind his principal if he exceeds that power.
2. A subsequent ratification by a principal of the unauthorized act of his agent, may have the same effect as previous authority.
3. The principal is bound to disavow the unauthorized act of the agent as soon as that fact comes to his knowledge; otherwise, as to third persons, he makes the act his own: *Bredig vs. Dubarry*, 14 S. & R. 27; *Valentine vs. Packer*, 5 Barr, 333. But, as between him and his agent, the rule is not so stringent. In the latter case he is not bound to disavow

the act until he has such information of the facts and circumstances as enable him to act understandingly: *Porter vs. Patterson*, 3 Harris, 229.

In this case the letter of attorney was specific and with a limited power. It authorized the agent to subscribe for five shares of stock for the principal; to pay a specific sum as the first instalment for him; and to vote the stock so subscribed as fully as the principal could do if personally present. These three specific acts were all the letter of attorney authorized the agent to do. The language clearly implied that the stock should be subscribed in the name of the principal. The sum so paid as the first instalment was advanced to the agent at the time he was authorized to subscribe. Under this specific and restricted agency, it is clear that the agent could not subscribe in his own name for a much greater number of shares, and long afterwards compel his principal to take five shares off his hands.

It further appears, by the testimony of witnesses, that at the very time the agent was authorized to make this subscription, the principal said to him that he wanted the stock put in his own name, and that the agent replied he would put it down in his (Schrack's) name.

Subsequently the agent caused a certificate for the whole stock purchased by him to be issued to himself. Neither the mode of subscription, nor the form of the certificate, appears to have been authorized by the principal. They were contrary to both the written and verbal authority given. The principal had the right to require a strict execution of the power given: *Story on Agency* 192; *Wilson vs. Wilson*, 2 Casey 393.

He may have had a very substantial reason for desiring the stock to be subscribed in his own name. Be that as it may, he had the right to direct it, and his agent had no power to disregard those instructions and hold the principal liable for his action: *Story on Contracts*, § 359.

The plaintiff in error then could only be made liable for the unauthorized act of his agent, by a failure to repudiate the act after information, or by ratification. The evidence would not justify the court in saying, as a conclusion of law, that the plaintiff had ratified the acts of the agent, either by omission or commission. Those were questions of fact which should have been submitted to the jury to find under a proper review of the evidence.

The fact that a jury might find that the defendant acted in good faith does not enlarge his power. Neither does it absolve him from the obligation to obey his instructions. Nor does it dispense with the necessity of procuring a subsequent ratification. We see no evidence of any prior agreement that the defendant in error should subscribe for the stock in his own name, and hold it in trust for the plaintiff in error. Without such evidence it was error to submit that fact to the jury. So it was error to say to the jury in the imperative manner the court did, that when the plaintiff in error discovered the

stock was in the name of his agent, if he was not satisfied with the manner of subscription, he should have demanded a cancellation of the letter of attorney, or a transfer of the stock to his own name. He was not bound to do either. A cancellation of the letter of attorney would not affect the action already taken under it. Nor was he obliged to then accept the stock. The conduct and action of the plaintiff in error when he discovered the fact referred to, and subsequently, were evidence pertinent for the jury to consider as bearing on the question of ratification. In so far as the court refused to affirm the sixth point submitted by the plaintiff in error that he was not liable without "positive proof" of subsequent ratification, we see no error. The word "positive" is too strong. It is defined by Webster to mean "direct," "express," "opposed to circumstantial."

The proof should be "satisfactory," but it may be such without being "positive." In that portion of the charge covered by the second assignment, the jury were told the plaintiff in error might be liable "even without proof of subsequent ratification," if the agent acted in good faith, although the plaintiff in error told him he wanted the stock in his own name. It is true, the judge added, if the agent made the subscription in his own name "for the mere purpose of carrying out the trust," he thereby assumed the existence of the trust, which is denied by the plaintiff in error. The fact of their being such a trust as to bind the principal, was a question to be first found by the jury, before he could be held responsible on it. The tendency of the charge was calculated to mislead the jury from a proper consideration of the controlling question in the case. It therefore follows that in so far as we have not qualified the language in the written points, the assignments are substantially sustained.

Judgment reversed and a *venire facias de novo* awarded.—*Pitts. Leg. Journal.*

#### SUPREME COURT OF MINNESOTA.

CLÓTHIDALDA BUERFENING, Respondent, vs.  
JACOB BUERFENING Appellant.

In an action for divorce, upon any other ground than that of adultery, the adultery of the plaintiff is not a bar to the action. But if plaintiff claims in her complaint alimony, her adultery may be pleaded and proved as a defense in whole or in part to that claim.

GILFILLAN, C. J. Filed May 31, 1877.

Action for divorce and alimony on the grounds of habitual drunkenness, and cruel and inhuman treatment.

The answer, in addition to denials, alleges various acts of adultery committed by the plaintiff. To the part of the answer alleging plaintiff's adultery a demurrer was interposed and sustained. This was the error complained of. We do not think the answer can be sustained as a complete bar to the action for divorce.

The statute, sec. 6, ch., 62, Gen. Stat., gives the action for divorce for adultery and inhuman treatment, habitual drunkenness, and three other causes. Section 8 provides: "In any action brought for a divorce on the

ground of adultery, although the fact of adultery is established, the court may deny a divorce in the following cases:

*First.* When it appears that the defense was committed by the procurement, or with the connivance of the complainant. *Second.* Where there has been an express forgiveness of the adultery charged, or a voluntary cohabitation of the parties with knowledge of the offence. *Third.* When the action has not been brought within three years after the discovery by the complainant of the offence charged. *Fourth.* When it is proved that the complainant has been guilty of adultery under such circumstances as would have entitled the defendant, if innocent, to a divorce. These defenses are limited by the statute to cases where the action is on the ground of adultery.

By limiting them to that class of cases, the legislature may fairly be presumed to have intended that the specified acts alone shall not be defenses in other cases: *Ristine vs. Ristine*, 4 Rawle 460.

But while the adultery of plaintiff is not necessarily a bar to the action in such cases, it is proper to be pleaded as a total or partial defense to a claim for alimony. An adulterous woman cannot stand in regard to alimony the equal of one whose conduct is irreproachable.

In determining the amount to be allowed, the good or bad conduct of the parties is always material. Bad conduct with a view to this part of the case cannot be proved unless pleaded.

In the order upon the demurrer it is stated that the charge is clearly pleaded as a bar to the action, and that the effect which it may have upon the question of alimony and custody of the children can be determined at the proper time. The purpose for which the allegations are made is not stated in the answer. There is nothing in it to indicate that the defendant intended them only as a defense the prayer for divorce, and as the misconduct charged cannot be proved for any purpose unless pleaded the defendant's right to offer proof of the allegations is determined by the order sustaining the demurrer to the part of the answer containing them. That order disposed of these allegations. For error in sustaining the demurrer, that order is reversed, and the judgment must be reversed so far as it allows alimony, and a new trial of that issue ordered. And after such trial the court below is directed to modify its judgment so far as to allow the alimony decided to be proper after such trial. The judgment, so far as it decrees a divorce, is affirmed.—*Northwestern Reporter.*

A SEARCHER after something or other, running his eye down the index of a law-book through letter B, arrived at the reference "Best—Mr. Justice—his great mind." Desiring to be better acquainted with the particulars of this assertion, he turned to page referred to, and there found, to his entire satisfaction, "Mr. Justice Best said he had a great mind to commit the witness for perjury."

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., AUG. 4, 1877.

### WEEKLY SUMMARY.

Letters of administration have been granted by the Register on the following estates since July 28, 1877.

ADAM BRENEMAN, dec'd, late of Lancaster city; A. N. Breneman, administrator.

S. W. P. BOYD, dec'd, late of Fulton twp.; Jeremiah B. Boyd and Samuel Boyd, administrators.

MARY SCHULER, dec'd, late of Columbia bor.; Frederick Bucher, administrator with will annexed.

STEPHEN BROWN, dec'd, late of Fulton twp.; Robert Warden and Hezekiah Brown, administrators.

The following Wills have been admitted to probate since July 28, 1877:

MARY SNYDER, late of Washington bor.; A. J. Kauffman, esq., executor.

MARY ANN MICHEL, late of Paradise twp.; Simon P. Eby, esq., executor.

WILLIAM BROWN, late of Fulton twp.; Montillon Brown and Haines Brown, executors.

DORATHEA GREINER, late of Penn twp.; Matthias Hoffer and John M. Will, executors.

SARAH DANCE, late of West Lampeter twp.; Lizzie F. Sides, executrix.

CHRISTIAN HIESTAND, sr., late of East Hempfield twp.; Samuel Hiestand, Henry Hiestand and Chn. K. Long, executors.

SAMUEL LESHER, late of East Cocalico twp.; Edw. Leshner and E. S. Leshner, executors.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

### Auditors' Notices.

Estate of DANIEL MOURER, late of the township of Providence, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel E. Mourer, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21st, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy21 JACOB HILDEBRAND, Auditor.

Estate of JOHN LINDEMUTH, late of East Donegal twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy21 OWEN P. BRICKER, Auditor.

Assigned Estate C. S. MUSSELMAN and WIFE, of Earl twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel Rife and Jacob R. Musser, assignees of C. S. Musselman and wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy14 C. S. HOFFMAN, Auditor.



**Estate of ADAM ROTHARMEI, late of the City of Lancaster, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Rotharmel, administrator *d. b. n. c. t. a.*, of the said Adam Rotharmel, deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 17, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 GEORGE NAUMAN,  
Auditor.

**Assigned Estate of PETER B. HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Peter B. Hertzog and Wife, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 W. K. SELTZER,  
Auditor.

**Estate of SARAH LANDIS, late of Lancaster City, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Westhaeffer and John Bubb, executors, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 H. R. FULTON,  
WM. D. WEAVER,  
Auditors.

**Assigned Estate of PETER W. GORRECHT and WIFE, of Lancaster City.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Adam J. Eberly, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 7th, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 PHILIP D. BAKER,  
D. McMULLEN,  
WM. D. WEAVER,  
Auditors.

**Estate of ISAAC RENNINGER, late of Brecknock twp., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Baltzer Schneider, administrator, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 17th day of AUGUST, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 E. C. DIEHL,  
F. G. MUSSER,  
Auditors.

**Assigned Estate of JOHN O'BRIEN and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel W. Stehman, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 HUGH R. FULTON,  
Auditor.

**Assigned Estate of A. R. WITMER, of West Hempfield twp., Lancaster co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi Myers, assignee, by deed of voluntary assignment for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 WM. R. WILSON,  
Auditor.

**Estate of JOHN HAMILTON, late of Rapho township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James W. Hamilton and John G. Hamilton, administrators, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 16th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 E. C. DIEHL,  
Auditor.

**Estate of GEORGE LEISEY, late of East Cocalico township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cyrus Ream and Israel Leisey, executors of said dec'd, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, the 16th day of AUGUST, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 JOHN H. FRY,  
Auditor.

**Assigned Estate of JOHN M. KEENER and WIFE, of Rapho township.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Metzler and Henry Shelly, assignees, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 11th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy21 L. ELLMAKER, Auditor.

**Assigned Estate of JACOB SOUDER and WIFE, of East Hempfield twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel E. Miller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy21 L. ELLMAKER,  
Auditor.

**Assigned estate of ADAM F. BAIR and WIFE, of West Hempfield twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benjamin Root, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy21 L. ELLMAKER,  
Auditor.

**Estate of CATHARINE LINDEMUTH, late of East Donegal twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.

Jy21 L. ELLMAKER, Auditor.

**Assigned Estate of HERR, BRACKBILL & Co.**

The undersigned Auditor, appointed to pass upon exceptions and to distribute the balance remaining in the hands of J. Phenegar, assignee of Herr, Brackbill & Co., to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 16th, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy21 DANIEL G. BAKER, Auditor.

**Estate of MARGARET LINDEMUTH, late of East Donegal twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy21 WILLIAM LEAMAN, Auditor.

**Estate of MARY ANN WITMER, late of Providence twp., Lan. co., deceased.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John Hildebrand, administrator of said estate, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 15th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 WM. R. WILSON,  
Auditor.

**Assigned Estate of ELIAS M. SHIRK and WIFE, of East Earl township.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 WM. D. WEAVER,  
Auditor.

**Assigned Estate of WILLIAM ROBERTS and WIFE, of West Hempfield twp., Lan. co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of Levi Myers, assignee by deed of voluntary assignment, for benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, the 7th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 WM. R. WILSON,  
Auditor.

**Assigned Estate of "REISSINGER & STIBGEN," of Marietta, Lancaster co.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John W. Rich, assignee by deed of voluntary assignment for the benefit of creditors, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 9th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 WM. R. WILSON, Auditor.

**Assigned Estate of H. H. NISSLEY and WIFE, of Mount Joy Borough.**

The undersigned Auditor, appointed to pass upon the exceptions filed to the account of Benjamin F. Eberle, assignee, &c., and to distribute the balance remaining in the hands of said assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 THOS. B. COCHRAN,  
Auditor.

**Assigned Estate of SAMUEL B. SENSENIG and WIFE, of Brecknock twp.**

The undersigned Auditors, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Jacob G. Garman, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 8th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 J. L. STEINMETZ,  
C. N. SPROUL,  
Auditors.

**Assigned Estate of EZRA BECKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Nisely, Esq., assignee of said Ezra Becker and Wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jy7 J. B. GOOD,  
Auditor.

**Assigned Estate of M. M. STRICKLER and WIFE, of Columbia Borough, Lan. Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. Haldeman Herr, assignee of M. M. Strickler and wife, to and among those legally entitled to the same, will sit for that purpose on MONDAY, AUGUST 13th 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. J. KAUFFMAN,  
Auditor.

jy7

**Assigned Estate of JOHN REIDLINGER and WIFE, of West Donegal twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Addison Eby, assignee, for the benefit of creditors of said estate, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 22d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. H. YUNDT,  
Auditor.

jy14

**Assigned Estate of AARON SHERTZER, of Washington Borough.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. W. Deshong and Wm. Shertzer, assignees, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

PHILIP D. BAKER, Auditor.

jy14

**Estate of MAGDALENA HERSHEY, late of Millersville, Lancaster Co., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Andrew Brubaker, executor, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 17th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

W. W. BROWN,  
AND M. FRANTZ,  
Auditors.

jy14

**Estate of JOHN BECKER, late of Rapho twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George S. Becker and Samuel S. Becker, executors, as per 2d account, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 18, 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

SIMON P. EBY,  
Auditor.

jy14

**Assigned Estate of JOHN W. PFEIFFER, of Warwick township.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benjamin Workman, assignee of said John W. Pfeiffer, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEO. NAUMAN, Auditor.

jy7

**Assigned Estate of LABORUS H. SHUTTE, of Mount Joy twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, Esq., assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. D. WEAVER,  
Auditor.

jy7

**Estate of MICHAEL EBERLY, late of West Cocalico twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Edward Eberly, administrator of Michael Eberly, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, A. D., 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

B. B. FLICKINGER,  
Auditor.

jy7

**Estate of JAMES BARNETT, late of Drumore township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Boyd, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. F. SHENCK,  
Auditor.

jy7

**Assigned Estate of HENRY MILLER and WIFE, of West Lampeter twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of H. N. Breneman, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21, 1877, at 3 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

B. F. ESHLEMAN,  
Auditor.

jy7

**Estate of MATTHIAS ERSHICK, late of Ephrata township, dec'd.**

The undersigned Auditor, appointed to pass on exceptions, and distribute the balance remaining in the hands of Charles Ershick, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

SIMON P. EBY,  
Auditor.

jy7

**Assigned Estate of SAMUEL HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Samuel Hertzog and wife, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 11 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

W. K. SELTZER,  
Auditor.

jy7

**Estate of JOHN BRUBAKER, late of West Cocalico twp., Lan. Co., dec'd**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Stober, administrator of John Brubaker, deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, AUGUST 11th, 1877, at 10 1/2 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JACOB G. GARMAN,  
Auditor.

jy7

**Estate of JOSEPH WELCHANS, late of Lancaster City, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Dr. George R. Welchans, administrator, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. D. WEAVER,  
Auditor.

jy7

**Assigned Estate of JACOB BRUBAKER and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of W. K. Seltzer, assignee of Jacob Brubaker and Wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, AUGUST 10, A. D., 1877, at 10 1/2 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. J. EBERLY, Auditor.

jy7

**Assigned Estate of HENRY LORAH and WIFE, of Lancaster City, Pa.**

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Diller P. Herr and Henry D. Bausman, assignees, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, the 8th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

HUGH R. FULTON,  
Auditor.

jy7

**Estate of JACOB RANCK, late of Earl township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John D. Ranck and Jacob Ranck, executors of the will of the said Jacob Ranck, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 22, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEO. NAUMAN,  
Auditor.

jy7

**Assigned Estate of EZEKIEL T. PAINTER, of Drumore twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Richard C. Edwards, assignee of Ezekiel T. Painter, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 8th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. W. F. SWIFT,  
Auditor.

je30

**Assigned Estate of HENRY H. HESS and WIFE, of Willow Street.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of the assignee of said estate, to and among those legally entitled to the same, will sit for that purpose on MONDAY, AUGUST 6th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

M. BROSIUS,  
J. F. FULTON,  
Auditors.

je30

**Assigned Estate of JOHN II. GRING and WIFE, of East Cocalico twp., Lan. Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of John Lutz, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, AUGUST 9th, 1877, at 10 1/2 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

CHAS. DENUES,  
J. W. DENLINGER,  
Auditors.

je30

**Estate of E. Y. CONYNGHAM, late of Lancaster City, dec'd, (trust account.)**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to pass on exceptions filed to said account, and to distribute the balance remaining in the hands of Joel L. Lightner, administrator with will annexed of said deceased, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend.

FRED. S. PYFER,  
Auditor.

je30

**Assigned estate of DR. A. K. ROHRER, of West Hempfield township, Lancaster Co.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Jacob M. Greider, assignee for the benefit of the creditors of said estate, as shown by his 2d account, will sit for that purpose on FRIDAY, the 10th day of AUGUST, 1877, at 10 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. SLAYMAKER,  
J. W. F. SWIFT,  
Auditors.

je25

**Estate of GEORGE BOWMAN, late of Strasburg township, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Henry Musser and H. N. Breneman, executors of the will of George Bowman, deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 21, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. H. YUNDT,  
H. C. BRUBAKER,  
B. F. ESHLEMAN,  
Auditors.

jy7

**Assigned Estate of ALBIN BROWN and WIFE, of Little Britain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Ephraim Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
C. N. SPROUL, Auditor.  
jy7

**Assigned Estate of HENRY SCHMITT and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bork, assignee, to and among those legally entitled to the same, will attend for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
JOHN H. FRY, Auditor.  
jy7

**Assigned estate of MOSES BRINTON and Wife, of Colerain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cromwell Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 7, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.  
M. BROSIUS, Auditor.  
je30

**Estate of BENJAMIN MOONEY, late of Manor township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bauaman, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 11th day of AUGUST, 1877, at 9 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
EMLEN FRANKLIN, Auditor.  
je23

**Estate Notices.**

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
HENRY HOFFMAN, CHN. K. LONG, SAM'L HEISTAND, Executors.  
N. ELLMAKER, H. B. SWARR, Att'ys.  
aug4\*

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
HEZEKIAH BROWN, ROBERT WARDEN, Administrators.  
aug3  
J. W. JOHNSON, Att'y.

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
SAMP'L BOYD, Chestnut Level P. O.  
aug4 JERE. B. BOYD, Peters Creek P. O. J. HAY BROWN, Atty. Administrators.

**Estate of SAMUEL LESHER, late of East Cocalico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
EDW. LESHER, East Earl twp.  
EPH'M S. LESHER, Brecknock twp. Executors.  
aug4\*

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
PHILIP D. BAKER, JOHN STROHM, Jr., Administrators.  
jy21\*

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
BARBARA HARNISH, widow, ABRAHAM HARNISH. Administrators.  
PHILIP D. BAKER, Att'y.  
jy21\*

**Estate of JAMES MCCA, Esq., late of Caernarvon township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
Dr. D. J. MCCA, Residing in Ephrata; WM. J. MCCA, ANNA E. MCCA, Residing in Churchtown. Executors.  
jy23\*  
W. K. SELTZER, Att'y. Ephrata.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
ANN W. TOWNSEND, widow, Administratrix.  
jy21\*  
PHILIP D. BAKER, Att'y.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y.  
jy21

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator.  
jy7 Lancaster Pa.

**Assigned Estate of AMOS ALTHOUSE, of East Cocalico twp., Lancaster co.**

Amos Althouse, of East Cocalico township, having by deed of voluntary assignment, dated June 23, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Althouse, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JOHN B. REINHOLD, A. J. EBERLY, Att'y, JOHN S. LUTZ, Assignees.  
49 Grant st., Lancaster. Stevens P. O., Lan. co.  
je30

**Estate of JOHN REIST, SEN., late of Penn township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
M. B. REIST, Mt. Joy twp., JOHN B. REIST, Penn twp., H. S. NISSELY, East Donegal twp. Executors.  
H. C. BRUBAKER, Att'y. [je23]

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator.  
jy7 Lancaster Pa.

**Estate of FREDERICK KOSER, late of Rapho township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Rapho twp., Lan. Co.  
REBECCA KOSER, FREDERICK Y. KOSER, Executors.  
je30  
D. McMULLEN, Att'y.

**Assigned estate of HENRY MAULICK and WIFE, of Lancaster City, Lancaster co.**

Henry Maulick and Wife, of Lancaster city, having by deed of voluntary assignment, dated June 20, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Henry Maulick, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
H. K. BURKHOLDER, Assignee, Residing in Lancaster City.  
B. F. ESHLEMAN, Att'y. je23

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.  
LEWIS PICKEL, Executor.  
jy7

**Assigned estate of DAVID G. STEACY and WIFE, of Bart township, Lancaster Co.**

David G. Steacy and wife, of Bart township, having by deed of voluntary assignment, dated June 18, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David G. Steacy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
SAMUEL SLOKOM, Assignee, Christiana, P. O.  
je23

**Estate of PHILIP SHREINER, late of Columbia Bor., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said Borough.  
REBECCA SHREINER, CLARA R. SHREINER, Executors.  
PHILIP D. BAKER, Att'y. je23

**Estate of JOHN AMMON, late of Salisbury township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
HENRY AMMON, Executor.  
PHILIP D. BAKER, Att'y. je23

**Assigned estate of JOHN AMMON and WIFE, of Salisbury twp., Lancaster co.**

John Ammon and Wife, of Salisbury township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Ammon, they therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to  
DANIEL LEE, HENRY AMMON, Assignees, Residing in Salisbury twp.  
PHILIP D. BAKER, Att'y. je33

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, AUGUST 11, 1877.

No. 11.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	4:50 a. m.	7:50 a. m.
Niagara Express	9:35 a. m.	9:35 a. m.	10:40 a. m.
Hanover Accom.	9:40 a. m.	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy	11:20 a. m.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia	11:20 a. m.	11:20 a. m.	1:25 p. m.
Sunday Mail	11:29 a. m.	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	2:10 p. m.	3:25 p. m.
Frederick Accom.	2:15 p. m.	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.	6:10 p. m.	6:10 p. m.	8:10 p. m.
Columbia Accom.	7:20 p. m.	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express	7:25 p. m.	7:25 p. m.	8:40 p. m.
Pittsburg Express	9:25 p. m.	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	11:30 p. m.	12:45 a. m.

  

EASTWARD.		LEAVE LANCASTER.	ARRIVE PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	12:30 a. m.	3:00 a. m.
Philadelphia Express.†	4:10 a. m.	4:10 a. m.	7:00 a. m.
Harrisburg Express	7:35 a. m.	7:35 a. m.	10:00 a. m.
Columbia Accom.	9:28 a. m.	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	1:20 p. m.	3:45 p. m.
Sunday Mail	2:00 p. m.	2:00 p. m.	5:00 p. m.
Johnstown Express	3:05 p. m.	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	5:18 p. m.	7:20 p. m.
Harrisburg Accom.	5:50 p. m.	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville	6:10	7:50	2:10
Lancaster—West King Street	7:20	9:16	3:15
Lancaster—Upper Depot	7:30	9:30	3:25

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot	10:16	5:30	8:39
Lancaster—West King Street	10:25	5:40	8:45
Quarryville, (arrive)	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street	7:20		3:15
Lancaster—Upper Depot	7:30		3:25
Lancaster Junction	7:57		3:51
Reading, (arrive)	10:20		5:50

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading	7:35		6:05
Lancaster Junction	9:53		8:15
Lancaster—Upper Depot	10:10		8:38
Lancaster—West King Street	10:25		8:45

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia	5:40	12:01	4:29
Arrive at Peachbottom	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom	7:15	2:05	5:55
Arrive at Columbia	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

Official Directory.

Supreme Court of the United States.

Appointed. Chief Justice—Morrison R. Waite, of Ohio, 1874 Justices—Nathaniel Clifford, of Maine, 1858 Noah H. Swayne, of Ohio, 1863 Samuel F. Miller, of Iowa, 1863 Stephen J. Field, of California, 1863 William Strong, of Pennsylvania, 1870 Jos. P. Bradley, of New Jersey, 1870 Ward Hunt, of New York, 1872 Attorney General—Charles E. Devens.

Supreme Court of Pennsylvania.

Chief Justice—Daniel Agnew. Associate Justices—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret. Attorney General—George Lear.

Prothonotaries:

Eastern District—Benj. E. Fletcher, Philadelphia. Western District,—J. B. Sweitzer, Pittsburgh. Middle District—Robert Snodgrass, Harrisburg. Northern District—J. A. J. Cummings, Montandon, Northumberland county. Reporter—A. Wilson Norris.

Places and time for holding Court:

At Philadelphia, commencing 1st Monday in January. At Harrisburg, commencing 1st Monday in May. At Pittsburgh, commencing 1st Monday in October. At Sunbury, commencing 3d Monday in September.

Second Judicial District.

President Judge—John B. Livingston. Additional Law Judge—David W. Patterson. Associate Judge—John J. Libhart. District Attorney—J. W. Johnson.

County Officers.

Prothonotary—Lewis S. Hartman. Deputy—Wm. E. Kreider. Clerks—P. E. Slaymaker and Thos. B. Hartman. Register—Harrison Ross. Deputies—W. M. Slaymaker and C. H. Fasnacht. Recorder—Samuel S. Martin. Deputy—Benj. Bauman. Clerks—Geo. R. Sensenig and M. O. Sensenig. Sheriff—Henry N. Breneman. Deputies—Jno. D. Wilson and G. W. Benedict. Clerk of Orphans' Court—Samuel L. Kauffman. Clerk of Quarter Sessions—Stephen S. Clair. Deputy—B. F. W. Urban. Commissioners—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller. Clerk—John M. Grider. County Solicitor—J. Hay Brown. County Treasurer—Henry S. Eberly. Clerk—Amaziah C. Barr. Coroner—Amos Groff. County Surveyor—M. N. Brubaker. County Auditors—N. N. Hensel, A. Konigmacher and H. S. Kerns.

City Officers.

Mayor—Wm. D. Stauffer. Solicitor—Robert M. Agnew. Recorder—Walter G. Evans. Aldermen—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake. Chief of Police—Philip L. Sprecher. Treasurer—Edw. Welchans. Civil Engineer—Francis S. Burrowes. Street Commissioner—Charles Schwebel.

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DIVORCE NOTICE.

CHRISTINE SOPHIA WIRTH, vs. JACOB WIRTH. Alias Subpoena for Divorce, To June Term, 1877, No. 7.

To JACOB WIRTH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Christine Sophia Wirth should not be divorced from the bonds of matrimony contracted with you. H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, July 16, 1877.

DIVORCE NOTICE.

PETER DAGUE vs. CAROLINE R. DAGUE. Alias Subpoena for Divorce, to June Term, 1877, No. 34.

To CAROLINE R. DAGUE: You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Peter Dague should not be divorced from the bonds of matrimony contracted with you. H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, June 26, 1877.

INSOLVENT NOTICE.

Notice is hereby given that Godfried Ripple has made application for his discharge under the insolvent laws and that a hearing will be held on SATURDAY, AUGUST 18th, 1877, at 10 o'clock, a. m. GODFRIED RIPPLE.

INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed SATURDAY, AUGUST 18th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper. SAMUEL S. NISSLEY.

COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN AUGUST, (the 20th,) 1877.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of July 1877. H. N. BRENEMAN, Sheriff.

GOLD. Great chance to make money. If you can't get gold you can get greenbacks. We need a person in every town to take subscriptions for the largest, cheapest and best illustrated family publication in the world. Any one can become a successful agent. The most elegant works of art given to subscribers. The price is so low that almost everybody subscribes. One agent reports of making over \$150 in a week. A lady agent reports taking over 400 subscribers in ten days. All who engage make money fast. You can devote all your time to the business, or only your spare time. You need not be away from home over night. You can do it as well as others. Full particulars, directions and terms free. Elegant and expensive outfit free. If you want profitable work send us your address at once. It costs nothing to try the business. No one who engages fails to make great pay. Address "The People's Journal," Portland, Maine.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., AUG. 11, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

THE COMMONWEALTH, at the instance of JOHN SWEIGART, against S. WHITE, sheriff of the County of Lancaster.

The writ of estrepement does not command the sheriff to take the body of the defendant, but authorizes him to do it, when it becomes necessary to prevent waste, and when other means are evidently insufficient.

The sheriff has no right to imprison the defendant in an ejectment, under a writ of estrepement, except to prevent him from committing waste.

A defendant in ejectment, arrested four months after the writ of estrepement, without having committed waste since the writ was issued, was discharged upon a *habeas corpus*, by one of the judges of the court out of which the estrepement issued.

A discharge from arrest under an estrepement does not defeat the writ—the exigency of which continues *pendente placito*.

The writ of *habeas corpus* commanded the sheriff to produce the body of John Sweigart, a prisoner in his custody, with the day and cause of his caption and detention, &c. The sheriff returned that he had arrested the prisoner (whom he now brought into court) on the 23d day of June, 1827, by virtue of a writ of estrepement, issued at the instance of the plaintiff, in an action of ejectment against John Sweigart (the prisoner)—that this writ was issued on the 15th of February, 1827, and that he had arrested the prisoner under it, in pursuance of the direction of the plaintiff's counsel.

The writ of estrepement, with the affidavit on which it was founded—setting forth that the defendant had committed and was then committing waste upon the premises in dispute, was also exhibited. The proceeding was in pursuance of the second section of the act of the 2d of April, 1803, which directs the prothonotary or clerk of the court in which such ejectment is pending, upon affidavit of the plaintiff or other person knowing the fact, filed in his office, that the tenant or defendant in such ejectment has committed or is committing waste and destruction of or in the premises, to issue a writ of estrepement to prevent the same; of course, without motion to the court and in vacation, etc. No other facts were shown.

Mr. Buchanan and Mr. Porter, for the prisoner, contended that the simple question was raised by the return whether on a writ of estrepement, issued upon an *ex-parte* statement, a citizen of Pennsylvania may be seized, and indefinitely confined in prison; the base assertion of which proposition, they said, was its own sufficient refutation. That

no such power had been granted to the sheriff, in executing writs of estrepement, the practice both in England and in this state would show. For the practice by the former, they cited 2 Reeves' History, Engl. Com. Law, 10 Vin. Abr. 497-500, pl. 10; 7; Bac. Abr. 286; and for the practice in Penna., 2 Grayd. Forms 171, 172, 173. The gentleman who issued this writ, they remarked, had been misled by the authority of Roberts' Digest 419, where it is said the sheriff may lawfully resist them that do or offer to do waste; and if he cannot otherwise do it, he may lawfully imprison them, etc.

Another ground on which they contended for the prisoner's discharge was that the sheriff did not arrest the defendant until after the return day of the writ of estrepement. That writ was issued on the 15th of February, and the next return day was the second Monday in June; whereas the prisoner was not arrested until the 23d day of June. Thomas vs. Cummings, 1 Yeates 1, was cited to show what is the true and only remedy in a case requiring a remedy.

Mr. Washington Hopkins (for I. Hopkins, Esquire, counsel for the plaintiff in the ejectment, who was absent on account of indisposition,) urged the following reasons against the prisoner's discharge: 1. There is no regular district court now sitting. There has been no adjournment to this day. The court held this morning was by consent of the parties in another matter particularly submitted. On the 23d of June last, the district court was open, from which time to the present it does not appear that any court has been held. The record, which should be our guide, and which alone can furnish us with evidence upon this point, shows nothing. The court having risen cannot sit again until the stated term, the first Monday in September. The present assistant judge's commission is dated the 25th of June last. He cannot therefore be considered as now holding the district court. Engaged in hearing this matter, then not as the district court, but as a single judge at his chambers, he will, not sitting in that character, discharge a defendant in custody on process issued out of the district court; for on a *habeas corpus ad subjiciendum*, the Supreme Court refused to discharge a party arrested by process out of the Court of Common Pleas; and *a fortiori* a single judge would not thus interfere with the process, even of the court of which he was a member. It is admitted that the judge here has all the power one judge can have, under the act of 18th of February, 1785; but it is denied that his authority extends to his discharge of the prisoner, who has been arrested by the writ of estrepement, which was issued out of the district court. 2. The estrepement was issued at the instance and upon the affidavit of Jacob Fry, plaintiff in the ejectment, who swore that the defendant had committed and was committing waste upon the premises. It is directed to the sheriff and command, him that he permit not waste to be done during the pendency of the action of ejectment. The power of the sheriff under this writ extends

to the commitment of the defendant; he has a right to imprison him, and the detention of the defendant in the present instance is not therefore wrongful or unlawful: 3 Bl. Comm. 225, 226. A writ of estrepement directed to the sheriff differs in its incidents from the writ directed to the tenant. In the latter case, if the tenant proceed, after the writ delivered to him, to commit waste, the court will imprison him for the contempt; but not so if the writ be directed to the sheriff: 3 Bl. Comm. 227. The whole authority is, then, given to him to prevent waste, and it is incumbent on him to prevent it absolutely. 3. The writ is not made returnable, but commands that the sheriff permit not waste to be done during the pendency of the action. The consequence is that it gave him as much authority to arrest after the court succeeding the issuing of the writ as before. 4. This is not the defendant's remedy. His remedy is under the 2d section of the act of the 29th March, 1822, to move that the writ of estrepement be dissolved. (7 Sm. Laws 520.) And the court, will if it seem just and right, give relief in a summary manner. Roberts' Digest 419, in the note 5 Rep. 115, Foljambe's case.

Mr. Porter in reply, referred again to 1 Yeates 1—to show that the court would award an attachment against the party, when the writ was directed to the sheriff.

HAYES, J. The act of 1785, which was passed in order to prescribe a certain method of proceeding by which all wrongful restraints of personal liberty might be easily and speedily redressed, authorizes any one committed or restrained of his liberty to make application to any judge of the Supreme Court, or president of the Court of Common Pleas, who, upon the proper preliminary steps being taken, shall grant a writ of *habeas corpus*, etc. This provision was, by subsequent acts, extended to the associates of the Court of Common Pleas, and to the judges severally of the district courts. On the return of the writ of *habeas corpus*, the judge shall proceed "to examine into the facts relating to the case, and into the cause of such confinement or restraint, and thereupon either bail, remand or discharge the party so brought, as to justice shall appertain."

The return of the sheriff in this case is, that he arrested the person in pursuance of this writ of estrepement and the orders of the plaintiff's counsel. The writ, however, does not contain a clause of *capias*; the sheriff's authority to arrest is denied, not immediately from the exigency of the writ, which is that he shall not permit waste to be done during the pendency of the action, but it is an incident to the duty enjoined upon him to prevent waste. In the case of *Respublica vs. The Gaoler of Philadelphia*, 2 Yeates 349, the prisoners were arrested by *capias* out of the Court of Common Pleas, and the Supreme Court refused to discharge them, because by so doing they would have defeated the process of another court. But here, if the prisoner be discharged, the writ of estrepement is not defeated, for its operation continues and will remain a standing injunc-

lien upon the sheriff whilst the action of ejectment shall be pending; and if Sweigart go at large to-day, the sheriff, under this writ, will have the same power to-morrow to restrain him from committing waste that he had the day after it was issued. It is, therefore, quite immaterial whether the district court be considered sitting or not, since either of the judges has full authority—at his chamber—to discharge the prisoner if the facts warrant his discharge.

Now, what are the facts? On the 15th of February, 1827, John Fry, plaintiff in an action of ejectment brought in the district court, made his affidavit setting forth that John Sweigart, the defendant, had committed great waste and was then committing waste on the premises. The writ of estrepement was thereupon issued, bearing *teste* on the same day. The district court sat on the second Monday in June. On the 23d day of June, after the court had risen, the sheriff arrested the defendant, and since that time has detained him in custody. The writ of estrepement is directed to the sheriff alone, and is not returnable, but a continuing command to that officer *pendente placito*.

The chief point for consideration upon these facts is the extent of the sheriff's authority. The writ gives him directly no authority to imprison or arrest; but the duty which it imposes carries by implication whatever means may be necessary and proper to enable him to perform it. He may resist those that do or offer to do waste; if he cannot otherwise prevent them, he may lawfully imprison the wasters or make a warrant to others to imprison them, and if necessity require, he may take the *posse comitatus* to his assistance.

In the present case there is no evidence that the prisoner committed waste after the estrepement was issued. From the 15th of February to the 23d of June the writ of estrepement was in the hands of the sheriff, and nothing appears to have been done in the interval; it does not appear that the prisoner offered or threatened to commit waste on the 23d of June, or that any warning had been given to him by the sheriff—or any order left with him—or any notice of the writ served upon him. We have before us simply the case of the sheriff, who had this writ for four months in his hands, arresting the defendant and casting him into prison; but the sheriff cannot exercise this high prerogative of imprisonment at his arbitrary will and discretion. It is necessary that the defendant be committing or offering to commit waste, and that other means should be evidently insufficient to resist the waster or prevent him from doing waste. As the only effectual means left the sheriff may arrest and imprison.

The act of the 29th March, 1822, provides for estrepement in behalf of lien creditors or landlords after notice to tenants to leave. It has no relation to the writ of estrepement issued in the action of ejectment, and does not, therefore, affect the present proceeding.

See Fitzherberts' Nat. Brev. 141, [61] G.

note (b. 17 Bac. Ab. 276) 2 Inst. 46-306; 11 Rep. 49, Liford's case.

The prisoner discharged.

On the 11th of January, 1828, John Sweigart was brought up on a second writ of *habeas corpus*, having been again arrested under the same writ of estrepement for committing waste on the premises. After hearing Mr. Barr for his discharge, and Mr. J. Hopkins against it, he was remanded by HAYES, J., until he should give bond to the sheriff, not to do further waste, in the sum of two hundred dollars with one or more sureties, upon which the sheriff was directed to discharge him. All parties expressed themselves satisfied with this order.

#### SUPREME COURT OF PENNSYLVANIA.

MARTIEN vs. WOODRUFF ET AL.

*Affidavit of defence—Insufficiency of.*

An affidavit of defence to a book account averred a course of dealing between the parties to take defendant's notes at five, six and seven months in settlement:

Held, that, as the defendant set forth no offer of notes or any attempt on his part to avail himself of the extended credit, the affidavit was insufficient.

Error to the Court of Common Pleas No. 4, of Philadelphia County.

Assumpsit on a book account by Charles H. Woodruff and Francis H. Woodruff, co-partners, trading as John Woodruff's Sons, against Alfred Martien.

The suit was brought January 17, 1876, and plaintiff filed a copy of book account consisting of several items commencing January 5, 1875, and ending September 15, 1875. The defendant filed an affidavit of defence averring that the book account was sold on an average credit of seventeen months, and that said account was not therefore due until June 5, 1876. On a rule for judgment, the Court below held the affidavit insufficient, and allowed a supplemental affidavit of defence to be filed. In his supplemental affidavit the defendant alleged that he had had dealings with the firm for several years, that the arrangement was to present the bill for all purchasers of goods during the year at the beginning of the next year, and then to take the defendant's notes at five, six and seven months from the middle of February of the year ensuing the purchase of the goods; that the bill of goods on which this suit was brought was bought upon the same terms, the statement of the same having been rendered January 1, 1876; that the defendant has always been ready to give his notes according to the terms of purchase at five, six or seven months for said bill, dated as of the 14th of February, 1876, and he therefore avers that no part of said book account is now due or was due at the time this suit was brought.

The Court held the supplemental affidavit to be insufficient, and entered judgment for the plaintiff.

The defendant took this writ of error, assigning therefor the entry of judgment.

W. C. Hannis, for the plaintiff in error.

A rule for judgment for want of a sufficient affidavit of defence is a demurrer to the evidence, and admits the facts set fourth in the affidavit to be true. Therefore it must be taken as admitted that, inasmuch as the bill did not become due until June, 1876, the action was prematurely brought. A party cannot sue and get judgment upon a claim which the record shows is not due at the time of the bringing of the suit.

J. E. Megargree (with whom was James W. Latta), contra.

The affidavit contains no express averment of a contract to give the credit claimed. It is therefore indefinite and evasive, and does not comply with the rule in—Wood vs. Watkins, 4 Wr. 461.

The defence is that there was an arrangement, but there is no allegation of the terms of a contract. Therefore there was no such contract as that claimed, for whatever is not set forth in an affidavit of defence is taken not to exist. Black vs. Halstead, 3 Wr. 71.

Jan. 18. THE COURT. Supposing that a contract arose from the course of dealing between the parties of which the defendant might have availed himself by giving his notes after the plaintiff's bill was rendered, he sets fourth in his affidavit of defence no attempt to avail himself of it, by offering notes, or doing any act to evince his readiness to perform, and obtain the extended credit the giving of his note would entitle him to under the contract. The affidavit sets forth no sufficient defence.

Judgment affirmed.

PER CURIAM.—*Weekly Notes of Cases.*

#### Orphans' Court, Philadelphia.

ESTATE OF THOMAS BROPHY, DEC'D.

An administratrix will be removed by the Orphans' court where she has not filed a complete inventory after due notification, and where she has otherwise wilfully failed to perform her duties, and where one of the sureties was insolvent.—*Leg. Intel.*

Sur petition to remove administratrix.

Opinion by HANNA, J. June 30th, 1877.

This is a proceeding under the Act of May 1, 1861, Purdon 1424, pl. 59, which provides, that "whenever it shall appear to the proper court having jurisdiction of the accounts of any executor, administrator, guardian, committee of a lunatic, or an habitual drunkard, or other trustee, on the oath or affirmation of any person interested, that such executor, administrator, guardian, committee or trustee is wasting or mismanaging the property or estate under his charge, or that for any reason the interests of the estate or property are likely to be jeopardized by the continuance of any such executor, administrator, guardian, committee or trustee, or when such executor, administrator, guardian, committee or trustee is, or is likely to prove insolvent, or has neglected to exhibit true and perfect inventories, or render full and just accounts of such estate or property, come to his hands or knowledge according to law," the court, if satisfied of the truth of the matters charged, may, in its discretion, instead of requiring additional security, as provided for in the Act of March

29, 1832, "vacate the letters of administration or testamentary or commission, and remove such administrator, executor, guardian, committee or trustee, and award new letters or commission to be granted by the register or by the court, or appoint some suitable person to discharge such trust; and shall, moreover, order and compel such executor, administrator, guardian, committee or trustee, to deliver over and pay to his successor all and every the goods, chattels and property, money, estate or effects in his hands."

The reasons alleged by the petitioners for the removal of the administratrix are, first, that she neglected to exhibit a true and perfect inventory of the personal estate of decedent, and to file any inventory whatever, until cited by the register; second, that she is intemperate and addicted to habits of intoxication; and third, that her sureties are pecuniarily irresponsible. The petitioners being a brother and sisters of the decedent, heirs and next of kin, are therefore interested in the faithful management and settlement of his estate, and proper parties to invoke the interposition of the court for the protection of their interests. From the evidence submitted at the hearing, it was demonstrated that the administratrix had neglected to file a true and perfect inventory of the personal estate of her husband, within the period provided by the act of assembly, and the inventory and appraisal subsequently filed was untrue and imperfect. This included personal property to the appraised value of \$46.75 only, whereas at the time she had in her possession, or under her control, other assets of her husband's estate, consisting of cash and securities, exceeding seven thousand dollars in value.

And although the present proceeding was promptly instituted after the granting of letters of administration, and notice given the administratrix that she would be held responsible for the personal property omitted from the inventory, still she persisted in her default, and upon filing her account as administratrix, failed to "render a full and just account of such estate or property," charging herself only with the amount of the untrue and erroneous inventory. No mention was made of the large amount of property omitted therefrom, although its possession had been admitted in her answer previously filed to the petition of the complainants. It is needless to urge, as a justification for such neglect and intentional omission of duty, that the administratrix claimed this large amount as her separate estate, and omitted the same from the inventory and account by advice of counsel.

Whatever personalty she collected and received as administratrix, she was bound faithfully and honestly to account for as such, irrespective of any claim she might have personally, either to the whole or a portion. And the proper, lawful time and place to assert and prove her claim was at the settlement of her account in this court.

An executor or administrator cannot be the arbiter of the measure of his responsibility to creditors or distributees. Again, the

testimony shows the administratrix to be of exceedingly intemperate habits. For many years she and her husband carried on a small tippling house, and both indulged to excess in the same degrading vice, which they industriously endeavored to disseminate amongst their humble neighbors. Since the death of her husband, the administratrix has continued the habit of intoxication; and, from the testimony on the subject, it is evident that, owing to her manner of life and ignorance, being unable to read or write, she is deficient in the qualifications necessary to the honest, intelligent and proper discharge of the duties of an administratrix.

It also appeared that one of the sureties is insolvent, and has made an assignment for the benefit of creditors. The other, although he testified he was worth a considerable amount in real estate, yet, from his testimony, as reported by the examiner, he could "not exactly say" whether he was one of the sureties, but answered: "I think I am." We think parties interested in an estate are entitled to more substantial security than the bond entered in this matter seems to present.

After a careful consideration of the case, we have no hesitation in arriving at the conclusion, that the interests of the estate are likely to be jeopardized by the further continuance of the administratrix; the letters granted to her should be revoked, and the final settlement of the estate committed to other more competent and reliable hands.

As the account filed by the administratrix has been audited at the present term, whereby she has been surcharged with the personal estate omitted from the inventory and account, and distribution awarded of the balance thus ascertained to be due the estate, we will, in the decree to be filed herewith, order and direct her to pay and transfer the remaining assets of the estate in her possession to her successor.

Petition granted.

#### Common Pleas of Luzerne County.

LACOE ET AL. VS. SHERWOOD ET AL.

1. It is gross misbehavior for any person to speak to a juror, or for a juror to permit a person to converse with him respecting the cause he is trying, at any time after he is summoned, and before the verdict is delivered. Parties offending must be made to know that they must loose, and cannot gain; that verdicts against them will be sustained, but those for them set aside.

2. Jurors, however, not to be held guilty of misbehavior and verdicts set aside without satisfactory proof.

Rule for new trial.

Opinion by DANA, J. June 29, 1877.

The reasons urged for a new trial in this case are, that the court erred in their answers to the plaintiff's point, particularly the fourth and sixth; and that one of the jurors misbehaved himself.

After a careful revision of the charge, and an examination of the evidence, we shall adhere to the views of the law expressed in our answered to the points submitted.

The alleged misconduct of a juror was in holding conversation, after he was sworn in the case, with one of the parties. It is gross misbehavior for any person to speak to a juror, or for a juror to permit any person to converse with him respecting the case he is trying, at any time after he is summoned, and before the verdict is delivered. It is a practice which corrupts one of the sources of justice, and is to be resolutely repressed, and, when detected, punished by the courts. It must be known that a party may loose, but cannot gain, by conversing with a juror after he is sworn, unless it be open and by permission of the court; that if the verdict be against him, it will stand; if for him, it will be set aside. But in view of the serious nature of the accusation, it must not be forgotten that jurors have rights as well as the parties litigant, and are neither to be presumed nor held guilty of misbehavior, and their verdicts set aside, without satisfactory proof of the charge. To yield to accusations against them, lightly made or without strong proof, would weaken, if not bring into contempt, that useful and indispensable institution in the administration of justice: ROGERS, J. in Commonwealth vs. Flannigan, 7 W. & S. 421. We have examined carefully the depositions relative to this ground of complaint, with the purpose, if misconduct is shown, to see that it be defeated in its object. There is some evidence of conversation between one of the jurymen and the defendants, or one of them; but this is specifically and positively denied by the juror and the parties charged. We cannot say that the fact is so far established as to warrant the court setting aside the verdict. The remark of the juror to Mr. Shiffer, referred to in Mr. Hand's letter and testimony, was inconsiderate and improper, but seems to have been intended only as a rough jest, and was an offence against propriety, rather than against the law or its administration.

The reasons for a new trial are, in our opinion, not sustained, and the rule is discharged.—Luz. Legal Register.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., AUG. 11, 1877.

#### WEEKLY SUMMARY.

Letters of administration have been granted by the Register on the following estates since August 4, 1877.

JOSHUA KEEN, dec'd, late of Bart twp.; Henry Keen, administrator.

ELIZABETH SHIRK, dec'd, late of West Cocalico twp.; Obed H. Shirk, administrator.

H. E. MÜHLENBERG, dec'd, late of Lancaster city; Mary E. Muhlenberg, administratrix with will annexed.

JAMES MCLIVAIN, dec'd, late of Lancaster city; Simon P. Eby, esq., administrator *d. b. n.*

The following Wills have been admitted to probate since August 4, 1877:

SAMUEL KURTZ, late of Lancaster city; Catharine Kurtz, executrix.

MARGARET PLITT, late of Lancaster city; Amanda Shertz, executrix.

JOHN LORENZ, late of Lancaster city; Susan Lorenz, executrix.



COMMON PLEAS TRIAL LIST.--First Week.

Commencing Monday, August 27, 1877.

<i>Reynolds.</i> 1	BREMER, TRUCKS & CO. <i>vs.</i>	} Aug. Term, 1867. No. 207. Sum's case. Plea, non assumpsit, pay't, &c.
<i>Swarr.</i>	FREDERICK S. BLETZ.	
<i>Smith.</i> 2 <i>North.</i>	RHOADES & YOUNG <i>vs.</i> CHARLES STOCKAM.	} June Term, 1871. No. 21. Sum's case. Plea, non assumpsit.
<i>Ellmaker, Kline.</i> 3 <i>North.</i>	JOHN BECKER <i>vs.</i> HENRY M. WATTS et al.	} Feb. Term, 1873. No. 60. Sum's case. Plea, not guilty.
<i>P. D. Baker.</i> 4 <i>Frantz.</i>	MICHAEL BEILER <i>vs.</i> STEHNAN, CLARKSON & CO.	} Aug. Term, 1873. No. 4. Sum's case. Plea, non assumpsit.
<i>Baker.</i> 5 <i>Reinsohl, P. D. Baker,</i> <i>Cochran.</i>	R. H. BRUBAKER, assignec, <i>vs.</i> J. H. HORTON et al.	} Jan'y Term, 1874. No. 120. Sum's in debt. Plea, nil debit, pay't, pay- ment with leave.
<i>Smith, Brown.</i> 6 <i>Ellmaker, North,</i> <i>Nauman.</i>	HOWARD TILDEN <i>vs.</i> SAMUEL WORST.	} Feb. Term, 1874. No. 109. Sum's case. Plea, pay't, pay't with leave.
<i>W. A. Wilson.</i> 7 <i>Reynolds.</i>	LEO LEHMAN <i>vs.</i> THE LAN. CEMETERY et al.	} May Term, 1874. No. 25. Sci. fa., sur mech. lien. Plea, payment.
<i>Amwake, Eberly.</i> 8 <i>Reinsohl.</i>	CLARA GERHART <i>vs.</i> DANIEL BRENNAN.	} Sept. Term, 1874. No. 63. Sci. fa. to revive judg't. Plea, nil debit, pay't, pay- with leave, &c.
<i>Reynolds, McMullen</i> 9	HARRIET H. NISSLEY <i>vs.</i>	} Jan'y Term, 1875. No. 42. Sum's sur breach of prom- ise of Marriage. Plea, non assumpsit.
<i>Ellmaker, North.</i>	ANDREW M. GARBER.	
<i>Davis.</i> 10 <i>Brosius, Steinmetz.</i>	ELI ESHLEMAN <i>vs.</i> SKILES & FREY.	} Jan'y Term, 1875. No. 57. Sum's in assumpsit. Plea, non assumpsit, &c.
<i>Frantz.</i> 11	JACOB BROWN <i>vs.</i> D. W. PATTERSON et al., ad- ministrators.	} April Term, 1875. No. 61. Sum's sur assumpsit. Plea, non assumpsit, etc.
<i>Franklin.</i> 12 <i>Reynolds.</i>	LEVI HOLLINGER'S use <i>vs.</i> HENRY S. KAUFFMAN.	} May Term, 1875. No. 119. Sum's in debt. Plea, payment, pay't with leave.
<i>Ellmaker.</i> 13 <i>Smith.</i>	ANDREW HERSHEY.	} Trust Book No. 6, p. 228. Traverse of Inquisition filed.
<i>Ellmaker.</i> 14 <i>P. D. Baker,</i> <i>Nauman, Given.</i>	MICHAEL SIEGRIST <i>vs.</i> HANOVER JUNCTION & SUSQUEHANNA R. R. CO.	} Aug. Term, 1875. No. 42. Sum's square claus. fregit. Plea, not guilty.

<i>Swarr, Brown.</i> 15	GEO. W. JONES <i>vs.</i>	} Aug. Term, 1875. No. 132. Sum's case. Plea, non assumpsit, in fra sex annos.
<i>Johnson.</i>	SAMUEL ROSS.	
<i>Franklin.</i> 16 <i>Ellmaker.</i>	THOS. BAUMGARDNER <i>vs.</i> GEO. SHOFF.	} Sept. Term, 1875. No. 103. Sum's in ejectment. Plea, not guilty.
<i>Nauman.</i> 17 <i>Baker.</i>	REED & HENDERSON <i>vs.</i> FARMERS NORTHERN MAR- KET CO.	} Oct. Term, 1875. No. 8. Sum's case. Plea, not guilty.
<i>Price.</i> 18 <i>Smith.</i>	WEAVER & KILLIAN <i>vs.</i> LAN. CO. MUTUAL LIVE STOCK INS. CO.	} Nov. Term, 1875. No. 14. Sum's in covenant. Plea, non assumpsit, pay- ment, pay't with leave.
<i>Given, Case.</i> 19 <i>Frueauff.</i>	WM. HIPPEY et al. <i>vs.</i> ANN HIPPEY.	} Jan'y Term, 1876. No. 39. Sum's case. Plea, non assumpsit, set-off
<i>Reynolds.</i> 20 <i>H. C. Brubaker.</i>	PETER WEBER <i>vs.</i> GEO. BRUBAKER, guard., etc.	} Jan'y Term, 1876. No. 49. Sum's in ejectment. Plea, not guilty.
<i>North.</i> 21 <i>Smith.</i>	JOHN F. CHARLES <i>vs.</i> B. B. GONDER & SON.	} Jan'y Term, 1876. No. 63. Sum's case. Plea, non assumpsit.
<i>B. F. Davis.</i> 22 <i>Eberly.</i>	DANIEL MISHLER <i>vs.</i> JOSEPH HARTMAN.	} Jan'y Term, 1876. [No. 152. App'l by def't from justice Plea, non assumpsit, pay- ment, pay't with leave.
<i>J. Hay Brown.</i> 23 <i>Reynolds, P. D. Ba- ker.</i>	HENRY C. HOSTETTER <i>vs.</i> GROFF & CO.	} Feb. Term, 1876. No. 19. Sum's case. Plea, pay't, payment with leave.
<i>North.</i> 24 <i>Frueauff.</i>	BENJ. B. THOMAS <i>vs.</i> THOMAS & MASON.	} Feb. Term, 1876. No. 109. Sum's case. Plea, non assumpsit.
<i>Steinmetz.</i> 25 <i>Davis.</i>	I. H. KAUFFMAN <i>vs.</i> A. B. CHRIST.	} Mar. Term, 1876. No. 75. Sum's in assumpsit. Plea, non assumpsit, etc.
<i>Atlee.</i> 26 <i>Steinmetz.</i>	SAMUEL H. WELCHANS <i>vs.</i> HERSHORN & EINSTEIN et al.	} April Term, 1876. No. 7. Foreign attach'm't in case. Plea, non assumpsit, pay't and set-off.
<i>Steinmetz.</i> 27 <i>Nauman, Given.</i>	F. SCHLOTTHAMER <i>vs.</i> HANOVER JUNCTION & SUSQUEHANNA R. R. CO.	} May Term, 1876. No. 8. Sum's in trespass quare clausum fregit. Plea, not guilty.
<i>McMullen.</i> 28 <i>Nauman, Given.</i>	C. G. DARRACH <i>vs.</i> SAME DEFENDANT.	} May Term, 1876. No. 20. Sum's case. Plea, non assump't, set-off.
<i>D. G. &amp; B. F. Eshle- man.</i> 29 <i>Reynolds.</i>	W. W. JONES & CO. <i>vs.</i> D. P. LOCHER & SON.	} May Term, 1876. No. 23. Issue to try right of prop- erty. Plea filed.
<i>Wilson.</i> 30	FRANKLIN DILLER <i>vs.</i> W. H. AMWAKE.	} May Term, 1876. No. 113. App'l by def't from justice Plea, non assumpsit, etc.

**PHILIP D. BAKER,**

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

**Auditors' Notices.**

**Estate of DANIEL MOURER, late of the township of Providence, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel E. Mourer, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21st, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy21 JACOB HILDEBRAND, Auditor.

**Estate of JOHN LINDEMUTH, late of East Donegal twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Nusser, executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy21 OWEN P. BRICKER, Auditor.

**Assigned Estate of M. M. STRICKLER and WIFE, of Columbia Borough, Lan. Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. Haldeman Herr, assignee of M. M. Strickler and wife, to and among those legally entitled to the same, will sit for that purpose on **MONDAY, AUGUST 13th 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 A. J. KAUFFMAN, Auditor.

**Assigned Estate of JOHN REIDLINGER and WIFE, of West Donegal twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Addison Eby, assignee, for the benefit of creditors of said estate, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 22d, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 E. H. YUNDT, Auditor.

**Assigned Estate of AARON SHERTZER, of Washington Borough.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of J. W. Deshong and Wm. Shertzer, assignees, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 PHILIP D. BAKER, Auditor.

**Estate of MAGDALENA HERSHEY, late of Millersville, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Andrew Brubaker, executor, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 17th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 W. W. BROWN, AND M. FRANTZ, Auditors.

**Estate of JOHN BECKER, late of Rapho twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George S. Becker and Samuel S. Becker, executors, as per 2d account, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, AUGUST 18, 1877, at 11 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy14 SIMON P. EBY, Auditor.

**Estate of JAMES BARNETT, late of Drumore township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel Boyd, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 A. F. SHENCK, Auditor.

**Assigned Estate of HENRY MILLER and WIFE, of West Lampeter twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of H. N. Breneman, assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21, 1877, at 3 o'clock, p. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 B. F. ESHLEMAN, Auditor.

**Estate of MATTHIAS ERSNICK, late of Ephrata township, dec'd.**

The undersigned Auditor, appointed to pass on exceptions, and distribute the balance remaining in the hands of Charles Ershick, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m.,** at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 SIMON P. EBY, Auditor.

**Estate of ADAM ROTHARMEL, late of the City of Lancaster, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Rotharmel, administrator *d. b. n. c. t. a.*, of the said Adam Rotharmel, deceased, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, AUGUST 17, 1877, at 2 o'clock, p. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 GEORGE NAUMAN, Auditor.

**Assigned Estate of HERR, BRACKBILL & Co.**

The undersigned Auditor, appointed to pass upon exceptions and to distribute the balance remaining in the hands of J. Phenegar, assignee of Herr, Brackbill & Co., to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, AUGUST 16th, 1877, at 2 o'clock, p. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy21 DANIEL G. BAKER, Auditor.

**Estate of MARGARET LINDEMUTH, late of East Donegal twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy21 WILLIAM LEAMAN, Auditor.

**Estate of GEORGE LEISEY, late of East Cocalico township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Cyrus Ream and Israel Leisey, executors of said dec'd, to and among those legally entitled to the same, will attend for that purpose on **THURSDAY, the 16th day of AUGUST, 1877, at 10½ o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy JOHN H. FRY, Auditor.

**Estate of CATHARINE LINDEMUTH, late of East Donegal twp., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry S. Musser, executor of said deceased, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy21 L. ELLMAKER, Auditor.

**Estate of JACOB RANCK, late of Earl township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John D. Ranck and Jacob Ranck, executors of the will of the said Jacob Ranck, dec'd, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 22, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 GEO. NAUMAN, Auditor.

**Estate of E. Y. CONYNGHAM, late of Lancaster City, dec'd, (trust account.)**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to pass on exceptions filed to said account, and to distribute the balance remaining in the hands of Joel L. Lightner, administrator with will annexed of said deceased, to and among those legally entitled to the same, will attend for that purpose on **THURSDAY, AUGUST 16th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, Pa., where all persons interested in said distribution may attend.

je30 FRED. S. PYFER, Auditor.

**Estate of GEORGE BOWMAN, late of Strasburg township, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Henry Musser and H. N. Breneman, executors of the will of George Bowman, deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 E. H. YUNDT, H. C. BRUBAKER, E. F. ESHLEMAN, Auditors.

**Estate of MARY ANN WITMER, late of Providence twp., Lan. co., deceased.**

The undersigned Auditor, appointed to pass on the exceptions filed to the account, and to distribute the balance remaining in the hands of John Hildebrand, administrator of said estate, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, the 15th day of AUGUST, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 WM. R. WILSON, Auditor.

**Assigned Estate of H. H. NISSLEY and WIFE, of Mount Joy Borough.**

The undersigned Auditor, appointed to pass upon the exceptions filed to the account of Benjamin F. Eberle, assignee, &c., and to distribute the balance remaining in the hands of said assignee, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy2 THOS. B. COCHRAN, Auditor.

**Assigned Estate of PETER B. HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Peter B. Hertzog and Wife, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 14th, 1877, at 10½ o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 W. K. SELTZER, Auditor.

**Estate of ISAAC RENNINGER, late of Brecknock twp., dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Baltzer Schneider, administrator, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, the 17th day of AUGUST, 1877, at 10½ o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jy7 E. C. DIEHL, F. G. MUSSER, Auditors.

**Assigned Estate of ALBIN BROWN and WIFE, of Little Britain twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Ephraim Blackburn, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
C. N. SPROUL, Auditor.  
jy7

**Assigned Estate of HENRY SCHMITT and WIFE, of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Bork, assignee, to and among those legally entitled to the same, will attend for that purpose on WEDNESDAY, AUGUST 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
JOHN H. FRY, Auditor.  
jy7

**Estate of MICHAEL EBERLY, late of West Cocalico twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Edward Eberly, administrator of Michael Eberly, dec'd, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, AUGUST 15th, A. D., 1877, at 11 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
B. B. FLICKINGER, Auditor.  
jy7

**Estate of JOHN HAMILTON, late of Rapho township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James W. Hamilton and John G. Hamilton, administrators, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 16th day of AUGUST, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. C. DIEHL, Auditor.  
jy7

**Estate Notices.**

**Estate of MARGARET PLITT, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
aug11 AMANDA SHERTZ, Executrix.  
D. P. ROSENMILER, JR., Att'y.

**Estate of DR. H. E. MUEHLBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
aug11 MARY E. MUEHLBERG, Administratrix.  
J. HAY BROWN, Att'y.

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAM'L BOYD, Chestnut Level P. O.  
aug4 JERE. B. BOYD, Peters Creek P. O. Administrators.  
J. HAY BROWN, Atty.

**Estate of SAMUEL LESHER, late of East Cocalico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
EDW. LESHER, East Earl twp.  
aug4\* EPH'M S. LESHER, Brecknock twp. Executors.

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
aug4\* HENRY HOFFMAN, CHN. K. LONG, SAM'L HEISTAND, Executors.  
N. ELLMAKER, } Att'ys.  
H. B. SWARR. }

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
aug3 HEZEKIAH BROWN, ROBERT WARDEN, Administrators.  
J. W. JOHNSON, Att'y.

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
jy21\* PHILIP D. BAKER, JOHN STROHM, JR., Administrators.  
Att'y.

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
jy21\* BARBARA HARNISH, widow, ABRAHAM HARNISH, Administrators.  
PHILIP D. BAKER, Att'y.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
jy21\* ANN W. TOWNSEND, widow, Administratrix.  
PHILIP D. BAKER, Att'y.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
MARY C. MARTIN, Administratrix.  
jy21 PHILIP D. BAKER, Att'y.

**Assigned Estate of SAMUEL HERTZOG and WIFE, of West Cocalico twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi W. Mentzer, assignee of Samuel Hertzog and wife, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 1 1/2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
W. K. SELTZER, Auditor.  
jy7

**Estate of JOSEPH WELCHANS, late of Lancaster City, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Dr. George R. Welchans, administrator, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, AUGUST 14th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
WM. D. WEAVER, Auditor.  
jy7

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator, Lancaster Pa.  
jy7

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.  
LEWIS PICKEL, Executor.  
jy7

**Estate of FREDERICK KOSER, late of Rapho township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Rapho twp., Lan. Co.  
REBECCA KOSER, FREDERICK Y. KOSER, Executors.  
jy30 D. McMULLEN, Att'y.

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator, Lancaster Pa.  
jy7

**Assigned Estate of AMOS ALTHOUSE, of East Cocalico twp., Lancaster co.**

Amos Althouse, of East Cocalico township, having deed of voluntary assignment, dated June 23, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Althouse, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JOHN B. REINHOLD, JOHN S. LUTZ, Assignees.  
A. J. EBERLY, Att'y, 49 Grant st., Lancaster. Stevens P. O., Lan. co.  
je30

**Assigned estate of HENRY MAULICK and WIFE, of Lancaster City, Lancaster co.**

Henry Maulick and Wife, of Lancaster city, having deed of voluntary assignment, dated June 20, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Henry Maulick, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
H. K. BURKHOLDER, Assignee. Residing in Lancaster City.  
B. F. ESHLEMAN, Att'y. je23

**Estate of JOHN REIST, SEN., late of Penn township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
H. B. REIST, Mt. Joy twp., JOHN B. REIST, Penn twp., H. S. NISSLEY, East Donegal twp. Executors.  
H. C. BRUBAKER, Att'y. [je23]

**Estate of JAMES MCCA, Esq., late of Caernarvon township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
Dr. D. J. MCCA, Residing in Ephrata; WM. J. MCCA, ANNA E. MCCA, Residing in Churchtown, Executors.  
je23\* W. K. SELTZER, Att'y, Ephrata.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, AUGUST 18, 1877.

No. 12.

## The Lancaster Bar.

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—AT—

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PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

	WESTWARD.		EASTWARD.	
	LANCASTER.	HARRISBURG.	LANCASTER.	PHILADELPHIA.
Pacific Express,*	2:40 a. m.	4:05 a. m.	12:30 a. m.	3:00 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.	4:10 a. m.	7:00 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.	7:35 a. m.	10:00 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.	9:28 a. m.	12:30 p. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.	1:20 p. m.	3:45 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.	2:00 p. m.	5:00 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.	3:05 p. m.	6:00 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.	5:18 p. m.	7:20 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.	5:50 p. m.	9:00 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.		
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.		
Harrisburg Express,	7:35 p. m.	8:40 p. m.		
Pittsburg Express,	9:35 p. m.	10:50 p. m.		
Cincinnati Express,*	11:30 p. m.	12:45 a. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

	GOING NORTH.		
	LEAVE.	a. m.	p. m.
Quarryville,	6:10	7:50	2:10
Lancaster—West King Street,	7:30	9:16	3:15
Lancaster—Upper Depot,	7:30	9:30	3:25
	GOING SOUTH.		
	LEAVE.	a. m.	p. m.
Lancaster—Upper Depot,	10:16	5:30	8:38
Lancaster—West King Street,	10:35	5:40	8:45
Quarryville, (arrive)	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

	GOING NORTH.		
	LEAVE.	a. m.	p. m.
Lancaster—West King Street,	7:30		3:15
Lancaster—Upper Depot,	7:30		3:25
Lancaster Junction,	7:57		3:51
Reading, (arrive)	10:20		5:50
	GOING SOUTH.		
	LEAVE.	a. m.	p. m.
Reading,	7:35		6:05
Lancaster Junction,	9:53		3:15
Lancaster—Upper Depot,	10:10		3:38
Lancaster—West King Street,	10:25		3:45

### Columbia and Port Deposit Railroad.

	GOING SOUTH.		
	LEAVE.	a. m.	p. m.
Columbia	5:40	12:01	4:29
Arrive at Peachbottom,	7:05	1:55	5:45
	GOING NORTH.		
	LEAVE.	a. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharwood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
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 Western District,—J. B. Sweltzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrer, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake  
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**DIVORCE NOTICE.**

CHRISTINE SOPHIA WIRTH, }  
 by her next friend Michael Schaibley, } *Alias Subpoena for Divorce,*  
 vs. } *To June Term,*  
 JACOB WIRTH. } *1877, No. 7.*

To JACOB WIRTH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Christine Sophia Wirth should not be divorced from the bonds of matrimony contracted with you.

H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, July 16, 1877.

**DIVORCE NOTICE.**

PETER DAGUE } *Alias Subpoena for Divorce,*  
 vs. } *to June Term, 1877.*  
 CAROLINE R. DAGUE. } *No. 34.*

To CAROLINE R. DAGUE: You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 20th day of AUGUST, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Peter Dague should not be divorced from the bonds of matrimony contracted with you.

H. N. BRENEMAN, Sheriff.  
 je30  
 Sheriff's Office, Lancaster, June 26, 1877.

**DIVORCE NOTICE.**

LEWIS A. WAMBAUGH } *Alias Subpoena for Divorce,*  
 vs. } *To August Term, 1877.*  
 MARY J. WAMBAUGH. } *No. 7.*

To MARY J. WAMBAUGH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 17th day of SEPTEMBER, 1877, at 10 o'clock, a. m., to show cause if any you have, why the said Lewis A. Wambaugh should not be divorced from the bonds of matrimony contracted with you.

aug18  
 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, August 15th, 1877.

**COURT PROCLAMATION.**

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN AUGUST, (the 20th,) 1877.

In pursuance of which precept *public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.*

Dated at Lancaster, the — day of July 1877.  
 jy28  
 H. N. BRENEMAN, Sheriff.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., AUG. 18, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

WILLIAM TUSSEY against SIMON BEHMER.

Under our rule of court for a commission to other states or foreign parts, a commission may issue to one or more commissioners, nominated by the party taking the rule. It may be joint or several. It is too late to object to its form after joining in it.

The commissioner, to whom it is sent, may take the affidavit of a person who has served a notice from him upon the other commissioners, of the time and place of executing the commission.

It is not necessary it should appear that the commissioner was sworn.

A notice to the opposite party of the particular time and place of executing the commission, is not requisite when due notice has been served on the commissioners nominated by him.

When a witness speaks in his deposition of what he understood, after stating a conversation with the opposite party, thus leaving it doubtful whether he understood the matter or not, his statement should go to the jury.

The clause in an answer of "further this deponent saith not," is a certificate by the commissioner, importing that the witness knew or could say nothing further.

It is a sufficient answer to an interrogatory, when a witness refers to his answer to a former interrogatory, declaring it contains all his knowledge relative to the subject.

It is no objection to an answer that it does not go to the whole inquiry of the interrogatory if it does not appear that the witness kept back or suppressed anything.

At the trial of this cause which was an action of replevin, and involved the value of a large drove of cattle, the question on which the verdict turned was whether there was a partnership in this drove between the plaintiff and one Andrew Springer, of whom the defendant had purchased the cattle. The plaintiff claimed the property as his own and denied the alleged partnership.

The testimony on behalf of the defendant consisted chiefly of depositions taken in the State of Ohio, under a commission from this District Court, by William A. Adams, one of the commissioners therein named. There were four commissioners; two on the part of the defendant, at whose instance the commission was issued, namely: William A. Adams, esq., of Zanesville, Muskingum county, and Cyrus P. Beatty, esq., of Cambridge, Guernsey county; and two on the part of the plaintiff, who joined in the commission, namely: Patrick M. Lane and Samuel N. Kerr, esqs., both of the town of London, in the county of Madison, Ohio. The form of the commission was joint and several, being directed to the commissioners or either of them. It was sent by the defendant's counsel to William A.

Adams, one of the commissioners named on his part, who served a notice on each of the plaintiff's commissioners of the time and place of executing the same. The depositions were taken on the 15th of January, 1828, pursuant to this notice, by William A. Adams alone—neither of the plaintiff's commissioners nor the other commissioner, on the part of the defendant appearing.

Upon the offer of Joseph Hottel's deposition (the first taken) various objections were stated, some of which were urged against the commission, and others against the matter of the deposition.

These objections were very fully argued by Mr. Montgomery and Mr. Norris for plaintiff, and

Mr. Jenkins and Mr. Hopkins for the defendant.

In support of the objections, it was contended:

1. That the commission should have been directed to all the commissioners jointly; that this mode of obtaining testimony is a departure from the common law, and the authority when given, should, like all other authority in derogation of the common law, be strictly pursued. The rule of court speaks only of commissioners in the plural, and does not recognize the issuing of a commission to a single commissioner, in which respect it conforms to the English practice. Our rule of the 23d April, 1811, is exactly like that of the circuit court, U. S., as it formerly stood, and when that court deemed it expedient to change the practice so as to authorize one commissioner to execute the commission, it adopted a new rule ordering that commissions should issue "to the persons therein named, or to any one of them." This commission having issued to the persons named in it, or either of them, is unwarranted and illegal. Wharton's Dig. 493, 494; Rule 15 C. C., Oct. 1812; 2 Grayd. Form 238; 16 S. & R., Grain vs. Bailie; 1 Harr. Ch. Pr. 324, 325; 1 Mumf. 247.

2. That no notice was given to the plaintiff or his attorneys of the issuing of the commission—the neglect of which was fatal to the commission. 7 S. & R. 16, Withers v. Gillopie; 6 John. 286; 2 Caine's R. 384; 3 Caine's R. 133. On this point Mr. Hopkins, Mr. Rogers, and Mr. Norris were severally examined touching the fact of notice, and much discussion took place relative to that disputed fact, but as the court was of opinion that the plaintiff's joining in the commission was a waiver of any objection to irregularity or defect of notice, their testimony is not inserted.

3. It is denied that there was notice to the commissioners, on the part of the plaintiff, of the time and place of taking the depositions. The affidavit of Jacob Dunn, appended to the depositions, purporting to have been sworn before Wm. A. Adams, the commissioner, cannot be regarded as proper because no authority was delegated to the commission to administer an oath for such purposes; and, (as we hold) the delegation of judicial power cannot be extended beyond the letter of the commission. The defendant's counsel might have framed an interrogatory, under which

the proof of notice would have been regular, or the person serving it might have testified the fact in answer to the general interrogatory. There was no authority to take the proof out of the commission. This was not an *ex parte* commission, and due notice was essential: 13 S. & R. 326, Nussear vs. Arnold; 1 Harrison Pr. Ch. 313.

4. It does not appear that Wm. A. Adams was sworn to execute this commission: 1 Harrison Pr. Ch. 310.

5. Nor that any notice whatsoever was given to the plaintiff of the time and place of taking the depositions. The rule of court contains no directions upon this subject, but the books of practice are full; and it is laid down that if notice be not given of executing the commission, the court will suppress the examination: 1 Harr. Pr. Ch. 313.

6. It does not appear how or by whom the witnesses were sworn, nor whether they were sworn according to law, nor whether they were sworn in the presence of the commissioner, nor whether their depositions were reduced to writing by him or in his presence—all which was indispensable according to the mandate of the commission and the books of practice: Hind's Ch. Pr. 348; 2 Johns. R. 417; 16 S. & R. 126.

With respect to the deposition of Joseph Hottel—the answer to the second interrogatory is irrelevant and evasive; it speaks of certain portions of the years 1822 and 1823, not of the whole, to which the interrogatory extended, besides, part of the answer is what the witness understood from whom? If from Andrew Springer, it is no evidence unless William Tussey were present—it is hearsay.

The answer to the third interrogatory is partial, and the conclusion is "further as to this interrogatory said deponent saith not," and not "that he knows nothing further."

The answer to the fourth interrogatory is not a full answer and at best is hearsay only.

The answer to the plaintiff's third cross-interrogatory is but partial, evincing a suppression of further knowledge. The witness says he knows nothing of the partnership, further than the statement contained in his answer to the second interrogatory of the defendant, and "further, as to this interrogatory said witness saith not."

Now, it is fatal to the whole deposition if one interrogatory is not answered: 13 S. & R. 128. The party against whom a witness is produced, has a right to show the slightest circumstance which may affect his credit, and if a witness does not answer interrogatories substantially, is fatal to the whole commission: Wharton's D. 495, pl. 181; 7 S. & R. 16.

The answers to the fourth cross and the twelfth cross-interrogatories are evasive—not referring to the purchase of Moore's drove, or Tussey's going on with the Cooper drove, or leaving the other in the charge of Springer—subjects of inquiry in the interrogatories.

For the offer it was urged in regard to the commission, that the construction of the rule of court, contended for on the other side, namely, that it should be directed to and be executed by at least two commissioners,

would render it impossible to obtain evidence from a distance—from Louisiana, Indiana, or Canada for instance, and would operate as a denial of justice; nor was such construction sanctioned by the practice in this county, whatever might have been the practice in the circuit courts of the U. S. In a great majority of instances, on the contrary, the party entering the rule has nominated but one commissioner. Why should not one commissioner be sufficient? One witness is competent in general to establish any fact, however important. Depositions taken in the county or state, are taken by one justice of the peace, though the most interesting questions may depend upon them. The case of *Nussey vs. Arnold*, 13 S. & R. 326, shows that in Adams county the commission may issue to one or more, jointly and severally, and refutes the notion that in Pennsylvania the common law requires there should be two commissioners at least. Reason, convenience and practice are all opposed to this construction.

The naming of two commissioners by the plaintiff in the present case was supererogation. *Cyrus P. Beatty* died after this commission was issued, and had it been necessary, according to the rule, that he should have joined in taking the depositions the defendant would have been urged on to trial without testimony, though deprived of it by the act of God. 1 *Yeates* 302.

But the objection is destroyed by the plaintiff's joining in the commission. What does the rule require? "That written notice be served on the adverse party at least fifteen days before the commission issues, in order that he may file cross-interrogatories, or nominate commissioners on his part if he shall deem it eligible. Being notified that the commission in question would issue, in this way, the plaintiff, by joining, evidently waived the objection now taken to its form; otherwise he would have applied to the court before it issued, which he had repeated opportunities of doing.

2. So with respect to the alleged want of notice. Had there been any irregularity, what should have been the plaintiff's course? He should have objected on the first opportunity—he should have brought the matter before the court as soon as he discovered it, but instead of that the plaintiff actually joined in the commission of which he now pretends he had not due notice; he named his commissioners, and he filed thirteen cross-interrogatories; he secured the object for which his opponent was required to give him notice, and now asks that the commission be thrown out of court, because notice was not given him that it would be issued. In *Dawson vs. Tibbs*, 4 *Yeates* 349, there did not appear to have been any rule for a commission, and yet it was considered that the parties having joined in the commission, and filed their respective interrogatories, superseded the necessity of a rule. The commission was held to be valid: 3 S. & R. 402, *Purviene vs. Dryden*.

3. The party having the carriage of the commission should give notice to the other

party's commissioners. In this case we are agreed; but they say no such notice was given, or, at least, we have not made due proof of it; that *Jacob Dunn's* affidavit of the fact, which was taken by the commissioners, is a nullity, because the commission had no authority to take it. They admit what we deny, that *Dunn* might have been examined as to the service of the notice upon a specific interrogatory to that effect, or under the general interrogatory. It was no evidence in the cause, and, therefore, the inquiry would have been irrelevant. But the commissioner had authority to take the affidavit in the form in which he has returned it—such power being necessary and proper to the due execution of his functions.

4. It is to be presumed in favor of the commission, that the commissioner, who is the agent of the courts, did everything that was requisite and proper, where there is nothing to show the contrary. In *Gilpins vs. Consequa*, 1 *Peters* 88, it was ruled to be of no valid objection to the return of a commission that the commissioner or clerk were not sworn.

5. To require the party at whose instance the commission is taken out, to give notice to his opponent of the time and place of executing it, would be requiring in many cases difficulties equivalent to an impossibility. It would defeat the purpose of the commission by enabling the adverse party to keep out of the way and thus avoid the service. The rule of court does not require such notice. It never has been the practice. The notice of the rule is sufficient to put the party on inquiry; it states that the depositions would be taken at the commissioners' convenience. Here the time was fixed by the commissioners named by the defendant, and fifteen days notice was given to the commissioners named by the plaintiff, of the time and place. It is not objected that either time or place was improper.

6. This commission is well executed. Seldom has any commission been returned to our courts in all respects so regular. The witness is stated to have been produced, sworn and examined, and at the foot the cross-deposition is certified by the commissioner to have been taken by him, with the day, etc. Besides which is the general return of the execution of the commission, with reference to the annexed schedules, under the hand and seal of the commissioner. In New York they have an act of assembly, relative to commissions, and the question in 2 *Johns. R.* 417 was, whether the depositions were taken in pursuance of that act. See a review of this case in 4 *Johns. R.* 130.

The deposition of *Joseph Hottel* is not justly obnoxious to any one of the exceptions urged against it. The answer to the second interrogatory is pertinent and direct.

How is partnership to be proved but by the conduct and declarations of the legal partners? The fact of partnership may be proved in this way, though there may have been a written agreement of partnership: 2 *Binn.* 245. Should the court be of the opinion that any part of the answer is hearsay, it will be struck out, though we suppose that when the

witness speaks of what he understood, as to *Springer's* purchasing, etc., it may be fairly taken as what he understood from the parties themselves, which would be evidence. The witness having spoken to the extent of his knowledge, it is no good objection that he did not speak of all the time embraced in the interrogatory, even if the inquiry had that scope which the objection imputes to it, which it has not.

The answer to the third interrogatory goes as far as the deponent's knowledge. It never happens that all the witnesses can answer fully to every interrogatory—some know more, others less; some can testify to a part only of the matter of inquiry. All that is required is that they tell what they know. There is no reason to presume that this was not done here. The conclusion, and further this deponent *sauit not*, is equivalent to "he knows nothing further."

The objection to the answer to the fourth interrogatory is, that it is hearsay and not a full answer. It is not requisite that the interrogatory should be fully answered, but that each witness shall answer so far as he knows. If the witness speaks of what he heard, from whom did he hear it? One of the partners. And if the partnership be established the declarations of any partner become evidence.

The answer to the third cross-interrogatory is objected to because the witness referred to his answer already given to the second interrogatory on behalf of the defendant as containing his knowledge. Is it not as well so as if the answer had been repeated? It is said that it appears from the face of the interrogatory, that the witness knew more; but how this conclusion is attained is incomprehensible. It certainly does not follow from the inability of the witness to answer all the inquiry.

So with respect to the answers to the fourth and twelfth cross-interrogatories, we say they are full to the extent of the deponent's knowledge. The objection seems to require that the witness should be charged with perjury on account of mental reservations, of which there is not the color of probability.

The following is the opinion of the Court upon the foregoing objections, by *HAYES, J.*

1st. As to the commission:

Every court in Pennsylvania may adopt the rules necessary for its proceedings, and give its own construction to those rules. According to the construction, the rule for commissions to other states and foreign parts, has received in practice, which may be considered as the cotemporaneous exposition of the profession, and which is sanctioned by reasons of convenience, and not opposed to any decided requisitions of its phraseology—a commission is good which issues to one or more commissioners, nominated by the party taking the rule. The objection, in this instance, is purely technical, since the attendance of but one of the commissioners nominated by the defendant could not prevent, nor in any way interfere with the attendance of both those who were nominated by the plaintiff. This objection is not sustained.

2. The notice required by the rule to be given is expressly "in order that the adverse party may file cross-interrogatories, or nominate commissioners on his own part if he should deem it eligible." Any irregularity or defect in the notice is therefore cured, when the opposite party does that, which it is the only purpose of the notice to give him the opportunity of doing; this the plaintiff in the present case has done, and the objection to this commission, founded in the alleged defect of notice, cannot be sustained.

3. The notice to the commissioner nominated by the plaintiff, was served by Jacob Dunn, who made affidavit of the fact before the commissioner that executed the commission. It is objected that the commissioner had no authority to take such affidavit. On the other side it is contended that the authority vested in him to execute the commission, included whatever was requisite to enable him properly to perform that duty, and the power consequently, to prove the service of notice upon the other commissioners. It is admitted by the objecting counsel, that the commissioners might have taken the oath of the person who served it under the general interrogatory. The objection, therefore, is not that the commissioner took the oath, but rather this, that he took it in the wrong place or mode. The answer which has been given to the objection in the discussion appears to me to meet and satisfy it. It is overruled by the court.

4. That it does not appear that the commissioner was sworn. Wherever it is necessary that the commissioner should be sworn or qualified in any particular manner, and there is nothing to show that it was omitted, it shall be presumed to have been done. The commissioner being properly considered as the agent of the court, *omnia presumuntur rite et solemniter acta*. The want of a certificate of the commissioners having been sworn is immaterial. The case of *Gilpins vs. Consequa*, 1 Peters 88, I regard as decisive on this point.

5. The notice was given to the commissioners nominated by the plaintiff, of the place and the plaintiff was notified by the notice of the rule that the particular time and place would be fixed by the commissioner nominated by the defendant, to whom the plaintiff was thus referred. This I consider sufficient.

6. I think this objection to the manner in which the commission was executed is not supported in point of fact. It sufficiently appears that the witnesses were sworn by the commissioner, and according to law, and that the depositions were reduced to writing by him.

2d. As to the deposition of Joseph Hottel, now offered, and the objection to:

1. The answer to the second interrogatory. A witness who answers as far as he knows, to the inquiry contained in an interrogatory, cannot be said to evade the interrogatory, or to answer prevaricatingly. It is no objection to say the witness did not testify a full knowledge of all the facts. If he stated all he knew, he testified to all that he ought. As

to the matters alleged to be hearsay, it is by no means evident that this is such hearsay as should be excluded. If the deponent understood what he relates from Tussey, the plaintiff, it is not such hearsay, and I cannot say that such is not the true construction of the answer. It is, therefore, referred to the jury.

2. The objection to the answer to the third interrogatory is met by two considerations, which appear to the court to be sufficient. 1. That when a witness knows but in part, he cannot answer but in part. 2. That the conclusion "and further this deponent saith not," is a technical certificate by the commissioner, and its true import is, that the witness having answered the questions contained in the interrogatory, so far as he knew anything in relation to them, could answer no further.

3. The matter of hearsay alleged in objection to the answer to the fourth interrogatory consists of the declaration of Andrew Springer, who was a partner of William Tussey, the plaintiff, according to the declaration of both, as set forth in a former answer. It is observable that these declarations are made a subject of inquiry in the plaintiff's fourth interrogatory. This is, therefore, not such hearsay as is proscribed. This answer may not be full, yet unobjectionable, unless it should appear that any thing is suppressed; and this does not appear.

4. This answer to the plaintiff's third cross-interrogatory, which is objected to as partial and insufficient, because the deponent refers to the answer he had given to the defendant's second interrogatory. And then is the conclusion, "that further the deponent saith not," appears to the court to be sufficient. The deponent, by referring to a former answer, as containing all he knew in relation to the subject, did, in effect, repeat that answer. I consider this sufficient.

5. and 6. The answers to the fourth and twelfth cross-interrogatories are, in the opinion of the court, not partial or evasive, but full. The latter is substantially full and complete, and the objection to it is not borne out by a comparison of the same with the twelfth interrogatory of the plaintiff.

All the objections have failed to be sustained, and the offer is admitted.

To this decision the plaintiff prayed a bill of exceptions.

[The depositions taken under the commission referred to in the foregoing discussion, carried the verdict for the defendant. The plaintiff moved for a new trial, but the motion was not allowed and he acquiesced in the judgment.]

#### Orphans' Court of Philadelphia.

Estate of WM. H. HAMILTON, dec'd.

An order was made against administratrix to pay a certain amount, which she failed to do, alleging that her attorney had collected the money, kept it and run away. *Held*, as she had acted in good faith an attachment would not be issued against her.—*Legal Intel.*

Sur rule for attachment against administratrix.

Opinion by HANNA, J. June 30th, 1877.

Upon the confirmation of the account of the administratrix she was ordered to pay certain awards to the heirs of decedent. Failing to obey the order of the court, a rule to show cause why an attachment should not issue against her for contempt was obtained, to which she has made answer.

From this it appears she is unable to comply with the decree of the court, by reason of never receiving any money from the estate, the proceeds of certain real estate sold having been paid to her attorney. That she did not know the purchase money had been paid to her attorney. That she did not know the purchase money had been paid to him until after its payment, and since that time has made diligent effort to obtain the amount from her attorney, who repeatedly promised to pay her, and on two occasions had given her checks for the amount, both of which, upon presentation, proved to be worthless. That she is now unable to find him, and believes he has left the city with intent to cheat and defraud her and the heirs. The respondent further alleges she is wholly without the necessary means wherewith to pay the awards, and submits herself to the order of the court. In view of these facts, admitted by the petitioners, it is evident that the respondent is innocent of wilful disobedience of the order of the court, and she, with the others interested in the estate, are the victims of a faithless and dishonest attorney. Upon him punishment should fall, and not upon his confiding and betrayed client. Wherever bad faith, intentional neglect of the decree of the court, or any form of fraud upon the part of an accountant, are disclosed, we will not hesitate to enforce the decree by attachment of his person; but where the default is occasioned by the misconduct of others, as in this case, we must leave the parties interested to suffer their misfortune, or to other remedies provided by law.

The attachment is refused.

Few cases are more laughable than that which describes the arithmetical process by which Baron Perrott arrived at the value of certain conflicting evidence. "Gentlemen of the jury," this judge is reported to have said, in summing up the evidence in a trial where the witnesses had sworn with noble tenacity of purpose, "there are fifteen witnesses who swear that the watercourse used to flow in a ditch on the north side of the hedge. On the other hand, gentlemen, there are nine witnesses who swear that the watercourse used to flow on the south side of the hedge. Now, gentlemen, if you subtract nine from fifteen, there remain six witnesses wholly uncontradicted; and I recommend you to give your verdict for the party who called those six witnesses."

IN *Manby vs. Scott*, (1 Sid. 106; 2 Smith, L. C. 422, 6th London Ed.) among the reasons for the second "point there established," it is said: "In the Spiritual Court such bad women as have violated their vows shall have such provision as clerks' convicts (Staunforde, 140), and shall be fed with bread of affliction and water of adversity.



# The Lancaster Bar.

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PHILIP D. BAKER, EDITOR.

LANCASTER, PA., AUG. 18, 1877.

## TRIAL LIST.

OF AUGUST COURT OF QUARTER SESSIONS,  
1877.

MONDAY, AUGUST 20th.

1. John R. Althouse, embezzlement. Aug. 76, 102.
2. Israel Bair and Lewis Mumma, neglect of duty. Jan'y 57.
3. Joseph Reese, assault and battery. Nov. 55, 126.
4. Jacob D. Warfel et al., assault and battery, &c. Nov. 88, 84, 85, 86.
5. Abraham B. Good, false pretense, fraud. Apr. 73, 74, 75.
6. T. F. Richardson, larceny. Aug. 29.
7. William Green, larceny. Aug. 31.
8. Samuel Robinson and Theo. Greer, robbery, felonious assault and battery. April 59, 60.
9. Joseph Wagner, felonious assault and battery. Aug. 59.
10. Adam Herr, assault and battery. Aug. 60.
11. A. Dittenbach, entering cigar store, &c. Aug. 86.
12. Isaac Wenfelt, larceny. Aug. 34.
13. George Boyer, larceny. Aug. 62.
14. George Anderson, assault and battery. Aug. 63.
15. John Coughnour, adultery. Aug. 54.
16. Francis Russel, counterfeiting. Aug. 89.
17. John Smith, accessory to counterfeiting. Aug.
18. Wm. Bachmiller, larceny. Aug. 64.
19. Paul Richter, larceny. "
20. George Laravie, larceny. "
21. Joseph Rhaa, larceny. "
22. Frantz Miller, larceny. "
23. Jno. Hoffman, larceny. "
24. Christian Myer, larceny. "
25. Charles Wolf, larceny. "
26. Lewis Stein, larceny. "
27. George L. Parks, larceny. Aug. 96.
28. Martin Landis, larceny. Aug. 100, 101, 102, 103, 104.
29. Max. Grace, burglary, &c. Aug. 107.
30. Bernard Young, larceny. Aug. 108.
31. David Lowe, larceny. Aug. 109.
32. David Phillips, larceny. Aug. 110.
33. James Given, burglary. Aug. 114.
34. Jno. Bessick, larceny. Aug. 119.
35. Adam Perry, larceny. Aug. 122.
36. James Green, larceny. Aug. 123.
37. Washington Cole, larceny. Aug. 124.
38. Hannah Jackson, adultery. Aug. 196.
39. Frank Archey, adultery. Aug. 197.

TUESDAY, AUGUST 21st.

40. Charles Baum, assault and battery. Aug. 153.
41. Charles M. Weaver, burglary. Aug. 147.
42. Miller M. Fraim, inciting to riot, aiding a strike on railroad. Aug. 148, 149.
43. Morris Bricker, burglary. Aug. 6.
44. J. W. Cressman, larceny. Aug. 11.
45. George Alice, burglary. Aug. 14.
46. Jno. Shoemaker, accessory to burglary. Aug. 15.
47. Wm. Helm, fornication and bastardy, larceny, &c. Aug. 163, 163, 164, 165.
48. Simon McCue, larceny, 105.
49. Benj. McCue, receiving stolen goods. Aug. 94.
50. Arthur Sylvester, counterfeiting. Aug. 95.
51. James Quinn, larceny. Aug. 32.
52. Elizabeth Corbet, larceny. Aug. 154.
53. George Blizzard, larceny. Aug. 35.
54. Jno. Frankford, larceny. Nov. 10, 53, 54, 74, 75, Aug. 97, 98, 99.

55. Matthew M. Diggs, assault and battery. Aug. 42.
56. Wm. Williams, assault and battery. Aug. 43.
57. Jno. G. Beck, entering mill, &c. Aug. 140.
58. Henry New, assault and battery. Aug. 16.
59. William Jones, larceny. Aug. 155, 202, 203.
60. Wm. Brown, malicious mischief. Aug. 199.
61. John Lenegan, malicious mischief. Aug. 200.
62. Thomas Brown, malicious mischief. Aug. 201.
63. Richard Johnson, robbery. Aug. 72.
64. Leonard Burns, larceny. Aug. 125.
65. Eugene McAnall, larceny. Aug. 126.
66. John Cupp, larceny. Aug. 127.
67. Jacob Witmer, assault and battery to rob. Aug. 131.
68. Edward Shultz, assault and battery to rob. Aug. 132.
69. Alex. Murray, alias Murphy, felonious assault and battery. Aug. 133.
70. Wm. Wettig, assault and battery to rob. Aug. 134, 146.
71. Charles Leonard, felonious assault and battery. Aug. 135.
72. Joseph Hinder, larceny. Aug. 183.
73. Conrad Sowers, larceny. Aug. 189.
74. John Ehman, larceny. Aug. 190, 191.
75. Andrew Ehman, larceny. Aug. 191, 192.
76. Samuel McClune, larceny. Aug. 193.

WEDNESDAY, AUGUST 22d.

77. Martha Sweeney, assault and battery. Aug. 128.
78. James Sweeney, assault and battery. Aug. 129, 130.
79. Geo. W. Spera, fornication and bastardy. April 49.
80. Wm. Jacobs, fornication and bastardy. Jan. 38.
81. Millard F. Hildebrand, fornication and bastardy. April 49.
82. O. Webb Weidner, fornication and bastardy. Aug. 3.
83. John Gross, fornication and bastardy. Aug. 92.
84. Wm. H. Bryson, fornication and bastardy. Aug.
85. John Hoover, larceny. April 90.
86. James Hoover, larceny. Aug. 1.
87. John Breininger and Adam Spehrle, larceny. Aug. 1.
88. John Bills, larceny. Aug. 57.
89. Nelson Glatfelter, horse stealing. Aug. 58.
90. Isaac S. Lauch, forgery. April 116.
91. Abraham Martin, larceny. Aug. 113.
92. George Brown, assault and battery. Aug. 91.
93. T. Park Guthrie, larceny. Aug. 121.
94. Elin Bleacher, burglary. April 139.
95. David Reese, burglary. April 139.
96. Franklin Reese, burglary. April 140.
97. Henry Stoner, adultery. Aug. 55.
98. Jno. L. Coleman, assault and battery. Aug. 56.
99. Christian Hess, larceny. Aug. 77.
100. Samuel Beed, violating fish laws. Aug. 20, 87.
101. Jacob Todd, violating fish laws. Aug. 21.
102. Chas. Keeseey, violating fish laws. Aug. 22.
103. Isaac Keeseey, violating fish laws. Aug. 23, 88.
104. Joseph Keeseey, violating fish laws. Aug. 24.
105. Tempest Wilson, violating fish laws. Aug. 25.
106. Samuel Hamaker, violating fish laws. Aug. 26.
107. Thomas Wilson, violating fish laws. Aug. 27.
108. David Strickler, violating fish laws. Aug. 28.
109. Israel Rhoads, cruelty to animals. Aug. 85.
110. George Peck, larceny. Aug. 118.
111. Henry McBride, larceny. 120.
112. O. C. Truxell, aiding a strike on railroad. Aug. 65.
113. Edward N. Seals, aiding strike on railroad. Aug. 66.
114. John Longenecker, perjury. Aug. 67.

THURSDAY, AUGUST, 23d.

115. Franklin L. Clark, assault and battery to rob, &c. April 75, 35.
116. Joel Miller, Benton Breneman and Andrew Miller, affray. Nov. 31.
117. Moses Miller, perjury. Nov. 32.

118. John Adam Schuh, forgery. Nov. 65.
119. John K. Seltzer, embezzlement. April 64.
120. William Keyes, larceny. Aug. 7.
121. Henry Brinkman, larceny. Aug. 8.
122. Simon Null, larceny. Aug. 9.
123. George Null, larceny. Aug. 10.
124. Milton Crumrine, larceny. Aug. 13.
125. Stephen Sheaffer, adultery. Aug. 12.
126. Joseph R. Widmyer, stoning cars. Aug. 36.
127. John Hain, assault and battery. Aug. 44.
128. Henry W. Dittenbach, perjury. April 33.
129. Henry Stamm, assault and battery. Aug. 73.
130. Jno. Zimmerman, assault and battery. Aug. 17.
131. Abraham K. Huber, false pretense. Aug. 83, 83.
132. Winfield S. Geiter, accessory to larceny. Aug. 30.
133. Calvin Cunningham, assault and battery. Aug. 39.
134. Israel F. Abele, false pretense. Aug. 68.
135. Henry Jackson, perjury.
136. Brice Painter, assault and battery. Aug. 51.
137. Nicholas Gardner and Michael Smith, affray. Aug. 38.
138. Jacob Butt, assault and battery. Aug. 52.
139. Joseph Boyer. Aug. 47.
140. Geo. C. Haldeman, assault and battery. Aug. 80.
141. James E. Yonge, assault and battery. Aug. 81.
142. Samuel Johnson, assault and battery. Aug. 76.
143. Walter McNally. Aug. 139.
144. Samuel C. Slaymaker, assault and battery. Aug. 76.
145. Michael Fritz, violating hotel law. Aug. 133.
146. F. J. Steinhauser, assault. Aug. 136.
147. John R. Dittenbach, assault. Aug. 75.
148. Catharine C. Libhart, receiving stolen goods. Aug. 204.
149. Samuel L. Fowler, assault and battery. Aug. 205.
150. James Fellenbaum, assault and battery. Aug. 208.

FRIDAY, AUGUST 24th.

151. Esalas Lockhuff, larceny. Aug. 156.
152. Thomas Holt, assault and battery. Aug. 157.
153. George W. McGinnis, assault and battery. Aug. 158.
154. Philip Buchner, false pretense. Aug. 160.
155. Benjamin Brackbill, malicious mischief. Aug. 156, 209, 110.
156. Matilda Carberry, disorderly house. Aug. 167.
157. David Brubaker, jr., assault and battery. Aug. 170.
158. Martin Hauck, false pretense. Aug. 173.
159. Daniel Oehme, adultery. Aug. 173.
160. Frederick Miller, violating election laws. Aug. 33.
161. G. A. Klugh and C. R. Cummings, assault and battery. Aug. 195.

SATURDAY, AUGUST 25th.

162. Frank Archey, desertion. Aug. 198.
163. Henry Stoner, desertion. Aug. 145.
164. George Shay, desertion. April 123.
165. Augustus Nutto, desertion. Aug. 79.
166. John Steiger, desertion. Aug. 74.
167. George C. Garber, desertion. Aug. 137.
168. David Brubaker, jr., desertion, surety of peace. Aug. 169, 171.
169. Solomon Gates, surety of peace. Aug. 161.
170. Matthew M. Diggs, surety of peace. Aug. 41.
171. Charles Baum, surety of peace. Aug. 153.
172. Leonard Youst, surety of peace. Aug. 115, 117.
173. William Deibler, surety of peace. Aug. 143.
174. Jacob Deibler, surety of peace. Aug. 144.
175. Lewis Sheaffer, surety of peace. Aug. 206.
176. Anna Sheaffer, surety of peace. Aug. 207.
177. Frederick Schlotthouer, surety of peace. Aug. 116.
178. David L. Thomas, surety of peace. Aug. 142.
179. Israel Miller, surety of peace. Aug. 53.
180. Milley Keech, surety of peace. Aug. 175.
181. Albert Keech, surety of peace. Aug. 176.
182. Phillip Martin, surety of peace. Aug. 78.
183. Richard Johnson, surety of peace. Aug. 71.
184. John Zimmerman, surety of peace. Aug. 18, 19.
185. Calvin Cunningham, surety of peace. Aug. 40.
186. John Hain, surety of peace. Aug. 45.
187. Frederick Waltz, surety of peace. Aug. 46.
188. Joseph Boyer, surety of peace. Aug. 48, 49.
189. Brice Painter, surety of peace. Aug. 50.
190. Simon McCue, surety of peace. Aug. 93.
191. Jacob McCord, surety of peace. Aug. 150.
192. Samuel Hess, surety of peace. Aug. 151.
193. Leon Rosenthal, surety of peace. Aug. 168.
194. Jacob Miller, surety of peace. Aug. 194.

COMMON PLEAS TRIAL LIST.--Second Week.

Commencing Monday, September 3d, 1877.

<i>Brosius, Champneys.</i> 1 <i>Baker, Kline.</i>	CAROLINE EVANS, adm'ix vs. GEO. K. REED.	Nov. Term, 1869. No. 38. Sum's in assumpsit. Plea, non assumpsit, pay't, pay't with leave.
<i>Smith.</i> 2 <i>Brown.</i>	JOSEPH BALLANCE et al., ad- ministrators. vs. W. W. BROWN.	Nov. Term, 1871. No. 14. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.
<i>Reynolds.</i> 3 <i>J. Hay Brown.</i>	HENRY F. WITMER vs. O'DELL & CO.	April Term, 1873. No. 74. Sum's case. Plea, non assumpsit, pay't, pay't with leave, etc.
<i>Reynolds, Sherk, Leaman.</i> 4 <i>Franklin.</i>	BAIR & SHENK vs. JOHN K. BARR, def't and FARMERS MUTUAL FIRE INS. CO., garnishee.	Oct. Term, 1873. No. 108. Attach't ad lev. deb. etc. Plea, nulla bona.
<i>Same.</i> 5 <i>Same.</i>	SAME PLAINTIFFS vs. SAME DEFENDANTS.	Oct Term, 1873. No. 109. Attach't ad lev. deb., etc. Plea, nulla bona.
<i>Reynolds.</i> 6 <i>J. Hay Brown.</i>	E. H. KAUFFMAN vs. JAMES LOOMIS.	April Term, 1874. No. 7. Sum's case. Plea, non assumpsit.
<i>Eshleman.</i> 7 <i>Reynolds.</i>	JOHN HILDEBRAND vs. D. W. PATTERSON, assignee.	May Term, 1874. No. 67. Sum's in ejectment. Plea, not guilty.
<i>Reynolds.</i> 8 <i>Reinckel.</i>	RUBENCAM & BARKER vs. M. H. WEBB.	Oct. Term, 1874. No. 35. Sum's case. Plea, non assumpsit, pay't, etc.
<i>J. Hay Brown, Eshleman.</i> 9 <i>P. D. Baker.</i>	ABRAHAM GROFF'S adm'ors vs. DAVID KRIDER.	Dec. Term, 1874. No. 39. Scire facias sur recogni- zance. Plea, nul tiel record.
<i>P. D. Baker.</i> 10 <i>Yundt.</i>	DANIEL DILLER et al. vs. JOHN SHEAFFER.	Feb. Term, 1875. No. 59. Sum's case. Plea, non assumpsit, etc.
<i>Reynolds.</i> 11 <i>North.</i>	J. P. KNIGHT vs. PENN. R.R. CO.	May Term, 1875. No. 8. Sum's case. Plea, non assumpsit.
<i>Reynolds, Reinckel.</i> 12 <i>Eshleman.</i>	TOBIAS NEWCOMER vs. JACOB DETWEILER.	June Term, 1875. No. 93. Sum's in ejectment. Plea, not guilty.
<i>Eberly.</i> 13 <i>Reynolds.</i>	JOHN S. LENTZ vs. ABNER PATTERSON.	June Term, 1875. No. 107. Sum's in assumpsit. Plea, non assumpsit.
<i>H. C. Brudaker.</i> 14 <i>Franklin, North.</i>	HENRY S. STAUFFER vs. GEO. H. MOORE.	June Term, 1875. No. 114. Sum's in assumpsit. Plea, non assumpsit.
<i>North.</i> 15 <i>Ellmaker.</i>	E. F. & J. HOOVER vs. JOHN S. LANDIS.	Sept. Term, 1875. No. 17. Scire facias to revive judg- ment. Plea, payment.

<i>Same.</i> 16	SAME PLAINTIFFS vs.	Sept. Term, 1875. No. 18. Scire facias to revive judg- ment.
<i>Same.</i>	SAME DEFENDANTS.	Plea, payment.
<i>Amwaks.</i> 17 <i>P. D. Baker.</i>	MARGARET BYERLY vs. JOHN TROUGHER.	Dec. Term, 1875. No. 32. Sum's in assumpsit. Plea, non assumpsit.
<i>Price.</i> 18 <i>J. Hay Brown.</i>	ALBERT FRAIM vs. DR. AUGUSTUS W. CAIN.	Dec. Term, 1875. No. 72. Sum's case. Plea, not guilty.
<i>Brosius.</i> 19 <i>North.</i>	H. R. & J. S. BRENEMAN vs. LAN. & READING N. G. R. R. CO.	Jan'y Term, 1876. No. 42. Issue trespass quare clau- sum fregit. Plea, not guilty.
<i>Same.</i> 20 <i>Same.</i>	M. V. B. COHO vs. SAME DEFENDANT.	Jan'y Term, 1876. No. 43. Issue trespass quare clau- sum fregit. Plea, not guilty.
<i>P. D. Baker.</i> 21 <i>Swift.</i>	W. C. McNULTY vs. JOHN WENDLER AND LOU- ISA MYERS.	Jan'y Term, 1876. No. 68. Sum's case. Plea, non assumpsit.
<i>W. A. Wilson.</i> 22 <i>Brosius.</i>	JOSEPH C. BRINSER. vs. WM. BANEY.	Feb. Term, 1876. No. 20. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.
<i>Atlee, Harris.</i> 23 <i>Agnew.</i>	KITCH & KNEEZEL vs. THE CITY OF LAN.	Feb'y Term, 1876. No. 29. Sum's case. Plea, non assumpsit, pay't etc.
<i>North.</i> 24 <i>Brosius.</i>	W. W. UPP vs. NATH'L ELLMAKER.	Feb. Term, 1876. No. 36. Sum's case. Plea, non assumpsit, pay't, etc.
<i>J. Hay Brown.</i> 25 <i>Hostetter.</i>	THOMAS WYNN vs. C. M. HOSTETTER.	Mar. Term, 1876. No. 4. Plea, non assumpsit. Sum's case.
<i>Sherk, Leaman.</i> 26 <i>Ellmaker, Eshleman.</i>	CASPER HILLER, ex'or vs. JOHN B. GOOD.	April Term, 1876. No. 28. Issue, etc. Plea, payment, pay't with leave.
<i>McMullen.</i> 27 <i>Franklin, J. Hay Brown.</i>	S. H. REYNOLDS, assignee, vs. S. W. P. BOYD.	April Term, 1876. No. 38. Sum's case. Plea, non assumpsit.
<i>Same.</i> 28 <i>Atlee.</i>	SAME PLAINTIFF vs. KITCH & KNEEZEL.	May Term, 1876. No. 52. Sum's case. Plea, pay't with leave and set-off.
<i>N. &amp; L. Ellmaker.</i> 29 <i>H. C. Brudaker.</i>	DAVID F. HERR vs. ISAAC BAIR.	May Term, 1876. No. 73. Sum's case. Plea, not guilty.
<i>McMullen.</i> 30 <i>Wilson, Steinmetz.</i>	S. H. REYNOLDS, assignee, vs. EDWIN MUSSER.	June Term, 1876. No. 79. Sum's case. Plea, non assumpsit, pay't, etc.

*Reynolds, Sherk, Leaman, Franklin, Same, Reynolds, Eshleman, Reynolds, Reinckel, J. Hay Brown, Eshleman, P. D. Baker, P. D. Baker, Yundt, Reynolds, North, Reynolds, Reinckel, Eshleman, Eberly, Reynolds, H. C. Brudaker, Franklin, North, North, Ellmaker.*

**Auditors' Notices.**

**Estate of DANIEL MOURER, late of the township of Providence, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel E. Mourer, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21st, 1877**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
jy21 JACOB HILDEBRAND, Auditor.

**Estate of GEORGE BOWMAN, late of Strasburg township, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Henry Musser and H. N. Breneman, executors of the will of George Bowman, deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21, 1877**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. H. YUNDT,  
H. C. B. UBAKER,  
B. F. ESHLEMAN,  
Auditors.  
jy7

**Assigned Estate of HENRY MILLER and WIFE, of West Lampeter twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of H. N. Breneman, assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, AUGUST 21, 1877**, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
B. F. ESHLEMAN,  
Auditor.  
jy7

**Assigned Estate of JOHN REIDLINGER and WIFE, of West Donegal twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Addison Eby, assignee, for the benefit of creditors of said estate, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 22d, 1877**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. H. YUNDT,  
Auditor.  
jy14

**Estate of JACOB RANCK, late of Earl township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John D. Ranck and Jacob Ranck, executors of the will of the said Jacob Ranck, dec'd, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, AUGUST 22, 1877**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
GEO. NAUMAN,  
Auditor.  
jy7

**Estate Notices.**

**Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
AUGUSTUS GROEZINGER,  
Assignee,  
Lancaster, Pa.  
aug18  
M. BROSIUS, Att'y.

**Estate of SARAH DANCE, late of West Lampeter twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp.  
SHENK & LEAMAN, LIZZIE F. SIDES,  
aug19 Att'ys. Executrix.

**Assigned Estate of "DILLER & GROFF," of Lancaster City.**

Diller & Groff, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said "Diller & Groff," he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to  
aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of GEORGE J. DILLER and WIFE, of Lancaster City.**

George J. Diller and wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George J. Diller, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to  
aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of HENRY D. GROFF and WIFE, of Lancaster City.**

Henry D. Groff and Wife having, by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry D. Groff, he therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to  
SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y. [aug18]

**Estate of MARGARET PLITT, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
aug11 AMANDA SHERTZ,  
D. P. ROSENMIER, JR., Att'y. Executrix.

**Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
aug11 MARY E. MUHLENBERG,  
J. HAY BROWN, Att'y. Administratrix.

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAM'L BOYD, Chestnut Level P. O.  
aug4 JERE. B. BOYD, Peters Creek P. O.  
J. HAY BROWN, Att'y. Administrators.

**Estate of SAMUEL LESHER, late of East Calico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
EDW. LESHER, East Earl twp.  
aug4\* EPH'M S. LESHER, Brecknock twp. Executors.

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
PHILIP D. BAKER, JOHN STROHM, Jr.,  
jy21\* Att'y. Administrator.

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
aug4\* HENRY HOFFMAN,  
CHN. K. LONG,  
N. ELLMAKER, } Att'ys. SAM'L HEISTAND,  
H. B. SWARR. } Executors.

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
aug3 HEZEKIAH BROWN,  
ROBERT WARDEN, Administrators.  
J. W. JOHNSON, Att'y.

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
jy21\* BARBARA HARNISH, widow,  
ABRAHAM HARNISH, Administrators.  
PHILIP D. BAKER, Att'y.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
ANN W. TOWNSEND, widow, Administratrix.  
jy21\* PHILIP D. BAKER, Att'y.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [jy21]

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator,  
jy7 Lancaster Pa.

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.  
LEWIS PICKEL,  
jy7 Executor.

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator,  
jy7 Lancaster Pa.

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# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, AUGUST 25, 1877.

No. 13.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy,	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:30 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:35.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,	6:10	7:50	2:10
Lancaster—West King Street,	7:20	9:16	3:15
Lancaster—Upper Depot,	7:30	9:30	3:25

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	10:16	5:30	8:38
Lancaster—West King Street,	10:25	5:40	8:45
Quarryville, (arrive)	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.		p. m.
Lancaster—West King Street,	7:30		3:15
Lancaster—Upper Depot,	7:30		3:25
Lancaster Junction,	7:57		3:51
Reading, (arrive)	10:20		5:50

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading,	7:35	7:30	6:05
Lancaster Junction,	9:53		8:15
Lancaster—Upper Depot,	10:10		8:38
Lancaster—West King Street,	10:25		8:45

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1863
Samuel F. Miller, of Iowa,	1863
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweltzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Philip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**COURT CALENDAR.--1877.**

SEPTEMBER.

- 7. Last day for issuing Writs to September Term.
- 8. Last day for setting down causes for Argument Court.
- 8. Last day for setting down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 22. Last day for setting down causes for trial for October 22.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE—No. 32 NORTH DUKE STREET,

LANCASTER, PENNA.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., AUG. 25, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JOHN R. MONTGOMERY, administrator of WILLIAM MONTGOMERY, dec'd, against ANN NICHOLAS.

An attorney of the party against whom arbitrators report may make the requisite affidavit and take an appeal on behalf of his client.

It can not be objected by the adverse party, to such an attorney, that he has not filed or obtained a warrant of attorney.

Effect of the appearance of an attorney at law, for a suitor:

It is not necessary on an appeal from an award of arbitrators, that the defendant should enter into the recognizance with the surety.

And now, May 12th, 1827, on motion of J. Slaymaker, the court grant a rule to show cause why the appeal from the award of arbitrators should not be dismissed, etc.

This rule was argued on the 15th of September, 1827, by Mr. Norris and Mr. Buchanan for the plaintiff, and Mr. Heckert for the defendant.

The following opinion of the court was delivered at a subsequent term, by HAYES, J.

This motion is made on behalf of the plaintiff. The grounds on which it is placed and supported, are, that the appeal from the award of arbitrators was taken by the attorney at law, on the record, without his having any warrant of attorney, and that the requisite security was not entered according to the letter and spirit of the act of assembly.

George Heckert, esquire, an attorney of this court, appeared for the defendant soon after the suit was brought, by causing his name to be marked on the docket as her attorney. On the 18th November, 1826, the defendant pleaded *nil debet*, etc. On the 5th of December, following, the plaintiff's attorney entered a rule for the appointment of arbitrators; and, on the 22d of the same month, Jasper Slaymaker, esquire, as attorney for the plaintiff, and George Heckert as attorney for the defendant, appearing in the prothonotary's office, chose arbitrators to meet on the 13th January, 1827. On the 10th of January the defendant withdrew the *nil debet*, and pleaded payment with leave, etc., the plaintiff replied *non solvit*, issue was joined and a rule for trial entered by consent. On the 13th of January, when the arbitrators met, George Heckert appeared before them as attorney for the defendant, and in her behalf controverted the plaintiff's demand. On the same day the arbitrators filed their report awarding \$254 in favor of the plaintiff. George Heckert, afterwards, on the 24th day of January, made the affidavit pre-

liminary to an appeal, which is required by the 11th section of the act of 20th of March, 1810, "regulating arbitrators," and entered an appeal for the defendant, in the prothonotary's office, with Abraham Hostetter's recognizance as bail or surety, in pursuance of the 11th and 14th sections of that act.

With regard to the authority of the attorney at law of the appellant to make the requisite affidavit, the case of *Anderson vs. Titler*, 3 S. & R. 1, is decisive; and as to the objection that the defendant did not enter into the recognizance herself, the 14th section of the act referred to expressly directs "that if the defendant be the appellant he shall, by himself, his agent or attorney, produce one or more sureties, who shall enter into a recognizance," etc., which clause, according to Boyce and Wilkins, 5 S. & R. 329, is to receive the obvious construction excluding the defendant. The only question that can be raised is, therefore, whether George Heckert is to be considered as the attorney at law of the defendant, in this suit, or not.

The plaintiff has exhibited a deposition of John Roberts, who testifies that the defendant, in the month of May last, told him she had nothing to do with this suit, and that Abraham Hostetter had agreed with her to settle with and satisfy her attorney for the services which are the foundation of the plaintiff's demand. She has since stated to the deponent that Abraham Hostetter had told her she should not concern herself about this suit as she had nothing to do with it. Whether this testimony proves that the defendant never retained or authorized George Heckert to appear for her may be doubted, but the fact is not deemed material upon this motion.

By the admission of an attorney at law to practice the courts receive him into their confidence and virtually recommend him to that of the public. His oath qualifies him as an officer of the court into which he is admitted binding him to "behave himself in the office of attorney within the court with all good fidelity, as well to the court as to the client." He does not require a written warrant from his client; he is usually employed by means of some secret and confidential communication; and although we have an act of assembly which, like the 4th of Hun. c. 16, directs the attorney for the plaintiff, in every action, to file his warrant of attorney the same court he declares, and the attorney of the defendant to file his the same court he appears, yet in practice the requisition is never observed. The mere fact of the attorney's appearance is always deemed sufficient for the opposite party and for the court. Nor can the party for whom he appears, however committed by his acts, obtain relief against the opposite party by denying the attorney's authority.

The only remedy of the client (provided the attorney is responsible) is an action against him for damages. In *McCullough vs. Guetner*, 1 Binn. 214, an attorney appeared, without any warrant of attorney, for a defendant who had not been summoned. The Supreme Court held that this was not a good appearance. They held, in the case of *Reinhold vs. Alberti*, 1 Binn. 469, that the authority of de-

defendant's attorney was competent to restore an action after *non pros.* without the knowledge or consent of his client; they therefore refused, upon the application of the defendant, to enter a discontinuance of the suit, remarking that the authority of an attorney is not limited here in the same manner that it is in England. So the Supreme Court of New York in a case (*Denton vs. Noyes*, 6 Johns. R. 296,) in which an attorney of the court appeared for a defendant against whom a writ had been issued, but not served, and without authority from the defendant, confessed a judgment, which was entered up in vacation; held that the proceedings were regular, and refused, upon application of the defendant, to set the judgment aside, recognizing the rule as settled by a long train of decisions, that the appearance of an attorney of the court, without warrant, is good as to the court.

But in the matter before us the complaint, which is the occasion of the motion, is made by the plaintiff throughout all the proceedings in the cause as above detailed. No application has been preferred for a rule upon the defendant or her attorney to file a warrant of attorney, and no step whatever taken to question the legality of the attorney's authority until after the appeal from the award of arbitrators. To say nothing of the effect of this admission as a waiver, or as concluding the present objection, it would be evidently unjust to give a party the benefit of the rule when it operates in his favor, and exempt him from its disadvantages when it operates against him. If, in this case, the defendant's attorney had, without authority from her, confessed judgment in favor of the plaintiff, the court would have held the judgment to be regular against her. Can they, then, consistently decide, upon the objection of the plaintiff, that this appeal is irregular? The defendant would not be allowed, by denying the authority of her attorney at law, who appears as such upon the record, to invalidate any part of the plaintiff's proceedings. It would surely then be inequitable to permit the plaintiff, by denying the authority of that attorney, to invalidate the defendant's proceedings.

To oblige a party to look beyond his adversary's attorney to his authority would be a great inconvenience. Hence the rule that the mere fact of the attorney's appearance upon the record shall be sufficient for the opposite party. The rule that the appearance of an attorney of the court, without a warrant of attorney, is good as to the court, is founded upon the relation subsisting between the attorney and the court, and the confidence which that relation implies. It is, therefore, not applicable to an agent or attorney in fact. Both these rules apply directly or by analogy to the case under consideration, and George Heckert must be regarded as the attorney of the defendant in this cause.

Let the rule be discharged.

In a Nevada trial a new theory for defence was evolved. It consists in proving the previous bad character of the accused in mitigation of his crime, and as an explanation why nothing better could have been expected of him.

## Orphans' Court of Lancaster County.

ESTATE OF COL. ABM. GREENAWALT, DEC'D.  
Facts found by an auditor are conclusive unless a clear mistake or misconduct in the officer is shown. In a distribution of an estate by an auditor, no interest is allowed when the claim is for unliquidated damages, and contested cases sounding in damages.

A reasonable allowance to accountants and their counsel, as a compensation for services at the audit, and in the distribution of an estate is proper.

Exceptions to auditor's report.

*N. Ellmaker* for exceptants.

*Thos. E. Franklin* contra.

Opinion delivered August 13, 1877. By PATTERSON, A. L. J.

The auditor's report in this case is elaborate and critical. We have considered it with care, and with the exception of several points involving questions more of law than of fact, it is our opinion that we cannot employ the power of this court to consider much of the matter embraced in the exceptions filed. That is certainly our position if this court feels bound, as it should do, to administer the law as it is clearly pronounced, and treat the report of the auditor upon the facts, as we would do the verdict of a jury.

The evidence submitted is conflicting, and the auditor has doubtless weighed it and decided in favor of the party in whose favor the scales in his judgment inclines.

It seems to the court that if parties are unwilling for the auditor to pass upon the facts, they should demand an issue, for they can not take the chance of his decision in their favor, and if against them, come in, as a matter of course, and have a re-hearing of the facts before the court.

Gentlemen of the law know this well, and when the evidence is of a conflicting character, and evidently from its nature and tenor such as to afford no grounds whatever for pronouncing the findings a clear mistake, or unless it shows misconduct in the officer, they know the court should not be asked to entertain a re-hearing. Indeed, if the court were to re-hear every case of that character we might as well dispense with auditors altogether.

It is a sufficient answer, therefore, to almost all the exceptions filed in the above case, to say, that they refer to the auditor's findings on the facts. These findings have all the force and efficacy of a verdict of a jury, and cannot be disturbed by us unless manifestly wrong. From a careful survey of the evidence, we are not prepared to say the auditor has erred. On the contrary, it will be found that the auditor was unusually specific in a report covering more than twenty-five pages, and drafted it in a manner bringing the exceptions on the record *seriatim* and as is to be expected, in order to assist the court, and if possible to convince the parties contending, he has presented such arguments and reasons for his conclusions as appeared to him to be pertinent.

We have seldom seen a report so critical, so clear in its diction, and marked by such sound legal sense, and also so satisfactory in its

conclusions on the questions of fact in dispute.

There is one point, however, not purely a question of fact, in which the learned auditor has departed from the law and the usual rule of practice by auditors, as heretofore recognized and approved by this court. We refer to his allowance of interest upon the unliquidated claim of John H. Brubaker. The auditor says, "with the allowances and deductions indicated, the claim of John H. Brubaker, as allowed, amounts to \$1,047.80" and then he adds interest on that finding from September 1st, 1875, to April 1st 1877—that interest amounting to \$104.70, "which is added to the sum allowed," making together the sum of \$1,152.50, and awards that latter sum to the claimant. That is error. No interest will be allowed on unliquidated damages. No interest is allowed when the claim is for unliquidated damages and contested claims sounding in damages: 1 Pet. C. C. Rep. 85, *Gilpin vs. Consequa*, and page 180—the same book. The amount of \$104.70 is, therefore, deducted from the sum awarded, and leaving the claim of John H. Brubaker to be \$1,047.80, as allowed by the auditor. The executors will retain the sum deducted to go to the decedent's estate.

The third exception is "in allowing his, John H. Brubaker's bill of costs for so many witnesses called to same point." The auditor states in reference to Wm. Brubaker's claims, that he "disregarded the evidence of the claimant himself, as to matters occurring in the lifetime of the testator;" that the claim was made out, not by his testimony, but *aliunde*, and adds, that "a large mass of testimony was taken to sustain these charges," and directed principally to proving the *rental value, keeping of horse, cost of boarding, etc.*"

We find no remark or intimation from the auditor that the number of witnesses called was excessive. The claim clearly was warmly contested and the aggregate claim was made up of not one item, but of three or more, and in that case would require a number of witnesses.

We are not prepared to say that the auditor erred in allowing costs to the number of witnesses that he did, and we dismiss the exception.

There is another exception to which we will refer, viz: The allowance by the auditor of \$150 fee to the executors' counsel at audit; the distribution being deferred until next account be filed. The principal part, if not all the exceptions filed to the executors' account, were overruled by the auditor, and the account found correct. The executors were entitled to have the aid and services of legal counsel, and the proceedings before the auditor, if judged by the mass of testimony taken, were quite protracted, besides the report shows distribution was made, so far as the estate in hands permitted, and in which the aid of counsel always is acceded to accountants. As we do not regard the allowance excessive this exception is overruled.

The auditor very properly animadverted on the conduct of one of the executors in depositing the funds of the estate in his indi-

vidual name, instead of in that of his office as executor. The censure was deserved and the penalty imposed was righteous and might have been greater.

One more point. The court will here take occasion to remark on a practice, which we fear is becoming to be abused and carried to extremes often by auditors of this court. We refer to the practice of allowances awarded to accountants for attending audits for distribution on their own official accounts. An auditor, doubtless may, and often should in his administration of equitable rights and equitable remedies, allow a reasonable sum to accountants, regulated in amount by the amount of commissions already received in their account, and also by the extent of their labors, which are to follow, including the payments to distributees. But it seems to the court these allowances are often excessive and out of all proportion. In the present case the sitting of the auditor having been very protracted, and the number of creditors of the estate—attaching creditors of legatees,—being considerable in number, therefore requiring care and trouble in making payments, we will not disturb the allowance of eighty dollars made to the accountants. But we wish to caution auditors—the officers of this court, against the abuse of this practice—a practice within the equity powers and discretion of the auditor, it is true, but should be administered to promote equity and justice, and with the object and motive to render such assistance as will enable this court, in all cases, to do complete justice in the premises. Entertaining the opinion already presented, we must dismiss all the exceptions to the report of auditor, except that so far as we disallow and deduct the interest of \$104.70 allowed on John H. Brubaker's claim; and with that correction now confirm the report absolutely.

## Supreme Court of the District of Columbia in General Term.

UNITED STATES vs. JOHN BOWEN.

*Criminal Law—Challenges—Evidence.*

1. At the trial of an indictment twelve of the regular jurors were empaneled in another cause and were out consulting upon their verdict. Defendant claimed the right before the empaneling commenced, to have the whole array present and subject to his challenge. The court ruled against the point, and the jury was completed from the other jurors and talesmen, and the ruling of the court was sustained on appeal.
2. On an indictment for presenting a false claim against the United States for back pay of a deceased soldier, claimed by the defendant to be his brother, the allegation of the indictment was that the brother was named "Major Dabney," and enlisted under the name of "George Bowen," whereas the proof was that defendant claimed to be the brother of George Bowen who served under the name of Major Dabney. It was held that the variance was immaterial, and the defendant properly convicted.
3. Previous good character is not sufficient to create such a doubt in the minds of the jury as would of itself justify an acquittal.
4. Declarations made to a witness by the father of an illegitimate son is not proof of pedigree.

## STATEMENT OF THE CASE.

The defendant was indicted for presenting to the second auditor of the Treasury a false claim for the back pay and bounty of a deceased soldier named Major Dabney, of Company C, 23d Regiment U. S. Colored Troops.

At the trial, exception were taken to the manner in which the jury was empaneled. It appears that twelve of the regular jurors were empaneled in another cause and were out consulting upon their verdict. The defendant claimed the right, before the empanelling commenced, to have the whole array, consisting of twenty-six jurors, present and subject to his challenge. The court overruled the point, and directed the jurors then present to be called until the number was exhausted by being accepted and by the challenges of the defendant. The court then directed the marshal to summon a sufficient number of talesmen, and the jury was completed and sworn to try the issue. To all of which the defendant, by his counsel, excepted.

The defendant represented in said claim that he was the sole and only heir of his brother, George Bowen, who enlisted and served in Company C or G, 23d Regiment U. S. C. T., as Major Dabney. It is claimed on the part of defendant that there is a fatal variance between the claim and the allegation in the indictment setting out said application. The indictment alleges, in substance, that the claim presented was for arrears of pay and other allowances due one Major Dabney and his lawful heirs, who served as a private in Company C, twenty-third regiment, U. S. Colored Troops, under the name George Bowen. It will be seen on examination that the claim describes the deceased soldier as the brother of the defendant, serving in the Company as Major Dabney, and the indictment describes the claim as setting up that he served under the name of George Bowen. The variance was deemed immaterial by the court below and the objection was accordingly overruled and exception noted. The defendant offered to prove the declarations of John Bowen, the reputed father of the defendant, to the effect that he had a woman in Washington, not his wife, who had a son named George by him. The court refused to allow the statement to be given in evidence on the ground that it was in no sense pertinent to the issue to prove that the reputed father of defendant had a son by a woman other than his wife, and that there was no law which authorized pedigree to be proved by hearsay testimony of that kind. This ruling was also objected to and an exception noted.

After the close of the testimony, the defendant's counsel asked the court to instruct the jury that previous good character of the accused is sufficient when clearly proved, to create such doubt in the minds of the jury as will justify an acquittal, which the court refused to give in the words prayed, but did instruct the jury fully as to the weight to be given to evidence of previous good character. The defendant, by his counsel, excepted to such refusal to give the instruction as prayed

for. There were two or three other exceptions not insisted upon and which are consequently omitted from this statement.

The defendant was convicted as charged in the indictment, and a motion for a new trial denied. The case is here on appeal.

H. H. Wells, U. S. Attorney, for the prosecution:

We say there was no error in the manner in which the jury was empaneled. The language of the section already quoted seems decisive on this point.

It is made the duty of the court to summon talesmen whenever for any cause there is not a sufficient number of the regular panel out of which to form a trial jury. There were in this case more than enough jurors present, until the number had been reduced by challenges on the part of the defendant, so that, as a matter of fact, the necessity for summoning talesman was created solely by his challenges.

The real scope of this exception, however, is that the defendant has a right, before the empanelling of the jury is commenced, to have twenty-six jurors present subject to his challenge, so that if twelve jurors, or any smaller number of the regular panel in attendance upon the term, are out in another cause, all business of the court must stop until they agree or are discharged.

It goes still further. If, from any cause, one or any greater number of the jury are absent, sick or for any other cause unable to attend, then no cause can be put on trial until the disabilities of such jurors are removed or they have been discharged and other regular panel jurors have been summoned to supply their places.

That such is not the true intentment of the statute is very plain, not only because of the use of the expression in this section, "*by reason of challenge or otherwise,*" but from the whole scope of the jury law.

A jury, before the commencement of each trial, is to be drawn from the box, "and the twenty-six persons whose names shall be drawn shall constitute the petit jury for that term."—(Sec. 858, Rev. Stat. D. C.)

If any of the persons so drawn shall have died or removed from the district or become incapable of serving, the clerk shall draw from the box another name to serve in his stead.—(Sec. 859, Rev. Stat. D. C.)

Three exceptions were taken on the trial, which together embody substantially one and the same proposition though stated in various forms, to wit: That under the allegations of the indictment it was incompetent to prove that Major Dabney was a member of Company G, 23d regiment United States colored troops.

All of these objections appear to us to rest upon a false construction put upon the indictment itself. That paper first alleges that the defendant, Bowen presented a false claim and states by way of recital what the claim was, and after that, concludes as follows: "Which said claim was false, fictitious, and fraudulent in this," and thereupon enumerates the following particulars: "That the said John Bowen was not the brother of said

Major Dabney, alleged to have been called George Bowen," \* \* \* "and was not entitled to recover any arrears of pay and other allowance due the said Major Dabney," \* \* \* and "that said Major Dabney died, leaving a father and a brother."

It will be remembered that the defendant in his first claim described Major Dabney as belonging to Company C, while in the second or amended claim he was described as belonging to Company C or G. Now, the indictment did not count at all as to any misstatement of the particular company, and it was not necessary for the purpose of proof to allege the fact that Major Dabney was a member of any company, because the falsity of the claim lay in the fact that he pretended and falsely stated that he was the brother and sole heir of George Bowen, alias Major Dabney, who served in Company C or G, and, therefore, it was no error for the court to allow the muster rolls of both Companies C and G to be received in evidence. They were proper evidence, being original documents from the War Department, in every cause in which they might be relevant.

The roll of Company C was introduced simply to show that no person of that name was borne on that roll, as charged in the defendant's original claim, nor were the facts as thus established by the roll of Company C repugnant to any allegation in the indictment. Not only so, but if it had been averred that Major Dabney was a member of Company C or G, and the fact in the examination proved to be otherwise, it would have been an immaterial defect, because the question as to which company the deceased belonged was immaterial and would be rejected as surplusage. As before stated, the allegation would have been only useful and the proof was only material for the purpose of identifying Major Dabney, deceased, so as to show that the defendant was not his brother.

The third exception relates to the instruction given, and refused by the court, on the subject of the weight that evidence of good character should have with the jury on the question of his guilt or innocence.

The court was asked to instruct the jury that "the fact of good character may be sufficient to create a doubt which will be sufficient to justify a verdict of acquittal," which the court refused to give in the words as prayed, but did instruct the jury that "evidence of good character is competent for the jury to consider, and, in the absence of uncontradicted and conclusive proof of guilt introduced on the part of the government, should weigh in favor of the defendant."

In the refusal to instruct as prayed we submit that there was no error, but that the instructions given stated, with the utmost liberality to the defendant, the broadest rule as to the effect of such evidence.

On the trial the defendant, having offered to prove that John Bowen, the reputed father of the defendant, who was his illegitimate son, had long ago and before the war said that he had a woman in Washington [not Sophia Clements] who had a son George by him. The court refused to allow that statement to be given in evidence.



In this ruling there was no error whatever, because the testimony was in no sense pertinent to the issue, inasmuch as it was already proven and never denied that Sophia Clements was the mother and John Bowen the father of the accused, and that Peter Dabney and Malinda Dabney were the father and mother of Major Dabney, the deceased soldier.

How could the fact, if properly proven, that John Bowen, deceased, had another illegitimate son by another woman, who was not the mother of the defendant, John Bowen, tend to establish any issue involved in this case? Clearly it had no relation or reference to that subject, because the question was whether John Bowen was the brother of Major Dabney, the deceased soldier.

*William A. Cook and J. S. Slater for defendants.*

The defendant was entitled to the array of the full panel of twenty-six, constituting the jury as provided by section 856, Rev. Stats. D. C., from which to make his selections; and and it was only after a full panel, constituted as aforesaid had, in being arrayed, become exhausted by "challenge or otherwise, that the court could legally direct talesmen to be summoned to complete it." The word "otherwise" cannot, by any proper construction, be taken to include an incomplete panel caused by the temporary engagement of some of the regularly summoned panel on a jury considering another cause.

There is a fatal variance between the allegations of the indictment concerning the service of the deceased soldier, and the proof offered in support thereof; said allegations setting out that defendant claimed his brother was named "Major Dabney," and enlisted under the name of "George Bowen," whereas the proof submitted by the Government shows that defendant claimed to be the brother of George Bowen *alias* Major Dabney, and who served as was believed, under the name of Major Dabney in the 23d regiment, U. S. colored troops, &c.: See 1 Wheat. Crim. Law 592, &c.; 1 Greenleaf 51, 56, 57, 60, 65; 10 Petersdorf Abridg't 353, 354; 15 Petersdorf Abridg't 200.

In proving pedigree, the declarations of a deceased parent, touching the existence and paternity of one of his alleged children, are competent proof to be submitted to the jury, and especially so when such declarations are offered to be proved by a relative or member of the family of the deceased. It having been proved on the trial that the father of defendant was long since dead, and that during his lifetime he made certain declarations concerning the existence of a person, claimed by defendant as his brother George, the court erred in excluding the testimony of Sophia Clements (formerly wife of defendant's deceased father), Alfred Ross, and others, of such declarations. The defendant was thus prevented from proving by competent testimony the truth of essential facts, viz., the existence of George Bowen, his brotherhood, &c. 1 Greenl. Ev. 103, and note 1, sec. 104; 1 Whart. Crim. Law, 866; Roscoe's Crim. Law, sec. 28 p. 27.

Previous good character of the accused is sufficient, when clearly proved, to create such doubt in the minds of the jury as will justify an acquittal; and the court should have given the instruction as to this point in full, as prayed by defendant. 1 Whart. Crim. Law 644; 3 Russ. Crimes 300; 2 Brewster's Rep't, Commonwealth vs. Hart 546.

Mr. Justice OLIN delivered the opinion of the court.

John Bowen was indicted under section 5438, p. 1060, for presenting a false claim against the United States. The particular crime alleged in the case was that the defendant, on the ninth day of December, 1874, presented to the second auditor of the Treasury a false claim for the back pay and bounty of a deceased soldier, one Major Dabney, to which back pay he, Bowen, claimed to be entitled as next of kin or heir-at-law. After carefully looking through the indictment we think it sufficient in law, and properly charges the offence mentioned in the statute. We see no error in the ruling of the court to which exceptions were taken on the trial.

The evidence recited in the bills of exceptions clearly shows that Bowen was a willing instrument in the attempt to perpetrate a gross fraud upon the treasury, and it is only to be regretted that the party or parties that made use of him for that purpose do not stand in the same position that Bowen does by the verdict of a jury. The judgment in this case is affirmed, and the warden of the jail is directed to carry into execution the sentence of the criminal court.—*Washington Law Reporter.*

#### Common Pleas of Luzerne County.

HAWK, Assignee, vs. SPADE et al.

To warrant a decree of the court to direct the prothonotary, under the Act of March 14th, 1876, to mark a judgment satisfied, the evidence of its payment must be clear and satisfactory.

If it be not, the court may, in accordance with the usual practice, open the judgment and award an issue to be tried by a jury.

Rule to show cause why judgment shall not be marked satisfied.

Opinion by DANA, J. June 29, 1877.

The judgment in this case was entered upon a judgment note, made to Samuel Hawk by Aaron Spade as principal debtor, and Peter Spade as surety. The consideration was the purchase by Aaron Spade of certain standing timber upon the lands of Hawk.

The present rule, granted on the special application of Peter Spade, is based on the act of March 14, 1876, (P. L. 7.) which provides that if, upon the hearing of a rule taken therefor, "it appears to the satisfaction of the court that said judgment has been fully paid, as set forth in the application of the defendant or defendants, the said court shall then direct the prothonotary to mark such judgment satisfied of record," &c. Whilst the act authorizes and directs the court to hear and decide a question, usually one of fact, yet the evidence of payment to warrant a decree must be clear and satisfactory; if not, the decree will be refused, although upon proper showing the court may open the judgment in

accordance with the existing practice, and award an issue to be submitted to a jury.

Is there such evidence in this case? It is clear that the amount of the judgment was paid to Samuel Hawk by Solomon A. Spade, son of Aaron Spade, and that he became the owner of the timber for which it was given. The testimony of Hawk, Guldin, Bliem, and Milton Spade, disinterested witnesses, is, that upon the transfer of the timber by Aaron Spade to Solomon A., his son, the latter assumed his father's position and liability, and that his payment to Hawk was a satisfaction and discharge of the judgment; that when the assignment was made "it was agreed that when the timber was sold and turned into money the judgment was to be satisfied." The apprehension of a levy upon the timber by creditors of Aaron Spade, referred to in the evidence of Mr. Guldin, may also have had an influence in taking the assignment. It further appears that the timber was cut and disposed of, and that the transactions above referred to occurred before the assignment to Hughes & Keenig.

Solomon A. Spade, on his examination, says he paid Hawk the amount of the judgment out of his own means, taking an assignment thereof, and denies any agreement to satisfy it. In his cross-examination he adds, after stating that the judgment was given by his father for standing timber bought of Hawk, "I afterwards got this timber of Hawk, and got parties to take it off. The timber that was sold to Aaron Spade I got." He refers to a bill of sale of property made to him by his father, in which is enumerated, amongst other items, "all the timber for lumber and sills to be taken from the lots of Samuel Hawk, to be paid to Samuel Hawk."

If the timber sold by Hawk to Aaron Spade, for which the judgment note, with Peter Spade as surety, was given, was afterwards taken back under arrangements with Aaron, resold by Hawk to Solomon A. Spade and paid for by him, in accordance with plaintiff's own showing, on what principle can Hawk, or any person as assignee under him, again claim payment? As to the surety at least, were not these agreements and transactions a payment of the judgment?

Looking at the depositions produced by the applicant for the rule, payment of the judgment is clearly shown. Under the testimony of Solomon A. Spade, and the paper referred to, there are strong grounds to sustain the inference of a payment in law; and, upon careful consideration, the evidence satisfies us that as to Peter Spade, by whom and in whose behalf alone the application is made, the judgment No. 422, January Term, 1871, is fully paid; and in accordance with the provisions of the act of assembly, we direct the prothonotary to mark such judgment, as to the said Peter Spade, satisfied of record.—*Luz. Leg. Reg.*

"PRAYING general relief," said Lord Hardwicke, "is sufficient though the plaintiff should not be more explicit in the (particular) prayer of the bill; and Mr. Robins, a very eminent counsel, used to say, 'General relief was the best prayer next to the Lord's Prayer!'"

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., AUG. 25, 1877.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since August 11, 1877.

MARTIN STEINMETZ, dec'd, late of Elizabeth twp.; Susan Gockley, administratrix.

JEREMIAH DAUM, dec'd, late of East Cocalico twp.; Cyrus Ream, administrator.

BENJAMIN K. LEAMAN, dec'd, late of Upper Leacock twp.; Isaac Leaman, administrator.

MARTIN GROSS, dec'd, late of Ephrata twp.; J. L. Steinmetz, esq., administrator.

BARBARA HELM, dec'd, late of Bart twp.; Jacob Helm, administrator.

JOHN BRENNEMAN, dec'd, late of Rapho twp.; Henry F. Breneman, administrator.

The following Wills have been admitted to probate since August 11, 1877:

ADAM ZARN, late of Clay twp.; Isaac Zarn, executor.

JACOB F. OCHNER, late of Lancaster city; Anna Sybilla Ochner, executrix.

JOHN B. BITZER, late of West Earl twp.; James Bryson, executor.

The accounts of the following persons are filed in the Register's office of Lancaster Co. for confirmation and allowance at an Orphans' Court, to be held in the city of Lancaster, on Monday, September 17th, 1877.

Robert Maxwell, guardian of Rachel J. Wilson.  
Elizabeth Murray, administratrix of George Murray.

James L. Gibson, administrator of Grizella Gibson.  
Peter Worst, guardian of H. B. Worst.

William Lechler, executor of Harriet Fisher.  
Dr. Jacob H. Musser, guardian of Ida B. Landis.

Charles Hays, executor of Mary Clendenin.  
Fanny B. Ruhl, administratrix of Henry B. Ruhl.

Henry Schaffner, guardian of Franklin Hartman.  
Henry Schaffner, administrator of Geo. W. Baker.

Daniel Engle and Henry S. Musser, executors of Barbara Greiner.

Daniel G. Diffenderfer, administrator of Phillip Diffenderfer.

David N. Taylor, executor of Joseph C. Taylor.  
Harriet Landis, administratrix of Joseph Landis.

Henry G. Minnieh, administrator of Catharine Myers.

Joseph B. Erb, administrator of Abraham Goss.  
George N. Taylor, executor of Elizabeth Taylor.

Conrad Gast, guardian of Emma Wilson.  
David W. Coble, executor of Elizabeth Albright.

Christopher Graham and John Grofft, administrators of Joseph Grofft, sr.

W. M. Cooper, administrator of Gabriel Reel.  
Margaret Arnold, executrix of John Arnold.

Mary C. Cole, guardian of Harriet Ellen Given.  
Christian Warfel, executor of George Warfel.

John S. and Joseph Hoover, administrators of E. Ferree Hoover.

Christian Shock and Christian F. Herr, executors of Christian Sterneman.

Benjamin and Tobias Brubaker and Samuel Higgins, executors of Tobias Brubaker.

O. H. Hunchberger, administrator of John H. Hunchberger.

Barbara Zimmers, administratrix of Abraham Zimmers.

John Ranck and Jacob Denlinger, executors of Peter Garra.

Elias Martin, administrator of John W. Martin.  
Peter H. Sander, guardian of Henry Newswanger.

H. M. North, administrator of Thomas Collins.  
Christian Good, executor of Jacob Yeider.

David O. Wissler, administrator of John Wissler.  
Baltzer D. Eckman, guardian of James Brison

Gregg and U. S. Grant Gregg.  
Samuel S. and Franklin S. Hess, executors of

Jacob R. Hess, deceased, who was guardian of Lena, Samuel and F. Grant Steinmetz.

Henry Wissler, guardian of Sarah B. Wissler.  
Michael S. Shuman, administrator of Uriah Findley.

David F. Gible, administrator of Peter H. Gible.  
John B. Erb, guardian of Franklin B. Hess.

Isaac Mohler, executor of Michael Frank, sr.  
Levi Snyder and Michael Coover, executors of

Wentel Horing.  
Geo. N. Lefever, guardian of Amand L. Kreider.

Philip D. Baker, administrator of Peter G. Greider.  
Casper Hiller, executor of Henry K. Frinckbach.

Martin E. Stauffer, executor of Benj. G. Alderfer.  
Joseph McClure, executor of Thomas McClure.

Samuel Grove, administrator of Emma C. Spring.  
Lizzie Rudy, administrator of Elam Rudy.

Jacob R. Myer and John D. Buckwalter, executors of Samuel R. Myers.

Hugh Cercoran, administrator of Patrick Corcoran.

John M. Lutz, administrator of Daniel Lutz.  
John M. Kessler, administrator Adam Kessler.

Ambrose McConomy, executor of Peter McConomy, deceased; and Mary Coyle, trustees of James Coyle.

Isaac Huntsberger, guardian of Mary Huntsberger.  
Christian Keller, guardian of William Lutz.

Aaron F. Gible, one of the administrators of Peter H. Gible.

Montillion and Haines Brown, executors of Wm. Brown, who was trustee of Albert E. Gregg.

Montillion and Haines Brown, executors of Wm. Brown, deceased, who was guardian of Elmer E. Gregg.

Samuel Ackerman, executor of Mary Mathlot.  
Daniel Engle and Joseph Musser, administrators of Hiram Engle.

Barbara Swanger, administratrix of Cyrus Swanger.  
B. F. Eberle and John H. Zeller, executors of Henry Eberle.

John E. and John N. Hershey, executors of Benj. Hershey.

James Keener, administrator of Bird Keener.  
David Boyce, jr., and Jacob D. Boyce, executors of David Boyce.

Wm. Whitman, executor of Rebecca Ronk.  
Elizabeth Miller, executrix of Henry Younge.

Samuel M. Wetzel, executor of Catharine Wetzel.  
Samuel M. Wetzel, surviving executor of John Wetzel.

Henry Houseal and Christian Engle, executors of Thomas Huston.

Christian B. and Eli K. Mylin, administrators of Samuel Charles.

Lysander White, executor of Caroline White.  
Martha Shiffer, administratrix of John Shiffer.

Amos Martin, guardian of Samuel Martin.  
John D. Brubaker, guardian of Amos Kreider and Amanda Kreider.

### PROTHONOTARY'S OFFICE.

The accounts of the following named estates will be presented for confirmation on Monday, September 17th, 1877:

James Gonder's trust estate; Alexander Harris, trustee.

Catharine Grofft's trust estate; Elias Grofft, trustee.

Martin Grofft's trust estate; Emanuel Grofft, trustee.  
Marks G. Wenger's assigned estate; John G. Bear et al., assignees.

Amos B. Christ and wife's assigned estate; And. M. Frantz, assignee.

Inland Insurance and Deposit Company's assigned estate; Samuel H. Reynolds, assignee.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET,  
LANCASTER, PA.

## ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE,

No. 13 NORTH DUKE STREET,

LANCASTER, PENNA.

### NOTICE.

And now, August 21, 1877, petition of Thos. J. Davis, assignee of R. H. Hinsdale, presented and filed, praying the Court for an order to re-convey all trust property now in his hands, whereupon the Court fix MONDAY, SEPTEMBER 17, 1877, at 10 o'clock, a. m., for a hearing.

Attest: LEWIS S. HARTMAN,  
Lancaster, Aug. 25, 1877. Prothonotary.

### INSOLVENT NOTICE.

Notice is hereby given that Joseph Miller has made application for his discharge under the insolvent laws and that a hearing will be had on MONDAY, SEPTEMBER 17th, 1877, at 10 o'clock, a. m. aug25\* JOSEPH MILLER.

### INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, SEPTEMBER 17th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper. aug25\* JOHN SMITH.

### DIVORCE NOTICE.

LEWIS A. WAMBAUGH } Alias Subpoena for Divorce,  
vs. } To August Term, 1877.  
MARY J. WAMBAUGH. } No. 7.

To MARY J. WAMBAUGH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 17th day of SEPTEMBER, 1877, at 10 o'clock, a. m., to show cause if any you have, why the said Lewis A. Wambough should not be divorced from the bonds of matrimony contracted with you, aug:8 H. N. BRENNEMAN, Sheriff. Sheriff's Office, Lancaster, August 15th, 1877.

## Auditors' Notices.

Estate of JACOB BUSSE, SR., late of Warwick twp., Lancaster co., deceased.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPT. 19th, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. K. MARTIN,  
C. S. HOFFMAN,

Auditors.

aug25

**Estate of JACOB BRENNER, late of Conoy township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel M. Lehman, administrator, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPT. 12th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
aug25 JNO. M. MAST, Auditor.

**Assigned Estate of ABRAHAM GOOD and WIFE, of Conestoga twp., Lancaster co.**

The undersigned Auditors, appointed to pass upon exceptions and to distribute the balance remaining in the hands of John P. Good, assignee, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. C. REINEHL,  
ROBT. J. EVANS,  
Auditors.  
aug25

**Estate Notices.**

**Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 59 North Duke-st.  
aug25 J. L. STEINMETZ, Administrator.

**Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.**

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JOHN P. WEISE, Assignee.  
J. HAY BROWN, Att'y. [aug25

**Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.  
THOS. J. DAVIS, Att'y.  
JAMES BRYSON, Executor.  
aug25\*

**Estate of JOHN BRENNEMAN, late of Rapho township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to him without delay.  
HENRY F. BRENNEMAN,  
D. G. BAKER, Att'y. Executor.  
aug25 Residing near Mount Joy.

**Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
AUGUSTUS GROEZINGER,  
aug18 Assignee,  
M. BROSIUS, Att'y. Lancaster, Pa.

**Estate of SARAH DANCE, late of West Lampeter twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp.  
SHEPK & LEAMAN, Att'ys.  
LIZZIE F. SIDES, Executrix.  
aug19

**Assigned Estate of "DILLER & GROFF," of Lancaster City.**

Diller & Groff, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said "Diller & Groff," he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to  
aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of GEORGE J. DILLER and WIFE, of Lancaster City.**

George J. Diller and wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George J. Diller, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to  
aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of HENRY D. GROFF and WIFE, of Lancaster City.**

Henry D. Groff and Wife having, by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry D. Groff, he therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to  
SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y. [aug18

**Estate of MARGARET PLITT, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
aug11 AMANDA SHERTZ,  
D. P. ROSENMILER, JR., Att'y. Executrix.

**Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
aug11 MARY E. MUHLENBERG,  
J. HAY BROWN, Att'y. Administratrix.

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAM'L BOYD, Chestnut Level P. O.  
aug4 JERE. B. BOYD, Peters Creek P. O. Administrators.  
J. HAY BROWN, Att'y.

**Estate of SAMUEL LESHNER, late of East Calico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
EDW. LESHNER, East Earl twp.  
EPH'M S. LESHNER, Brecknock twp. Executors.  
aug4\*

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
PHILIP D. BAKER, JOHN STROHM, JR., Att'ys. Administrators.  
jy21\*

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
aug4\* HENRY HOFFMAN,  
CHN. K. LONG,  
N. ELLMAKER, } Att'ys. SAM'L HEISTAND, Executors.  
H. B. SWARR. }

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
HEZEKIAH BROWN,  
ROBERT WARDEN, Administrators.  
aug3 J. W. JOHNSON, Att'y.

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
BARBARA HARNISH, widow,  
ABRAHAM HARNISH, Administrators.  
jy21\* PHILIP D. BAKER, Att'y.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
ANN W. TOWNSEND, widow, Administratrix.  
jy21\* PHILIP D. BAKER, Att'y.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [jy31

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator,  
jy7 Lancaster Pa.

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.  
LEWIS PICKEL, Executor.  
jy7

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to  
A. HERR SMITH, Administrator,  
jy7 Lancaster Pa.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, SEPTEMBER 1, 1877.

No. 14.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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WM. H. ROY,  
No. 16 South Queen-st., Lancaster, Pa.

## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

	WESTWARD.		EASTWARD.	
	LANCASTER.	HARRISBURG.	LANCASTER.	PHILADELPHIA.
Pacific Express,*	2:40 a. m.	4:05 a. m.	12:30 a. m.	3:00 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.	4:10 a. m.	7:00 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.	7:35 a. m.	10:00 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10:10 a. m.	9:28 a. m.	12:30 p. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.	1:20 p. m.	3:45 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.	2:00 p. m.	5:00 p. m.
Sunday Mail,.....	11:29 a. m.	1:30 p. m.	3:05 p. m.	6:00 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.	5:18 p. m.	7:20 p. m.
Frederick Accom.,.....	2:15 p. m.	COL. 2:45 p. m.	5:50 p. m.	9:00 p. m.
Harrisburg Accom.,.....	6:10 p. m.	8:10 p. m.		
Columbia Accom.,.....	7:20 p. m.	COL. 8:00 p. m.		
Harrisburg Express,.....	7:35 p. m.	8:40 p. m.		
Pittsburg Express,.....	9:25 p. m.	10:50 p. m.		
Cincinnati Express,*	11:30 p. m.	12:45 a. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,.....	6:10	7:50	2:10
Lancaster—West King Street,...	7:20	9:16	3:15
Lancaster—Upper Depot,.....	7:30	9:30	3:25
LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	10:16	5:30	8:38
Lancaster—West King Street,...	10:25	5:40	8:45
Quarryville, (arrive).....	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,...	7:20		3:15
Lancaster—Upper Depot,.....	7:30		3:25
Lancaster Junction,.....	7:57		3:51
Reading, (arrive).....	10:20		5:50
LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Reading,.....	7:35		6:05
Lancaster Junction,.....	9:53		8:15
Lancaster—Upper Depot,.....	10:10		8:38
Lancaster—West King Street,...	10:25		8:45

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom,.....	7:05	1:55	5:45
LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:30

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweitzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditor*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Philip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

THE LANCASTER BAR

**BOOK AND JOB PRINTING OFFICE.**

JNO. H. BARNES.

GENERAL

**JOB PRINTER,**

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COURT CALENDAR.--1877.

SEPTEMBER.

- 7. Last day for issuing Writs to September Term.
- 8. Last day for setting down causes for Argument Court.
- 8. Last day for setting down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 22. Last day for setting down causes for trial for October 22.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

WILLIAM B. WILEY,

ALDERMAN,

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 25, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—ED.]

## HAYES' OPINIONS.

JOHN MERCER AND MARGARET MERCER  
against JANE WATSON, PATTERSON WATSON, DAVID WATSON, SAMUEL WATSON, SAMUEL SMOKER, AND SARAH, HIS WIFE, MARIA WATSON, HETTIE WATSON AND JANE WATSON.

A new trial will not be granted on an alleged error in fact. The appearance of some of the defendants, who were infants, by attorney, when the error is not manifest or the fact is doubtful, the merits of the case were fully tried, and no injustice was done by the verdict.

The proper grounds of the motion for a new trial.

This action having been tried at the December Term, 1826, and a verdict found for the plaintiffs, a rule to show cause why a new trial should not be granted was moved for on the affidavit of David Watson, made on the 8th of December, in which he deposed to the truth of the following among other reasons, viz: Because the verdict is rendered against five of the defendants who are minors, and who appeared by attorney and not by guardian, as by law they ought, to sustain any judicial proceeding against them. This was the only reason not noticed in the discussion, and the others are, therefore, omitted in this statement.

Mr. Montgomery for the rule, said, the origin of the present cause might be found in 1 Bin. 470, Lessee of Watson vs. Bailey. This action was brought to recover the land which was attempted to be conveyed away from the wife of Samuel P. Watson, by means of an illegal acknowledgement. The single question which we present to the court, is whether, if a verdict against minors, appearing by attorney be rendered, the court will permit judgment to be entered with a perfect conviction that it would be erroneous and must be reversed.

There were seven defendants in this suit, six of them the children of Jane Watson, all of whom were minors when the suit was brought, and all except David Watson, were still minors when the verdict was found.

By turning to the record of this action, it will be seen that Montgomery appeared for Samuel Smoker, who married Sarah, one of the daughters, and that I. Hopkins appeared for the defendants generally.

The law on the subject as it exists in England, is given in 2 Saund. 212 (n. 4.) In King vs. Marborough, Cro. Jac. 300, one of the defendants—an infant, appeared by attorney: ruled that the judgment was erroneous, and reversible as to all.

It has long been settled in the same way here, of which the cases of Silver vs. Shellbach, 1 Dall. 165, and Moore vs. McGiven, 5 S. & R. 373, are incontrovertible proof. In 2 Tyler 50, Priest, &c. vs. Hamilton, the error assigned was, that one of the plaintiffs was an infant who appeared by attorney, and on demurrer it was held that the exception of infancy was a personal privilege. Here the motion of the court is an application by the guardian, Jane Watson, so that if the exception be a personal privilege, to be realized only upon the infant's application, the present case falls within the condition, for this is an application of the infants by their guardian. But I contend that the notion of infancy being a personal privilege is not law, nor is it agreeable to reason. The error vitiates the judgment, and any of the parties affected may avail themselves, as in all other cases, of the legal defect. In what situation do the opposite counsel ask the court to place itself by rendering a judgment which is unquestionably erroneous and must inevitably be reversed?

Mr. Rogers against the rule.

The writ commencing this suit was returnable the 12th of June. On the 6th of the same month, Jane Watson, the mother, and first named of the defendants was, on the petition of Samuel Smoker, appointed guardian by the Orphans' Court of this county, of all the minor children except Sarah, wife of the petitioner. Mr. Hopkins, on the return day, appeared generally for all the defendants.

At the trial all the facts were fully investigated and amply discussed; and not until verdict was rendered did we hear of the exception of infancy. They go upon mere form. We will meet them. They ground their motion upon the affidavit of David Watson alone. The four days succeeding that of rendering the verdict elapsed and nothing else was exhibited.

Now the exception of infancy is a personal privilege and can only be taken advantage of by the guardian of the infant: 3 Bac. Ab. 616. The assignment of infancy for error must be by guardian. How does the matter stand? Can David Watson—an adult at the time he made the affidavit, avail himself of this privilege of his co-defendants? That he cannot, the following authorities will show, viz: 2 Johns. R. 279, and 5 Johns. R. 160.

As to the allegation that the judgment upon this verdict, would be plainly erroneous and would necessarily be reversed, we say:

1. The decision of the supreme court would depend on the manner in which the writ of error was taken and prosecuted, we say:

2. There is no error. In support of this position, the court is referred to the case cited by Mr. M., from 2 Tyler's R. 50, and 3 Am. Dig. 331, 332, pl. 7. As Jane Watson was appointed guardian on the 6th of June, and Mr. Hopkins appeared on the 12th generally, we say he appeared for her, as representing her whole interest both in her own right and as guardian.

Mr. Ellmaker on the same side:

Mr. Montgomery wrote the petition of Samuel Smoker to the Orphans' Court on the

6th of June, 1826, and D. Watson, who made the affidavit on which this motion was founded, came of age the day the jury was sworn which tried this cause. Why is this application made? If the counsel are so sure of their ground why do they not pursue the more appropriate remedy of a writ of error? That is the ordinary course, even where the court has done the act complained of in the reception or rejection of testimony for instance. It is very seldom that a new trial is asked for on that account. In Shaeffer vs. Landis, 1 S. & R. 402, TILGHMAN, C. J. said the motion for a new trial was no waiver of a bill of exceptions; but the court may, when there is a bill of exceptions, refuse to hear the motion. I cite this case to show that the practice of moving for a new trial, when a writ of error would answer the purpose, is a bad one, and not to be encouraged.

The reason for a new trial, which is now relied on, does not affect the merits. We are brought up, on the technical objection, to the appearance of the defendants, because they did not appear as they ought to have done. Nothing is alleged against the justice of the verdict. 3 S. & R. 14. Unless injustice be the consequence of the verdict, the court will not grant a new trial.

David Watson was one of the defendants.

His mother, who was his guardian, was all the time in court; yet the motion is made on his affidavit. Is not the whole proceeding a trick on the part of David Watson to obtain the benefit of another trial?

Taking up the case as it stood at the trial are not all the circumstances a waiver of the objection now made? If for the adults, they cannot avail themselves of the privilege of the infants. For whom was this motion made? If for all the defendants, then for Jane Watson, the mother, as guardian; and she was guardian at the trial and before. She was in court during the trial, and not a word of objection was heard about the minority. As for us, we never knew till the 27th of June the fact of her appointment as guardian.

Suppose an ejectment against a tenant; the landlord comes in, and at his suggestion, other names as parties are added to the record. A trial takes place and verdict is returned for the plaintiff, would any court set aside the verdict, because one of the defendants was an infant, especially if the landlord who suggested his name was his guardian?

Equality is equity, but is not this giving the defendant two chances where the plaintiff has but one? This is a preposterous demand. The applicants allege for error, a matter of fact within their full knowledge six months before the trial, an error which, if it had tended in the slightest degree to their inconvenience they could have remedied at any moment. But they sustained no inconvenience, for the guardian was in the court during the progress of the trial, and sat by the side of Mr. Hopkins, her counsel. 3 Am. Dig., 335, pl. 51. It is said to be error to take a judgment against infants before the appointment of a guardian *ad litem*. But if there be a guardian in fact, how is it?

Here, let it be remembered, the jury had no evidence of the minority. The court must take the record or go out of it. If they take the record there is nothing about minors in it. If they go out of the record we will follow them and show that the minors had guardians who appeared for them actually in court. Such, too, will be the alternative presented in the supreme court.

We can and will meet them either on the record or on the fact.

The appearance must be on the record. 3 Bac. Abr. 617. The fallacy of the argument on the other side is that it supposed the record showed the defendants to be some of their minors.

*Mr. Hopkins* in reply.

Can it be that infants can be tried without the knowledge of their minority being made known? Was it not the duty of the plaintiffs to know that the defendants were infants? The law is that the infant must appear by guardian, and, if he be not placed on the record in that way, how can it be said that he has appeared at all? Or that the defendants not having been so placed on the record in this instance there is any blame attached to us, could the infants apply for the appointment of guardians *ad litem*? 3 Bac. Abr. 617. Mr. E. has assigned to us a fault which belongs solely to his own clients.

What could we do? There can be no plea without appearance. Suppose a judgment entered by default—could that judgment stand? There being in fact no appearance there is a manifest mistrial, for nothing which was done had any foundation, being done by attorney without authority. The case in 1 Dall. 165 is an attempt to throw down the salutary protection of this principle.

Now as to David Watson. Was there any appearance or an issue for him? Certainly not. When he came of age, as he did before the verdict, he had a right surely to make his application for a new trial. The application is appropriately before the court at his instance. The guardian *in pais* has come into court and states the situation of these parties. Any and every person has a right to come in as *amicus curia*, and give information to the court, if the court allow it. All that is necessary is that the error be made manifest. David Watson never was in court, and yet was tried: so of the other minors. They have been tried and condemned without a hearing. None of the circumstances mentioned in the case cited in 3 Am. Dig., from 6 Munford's Reports, appear in the present case, but observe what follows in that decision: "But if she die before a decision, a guardian *ad litem* ought to be appointed," which shows that a court of justice will not take a step, after being apprised that the defendants were infants.

The principle is admitted that application for new trials must be sustained by the necessity of justice: 3 Am. Dig. 335. It is error to take a judgment against infants without the appointment of a guardian *ad litem*. But, say the gentlemen, none but the infants can take advantage of their privileges. Granted. Who but the infants wish to take advantage of them

here? Are we not using the privilege now for the benefit of the infant defendants, or those who were so, during this trial? I admit that if this woman had appeared as guardian, and pleaded in that character, the court would not disturb or interfere with the verdict. It does not appear, it is said, that these persons were infants. That, we reply, is the very reason why the whole superstructure of the trial must fall. Suppose any person as *amicus curia* had said to your honors, "why, three or four of these defendants are infants." Would you have proceeded one step further? Now this is precisely the information it was the duty of the plaintiffs to give. They are bound to show not only that they have a right to sue, but that the defendants are legally liable to be sued, and in the manner in which they are sued. Do they see into what inextricable difficulty they are falling? The youngest defendant was born in 1815. He might ten years to come overthrow this judgment, after he arrives at age. Saund. 212; (n. 4.)

This is unquestionable error. Then why not do what is right now? Why should this court be compelled to commit error by rendering judgment on the verdict.

There is but one other point. The opposite side objects that to set aside this verdict would relieve the adult defendants, as well the infants. Well, this is so, but whose fault? Certainly the plaintiffs. It was not our business to inform the plaintiff, that a guardian was appointed. It was their business to know it; and if they have gone wrong, it shall not be charged as a sin upon us.

This verdict was the result of a trial of five infants who never were in court; consequently of a mistrial; and ought therefore to be set aside.

NOTE: This was the second argument of the rule for a new trial; the first was heard by Judges BRADFORD and THOMPSON, in June, 1827, and Judge THOMPSON was soon after transferred to the 16th judicial district. In their consultation upon the subject there was some difference of opinion relative to the propriety of granting a new trial in this case; and President BRADFORD thought proper, on Judge THOMPSON's successor taking his seat, to order a re-hearing. The foregoing argument was the consequence of that direction, and was addressed to both Judges. Judge BRADFORD remained of opinion that the verdict ought to be set aside.

HAYES, J. It would have given me pleasure, had my mind been satisfied at the hearing of this case, that a new trial ought to be granted, to have immediately announced my concurrence with the president of the court, in the opinion which he had formed. But the doubts I then entertained required further consideration. This I have since bestowed upon the question; and the conclusion at which I have arrived is unfavorable to the motion.

It has not been shown or alleged by the defendants that the merits of this cause were not fairly tried; that injustice was done by the verdict, or will be the consequence of it. It has not been shown or alleged that in case of a new trial, with the proper appearances entered, a different verdict would probably

be rendered. There is no complaint of the charge of the court being contrary to law, or of the verdict being against the charge, the law, or the evidence. But the application is founded on the fact that several of the defendants are minors and that they have not, as it is alleged, appeared by guardian to the suit. The court is asked to grant a new trial, because, as it is said, a judgment upon this verdict would be manifestly erroneous and be reversed by writ of error. The plaintiffs, who oppose the motion, contend that the appearance is substantially good and profess their willingness to meet their adversaries upon that ground in the supreme court.

The general rule unquestionably is that if an infant appear in an action by attorney, it is error; and if there be several defendants, who all appear by attorney, and only one be an infant, the judgment shall be reversed against all. But the rule is not inflexible. It has been adjudged, that if A. being within age, enters into a bond to B. who procures C. without any warrant to appear for A. and confess judgment thereupon; yet A. shall not have an *audita querela*, but he must take his remedy by action of deceit against the attorney: Cro. Jac. 694; 3 Bac. Abr. 609. So, if judgment be given against an infant by default, after the default, he shall have a writ of error, and reverse the judgment for his nonage; but if an infant after appearance, make default, judgment shall be given against him: Cro. Jac. 464. So several co-executors, one or more of them being infants, may all sue or appear by attorney: 2 Saund. 212. So where an infant sole executor brought an action by attorney and recovered judgment on a writ of error in which that matter was assigned for error, was affirmed: Cro. Eliz. 542. And although the appearance of minors in an action against them is regularly by guardian specially admitted by the court, yet in the superior court of chancery in Virginia, it was held that when a suit against infants was defended by their mother, who had been appointed guardian by the county court, and her answer was received for them and full defence made under the sanction and authority of the chancery court, the infants were equally bound by such defence as if she had been in form appointed by the court, guardian *ad litem*. *Beverly vs. Miller*, 6 Munford's R. It has also been decided in the supreme court of Vermont, that when the father, the natural guardian of an infant defendant actually appeared and employed counsel to defend the suit for the infant such an appearance is sufficient though there is no entry on the record, showing that the infant defended the suit by guardian: 2 Tyler's R. 50.

The suit in which this motion was made was brought on the 26th of April, 1826. On the petition of Samuel Smoker, who married one of the defendants, a minor, drawn and presented by Mr. Montgomery his counsel in this case, on the 6th of June following, Jane Watson, mother of the defendants who are minors, was appointed their guardian by the Orphans' Court of Lancaster county. Mr. Hopkins appeared on the 12th of June, 1826, generally as attorney for the defendants; and

on the 11th of September, 1826, the defendants pleaded *not guilty*, an issue and rule for trial were entered in the usual form.

Jane Watson, who was one of the defendants, as well as guardian for those who were minors, actually appeared in court at the trial which took place December following. During the trial or before the verdict no objection was made on the part of the defendants to the appearance; nor was the ground now insisted on made known or intimated to the court and jury; but the trial proceeded from the beginning to the conclusion upon the merits.

Considering the decisions adverted to with reference to these facts; I am not convinced that the appearance in this case is erroneous. I deem it unnecessary to go farther upon that point, since the court cannot in my opinion, be expected to interpose in this way, where no injustice has been or will be done by the verdict; where there has been no impropriety in conducting the trial; and where the party has his remedy elsewhere—unless indeed, the error were so manifest, as to preclude all doubt. An additional reason why a doubt in regard to the validity of the appearance, should operate against this application, arises out of the unequal consequences of a decision to the parties. If the appearance is good, the granting of a new trial might do a great and irreparable injury to the plaintiffs; whereas if it is not good the refusal of a new trial would have the effect merely of referring the defendants to the supreme court; and they will ultimately attain the object of their present motion with but little delay, in the meantime keeping possession of the premises.

A general verdict by which injustice has been done can only be rectified by a new trial. "But, if an erroneous judgment be given in point of law, there are many ways to review and set it right." 1 Burr. 393. The best general rule in regard to granting a new trial is that, says Lord Mansfield, which was laid down by Lord Parker: viz: "Doing justice to the party," or in other words "attaining the justice of the case."

A motion for a new trial is an appeal to the discretion of the court and should not be granted unless injustice be the consequence of the verdict, 3 S. & R. 9. It will not be granted on a technical exception to the form of the action, where, for instance, *indebitatus assumpsit* instead of covenant was brought and justice was done by the verdict: 2 Yeates 436. Nor on the ground of material evidence discovered since the trial; unless the party satisfy the court not only that the evidence came to his knowledge since the trial and it was not owing to want of due diligence that it was not sooner discovered; but also, that if a new trial were granted a different verdict would probably take place: 5 S. & R. 41. Nor on the ground of a claim which the party might have brought forward at the trial; but did not: 3 S. & R. 604. Nor on a point of law not made at the trial unless the party would otherwise be remediless: 3 S. & R. 25. These positions which are extracted from the reported revisions of our supreme

court, afford, according to the view I have taken of the case presented to our consideration, ample authority for the refusal to disturb the verdict of the jury and indicate the propriety of such refusal. My opinion, therefore, is that a new trial should not be granted and that the rule should be discharged.

*Mr. Hopkins:* What is the effect of this opinion? BRADFORD, Prest: That the defendants take nothing by their motion.

The rule is discharged.

#### Orphans' Court of Lancaster County.

ESTATE OF JEREMIAH BAUMAN, DEC'D.

It is the duty of the holder of a negotiable bill to present it for payment, and in case of dishonor, to give immediate notice of such dishonor to the indorser, otherwise the indorser is excused.

To make a subsequent promise by the indorser amount to give waiver, it is essential that the party making it knew of the laches which he alleged to have excused.

It is no such waiver, where an indorser promises to pay the note in ignorance of the fact that he has been discharged by the laches of the holder.

Exception to report of auditor.

*Wm. Aug. Allee and Hugh R. Felton* for exceptants.

*N. Ellmaker* contra.

Opinion delivered August 18, 1877. By LIVINGSTON, P. J.

The exception is that "the auditor erred in rejecting the claim of E. P. Moyer & Bro."

The learned auditor, after a thorough examination, rejected the claim of Moyer & Bro. Has he erred in so doing?

E. P. Moyer & Bro. held a note for \$1,700, payable to their order ninety days after date, dated January 4, 1871; and held as collateral security for the payment of said note another note, an accommodation note, for \$1,700, dated January 4, 1871, drawn by Joseph K. Bauman, payable to order of Jeremiah Bauman and endorsed by Jeremiah Bauman to E. P. Moyer & Co., who became the holders thereof, and who now claim payment thereof out of the estate of Jeremiah Bauman, dec'd.

The first note—the note drawn by Jos. K. Bauman to order of E. P. Moyer & Bro., was duly protested, but the note drawn by Jos. K. Bauman, payable to order of Jeremiah Bauman, and endorsed by Jeremiah Bauman, and held by E. P. Moyer & Bro. as security for payment of Jos. K. Bauman's note, never was protested.

His first duty is to present for payment, and when a negotiable bill or note is dishonored by non-payment at maturity, it is the duty of the holder to give immediate notice of such dishonor to the indorser.

The law regards as entering as a condition in the contract of the indorser of a note, that he shall only be bound in the event payment is demanded and he notified if it is not made, and in default of notice of non-payment, the party entitled to notice is at once discharged unless some excuse exist which exonerates the holder.

So absolute is the necessity for notice to an indorser, in order to charge him, that it has been held that if a note has been indorsed

to the holder in conditional payment of a debt, the failure to give notice to the indorser will not only discharge the indorser as a party to the note, but also as debtor upon the original consideration, even though it be secured by mortgage or deed of trust.

No demand was made of the maker of the note indorsed by Jeremiah Bauman, nor was it ever protested. It is said that a formal protest is not absolutely necessary, and this is true in some instances. There may be a demand by the holder on the maker, and in case of non-payment immediate notice of the dishonor given to the indorser. There must be a demand made and notice of dishonor to the indorser to hold him liable.

There is no excuse offered for the purpose of exonerating the holder from making demand and giving notice of dishonor, or for failure to have the note protested, in this case. But it is argued that Mr. Bauman promised to pay the note, and therefore, waived notice of protest. In order to make such promise available as a waiver of protest and notice, when actually made, it is necessary that it should be made with a full knowledge of the facts; he must know of the laches which his promise is alleged to have excused, for waiver is nothing without intention.

If with full knowledge, by notice of the facts of presentation, demand and dishonor, he promises to pay, he is bound. Regarding a promise as a waiver, it is essential that the party making it knew of the laches which he is alleged to have excused: 8 Allen 435; 40 Ill. 278; 32 Ill. 281-8; 26 Ill. 426; 7 N. H. 271; 3 Best & S. 101. But no such waiver is made where an indorser promises to pay the note in ignorance of the fact that he has been discharged by the laches of the holder in not making due demand of the promisor, or where such promise is made under a misapprehension or mistake of facts concerning the due presentment and demand of payment of the note. And it is said that it is perfectly settled, that the insolvency or bankruptcy of the maker of a promissory note, and knowledge on the part of the indorser of that insolvency or bankruptcy, and that the note cannot or will not be paid by the acceptor or maker, will not exempt the holder from the obligation of due presentment and notice of dishonor: 11 East. 117; Redfield and Biglow's Leading Cases on bills and notes 465, note to Barton vs. Baker.

We think the auditor is correct in his finding of the facts—that Jeremiah Bauman had no notice of the presentment of the note for payment and its dishonor; had no notice that it had not been presented for payment, and that he made no promise at any time to pay the note he had indorsed, or any part of it, with the knowledge that he was discharged from payment thereof by the laches of the holder. His offers or promises to compromise or arrange the matter upon terms he proffered not being accepted did not bind him. The learned auditor has discussed this point so fully that we deem it unnecessary to pursue it further.

We dismiss the exception and confirm the report.



## SUPREME COURT OF PENNSYLVANIA.

## THE JUNIATA BUILDING AND LOAN ASSOCIATION vs. SAM'L MIXELL AND WIFE.

A married woman may unite with her husband in executing a valid mortgage to a building association on her separate property, to secure his debt to the association, including premiums and fines.

Error to the Court of Common Pleas of Bedford county.

Opinion by STERRETT, J. June 4th, 1877.

The mortgage on which the *scire facias* in this case issued, was executed and acknowledged, in due form, by Mixell and his wife, to secure a loan which he, as a stockholder, procured from the Juniata Building and Loan Association. It cannot be doubted that it was competent for Mrs. Mixell to unite with her husband in executing a valid mortgage on her separate property to secure his debt to the association, and the only question is, as to the amount of his indebtedness. If, under the facts found by the jury, he is liable for the amount of the loan, including premiums, fines and interest on premiums, his indebtedness at the date of the verdict has been ascertained to be \$450.38, but if he is not liable for premiums and fines, it was only \$313.28. The difference between these sums is the subject of controversy.

The special verdict of the jury finds, *inter alia*, that the loan was made without inquiry by the plaintiff as to the purpose for which the funds were so to be used, and without stipulation or condition as to how they were to be expended, and that they were, in fact, applied by Mixell to the payment of his debts.

In view of these facts the learned judge was of opinion that the association had no right to enforce the payment of the premiums and fines; that, in making the loan, under the circumstances found by the jury, the association transcended its authority, and was not entitled to recover any part of the premiums and fines, for the reason that they were usurious, and accordingly, he entered judgment for the lesser sum found by the jury. In this we think there was error.

The fourth section of the act of April 12th, 1859, makes it the duty of the officers of such association to offer at stated times, money on hand, and loan the same in open meeting to the stockholder who shall bid the highest premium for the preference or priority of loan; and the sixth section declares that no premiums, fines or interest on such premiums, shall be deemed usurious, and the same shall be collected as debts of like amount are now by law collected. We have recently held, in *Wolbach and wife vs. The Lehigh Building and Loan Association*, that these provisions do not apply to borrowers who are not members of the association, or who are not *sui juris*, and incapable of acquiring membership therein; but the language of the act is too plain to admit of any doubt that, as between the association and its members, the intention was to legalize the payment of premiums and fines, and preserve such loans from the taint of usury. In *Selden and wife vs. The Reliable Savings and Building Association*, 2 W. N. 481, it is said,

that in a *scire facias* on a mortgage given by a member of the association, "it is no defence to say that the borrower has only received a certain sum, for the difference between that and the face of the mortgage is presumptively the premiums which the act makes legal."

There is nothing, either in the letter or the spirit of the act, or in the charter of the plaintiff in error, that makes it the duty of the association to inquire for what purpose loans are being obtained, or to require any stipulation from the borrower as to the use he shall make of the money, or in any manner to supervise or control its disbursement.

The first article of its constitution declares that the association shall have such object and exercise such powers as are conferred by the act of April 12th, 1859; and the fourth article makes it the duty of the officers to hold stated meetings, at which the money in the treasury shall be offered for loan, upon the conditions and according to the directions and provisions of the fourth and fifth sections of the same act. It thus appears that the charter authority is co-extensive with the power conferred by the act under which the association was incorporated.

The learned judge is, no doubt, correct, in saying that cases of extreme hardship sometimes arise under the operation of the law governing building and loan associations; but it will, perhaps, be found that they are generally traceable either to the fault or misfortune of the parties themselves, rather than to the law under which the associations are organized. Whether this is so or not, if there is any thing wrong in the law the legislature must be appealed to for correction of the evil.

The judgment of the Court of Common Pleas is reversed, and judgment is entered on the special verdict, in favor of the plaintiff, for four hundred and fifty dollars and thirty-eight cents and costs, with interest from April 21, 1876, the date of the verdict.—*Pitts. Leg. Journal.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 25, 1877.

### LISTS OF JURORS.

Names of 48 Petit Jurors, to serve in a Court of Quarter Sessions of the Peace commencing Monday, October 1st, 1877:

Thomas Ambler, farmer, Drumore.  
John H. Bushong, miller, Upper Leacock.  
F. L. Baker, justice of the peace, Marietta.  
Joseph Brinser, farmer, West Donegal.  
Hiram Bleacher, farmer, Providence.  
Henry K. Burkholder, merchant, 6th Ward, city.  
Amos M. Clime, tobacconist, East Earl.  
John Carter, blacksmith, Drumore.  
George H. Darmstetter, butcher, 7th Ward, city.  
Silas Eshleman, miller, Paradise.  
Nathaniel Ellmaker, jr., farmer, Salisbury.  
Henry Gable, painter, East Cocalico.

Jacob G. Gamber, laborer, 8th Ward, city.  
Jacob H. Hershey, farmer, West Hempfield.  
Jacob Hall, farmer, East Donegal.  
A. K. Hornberger, merchant, West Earl.  
Elijah Hagen, farmer, Martic.  
David Hartman, sr., gentleman, 9th Ward, city.  
John W. Jackson, gentleman, 1st Ward, city.  
D. M. Kline, farmer, Manor.  
Martin Kendig, farmer, Conestoga.  
Frederick Lenig, innkeeper, Conoy.  
Emanuel Minnich, wagonmaker, East Hempfield.  
Levi Myers, clerk, West Hempfield.  
James Martin, farmer, Upper Leacock.  
John McFalls, wood dealer, Providence.  
Watson H. Miller, superintendent, 5th Ward, city.  
George Nagle, cigarmaker, 7th Ward, city.  
Henry Nagle, tinsmith, Earl.  
J. Franklin Paxson, farmer, Little Britain.  
J. W. Passmore, merchant, Little Britain.  
Isaac Rohrer, farmer, Upper Leacock.  
David Ringwalt, merchant, East Hempfield.  
John Strohm, jr., miller, Providence.  
John Spangler, merchant, Marietta.  
William S. Shirk, collector, 3d Ward, city.  
Solomon Strock, wheelwright, Conoy.  
John W. Steacy, oil refiner, Columbia.  
N. E. Slaymaker, justice of the peace, Paradise.  
Tobias Stehman, farmer, Conestoga.  
T. R. Supplee, foundryman, Columbia.  
Ellwood Stubbs, farmer, Drumore.  
W. W. Upp, contractor, Columbia.  
Samuel Wanner, farmer, West Earl.  
John Worden, farmer, Eden.  
David Weaver, (David's son,) farmer, Earl.  
Benjamin Workman, farmer, Warwick.  
David Yohn, drover, West Hempfield.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas commencing on Monday, October 8th, 1877:

Samuel A. Altick, coachmaker, 1st Ward, city.  
Frederick S. Albright, clerk, 9th Ward, city.  
Oliver P. Brubaker, drover, East Earl.  
William Brooks, slater, Drumore.  
Jacob Bachman, gentleman, Strasburg-bor.  
John R. Bricker, lumber merchant, Warwick.  
Wm. H. Barton, merchant, Upper Leacock.  
Wm. C. Beecher, founder, Manheim.  
John Barr, innkeeper, Columbia.  
Joseph Boyer, farmer, Mount Joy.  
Sem Brubaker, farmer, Rapho.  
Richard Charles, butcher, Washington-bor.  
William Chandler, justice of the peace, Drumore.  
Daniel Doner, farmer, East Lampeter.  
Samuel Dietrich, drover, East Hempfield.  
John Denlinger, laborer, Manor.  
John H. Engle, farmer, Rapho.  
George H. Eberly, coachmaker, 9th Ward, city.  
Martin L. Greider, farmer, Rapho.  
Benjamin Groff, farmer, East Lampeter.  
John Geyer, plasterer, Mount Joy.  
Reuben Gamber, laborer, 8th Ward, city.  
John W. Gross, gentleman, Ephrata.  
Christian Herr, brickmaker, 8th Ward, city.  
John Hess, farmer, Conestoga.  
Amos Herr, farmer, Providence.  
J. Haldeman Herr, miller, West Hempfield.  
Christian Herschok, farmer, Pequea.  
Michael L. Huber, farmer, Lancaster.  
Henry M. Herr, bookseller, 3d Ward, city.  
Preston Hannum, miller, Sadsbury.  
Jacob E. Jenkins, farmer, Little Britain.  
Robert Jacobs, gentleman, Caernarvon.  
David P. Doshier, banker, 3d Ward, city.  
John C. Lewis, surveyor, Drumore.  
Henry Mellinger, miller, West Cocalico.  
Peter McConomy, banker, 5th Ward, city.  
Joseph Miller, lumber merchant, West Donegal.  
Jonathan Overholtzer, farmer, East Earl.  
Abraham Orman, laborer, Manor.  
Phillip A. Pyle, druggist, Mount Joy-bor.

John R. Russel, merchant, 2d Ward, city.
Jacob Rutt, farmer, West Donegal.
Daniel A. Shiffer, carpenter, 3d Ward, city.
John Sener, farmer, Pequea.
Abraham Settley, innkeeper, Earl.
Daniel S. Wade, laborer, Earl.
Joseph M. Watts, shoemaker, Columbia.
Harry Worst, jr., merchant, Salisbury.
Samuel Workman, saddler, Warwick.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas, commencing Monday, October 15th, 1877:

John P. Bushong, laborer, 2d Ward, city.
J. P. Brosius, farmer, Colerain.
A. N. Breneman, shoe merchant, 4th Ward, city.
E. A. Becker, blacksmith, Columbia.
George Book, pumpmaker, Elizabethtown-bor.
Samuel P. Beckley, agent, Mount Joy-bor.
Phares Buckwalter, teacher, Leacock.
Tobias Brubaker, farmer, Providence.
Jacob K. Brown, miller, Fulton.
Alvin Cutler, farmer, Drumore.
John B. Coldwell, farmer, Leacock.
Frank R. Diffenderfer, gentleman, 6th Ward, city.
James R. Emery, farmer, Salisbury.
Christ S. Eckman, carpenter, Sadsbury.
Joseph P. Echternacht, farmer, Paradise.
Martin Grube, innkeeper, East Earl.
Isaac Groff, farmer, Strasburg.
John Hershey, farmer, 8th Ward, city.
Harry H. Herr, miller, West Lampeter.
Jos. G. Helsey, merchant, Elizabethtown-bor.
John Humphrevill, plasterer, 4th Ward, city.
John G. Horner, farmer, East Donegal.
Isaac Hoover, blacksmith, Providence.
David Kemper, farmer, Ephrata.
And. B. Kaufman, insurance agent, 1st Ward, city.
Jacob H. Kline, lumber merchant, Manheim-bor.
Peter Lewis, farmer, Bart.
U. S. Long, farmer, Drumore.
Robert K. McCullough, farmer, Fulton.
Emos R. Marsh, merchant, Little Britain.
Henry Mellinger, blacksmith, Washington-bor.
Henry Musselman, farmer, Earl.
Johnson Miller, farmer, Warwick.
John Monteth, farmer, Martic.
Samuel McClure, farmer, Bart.
Thomas A. McNeal, farmer, Salisbury.
Reuben Oster, blacksmith, 9th Ward, city.
John Ochs, grocer, 4th Ward, city.
Joseph D. Pyett, printer, 4th Ward, city.
Levi Plank, merchant, Salisbury.
Peter S. Relst, farmer, Manheim.
Jacob Reese, justice of the peace, Martic.
Jerome B. Shultz, agent, Elizabethtown-bor.
Adam Smith, pilot, Conoy.
Edw. N. Smith, civil engineer, Columbia.
John Smith, innkeeper, Martic.
Henry Smith, laborer, Adamstown-bor.
Curtis Withers, farmer, East Cocalico.
Henry E. Wolfe, farmer, Columbia.
Al. M. Zahm, watchmaker, 6th Ward, city.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas commencing on Monday, October 22d, 1877:

Benj. K. Binkley, miller, West Cocalico.
George P. Badger, carpenter, Columbia.
Christ. Bachman, cabinetmaker, Strasburg bor.
Jeremiah Campbell, tobacconist, 3d ward, city.
David Denliager, farmer, East Lampeter.
Jeremiah Dernes, mason, Conoy.
John H. DeHaven, farmer, Cernarvon.
Charles Eden, confectioner, 1st ward, city.
Samuel Eisenberger, brickmaker, West Hempfield.
Daniel Erb, farmer, East Lampeter.
Peter B. Fidler, clerk, Clay.
John Foessel, stone cutter, Elizabeth twp.
Aaron Gable, merchant, Marietta.

John L. Gingrich, farmer, West Donegal.
Daniel Grove, gentleman, East Donegal.
Henry Galen, farmer, Martic.
John Homsher, merchant, Bart.
N. N. Hensel, wheelwright, Drumore.
Pierson Holcomb, blacksmith, Colerain.
John S. Harman, farmer, Pequea.
David F. Hammaker, miller, East Hempfield.
Jacob Helsey, farmer, West Donegal.
Winfield Kennedy, farmer, Salisbury.
Eli Kendig, farmer, Conestoga.
John Kauffman, farmer, Cernarvon.
John K. Kurtz, farmer, Cernarvon.
John B. Markley, druggist, 9th ward, city.
David Miller, farmer, Conestoga.
A. J. McComsey, innkeeper, Bart.
John R. Messner, clerk, Ephrata.
I. W. Mentzer, coal and lumber, East Cocalico.
J. N. Miller, coffee dealer, 7th ward, city.
Henry G. Mohn, miller, Adamstown.
Elisha Martin, farmer, East Earl.
P. S. McTague, contractor, 6th ward, city.
George McCulley, moulder, 1st ward, city.
Eli Martin, farmer, Earl.
Abraham Nissly, jr., farmer, West Donegal.
John M. Royer, farmer, Ephrata.
Abraham Roop, innkeeper, Colerain.
Jacob Stacke, farmer, East Donegal.
Samuel Skeen, coachmaker, Bart.
John K. Shirk, farmer, Manheim twp.
Sam'l C. Slaymaker, civil engineer, 2d ward, city.
Elias Seigler, drover, Brecknock.
Robert M. Slaymaker, hardware, 1st ward, city.
Jacob Warfel, confectioner, Manor.
Benjamin Wissler, miller, Clay.
Jacob Wolf, cigarmaker, West Earl.
John H. Zercher, clerk, West Lampeter.

Auditors' Notices.

Assigned estate of JOHN KILHEAFNER, of Eden twp., Lancaster county.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Hildebrand, esq., assignee of said John Kilheafner, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, SEPTEMBER 18, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

S. W. SHADLE, Auditor.

sepl

Assigned estate of JOHN B. AUMENT and Wife, of Strasburg bor., Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Hildebrand, esq., assignee of John B. Aument and Wife, to among those legally entitled to the same, will sit for that purpose on TUESDAY, SEPTEMBER 18, 1877, at 11 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. C. REINOEHL, Auditor.

sepl

Estate of JOHN HILL, late of East Donegal township, dec'd.

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of William Hill, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPTEMBER 26th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

DANIEL G. BAKER, Auditor.

sepl

Estate of JACOB BRENNER, late of Conoy township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel M. Lehman, administrator, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPT. 12th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JNO. M. MAST, Auditor.

aug25

Estate of JACOB WHITE, late of Penn twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John M. Stehman and John B. Relst, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 22d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. ILYUS, ISRAEL G. ERB, A. H. FRITCHEY, Auditors.

sepl

Assigned Estate of ABRAHAM GOOD and WIFE, of Conestoga twp., Lancaster co.

The undersigned Auditors, appointed to pass upon exceptions and to distribute the balance remaining in the hands of John P. Good, assignee, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. REINOEHL, ROBT. J. EVANS, Auditors.

aug25

Estate of JACOB BUSSER, Sr., late of Warwick twp., Lancaster co., deceased.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPT. 19th, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. K. MARTIN, C. S. HOFFMAN, Auditors.

aug25

NOTICE.

And now, August 21, 1877, petition of Thos. J. Davis, assignee of R. H. Hinsdale, presented and filed, praying the Court for an order to re-convey all trust property now in his hands, whereupon the Court fix MONDAY, SEPTEMBER 17, 1877, at 10 o'clock, a. m., for a hearing.

Attest: LEWIS S. HARTMAN, Prothonotary. Lancaster, Aug. 25, 1877.

INSOLVENT NOTICE.

Notice is hereby given that Joseph Miller has made application for his discharge under the insolvent laws and that a hearing will be had on MONDAY, SEPTEMBER 17th, 1877, at 10 o'clock, a. m.

JOSEPH MILLER.

INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, SEPTEMBER 17th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

JOHN SMITH.

DIVORCE NOTICE.

LEWIS A. WAMBAUGH } Alias Subpœna for Divorce, vs. MARY J. WAMBAUGH. } To August Term, 1877. No. 7.

To MARY J. WAMBAUGH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 17th day of SEPTEMBER, 1877, at 10 o'clock, a. m., to show cause if any you have, why the said Lewis A. Wambaugh should not be divorced from the bonds of matrimony contracted with you,

H. N. BRENNEMAN, Sheriff. Sheriff's Office, Lancaster, August 15th, 1877.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET, LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET, LANCASTER, PA.

**Estate Notices.****Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration *c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

WM. AUG. ATLEE, NOAH SWARTLEY,  
sepl\* Att'y. JONAS SWARTLEY,  
Administrators.

**Estate of JACOB G. SWARR, late of Sporting Hill, Rapho twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sporting Hill.

OWEN P. BRICKER, ALICE A. SWARR,  
sepl Att'y. Administratrix.

**Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 59 North Duke-st.

aug25 J. L. STEINMETZ, Administrator.

**Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.**

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN P. WEISE, Assignee.  
J. HAY BROWN, Att'y. [aug25]

**Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.

THOS. J. DAVIS, JAMES BRYSON,  
aug25\* Att'y. Executor.

**Estate of JOHN BRENNEMAN, late of Rapho township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

D. G. BAKER, Att'y. Executor,  
aug25 Residing near Mount Joy.

**Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

AUGUSTUS GROEZINGER,  
aug18 Assignee,  
M. BROSIUS, Att'y. Lancaster, Pa.

**Estate of SARAH DANCE, late of West Lampeter twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp.

SHENK & LEAMAN, LIZZIE F. SIDES,  
aug19 Att'y. Executrix.

**Assigned Estate of "DILLER & GROFF," of Lancaster City.**

Diller & Groff, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said "Diller & Groff," he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

aug18 SAMUEL GROFF, Assignee.  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of GEORGE J. DILLER and WIFE, of Lancaster City.**

George J. Diller and wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George J. Diller, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

aug18 SAMUEL GROFF, Assignee.  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of HENRY D. GROFF and WIFE, of Lancaster City.**

Henry D. Groff and Wife having, by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry D. Groff, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL GROFF, Assignee.  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y. [aug18]

**Estate of MARGARET PLITT, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 AMANDA SHERTZ,  
D. P. ROSENMILER, JR., Att'y. Executrix.

**Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 MARY E. MUHLENBERG,  
J. HAY BROWN, Att'y. Administratrix.

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAM'L BOYD, Chestnut Level P. O.

aug4 JERE. B. BOYD, Peters Creek P. O.  
J. HAY BROWN, Att'y. Administrators.

**Estate of SAMUEL LESHER, late of East Calico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

EDW. LESHER, East Earl twp.  
aug4\* EPH'M S. LESHER, Brecknock twp.  
Executors.

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, JOHN STROHM, JR.,  
jy21\* Att'y. Administrator.

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

aug4\* HENRY HOFFMAN,  
CHN. K. LONG,  
N. ELLMAKER, } Att'y. SAM'L HEISTAND,  
H. B. SWARR. } Executors.

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

aug3 HEZEKIAH BROWN,  
ROBERT WARDEN,  
J. W. JOHNSON, Att'y. Administrators.

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

jy21\*] BARBARA HARNISH, widow,  
ABRAHAM HARNISH,  
PHILIP D. BAKER, Att'y. Administrators.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

jy21\*] ANN W. TOWNSEND, widow,  
PHILIP D. BAKER, Att'y. Administratrix.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [jy21]

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to

jy7 A. HERR SMITH, Administrator.  
Lancaster Pa.

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.

jy7 LEWIS PICKEL,  
Executor.

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to

jy7 A. HERR SMITH, Administrator.  
Lancaster Pa.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, SEPTEMBER 8, 1877.

No. 15.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

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PHILIP D. BAKER, EDITOR.

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SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		EASTWARD.	
	LANCASTER.	LANCASTER.	PHILADELPHIA.
Pacific Express,*	2:40 a. m.	12:30 p. m.	3:00 a. m.
Way passenger†	4:50 a. m.	4:10 a. m.	7:00 a. m.
Niagara Express,...	9:35 a. m.	7:35 a. m.	10:00 a. m.
Hanover Accom,...	9:40 a. m.	9:28 a. m.	12:30 p. m.
Mail Train via Mt. Joy	11:20 a. m.	1:20 p. m.	3:45 p. m.
No. 2, via Columbia,...	11:20 a. m.	2:00 p. m.	5:00 p. m.
Sunday Mail,.....	11:29 a. m.	3:05 p. m.	6:00 p. m.
Fast Line,*	2:10 p. m.	5:18 p. m.	7:20 p. m.
Frederick Accom,.....	2:15 p. m.	5:50 p. m.	9:00 p. m.
Harrisburg Accom,.....	6:10 p. m.		
Columbia Accom,.....	7:20 p. m.		
Harrisburg Express,...	7:25 p. m.		
Pittsburg Express,.....	9:25 p. m.		
Cincinnati Express,*	11:30 p. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:10	7:50	2:10
Lancaster—West King Street,...	7:20	9:16	3:15
Lancaster—Upper Depot,.....	7:30	9:30	3:25
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	10:16	5:30	8:33
Lancaster—West King Street,...	10:25	5:40	8:45
Quarryville, (arrive).....	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	7:20		3:15
Lancaster—Upper Depot,.....	7:30		3:25
Lancaster Junction,.....	7:57		3:51
Reading, (arrive).....	10:20		5:50
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading, .....	7:35		6:05
Lancaster Junction,.....	9:53		8:15
Lancaster—Upper Depot,.....	10:10		8:38
Lancaster—West King Street,...	10:25		8:45

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:29
Arrive at Peachbottom, .....	7:05	1:55	5:45
GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1863  
 Samuel F. Miller, of Iowa, 1863  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

**Prothonotaries:**

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 Western District,—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.

At Harrisburg, commencing 1st Monday in May.

At Pittsburgh, commencing 1st Monday in October.

At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

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*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrler, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwage.  
*Chief of Police*—Philip L. Sprecher.  
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**COURT CALENDAR.--1877.**

SEPTEMBER.

- 8. Last day for setting down causes for Argument Court.
- 8. Last day for setting down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 22. Last day for setting down causes for trial for October 22.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 23. Last day for filing Accounts to January Court, 1878.
- 23. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 8, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JACOB GRAYBILL *against* HENRY GROFF.

A statement in the following words: "This suit is brought to recover the balance due on a bond given Conrad Crim and John Sprecher for the payment of \$800, to Randle McClure, on the first of April, 1815, and transferred to the plaintiff on the 19th of April, 1814, which defendant promised to pay as part of the purchase money of the house and lot of Conrad Crim, purchased by defendant from Crim, and of which he has paid on account of plaintiff, in the Lancaster Trading Company, \$320" contains a sufficient cause of action, to support a suit by the person to whom the bond was transferred against him who made the promise.

It is not a sufficient reason in arrest of judgment that the statement does not contain the date of the assumption, nor the amount claimed to be due, though the court was requested at the trial to charge the jury that the statement did not comply with the act of assembly in these particulars.

It is not requisite that the statement should set forth or allege the consideration of the promise of the defendant.

The plaintiff in this action filed the following statement, viz: "This suit is brought to recover the balance due on the bond given by Conrad Crim and John Sprecher, for the payment of \$800, to Randle McClure, on the first day of April, 1815, and transferred to plaintiff on the 19th day of August 1814, which defendant promised to pay as part of the purchase money of the house and lot of Conrad Crim, purchased by defendant from Crim, and of which he has paid, on account of plaintiff in the Lancaster Trading Company, \$320. P. Ross, att'y, p. 2.

On the trial Judge THOMPSON charged the jury in these words: "The plaintiff in this case has not filed a declaration but a statement under the act of assembly. The defendant does not demur to the statement, but desires the court to give you their opinion whether it contains a sufficient cause of action. The court give it to you as their opinion that it does contain a cause of action on which you may find a verdict, if on a consideration of the facts in the case, you think there is a balance due to the plaintiff. If the statement be not formal or according to the provisions of the act of assembly, the defendant can take advantage of the defect on a motion in arrest of judgment, or on a writ of error, which is the proper mode of taking advantage of such defects.

If you are of opinion that the defendant did promise to pay the plaintiff the amount of the bond in question, or the balance due thereon, in part of the purchase money of

the house and lot he had purchased of Conrad Crim, and that he got credit with Conrad Crim for the amount of the bond in settling the purchase money of the house and lot with him, he could not afterwards discharge himself from his promise to pay Graybill, by paying to Conrad Crim the money which he had thus promised to pay Graybill, unless Graybill had in the meantime released him or given him authority to pay the money to Conrad Crim. Of this you will judge."

The jury found for the plaintiff eight hundred and sixty-eight dollars and eighty-seven cents.

February 2d, 1827, judgment nisi. On the same day the defendant's attorney, on reasons filed, moves in arrest of judgment.

The following were the reasons:

1. The statement filed in the cause does not state the date of the assumption, nor the amount which the plaintiff claims to be justly due from the defendant, according to the provisions of the 5th section of the act of the 21st of March, 1806.

2. There is no consideration alleged in the statement filed for the promise of the defendant, neither of benefit to the defendant or of trouble or prejudice to the plaintiff.

3. That it appears from the face of the statement that the claim made is satisfied, and no cause of action remains.

The motion in arrest of judgment was argued at the June term, 1827, before Judges BRADFORD and THOMPSON, and held under advisement. They differed in their opinions, in consequence of which it was a second time argued before judges BRADFORD and HAYES, after Judge THOMPSON had ceased to be a member of the court.

The second argument was on the 13th of June, 1828.

*Mr. Champneys* and *Mr. Hopkins* for the motion.

*Mr. Ross* and *Mr. Ellmaker* contra.

*Mr. Champneys*: This action was brought on a promise to pay the debt of a third person. The ground of such promise is a consideration which must be expressed on the face of the declaration or statement. The only assumption is in the close of the statement and is unaccompanied by any mention of consideration.

On no principles of pleading, were this a declaration, could it be sustained: 1 Chitty, 295, 296. The want of consideration in the declaration is not cured by verdict: 1 Com. Contr. 10, 11. The omission is a fatal defect: 5 S. & R. 358; Whitall vs. Morse.

For the requisites of a statement we must look to the 5th section of the Act of 1806. It must particularly specify the date of the promise, book account, note, bond, penal or single bill, or all or any of them, on which the demand is founded, and the whole amount that he she or they believe is justly due to them from the defendant.

Now, our objections are: 1. That there is no date given in this statement to the promise. 2. That "the whole amount" claimed to be due is not mentioned. The date of the bond even is not given. Could it ever have

been intended that the consideration of a collateral promise should be omitted at the pleasure of the plaintiff—the consideration which is the gist of the promise or contract?

The following cases will show the construction which the Supreme Court has given to the act of assembly authorizing statements: 2 S. & R. 537, Riddle vs. Stevens; 3 S. & R. 402, Purviance vs. Dryden; 6 S. & R. 25, Sturgeon vs. Sturgeon; Ibid 53, Boyd vs. Gordon; 8 S. & R. 567, Cook vs. Gilbert; 12 S. & R. 74, Thompson vs. Gifford; 14 S. & R. 195. Upon these cases the matter is clear that the Supreme Court demands a compliance with the requisitions of the act, and requires especially that there should appear in the statement a cause of action.

*Mr. Ellmaker*: It is denied that this suit is founded on a promise to pay the debt of another. It is to pay Henry Groff's own debt for the house and lot he had bought. At the time of the trial not a word of objection was heard to the statement until the counsel addressed the jury in summing up the case. It was a technical and formal objection, which induced the court to make the remarks upon the proper course in such cases, significantly indicating that it was not so proper to take the objections then and in that way.

There seems to be an entire misapprehension of the true character of a statement. The legislature chiefly meant to relieve the party from the technical niceties of pleading, and make every man his own lawyer; but, according to the construction contended for, a statement would be as difficult, at least as a declaration. The defendant's counsel would subject it to all the rules of special pleading. But this is not the idea of the Supreme Court. "A statement," says TILGHMAN, C. J., "is widely different from a declaration." "It is the creature of the act of assembly, the object of which was to dispense with form." In 6 S. & R. 26, the Supreme Court said, "substance only is required," and in p. 54, that the legislature never intended that there should be in the statement the same precision and nicety of averment that is necessary in a declaration. In 1 S. & R. 555, statements are characterized as being "less certain" than declarations.

As to the alleged want of consideration in the statement, we deny it as matter of fact. There is a consideration sufficiently expressed in this statement; it is the purchase money of the house and lot bought by Groff of Conrad Crim. In the second place we say there is not one word in the act of assembly about consideration. When the defendant resorts to the act for the requisites of a statement, he is obliged to drag in the rules respecting declarations to help him out.

The cases will show that the particulars, insisted on by the other side as essential, are by no means so. In 3 S. & R. 402, the date of the assumption is not stated, nor that the plaintiff justly believed the amount due. In 12 S. & R. 74, there was no promise, no date, and no declaration that the plaintiff believed such an amount to be justly due. And in 14 S. & R. 195, 199, the chief justice says there

is no necessity for laying an assumption at all.

The same question now raised was decided by the Supreme Court, sitting in Lancaster, on the 29th of May, 1819, in the case of *Wolf vs. Wilson and Ramsay*—error to the May term, 1818, No. 7; 2 Aug., 1814, præcipe and statement; 7 Oct., 1814, award \$704.36; 31 Oct., 1815, rule on the defendant to plead in two weeks from Monday next; 27 Nov., 1815, defendant pleads non assumpsit and payment with leave, etc.; 10 June, 1816, trial. The court was requested to charge the jury that the statement did not comply with the act in stating the date of the account with the amount claimed. Same day verdict for the plaintiff. 12 June, 1816, reasons in arrest of judgment: 1. That the statement does not contain the date of the assumption. 2. That it does not state how much is due to the plaintiff. 3. That the act of assembly does not authorize the action of debt for an assumpsit. 18 Sept., 1816, motion in arrest of judgment argued and overruled, and judgment entered upon the verdict. 29 May, 1819, this judgment affirmed in the Supreme Court—GIBSON, J., delivering the opinion of the court.

In another case not yet reported, *Sauerman vs. Weckerly*, the plaintiff having obtained a verdict and judgment in the Court of Common Pleas of the county of Philadelphia, it was assigned for error that the declaration did not sufficiently state the time when the defendant below was indebted—the blanks for the dates having been left open, and that the cause was not at issue when it was tried, there being no plea whatever, nor any pleadings in the cause, except the declaration. But the Supreme Court, after mature reflection, resolved to disregard such exceptions altogether, and ruled that this assignment of error could not be sustained.

*Mr. Hopkins* in reply: I did suppose, until I heard the attorney general (Mr. E.) that it was of some importance that the declaration should set forth a cause of action. I am called upon to satisfy the court that if a man sues without cause he can recover nothing. I can not see the application of *Sauerman vs. Weckerly* which has been read from a newspaper. No facts are stated in this newspaper sketch of a report—no case—nothing upon which the Supreme Court was requested to give an opinion. The first stumbling block in our way, it is said, is that we did not take advantage of the defect of this statement before the trial. Now, was it not the duty of the plaintiff to apply to the court for leave to amend the defective statement? Did not we on the trial object to its sufficiency? We requested the court to stop the cause on account of there being no cause of action. The neglect was the plaintiff's. The defendant was not authorized, at least not required, to interfere for the plaintiff's benefit.

1. We say there are two fatal defects in the statement; first, there is no date; secondly, there is no sum set forth as the plaintiff's claim. The act of assembly requires of the plaintiff to file a statement *particularly specifying* the date of the promise, etc., and the

whole amount that he believes is justly due to him. Here is an express command; and, when the legislature commands, the court must obey. What is the balance here mentioned? Eight hundred dollars is the amount of the bond. I defy any one living to say what the balance really was. No sum is specified directly or indirectly. Suppose judgment by default in this case—for what sum could execution have issued? The statement was introduced to avoid the necessity of rendering judgment for the penalty of the bond; but from this statement the court could not render judgment. The act of assembly intended to dispense with attorneys altogether, that the defendant might go into the office and at once see what was claimed. Have they shown a case in which these two essential features of the statement have been cut away in the manner now attempted? No. They have shown *Sauerman vs. Weckerly*, which, as far as I understand it, regards form merely. There is not a statement which omits the sum in any of the cases. They all give it *in numero*, and specify the date of the engagement. In 6 S. & R. 53, the sum is mentioned and the date. *Ibid* 25, specifies particularly the amount. 3 S. & R. 402, states precisely the dates and sum. 12 S. & R. 74, has a date; it shows the principal and interest and the time from which the interest ran. 1 S. & R. 555, is a case which we ought not to quarrel with, though cited by our opponents. It contains good doctrine enough. The court, it says, should enforce a substantial compliance with the act; and this is what we contend for when we urge that this statement does not conform to it in two essential particulars, and is, therefore, incurably defective.

2. A consideration is the vital part of the cause of action. This court does not sit to enforce voluntary courtesies. What was the consideration that moved from the plaintiff to the defendant to induce this promise? What had the plaintiff done? Could the defendant pay off Crim's debt without his consent? The statement is rotten, inasmuch as it does not allege directly or indirectly that Conrad Crim authorized him to do any such thing as to pay to Graybill. Would Graybill's receipt be a protection to us against Crim?

The only answer I have heard is that the plaintiff has got a verdict, and that changes the state of the matter. The objection was presented to the court on the trial of the cause. The court did not intend that the verdict should prejudice us; but Judge THOMPSON stated that the proper mode of taking advantage of such a defect would be by arrest of judgment or writ of error. Now, it is a principle which is conclusive here, that whatever is available on a general demurrer may be taken advantage of by writ of error, or in arrest of judgment. The want of an averment of consideration in a declaration is a defect of substance, and not of form merely: 1 Com. Cont. 10, 11; 5 S. & R. 358. With respect to essentials there is no difference between a declaration and a statement; and the statement in this case being essentially

and substantially defective judgment ought therefore to be arrested.

BRADFORD, P. J. This cause was tried before Judge THOMPSON and a verdict given for the plaintiff. Messrs. *Hopkins* and *Champneys*, on the 20th of February, 1827, moved in arrest of judgment on three reasons filed. The disposition of this motion depends on two points. Does the statement filed contain the substantial requisites dictated by the act of assembly, creating and defining a method of placing the plaintiff's claim or record in substitution of a declaration? If it has not, has the verdict cured the defects of the statement?

The statement is this: "This suit is brought, &c." (*ante* \* \* \* \*). The right to file a statement in certain specified cases was given by the 5th section of the act of the 21st March, 1806, which provided that "it shall be the duty of the plaintiff, by himself, his agent, or attorney, to file in the office of the prothonotary a statement of his, her, or their demand, particularly specifying the date of the promise, book account, note, bond, penal or single bill, or all or any of them, on which the demand is founded, and the whole amount, what he, she, or they believe is justly due to him, her, or them from the defendant." A slight inspection of this section discloses that the indispensable requisites of a statement are a particular specification of the date of the promise, book account, note or bond, on which the demand is founded; and the whole amount that the plaintiff believes is justly due to him from the defendant.

This being a form of practice introduced by the act of assembly to facilitate the conduct of a suit at law, it must be enjoyed as provided. Without that act a statement would be a nullity. Its introduction was an innovation on common law forms, and all innovations should be construed strictly, while acts creating a remedy for an existing evil, should have a liberal construction. This statement was provided for the layman; created to enable any one who could read and write to set out his claim on the record of a court and recover it, without the intervention of counsel.

The process issued in this case was a "summons in debt, in parol contract, not exceed-\$600." On this statement, if the plaintiff has distinctly and intelligibly stated a verbal promise with its date, and the whole amount he believes is justly due to him, it is all the act requires. These matters must be plainly, palpably and intelligibly set out, so as to meet the comprehension of a lay defendant who has no professional knowledge; for the same act makes it the duty of the defendant to file a counter-statement containing his account against the plaintiff, if he has any, particularly specifying what he believes is justly due from him to the plaintiff.

In the plaintiff's statement nothing should be left to conjecture as to what the promise was, what was its date, or what was the whole amount justly due to the plaintiff. More might well have been required by this act; but certainly not less. The place where the promise was made, the consideration of

it, the allegation of a previous demand, and the averments contained in a declaration scientifically drawn, are all cast aside, the legislature intending to dispense with everything not absolutely indispensable. Let us then examine this statement, and see if we can clearly and certainly discover what is the promise, what its date and the whole sum due the plaintiff. As I read and understand the statement, it is set out that Conrad Crim and John Sprecher gave their bond to Randle McClure for \$800, payable on the 1st April, 1815, which, on the 19th of August, 1814, was transferred to Jacob Graybill, the plaintiff, and that the defendant, Henry Groff, promised to pay the balance, being part of the purchase money of a house and lot of Conrad Crim, bought by Groff of Crim. It is sufficiently set out that the defendant A promised to pay a balance (not defining it) of a bond for \$800, as part by the purchase money of a house and lot bought of the defendant of Crim. But it does not state when the promise was made, or when the promise was broken. I have said this is indispensably requisite. It is enough that the act makes it so. But I do not see how a jury can ascertain the interest due on this claim, without the date of the promise or its breach. Had there been judgment by default, and all the allegations in this statement admitted as true, how could the principal and interest of the claim have been settled according to the plaintiff's demand on the record. This defect is, in my judgment, fatal to the statement. I cannot (however much I desire it, after a verdict for the plaintiff) solemnly pronounce it sufficient.

I think the statement is also defective in not setting out distinctly and explicitly the whole amount the plaintiff believes is justly due to him from the defendant. This we have seen is directed by the act. It is not to be collected by inference or conjecture; it must be certainly and particularly specified. On advertent to the statement it is impossible to be blind to this defect. If the two last lines are read by the omission of the word "of" through which the pen has passed, apparently for an erasure, the paper concludes with an averment that the balance sued for has been paid to the Lancaster Trading Company. But if the word *of*, alluded to is not to be considered as erased, still there is no definite sum claimed to be justly due the plaintiff. He does not certify or declare his belief of the whole amount that is justly due him from the defendant. This is required by the act, and surely a defendant has a right to this information, to know, in plain terms, what the plaintiff demands. A statement should not be capable of two readings, and should be free from all doubt as to its meaning.

As the defects of this statement were mentioned during the trial, it might have been amended and the objections removed. There is, therefore, no severity in holding the plaintiff to a compliance with the act, even after verdict, when infirmities, affecting its vitality might have been removed before the case was committed to the jury by the court. So little being required by the

act, and such abundant opportunities given to supply that little, when its deficiency is ascertained at the trial, indicates that we are not giving an importance to form and thereby sacrificing justice. In *Underwood vs. Lilly*, 10 S. & R. 100; the Supreme Court say: "That the act prescribes a certain form both of writ and statement, which, if not substantially pursued, the court will be bound to reverse the judgment." If the defects of this statement, are such as to cause judgment to be reversed on error, we ought arrest the judgment.

What defects in a declaration are cured by a verdict is well ascertained; and I am disposed to be as liberal in construing its efficacy when applied to a statement. The essence of all the decided cases on declarations is this, that a verdict will not cure a defective title, but it will aid a title defectively stated. 8 S. & R. 265-6.

When neither the date of a parol promise, nor the sum claimed for its breach is specified, the statement is beyond the curing power of a verdict. The title to any and what sum is absent, is not in the case of the plaintiff which is reduced to writing. The act requires the statement to have certain form and substance, which is to be given it by the hands of the plaintiff. This the verdict cannot supply. The absence of other matters, not expressly directed by the terms of the act, may be disregarded. As in an action on contract, the plaintiff need not state the performance on his part: 2 S. & R. 537; nor even the performance of conditions precedent: 6 S. & R. 53; or the consideration of making the promise, for a statement is an immethodical declaration stating in substance the time of the contract, on what founded, with a certificate of the belief of the plaintiff or his agent of what is really due: 6 S. & R. 28-26; 8 S. & R. 263.

This is the opinion I had formed on the first argument, and which is now read to show the reasons why I dissented from my brother THOMPSON. On the second argument, before Judge HAYES and myself, the case of *Wolf vs. Wilson and Ramsay*, decided in the Supreme Court here at May term, 1819, and the case of *Sauerman vs. Weckerly*, decided in Philadelphia, have been produced. In the first case the court dispense with what appear to me to be the requisites of the act on the subject of statements, and in the second render unavailing all objections after verdict. I am, therefore, compelled to yield my own judgment to superior wisdom and authority, and concur with Judge HAYES that the rule be discharged.

HAYES, J. On the trial of this cause exception was taken to the statement filed by the plaintiff, and the court was requested by the defendant "to give their opinion whether it contains a sufficient cause of action." The court accordingly charged the jury that the statement does contain a cause of action on which they might find a verdict, if, on consideration of the facts, they thought there was a balance due to the plaintiff.

After the verdict the defendant moved in arrest of judgment, for the following reasons,

viz.: 1. The statement filed in the cause does not state the date of the assumption, nor the amount which the plaintiff claims to be justly due from the defendant, according to the provisions of the 5th section of the act of the 21st of March, 1806. 2. There is no consideration alleged in the statement filed for the promise of the defendant, neither of benefit to defendant or of trouble or prejudice to the plaintiff. 3. That it appears from the face of the statement that the claim made is satisfied, and no cause of action remains.

The last of these reasons, I think, is not sustained in point of fact. With regard to the *first*, it cannot, after verdict, avail the defendant. It does not appear that on the trial, or before, any *other* objection was made to the statement than that it did not set forth a sufficient cause of action. We must take it to have been shown to the jury that the assumption was of a particular date previous to the bringing of the suit. The amount which was due must also have been precisely shown, otherwise the jury could not have ascertained it as they have done by their verdict.

In *Sauerman vs. Weckerly* the Supreme Court say that nothing is more palpable than the injustice of suffering a party, who has without objection gone to trial before plea pleaded or issue joined, or on a declaration containing blank spaces for dates or sums, to elude the consequences of the verdict; and that an omission to call on the opposite party to perfect the pleadings beforehand, ought in practice to be considered what it is in justice and truth, a tacit agreement to waive formal objection, and try the case on its merits. In the case of *Wolf vs. Wilson and Ramsay*, which was argued at the May term, 1818, and in which a motion had been made in the court of Common Pleas in arrest of judgment for an alleged defect of the statement, the supreme court, upon due consideration, affirmed the judgment upon the verdict. In that case, the reasons in arrest of judgment were: 1. Because the statement did not contain the date of the assumption. 2. Because it did not show how much was due to the plaintiff. 3. Because the act of assembly does not authorize an action of debt for an assumption. The court below, on the trial, were requested to charge the jury that the statement did not comply with the act in stating the date of the plaintiff's account, with the amount claimed by him, which made that a stronger case for the defendant, on the argument in arrest of judgment, than the one now before the court, inasmuch as the defendant's counsel in this case only requested the opinion of the court to be given to the jury respecting the sufficiency of the cause of action mentioned in the statement.

The only question, therefore, is whether there is a sufficient cause of action contained in this statement or not. It sets forth these facts as the foundation of the plaintiff's demand: that Graybill became the owner of a bond (by assignment of the obligee) by which Conrad Crim was bound to pay the real debt of \$800 on the 14th of April, 1815; that Henry Groff, having purchased a house and lot of the said Crim, promised to pay this bond to



Graybill as a part of the purchase money, and having paid on account of the plaintiff, to the Lancaster Trading Company, three hundred and twenty dollars, became indebted to him in the balance, or difference between the sums of \$320 and \$800, to recover which balance the plaintiff brings his suit.

I construe this as a promise to pay to Graybill, assignee of Crim's bond, the amount thereof in part consideration of the said house and lot. I cannot doubt that this is a valid consideration. I therefore, think there is a sufficient cause of action contained in this statement, and that the motion in arrest of judgment should be denied.

Motion denied and judgment on the verdict.

[This cause was removed by writ of error, and at an adjourned Supreme Court for the Lancaster district the judgment was, on the 19th November, 1831, affirmed. 1 Watts 428.]

#### Orphans' Court of Lancaster County.

##### ESTATE OF ISAAC R. KUHNS, Dec'd.

Guardianship is a matter of personal confidence, and one accepting such a trust cannot delegate it to another.

Negligence, even when consistent with good faith, will render the guardian accountable for loss on his ward's estate.

The findings of an auditor have every presumption in their favor, and will not be set aside unless manifestly against the evidence.

Exceptions to auditor's report on exceptions to guardian's account of John M. Stehman, guardian of Isaac M. Kuhns, a child of deceased.

*Thos. E. Franklin and Geo. Brubaker* for exceptions.

*N. Ellmaker* contra.

Opinion delivered August 18, 1877. By PATERSON, A. L. J.

The exceptions to this auditor's report were argued at great length and we have given the argument of counsel, as well as the findings and conclusions of the auditor, our careful consideration.

The accountant, it seems, filed his account and charged himself with the principal sum of \$4,722.99, together with the interest on same, amounting to \$2,450.39, and in addition with two other small items, amounting together to the sum of \$18.12, making the debits altogether amount in the aggregate to \$7,192.50. To that account exceptions were filed and an auditor was appointed to hear and report.

The auditor makes report that he finds that the principal sum, viz: of \$4,722.99 with which the accountant charged himself was the exact share of his ward arising out of sale of real estate, sold by the administrators of the decedent, but finds also there was personal property, with which the administrators of the estate of decedent charged themselves in their account, and that the portion of which, after deducting therefrom the widow's share, due and coming to this minor, amounted to \$1,090.46. The auditor, therefore, surcharged the account of the guardian with that sum, and with legal interest on same for ten years and four months.

To that surcharge of the auditor, the counsel for accountant files a number of excep-

tions, which may all properly be resolved into one, and will be collectively considered.

There was both oral and written testimony submitted to the auditor, and we have closely scanned both, and regarding his adjudication and finding in the premises, we cannot say it was palpably founded on insufficient evidence.

The auditor finds, from the testimony of the accountant himself, that he never examined the account filed by the administrators of Isaac R. Kuhns, deceased, until this controversy (meaning the exceptions to his guardian account) started up. And, therefore, on authority cited, finds the accountant was guilty of negligence, that he says may be justly characterized as "gross." The auditor decides the question of surcharge—not only on the law of want of due care and diligence, but also on the merits as gathered from the evidence. We think the merit of this controversy, however, and aside from all technical ground, is with the minor; because, whether it has occurred through the wilful negligence of the guardian, or through his mere unintentional forgetfulness, the innocent minor should not be permitted to suffer. No deliberate or wilful negligence on the part of the guardian is shown by the evidence; but a guardianship is a matter of personal confidence, and, if accepted, he is not allowed to delegate his powers or his duties, under his appointment, to another. Hence the argument urged by the accountant's counsel cannot be entertained, viz: That owing to the relations of the administrators with his ward, being that of mother and brother, he, the guardian, was led not to examine the account filed by them, was not so particular, and consequently trusted that the administrators would do what was right, and that, therefore, there was not such negligence on his part as as to make him pay money that did not come to his hands. While that argument is, doubtless, just to the conduct and heart of the guardian, it should not prevail to the prejudice of the minor in his case. The office of guardianship requires at least ordinary vigilance and watchfulness, and often the courts have held the guardian responsible for any loss sustained by reason of his mere lethargy and inattention. That was the ruling of the supreme court in Wills' Appeal, 10 Harris 325, as to the Brackenridge judgment, and cited by the auditor. The guardian was held for the loss, and had to account to his ward, thus holding that even *supine negligence* without wilful default, will often render the guardian responsible.

Without, therefore, concurring with the auditor on finding this accountant chargeable with "gross negligence," the law controlling trustees, under the facts in evidence, would make him account for the portion of the personal estate due to his ward, whether he received it or not. The auditor committed no error, therefore, in refusing to turn over the ward to the remedy of proceedings against the administrators and their sureties for that portion of the personal estate not distinctly found in the hands of this accountant.

From the testimony taken before the audi-

tor, it seems the administrators disclaim ever having taken a release, or even a receipt from this accountant for any of the personal estate—the fund for which he is made chargeable, and therefore this case is relieved of any apparent hardship, as the guardian himself can still, in this character of claims, proceed to make the administrators respond if he choose to invoke that remedy.

As to the exception, viz: The auditor *not allowing commissions* on the amount surcharged, we have already said that in our opinion even *supine negligence* consistent with good faith, will render the guardian accountable for loss to his ward's estate, and in such instances of omission or negligence, the ward is delayed thereby in obtaining his estate and involved often, as in the present case, in expense and expensive litigation, which facts make it incumbent on the court to sustain the auditor in that ruling.

For compensation to trustees and guardians, in whom the estate for the benefit of another is vested, are to a certain extent trustees—and the law of trusts so far is applicable to them. Compensation, we say, to trustees is allowed for ordinary care and diligence in the execution of the trust.

As to the auditor's finding in this case. We observe the testimony before him is contradictory, and we cannot say that there is such a plain mistake as to justify the court in reversing the auditor's findings. For where facts have been found by an auditor's report it is entitled to every presumption in favor of such finding, and will not be set aside on a question of fact, unless found to be manifestly against the evidence. That is the established rule of law governing our Orphans' Courts.

There is nothing placed upon our records in this case, except by mere implication, which reflects in any way upon the integrity of the accountant (and a public disavowal of any such intention was made by the counsel for exceptant at the bar of the court.) There is no evidence before us to justify a reflection of that nature, and the individual character of the guardian is in his favor and precludes such a conclusion.

It is proper to revert here to the fact that the accountant, in his exceptions, claims that he submitted to the auditor evidence of a payment by him to the late minor of a part of his estate. The sum of four thousand dollars, on account, was paid about a month before his account, now in controversy, was filed, and of course the guardian will be allowed a credit to that extent against the balance found against him by the auditor's report.

Having submitted our opinion as to the auditor's report, covering, we think, the whole question, we now must dismiss all the exceptions and confirm the report absolutely.

IN *Manby vs. Scott*, (1 Sid. 106; 2 Smith, L. C. 422, 6th London Ed.) among the reasons for the second "point there established," it is said: "In the Spiritual Court such bad women as have violated their vows shall have such provision as clerks' convicts (Stauforde 140), and shall be fed with bread of affliction and water of adversity.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 8, 1877.

## WEEKLY SUMMARY.

REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since August 18, 1877.

GEORGE WOLF, dec'd, late of Columbia bor.; Nicholas Wolf, administrator with will annexed.

JOHN H. DAVIS, dec'd, last of East Lampeter twp.; David Miller, (farmer) administrator.

JACOB G. SWARR, dec'd, late of Rapho twp.: Alice M. Swarr, administratrix.

JOHN SHIRK, dec'd, late of Carnarvon twp.; Martin Shirk, administrator.

ANN MACK, dec'd, late of Columbia bor.; Joseph M. Watts, administrator c. t. a.

SARAH LINEWEAVER, dec'd, late of Columbia bor.; Dr. S. T. Lineweaver, administrator.

JOHN CHARLES, dec'd, late of Washington bor.; John A. Brush, administrator.

HENRY BRENNBERGER, sr., dec'd, late of Martie twp.; Henry Brenberger, jr., administrator.

WILLIAM WILSON, dec'd, late of Lancaster city; Annie Wilson, administratrix.

JOHN H. CLARK, dec'd, late of Salisbury twp.; A. B. Ayers, administrator.

The following Wills have been admitted to probate since August 18, 1877:

HENRY SENSEL, late of East Hempfield twp.; Christian Musselman, executor.

ELIZABETH MONDAL, late of Ephrata twp.; Jacob R. Keller, executor.

ELIZABETH GRABILL, late of Earl twp.; Samuel Grabill, executor.

HENRY ZWALLY, late of West Earl twp.; Franklin B. Zwally and Isaac B. Zwally, executors.

THOMAS R. TORR, late of Lancaster city; M. Haberbush and Mary S. Torr, executors.

CHRISTIAN SOURBEER, late of Manor twp.; Martin Miller, jr., executor.

JOHN W. LORAH, late of Brocknock twp.; Edward Lorah, Martin Lorah, Peter Zeimer and Peter Becker, executors.

MARY WOLF, late of Lancaster city; Amelia C. O'Brien, executrix.

CHRIST. PAULSEN, late of Lancaster city; Rebecca Paulsen, executrix.

## ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE,

No. 13 NORTH DUKE STREET,

LANCASTER, PENNA.

## Auditors' Notices.

Assigned estate of J. ADAMSCHUH and Wife, of Lancaster City, Lancaster co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Philip D. Baker, assignee of J. Adam Schuh and wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 29th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEORGE NAUMAN,  
SIMON P. EBY,  
S. W. SHADLE,

sep8

Auditors.

Estate of ISAAC SWEIGART, late of Salisbury township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Harvey Sweigart, H. M. Sweigart and H. W. Worst, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, SEPTEMBER 25, 1877, at 2 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. D. F. ROSENMILLER, JR., sep8 Auditor.

Assigned Estate of ELIZABETH LESCH and HUSBAND, of Lancaster.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Gable, assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, SEPTEMBER 17th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

F. G. MUSSER,  
Auditor.

sep8

Assigned Estate of ISAAC B. SWEIGART and WIFE, of Salisbury twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Uriah Bitzer, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 2, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

EMLEN FRANKLIN,  
Auditor.

sep8

Assigned Estate of CHARLES A. HOOK and WIFE, of Columbia, Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel A. Altick, assignee, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, OCTOBER 6th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

S. M. SENER,  
Auditor.

sep8

Assigned estate of JOHN KILHEAFNER, of Eden twp., Lancaster county.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Hildebrand, esq., assignee of said John Kilheafner, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, SEPTEMBER 18, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

S. W. SHADLE,  
Auditor.

sep1

Assigned estate of JOHN B. AUMENT and Wife, of Strasburg bor., Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Hildebrand, esq., assignee of John B. Aument and Wife, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, SEPTEMBER 18, 1877, at 11 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. C. REINOEHL,  
Auditor.

sep1

Estate of JOHN HILL, late of East Donegal township, dec'd.

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of William Hill, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPTEMBER 26th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

DANIEL G. BAKER,  
Auditor.

sep1

Estate of JACOB BRENNER, late of Conoy township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel M. Lehman, administrator, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPT. 12th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JNO. M. MAST, Auditor.

aug25

Estate of JACOB WHITE, late of Penn twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John M. Stehman and John B. Reist, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 22d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. ILYUS,  
ISRAEL G. ERB,  
A. H. FRITCHEY,  
Auditors.

sep1

Assigned Estate of ABRAHAM GOOD and WIFE, of Conestoga twp., Lancaster co.

The undersigned Auditors, appointed to pass upon exceptions and to distribute the balance remaining in the hands of John P. Good, assignee, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. REINEHL,  
ROBT. J. EVANS,  
Auditors.

aug25

Estate of JACOB BUSSEY, SR., late of Warwick twp., Lancaster co., deceased.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPT. 19th, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. K. MARTIN,  
C. S. HOFFMAN,  
Auditors.

aug25

## NOTICE.

And now, August 21, 1877, petition of Thos. J. Davis, assignee of R. H. Hinsdale, presented and filed, praying the Court for an order to re-convey all trust property now in his hands, whereupon the Court fix MONDAY, SEPTEMBER 17, 1877, at 10 o'clock, a. m., for a hearing.

Attest: LEWIS S. HARTMAN,  
Lancaster, Aug. 25, 1877. Prothonotary.

## INSOLVENT NOTICE.

Notice is hereby given that Joseph Miller has made application for his discharge under the insolvent laws and that a hearing will be had on MONDAY, SEPTEMBER 17th, 1877, at 10 o'clock, a. m. aug25\* JOSEPH MILLER.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, SEPTEMBER 17th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper. aug25\* JOHN SMITH.

## DIVORCE NOTICE.

LEWIS A. WAMBAUGH } Alias Subpoena for Divorce,  
vs. } To August Term, 1877.  
MARY J. WAMBAUGH. } No. 7.

To MARY J. WAMBAUGH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 17th day of SEPTEMBER, 1877, at 10 o'clock, a. m., to show cause if any you have, why the said Lewis A. Wambaugh should not be divorced from the bonds of matrimony contracted with you, aug18 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, August 15th, 1877.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET,  
LANCASTER, PA.

**Estate Notices.**

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration *et al.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

WM. AUG. ATLEE, NOAH SWARTLEY,  
sept1\* Att'y. JONAS SWARTLEY,  
Administrators.

**Estate of JACOB G. SWARR, late of Sporting Hill, Rapho twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sporting Hill.

OWEN P. BRICKER, ALICE A. SWARR,  
sept1 Att'y. Administratrix.

**Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 59 North Duke-st.

aug25 J. L. STEINMETZ, Administrator.

**Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.**

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN P. WEISE, Assignee.  
J. HAY BROWN, Att'y. [aug25]

**Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.

THOS. J. DAVIS, JAMES BRYSON,  
aug25\* Att'y. Executor.

**Estate of JOHN BRENEMAN, late of Rapho township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

HENRY F. BRENEMAN,  
D. G. BAKER, Att'y. Executor.  
aug25 Residing near Mount Joy.

**Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

AUGUSTUS GROEZINGER, Assignee,  
aug18 M. BROSIUS, Att'y. Lancaster, Pa.

**Estate of SARAH DANCE, late of West Lampeter twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp.

SHEKX & LEAMAN, LIZZIE F. SIDES,  
aug19 Att'ys. Executrix.

**Assigned Estate of "DILLER & GROFF," of Lancaster City.**

Diller & Groff, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said "Diller & Groff," he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of GEORGE J. DILLER and WIFE, of Lancaster City.**

George J. Diller and wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George J. Diller, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of HENRY D. GROFF and WIFE, of Lancaster City.**

Henry D. Groff and Wife having, by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry D. Groff, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL GROFF, Assignee,  
Residing in Lancaster City. [aug18]  
PHILIP D. BAKER, Att'y.

**Estate of MARGARET PLITT, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 AMANDA SHERTZ,  
D. P. ROSENMILER, JR., Att'y. Executrix.

**Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 MARY E. MUHLENBERG,  
J. HAY BROWN, Att'y. Administratrix.

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

SAM'L BOYD, Chestnut Level P. O.  
aug4 JERE. B. BOYD, Peters Creek P. O.  
J. HAY BROWN, Atty. Administrators.

**Estate of SAMUEL LESHER, late of East Calico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

EDW. LESHER, East Earl twp.  
aug4\* EPH'M S. LESHER, Brecknock twp. Executors.

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, JOHN STROHM, JR.,  
y21\* Att'y. Administrator.

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

aug4\* HENRY HOFFMAN,  
CHN. K. LONG,  
N. ELLMAKER, } Att'ys. SAM'L HEISTAND,  
H. B. SWARR. } Executors.

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

aug3 HEZEKIAH BROWN,  
ROBERT WARDEN,  
J. W. JOHNSON, Att'y. Administrators.

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

BARBARA HARNISH, widow,  
ABRAHAM HARNISH,  
jy21\* PHILIP D. BAKER, Att'y. Administrators.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

ANN W. TOWNSEND, widow,  
jy21\* PHILIP D. BAKER, Att'y. Administratrix.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [jy21]

**Estate of MARY TRAFZER, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to

A. HERR SMITH, Administrator.  
jy7 Lancaster Pa.

**Estate of JOHN M. GOWEN, late of Bart township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing at Bart P. O.

LEWIS PICKEL,  
jy7 Executor.

**Estate of ABIGAIL HAWTHORN, late of Petersburg, Pike Co., Indiana, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to

A. HERR SMITH, Administrator,  
jy7 Lancaster Pa.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, SEPTEMBER 15, 1877.

No. 16.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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WM. H. ROY,  
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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way passenger†	.....	4:50 a. m.	7:50 a. m.
Niagara Express,...	.....	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	.....	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy.	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	.....	11:20 a. m.	1:25 p. m.
Sunday Mail,.....	.....	11:29 a. m.	1:30 p. m.
Fast Line,*	.....	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	.....	6:10 p. m.	8:10 p. m.
Columbia Accom.,.....	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	.....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.

  

EASTWARD.		LEAVE LANCASTER.	ARRIVE PHILADELPHIA.
Atlantic Express,*	.....	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	.....	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	.....	2:00 p. m.	5:00 p. m.
Johnstown Express,...	.....	3:05 p. m.	6:00 p. m.
Day Express,*	.....	5:18 p. m.	7:30 p. m.
Harrisburg Accom.,.....	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:10	7:50	3:10
Lancaster—West King Street,...	7:20	9:16	3:15
Lancaster—Upper Depot,.....	7:30	9:30	3:25

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	10:16	5:30	8:38
Lancaster—West King Street,...	10:25	5:40	8:45
Quarryville, (arrive).....	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	7:30		3:15
Lancaster—Upper Depot,.....	7:30		3:25
Lancaster Junction,.....	7:57		3:51
Reading, (arrive).....	10:20		5:50

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading,.....	7:85		6:05
Lancaster Junction,.....	9:53		8:15
Lancaster—Upper Depot,.....	10:10		8:38
Lancaster—West King Street,...	10:25		8:45

### Columbia and Port Deposit Railroad.

Passenger trains on this road run as follows:

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:29
Arrive at Peachbottom,.....	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharawood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.

*Prothonotaries:*

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweltzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Philip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

THE LANCASTER BAR

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COURT CALENDAR.--1877.

SEPTEMBER.

- 8. Last day for settling down causes for Argument Court.
- 8. Last day for settling down causes for trial for October 8 and 15.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.
- 22. Last day for settling down causes for trial for October 22.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court.
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for settling down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court.
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for settling down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for settling down causes for trial for January Court, 1878.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE — No. 33 NORTH DUKE STREET,

LANCASTER, PENNA.

COMMISSIONER OF DEEDS

FOR THE STATES OF

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 15, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

### JOHN YUNDT *against* GEORGE YUNDT'S ADMINISTRATORS.

The sale of a farm by the sheriff, set aside for the insufficiency of the advertisement, in omitting to mention sixty-five or seventy acres of valuable wood land—a mill-seat and water-power on the Conestoga running through the tract—a good orchard, etc.

The description in the advertisement which was as follows, viz.: "164 acres of land, more or less, a two-story stone house, swisser barn, wagon shed, fulling mill and other improvements, lying in Earl township," was not a *proper description* of the premises according to the act of assembly.

What constitutes a *proper description* considered.

To a writ of *venditioni exponas* the sheriff had returned to the September term, 1827, that he had sold the within described premises to Christian Stoltzfoos at fifty-four dollars and a half per acre. At that time Mr. Porter presented an affidavit and moved for a rule to show cause why this sale should not be set aside, which was granted.

At an adjourned court on the 3d of October the rule came on to be heard.

*Mr. Ellmaker* and *Mr. Porter* for the rule.

*Mr. Champneys* and *Mr. Jenkins* against it.

A number of depositions had been taken in the meantime from which it appeared that the land sold by the sheriff as the estate of George Yundt, deceased, was a very valuable plantation, containing one hundred and sixty to one hundred and seventy acres of land—sixty to seventy acres of which were covered with excellent timber; that the Conestoga Creek runs through the tract; that it has a mill-seat and valuable water-power; that there was on it a two-story stone dwelling house, with a large stone kitchen adjoining, a stone swisser barn—seventy-five to eighty feet long and thirty-seven feet wide—a fulling mill, three stories high, including a dwelling house and a kitchen annexed, and containing a carding machine, and a tenant house and stable, together with a good and "thriving" orchard. One or two of the witnesses declared that, in their opinion, the farm sold for its real value; but most of them deposed that it would, as they believed, bring at a sale fairly advertised from fifteen to twenty dollars an acre more. The description in the sheriff's advertisement was "164 acres of land, more or less, a two-story stone house, swisser barn, wagon shed, fulling mill and other improvements lying in Earl township."

The following were the objections urged against the sale, viz.:

1. That the sheriff in his advertisement of the sale did not give a proper description of the farm, its appurtenances and privileges.

2. That the sale was not on the premises, but at Hinkletown, one or two miles distant.

3. That there was but one real bidder at the sale.

4. That the land was sold for twenty dollars an acre below its real value, amounting to between three and four thousand dollars; and the purchaser has offered a premium if no objection be made to the sale.

Another objection was also made and insisted on by Mr. Porter, namely, that the sale took place on the day on which it was advertised to be sold without the intervention of an adjournment.

HAYES, J. The chief objection to the sheriff's sale in this case is the insufficiency of the description, which is contained in the advertisement of the sheriff giving notice of the vendue. All the proceedings up to the time of the sale and the sale itself were fair and regular.

There is but little weight in the exceptions that the sale was not on the premises; that there was but one real bidder (if that were the fact); that the property was sold on the first day it was exposed for sale; that it was sold for twenty dollars an acre below its actual value, and that the purchaser has offered (as it is alleged) a premium provided no objection should be made to the sale. These exceptions, assuming that they are sustained by the testimony, are in themselves of no avail. The paucity of bidders and inadequacy of price, may indeed be urged as evidence of the effects proceeding from the want of a proper description in the sheriff's advertisement, but are not *per se* objections to the sale.

I concur in the observations, which were made in the course of the discussion, respecting the inexpediency of lending a too easy ear to objections to sheriff's sales. The inclination of the court should be to support the proceeding whenever it can be done consistently with justice: 4 Johns. 34; Grant vs. McLaughlin.

The act of 24th March, 1824, requires the sheriff, in his advertisement, to give a proper description of the lands to be sold. The general practice and decisions before the passing of that act were, it is believed, in accordance with that requisition; though instances of the contrary character must have occurred to render the provision necessary. What is the meaning of a proper description? Does it mean an accurate minute account of the land—its peculiar soils, the dimensions of its improvements and buildings, or the particular extent of its privileges and appurtenances? No—such a decree of particularity, is not requisite. Much less does it mean a general form of description to be applied indiscriminately to all occasions: It signifies, as I conceive, such a description as is demanded by the object of the advertisement, which is to give full notice to the public, so as to arrest the attention and excite the inquiries of all who are able and disposed to purchase. It must be appropriate to the premises to be sold. Whatever, therefore, constitutes a pe-

culiar and valuable feature of the property, ought to be specified in order to make the description a proper one, since the omission may always be considered as injurious by the consequent failure of a general attendance and a fair sale.

The advertisement in this case, is singularly defective, omitting any mention of a valuable piece of well timbered land, amounting to sixty-five or seventy acres, merely including it in the general description of one hundred and sixty-four acres of land, more or less, besides omitting the orchard, the Conestoga creek, the water-power and mill-seat appurtenant to the premises, and other matters of less importance. In short there is nothing in the description, which the advertisement gives of this property, a most excellent and advantageously situated farm, to distinguish it from one of a very inferior grade. I cannot, therefore, regard this as "a proper description." It was not calculated to give notice to the public of the sort of plantation which was about to be sold, so as to induce such persons as were not previously acquainted with it, and might be anxious to obtain such a plantation as this, to attend the sale or make any inquiries concerning it. The weight of the evidence is, that the sale was for an inadequate price; which we are warranted in attributing to the insufficiency of the advertisement.

Let the rule be made absolute. In *Passmore vs. Gordon*, 1 Browne 320. a house and kitchen erected on a lot were omitted by the sheriff in the advertisement, and the sale was therefore set aside. It is not enough that the buildings are proclaimed at the time of sale, because, by the omission, many persons may have been prevented from attending.

### Common Pleas of Lancaster County.

#### DAVID CONYNGHAM'S TRUST ESTATE.

A trustee acting in good faith and in accordance with a power contained in the instrument creating the trust, will not be responsible for premiums on investments.

If, however, he make investments not warranted by the instrument creating the trust, he does so on his own risk, and may, if loss occur, be charged therewith.

The interest of a trust fund must be applied to the use of *cestui que trust*, in strict conformity to the terms of the trust.

Rule to show cause why trustee should not be dismissed.

*D. G. Eshleman* and *W. S. Amweg* for rule.  
*N. Ellmaker* contra.

Opinion by LIVINGSTON, P. J. August 18, 1877.

With reference to the petition presented, and the matters therein contained, it is sufficient for the court to say that they have all been fully noticed and passed upon by a very learned and able auditor, and by this court in reviewing his report on exceptions thereto, except the fact that David Conyngham, the petitioner, has no other estate or means of living than the proceeds of the trust fund, and is now in absolute want by reason of his trustee refusing to pay him the proceeds of his trust estate as the same accrues; the trus-

tee having filed his account in November, 1876, and paid him no interest since filing the same.

It appears, from the papers, account, &c., before us in this trust estate, that, although this interest accrues to David Conyngham annually, his trustee, Mr. Witmer, instead of paying him annually, has advanced money to him frequently during each year, and when he filed his account was not in arrear in the payment of interest. This was as it should be, and exhibited great kindness, care and thoughtfulness on the part of the trustee, who might have withheld payment until the close of each year, and whose doing so would not have subjected him to dismissal from the trust, for, by its very terms, he had the right, privilege and power of investing it in securities, the interest of which are only payable annually. And we could not have compelled him to pay it more frequently. And because he invested it otherwise, and received a larger amount of interest) and at shorter intervals, that would not justify the court to order him to settle with the *cestui que* trust more frequently on pain of dismissal.

But the reason for now refusing to pay over interest to the *cestui que* trust is not that a year has not elapsed since his last payment, or that there is not a year's interest due David Conyngham; but, because he, the trustee, fears he may be surcharged with moneys, part of the *corpus* of the estate, which he paid in premiums to obtain the investments directed by the will to be made, and, if so, he claims the interest now in hand to repay him interest he has paid to David Conyngham over and above the *legal interest* on the trust funds, after deducting commissions, &c. This position is no more tenable than that contended for by the petitioner—that if the trustee receives interest on the trust fund, or different portions of it, every day, the court should compel or order him to pay it over immediately, or at farthest next day, to the *cestui que* trust.

The trustee is in no danger of being made to repay or make up premiums paid on investments made according to the terms prescribed in the will creating the trusts, where the investments are made *bona fide* and at the market value of the stock invested in. If, however, he saw fit to change the investment first made, and invest the fund in securities not warranted by nor named in the will creating the trust he accepted, he did so upon his own responsibility, and his liability eventually, in such case, may, perhaps, depend upon whether or not there is loss occasioned to the estate by reason of his so doing. Where there are directions in the instrument creating the trust which fix the time, manner and particular kind or kinds of investment to be made in pursuance of the trust, the trustee accepting the trust must follow strictly the direction and power so coupled with the trust. And, in our judgment, he cannot properly ask the court to approve, nor would the approval of the court, under the act of assembly, render valid, so as to shield him eventually, should loss occur on investment made otherwise than in one or other of the modes prescribed by the will.

The learned auditor, in passing upon the exceptions to the account of the trustee, and which are set forth in the petition for the removal of the trustee, finds as a fact that no loss has yet occurred to the estate by reason of such investments; but, whether loss has occurred or will occur for this reason is not now, so far as the payment of the interest in hand is concerned, a question requiring grave consideration, for in no event can the trustee, under the terms of the trust, deprive the *cestui que* trust of the use and benefit of the whole annual interest received by him on the investment made, at the rate per cent. at which the investment was made, less the expenses named in the trust. If he were to attempt, after a year's interest has accrued, to deprive the *cestui que* trust from receiving it, or to hold it for the purpose stated in his answer, the *cestui que* trust might with propriety ask for his removal.

The learned auditor, after a full review of all the testimony, has found that the trustee has not acted in bad faith, but is "entirely free from the taint of bad faith or improper purpose." And after a full examination of the cause as presented we are of opinion that the court would not at present be justified in removing him from the trust.

We, therefore, dismiss the petition at the cost of the petitioner.

#### SUPREME COURT OF PENNSYLVANIA.

##### BOWERS' APPEAL.

The Orphans' Court may, after ordering a sale of real estate, set aside the sale on proof of inadequacy of price, or where irregularities are shown. In cases of this kind the Supreme Court will not review unless the record shows gross and palpable abuse.

Appeal of Alice M. Bowers from the decree of the the Orphans' Court of Perry county.

Opinion by PAXSON, J. May 28th, 1877.

The power of the Orphans' Court to set aside a sale of real estate made in pursuance of its own order, for inadequacy of price, is well settled. It is frequently done where security is offered that the property will bring a higher price at a resale. This power has been recognized by this court in Hays' appeal, 2 P. F. S. 58; Brown's appeal, 2 Id. 53. It by no means follows, however, that because the power exists, it is to be exercised in all cases. It is a matter that rests in the sound discretion of the Orphans' Court. As a general rule this court will not review an exercise of discretion unless the record shows palpable and gross abuse: North Penna. Railroad Co. vs. Davis, 2 Casey 258; Hudson's appeal, 3 Casey 47; Neil vs. Tate, 3 Id. 208; Helfenstein vs. Leonard, 14 Wright 462; Keeld's appeal, 20 P. F. S. 113. In this case the real estate was sold for \$1,626. Prior to confirmation it was ascertained that \$2,000 could be had for it; in fact a responsible bid for that amount was tendered in case of a resale. The Orphans' Court, notwithstanding this offer, confirmed the sale. We are not sure that this was a wise exercise of its discretion. The question for our consideration, however, is whether the

confirmation of the sale was such a palpable abuse of its discretion as to justify our interference. We are not clear that it was. Repeated efforts had been made to sell the property without success, and it was sold at last upon a third pluries order. It was a sale for the payment of debts, and creditors who are delayed in the collection of their money are entitled to some consideration as well as heirs. It also appears from the record that even if the property were sold for \$2,000, the estate would not more than pay the debts, leaving nothing for heirs, who are the parties seeking to have the sale set aside. The creditors, who are the only parties practically interested in the matter, make no complaint. If they prefer prompt payment of a part their money, to a larger dividend accompanied with delay, the court below did no wrong to heirs at law in confirming the sale. There would be nothing for them in either event.

The decree is affirmed and the appeal dismissed, the costs to be paid by the appellant. —Pitts. Leg. Journal.

##### BOVARD vs. PATTERSON.

1. Where the surety entrusted the principal with a blank bond to be filled up, the striking out the interest clauses, which did not prejudice the surety, will not release him.

2. Delay in this by the creditor in pursuing the principal not sufficient to discharge the surety.

Error to the Court of Common Pleas of Armstrong county.

PER CURIAM. October 30, 1876.

Bovard entrusted Campbell, the principal, with a blank bond to be filled up for the benefit of Campbell. The striking out of the interest clause in the waiver of execution did Bovard no injury. The bond contained the interest clause in the condition for payment of the debt in favor of the creditor, so that striking it out of the waiver of exemption from execution was to his prejudice and not that of the obligors.

Whatever question might be made upon the instruction of the court, that the request or notice of the surety to collect the debt must be proved clearly and *beyond all doubt*, in this instance it did no injury, for the evidence does not show an injury of which the surety can complain. The creditor was not bound, without any particular explanation of the necessity of extreme diligence, upon a notice late in the evening to ride many miles to the county seat, without any assurance that the prothonotary's office would be open late at night, to enter judgment on this bond. He had his bond there early in the morning of the next day, before the prothonotary's office was opened, and his judgment was the first entered that morning. The jury having found the facts in his favor, it cannot be said there was such supineness on his part as in equity to cause the loss of his debt. A legal obligation, the result of voluntary contract, is not to be dissolved for light and trivial causes. The voluntary agreement of the surety to pay the debt binds him both at law and in equity, and nothing less than the clear negligence of the creditor when duly prompted to action by the condition of danger of the surety ought to dissolve the obligation.

Judgment affirmed.

COMMON PLEAS ARGUMENT LIST.

Commencing Monday, September 17th, 1877.

<i>N. &amp; L. Ellmaker.</i> 1 <i>North.</i>	HENRY KEEN <i>vs.</i> PENN'A R. R. CO.	} Trust Book, No. 7, p. 249. } Exceptions to report of } viewers.
<i>Same.</i> 2 <i>Same.</i>	ABRAHAM AND SUSAN E. LONG <i>vs.</i> PENN'A R. R. CO.	} Trust Book, No. 7, p. 246. } Exceptions to report of } viewers and motion to } strike off appeal.
<i>North, Martin.</i> 3 <i>Franklin, Atlee.</i>	SAMUEL ELDER & CO. <i>vs.</i> SHENK, BAUSMAN, CAR- PENTER & CO.	} Sept. Term, 1869. No. 63. } Rule for a new trial.
<i>Kaufman.</i> 4 <i>Amwake.</i>	DANIEL MISHLER <i>vs.</i> LEVI WEISE.	} Aug. Term, 1877. No. 146. } Certiorari.
<i>Puffer.</i> 5 <i>Eberly.</i>	JOHN EVANS & SON <i>vs.</i> THE LAN. CITY SCHOOL BOARD.	} Aug. Term, 1877. No. 46. } Plaintiff appeals from tax- } ation of costs. } Defendants appeal from } taxation of costs.
<i>North.</i> 6 <i>Reynolds, Kline,</i> <i>Frueauff.</i>	THE COL. NAT. BANK <i>vs.</i> F. S. BLETZ.	} Jan'y Term, 1874. Nos. } 113 and 125. } Rule on def't to pay costs } in Nos. 115, 117, 119, 121 } 123, 126 and 127, Jan'y } T., 1874.
<i>Same.</i> 7 <i>Same.</i>	SAME PLAINTIFF <i>vs.</i> THOMAS GROOM.	} Jan'y Term, 1874. No. 114. } Rule on def't to pay costs } in Nos. 116 and 118.
<i>Baker.</i> 8 <i>Kline, Reinoehl,</i> <i>Cochran.</i>	R. H. BRUBAKER, assignee <i>vs.</i> J. H. HORTON et al.	} Jan'y Term, 1874. No. 129. } Rule for a new trial.
<i>Ellmaker.</i> 9 <i>Amwake.</i>	ABRAHAM EBERSOLE <i>vs.</i> SAMUEL BLECHER.	} April Term, 1877. No. 102. } Ex. Doc. } Rule to open judgment and } issue granted.
<i>North.</i> 10 <i>Ellmaker.</i>	E. F. AND J. HOOVER <i>vs.</i> JOHN S. LANDIS et al.	} Jan'y T., 1872, Nos. 67 & 68, } and Aug. T., 1877, Nos. } 117 & 108. Ex. Doc. } Rule to stay proceedings.
<i>Davis.</i> 11	AMOS DILLER <i>vs.</i> ELI WEAVER.	} April Term, 1877. No. 56. } Certiorari. } Exceptions.
<i>Davis.</i> 12	A. B. PATTERSON <i>vs.</i> S. B. SHEAFFER.	} April T., 1877. No. 63½. } Certiorari. } Exceptions.
<i>Davis.</i> 13 <i>P. D. Baker.</i>	H. H. DEITRICH <i>vs.</i> JOHN AND BARBARA BUN- TEMAN.	} April Term, 1877. No. 65. } Ex. Doc. } Rule to open judgment.
<i>A. J. Kauffman.</i> 14 <i>W. M. Franklin,</i> <i>Given.</i>	JAMES WATSON'S use <i>vs.</i> WASHINGTON COLE.	} April Term, 1877. No. 69. } Ex. Doc. } Rule to show cause, etc.

<i>Same.</i> 15 <i>Eberly,</i> <i>Good, Amwake.</i>	BRUNER & BRO. <i>vs.</i> E. BILLINGFELT et al.	} Nov. Term, 1876. No. 59. } Rule to strike off judg- } ment.
<i>Good,</i> <i>H. C. Brubaker.</i> 16	DANIEL OVERHOLSER <i>vs.</i> LEVI M. ZIMMERMAN.	} Jan. Term, 1875. No. 509. } Rule to show cause, etc.
<i>Johnson.</i> 17 <i>Agnew,</i> <i>H. C. Brubaker.</i>	GABRIEL HIRSH <i>vs.</i> THE CITY OF LANCASTER.	} Equity Doc. No. 2, p. 143. } Rule to dissolve prelimi- } nary injunction.
<i>N. T. Patterson.</i> 18 <i>E. G. Smith.</i>	SAMUEL SPRENGLE <i>vs.</i> DANIEL SHULTZ.	} Aug. Term, 1877. No. 31. } Ex. Doc. } Rule to set aside sheriff's } sale.
<i>North, Kline,</i> <i>Franklin, Sellers.</i> 19 <i>Reynolds,</i> <i>Slaymaker.</i>	CLEMENT B. GRUBB et al. <i>vs.</i> A. BATES GRUBB.	} Equity Doc. No. 2, p. 84. } Exceptions to master's re- } port.
<i>North, Penrose,</i> <i>Jas. L. Reynolds.</i> 20 <i>Reynolds,</i> <i>Slaymaker.</i>	E. B. GRUBB et al. <i>vs.</i> A. BATES GRUBB.	} Aug. Term, 1873. No. 116. } Exceptions to auditor's re- } port.
<i>North,</i> <i>W. M. Franklin.</i> 21 <i>Ellmaker,</i> <i>Eshleman.</i>	THOS. BAUMGARDNER <i>vs.</i> GEORGE SHOFF.	} Sept. Term, 1875. No. 103. } Rule for a new trial.
<i>Eshleman, W. S.</i> <i>Amweg.</i> 22 <i>Ellmaker.</i>	DAVID CUNYNGHAM'S trust estate.	} Trust Book No. 5, p. 11. } Exceptions to auditor's re- } port.
<i>Atlee.</i> 23 <i>A. C. Reinoehl,</i> <i>J. Hay Brown.</i>	JACOB BRUBAKER'S assigned estate.	} Trust Book No. 7, p. 45. } Exceptions to auditor's re- } port.
<i>H. M. &amp; E. D. North, Kauffman.</i> 24 <i>Nauman, Given.</i>	HENRY E. WOLF <i>vs.</i> THE HANOVER J. & S. R. R. CO.	} June Term, 1877. No. 90. } Rule to show cause, etc.
<i>Yundt.</i> 25 <i>Kready.</i>	JOHN O'BRIEN'S assigned es- tate.	} Trust Book No. 7, p. 40. } Exceptions to auditor's re- } port.
<i>N. &amp; L. Ellmaker.</i> 26 <i>H. C. Brubaker.</i>	DAVID F. HERR <i>vs.</i> ISAAC BAIR.	} May Term, 1876. No. 73. } Rule for a new trial.
<i>Brown, Harris.</i> 27 <i>Eby.</i>	ISAAC SIMMONS <i>vs.</i> A. CARPENTER.	} Equity Doc. No. 2, p. 140. } Bill of complaint filed.
<i>Same.</i> 28 <i>Same.</i>	AMOS SIMMONS <i>vs.</i> A. CARPENTER.	} Equity Doc. No. 2, p. 141. } Bill of complaint filed.
<i>Brown.</i> 29 <i>Yundt.</i>	JACOB KOHR'S assigned es- tate.	} Trust Book No. 7, p. 23. } Exceptions to auditor's re- } port.



<i>A. J. Kauffman.</i> 30 <i>North.</i>	COL. DIME S. BANK <i>vs.</i> MARY HARRY.	} Jan'y Term, 1877. No. 62. Ex. Doc. Rule on sheriff to pay \$300 exemption.
<i>North.</i> 31 <i>B. F. Eshleman.</i>	E. A. W. HUNTER <i>vs.</i> DANIEL S. YINGER.	} Aug. Term, 1877. No. 105. Rule for judgment.
<i>North,</i> <i>A. J. Kauffman.</i> 32 <i>Kline, Frueauff.</i>	E. K. SMITH & CO. <i>vs.</i> THOMAS & MASON et al.	} Jan'y Term, 1876. No. 23. Ex. Doc. Rule to show cause, etc.
<i>Eshleman.</i> 33 <i>Kline, P. D. Baker.</i>	TERRY, BENNETT & CO. <i>vs.</i> J. A. SPRINGER et al.	} Mar. Term, 1877. No. 73. Rule for judgment.
<i>Brown, Price.</i> 34 <i>Eshleman.</i>	COMM. OF PENN'A. <i>vs.</i> JOHN ERISMAN.	} Aug. Term, 1874. No. 50 and 51. App'l from taxat'n of costs
<i>E. Franklin.</i> 35 <i>Eberly.</i>	JOHN R. SMITH <i>vs.</i> JACOB KAUTZ.	} June Term, 1877. No. 54. Defendants appeal from taxation of costs.
<i>Reynolds.</i> 36 <i>Baker, Reinoschl,</i> <i>Kready, Eberly.</i>	INLAND INS. & DEPOSIT CO. assigned estate.	} Trust Book No. 7, p. 22. Exceptions to auditor's re- port.
<i>Reynolds.</i> 37 <i>McMullen.</i>	INLAND INS. & DEPOSIT CO. assigned estate.	} Trust Book No. 7, p. 22. Exceptions to minority re- port.
<i>Eby,</i> <i>W. M. Franklin.</i> 38 <i>R. H. Long.</i>	WHITMAN & CO. <i>vs.</i> GEO. W. FISHER.	} Jan'y Term, 1877. No. 39. Ex. Doc. Exceptions to auditor's re- port.
<i>Eberly.</i> 39 <i>Wilson.</i>	SAM'L BUCHER'S ex'ors, <i>vs.</i> CYRUS REAM, assignee.	} Feb. Term, 1873. No. 35. Defendants appeal from taxation of costs.
<i>Brown.</i> 40 <i>Frueauff.</i>	GOTLEIB SWILKEY et al. <i>vs.</i> J. SHAIBLEY.	} June Term, 1877. Nos. 8, 9 and 10. Rule to show cause, etc.

## ORPHANS' COURT ARGUMENT LIST.

- Estate of Benjamin Mishler, dec'd.* Rule to show cause why the moneys awarded to Benj. Mishler by the report of the auditor distributing the estate of John Mishler, dec'd, payable on the death of the widow of said John Mishler, and since her death paid into court, should not be paid to the administrators *pendente lite* of Benj. Mishler, dec'd. S. H. Price for rule. W. R. Wilson contra.
- Estate of George Gerhart, dec'd.* Rule to show cause why proceedings in partition should not be set aside. Geo. Brubaker, A. J. Eberly and J. B. Amwake for rule. T. J. Davis contra.
- Estate of Christian Barr, dec'd.* Rule to show cause why report of auditor should not be recommitted for purpose of adjusting claims of Bair & Shenk against said estate. H. C. Brubaker for rule. Wm. Leaman and R. W. Shenk contra.

*Estate of Isaac R. Kuhns, dec'd.* Rule on John B. Stehman, late guardian of Lavinia Kuhns, to show cause why decree of court confirming guardian account should not be opened. T. E. Franklin and George Brubaker for rule. N. Ellmaker contra.

*Estate of Silas Omohundro, dec'd.* Exceptions to report of auditor, appointed to ascertain what amount of funds in hands of Wm. Carpenter, administrator, is necessary to pay debts and expenses, &c. Emlen Franklin and D. G. Eshleman for exceptants. W. W. Brown contra.

*Estate of Silas Omohundro, dec'd.* Exceptions to report of auditor, appointed to pass on exceptions to account of B. F. Eshleman administrator, *d. b. n.* D. G. Eshleman and W. W. Brown for exceptants.

*Estate of Adam Rotharmel, dec'd.* Exceptions to report of auditor. N. Ellmaker and W. Aug. Atlee for exceptants.

*Estate of David Jenkins, dec'd.* Exceptions to report of auditor. W. U. Hensel and H. R. Fulton for exceptants. J. W. F. Swift contra.

*Estate of Michael Bard, dec'd.* Exceptions to report of auditor. J. B. Amwake for exceptants. W. W. Brown contra.

*Estate of Jacob Carter, dec'd.* Exceptions to report of auditor, appointed to pass on exceptions to guardian account of Wm. B. Allwine, guardian of Mary Ella Carter. Amos Slaymaker for exceptants. S. P. Eby contra.

*Estate of John B. Bitzer, dec'd.* Citation to James Bryson, executor, to give security. W. R. Wilson for citation. T. J. Davis contra.

## QUARTER SESSIONS ARGUMENT LIST.

*West Donegal Road.* Exceptions to report of viewers. J. B. Amwake for exceptants.

*Commonwealth vs. William Eckert.* Maintenance. Petition to be relieved from order of court. E. H. Yundt for petition. Wm. Aug. Atlee contra.

*Commonwealth vs. James Mosely.* Forfeited recognizance. Rule to show cause why the recognizance should not be respited. M. Brosius for rule. J. W. Johnson contra.

*Commonwealth vs. John Althouse.* Forfeited recognizance. Rule to show cause why the recognizance should not be respited. J. L. Steinmetz for rule. J. W. Johnson contra.

*Commonwealth vs. Frederick Miller.* Violating election laws. Thos. J. Davis for demurrer. J. W. Johnson contra.

*Commonwealth vs. Thomas Holt.* Assault and battery. Rule to show cause why the finding of the grand inquest should not be set aside. J. B. Amwake for rule. J. W. Johnson contra.

*Commonwealth vs. William Jones.* Horse stealing. Application for a reward. D. P. Rosenmiller, jr., for application. J. W. Johnson contra.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 15, 1877.

## WEEKLY SUMMARY.

REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since September 15, 1877.

JOHN SPERA, dec'd, late of Warwick twp.; Jacob Kemper, administrator *pendente lite*.

FREDERICK FOEHLINGER, dec'd, late of Marietta bor.; Eva Fohlinger, administratrix.

HENRY ZIMMERMAN, dec'd, late of East Hempfield twp.; H. W. Graybill, Leah Zimmerman and G. H. Bingham, administrators.

The following Wills have been admitted to probate since September 15, 1877:

SUSANNA SHINDLE, late of Lancaster city; George Shindle, executor.

CHRISTIAN SOURBEER, late of Manor twp.; Martin Miller, jr., executor.

ELIZABETH GEHMAN, late of Brecknock twp.; Esaias Billingfelt, surviving executor.

JOSEPH LEHN, late of Elizabeth twp.; Luzette Lehn, executrix.

DANIEL HAGAN, late of Colerain twp., Wm. N. Galbraith, executor.

FRANCIS SEGG, late of Columbia bor.; Margaret M. Segg, executrix.

## ORPHANS' COURT OFFICE.

Appraisement of \$300 allowed by law to widows of decedents, have been filed in the office of the clerk of the Orphans' Court for approval nisi at the City of Lancaster on the third Monday in September, A. D. 1877.

For Ann W. Townsend, widow of Ames Townsend, late of Sadsbury township.

For Ellen Trinwith, widow of Robert Trinwith, late of Paradise township.

For Maria Daum, widow Jeremiah Daum, late of East Cocalico township.

For Mary Jane Boyd, widow of S. W. P. Boyd, late of Fulton township.

For Christiana Eidenmiller, widow of Peter Eidenmiller, late of Strasburg township.

For Juliana Smith, widow of Jacob Smith, late of Warwick township.

For Margaret M. Jackson, widow of J. Morris Jackson, late of Fulton township.

For Rebecca Kooser, widow of Frederick Kooser, late of Rapho township.

For Esther Gibbel, widow of Michael Gibbel, late of Rapho township.

For Jane McGowen, widow of John McGowen, late of Bart township.

For Mary Becher, widow of Jacob C. Becher, late of Upper Leacock township.

For Fanny Weiler, widow of Isaac Weiler, late of Providence township.

For Susanna Nein, widow of Henry Nein, late of Conoy township.

For Mary Bucher, widow of J. C. Bucher, late of Columbia borough.

For Barbara Harnish, widow of Emanuel Harnish, late of Pequea township.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

## Auditors' Notices.

Estate of ISAAC SWEIGART, late of Salisbury township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Harvey Sweigart, H. M. Sweigart and H. W. Worst, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, SEPTEMBER 25, 1877, at 2 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. D. P. ROSENMILLER, JR., sep8 Auditor.

Assigned Estate of ELIZABETH LESCH and HUSBAND, of Lancaster.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Gable, assignee, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, SEPTEMBER 28th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. F. G. MUSSER, sep8 Auditor.

Assigned estate of JOHN KILHEAFNER, of Eden twp., Lancaster county.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Hildebrand, esq., assignee of said John Kilheafner, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, SEPTEMBER 18, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. S. W. SHADLE, sep1 Auditor.

Assigned Estate of CHARLES A. HOOK and WIFE, of Columbia, Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel A. Altick, assignee, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, OCTOBER 6th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. S. M. SENER, sep8 Auditor.

Assigned estate of J. ADAMSCHUH and Wife, of Lancaster City, Lancaster co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Phillip D. Baker, assignee of J. Adam Schuh and wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 29th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. GEORGE NAUMAN, SIMON P. EBY, S. W. SHADLE, sep8 Auditors.

Estate of JACOB WHITE, late of Penn twp., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John M. Stehman and Jehn B. Reist, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 22d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. A. C. ILYUS, ISRAEL G. ERB, A. H. FRITCHEY, sep1 Auditors.

Estate of JACOB BUSSER, SR., late of Warwick twp., Lancaster co., deceased.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of E. Burkholder, esq., executor of will of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPT. 19th, 1877, at 10 o'clock, a. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. E. K. MARTIN, C. S. HOFFMAN, aug25 Auditors.

Assigned Estate of ISAAC B. SWEIGART and WIFE, of Salisbury twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Uriah Bitzer, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 2, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. EMLEN FRANKLIN, sep8 Auditor.

Assigned estate of JOHN B. AUMENT and Wife, of Strasburg bor., Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Hildebrand, esq., assignee of John B. Aument and Wife, to among those legally entitled to the same, will sit for that purpose on TUESDAY, SEPTEMBER 18, 1877, at 11 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend. A. C. REINOEHL, sep1 Auditor.

Estate of JOHN HILL, late of East Donegal township, dec'd.

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of William Hill, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, SEPTEMBER 26th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. DANIEL G. BAKER, sep1 Auditor.

## NOTICE.

And now, August 21, 1877, petition of Thos. J. Davis, assignee of R. H. Hunsdale, presented and filed, praying the Court for an order to re-convey all trust property now in his hands, whereupon the Court fix MONDAY, SEPTEMBER 17, 1877, at 10 o'clock, a. m., for a hearing.

Attest: LEWIS S. HARTMAN, Lancaster, Aug. 25, 1877. Prothonotary.

## INSOLVENT NOTICE.

Notice is hereby given that Joseph Miller has made application for his discharge under the insolvent laws and that a hearing will be had on MONDAY, SEPTEMBER 17th, 1877, at 10 o'clock, a. m. aug25\* JOSEPH MILLER.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, SEPTEMBER 17th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper. aug25\* JOHN SMITH.

## DIVORCE NOTICE.

LEWIS A. WAMBAUGH } Alias Subpena for Divorce,  
vs. } To August Term, 1877.  
MARY J. WAMBAUGH. } No. 7.

To MARY J. WAMBAUGH.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 17th day of SEPTEMBER, 1877, at 10 o'clock, a. m., to show cause if any you have, why the said Lewis A. Wambaugh should not be divorced from the bonds of matrimony contracted with you, aug18 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, August 15th, 1877.

## Estate Notices.

Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.

sep15] H. C. BRUBAKER, Att'y.

**Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.**

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ERB, Assignee,  
Penn twp., Lancaster co., Pa.  
OWEN P. BRICKER, Att'y. [sep15]

**Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.**

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

J. I. HARTMAN, Assignee,  
Residing in Lancaster City.  
sep15] P. D. BAKER, Att'y.

**Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd.) late of Brecknock twp., Lancaster co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

E. BILLINGFELT,  
Surviving Executor.  
sep15

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

WM. AUG. ATLEE, NOAH SWARTLEY,  
sep1\* Att'y. JONAS SWARTLEY,  
Administrators.

**Estate of JACOB G. SWARR, late of Sporting Hill, Rapho twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sporting Hill.

OWEN P. BRICKER, ALICE A. SWARR,  
sep1 Att'y. Administratrix.

**Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 59 North Duke-st.

aug25 J. L. STEINMETZ, Administrator.

**Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.**

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN P. WEISE, Assignee.  
J. HAY BROWN, Att'y. [aug25]

**Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.

THOS. J. DAVIS, JAMES BRYSON,  
aug25\* Att'y. Executor.

**Estate of JOHN BRENEMAN, late of Rapho township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

HENRY F. BRENEMAN,  
D. G. BAKER, Att'y. Executor,  
aug25 Residing near Mount Joy.

**Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

AUGUSTUS GROEZINGER,  
aug13 Assignee,  
M. BROSIUS, Att'y. Lancaster, Pa.

**Estate of SARAH DANCE, late of West Lampeter twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp.

SHERK & LEAMAN, LIZZIE F. SIDES,  
aug19 Att'ys. Executrix.

**Assigned Estate of "DILLER & GROFF," of Lancaster City.**

Diller & Groff, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said "Diller & Groff," he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL GROFF, Assignee,  
aug18 Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of GEORGE J. DILLER and WIFE, of Lancaster City.**

George J. Diller and wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George J. Diller, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL GROFF, Assignee,  
aug18 Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of HENRY D. GROFF and WIFE, of Lancaster City.**

Henry D. Groff and Wife having, by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry D. Groff, he therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y. [aug18]

**Estate of MARGARET PLITT, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

AMANDA SHERTZ,  
D. P. ROSENMLER, JR., Att'y. Executrix.  
aug11

**Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARY E. MUHLENBERG,  
J. HAY BROWN, Att'y. Administratrix.  
aug11

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

SAM'L BOYD, Chestnut Level P. O.  
aug4 JERE. B. BOYD, Peters Creek P. O.  
J. HAY BROWN, Atty. Administrators.

**Estate of SAMUEL LESHER, late of East Calico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

EDW. LESHER, East Earl twp.  
EPH'M S. LESHER, Brecknock twp.  
aug4\* Executors.

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, JOHN STROHM, JR.,  
y21\* Att'y. Administrator.

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

HENRY HOFFMAN,  
CHN. K. LONG,  
N. ELLMAKER, } Att'ys. SAM'L HEISTAND,  
H. B. SWARR. } Executors.

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

HEZEKIAH BROWN,  
ROBERT WARDEN,  
aug3 J. W. JOHNSON, Att'y. Administrators.

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

BARBARA HARNISH, widow,  
ABRAHAM HARNISH,  
jy21\* PHILIP D. BAKER, Att'y. Administrators.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

ANN W. TOWNSEND, widow,  
jy21\* PHILIP D. BAKER, Att'y. Administratrix.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [jy21]

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st.. Lancaster, Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, SEPTEMBER 22, 1877.

No. 17.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Sunday Mail,.....	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	6:10 p. m.	8:10 p. m.
Columbia Accom.,.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	2:00 p. m.	5:00 p. m.
Johnstown Express,....	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:35.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:10	7:50	2:10
Lancaster—West King Street,...	7:20	9:16	3:15
Lancaster—Upper Depot,.....	7:30	9:30	3:25

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	10:16	5:30	8:38
Lancaster—West King Street,...	10:35	5:40	8:45
Quarryville, (arrive).....	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	7:30		3:15
Lancaster—Upper Depot,.....	7:30		3:25
Lancaster Junction,.....	7:57		3:51
Reading, (arrive).....	10:20		5:50

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading,.....	7:35		6:05
Lancaster Junction,.....	9:53		8:15
Lancaster—Upper Depot,.....	10:10		8:38
Lancaster—West King Street,...	10:25		8:45

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:29
Arrive at Peachbottom,.....	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweitzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditor*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Phillip L. Sprecher.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**COURT CALENDAR.--1877.**

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE -- No. 33 NORTH DUKE STREET,

LANCASTER, PENNA.

COMMISSIONER OF DEEDS

FOR THE STATES OF

New York, Iowa, Minnesota, Illinois,  
 Indiana, Missouri, Ohio, Michigan,  
 Kansas, Wisconsin, West Virginia.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE -- No. 25 NORTH DUKE STREET,  
 LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 22, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JOHN GRIFFITH, who sues as well for himself as the Commonwealth of Pennsylvania, against JACOB ESHLEMAN.

An amendment of the writ by the præcipe, by inserting in a summons in debt the amount mentioned in the præcipe, moved before any plea pleaded is allowable at common law.

Neither the statutes of amendments, the statutes of *jeofails*, nor the act of the 21 March, 1806, extend to such an amendment.

What amendments are at common law, and what under the statutes and the act of assembly, considered.

This was a summons in debt, for usury. The writ was issued the 27th January, 1827. On the 8th February, 1827, the defendant demurred to the writ, because no sum of money is stated in it; after which *Hopkins* appears and praysoyer of the writ and special imparlance. 2d September, 1828, *Eastburn* moves to amend the writ by the præcipe, which was as follows: viz. "Debt for usury on judgment bond, dated the 3d day of January, 1822, conditioned for the payment of \$530, entered Jan. 3, 1822, in the Common Pleas of Lancaster Co. to November Term, 1821, No. 306. Issue summons in debt. "Eastburn."

This motion was argued on the 24th December, 1828.

*Mr. Eastburn* for the plaintiff.

My præcipe contained the instructions for framing the writ. All the clerk had to do was pursue the description of the instrument there given, and fill up the writ with the amount specified. He omitted to insert any amount whatever; and it is in this particular we ask for leave to amend. The amendment is one which the court may allow at common law. It may also be made under the act of 21 March, 1806, Sect. 6, Penna. Pract. 317; 9 S. & R. 284-5; 4 Y. 185-205; 1 Binn. 366-369; 3 Johns. R. 144; 2 Dall. 143; 1 Jac. L. Dict. 89-90; 1 Bac. Ab. 105.

If it should now be decided that we can not amend, we are not only turned out of court, but debarred from bringing an action again, on account of the statute of limitations.

*Mr. Hopkins* for the defendant.

There are two matters before the court. 1. Whether upon this writ, in an action of debt, there is any cause of action in contemplation of law. The action of debt, from its very nature and definition, is for a specific sum. This same point has been heretofore before the court, and decided after an elaborate discussion. It was the case of the Commonwealth to the use of the heirs of Catharine Barger, deceased, against Jacob Eshelman and Henry Breckbill, brought in the Court of Common Pleas, November Term, 1822, No. 49. *Hopkins* appeared and praysoyer and special imparlance. July 17, 1824, defendant's attorney demurs to the writ issued, which was a summons in debt on an administration bond. September 29, 1824, *Buchanan* moves to quash the demurrer, and *Hopkins* the same day moves for a rule to join in the demurrer. Argued September 29, 1824, and *curia advisare vult*. December 20, 1824, the motion to quash the demurrer overruled. This cause was transferred to the District Court, June Term, 1826, No. 365.

2. If the amendment applied for be not allowed our demurrer must take effect. We object that this writ is void for want of a sum specified and therefore not amendable. The application to amend admits the original fault. This action was brought for a judgment for a debt in \$1060 penalty, real debt in the condition \$530, payable 3d January next, with interest and costs. Was there any direction on the face of this præcipe to the clerk to insert any sum? If the plaintiff's attorney meant that \$530 should be inserted he would have ruined him, because that was not the sum contained in the bond at all. The clerk exercises no discretion of any kind. In the action for usury the usurious contract should be accurately stated. The order to issue is an essential part of the præcipe. But the order in the present case was not to issue the writ for \$530. The præcipe does not say so. Does it direct the clerk or prothonotary to issue a writ for the amount of the judgment bond? No. Can it be contended that he was presented with an alternative by this præcipe—to issue for the amount of the bond or for that of the condition? If so—how is he to decide? He is not bound to decide. His business is only to obey orders.

The acts of parliament referred to in 1 Bac. Ab. 146, relate to the misprisions of clerks in civil actions. Not one of these is applicable to penal and popular actions. Neither has our own act of 1806 anything to do with this question, and the same answer may be given to the case cited from 9 S. & R. 284. So of the case in 2 Dall. 143, which was not an application to amend an original writ. There are two complete grounds of objection to the proposed amendment: 1. There is nothing to amend by, and 2. The statutes of *jeofails* do not apply to penal actions or the act of 1806, to this motion.

*Mr. Eastburn*, in reply, referred to the statute of usury, the act of the 22d March, 1723, sect. 2, to show that the plaintiff could only recover the sum loaned, and that there would be no error in inserting the real debt of the judgment bond.

HAYES, J. Before any plea pleaded in this cause the plaintiff, on the 2d September, 1828, moved for leave to amend the writ by the præcipe. The præcipe, after stating the title of the suit, proceeds as follows, to wit: "Debt for usury on judgment bond dated the 3d January, 1822, conditioned for the payment of \$530. Entered January 3,

1822, in the Common Pleas of Lancaster Co. to November Term, 1821, No. 306. Issue summons in debt. *Eastburn*."

The writ commanded the sheriff to summon Jacob Eshleman to be and appear, etc., "to answer John Griffith, who sues as well for himself as the Commonwealth of Pennsylvania, of a plea of debt for usury." The motion to amend is resisted on two grounds, viz:

1. That there is nothing to amend by, and 2. That the statutes of *jeofails* do not extend to penal actions.

1. The objections to the præcipe are, that it does not require the prothonotary to insert any specified sum—that it contains no precise direction to the officer; but is in the alternative, referring both to the bond and the condition of the obligation, and therefore leaving it at his option whether to insert the amount of the penalty or the real debt. We do not consider the præcipe as justly liable to these objections. But one sum is mentioned which is the sum contained in the condition, namely, \$530. The reference to the bond and judgment appears to have been made only for the purpose of identifying the usurious contract. The direction was sufficiently intelligible and specific; the narr., as appears from the indorsement, was filed the same day that the writ was issued; and if the fact was (as is probable) that the narr. was delivered with the præcipe, the complaint of a want of clear directions to the prothonotary, is without color. Certainly the writ may be amended by this præcipe unless there is some rule of law, or statute by which it is prohibited.

2. It is contended then, that as this is a penal action, the desired amendment is inadmissible, because the statutes of *jeofails* do not extend to actions of this nature. Amendments are of several kinds; they are at common law—by the statutes of amendments, and by the statutes of *jeofails*, to which may be added amendments in Pennsylvania, under our act of assembly of 1806, the statutes of amendments, (14 Ed. 3; 9 Ed. 5; 4 Hen. 6; 8 Hen. 6;) refer to such mistakes as are sought to be corrected after the pleadings are concluded and entered (according to the practice in England,) upon the plea roll in parchment. They relate only to proceedings of record.

The statutes of *jeofails* were passed for the purpose of redressing mistakes and errors of form, so that no advantage should be taken of them after verdict and judgment. They contemplate either a verdict found and judgment thereon, or a judgment upon confession by *nil dicit* or *non sum informatus*.

Our act of assembly of 1806 relates to the pleadings in an action, and provides for the correction of mistakes and informalities, not affecting the merits of the controversy, either at the trial or before.

Whilst proceedings are in paper or *feri*, that is before the completion and enrolment of the pleadings in parchment, according to the English practice, all amendments are at common law, and, whether in matter of form or substance are allowable in whatever stage the proceedings may be. In modern times the common law indulgence has been extended beyond its former limits.

"The courts," says Sir William Brackstone, "are become more liberal, and where justice requires it will allow of amendments at any time while the suit is depending, notwithstanding the record be made up and the term be past. For they at present consider the proceedings as in *feri* till judgment is given, and therefore that till then they have power to permit amendments by the common law." 3 Blacks. Comm. 407.

The application in this case is addressed to the legal discretion of the court, the amendment sought being at common law. The statutes of *jeofails* have nothing to do with it, and although most of these statutes expressly exclude penal actions from the benefit of their provisions, yet such actions, in regard to amendments, stand upon the same footing at common law with civil actions. In *Bonfield qui tam, etc. vs. Milner*, 2 Burr 1098, which was an action for usury, the Court of King's Bench permitted the declaration to be amended in altering the date of the note, although it was objected that issue was joined and entered on the roll, and many terms had elapsed since the commencement of the suit. Lord Mansfield stated the rule to be "that whilst all is in paper you may amend," and said the amendment in that case was at common law. Mr. Justice DENISON remarked "there is no difference between civil and penal actions, where they apply as for an amendment at common law, and all is in paper." That there is no difference between civil and penal actions as to amendments at common law is also laid down in *Richard q. t. vs. Brown*, 1 Dougl. 114; *Goff q. t. vs. Popplewill*, 2 T. R. 707; and in 5 Burr. 2833.

By the statutes of amendments it is necessary that there should, in all cases within the scope of their provisions, be something to amend by, as the *præcipe* whereby to amend the writ—the judge's notes to amend the verdict, etc., by which it may appear that the variance is a mistake and therefore in strict justice ought to be rectified: 2 Sell. 457. But neither these statutes nor the act of assembly of the 21st March, 1806, apply to the present motion. The plaintiff, asking the court for permission to amend by his *præcipe*, not his own mistake but an omission of the clerk to insert the sum of \$530 in the writ pursuant to the *præcipe*, we are of opinion that he is in strict justice entitled to such amendment at common law, and do accordingly allow the motion.

#### Common Pleas of Lancaster County.

ALTICK & SON vs. PENN'A R. R. CO.

It is error to issue a summons in one form of action and file a declaration, in the same cause, in another form.

A plea, which answers the declaration, cannot be treated as a nullity, or stricken off by the prothonotary; but the plaintiff, if dissatisfied, must seek his remedy in open court.

Rule to strike off judgment entered for want of a plea.

H. M. North for rule.

F. S. Pyfer and S. H. Reynolds contra.

Opinion by LIVINGSTON, P. J. August 18, 1877.

Summons in trespass on the case *sur assumpsit* issued September 5, 1874. Service accepted.

Narr. filed November 28, 1874.

April 26, 1877, rule on defendant to plead in ten days or judgment.

Rule served April 26, 1877. May 5, 1877, defendant pleads "not guilty."

May 8, 1877, on application of the plaintiffs' attorney to prothonotary, judgment for want of a plea in favor of plaintiff for two hundred and four dollars and thirty cents (\$204.30) entered by the prothonotary.

A rule was entered to show cause why this judgment, so entered, should not be stricken off.

From the record and pleadings in this cause it is very apparent that the plaintiff has fallen into two serious errors, at least, which are fatal to the judgment entered, (if a judgment it can be called,) and which will compel us to make the rule to strike it off absolute.

The *præcipe* shows that the plaintiff ordered a summons in trespass on the case *sur assumpsit* to be issued. The record entry of the suit shows that "summons in trespass on the case *sur assumpsit* was issued and service thereof accepted, while plaintiff's narr. filed is clearly in case and not in *assumpsit* proper, and if the facts as alleged in the narr. are correct, it is proper that it should be in case, and indeed, under the decision of the Supreme Court, in *Satterlee vs. Melick & Eves*, 26 Sm. 62, if plaintiff's allegations are correct, it is hard to discern how they could safely go to trial under any other form of action or narr. In that case, which was an action of *assumpsit*, the narr. contained counts for goods sold and delivered, work and labor done, the common money counts and on an account stated; while the proof was, that Melick employed Satterlee, the owner of a saw mill, to saw logs into lumber for him, and deliver to him the lumber when sawed. The logs were delivered to him to saw. Satterlee sawed them, and delivered to Melick much less lumber than the logs actually produced, but there was no evidence that Satterlee had sold or converted any of it to his own use. In delivering the opinion of the court, Justice SHARSWOOD, *inter alia*, says: "It is evident that conversion or consumption was essential—a mere detention, or a loss even by negligence would not have been enough to charge him in this form of action."

In the case before us, the narr. does not contain any counts for work and labor done, goods sold and delivered, any of the common money counts, nor on an account stated. It does not charge defendant with consuming, disposing of or converting any of plaintiff's property to its own use. It contains three counts. In the first it charges, that the defendant is a common carrier for hire; that plaintiffs delivered to defendant, as such common carrier, certain goods of great value, which defendant received and undertook to convey to a point designated, and there to deliver them safely for plaintiffs; that after receiving and undertaking to deliver them safely for certain hire, in good condition, at the place appointed, for plaintiffs, defendant

did not take proper care of and safely deliver the goods, but so carelessly and negligently behaved and conducted himself with respect thereto that by and through the mere carelessness and improper conduct of the defendant and servants, said goods and chattels became and were wholly lost to plaintiffs.

The two other counts charge substantially the same except that they close by alleging that in consequence of such mere carelessness, negligence, want of care and misconduct on the part of the defendant, said goods and chattels were greatly damaged and injured, and partly and nearly lost to plaintiffs. The first error, therefore, was in issuing a summons in trespass on the case *sur assumpsit*, and then declaring in case.

When the rule to plead was served on defendant, it became his duty to ascertain what was charged against him. This he could only do properly and correctly by examining carefully plaintiff's narr., "which contained and set forth his grievance, or cause of action or demand." Having done so and finding the narr. in case, the plea of "not guilty" was entered. This plea was responsive to the narr., and was properly entered; it was issuable and covered the whole alleged cause of complaint, carelessness and negligent conduct by defendant as bailee for hire; it was not a mere sham or frivolous plea, nor was it a mere nullity.

The second error, therefore, was in plaintiff's counsel attempting to treat it as a nullity, and commanding the deputy prothonotary to enter judgment in favor of plaintiffs for \$204.30, for "want of a plea"—a direction order or command which the prothonotary and his deputies, under our rules of court, should always decline to notice or obey, when the record before them shows that a plea has already been entered for the defendant, and direct the party applying for judgment, if dissatisfied with the plea entered of record, to apply to the court to have it stricken off, and have judgment entered in open court.

The rule is made absolute, and this judgment, which was improperly and irregularly entered, stricken off.

#### Common Pleas of Montgomery County.

##### IN THE MATTER OF THE DISTRIBUTION OF SOLMS' ESTATE.

The Act of April 9, 1872, giving certain employees priority of claim for wages, does not apply to a farm laborer.

Sur report of auditor and exceptions thereto.

Opinion by Ross, P. J.

The record presents for adjudication a question that is novel in this court, and one we must decide unaided by the light of authority, and guided only by the construction of the Act of the General Assembly (P. L. 47), approved April 9, 1872, giving certain employees priority of claim for wages.

Mr. Solms was engaged in business as a farmer in Lower Merion township, in this county, in 1873 and 1874, and during that period judgments were entered against him, writs of *feri facias* were issued against him

upon these judgments, and his personal property was sold. Its proceeds were claimed by the execution creditors in the order of their priority, and also by certain persons who were in his employ at the time he became insolvent. One is Ann Kelly, who was in his service as a menial servant, and the other two, Patrick Kelly and Edward Harrold, were employed upon the farm at regular wages. There was due at the time of Mr. Selms' insolvency and the levy under the writs to the exceptants in gross the sum of \$270.50, and notice of this indebtedness was duly given at the sale made by the sheriff. The question presented by the record is simply whether these claims are to be paid out of the sum raised by the sale in preference to the indebtedness of the execution creditors.

It is insisted that they are thus preferred by virtue of the act already cited. That provides as follows: "All moneys that may be due, or hereafter may become due, for labor and services rendered any miner, mechanic, laborer or clerk, from any person or persons, or chartered company employing clerks, miners, mechanics or laborers, either as owners, lessees, contractors or under-owners of any works, mines, manufactory or other business, where clerks, miners or mechanics are employed, whether at so much per diem or otherwise, for any period not exceeding six months immediately preceding the the sale and-transfer of such works, mines, manufactories, or business, or other property connected therewith in carrying on said business, by execution or otherwise, preceding the death or insolvency of such employer or employers, shall be a lien upon said mine, manufactory, business, or other property in and about or used in carrying on the said business, or in connection therewith, to the extent of the interest of said owners or contractor, as the case may be, in said property, and shall be preferred and first paid out of the proceeds of the sale of such mine, manufactory, business, or other property as aforesaid," &c.

I think it is too clear to admit either of doubt or question that the legislature only intended to protect laborers and such other employees who were employed by individual owners, companies, or lessees, who were engaged in business of a character requiring the employment and services of miners, mechanics, laborers, and clerks, and does not apply to general laborers. In fact it was to protect the employees of individual owners and lessees who are engaged in developing the great manufacturing, mining and mineral resources of the commonwealth. These men, paid at regular intervals by pay roll, are, of necessity, at the mercy of trade and financial mutations, precisely as are their employers when times are hard; in order to obtain work, they are compelled to labor and take the risk of obtaining their wages when pay day comes; and it is evident that the reason and spirit of this legislation was to protect this class of laborers only.

But the act distinctly declares this in terms, for after specially providing for laborers under owners of any works, mines, and manufactories, it adds the broad phrase, "or

other business," but immediately limits its extensive significance by adding, "where clerks, minors, or mechanics are employed." This clearly limits the character of the other business contemplated by the act to the classes of industry to which its general spirit applies.

It is absurd to apply it to a menial servant, for such are now protected by law. If it can be applied to laborers on a farm, it may be applied to the body servant of a gentleman of leisure. Laborers on a farm are not laborers at "other business," in the contemplation of the statute, but are, in fact, menial servants. It never was the intention of the legislature to give farm hands and other employees in the various forms of domestic life the protection of this statute, and thus obtain liens both upon the real and personal estate of their employers, which are to be preferred in the distribution of assets to lien creditors of record. It has, by other statutes made for their protection, given them preference; and by the act of 1872 it extends to a different class of laborers and employees a preference which is special to that class.

We are of opinion that the auditor erred in allowing the claim for wages out of this fund; and we, therefore, remit the report to him to distribute the fund in court among the execution creditors in the order of their priority.—*Legal Intelligencer.*

At a dinner of artists, a barrister present, having his health drunk in connection with the law, began an embarrassed answer, by saying he did not see how the law could be considered as one of the arts, when Jerrold jerked in the word *black*, and threw the whole company into convulsions.

#### TRIAL LIST

##### OF OCTOBER ADJOURNED QUARTER SESSIONS 1877.

###### MONDAY, OCTOBER 1st.

1. Arthur Sylvester, counterfeiting. Aug. 95.
2. Wm. Helm, fornication and bastardy, larceny, Aug. 163, 165.
3. Isaac S. Lausch, forgery. April 116.
4. Millard F. Hildebrand, fornication and bastardy. April 49.
5. Daniel W. Weidler, arson. Nov. 100, 102.
6. Daniel Oehme, adultery. Aug. 173.
7. John Haines, assault and battery. Aug. 44.
8. Wm. Morris, no license. Aug. 240.
9. Nelson Glatfelter, horse stealing. Aug. 58.
10. Charles Bruckhart, adultery. Aug. 246.
11. James Sweeney, assault and battery. Aug. 129, 130.
12. Charles Leonard, felon. assault and battery. Aug. 135.

###### TUESDAY, OCTOBER 2d.

13. John Coughnour, adultery. Aug. 54.
14. John Smith and Francis Russel, passing counterfeit money. Aug. 89, 90.
15. James B. Henderson, false pretense. Aug. 75, 168.
16. Catharine C. Libhart, receiving stolen goods. Aug. 204.
17. Elam Bleacher, David Reese and Franklin Reese, burglary. April 139, 140.
18. Henry Stamm, assault and battery. Aug. 73.
19. Elizabeth Sourbeer and Joseph May, assault and battery. Nov. 122.

20. David Brubaker, jr., assault and battery. Aug. 170.
21. George Peck, robbery. Aug. 118.
22. George W. McGinnis, assault and battery. Aug. 153.
23. Max Grace, burglary. Aug. 107.
24. Jacob Witmer, assault and battery. Aug. 131.
25. Edward Shultz, assault and battery. Aug. 132.

###### WEDNESDAY, OCTOBER 3d.

26. Alice Horner, assault and battery. Aug. 220.
27. Winfield S. Geiter, accessory after larceny. Aug. 30.
28. O. Webb Weidner, fornication and bastardy.
29. Bernard Young, David Lowe, David Phillips, larceny. Aug. 108, 109, 110.
30. Martin Rohrer, selling liquor on Sunday. Aug. 237, 241.
31. Samuel Read, violating fish laws. Aug. 20, 87.
32. Charles Keesey, violating fish laws. Aug. 22.
33. Isaac Keesey, violating fish laws. Aug. 23, 88.
34. Joseph Keesey, violating fish laws. Aug. 24.
35. Tempest Wilson, violating fish laws. Aug. 25.
36. Thomas Wilson, violating fish laws. Aug. 27.
37. David Strickler, violating fish laws. Aug. 28.
38. Alex. Murray, alias Murphy, felonious assault and battery. Aug. 133.
39. Hannah Jackson, adultery. Aug. 196.
40. Franklin Archey, adultery. Aug. 197.

###### THURSDAY, OCTOBER 4th.

41. Franklin L. Clark, assault and battery to rob, &c. April 75, 35.
42. O. C. Truxell, aiding a strike on railroad. Aug. 65.
43. Edward N. Seals, aiding strike on railroad, &c. Aug. 66.
44. John Ehman, Bernard Shill, Andrew Ehman, larceny. Aug. 190, 191, 192.
45. John Ehman and John M. Reidlinger, felon-entering store. Aug. 215.
46. John Ehman and Clement Peck, aiding a strike &c. Aug. 216.
47. John Ehman, carrying concealed deadly weapons. Aug. 217.
48. Jacob Divine, aiding a strike, &c. Aug. 223.
49. George L. Lyle and George Hubley, aiding a strike, &c. Aug. 228.
50. John B. Develin, accessory to abortion, &c. April 76, 91.
51. Morris Bricker, burglary. Aug. 6.
52. Charles Baum, assault and battery. Aug. 153.
53. Franklin Hernelser, alias Hannagle et al. attempt at burglary. Aug. 214.

###### FRIDAY, OCTOBER 5th.

54. Calvin Cunningham, carrying concealed deadly weapons. Aug. 39.
55. Jacob Butt, assault and battery. Aug. 53.
56. John Bills, burglary. Aug. 57.
57. Wm. Keyes, larceny. Aug. 7.
58. Henry Brinkman, larceny. Aug. 8.
59. Simon Null, larceny. Aug. 9.
60. George Null, larceny. Aug. 10.
61. Abraham Martin, larceny. Aug. 113.
62. Jno. Bessick, larceny. Aug. 119.
63. Jesse Martin, larceny. Aug. 178.
64. Adam Perry, larceny. Aug. 123.
65. James Green, larceny. Aug. 123.
66. Washington Cole, larceny. Aug. 124.
67. John Cupp, larceny. Aug. 127.
68. Jonathan Shultz, larceny. Aug. 174.
69. Eugene McAnall, larceny. Aug. 126.
70. Esaias Lockhuff, larceny. Aug. 156.
71. Walter McNally, libel. Aug. 139.
72. Miller M. Fraim, aiding a strike, &c. Aug. 143, 149.

###### SATURDAY, OCTOBER 6th.

73. Frederick Schlotthauer, surety of peace. Aug. 116.
74. Leonard Youst, surety of peace. Aug. 115, 117.



## COMMON PLEAS TRIAL LIST.--First Week.

Commencing Monday, October 8th, 1877.

			North. 16 Smith.	JOHN F. CHARLES vs B. B. GONDER & SON.	} Jan'y Term, 1876. No. 63. Sum's case. Plea, non assumpsit.
<i>Kauffman.</i> 1	FRANCIS BENDER vs.	} Aug. Term, 1876. No. 51. Sci. fa. sur mech. lien, etc. (For labor.) Plea, nul tiel record pay't.	<i>J. Hay Brown.</i> 17 <i>Reynolds,</i> <i>P. D. Baker.</i>	HENRY C. HOSTETTER vs GROFF & CO.	} Feb. Term, 1876. No. 19. Sum's in assumpsit. Plea, payment, pay't with leave.
<i>B. F. Eshleman.</i>	J. M. HOFER.		<i>Atlee, Harris.</i> 18 <i>Agnew.</i>	KITCH & KNEEZEL vs THE CITY OF LANCASTER.	} Feb. Term, 1876. No. 29. Sum's case. Plea, non assumpsit, etc.
<i>H. C. Brubaker.</i> 2 <i>Nauman.</i>	JOHN BRADY vs. REED, HENDERSON & CO.	} Oct. Term, 1869. No. 18. Sum's case. Plea, non assumpsit.	North. 19 <i>Brosius.</i>	W. W. UPP vs NATH'L ELLMAKER.	} Feb. Term, 1876. No. 36. Sum's case. Plea, non assumpsit, etc.
<i>Reynolds.</i> 3	THE SCHOOL DISTRICT OF LAN. CITY vs. W. L. SHIRK.	} May Term, 1873. No. 14. Sum's case. Plea, non assumpsit.	<i>H. Franklin.</i> 20 <i>P. D. Baker.</i>	FREDERICK GEMPERLING vs JACOB PONTZ.	} Feb. Term, 1876. No. 73. Sum's in covenant. Plea, covenants performed absque hoc.
<i>Amwake, P. D. Baker.</i> 4 <i>Frantz.</i>	MICHAEL BEILER vs STEHMAN, CLARKSON & CO.	} Aug. Term, 1873. No. 4. Sum's case. Plea, non assumpsit.	<i>J. Hay Brown.</i> 21 <i>Hostetter.</i>	THOMAS WYNN vs C. M. HOSTETTER.	} Mar. Term, 1876. No. 4. Sum's in assumpsit. Plea, non assumpsit, pay't and set-off.
<i>G. &amp; H. C. Brubaker.</i> 5 <i>Agnew.</i>	HENRY F. WITMER vs. THE CITY OF LANCASTER.	} Sept. Term, 1873. No. 65. Sum's case. Plea, not guilty.	<i>Nauman.</i> 22 <i>H. C. Brubaker.</i>	SAMUEL HOSSLER vs CHRISTIAN GROFF.	} Mar. Term, 1876. No. 26. Sum's vi et armis. Plea, not guilty.
<i>E. Franklin, H. C. Brubaker.</i> 6 <i>J. Hay Brown.</i>	MILTON S. BRADY vs. JOHN G. BRENNER.	} Feb. Term, 1874. No. 18. Sum's in trespass. Plea, not guilty.	<i>Amwake.</i> 23 <i>Davis.</i>	JACOB BRENNER et al. vs BENJ. F. HOOKEY.	} April Term, 1876. No. 53. Issue to try by a jury, etc. Plea filed.
<i>E. Franklin.</i> 7 <i>J. Hay Brown.</i>	W. SCOTT BRADY vs. SAME DEFENDANT.	} Feb. Term, 1874. No. 124. App'l by pl'ff from justice. Plea, not guilty.	<i>Steinmetz.</i> 24 <i>Nauman, Given.</i>	F. SCHLOTTHOUER vs THE HANOVER J. & S. R. R. CO.	} May Term, 1876. No. 8. Sum's quare clausum fre- git. Plea, not guilty.
<i>W. A. Wilson.</i> 8 <i>Reynolds.</i>	LEO. LEHMAN vs. THE LAN. CEMETEAY et al.	} May Term, 1874. No. 25. Sci. fa. sur mech. lien. Plea, payment.	<i>H. C. Brubaker.</i> 25 <i>P. D. Baker.</i>	CHARLES COULTER vs PAYENOUR TICKNER.	} May Term, 1876. No. 12. Sum's in assumpsit. Plea, payment, pay't with leave.
<i>Johnson.</i> 9 <i>Wilson.</i>	SPRECHER & HIGH'S use vs MRRTIN H. FRY.	} Sept. Term, 1874. No. 67. App'l by def't from justice Plea, non assumpsit, etc.	<i>McMullen.</i> 26 <i>Nauman, Given.</i>	C. G. DARRACH vs THE HANOVER J. & S. R. R. CO.	} May Term, 1876. No. 20. Sum's case. Plea, non assumpsit and set-off.
<i>Steinmetz.</i> 10 <i>J. Hay Brown.</i>	GEORGE H. SUTTERLEY vs. HENRY LEE.	} Jan'y Term, 1875. No. 47. Sum's sur assumpsit. Plea, non assumpsit.	<i>Wilson.</i> 27 <i>Amwake, Swope,</i> <i>Yundt, Eberly.</i>	GEO. B. SHOBER vs JOHN B. SNYDER et al.	} May Term, 1876. No. 57. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.
<i>Reynolds, Reinchl.</i> 11 <i>Eshleman, North.</i>	TOBIAS NEWCOMER vs. JACOB DETWEILER.	} June Term, 1875. No. 93. Sum's in ejectment. Plea, not guilty.	<i>Reynolds, McMullen</i> 28	THE SCHOOL DISTRICT OF LANCASTER CITY. vs W. S. SHIRK.	} June Term, 1876. No. 18. Sum's case. Plea, non assumpsit, pay't, etc.
<i>Price.</i> 12 <i>North.</i>	SUSAN C. BOWMAN vs. JOHN SHERTZER.	} Aug. Term, 1875. No. 14. Sum's in trover. Plea, not guilty.	<i>Same.</i> 29	SAME PLAINTIFF vs JOSEPH C. SNYDER.	} June Term, 1876. No. 19. Sum's case. Plea, non assumpsit, pay't etc.
<i>Baker, Eberly.</i> 13 <i>Yundt.</i>	THE LAN. W. S. F. & B. AS- SOCIATION vs. SAMUEL B. COX.	} Sept. Term, 1875. No. 96. Sum's in debt. Plea, nil debit, pay't, pay- ment with leave.	<i>Same.</i> 30	SAME PLAINTIFF vs LEVI SENSENIG.	} June Term, 1876. No. 20. Sum's case. Plea, non assumpsit, pay't, etc.
<i>Kready, Brubaker.</i> 14 <i>Amwake, P. D. Baker, Good.</i>	COMM. OF PENN'A vs A. F. SPECHT et al.	} Dec. Term, 1875. No. 125. Sci. fa. on judgment. Plea, pay't, payment with leave.	<i>Reynolds.</i> 15 <i>H. C. Brubaker.</i>	PETER WEBER vs GEO. BRUBAKER, guardian.	

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 22, 1877.

## WEEKLY SUMMARY.

REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since September 15, 1877.

**JOSEPH MILLER**, dec'd, late of Columbia bor.; Amanda Haberstroh, administratrix with will annexed.

**MARGARET MACGONIGLE**, dec'd, late of Lancaster city; M. Macgonigle, administrator.

**ELIZA J. ECKMAN**, dec'd, late of Drumore twp.; Charles W. Pusey, administrator.

The following Wills have been admitted to probate since September 15, 1877:

**JACOB AUMENT**, late of Drumore twp.; Elias Aument, Harry Aument and Aldus Aument, executors.

**JOHN ZIMMERMAN**, late of Eden twp.; Rosina Zimmerman, executrix.

**MICHAEL KREIDER**, late of Pequea twp.; Amos S. Kreider and Andrew Mehaffey, executors.

**JOSIAH McELWAIN**, late of Bart twp.; Martha M. McElwain and Mary E. McElwain, executors.

**JOSEPH STROUSE**, late of Elizabethtown bor.; Samuel Eby, esq., and Anna M. Strouse, executors.

**FREDERICK STONER**, late of Manor twp.; Levi M. Stoner and Barnherd Mann, executors.

## DIVORCE NOTICE.

**MARY ECKMAN** } Alias Subpœna for Divorce,  
by her next friend }  
**George Diehl,** } To September Term, 1877,  
vs. }  
**ALDUS ECKMAN.** } No. 9.

To **ALDUS ECKMAN**.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on **MONDAY**, the 15th day of **OCTOBER**, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Mary Eckman should not be divorced from the bonds of matrimony contracted with you.

sep22 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, September 15, 1877.

## DIVORCE NOTICE.

**ELLEN A. FULTON** } Alias Subpœna for Divorce,  
by her next friend }  
**John D. Clinton,** } To September Term, 1877.  
vs. }  
**DAVID FULTON.** } No. 14.

To **DAVID FULTON**.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on **MONDAY**, the 15th day of **OCTOBER**, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Ellen A. Fulton should not be divorced from the bonds of matrimony contracted with you.

sep22 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, September 15, 1877.

## ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE,

No. 13 NORTH DUKE STREET,

LANCASTER, PENNA.

## Auditors' Notices.

Estate of **HENRY YOUNG**, late of Columbia borough, Lancaster county, dec'd.

The undersigned Auditor, appointed to pass upon exceptions filed, and also distribute the balance remaining in the hands of Harriet Miller, (formerly Young) executrix, to and among those legally entitled to the same, will attend for that purpose on **WEDNESDAY, OCTOBER 10th, 1877**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep22

A. C. REINGEHL,  
Auditor.

Estate of **ELIZABETH YONTZ**, dec'd, late of West Hempfield township.

The undersigned Auditors, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Ephraim S. Lynch, executor, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, OCTOBER 12th, 1877**, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep22

W. S. AMWEG,  
A. C. REINGEHL,  
Auditors.

Estate of **ISAAC SWEIGART**, late of Salisbury township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Harvey Sweigart, H. M. Sweigart and H. W. Worst, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, SEPTEMBER 25, 1877**, at 2 o'clock p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep8

D. P. ROSENMILLER, Jr.,  
Auditor.

Assigned Estate of **ELIZABETH LESCH and HUSBAND**, of Lancaster.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Gable, assignee, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, SEPTEMBER 28th, 1877**, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep8

F. G. MUSSER,  
Auditor.

Assigned Estate of **CHARLES A. HOOK and WIFE**, of Columbia, Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel A. Altick, assignee, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, OCTOBER 6th, 1877**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep8

S. M. SENER,  
Auditor.

Assigned estate of **J. ADAMSCHUH and Wife**, of Lancaster City, Lancaster co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Philip D. Baker, assignee of J. Adam Schuh and wife, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, SEPTEMBER 29th, 1877**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep8

GEORGE NAUMAN,  
SIMON P. EBY,  
S. W. SHADLE,  
Auditors.

Assigned Estate of **ISAAC B. SWEIGART and WIFE**, of Salisbury twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Uriah Bitzer, assignee, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, OCTOBER 2, 1877**, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep8

EMLÉN FRANKLIN,  
Auditor.

Estate of **JOHN HILL**, late of East Donegal township, dec'd.

The undersigned Auditor, appointed to pass upon exceptions, and distribute the balance remaining in the hands of William Hill, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **WEDNESDAY, SEPTEMBER 26th, 1877**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep1

DANIEL G. BAKER,  
Auditor.

## Estate Notices.

Estate of **T. R. TORR**, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

sep23

MARY S. TORR, widow,  
MICHAEL HABERBUSH,  
P. D. BAKER, Att'y. Executors.

Estate of **MICHAEL KREIDER**, late of Pequea township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep23\*

AMOS S. KREIDER,  
ANDREW MEHAFFY,  
P. D. BAKER, Att'y. Executors.

Estate of **JOSEPH STROUSE**, late of the Borough of Elizabethtown, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

sep23\*

ANNA MARY STROUSE,  
SAMUEL EBY,  
Executors.

Estate of **JACOB AUMENT**, late of Drumore township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep22\*

ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT,  
P. D. BAKER, Att'y. Executors.

Estate of **HENRY ZIMMERMAN**, late of East Hempfield twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

sep22

HIRAM W. GRAYBILL,  
LEAH ZIMMERMAN,  
GEORGE BINGAMIN,  
GEORGE BRUBAKER, Att'y. Administrators.

Assigned Estate of **JOHN W. URBAN and WIFE**, of Conestoga twp., Lan. co.

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.  
sep15] H. C. BRUBAKER, Att'y.

**Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.**

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ERB, Assignee,  
Penn twp., Lancaster co., Pa.  
OWEN P. BRICKER, Att'y. [sep15]

**Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.**

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

J. I. HARTMAN, Assignee,  
Residing in Lancaster City.  
P. D. BAKER, Att'y. [sep15]

**Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd,) late of Brecknock twp., Lancaster co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

E. BILLINGFELT,  
Surviving Executor. [sep15]

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

Wm. AUG. ATLEE, NOAH SWARTLEY,  
sep1\* Att'y. JONAS SWARTLEY,  
Administrators.

**Estate of JACOB G. SWARR, late of Sporting Hill, Rapho twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sporting Hill.

OWEN P. BRICKER, ALICE A. SWARR,  
sep1 Att'y. Administratrix.

**Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 59 North Duke-st.

aug25 J. L. STEINMETZ, Administrator.

**Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.**

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN P. WEISE, Assignee.  
J. HAY BROWN, Att'y. [aug25]

**Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.

THOS. J. DAVIS, JAMES BRYSON,  
aug25\* Att'y. Executor.

**Estate of JOHN BRENEMAN, late of Rapho township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

HENRY F. BRENEMAN,  
D. G. BAKER, Att'y. Executor,  
aug25 Residing near Mount Joy.

**Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

AUGUSTUS GROEZINGER,  
aug18 Assignee,  
M. BROSIUS, Att'y. Lancaster, Pa.

**Estate of SARAH DANCE, late of West Lampeter twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp.

SHENK & LEAMAN, LIZZIE F. SIDES,  
aug19 Att'ys. Executrix.

**Assigned Estate of "DILLER & GROFF," of Lancaster City.**

Diller & Groff, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said "Diller & Groff," he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of GEORGE J. DILLER and WIFE, of Lancaster City.**

George J. Diller and wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George J. Diller, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y.

**Assigned Estate of HENRY D. GROFF and WIFE, of Lancaster City.**

Henry D. Groff and Wife having, by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry D. Groff, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

aug18 SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y. [aug18]

**Estate of MARGARET PLITT, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 AMANDA SHERTZ,  
D. P. ROSENMILLER, JR., Att'y. Executrix.

**Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 MARY E. MUHLENBERG,  
J. HAY BROWN, Att'y. Administratrix.

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAM'L BOYD, Chestnut Level P. O.

aug4 JERE. B. BOYD, Peters Creek P. O.  
J. HAY BROWN, Atty. Administrators.

**Estate of SAMUEL LESHER, late of East Calico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

EDW. LESHER, East Earl twp.  
aug4\* EPH'M S. LESHER, Brecknock twp. Executors.

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, JOHN STROHM, JR.,  
jy21\* Att'y. Administrator.

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

aug4\* HENRY HOFFMAN,  
CHN. K. LONG,  
N. ELLMAKER, } Att'ys. SAM'L HEISTAND,  
H. B. SWARR. } Executors.

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

aug8 HEZEKIAH BROWN,  
J. W. JOHNSON, Att'y. ROBERT WARDEN,  
Administrators.

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

jy21\*] BARBARA HARNISH, widow,  
ABRAHAM HARNISH,  
PHILIP D. BAKER, Att'y. Administrators.

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

jy21\*] ANN W. TOWNSEND, widow,  
PHILIP D. BAKER, Att'y. Administratrix.

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [jy21]

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, SEPTEMBER 29, 1877.

No. 18.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES.

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE	ARRIVE
	LANCASTER.	HARRISBURG.
Pacific Express,*	3:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom,...	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy,	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Sunday Mail,...	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom,...	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom,...	6:10 p. m.	8:10 p. m.
Columbia Accom,...	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,...	7:25 p. m.	8:40 p. m.
Pittsburg Express,...	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LEAVE	PHILADELPHIA.
	LANCASTER.	
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,...	7:35 a. m.	10:00 a. m.
Columbia Accom,...	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,...	2:00 p. m.	5:00 p. m.
Johnstown Express,...	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom,...	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,.....	6:10	7:50	2:10
Lancaster—West King Street,...	7:20	9:18	3:15
Lancaster—Upper Depot,.....	7:30	9:30	3:25

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	10:16	5:20	8:33
Lancaster—West King Street,...	10:25	5:40	8:45
Quarryville, (arrive).....	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.		p. m.
Lancaster—West King Street,...	7:20		3:15
Lancaster—Upper Depot,.....	7:30		3:25
Lancaster Junction,.....	7:57		3:51
Reading, (arrive).....	10:20		5:50

  

LEAVE.	GOING SOUTH.		
	a. m.		p. m.
Reading, .....	7:35		6:05
Lancaster Junction,.....	9:53		8:15
Lancaster—Upper Depot,.....	10:10		8:38
Lancaster—West King Street,...	10:25		8:45

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom, .....	7:05	1:55	5:45

  

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1863  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jes. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gerden, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweitzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayer*—Wm. D. Stauffer.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—Phillip L. Sprecher.  
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*Street Commissioner*—Charles Schwebel.

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COURT CALENDAR.--1877.

OCTOBER.

- 5. Last day for issuing Writs to October Term.
- 20. Calling Judgment Docket.
- 20. Last day for filing Accounts to November Court
- 20. Argument for Rules of Affidavit of Defense.
- 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 23. Last day for filing Accounts to January Court, 1878.
- 23. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 29, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. This Bar will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

DANIEL ECKMAN and JOHN KUNKLE, executors of MICHAEL FAUTZ, dec'd, against JACOB FAUTZ and MARTIN FAUTZ, with notice, etc.

The rule that property consisting of separate tracts or lots, shall be sold separately, is to be strictly observed.

And when in any instance of a lumping sale, the case is alleged to be an exception to this rule, it must be clearly and satisfactorily shown that the property could not be sold separately, or that it would not bring so much if thus sold.

How long the sheriff should keep the sale open, must depend upon the circumstances of the case—no general rule can be laid down.

This was a motion to set aside the sheriff's sale of the real estate of Michael Fautz deceased, devised to the defendants, consisting of about eighteen acres of land situate in the borough of Strasburg, which was described by the plaintiffs' attorneys, in their directions to the sheriff to levy in the following words, viz:

"A lot of about sixteen acres, on which is erected a two story stone dwelling house and kitchen, and a large stone barn on the street, a log stable aback of the house; and on the rear of the lot is a brick dwelling house and spring house, stone still house, shed and other improvements; the said lot adjoining property of the Rev. N. W. Sample, and James Whitehill on the west, property of George Lefevre on the north, John Gyger and others on the east, and the residue of the eighteen acres and property of Martin Fautz and others on the south, except where the same bounds on the main street.

"The other two acres or thereabouts, situate fronting on the main street, on which is erected a one story log house and other improvements, adjoining property of Martin Fautz, deceased, on the west, Peter Holl on the east, and the residue of the eighteen acres on the north; on each of which tracts are a great quantity of fine fruit trees."

There were more than twenty depositions taken, and read on the argument by the plaintiffs or defendants. They related to the value and situation of the property, and the manner in which the sale had been conducted.

Mr. Champneys and Mr. Ellmaker for the motion, cited *Reyerson vs. Nicholson*, 2 Yeates 516; *Rowley vs. Brown*, 1 Binn. 61.

Mr. Barr and Mr. Porter for the sale.

HAYES, J. Two objections were made to this sale: 1. That it was not regularly and fairly conducted; and 2. That the property was sold in the lump when it ought to have been sold in two parts.

1. My opinion, at the close of the discussion, was that the first objection was not sustained. The evidence viewed in the whole exhibited no undue precipitancy in striking the property off; and as to the particular allegation that the deputy sheriff knocked it down in two minutes after having given notice that in five minutes he would close the sale, I thought it was disproved by the depositions. There can, of course, be no rule as to the length of time the sheriff shall keep the sale open; that must depend on circumstances of time, place, etc. Here it was not shown that any person who intended to bid for this property had not time to reach the place of sale, or was prevented by the closing of the sale before it had continued open for a sufficient length of time. All who meant to bid were on the ground in time. The circumstance, mentioned by one or two of the witnesses, that the deputy sheriff went back, whilst crying the property, from three thousand to twenty-nine hundred dollars, is trivial, being evidently a mere lapsus (which was immediately corrected when his attention was called to it,) and not affecting the bids.

2. But I conceived that the second objection to the sale of the whole eighteen acres together was unanswerable. The well founded presumption of law is that property sold in the separate divisions or parcels in which it has been held or known will sell better; and, as the object of these sales is to sell the property for a fair price, courts require that when land may be sold in two or more parts it shall be thus sold. This is the rule, and it is enjoined with considerable strictness for the benefit of debtors in executions, their creditors, and others interested. In those cases, in which it is contended that lumping sales are, by reason of peculiar circumstances, exceptions to this rule, the court would demand that it should be shown most clearly and satisfactorily that the property could not be sold separately, or that thus sold it would not bring so much. In the present instance the plaintiffs and purchaser have failed in making this out. The two acres unquestionably might have been sold separately from the remaining sixteen acres, because they had been occupied separately; they were described in the directions to the sheriff, the levy, advertisement and conditions of sale separately, and were put up and cried for some time separately. The evidence shows there were persons at the sale who wished to buy the two acres, and not the whole; and the weight of the evidence is, that sold in two parts the eighteen acres would probably bring more than when sold entire.

Subsequent reflection has not altered my opinion. I therefore think the sale ought to be set aside upon the second objection.

Let the rule to show cause be made absolute.

### Common Pleas of Lancaster County.

#### HIRAM HARTING'S ASSIGNED ESTATE.

Where the formal presentation of the petition and appraisement to the proper court, to enable an assignor to have his \$300 exemption, has been neglected, and where all other requirements of the act

have been complied with, the court will accept the subsequent confirmation *nunc pro tunc*.

Rule to confirm \$300 appraisement.

W. Aug. Atlee for rule.

N. Ellmaker contra.

Opinion delivered August 18, 1877. By LIVINGSTON, P. J.

Hiram Harting, (as shown by his petition filed April 17, 1875,) by his deed of assignment dated April 5, 1877, assigned and transferred his property to Thomas Baumgardner in trust for the benefit of his creditors. That said property had been appraised, and he desired that there might be set aside for the use of himself and his family, the following articles:

The furniture appraised at	\$	94.25
Two pigs,	"	5.00
One grey mare,	"	60.00
One market wagon,	"	40.00
Two cows, at \$25.00,	"	50.00
One heifer,	"	30.00
Two calves,	"	10.00
One cultivator,	"	8.00
One shovel plow,	"	1.00
One shovel harrow,	"	1.25
One do do	"	.50
		\$300.00

And that the same might be released from the assigned estate and handed to him. (See *S. Peterman's Est., Sup. Ct., WILLIAMS, J. Also Purd. p. 90; Pam. L. 1864-762.*)

When this petition was filed, the court ordered that notice to creditors be published in THE LANCASTER BAR three weeks, that the same will be confirmed the third Monday of May, if no cause be shown to the contrary. Thus matters remained until the time fixed for confirmation of the application and handing over the property to the claimant. No cause was shown or objection made or filed by any one why it should not be confirmed, and the property passed to the petitioner as requested.

No creditor, nor any one else, so far as the records show, filed any objection or took any exception to the allowance of the \$300 claimed, and no such objection appears anywhere of record until counsel made the present motion. Hiram Harting was therefore entitled, at the time specified in the notice, to have had his application confirmed May 17, 1875. It was not then formally presented to and confirmed by the Court, not prior to that date was any exceptions filed to its confirmation. So, that at that time, if it had been presented for confirmation it would undoubtedly have been confirmed. Who then suffers by the delay. Certainly not creditors, for they interposed no objection to its confirmation at the time it should and would have been confirmed, if presented. The only one having a right to complain is Hiram Harting, who, after having made his claim under the act of assembly, and who is shown to have complied with the order of court, relative to advertising notice, etc., has been kept out of and deprived of the possession of the goods claimed.

We therefore, now, *nunc pro tunc*, as of May 17, 1875, confirm the prayer of the petitioner, and order and direct that the articles named in his petition filed, be released from the assigned estate, and by the assignee formally delivered and handed over to Hiram Harting, the assignor.

## SUPREME COURT OF PENNSYLVANIA.

CENTRAL RAILROAD OF NEW JERSEY vs.  
FELLER ET AL.

*Negligence—Contributory negligence—Railroad company—Crossing at grade—When questions of negligence should not be submitted to the jury.*

F., a partially deaf man, drove a wagon up a steep slope, to a railroad crossing at grade on a road with which he was familiar. At about five feet from the railroad the company had recently erected a watch-house which obstructed the view to the north for about eight feet. Back of the watch house was an open space for about thirteen feet through which there was an unobstructed view of the railroad. Beyond this the view was again closed by some buildings. F. drove past the buildings and the open space and stopped opposite the watch-house. He then looked in both directions; though it was impossible for him to see towards the north. Without leaving his wagon, he then drove on to the track and was killed by a train:

*Held*, that under the circumstances there was a clear case of contributory negligence, and the judge should have directed a verdict for the defendant.

*Señble*. It is not negligence *per se* for a railroad company to place a watch-house near a crossing in such a position as to obstruct the view of travelers using the crossing. The question of the company's negligence in such case is for the jury.

Error to the Court of Common Pleas of Carbon county.

Case brought by the widow and heirs of Henry Feller, deceased, against the above corporation for damages occasioned by the death of Feller, who, it was alleged, lost his life through defendant's negligence. Plea, not guilty.

At the trial (before DREHER, P. J.,) the plaintiffs proved that the railroad of the defendant corporation ran from north to south through the borough Weissport, and was there crossed at right angles by a carriage road leading from Weissport westward to Kregelshville, near the home of Feller. On March 26, 1874, Feller took a load of railroad ties in a wagon, drawn by a pair of mules, from his farm to Weissport, and when returning with his empty wagon over the railroad crossing was struck and killed by a train coming from the north.

It appears that the approach to the railroad was a steep ascent, and that on the north side of the carriage road, about twenty-six feet from the railroad, there were several buildings, partially obstructing the view up the railroad in that direction.

About five feet from the railroad, and near the north side of the carriage road, the defendants had placed a watch-house eight feet square. Between the buildings and the watch-house was a space of about thirteen feet, in which one could see up the railroad for a considerable distance, but opposite the watch-house the view to the north was cut off. Several witnesses saw Feller approaching the track, and shouted out to him. He stopped opposite the watch-house, standing in his wagon. He was then seen to turn his head rapidly in both directions, after which he hit his mules with his reins, and drove on to the track, when he was struck. It appeared that the crossing was in a bad condi-

tion, the planks adjoining the outer rail being seven or eight inches above the road; that this defect was repaired by the company after the accident; that the watch house had been placed in its position about a week before the accident, but was after that removed to the east side of the railroad, and a flagman stationed there for the first time. The population of Weissport was about 900, and that of the villages within a mile east of the railroad, in the aggregate about 500 or 600, and as many as fifty teams cross the railroad daily.

On cross-examination it appeared that Feller had gone over the crossing with his team once or twice a week for five or six years; that the mules were gentle, and accustomed to railroads; that it was not impossible for him to have stopped an empty wagon as any part of the road; that had he got out of his wagon when he stopped and gone to the head of his mules he could have seen a long distance up the railroad; that a whistle was blown by the locomotive five or six times, and that Feller was partially deaf.

For the defendant the engineer, fireman, brakeman and conductor of the train testified that they saw him coming up the hill, blew the danger whistle, rang the bell, applied the brakes and made every effort to stop the train, but it was impossible to do so.

A witness testified that near the bottom of the hill he saw Feller driving up and heard another man warn him that a train was coming; that Feller stopped when he was spoken to, but afterwards went on. On cross-examination the witness was not sure that Feller heard what was said to him.

The plaintiff requested the court to charge, *inter alia*, (8) If the jury believe that the watch-house erected by the company shut off the view of the approaching trains, then the company is liable for the collision in the absence of negligence of the deceased.

The court said: This point we affirm, but charge you further that if the deceased could not see the approaching train from where he stopped, because the watch-house obstructed his view, and there was a point on the hill approaching the railroad from which he could have seen the approaching train, he was guilty of negligence.

The defendant requested the court to charge, *inter alia*, (4) Feller was bound, as every man crossing a railroad in ordinary prudence is bound, to look in all directions in which trains may approach, and pause until he found he could cross in safety, and as the evidence here shows he did not do so, there can be no recovery, and the court is requested to give binding instructions to that effect to the jury. *Negatived*.

The Judge said, in the course of his general charge: "It is the duty of a traveler on a public highway, when approaching a railroad crossing at a grade, to look and listen for an approaching train, and if he fails to do so such failure is negligence. \* \* \* If Feller was negligent and his negligence in any way contributed to the accident \* \* \* the plaintiffs cannot recover. \* \* \* It is a question for the jury whether the erection of the watch-

house obstructed the view, and if so, whether it was negligence in the company to erect it at that point."

Verdict and judgment for the plaintiffs for \$1,840.

The defendant took this writ, assigning for error *inter alia*, the affirmance of the plaintiffs' third point, and the refusal of defendants' fourth point.

*Albright* (with whom was *Freyman*), for the plaintiff in error.

Upon the plaintiff's evidence the court should have directed the jury to find for the defendant.

There is no doubt that in Pennsylvania it is negligence in law not to stop and look both ways before crossing a track. And if from fog or other cause the view is obstructed, a prudent man should get out and lead his wagon. *R. R. Co. vs. Beale*, 23 Sm. 504.

A failure, under such circumstances, to make use of any means to ascertain whether the train is approaching before venturing on the track, must of itself be pronounced negligence as a matter of law. *R. R. Co. vs. Miller*, 22 Michigan, 274.

If it is not negligence *per se* for a deaf man to drive on a railroad, as Feller drove on it, then it would not have been negligence for a blind man to have done so. He was bound to take more than ordinary care. The engineer and many other people on the train saw Feller, and he should have seen them. A man is bound to use his senses when approaching a track. *R. R. Co. vs. McKean*, 40 Ill. 218; *R. R. Co. vs. Hunter*, 33 Ind. 335.

If negligence appear by the plaintiff's own case, he cannot recover. *Canal Co. vs. Bentley*, 16 Sm. 30; *R. R. Co. vs. Rowan*, Id. 393.

If, believing the plaintiff's witnesses, there is not enough to found a reasonable conclusion, it is not a question of the weight of evidence—there is no evidence. *R. R. Co. vs. Shay*, 3 *Weekly Notes* 46.

If the evidence of the defendant was necessary, that of the witness who heard the warning given to Feller would be conclusive. *R. R. Co. vs. Robinson*, 8 Wr. 175.

*Allen Craig* (with whom was *Rapsler*), contra.

A man must approach a railroad crossing with ordinary care, and in Pennsylvania must stop and look each way, but it is always presumed that he has done his duty till the contrary appears. *R. R. Co. vs. Weber*, 26 Sm. 168; *S. C. 1 Weekly Notes* 567; *Weiss vs. R. R. Co.* 2 *Weekly Notes* 214.

Here there is evidence that Feller stopped and looked, and the jury have the right to infer that he also listened. *R. R. Co. vs. Rowan*, 16 Sm. 395.

And the last case, THOMPSON, C. J. says, "as the love of life and the instinct of preservation are the highest motive for care in any reasoning being, they will stand for proof of care until the contrary is shown."

As to Feller's deafness, it is conceded that he should have taken extra care with his eyes, but the question of the care he took was properly submitted to the jury.

What is proper care cannot be determined

by any fixed rule of law. *R. R. Co. vs. Stringer*, 28 Sm. 226; *S. C.*, 1 *Weekly Notes* 547; *R. R. Co. vs. Ackerman*, 24 Sm. 265.

May 7, 1877. THE COURT. This case was well tried in the court below, except in a single aspect which the court failed to notice. The consequence has been that the jury, looking at one side only, followed the common bent of jurors when a railroad company is a party. Had the consequence of Henry Feller's negligence been the destruction of the train, and a heavy loss of human life, the case would have been seen very differently. Being himself the only sufferer the interest of the railroad company and the public have been lost sight of. A motion for a non-suit at the close of the plaintiff's evidence would have disclosed the true character of the case. Taking that evidence alone, we have this state of facts. Henry Feller had driven to Weissport with a load of ties, crossing the railroad, and was returning in the afternoon, in broad daylight. He was perfectly familiar with the crossing, having driven over it frequently for several years, often two and three times a week. His team of mules was gentle and manageable. On the return the ascent is steep, passing a row of houses in front of ironworks, which extended nearer to the railroad. A watch-house, eight feet in width, stood about five feet from the railroad, and from six to eight feet from the road he was traveling. Between the ironworks and the watch-house is a considerable space, through which he could see up the railroad beyond the depot, about six hundred and fifty feet. Feller drove his team and empty wagon past this opening without stopping, and came to a stand right before the watch-house, the heads of the mules passing the watch-house, and being within three or four feet of the outer rail, he stood in his wagon, and, according to the testimony of all the witnesses of the plaintiffs who saw the occurrence, the watch-house shut out his sight above in the direction in which the train was coming. In this position he stopped momentarily, turning his head as if looking to each side, then whipped his mules with the lines held in his hands; the mules starting, he had just gotten upon the track when the engine struck them, killing one and maiming the other, breaking up the wagon and killing Feller. All the witnesses agree that where he stood in his wagon he could not see up the track; that he did not get down and look past the watch-house, but drove on after a short pause, though unable to see the track on his left side.

These are the uncontradicted facts as shown in the plaintiff's own testimony. In such a case the question becomes one of law. (*Rung vs. Shoneberger*, 2 Watts 27.) It was a plain case of foolish negligence in passing a point where he could see in one direction, and yet driving on without any attempt at examination, except to turn his head in each direction. He was somewhat deaf, but this was unknown to those on the train, even if they could have supposed he would drive on past the watch-house. But he himself, being aware of his own defect, had a greater reason for caution in advancing. On the plaintiff's own show-

ing it was a clear case of concurring negligence, which the testimony for the defence makes even more apparent. The engineer saw the wagon passing through the opening when moving to the watch-house, and gave five or six sharp alarm whistles, heard by many, including the plaintiff's witnesses. A witness testified that a person saw the deceased passing up toward the railroad and told him to wait, that a train was coming.

The case was, therefore, not helped out by the defendant's testimony. It was a case of uncontradicted concurring negligence, upon which the court should have instructed the jury that the plaintiffs could not recover; the attention of the court was called to the state of the evidence by the defendant's fourth point, and instead of negating it, the court should have affirmed it.

The affirmation of the plaintiffs' third point was not exactly accurate, though it is perhaps, redeemed from error by the qualification and the charge. This point is, "if the jury believe that the watch-house erected by the company shut off the view of approaching trains, then the company is liable for the collision, in the absence of negligence of deceased." In effect this was to say that it was negligence *per se*, and binding upon the jury. That the placing of a watch-house in the way, and shutting out a view of the railroad, so far as to entrap travelers at a crossing, may be such a wrongful act as will render the company liable, may be well conceded. But it is one which is not negligence *per se*. A railroad company is entitled to a full and free enjoyment of its own property, and to place upon it all needed structures. For example, the block system of running upon railroads is found to be a valuable aid in the security it affords. This system requires signal stations along the route, and close to the track, and circumstances may require a signal station at a depot or station to be placed near to a crossing. It would be too much to say that any one found near a public road is a nuisance *per se*. So a watch-house for a flagman at a crossing may be necessary. The question is one of circumstances and not of legal conclusion, and necessarily must go to a jury to determine upon the circumstances. But the slight inaccuracy in affirming the point generally is counteracted by the qualification, and also by the general charge which submits the question as to the watch house clearly and fully to the jury.

Judgment reversed and a *venire facias de novo* awarded.

Opinion by AGNEW, C. J. SHARSWOOD, J. absent.—*Weekly Notes*.

#### Orphans' Court of Philadelphia.

ESTATE OF DANIEL WILSON, JR., a Minor.

When a guardian has collected the rents of his ward's realty, which is subject to dower, and expended them all for the maintenance of his ward, a balance found on settlement of his account may be awarded to the widow. But the guardian cannot be surcharged with the amount of the widow's claim. For this she will have to pursue the estate of the guardian personally in another forum.

Sur exceptions to adjudication of guardian's account.

Opinion by HANNA, J. July 14, 1877.

After a careful consideration of this matter

we think the auditing judge was correct in his conclusions except in two particulars. The minor's estate consists of realty subject to his mother's dower; she is therefore entitled to one-third of the net rents, issues and profits. The guardian, however, collected the rents, and instead of paying the widow her portion in full, from time to time, paid her such amounts as he deemed proper, until she was obliged to bring suit against him; and as it appeared at the audit, a large sum is still due her and unpaid. In his account the guardian included all the rents collected and expenditures on behalf of his ward, together with certain payments to the widow as part of her share of the rents. She appeared at the audit and claimed to be awarded the balance due her. This being ascertained, the account was surcharged therewith, and the amount awarded to the widow. This surcharge is the subject of the first exception. While the guardian has acted wrongfully in withholding from the claimant her share of the rents, and applying the same to the use of his ward, yet it must be borne in mind that we are now called upon to settle the account between the guardian and the minor. If he has omitted to charge himself with any of the estate of his ward, his deficit can be corrected by *surcharging* him with the amount upon proof of receipt by him: *Milligan's Estate*, 1st Legal Gazette Reports 203. But it is irregular to surcharge him with the amount of a claim against the minor or his estate, or with a claim against the guardian personally. While over the former we would have jurisdiction, the latter must be maintained in another forum. The widow, therefore, appears simply as a creditor of the minor's estate, and if, by the adjustment of the account, the balance is ascertained to be in the hands of the guardian for distribution, then the same may be properly awarded to her. But if, on the contrary, the whole of the rents received by the guardian have been expended for the benefit of the minor, then the widow must be remitted to the remedies she possessed before the account was filed, and either pursue the guardian personally or proceed against the land. A guardian or other trustee may be *surcharged* with moneys and other assets which he has received and failed to include in his inventory or account, or neglected to collect or convert, and where, through inattention, unjustifiable delay and negligence, the assets of the estate become uncollectable, unsaleable or worthless. A surcharge therefore presupposes either actual possession by the trustee, or that he could have obtained the custody and possession by the exercise of due diligence. But the guardian in the present case accounted for all he received of the minor's estate, including the share of the rents due the widow, and expended the whole amount, according to his account, for the benefit of the ward and his estate. It was therefore erroneous to surcharge the guardian with the claim made by the widow. The exception is sustained. But as the auditing judge disallowed certain of the credits claimed by the accountant, and, we think, very properly, whereby a balance appears to be due the late ward, this amount will be awarded the widow on account of her claim. The second exception must also be sustained, for while the accountant would be chargeable with all penalties imposed for non-payment of city taxes, yet *non constat* that they have ever been imposed and paid. It would therefore be improper to surcharge him with penalties which may hereafter be remitted. The remaining exceptions are dismissed. Some relate to errors of fact immaterial to be considered, and others to conclusions based upon the evidence, as to which we fail to discover any error.

The adjudication will be corrected in the decree filed herewith, and as corrected confirmed.



COMMON PLEAS TRIAL LIST.--Second Week.

Commencing Monday, October 15th, 1877.

			<i>Same.</i> 16	M. V. B. COHO vs.	{ Jan'y Term, 1875. No. 43. Issue trespass quare clau- sum fregit. Plea not guilty.
			<i>Same.</i>	SAME DEFENDANT.	
<i>Frucauff.</i> 1 <i>North.</i>	JOHN W. CURRAN vs. THE PENN'A R. R.	{ June Term, 1873. No. 30, Sum's case damages. Plea, not guilty.	<i>Long,</i> <i>W. A. Wilson.</i> 17 <i>Brosius.</i>	JOSEPH C. BRINSER vs. WM. BANEY.	{ Feb. Term, 1876. No. 20. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.
<i>Ellmaker, Kline.</i> 3 <i>North.</i>	JOHN BECKER vs. HENRY M. WATTS et al.	{ Feb. Term, 1873. No. 60. Sum's case. Plea, not guilty.	<i>Eberly.</i> 18 <i>Ellmaker.</i>	REBECCA HEFFLEY vs. MICHAEL AND JOHN M. KELLER, executors.	{ Feb'y Term, 1876. No. 74. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.
<i>Franklin, E. D.</i> <i>North.</i> 3 <i>Puffer.</i>	THE LAN. & READING N. G. R. R. CO. vs. SAMUEL M. MILLER.	{ June Term, 1873. No. 50. Sum's case. Plea, non assumpsit.	<i>Notrh.</i> 19 <i>A. J. Kauffman.</i>	THE COL. NAT'L BANK. vs. C. S. KAUFFMAN.	{ Feb'y Term, 1876. No. 105. Sum's case. Plea, non assumpsit.
<i>Reynolds.</i> 4 <i>J. Hay Brown.</i>	E. H. KAUFFMAN vs. JAMES LOOMIS.	{ April Term, 1874. No. 7. Sum's case. Plea, non assumpsit.	<i>Same.</i> 20 <i>Same.</i>	SAME PLAINTIFF vs. M. M. STRICKLER.	{ Feb'y Term, 1876. No. 106. Sum's case. Plea, non assumpsit.
<i>B. F. Eshleman.</i> 5 <i>H. C. Brubaker.</i>	McCAMANT & KURTZ vs. HENRY & GEO. AMMONS.	{ Aug. Term, 1874. No. 101. Sum's case. Plea, non assump't, set-off.	<i>Same.</i> 21 <i>Same.</i>	SAME PLAINTIFF vs. JOHN B. BACHMAN.	{ Feb'y Term, 1876. No. 107. Sum's case. Plea, non assumpsit.
<i>Puffer, Reynolds.</i> 6 <i>North.</i>	D. A. ALTICK & SON vs. THE PENN'A R. R. CO.	{ Sept. Term, 1874. No. 79. Sum's in assumpsit. Plea, not guilty.	<i>Same.</i> 22 <i>Same.</i>	SAME PLAINTIFF vs. HENRY E. WOLFE.	{ Feb'y Term, 1876. No. 108. Sum's case. Plea, non assumpsit.
<i>Eberly.</i> 7 <i>McMullen.</i>	RICHARD STEFFY vs. J. S. KLINE.	{ Jan'y Term, 1875. No. 19. Sum's case. Plea, non assumpsit.	<i>Geo. &amp; H. C. Bru-</i> <i>baker.</i> 23 <i>P. D. Baker.</i>	HENRY KEENER vs. O'NEIL & DURST.	{ Mar. Term, 1876. No. 90. App'l by def't from justice. Plea, non assumpsit, pay- ment.
<i>Same.</i> 8 <i>Eby.</i>	SAME PLAINTIFF vs. EDWIN B. BRUBAKER.	{ Jan'y Term, 1875. No. 30. Sum's case. Plea, non assumpsit, pay't. &c.	<i>Atlee.</i> 24 <i>Steinmetz.</i>	SAMUEL H. WELCHANS vs. HERSHORN & EINSTEIN et al.	{ April Term, 1876. No. 7. Foreign attach'm't in case. Plea, non assumpsit, pay- ment and set-off.
<i>Eshleman.</i> 9 <i>Davis, Johnson.</i>	JOHN HILDEBRAND vs. ISAAC K. ROBINSON et al.	{ Mar. Term, 1875. No. 79. App'l by def't from justice. Plea, pay't with leave and set-off.	<i>H. C. Brubaker.</i> 25 <i>P. D. Baker.</i>	HENRY KEENER et al. vs. O'NEIL & DURST.	{ April Term, 1876. No. 15. Foreign attachment in as- sumpsit. Plea, non assumpsit, pay- ment, pay't with leave.
<i>H. C. Brubaker.</i> 10 <i>Franklin, North.</i>	HENRY C. STAUFFER vs. GEO. H. MOORE.	{ June Term, 1875. No. 114. Sum's in assumpsit. Plea, non assumpsit.	<i>Shenk, Leaman.</i> 26 <i>Ellmaker,</i> <i>Eshleman.</i>	CASPER HILLER, executor vs. JOHN B. GOOD.	{ April Term, 1876. No. 28. Issue to determine, etc. Plea, pay't, pay't with leave, etc.
<i>Davis.</i> 11 <i>P. D. Baker.</i>	BENJ. ROWE vs. JOSIAH BURGESS.	{ Aug. Term, 1875. No. 166. App'l by def't from justice. Plea, non assumpsit.	<i>McMullen.</i> 27 <i>Franklin, J. Hay</i> <i>Brown.</i>	S. H. REYNOLDS, assignee vs. S. W. P. BOYD.	{ April Term, 1876. No. 38. Sum's case. Plea, non assumpsit.
<i>Reynolds, Eby.</i> 12 <i>Kready, Kline.</i>	JACOB B. GOOD vs. TOBIAS G. FUNK.	{ Oct. Term, 1875. No. 37. Sum's in covenant. Plea, covenants performed abque hoc.	<i>Eby.</i> 28 <i>P. D. Baker.</i>	HENRY E. HERSHEY vs. JOHN K. FISHER.	{ May Term, 1876. No. 14. Sum's sur assumpsit. Plea, non assumpsit, etc.
<i>Johnson.</i> 13 <i>Nauman.</i>	HENRY KNEFELY vs. HENRY FRANK.	{ Nov. Term, 1875. No. 74. App'l by def't from justice. Plea, non assumpsit, pay't, pay't with leave, etc.	<i>Same.</i> 29 <i>Same.</i>	SAME PLAINTIFF vs. JOHN K. FISHER AND D. N. FASS.	{ May Term, 1876. No. 15. Sum's sur assumpsit. Plea, non assumpsit, etc.
<i>Fundi.</i> 14 <i>E. Franklin.</i>	MOONEY & MILLER vs. DAVID KILLINGER.	{ Dec. Term, 1875. No. 59. Sum's case. Plea, non assumpsit, pay't.	<i>McMullen.</i> 30 <i>Atlee.</i>	S. H. REYNOLDS, assignee vs. KITCH & KNEEZEL.	{ May Term, 1876. No. 59. Sum's case. Plea, pay't with leave, etc.
<i>Brosius.</i> 15 <i>E. D. H. M. North.</i>	H. R. & J. S. BRENNEMAN vs. LAN. & READING N. G. R. R. CO.	{ Jan'y Term, 1876. No. 43. Issue trespass quare clau- sum fregit. Plea, not guilty.			

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., SEPT. 29, 1877.

## WEEKLY SUMMARY.

REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since September 22, 1877.

ELIAS BEHM, dec'd, late of Penn twp.; Emanuel Keener, administrator.

DANIEL KOPF, dec'd, late of Columbia bor.; Susan Kopp, administratrix.

WENDELL HOLL, dec'd, late of Earl twp.; Margaret Holl, administratrix.

JACOB DOHNER, dec'd, late of Warwick twp.; Cyrus R. Dohner and Benj. R. Dohner, administrators.

GEORGE BRENNBERGER, dec'd, late of Providence twp.; Maria Brenberger, administratrix.

The following Wills have been admitted to probate since September 22, 1877:

DANIEL HAMAKER, late of East Hempfield twp.; D. L. Hamaker and Daniel F. Hamaker, executors.

JOHN GODFRED WETTIG, late of Lancaster city; Johanna Wettig, executrix.

## DIVORCE NOTICE.

MARY ECKMAN } Alias Subpœna for Divorce,  
by her next friend }  
George Diehl, } To September Term, 1877,  
vs. }  
ALDUS ECKMAN. } No. 9.

To ALDUS ECKMAN.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 15th day of OCTOBER, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Mary Eckman should not be divorced from the bonds of matrimony contracted with you.

sep22 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, September 15, 1877.

## DIVORCE NOTICE.

ELLEN A. FULTON } Alias Subpœna for Divorce,  
by her next friend }  
John D. Clinton, } To September Term, 1877.  
vs. }  
DAVID FULTON. } No. 14.

To DAVID FULTON.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 15th day of OCTOBER, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Ellen A. Fulton should not be divorced from the bonds of matrimony contracted with you.

sep22 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, September 15, 1877.

## ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE,

No. 13 NORTH DUKE STREET,

LANCASTER, PENNA.

## Auditors' Notices.

Assigned Estate of NOAH STEFFY and Wife, of Earl twp., Lancaster co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Levi Weiler, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 23d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JOHN H. FRY,  
EUGENE G. SMITH,  
W. F. BEYER,  
Auditors.

sep29

Estate of HENRY YOUNG, late of Columbia borough, Lancaster county, dec'd.

The undersigned Auditor, appointed to pass upon exceptions filed, and also distribute the balance remaining in the hands of Harriet Miller, (formerly Young) executrix, to and among those legally entitled to the same, will attend for that purpose on WEDNESDAY, OCTOBER 10th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. REINGEHL,  
Auditor.

sep22

Estate of ELIZABETH YONTZ, dec'd, late of West Hempfield township.

The undersigned Auditors, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Ephraim S. Lynch, executor, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, OCTOBER 12th, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

W. S. AMWEG,  
A. C. REINGEHL,  
Auditors.

sep22

Assigned Estate of CHARLES A. HOOK and WIFE, of Columbia, Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Daniel A. Altick, assignee, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, OCTOBER 6th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

S. M. SENER,  
Auditor.

sep8

Assigned estate of J. ADAMSCHUH and Wife, of Lancaster twp., Lancaster co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Phillip D. Baker, assignee of J. Adam Schuh and wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, SEPTEMBER 29th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEORGE NAUMAN,  
SIMON P. EBY,  
S. W. SHADLE,  
Auditors.

sep8

Assigned Estate of ISAAC B. SWEIGART and WIFE, of Salisbury twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Uriah Bitzer, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 2, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

EMLN FRANKLIN,  
Auditor.

sep8

## Estate Notices.

Estate of ELIAS BEHM, late of Penn twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

EMANUEL KEENER,  
Administrator.

sep29

Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

CYRUS R. DOHNER,  
Residing in Penn twp.  
BENJAMIN R. DOHNER,  
Residing in Warwick twp.  
Administrators.

sep29\*

Estate of T. R. TORR, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY S. TORR, widow,  
MICHAEL HABERBUSH,  
Executors.

sep23

P. D. BAKER, Att'y.

Estate of MICHAEL KREIDER, late of Pequea township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

AMOS S. KREIDER,  
ANDREW MEHAFFY,  
Executors.

sep23\*

P. D. BAKER, Att'y.

Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

ANNA MARY STROUSE,  
SAMUEL EBY,  
Executors.

sep22\*

Estate of JACOB AUMENT, late of Drumore township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT,  
Executors.

sep22\*

P. D. BAKER, Att'y.

Estate of HENRY ZIMMERMAN, late of East Hempfield twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HIRAM W. GRAYBILL,  
LEAH ZIMMERMAN,  
GEORGE BINGAMIN,  
Administrators.

sep22

GEORGE BRUBAKER, Att'y.

Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.

sep15]

H. C. BRUBAKER, Att'y.

**Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.**

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ERB, Assignee,  
Penn twp., Lancaster co., Pa.  
OWEN P. BRICKER, Att'y. [sep15]

**Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.**

Henry Gast and Wife having by deed of voluntary assignment, dated September 12, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

J. I. HARTMAN, Assignee,  
Residing in Lancaster City.  
P. D. BAKER, Att'y. [sep15]

**Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd.) late of Brecknock twp., Lancaster co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

E. BILLINGFELT,  
Surviving Executor. [sep15]

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

WM. AUG. ATLEE, NOAH SWARTLEY,  
Att'y. JONAS SWARTLEY,  
Administrators. [sep1\*]

**Estate of JACOB G. SWARR, late of Sporting Hill, Rapho twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sporting Hill.

OWEN P. BRICKER, ALICE A. SWARR,  
Att'y. Administratrix. [sep1]

**Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 50 North Duke-st.

J. L. STEINMETZ, Administrator. [aug25]

**Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.**

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN P. WEISE, Assignee.  
J. HAY BROWN, Att'y. [aug25]

**Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.

THOS. J. DAVIS, JAMES BRYSON,  
Att'y. Executor. [aug25\*]

**Estate of JOHN BRENEMAN, late of Rapho township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

HENRY F. BRENEMAN,  
Executor.  
D. G. BAKER, Att'y. Residing near Mount Joy. [aug25]

**Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

AUGUSTUS GROEZINGER,  
Assignee,  
Lancaster, Pa.  
M. BROSIUS, Att'y. [aug18]

**Estate of SARAH DANCE, late of West Lampeter twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp.

SHEEN & LEAMAN, LIZZIE F. SIDES,  
Att'ys. Executrix. [aug19]

**Assigned Estate of "DILLER & GROFF," of Lancaster City.**

Diller & Groff, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said "Diller & Groff," he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y. [aug18]

**Assigned Estate of GEORGE J. DILLER and WIFE, of Lancaster City.**

George J. Diller and wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George J. Diller, he therefore gives notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y. [aug18]

**Assigned Estate of HENRY D. GROFF and WIFE, of Lancaster City.**

Henry D. Groff and Wife having, by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry D. Groff, he therefore give notice to all persons indebted to said assignors, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL GROFF, Assignee,  
Residing in Lancaster City.  
PHILIP D. BAKER, Att'y. [aug18]

**Estate of MARGARET PLITT, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

AMANDA BHERTZ,  
D. P. ROSENMIHLER, JR., Att'y. Executrix. [aug11]

**Estate of DR. H. E. MUEHLENBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARY E. MUEHLENBERG,  
J. HAY BROWN, Att'y. Administratrix. [aug11]

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

SAM'L BOYD, Chestnut Level P. O.  
JERE B. BOYD, Peters Creek P. O.  
J. HAY BROWN, Atty. Administrators. [aug4]

**Estate of SAMUEL LESHER, late of East Calico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

EDW. LESHER, East Earl twp.  
EPH'M S. LESHER, Brecknock twp.  
Executors. [aug4\*]

**Estate of ISAAC WELLER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, JOHN STROHM, JR.,  
Att'y. Administrator. [y21\*]

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

HENRY HOFFMAN,  
JOHN K. LONG,  
SAM'L HEISTAND,  
N. ELLMAKER, } Att'ys. Executors.  
H. B. SWARR. [aug4\*]

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

HEZEKIAH BROWN,  
ROBERT WARDEN,  
J. W. JOHNSON, Att'y. Administrators. [aug3]

**Estate of EMANUEL HARNISH, late of Pequea township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

BARBARA HARNISH, widow,  
ABRAHAM HARNISH,  
PHILIP D. BAKER, Att'y. Administrators. [jy21\*]

**Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

ANN W. TOWNSEND, widow,  
Administratrix.  
PHILIP D. BAKER, Att'y. [jy21\*]

**Estate of JACOB MARTIN, late of the city of Lancaster, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY C. MARTIN, Administratrix.  
PHILIP D. BAKER, Att'y. [jy21]

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# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, OCTOBER 6, 1877.

No. 19.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation; or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

	WESTWARD.		EASTWARD.	
	LANCASTER.	HARRISBURG.	LANCASTER.	PHILADELPHIA.
Pacific Express,*	2:40 a. m.	4:05 a. m.	12:30 a. m.	3:00 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.	4:10 a. m.	7:00 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.	7:35 a. m.	10:00 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10:10 a. m.	9:28 a. m.	13:30 p. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.	1:20 p. m.	3:45 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.	3:00 p. m.	5:00 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.	3:05 p. m.	6:00 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.	5:18 p. m.	7:20 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.	5:50 p. m.	9:00 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.		
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.		
Harrisburg Express,	7:35 p. m.	8:40 p. m.		
Pittsburg Express,	9:25 p. m.	10:50 p. m.		
Cincinnati Express,*	11:30 p. m.	12:45 a. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

	GOING NORTH.			GOING SOUTH.			
	LEAVE.	a. m.	p. m.	LEAVE.	a. m.	p. m.	
Quarryville,	6:10	7:50	2:10	Lancaster—Upper Depot,	10:16	5:30	8:38
Lancaster—West King Street,	7:20	9:16	3:15	Lancaster—West King Street,	10:25	5:40	8:45
Lancaster—Upper Depot,	7:30	9:30	3:25	Quarryville, (arrive)	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

	GOING NORTH.			GOING SOUTH.		
	LEAVE.	a. m.	p. m.	LEAVE.	a. m.	p. m.
Lancaster—West King Street,	7:20		3:15	Reading,	7:35	6:05
Lancaster—Upper Depot,	7:30		3:25	Lancaster Junction,	9:53	8:15
Lancaster Junction,	7:57		3:51	Lancaster—Upper Depot,	10:10	8:38
Reading, (arrive)	10:20		5:50	Lancaster—West King Street,	10:25	8:45

### Columbia and Port Deposit Railroad.

	GOING SOUTH.			GOING NORTH.			
	LEAVE.	a. m.	p. m.	LEAVE.	a. m.	p. m.	
Columbia,	5:40	12:01	4:29	Peachbottom,	7:15	2:05	5:55
Arrive at Peachbottom,	7:05	1:55	5:45	Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
**Chief Justice**—Morrison R. Waite, of Ohio, 1874  
**Justices**—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
**Attorney General**—Charles E. Devens.

**Supreme Court of Pennsylvania.**

**Chief Justice**—Daniel Agnew.  
**Associate Justices**—George Sharwood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
**Attorney General**—George Lear.

**Prothonotaries:**

**Eastern District**—Benj. E. Fletcher, Philadelphia.  
**Western District**—J. B. Sweitzer, Pittsburgh.  
**Middle District**—Robert Snodgrass, Harrisburg.  
**Northern District**—J. A. J. Cummings, Montandon, Northumberland county.  
**Reporter**—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

**President Judge**—John B. Livingston.  
**Additional Law Judge**—David W. Patterson.  
**Associate Judge**—John J. Libhart.  
**District Attorney**—J. W. Johnson.

**County Officers.**

**Prothonotary**—Lewis S. Hartman.  
**Deputy**—Wm. E. Kreider.  
**Clerks**—P. E. Slaymaker and Thos. B. Hartman.  
**Register**—Harrison Ross.  
**Deputies**—W. M. Slaymaker and C. H. Fasnacht.  
**Recorder**—Samuel S. Martin.  
**Deputy**—Benj. Bauman.  
**Clerks**—Geo. R. Sensenig and M. O. Sensenig.  
**Sheriff**—Henry N. Breneman.  
**Deputies**—Jno. D. Wilson and G. W. Benedict.  
**Clerk of Orphans' Court**—Samuel L. Kauffman.  
**Clerk of Quarter Sessions**—Stephen S. Clair.  
**Deputy**—B. F. W. Urban.  
**Commissioners**—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
**Clerk**—John M. Grider.  
**County Solicitor**—J. Hay Brown.  
**County Treasurer**—Henry S. Eberly.  
**Clerk**—Amaziah C. Barr.  
**Coroner**—Amos Groff.  
**County Surveyor**—M. N. Brubaker.  
**County Auditors**—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

**Mayor**—Wm. D. Stauffer.  
**Solicitor**—Robert M. Agnew.  
**Recorder**—Walter G. Evans.  
**Aldermen**—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
**Chief of Police**—Phillip L. Sprecher.  
**Treasurer**—Edw. Welchans.  
**Civil Engineer**—Francis S. Burrowes.  
**Street Commissioner**—Charles Schwebel.

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COURT CALENDAR.--1877.

OCTOBER.

5. Last day for issuing Writs to October Term.  
 20. Calling Judgment Docket.  
 20. Last day for filing Accounts to November Court.  
 20. Argument for Rules of Affidavit of Defense.  
 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

9. Last day for issuing Writs to November Term.  
 16. Last day for filing Accounts to December Court.  
 17. Argument for Rules of Affidavit of Defense.  
 19. Last day for issuing Executions to November Term.  
 24. Calling Judgment Docket.

DECEMBER.

7. Last day for issuing Writs to December Term.  
 8. Last day for setting down causes for Argument Court.  
 15. Argument for Rules of Affidavit of Defense.  
 22. Last day for filing Accounts to January Court, 1878.  
 23. Calling Judgment Docket.  
 29. Last day for setting down causes for trial for January Court, 1878.

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ATTORNEY-AT-LAW,

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., OCT. 6, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

P. WASHINGTON WEBB *against* WM. CARTER.

A party arrested whilst attending as plaintiff before referees, appointed by a justice of the peace, may be discharged by the court out of which the *capias* was issued. The freedom from arrest—while a party is attending the trial of his cause is his own proper right, his personal immunity: it is distinctly the privilege of the court.

The arrest having violated this right the court set aside the service of the writ and ordered the bail-bond to be cancelled.

This was a rule, on motion of *Mr. Ellmaker*, in behalf of the defendant, to show cause why the service of the writ *capias* should not be set aside. The rule was granted on the affidavit of William Carter, who deposed that on the 21st of December, 1829, he commenced a suit against William Wallace before a justice of the peace in Little Britain township, Lancaster county.

The parties appeared on the 28th of December, 1829, when all matters in variance were referred to arbitrators, appointed to meet at the public house of William Ferguson, in Little Britain township, on the 6th January, 1830, at 10 o'clock, a. m. On the 5th January, at the instance of the defendant, Wm. Wallace, a subpoena was issued by the justice for P. Washington Webb to attend before the referees on the next day, the 6th January 1830, at 10 o'clock a. m., to testify on behalf of the defendant. William Carter the deponent, resided, and for sixteen years had resided in West Nottingham township, Chester county, on a farm of seventy acres, which he owned, and which was free of all incumbrances. On the 6th January he attended at William Ferguson's between 10 and 11 o'clock, a. m. for the purpose of maintaining his suit. The defendant was there and two of the referees. They waited for the third. About 12 o'clock, Webb, the plaintiff in the present action, was there with Job Reynolds, who produced the above mentioned writ of *capias*, and arrested the deponent, demanding bail in one thousand dollars, and insisting upon taking him forthwith about a mile distant to the brother of the said J. Reynolds, for the purpose of getting bail. The deponent begged permission to stay till the trial should be over, provided he could not procure bail. To this no answer was made. But Reynolds did not offer to remove him until Jacob Kirk arrived who became his bail.

Previously to the argument of the above rule, depositions on the part of the applicant were taken and all the material facts con-

tained in his affidavit were thereby established.

The rule was argued by *Mr. Ellmaker* for the defendant, and *Mr. Champneys* for the plaintiff.

For the defendant it was contended that the arrest under this *capias* had violated the privilege of the tribunal before which the defendant was attending as a witness, and of the party by whom he was summoned; the privilege was two-fold. Whether the referees could or could not, did or did not, interfere and discharge the defendant would make no difference. The remedy may be applied either by the court which issues the process, or the court before whom the party is attending: 1 Binn. 77, *Miles vs. McCullough*; 9 Serg't & R. 147, *United States vs. Edme*; 2 Yeates 222, *Hayes vs. Shields*; 4 Dall. 387, *Hurst's Case*; *Ibid* 329, *Smythe vs. Banks*; 5 Bac. Ab. 623.

*Mr. Champneys* for the plaintiff:

There is no case to be found in which one court has interfered with another in protecting the privilege of a party. The question here is whether the service of the writ be legal. All the cases according to my researches say it is the privilege of the court, and of that court in which the party or witness is attending. The application must be in that court and no other: 5 Bac. Ab. 616; *Wilson's Edit'n*, Ib. 619, 620; 2 Johns B. 204, *Norris vs. Beach*; 4 Serg't & R. 149, *Comm. vs. Hambright*; 1 Binn 77, *Miles vs. McCullough*. The cases cited from 2 Yeates 222, 9 Serg't & R. 149, and 4 Dall. 387, fortify this position.

*Mr. Ellmaker* in reply:

1. If the referees had no power to discharge Carter, has this court the power? It is conceded that if, under the process of this court, a man is arrested who is attending in another court, that other court can discharge him, notwithstanding the process. Cannot this court do the same? Unquestionably it can as appears by the authorities. Persons going to an election, to a militia muster, or on a Sunday—members of the legislature—are privileged from arrest. Who or what court is to give them relief. Certainly the court issuing the process, for there is no other authority that can do it.

2. The referees had not the power; in this we are both agreed. Then the defendant is exactly in the situation of the persons privileged on going to an election, militia muster, etc. In conclusion *Mr. E.* prayed the court, if it should be of opinion with him, to order the bailbond to be given up to be cancelled according to the suggestions of Judge DUNCAN in 9 S. & R. 149.

BRADFORD, P. J. On 1st February, 1830, on motion of *Mr. Ellmaker*, the court granted rule to show cause why the service of the writ of *capias* should not be set aside. On the hearing, in June Term last, the following case was presented to the court. William Carter sued William Wallace before James Johnson, esq., a justice of the peace of Lancaster county, on the 21st February, 1829. On the 28th of the same month the cause was referred to arbitrators, who met on the 6th January,

1830. Carter appeared at the time and place appointed to prosecute his suit against Wallace, and while there for that purpose—waiting for the third arbitrator to arrive—he was arrested on a *capias ad respondendum*, at the suit of Webb, and bail demanded in the sum of one thousand dollars. After some delay Carter procured bail in that sum. The arbitrators were organized, the cause heard, and an award made. Webb knew of this suit, the arbitration and hearing, for he was subpoenaed to attend before the arbitrators as a witness, and was actually attending at the time the sheriff's officer arrested Carter. This arrest was meditated, for the day before the arbitration Webb declared his intention to bring the sheriff down on Carter the next day.

What are the powers of an organized and sitting arbitration to punish actual contempt committed by the arrest of suitors or witnesses in cases before them and in their presence is not necessary to decide. Whether an arbitration can discharge from arrest a suitor or witness in any case is immaterial to the disposition of this rule. But as relates to the right of the suitor I will remark that I see no reason why the protection of the law should not as well extend to him when attending the hearing of his cause before arbitrators as before any other tribunal. It was created by legal enactment and is in operation in every village and town in the State. Its legality and utility are as notorious as its existence. It is the familiar little court by and before which in the aggregate an immense mass of business is dispatched. Although not clothed in the form and circumstance of a superior court having its concomitant officers, it is as essentially a tribunal for administering justice, where it is as necessary parties should appear as any court in the commonwealth. The law by its creation vests it with all powers incident to and necessary for the execution of the purposes for which it was created; and it has power to protect its existence and legal operation. It is a well settled rule of law that suitors and witnesses shall not be arrested when going to, staying at, and returning from a court of justice when called to attend the trial of a cause. This rule has had a liberal application when relating to attendance before established courts of record, and has been made effectual by the discharge of the party from arrest by the court before whom the suitor or witness was attending.

But it has been contended by the counsel for Webb that this court has no power to discharge Carter from this arrest by setting aside the service of this process; that it is only the court before whom the suitor was attending that can release from arrest; that the freedom from arrest of suitors is the privilege of the court before whom they appear, and not of the suitor, and that a court cannot punish a contempt shown to another tribunal by setting aside the arrest of a suitor.

Where the process of a court has been abused, and illegally and maliciously used to the injury of a party and in contempt of his right, a judge will not think it indispensably necessary to search for opposite precedents to direct his course. The prostituted machinery

of the court should be cast aside as vitiated by an illegal application and the injured party relieved from its oppression.

I admit that most applications for relief of an arrested suitor have been to the court which he was attending; but this must have arisen from the convenience of making application to a sitting court on the spot where the arrest has taken place. But I find no *dictum* in our books that the court issuing the process cannot relieve the suitor in another court who has been wrongfully arrested. The freedom from arrest while the party is attending the trial of his cause is his own proper right, his personal immunity. It is not absorbed by the privilege of the court which he is attending, but has a distinct existence.

All who have relation to a suit which calls for their attendance, whether compelled to attend by process or not, are entitled to privilege from arrest: 5 Bac. Ab. 618; 3 Mass. R. 288; 6 Mass. R. 245.

So a party attending to be examined under an order of the court is privileged from arrest: 5 Bac. Ab. 618. This privilege extends to arrest on mesne process as well as judicial process, and to a writ of summons as well as *capias*: 4 Dall. 387; 1 Binn. 77. The court will not only discharge the party from the arrest, but will punish the officers *as also the plaintiff who procured the arrest*, because it is an affront to the court as well as an injury to the party arrested: 5 Bac. Ab. 616; 2 Lib. Reg. 369. The party arrested may apply to the court under whose protection he is, or the court out of which the process issued, whichever happens to sit first.

In *Miles vs. McCullough*, 1 Binn. 77, a summons was issued from the Supreme Court to the defendant, who was attending on an appeal from the Orphans' Court of Lancaster County, and the service of the writ set aside. The Supreme Court of Pennsylvania say the power to discharge suitors and witnesses is necessarily inherent in any court, and though the court from which the process issues may discharge for the abuse of their process on the privilege of suitors and parties in other courts, yet the court on whom the contempt is committed is the most suitable forum and the practice is to apply there for redress: 9 S. & R. 150; and in page 157 Judge DUNCAN says whatever doubts might have been entertained as to a witness attending an arbitration under a rule of court, he is now as much protected as if attending a judge at *nisi prius*.

Parties and witnesses are privileged during attendance before referees on a rule of submission on the act of 1705. If authority is necessary it is thus then that a suitor attending on the trial of his cause before arbitrators is by law protected from molestation and arrest *eundo morando et redeundo*, and the court issuing the process and in oppression, embarrassment and arrest of the suitor has a legal power to set aside the service of the writ and discharge the party from the arrest, and I think there is no doubt that this is a case which calls for the exercise of this power.

A party to a cause has his right on the day and place of hearing to proceed without

molestation or interference in the trial of his cause, and ought not to be wrongfully drawn from it. If estimated as a privilege it is the privilege of a freeman, and I would not encumber it with a writ of protection as in Massachusetts: 3 Mass. 288; *Ibid* 264, or by a writ of privilege as is used in England.

The process of this court, if the depositions taken in the cause are to be believed was taken out by Webb with intention of violating this right for the purpose of having it served on Carter in despite of his legal immunities. The seizure was designed to be in Webb's presence, affording him an opportunity to delight himself in the annoyance, arrest, and imprisonment of Carter at the time of an important engagement. A suitor cannot be snatched from a tribunal of justice, wantonly distressed with the alternative of bail or confinement, under the sanction and by the authority and process of a court, and there be no remedy by annulling such illegal act.

I am, therefore, satisfied it is our duty to set aside the service of this writ. That the protection which the law allows to a suitor under the circumstances of this case is a great personal privilege of which he may avail himself to defeat and arrest the service of the *capias*. Let the service of the *capias* be set aside and the bailbond cancelled.

Rule made absolute.

NOTE. The same indulgence has been extended to a witness attending an arbitrator under a rule of *nisi prius*: *Spence vs. Stuart*, 3 East. 89. And to a plaintiff attending execution of a writ of inquiry. When the writ of inquiry issued from the Common Pleas, and the process on which he was arrested out of the exchequer, it was held that *either court* might discharge him: *Walters vs. Reese*, 4 Moore 34. The parties, witnesses, and all who have any relation to a cause which calls for their attendance in court, such as bail, etc., are protected. Nor have the courts been nice in scanning this privilege, but have given in a large and liberal construction: 1 Tidd. 174; 1 Atk. 55; 2 Bl. R. 1142; 2 Hen. Bl. 636.

#### Common Pleas of Lancaster County.

##### LANCASTER AGRICULTURAL PARK ASSOCIATION vs. HENRY COPLAND.

On certiorari, parol evidence will not be admitted to affect the record, unless the magistrate is charged with want of jurisdiction, partiality or corruption. The presumption of law is that a magistrate acts fairly and honestly, and where the proceedings appear regular the merits of a cause will not be re-examined by the court.

The fact that the alderman is the secretary of corporation, *plaintiff*, does not make him a "judge in his own case."

Certiorari to Alderman H. R. McConomy.

Opinion delivered August 18, 1877. By PATTERSON, A. L. J.

The second exception filed to these proceedings, viz: that "the proceedings before the said alderman were irregular" was not urged by the counsel before the court, and we may conclude, therefore, was not relied on by the plaintiff in this writ to set aside the judgment. Besides it is *general* in its terms, and the assignment of general errors is insufficient under our rule of court. Yet, giving

it all the virtue desired, on inspection we find no irregularity in these proceedings before the alderman.

The first exception, "that the alderman, at the time of the hearing, was the secretary of the Lancaster Agricultural Park Association, the plaintiff, (and for that reason was unqualified to act as alderman or judge in the case) was taken at the hearing, and appears on the record. That exception being again included in the objections filed to the proceedings of the alderman, is within the provisions of the rule which requires the court to entertain it.

Objections to the judgment or proceedings on a certiorari, must, generally speaking, be confined to those appearing on the record, and can neither be supported or contradicted by parol evidence. Yet the courts have gone into inquiries *per testes*, on exceptions, charging the want of jurisdiction in the magistrate, corruption, or extreme partiality. And in order to maintain the purity of the administration of justice this court would not hesitate to invoke that rule.

We refer to that practice under some circumstances, and when justice demands it, in order to shew to the exceptant, that if what was orally alleged, (though denied by the opposite party) in respect to the alderman, was really a fact, namely, that he was a stockholder in the association bringing the suit, that depositions or affidavits might have been admitted to show that fact in this case.

That the alderman was a stockholder, as stated, is not however made to appear in any regular manner whatever, nor even embraced in the exceptions.

The court cannot presume that such is the case, and that the alderman executed his authority wantonly, but on the contrary, when it appears that the proceedings are regular on their face, and the officer has kept within the sphere of his jurisdiction, and no proof of partiality or incompetency is submitted, the merits will not be re-examined; but a fair presumption arises that the alderman acted *bona fide*, and, as a consequence, the judgment must be affirmed.

As to the argument urged before the court, that the alderman is the mere secretary of the plaintiff, and that being such makes him a "judge in his own cause." We can find no authority or precedent to sustain the proposition. The intendment of law is that the alderman did not sit in judgment on his own cause, but that he acted in the premises with a strict adherence to duty.

We cannot, therefore, do other than dismiss the exceptions and affirm the judgment and proceedings below.

Proceedings below and judgment affirmed.

#### SUPREME COURT OF PENNSYLVANIA.

##### MILLER vs. BASCHORE.

A promise to pay "all I owe you" is sufficient to revive a debt barred by the statute of limitations, in that it does not fix the amount of the balance due either directly or by reference to something by which the amount can be definitely ascertained.

Error to the Court of Common Pleas No. 4 of Philadelphia county.

On the 28th day of December, 1859, the defendant, Miller, gave his promissory note for \$100, payable one day after date, to the plaintiff, Catharine Baschore. Several payments were made on account of interest on said note, on and previous to the 11th day of October, A. D. 1864; all of which payments were endorsed thereon.

The said note was barred by the statute of limitations at the time suit was brought thereon. In order to take the case out of the statute, the plaintiff put in evidence, under objection, the following letter:

PHILADELPHIA, March 23, 1869.

MRS. CATHARINE BASCHORE:—I have received a letter from you some time ago, asking of me to let you know what I intended doing with balance of a note I owe you. It is hardly necessary to tell you that I had a great deal to pay when I failed, for you know that I have paid off many of my old debts, and calculate to pay all I owe. Just now I cannot pay you anything, for one reason, I compromised with John G. Seltzer, to pay him in installments, of which I have paid one, and another is coming due on the 1st of April, which I must somehow arrange, and then I have to pay him one more note which comes due April 1st, 1870, and after he is paid I will pay you all I owe you, and if I can do anything for you before that time I will do so; you need not trouble yourself about me that I will not pay you, for I expect to pay all I owe. If you think I am not telling you the truth, you can ask J. G. Seltzer himself.

I remain your friend,  
JOHN W. MILLER.

It was in evidence that the John G. Seltzer referred to in the foregoing letter, had been paid by the defendant. It was claimed by Miller that, at the time the above letter was written, the plaintiff was indebted to him on a book account, which had never been settled.

Under the charge of the court, the verdict was for plaintiff for the full amount of the claim.

Charge of the court by BRIGGS, J.

The letter of 1869 declare that the defendant will pay what he owes to the plaintiff, after he shall have paid Seltzer, and the defendant testifies that he has paid Seltzer, therefore his promise, then conditional, is now absolute. The question now is, what does he owe the plaintiff? Both the note in suit and the defendant's claim for goods sold, were at the time the letter was written, barred by the statute, and we cannot consider the promise without inquiring into the state of their accounts at that time. You should allow the defendant for the sum the plaintiff owed him at that time, and give her a verdict for the balance, and if, you do not find a balance in plaintiff's favor, then give a verdict for defendant.

The rulings and charges of the court were assigned for error.

Opinion by GORDON, J. January 26th, 1877.

The evidence was not sufficient to relieve the claim of the plaintiff below from the effect of the statute of limitations. In order to effect such a result there must be a clear and definite acknowledgement of the debt; a specification of the amount due, or a refer-

ence to something by which such amount can be definitely and certainly ascertained, and an unequivocal promise to pay. In the case under consideration, the acknowledgement and undertaking of the defendant, lack these essential characteristics. He writes: "I have received a letter from you sometime ago, asking of me what I intend doing with balance of a note I owe you."

In this there is nothing specific or definite, for it is not stated what note is referred to, neither is the amount of the balance indicated. The latter part of this letter is not less indefinite, for, after speaking of an agreement to pay another creditor with whom he had compromised, he says, "and after he is paid I will pay you all I owe you, and if I can do anything for you before that time I will do so; you need not trouble yourself about me that I will not pay for I expect to pay all I owe." If, in *Weaver vs. Weaver* 4 Sm. 152, the writing by the debtor under an account stated, "I agree to settle with you for the above balance and any other just claim between us," was not sufficient to take the claim out of the operation of the statute, much less the promise above stated. In the case cited the claim and the amount were fixed beyond a doubt or cavil, the fault occurred in the want of a promise to pay the sum thus fixed; for the undertaking was not to liquidate the account stated, but only to settle that and any other just claim his creditor might have against him; it was, therefore, at best, but a promise to pay what appear to be due upon an adjustment of their several accounts. Applying the above stated doctrine to the case in hand, and it is found to be utterly wanting in every element necessary to rescue it from the grasp of the statute; the defendant promises to pay the balance of note but neither note nor balance is stated; he promises to pay what he owes, but whether that is much or little we are not informed; there is, in fact, neither the required certainty nor perspicuity in the evidence produced to break down the defence, hence the attempt has resulted in failure.

Judgment is reversed and a new venire awarded.

New York Supreme Court. General Term.  
Fourth Department.

CATHARINE CURRY vs. ROBERT CURRY.  
THE SAME vs. JOHN CURRY.

An antenuptial agreement by which a woman, in contemplation of marriage, and without other consideration except the proposed marriage, agrees to forego right of dower in certain lands of the proposed husband, is contrary to public policy and not binding on the woman.

A provision in an agreement that the said agreement shall not affect the proposed wife's rights to be acquired by the marriage in respect to other lands or property, constitutes no sufficient consideration for the relinquishment of the right of dower in the specified lands.

These two cases, which were based on the same facts, tried at the same time before the same referee, were argued and considered together on appeal from the report of the referee in favor of the defendant in each case. Each case was an action of ejectment for dower in a farm in Monroe county, which had been devised by Robert J. Curry, deceased, to the defendants, his two sons, respectively. The referee reported in favor of the defendant in each case, giving effect to an antenuptial agreement made between the plaintiff and Robert J. Curry, entered into between the

parties in contemplation of marriage and about an hour before the marriage took place.

The antenuptial agreement was duly executed and acknowledged by the parties, and in substance recites that the plaintiff (then Catharine Barry) in consideration of a marriage about to be had and solemnized between the parties, and in consideration of one dollar, "doth hereby covenant and agree with the said Robert J. Curry, that the said Robert J. Curry, his heirs and assigns, shall, and will forever hereafter, stand seized of and sole owners to" the said two farms, "to the use of the said Robert J. Curry, his heirs and assigns, freed from all claims of dower or interest therein of the said Catharine, both before and after the decease of the said Robert J. Curry." And it was further stated in the said agreement that it was thereby intended that the said agreement should operate as a release and discharge of all claim for dower, which the said Catharine might acquire by virtue of her marriage with said Robert J. Curry, and that the said two farms should be and the same were thereby discharged of and from all claim which the said Catharine might have or acquire by such marriage; and it was furthermore provided that the said agreement was not to affect or impair any claim of the said Catharine by virtue of said marriage in any other real or personal estate of the said Robert J. Curry.

The instrument was executed under seal by both parties and was duly acknowledged by each. The marriage was duly solemnized immediately after such execution and acknowledgment, and, as the referee finds as matter of fact, "in reliance upon it, and in the belief that by its provisions two parcels of land therein described were free and clear from all claim for dower or other interest therein to which the plaintiff would otherwise be entitled by said marriage." There was no actual consideration paid or given to the plaintiff as the consideration for the execution of said agreement. The agreement was made in 1864, and the parties lived together in wedlock until the year 1875, when Robert J. Curry died seized of the two farms in question and of several other parcels of land.

Held, that an antenuptial contract of a female that she will not claim her dower in the event of her intended marriage is contrary to public policy, and unless founded on consideration of some provision for her in lieu of dower will be ineffectual both at law and in equity: 4 Kent's Com. 56, note b; *Power vs. Shiel*, 1 Mallory 296; *Miller vs. Folger*, 14 Ohio 610; *Gould vs. Vomack*, 2 Ala. 83.

The marriage itself, however advantageous to the woman it may appear, is not a sufficient consideration to support the contract to forego dower.

By the Rev. Stat. (1 R. S. 741, § 9.) the settlement of lands upon any intended husband and wife, or the wife alone, for the purpose of creating a jointure, and with her assent, is sufficient to bar dower. So, by § 11, any pecuniary provision made for the benefit of an intended wife in lieu of dower, and with her assent, is sufficient.

The assumption by the referee that the provision in the antenuptial agreement, that the release therein contained should not affect or impair the right of the plaintiff to any other of the property of her intended husband, did not imply a covenant on his part to do nothing to affect or impair her rights in regard to his other property was, in itself, entirely useless and of no effect, as without it the agreement could not affect any rights not specified in it, and constituted no valid consideration for the attempted relinquishment of dower in the two farms.

Judgment in both cases reversed and new trial ordered, with costs to abide the event.

Opinion by TALCOTT, J. April, 1877.—  
*Weekly Digest.*



## COMMON PLEAS TRIAL LIST.

Commencing Monday, October 22th, 1877.

<i>Reynolds.</i> 1	HENRY F. WITMER <i>vs.</i>	April Term, 1876. No. 74. Sum's case. Plea, non assumpsit, pay't, etc.	<i>Same.</i> 15 <i>Smith.</i>	SAME PLAINTIFF <i>vs.</i> B. B. GONDER & SON.	Aug. Term, 1876. No. 13. Sum's case. Plea, non assumpsit.
<i>J. Hay Brown.</i>	JULIUS ODELL & CO.		<i>North.</i> 16	RAYMOND & CAMPBELL <i>vs.</i>	Aug. Term, 1876. No. 13. Sum's case. Plea, non assumpsit, pay't pay't with leave.
<i>Frueauff.</i> 2	W. C. HOUSER <i>vs.</i>	Oct. Term, 1874. No. 26. Sum's case. Plea, non assumpsit, pay't, etc.	<i>Kline.</i>	THEOPHILUS HIESTAND.	
<i>A. C. Retnoehl</i>	B. F. EBERLY.		<i>Brown,</i> <i>H. C. Brubaker.</i> 17	SAMUEL H. PRICE et al. <i>vs.</i> HENRY L. MISHLER et al.	Aug. Term, 1876. No. 54. Issue to try validity of will. Plea filed.
<i>Johnson.</i> 3	DR. WM. P. McLAREN <i>vs.</i>	Aug. Term, 1875. No. 95. App'l by def't from justice Plea, non assumpsit, pay't etc.	<i>Wilson.</i>	GUSTAVUS GROEZINGER <i>vs.</i> THE LAN. AND READING N. G. R. R. CO.	Aug. Term, 1876. No. 64. Issue quare clausum fregit. Plea, not guilty.
<i>Brosius.</i>	J. C. ADAMS.		<i>Nauman.</i> 18	THE HANOVER J. & S. R. R. CO. <i>vs.</i> B. F. HIESTAND et al., ex'ors.	Aug. Term, 1876. No. 79. Sum's in assumpsit. Plea, non assumpsit.
<i>Swarr, Brown.</i> 4	GEO. W. JONES <i>vs.</i>	Aug. Term, 1875. No. 132. Sum's case. Plea, non assumpsit in fra sex annus, etc.	<i>Franklin, North.</i>	JOHN HOLMES <i>vs.</i> JOHN McCALLA, dec'd, ex'ors.	Aug. Term, 1876. No. 118. Sum's in assumpsit. Plea, non assumpserunt, pay't, etc.
<i>Johnson.</i>	SAMUEL ROSS.		<i>Brosius.</i> 20	THE SALEM COAL CO. <i>vs.</i> LEMUEL COOPER.	Aug. Term, 1876. No. 160. Sum's case. Plea filed.
<i>Price.</i> 5	WEAVER & KILLIAN <i>vs.</i>	Nov. Term, 1875. No. 14. Sum's in covenant. Plea, covenants performed absque hoc.	<i>North.</i> 21 <i>Given.</i>	H. M. FREED <i>vs.</i> PETERS, RHODES & TAYLOR	Sept. Term, 1876. No. 17. Sum's case. Plea, non assumpsit.
<i>Smith.</i>	THE LAN. CO. MUT'L LIVE STOCK INS. CO.		<i>North, Martin,</i> <i>Holahan.</i> 23 <i>Elmker.</i>	H. S. FICK <i>vs.</i> G. SENNER & SONS.	Sept. Term, 1876. No. 45. Sum's in covenant. Plea, covenants performed absque hoc and pay't.
<i>Hensel.</i> 6	JOHN J. AND JAC. KEYLOR <i>vs.</i>	May Term, 1876. No. 110. App'l by def't from justice Plea, non assumpsit, pay't, etc.	<i>Reynolds.</i> 24	LEVI L. BUSH <i>vs.</i> THE LAN. AND READING N. G. R. R. CO.	Sept. Term, 1876. No. 54. Issue trespass quare clau- sum fregit. Plea, not guilty.
<i>P. D. Baker.</i>	WM. RICE.		<i>North.</i> 22 <i>Davis.</i>	ELIZABETH REESE <i>vs.</i> SAME DEFENDANT.	Sept. Term, 1876. No. 68. Issue ut supra. Plea, not guilty.
<i>North.</i> 7	HENRY ZEAMER <i>vs.</i>	June Term, 1876. No. 98. Issue as in an action of trespass quare clausum fregit. Plea, not guilty.	<i>Same.</i> 25	SAMUEL TOWSON et al. <i>vs.</i> THE PEACH BOTTOM R. R. CO.	Nov. Term, 1876. No. 45. Issue et supra. Plea, not guilty.
<i>Nauman, Given.</i>	THE HANOVER J. & S. R. R. CO.		<i>North, Martin,</i> <i>Holahan.</i> 23 <i>Elmker.</i>	ABRAHAM COLLINS <i>vs.</i> BENJ. F. HIESTAND et al.	Nov. Term, 1876. No. 67. Sum's trespass vi et armis. Plea, not guilty.
<i>Same.</i> 8	CHRISTIAN G. SHIRK <i>vs.</i>	June Term, 1876. No. 99. Issue ut supra. Plea, not guilty.	<i>Reynolds.</i> 24	FIRST NAT. BANK OF HOL- LIDAYSBURG <i>vs.</i> HENRY MUSLEMAN, dec'd, executors.	Nov. Term, 1876. No. 73. Sum's case. Plea, non assumpsit.
<i>Same.</i> 9	SAMUEL MAY <i>vs.</i>	June Term, 1876. No. 100. Issue ut supra. Plea, not guilty.	<i>North.</i> 26	DAVIS KITCH, Jr. <i>vs.</i> ELIJAH DUNN.	Nov. Term, 1876. No. 102. Sum's in ejectment. Plea, not guilty.
<i>McMullen.</i> 10 <i>Amwake.</i>	DAVID HERSHEY <i>vs.</i> LEVI B. NEFF.	June Term, 1876. No. 107. App'l by def't from justice Plea, payment.	<i>Atlee.</i>	ALEX. M. KEMBLE <i>vs.</i> SAMUEL G. FOGLE.	Nov. Term, 1876. No. 107. App'l by def't from justice Plea, not guilty.
<i>Reynolds.</i> 11	MERCHANTS BANK <i>vs.</i>	June Term, 1876. No. 131. Sum's in assumpsit. Plea, payment.	<i>Kline, North.</i> 27 <i>Reynolds, Eberly,</i> <i>Cottrell.</i>		
<i>A. J. Kauffman.</i>	JOHN B. BACHMAN AND A. BRUNER.		<i>Frueauff.</i> 28		
<i>Reynolds, H. C.</i> <i>Brubaker, P. D.</i> <i>Baker.</i> 12	JOHN M. AMWEG <i>vs.</i>	June Term, 1876. No. 124. Sum's case. Plea, not guilty.	<i>Franklin, North.</i>		
<i>Price, Franklin.</i>	SAMUEL J. DEMUTH.		<i>Atlee.</i> 29 <i>Price.</i>		
<i>Kauffman.</i> 13	GEO. D. SPRECHER <i>vs.</i>	June Term, 1876. No. 126. Sum's in assumpsit. Plea, non assumpsit, pay't etc.	<i>Reynolds.</i> 30		
<i>Yundt.</i>	SAMUEL B. COX & CO.		<i>L. Elmker.</i>		
<i>North.</i> 14	WESLEY W. UPP <i>vs.</i>	Aug. Term, 1876. No. 11. Sum's case. Plea, non assumpsit, pay't with leave.			
<i>Given.</i>	JOHN S. GIVEN.				

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., OCT. 5, 1877.

## WEEKLY SUMMARY.

REGISTER'S OFFICE.

The following Wills have been admitted to probate since September 29, 1877:

SAMUEL HOGENTGLER, late of West Hempfield twp.; E. M. Hogentogler, executor.

SUSANNA LYNE, late of Providence twp.; John Strohm, executor.

SREWA M. FRANKLIN, late of Lancaster city; Thos. E. Franklin, executor.

## DIVORCE NOTICE.

MARY ECKMAN } Alias Subpoena for Divorce,  
by her next friend }  
George Diehl, } To September Term, 1877,  
vs. }  
ALDUS ECKMAN. } No. 9.

To ALDUS ECKMAN.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 15th day of OCTOBER, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Mary Eckman should not be divorced from the bonds of matrimony contracted with you.

sep23 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, September 15, 1877.

## DIVORCE NOTICE.

ELLEN A. FULTON } Alias Subpoena for Divorce,  
by her next friend, }  
John D. Clinton, } To September Term, 1877.  
vs. }  
DAVID FULTON. } No. 14.

To DAVID FULTON.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 15th day of OCTOBER, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Ellen A. Fulton should not be divorced from the bonds of matrimony contracted with you.

sep23 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, September 15, 1877.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, NOVEMBER 19th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

oct6 CASPER DITTMAN.

## Auditors' Notices.

Estate of BENJAMIN G. ALDERFER, late of East Earl twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin E. Stauffer, executor, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 30th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct6 EUGENE G. SMITH, Auditor.

Estate of JOHN H. HUNCHBERGER, late of Lancaster city, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian H. Hunchberger, administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 3d day of NOVEMBER, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct6 GEO. M. KLINE, Auditor.

Estate of PETER GARRA, late of Paradise township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Ranck and Jacob Denlinger, executors, of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 30th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.

oct6 A. J. EBERLY, Auditor.

Estate of JOHN W. MARTIN, late West Lampeter township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Elias Martin, administrator of said deceased, to among those legally entitled to the same, will sit for that purpose THURSDAY, NOVEMBER 1st, 1877, at 11 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

oct6 A. J. EBERLY, Auditor.

Estate of JAMES A. GONDER, one of the heirs of Abraham Gonder, late of Lancaster Co., dec'd.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster Co., Pa., to distribute the balance remaining in the hands of Alexander Harris, esq., trustee, appointed by said court, of the estate of James A. Gonder, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, NOVEMBER 2d, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct6 A. J. EBERLY, Auditor.

Estate of BENJAMIN GROFF, late of Mount Joy township, dec'd.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Isaac and Leander Groff, executors, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, OCTOBER 27th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct6 CHAS. DENUES,  
JNO. M. MAST,  
Auditors.

Assigned Estate of NOAH STEFFY and Wife, of Earl twp., Lancaster co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Levi Weiler, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 23d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep29 JOHN H. FRY,  
EUGENE G. SMITH,  
W. F. BEYER,  
Auditors.

Estate of HENRY YOUNG, late of Columbia borough, Lancaster county, dec'd.

The undersigned Auditor, appointed to pass upon exceptions filed, and also distribute the balance remaining in the hands of Harriet Miller, (formerly Young) executrix, to and among those legally entitled to the same, will attend for that purpose on WEDNESDAY, OCTOBER 10th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep23 A. C. REINCEHL,  
Auditor.

Estate of ELIZABETH YONTZ, dec'd, late of West Hempfield township.

The undersigned Auditors, appointed to pass upon exceptions, and distribute the balance remaining in the hands of Ephraim S. Lynch, executor, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, OCTOBER 12th, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

sep23 W. S. AMWEG,  
A. C. REINCEHL,  
Auditors.

## Estate Notices.

Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

B. F. COX,  
oct6] PHILIP D. BAKER, Att'y. Assignee.

Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. R. SENSENIG, Assignee.  
Residing in Lancaster City.  
GEO. M. KLINE, Att'y. [oct6]

Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

HENRY E. MILLER,  
OWEN P. BRICKER, Att'y. Assignee.  
oct6 Residing in Litz, Lancaster co., Pa.

Estate of ELIAS BEHM, late of Penn twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

sep29 F. MANUEL KEENER,  
Administrator.

Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep29\* CYRUS R. DOHNER,  
Residing in Penn twp.  
BENJAMIN R. DOHNER,  
Residing in Warwick twp.  
Administrators.

Estate of T. R. TORR, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

sep23 MARY S. TORR, widow,  
MICHAEL HABERBUSH,  
P. D. BAKER, Att'y. Executors.

Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

sep15] BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.  
H. C. BRUBAKER, Att'y.

Estate of MICHAEL KREIDER, late of Pequea township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. AMOS S. KREIDER, ANDREW MEHAFFY, sep23\* P. D. BAKER, Att'y. Executors.

Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough. ANNA MARY STROUSE, SAMUEL EBY, sep23\* Executors.

Estate of JACOB AUMENT, late of Drumore township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. ELIAS AUMENT, HARRY AUMENT, ALDUS AUMENT, sep23\* P. D. BAKER, Att'y. Executors.

Estate of HENRY ZIMMERMAN, late of East Hempfield twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. HIRAM W. GRAYBILL, LEAH ZIMMERMAN, GEORGE BINGAMIN, sep23 GEORGE BRUBAKER, Att'y. Administrators.

Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JOHN H. ERB, Assignee, Penn twp., Lancaster co., Pa. OWEN P. BRICKER, Att'y. [sep15]

Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd), late of Brecknock twp., Lancaster co., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough. E. BILLINGFELT, sep15 Surviving Executor.

Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city. WM. AUG. ATLEE, NOAH SWARTLEY, sep1\* Att'y. JONAS SWARTLEY, Administrators.

Estate of JACOB G. SWARR, late of Sporting Hill, Raphe twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sporting Hill. OWEN P. BRICKER, ALICE A. SWARR, sep1 Att'y. Administratrix.

Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to J. I. HARTMAN, Assignee, Residing in Lancaster City. sep15] P. D. BAKER, Att'y.

Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 59 North Duke-st. aug25 J. L. STEINMETZ, Administrator.

Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JOHN P. WEISE, Assignee. J. HAY BROWN, Att'y. [aug25]

Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster. THOS. J. DAVIS, JAMES BRYSON, aug25\* Att'y. Executor.

Estate of JOHN BRENEMAN, late of Rapho township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay. HENRY F. BRENEMAN, D. G. BAKER, Att'y. Executor. aug25 Residing near Mount Joy.

Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to AUGUSTUS GROEZINGER, Assignee, Lancaster, Pa. aug18 M. BROSIUS, Att'y.

Estate of SARAH DANCE, late of West Lampeter twp., deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp. SHEBK & LEAMAN, LIZZIE F. SIDES, aug19 Att'ys. Executrix.

Estate of MARGARET PLITT, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. aug11 AMANDA SHERTZ, D. P. ROSENMILLER, JR., Att'y. Executrix.

Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. aug11 MARY E. MUHLENBERG, J. HAY BROWN, Att'y. Administratrix.

Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAM'L BOYD, Chestnut Level P. O. aug4 JERE. B. BOYD, Peters Creek P. O. J. HAY BROWN, Att'y. Administrators.

Estate of SAMUEL LESHER, late of East Calico twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. EDW. LESHER, East Earl twp. EPH'M S. LESHER, Brecknock twp. aug4\* Executors.

Estate of ISAAC WEILER, late of Providence twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. PHILIP D. BAKER, JOHN STROHM, JR., y21\* Att'y. Administrator.

Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned. HENRY HOFFMAN, CHN. K. LONG, N. ELLMAKER, H. B. SWARR. } Att'ys. SAM'L HEISTAND, Executors. aug4\*

Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township. HEZEKIAH BROWN, ROBERT WARDEN, aug3 J. W. JOHNSON, Att'y. Administrators.

Estate of EMANUEL HARNISH, late of Pequea township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. BARBARA HARNISH, widow, ABRAHAM HARNISH, PHILIP D. BAKER, Att'y. Administrators. jy21\*]

Estate of AMOS TOWNSEND, late of Sadsbury township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township. ANN W. TOWNSEND, widow, jy21\*] Administratrix. PHILIP D. BAKER, Att'y.

LEGAL PRINTING of all kinds neatly and promptly done at The Lancaster Bar printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, OCTOBER 13, 1877.

No. 20.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each of three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Sunday Mail,.....	11:20 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	6:10 p. m.	8:10 p. m.
Columbia Accom.,.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*...	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	2:00 p. m.	5:00 p. m.
Johnstown Express,....	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:10	7:50	2:10
Lancaster—West King Street,...	7:30	9:16	3:15
Lancaster—Upper Depot,.....	7:30	9:30	3:25

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	10:16	5:30	6:38
Lancaster—West King Street,...	10:35	5:40	6:45
Quarryville, (arrive).....	11:30	7:00	9:50

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	7:30		3:15
Lancaster—Upper Depot,.....	7:30		3:25
Lancaster Junction,.....	7:57		3:51
Reading, (arrive).....	10:20		5:50

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading, .....	7:35		6:05
Lancaster Junction,.....	9:53		8:15
Lancaster—Upper Depot,.....	10:10		8:38
Lancaster—West King Street,...	10:25		8:45

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom, .....	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom, .....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

Official Directory.

Supreme Court of the United States.

Chief Justice—Morrison R. Waite, of Ohio, 1874
Justices—Nathaniel Clifford, of Maine, 1858
Noah W. Swayne, of Ohio, 1862
Samuel F. Miller, of Iowa, 1862
Stephen J. Field, of California, 1863
William Strong, of Pennsylvania, 1870
Jos. P. Bradley, of New Jersey, 1870
Ward Hunt, of New York, 1872
Attorney General—Charles E. Devens.

Supreme Court of Pennsylvania.

Chief Justice—Daniel Agnew.
Associate Justices—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

Attorney General—George Lear.

Prothonotaries:

Eastern District—Benj. E. Fletcher, Philadelphia.
Western District,—J. B. Sweitzer, Pittsburgh.
Middle District—Robert Snodgrass, Harrisburg.
Northern District—J. A. J. Cummings, Montandon, Northumberland county.

Reporter—A. Wilson Norris.

Places and time for holding Court:

At Philadelphia, commencing 1st Monday in January.

At Harrisburg, commencing 1st Monday in May.

At Pittsburgh, commencing 1st Monday in October.

At Sunbury, commencing 3d Monday in September.

Second Judicial District.

President Judge—John B. Livingston.

Additional Law Judge—David W. Patterson.

Associate Judge—John J. Libhart.

District Attorney—J. W. Johnson.

County Officers.

Prothonotary—Lewis S. Hartman.

Deputy—Wm. E. Kreider.

Clerks—P. E. Slaymaker and Thos. B. Hartman.

Register—Harrison Ross.

Deputies—W. M. Slaymaker and C. H. Fasnacht.

Recorder—Samuel S. Martin.

Deputy—Benj. Bauman.

Clerks—Geo. R. Sensenig and M. O. Sensenig.

Sheriff—Henry N. Breneman.

Deputies—Jno. D. Wilson and G. W. Benedict.

Clerk of Orphans' Court—Samuel L. Kauffman.

Clerk of Quarter Sessions—Stephen S. Clair.

Deputy—B. F. W. Urban.

Commissioners—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.

Clerk—John M. Grider.

County Solicitor—J. Hay Brown.

County Treasurer—Henry S. Eberly.

Clerk—Amaziah C. Barr.

Coroner—Amos Groff.

County Surveyor—M. N. Brubaker.

County Auditors N. N. Hensel, A. Konigmacher and H. S. Kerns.

City Officers.

Mayor—Wm. D. Stauffer.

Solicitor—Robert M. Agnew.

Recorder—Walter G. Evans.

Aldermen—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.

Chief of Police—Phillip L. Sprecher.

Treasurer—Edw. Welchans.

Civil Engineer—Francis S. Burrowes.

Street Commissioner—Charles Schwebel.

THE LANCASTER BAR

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COURT CALENDAR--1877.

OCTOBER.

20. Calling Judgment Docket.
20. Last day for filing Accounts to November Court
20. Argument for Rules of Affidavit of Defense.
27. Last day for setting down causes for trial for November Court.

NOVEMBER.

9. Last day for issuing Writs to November Term.
16. Last day for filing Accounts to December Court
17. Argument for Rules of Affidavit of Defense.
19. Last day for issuing Executions to November Term.
24. Calling Judgment Docket.

DECEMBER.

7. Last day for issuing Writs to December Term.
8. Last day for setting down causes for Argument Court.
15. Argument for Rules of Affidavit of Defense.
22. Last day for filing Accounts to January Court, 1878.
22. Calling Judgment Docket.
29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., OCT. 13, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JOHN BEAM, indorsee of GROSH, against JACOB GROSH, indorser.

An action upon a promissory note against an indorser, brought more than four years after it was due, and more than two after it was indorsed, without demand of the drawer, and notice to the indorser within that time, cannot be sustained.

A demand of the drawer, four years after the note was due, or two after it was indorsed, is not a due legal demand to fix the indorser.

Notice to the indorser, of non-payment by the drawer two years after the indorsement, is not a due legal notice to render the indorser liable.

This suit was brought on a promissory note dated May 1, 1813, for \$200, payable ten days after date to Jacob Grosh, or order, for value received, made by James Galbraith and indorsed by Jacob Grosh. A suit was brought against James Galbraith, payer, on the 10th July, 1816, in which there was, on the 30th of July, 1816, an award of arbitrators in favor of the plaintiff for \$238.69. James Galbraith was then insolvent, and the present action was brought to August term, 1817.

The plaintiff proved that in the sale of a house and lot in Marietta, by Matthew Garner to Jacob Grosh, in the fall of 1813, or early in 1814, the former agreed to take for the same a gig and some claim which Jacob Grosh had on James Galbraith. G. B. Porter, esquire, testified that the note on which this suit was brought was put into his hands in May, 1816. He was under the impression that he wrote to Mr. Grosh informing him of it. He saw Mr. Grosh before he brought any suit on the note, and mentioned to him that James Galbraith had said he was not able to pay it, which Mr. Porter remarked was too true. Jacob Grosh then told him to sue Galbraith, and get the money if he could; it would be very hard for him (Grosh) to have to pay it; and if Galbraith was now sued and judgment obtained soon, he (Grosh) did not believe he would go to jail for this amount.

The defense was founded on the want of demand and notice to the indorser, and delay in bringing suit upon the note; and it was shown that James Galbraith's real estate in 1813 and 1814 was worth more than \$40,000, whilst the judgments against him did not, in August, 1813, exceed \$9,000.

The court charged the jury that the liability of the defendant depended upon the facts proved and the law applicable to them; that the facts above mentioned did not dispense with the necessity of a demand upon James Galbraith within a reasonable time, and due

legal notice to the defendant; and that the court was of opinion if this note was indorsed in the fall of 1813, or early in 1814, a demand on James Galbraith in the summer of 1816, was not without a reasonable time; that the communication between Mr. Porter and Jacob Grosh did not amount to a due legal notice to the defendant, and that the proceeding against James Galbraith and his insolvency did not entitle the plaintiff to recover in the present action.

The jury found for the plaintiff a verdict for \$396, upon which the defendant moved for a rule to show cause why a new trial should not be granted for this reason, because the verdict was against law and the evidence given in the cause, and the charge of the court. The rule being allowed was argued by—

*Mr. Rogers and Mr. Ellmaker* for the rule.

*Mr. Champneys and Mr. Porter* contra.

By the former it was said that this was the case of an indorser sued, upwards of three years after the note was drawn, without demand or notice during that time. The note was made 1st of May, 1813, and was payable ten days after date. It appeared, by a list of judgments against the drawer, that in August, 1813, they amounted to \$8,000 and \$9,000; but his real estate amounted to \$40,000. Had James Galbraith been sued when the note became due; had Jacob Grosh been informed at that time that there was any difficulty in getting the money from him, would not the payment have been enforced against Galbraith? No state of facts could be exhibited which would more clearly show the utility and good sense of the commercial rule. If the plaintiff says that this note was indorsed after due he must show it. The *onus* lies on him. But, admitting it was indorsed after due, that is, when the sale took place of the house and lot of Matthew Garner, in the fall of 1813, or early in 1814, more than two years elapsed before any notice. Upon this state of facts they contended, and so the court had instructed the jury there was not notice or demand within a reasonable time. They cited 16 Sergt. & R. 160; 14 Mass. 116; 1 Sergt. & R. 134; 12 Mass. 89; 8 Sergt. and R. 355; 13 Mass. 131, 137; 10 Mass. 84; 7 Mass. 449; 6 Mass. 524; 9 Mass. 408; 13 Sergt. & R. 311.

*Mr. Champneys and Mr. Porter* against the rule.

They referred to the arbitrations and awards in both suits, which, like the verdict, were in favor of the plaintiff. There were therefore two decisions—one of the defendant's own choosing—and it would consequently require a strong case to induce this court to set aside the verdict. The time of the indorsement was the turning point in the cause. It was left to the jury by the court; and the verdict in effect is that the indorsement was made long after the sale and within a reasonable time of the notice and demand. The court, indeed, charged very decisively as to the law, but when they came to the facts they submitted them to the jury. 1 Yeates 360; Bank of North America vs. Barriere, overruled in 13 Sergt. & R. 311; 8 Sergt. &

R. 351, McKiney vs. Crawford; 16 Sergt. & R. 157, Juniata Bank vs. Hale and others; Chitty on bills, 248 to 251, edition of 1819.

HAYES, J. By the verdict in this case the jury have virtually declared that there were a demand and notice to the indorser within less than two years after the indorsement, or that a demand and notice two years after the indorsement are sufficient in law to entitle the plaintiff to recover in the present action; if the former, their verdict is clearly unsupported by the evidence; if the latter it is contrary to law and the charge of the court. We therefore think that a new trial ought to be allowed.

Rule made absolute.

## SUPREME COURT OF PENNSYLVANIA.

S. S. HENRY ET AL. vs. JACOB DIETRICH ET AL.

Where real estate is held in trust for religious societies, the articles of agreement are in the nature of a constitution and cannot be superceded by a charter obtained by a minority of the members of the congregations.

The power of a majority of a church congregation, acting in accordance with the original articles of agreement, is absolute.

The act of the court cannot create or transfer title or ecclesiastical authority where the articles of agreement confer none.

The validity of a charter is not inquirable into in a collateral proceeding, but it is the duty of the Supreme Court to inquire whether a franchise claimed is actually possessed.

Where churches divide into parties, on account of the number and of the character of the rights of the parties, damages are unsuitable as a means of redress. Equity alone can apply the required remedy.

Appeal by plaintiffs from decree of the Court of Common Pleas of Lancaster County.

*N. Ellmaker and D. G. Eshleman* for plaintiffs.

*A. J. Eberly and O. J. Dickey* for defendants.

Opinion by WOODWARD, J. Oct. 1, 1877.

After a denial of some of the material allegations of the plaintiffs, the defendants concluded their answer by a general demurrer to the whole bill. All embarrassment that might have arisen in the investigation of the cause from controverted facts has been thus averted. The argument throughout has recognized the truth of the averments of the bill, and has proceeded precisely as if no answer had been filed. While the counsel for the defendants have explained that a motive as laudable as their "high regard for truth" has prompted their denial of the statements of the plaintiffs, they have still expressly acquiesced in and accepted the effect of the demurrer.

A warrant was issued out of the land office of the proprietaries of Pennsylvania, on the 8th of May, 1744, to Henry Haller and Peter Frey for a tract of land in the township of Cecalico, in the county of Lancaster, to be held in trust for the Calvinist Reformed and Lutheran congregations of that township; Haller being the representative of the first congregation, and Frey the representative of the second. By a deed-poll dated the 16th of May, 1761, Peter Frey conveyed his interest in the warrant to Jacob Frey, subject to the same trust. On the 5th of February, 1762, a survey was made, and the quantity of land

ascertained to be nine acres and sixty perches. A patent was issued on the 25th of March, 1762, to Haller and Jacob Frey, and their heirs and assigns, "in trust, nevertheless, and to and for the use of the said two several congregations of Calvinists and Lutherans, for the time being, and their successors forever, using and frequenting and to use and frequent the respective churches and meeting-houses erected and to be erected from time to time on said land, and for burial yards for them respectively, in such manner as the majority of each of the said congregations respectively shall from time to time order, direct and appoint, and to and for no other use or purpose whatever." On the 30th of May, 1761, in the interval between the execution of the deed-poll and the location of the warrant, Henry Haller and three other persons, as elders and trustees of the Calvinist Reformed congregation, entered into articles of agreement with Jacob Frey and three others, as elders and trustees of the Lutheran congregation, by which, after reciting the warrant from the proprietaries and the joint erection of a common church on the land granted, it was stipulated that Haller and his co-trustees, and their successors forever, should have the right to use the property for the purpose of the Calvinistic Reformed congregation, which was to be "ministered after the manner and true meaning of the Heidelberg Catechism;" that Frey and his co-trustees, and their successors forever, should have the right to use the property for the purposes of the Lutheran congregation, to be "ministered after the Reformation of Dr. Luther and the true meaning of the Augsburg Confession;" that the two congregations should be jointly chargeable with the costs of buildings and repairs; that if both should provide for church services on the same Sunday, the hours for the services of each should be peaceably arranged; that the privileges of each in the occupancy of the property should be equal; and that the patent for the land should be granted on these terms. From 1761 to this time the two churches have maintained their organizations, elected their officers, and called their ministers. The plaintiffs are the ministers, trustees, elders and deacons of the two congregations, elected in due and regular succession in pursuance of the ancient instrument by which the uses of their property were defined. Two small tracts adjoining that for which the patent issued in 1762 have been since purchased and dedicated to the same purposes. The quantity of land now held is about eleven acres.

In October, 1872, Daniel Kessler and others, claiming to be officers and members of the Reformed congregation, and Joseph Zerbe and others, claiming to be officers and members of the Lutheran congregation, obtained a charter of incorporation by a decree of the Court of Common Pleas of Lancaster, under the title of "The Independent Associate German Reformed and German Lutheran Muddy Creek Church of East Cocalico Township." The fourth article declared: "Each congregation, though the two by this charter form but one congregation, shall continue to have the

right to hold whatever property they now have, own and possess, as heretofore, and to take and receive bequests, donations and legacies as individual congregations; to have the right, as separate congregations, to call and employ such ministers and other persons as they may severally require, and to order and provide by their by-laws, rules and regulations how disputes and difficulties are to be arranged, settled and compromised that may arise between the two separate, and for many purposes distinct congregations, and how each congregation is to contribute towards the payment of the expenses in keeping the common property in repair."

Under the charter, which was procured without the concurrence of the plaintiffs, the defendants assert the right to control the organization of the two churches, and to take exclusive possession of their land and buildings. It is alleged in the bill that those of them who are Lutherans, by force and threats prevented the use by the Lutheran plaintiffs of the church for the usual services on Sunday, the 28th of June, and on Sunday, the 12th of July, 1874; and that the German Reformed defendants have threatened forcibly and violently to prevent its use by the plaintiffs who represent the German Reformed congregation. This bill for an injunction was dismissed by the court below because the decree incorporating the defendants could not be overturned in a collateral proceeding, and because the plaintiffs had adequate remedies at law.

In the consideration of the cause the first question that presents itself is whether or not the jurisdiction of a court of equity was properly invoked. It is clear upon ample authority that the original articles of agreement created a charitable use to which the legal title derived from the warrant, survey and patent became subservient.

The English statute of 43d Elizabeth never was in force in Pennsylvania, but its principles have constantly been applied here by common usage and under constitutional recognition: *Brightly's Equity* § 398. "We consider," Chief Justice GIBSON said, in *Witman vs. Lex*, 17 S. & R. 91, "the principles which chancery has adopted in their application to particular cases, as obtaining here, not indeed by force of the statute, but as part of the common law, and where the object is defined, and we are not restrained by the inadequacy of the instrument which we are compelled to employ, we give relief nearly if not altogether to that extent which chancery does in England."

The rules deducible from the English chancery precedents for the construction of the statute of Elizabeth may be safely trusted, therefore, to illustrate questions which arise in the current practice of our own courts.

In the *Attorney General vs. Heelis*, 2 Sim. & Stewart 67, one of these rules was stated by the vice chancellor to be that "funds supplied from the gift of the crown, or from the legislature, or from private gift for a legal, general and public purpose, are charitable funds to be administered by courts of equity." And this rule has been adopted in this State

to its full extent. Thus, in *Mangst vs. Shertz*, 5 Wharton 506, which was a contest amongst persons claiming as members of the German Lutheran and German Reformed congregations of the Drylands, under articles of agreement by which the rights of the congregations, and the privileges, powers and duties of their officers and members were prescribed, Mr. Justice SERGANT said: "The articles of agreement form the fundamental rules and regulations, and are in the nature of a constitution, under which the congregations jointly and severally enjoy certain temporal and religious rights. This mode of holding real estate in trust for religious societies, and others of a charitable nature, was frequently adopted in Pennsylvania, when it was a province, instead of a charter of incorporation. They are not incorporated bodies in the proper sense of the term, but resemble them in this, that their trusts are of a public character, and are specially provided for by the laws and constitution of the Commonwealth."

The *Methodist Church vs. Remington* affirmed the decision in *Whitman vs. Lex*, *supra*, that a trust in favor of an incorporated religious or charitable society is an available one. And the court remarked in same case, "that equitable powers in support of charitable uses seem to be founded in necessity, and the constitution of the court, rather than in the provisions of the statute of Elizabeth."

The courts of common pleas, by statutory enactment, have the jurisdiction and powers of a court of chancery in "the supervision and control of all corporations other than those of a municipal character and unincorporated societies or associations, and partnership."

This controversy relates to the rights, privileges and property of two unincorporated religious societies, and jurisdiction in the court below in a proper case for its intervention would be unquestionable. If it had not jurisdiction it was necessarily for reasons resting in the nature of the controversy itself.

Large numbers of individuals were connected with each of these congregations.

The contest between the parties to the record related to powers and privileges in which all these individuals are entitled to participate.

If they had desired it they could have demanded a hearing and have been heard.

To them damages which might be recovered by the plaintiffs would afford not only no adequate remedy, but no remedy at all.

A resort to the criminal process of surety of the peace would be equally inadequate, and would produce scandalous and unseemly conflict. Religious societies are entitled to a more appropriate legal protection of their secular and spiritual interests than would consist in the power to appeal to a criminal court or a justice of the peace. Here, as in *Keisor's Appeal*, 12 P. F. S. 428, "by reason of numbers, and of the character of the rights of the parties, damages are unsuitable as a means of redress, and the case admits of no adequate relief at law. Equity alone can apply the required remedy, while the malcontents can be restrained only by the powers of a chancellor."

In the same case the remark of Chief Justice LOWRIE, in *Kerr vs. Trego*, 6 Wright 296, was quoted, that a bill in equity "is the very remedy usually adopted when churches divide into parties, and we applied it in three such cases in the last year."

In the words of Mr. Justice SHARSWOOD, in *Roshi's Appeal*, 19 P. F. S. 462, "A religious society, incorporated or unincorporated, is but the trustee of a charity, and it has always been peculiarly within the province and duty of a court of equity to prevent the diversion of property held in trust for such purposes from the object and design of the original endowment."

The rights of one of these congregations have been invaded by the exercise of actual force, and those of the other are held subject to the threat that they will be subverted by the future violent action of the defendants. And the acts done and the acts threatened are proposed to be justified by an alleged title to the whole common property derived from the charter of incorporation. The defendants have set up no other ground of claim, and the validity of that the plaintiffs have earnestly and persistently denied.

It cannot be possible that any system of jurisprudence would leave a body of christian people in a peaceable community in terror every Sunday of outbreak and outrage in a christian church. An adjustment of the differences between these parties is necessary, no less for the public interest than for the welfare and prosperity of the two congregations. And the adjustment can be effectual only in the form of remedy the plaintiffs have adopted. It can extend to every question at issue, and can define all rights, whether individual or congregate, that are involved. Its adaptation is all the more complete because its determination will prevent a series of disgraceful wrangles before a magistrate and in the quarter sessions, and of protracted lawsuits in the common pleas prosecuted with the proverbial bitterness of church disputes.

Confessedly the plaintiffs are representatives of the majorities of the members of both the churches. By the terms of the patent the land granted and the buildings to be erected on it were to be used and frequented "in such manner as the majority of each of the said congregations should from time to time order, direct and appoint." It has not been alleged that there has been any departure from the rules and usages of the denominations to which they respectively belong. In simple truth the one element of disturbance has been the existence of a dissatisfied and restive minority in each church.

While the general principle of law is that in private associations the majority cannot bind the minority except by special agreement, yet the principle is equally general that where the power is of a public nature, the majority shall govern, because it is for the public good, and the power is to be more favorably expounded than when it is for private purposes: *Attorney Gen. vs. Davy*, 2 A. & K. 212; *Withnell vs. Garthan*, C. Term, K. 388; *Livingston vs. Lynch*, 4 Johns. Ch. 573. A majority of a church congregation may di-

rect and control in church matters consistently with the particular and general laws of the organism and denomination to which it belongs. *Sutter vs. Trustees of the First Reformed Dutch Church*, C. Wr. 503. Acting within the limits and under the rules of the original articles of association, the power of the majority of the members of each of these congregations is absolute.

The officers elected by them can alone exercise the authority conferred on the first trustees, and a minority can assert no privilege or immunity to justify resistance to legitimate action the majority may take.

But the defendants rely on their charter. If the effect claimed for it were to be necessarily conceded, the most easily contrived and most flexible possible machinery would have been invented for the creation of church organizations and the acquisition of church property. The petitioners for incorporation styled themselves officers and members of the congregations. But they were outside all regular and legal congregational action. As officers they had never been elected in any duly prescribed form or by any qualified constituency. They represented no interests entitled to representation. The act of the court neither created nor transferred title to property or ecclesiastical authority and jurisdiction. Conceding that the court's exercise of the legislative power vested in it, was equivalent to the direct exercise of that power by the legislature itself, yet an act of assembly could not have shifted the title derived from the articles of 1761, from the plaintiffs to the defendants.

It was settled in the *Commonwealth vs. Jarret*, 7 S. & R. 460, that a minority of the persons in whom a trust of a school-house and school was vested, could not, by associating and procuring a charter of incorporation, under the act of April, 1791, acquire the right to the management of them in opposition to the will of the majority of those interested. It is not proposed to overturn or otherwise interfere with any legitimate powers of the defendants as corporators. No inquiry into the validity of the charter would be possible in this collateral proceeding. But under it the defendants claim the franchise to control the temporal and spiritual concerns of these churches.

The act of the 19th June, 1871, makes it the duty of this court to inquire whether the franchise claimed is actually possessed: *Edgewoods Railroad Co. Appeal*, 29 P. F. S. 257.

The power to manage the churches, and their property, has descended to the officers who have been duly chosen. The charter may be useful somewhere, but it has no place here. Whatever its value, and in whatever direction the franchises it has conferred may be exercised, it is mere waste paper, and its place would be more appropriate in a waste basket than among the files of a court of justice, so far as its provisions relate to the organization, the land, or the church building of these congregations.

The decree of the court of common pleas is reversed, and it is now ordered, adjudged and decreed that a writ of injunction be forth-

with issued out of the said court, to be directed to Jacob Deitrich, Henry Lausch, Jacob Lausch, Sam'l Frey, Joel Brossman, Michael Smith, John Zerber, Isaac Zerber, Jacob Garner, Daniel Kessler, sr., Henry Rupp, Martin Lorah, William Rupp and Samuel Pennybecker, to restrain and enjoin them and each of them, their aiders and abettors, from interfering with or in any way preventing the plaintiffs and their successors, regularly elected and installed, from entering the Muddy Creek Church at such times as they may see fit, for the purpose of worshipping therein in accordance with the articles of agreement of the 30th of May, 1761, and with the rules and regulations of the German Reformed and Lutheran churches. And it is further ordered, adjudged and decreed that all costs in this cause accruing and incurred in the court of common pleas and in this court be paid by said defendants.

#### Supreme Judicial Court of Massachusetts.

COTTAGE STREET METHODIST EPISCOPAL CHURCH vs. EDWARD KENDALL, Executor.

*Voluntary subscriptions—What necessary to enforce.*

A gratuitous subscription, to promote the objects for which a corporation is established, cannot be enforced unless the promisee has, in reliance on the promise sued on, done something, or incurred or assumed some liability or obligation, and it is not sufficient that others were led to subscribe by the subscription sought to be enforced.

Contract to recover the amount of a subscription by A. P. Rollins, the defendant's testator, towards the erection of a chapel for the plaintiff. The facts were substantially as follows:

In April, 1871, after the organization of the church, an informal meeting of persons interested in building a chapel for said church, was held at the house of said Rollins, who was treasurer of the trustees. A subscription was thereupon opened, to see how much could be raised for that purpose. Various persons announced their willingness to give different sums, and the secretary, at the time, in their presence, and with their knowledge, wrote down their names, and the amount so promised by each opposite thereto. Rollins was one of those so promising and said that his name might be put down for \$500. He afterwards, in a short time, acknowledged and ratified such subscription orally. Being treasurer of the trustees, he also received some payments from individuals on account of such subscriptions.

Some months after this meeting, and long before August, 1872, some trouble arose between Rollins and the other members, and Rollins, at their request, withdrew from the office of treasurer, and subsequently voluntarily ceased all participation in the affairs of the society, except that he remained one of the trustees until the end of the year for which he was chosen, and was present at a re-organization of the church in August, 1872, made necessary by some flaw in the original organization in April, 1871. No demand was made on him for payment. He died in March, 1873.



The chapel was built before Rollins' death, by and for the use of the plaintiff. There was conflicting evidence as to whether anything was done, or any liability incurred, or obligation assumed by the plaintiff in reliance upon the subscription of Rollins.

The defendant contended that nothing was done, nor any liability or obligation incurred or assumed by the plaintiff in reliance upon the subscription of Rollins, that there was no consideration for the promise, and that the plaintiff was not the party to maintain this action, and asked the court so to rule.

But the judge before whom the case was tried without a jury, without passing upon the question of fact, whether the plaintiff relying upon the subscription of Rollins, had done anything, or incurred or assumed any liability or obligation, ruled that upon the facts above stated there was a sufficient consideration for the promise of Rollins, and that the plaintiff was the proper party to bring the action. The defendant excepted to these rulings.

The opinion of the court was delivered by GRAY, C. J.

The performance of gratuitous promises depends wholly upon the good will which prompted them, and will not be enforced by the law. The general rule is that, in order to support an action, the promise must have been made upon a legal consideration moving from the promisee to the promisor: *Exchange Bank vs. Rice*, 107 Mass. 37. To constitute such consideration, there must be either a benefit to maker of the promise, or a loss, trouble or inconvenience to, or a charge or obligation resting upon the party to whom the promise was made.

A promise to pay money to promote the objects for which a corporation is established falls within the general rule. In every case in which this court has maintained an action upon a promise of this description, the promisee's acceptance of the defendant's promise was shown either by express vote or contract, assuming a liability or obligation, legal or equitable, or by some unequivocal act, such as advancing or expending money, or erecting a building, in accordance with the terms of the contract, and upon the faith of the defendant's promise, so that there was a consideration directly moving from the plaintiff to the defendant: *Fisher vs. Ellis*, 3 Pick. 322; *Bryant vs. Goodnow*, 5 Id. 228; *Amherst Academy vs. Cows*, 6 Id. 427; *Williams College vs. Danford*, 12 Id. 541; *Thompson vs. Page*, 1 Met. 565; *Ives vs. Sterling*, 6 Id. 310; *Walkins vs. Eames*, 9 Cush. 537; *Myrick vs. French*, 16 Id. 196; *Athel Music Hall Co. vs. Cary*, 116 Mass. 471. So in *Hanson Trustees vs. Stetson*, 5 Pick. 506, in which the subscription was to increase a ministerial fund, the court "found it a fact agreed" (whether in the case stated, or by counsel at the argument, does not clearly appear by the report), "that in consequence of the accumulation of the fund by these means, the great purpose, namely, the settlement of a minister has been effected."

The suggestion in 5 Pick. 508, substantially repeated in 6 Met. 316, and in 9 Cush.

539, that "it is a sufficient consideration that others were led to subscribe by the very subscription of the defendant," was in each case but *obiter dictum*, and appears to us to be inconsistent with elementary principles. Similar promises of third persons to plaintiff may be a consideration for agreements between those persons and the defendant, but as they confer no benefit upon the defendant, and impose no charge or obligation upon the plaintiff they constitute no legal consideration for the defendant's promise to him.

The facts in the present case show no benefit to the promisor, and although it appears that the chapel was afterwards built by the plaintiff, it is expressly stated in the bill of exceptions that the learned judge who presided at the trial did not pass upon the question of fact whether the plaintiff had, in reliance upon the promise sued on, done anything or incurred or assumed any liability or obligation. It does not therefore appear that there was any legal consideration for the promise upon which this action was brought.

Exceptions sustained.—*Pitts. Leg. Journal.*

#### Supreme Court of Illinois.

THE PULLMAN PALACE CAR CO., Appellant,  
vs. SMITH.

The proprietors of a sleeping car are not liable, either as innkeepers or common carriers, for property lost or stolen from persons traveling in such car.

Opinion by SHELDON, J. Decided June, 1877.

This was an action brought by Chester M. Smith, appellee, against the Pullman Palace Car Company, appellant, for the recovery of \$1,180, claimed to have been lost from the Pullman sleeping car Missouri, on the night of December 17, 1872, under the following circumstances: On the afternoon of December 17, 1872, appellee started from his home in Oconomowoc, Wis., for a point in Missouri, southwest of St. Louis, for the purpose of buying horses and mules. He purchased a ticket through to St. Louis, via the Milwaukee and St. Paul Railway to Chicago, thence to St. Louis over the Alton and St. Louis Railway, for which he paid \$15.25. He arrived at Chicago about eight o'clock in the evening of the same day, went to the office of the appellant and bought a sleeping-car ticket from Chicago to East St. Louis, for which he paid the sum of \$2, and took a berth in the Pullman car, which left Chicago for St. Louis, at nine o'clock, p. m. His money, \$1,180, was in an inside vest pocket, and when he retired for the night the vest was placed under his pillow; in the morning he found the vest as he left it, but the money was gone.

The court below gave the following instructions to the jury:

"If the jury believe from the evidence that the plaintiff, while sleeping in defendant's car, on the trip from Chicago to Alton, was robbed of a sum of money which he there had with him, then the verdict should be in his favor for a sum of which he was so robbed, unless the same was greater than would be

an ordinary and reasonable sum for a traveler to carry with him for traveling expenses only, upon such a journey, as the plaintiff was then upon his return home; in which case he should only recover such ordinary and reasonable sum, to which the jury may, if they think proper, add interest at six per cent. for fourteen months."

The jury returned a verdict for the plaintiff for \$277, upon which judgment was rendered, to reverse which the Pullman Palace Car Company bring this appeal.

*Held*, error; the instruction which the court gave to the jury made the company responsible as insurer for the safety of the money, imposing upon it the severe liability of an innkeeper or common carrier.

The company is not liable as an innkeeper. It does not, like the innkeeper, undertake to accommodate the traveling public, indiscriminately, with lodging and entertainment. It only undertakes to accommodate a certain class—those who have already paid their fare and are provided with a first-class ticket, entitling them to ride to a particular place. It does not undertake to furnish victuals and lodging, but lodging alone. There is a dining car attached to the train, as shown, but not owned by the Pullman Company, nor run by them. It belongs to another company, the Chicago and Alton Dining Car Association. Appellant furnishes no accommodation whatever, save the use of the berth and bed and a place and conveniences for toilet purposes. We would not have it implied, however, that even were these eating accommodations furnished by appellant, it would vary our decision; but the not furnishing entertainment is a lack of one of the features of an inn.

The accommodation furnished appellee was in accordance with the express contract entered into when he bought his berth ticket to Chicago, which was for the use of a specified couch from Chicago to St. Louis, and appellant did not render a service made mandatory by law, as in the case of an innkeeper.

But if it should be deemed that, on principle merely, this company would be required to take as much care of the goods of a lodger, as an innkeeper of those of a guest, the same may be said with reference to the keeper of a boarding house, or a lodging house. In *Dansey vs. Richardson*, 3 E. & B. 144, the innkeeper's liability was refused to be extended to a boarding house keeper. In *Holder vs. Toulby*, 983 C. L. 254; it was held the law imposed no duty on a lodging house keeper to take due care of the goods of a lodger. See also *Calye's case*, 8 Co. Rep. 32; *Parker vs. Flink*, 12 Mod. 255.

Appellant is not liable as a carrier. It made no contract to carry. Appellee was being carried by the railroad company; and if appellant was a carrier, it would not be liable for the loss in this case, because the money was not delivered into the possession or custody of appellant, which is essential to its liability as carrier. *Town vs. The Union and Schenectady Railroad Co.*, 7 Hill 47.

It would be unreasonable to make the company responsible for the loss of money which was never intrusted to its custody at all, of which it had no information, and which the owner had concealed upon his own person. The exposure to the hazard of liability for losses by collusion, for pretended claims of loss where there would be no means of disproof, would make the responsibility claimed a fearful one. Appellee assumed the exclusive custody of his money, adopted his own measures for its safe keeping by himself, and we think his must be the responsibility of its loss.—*4 Weekly Digest*, N. Y. 541.

Judgment reversed.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., OCT. 13, 1877.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since October 6, 1877:

WILLIAM BROOKS, dec'd, late of Providence twp.; Henry S. Brooks and Wm. Brooks, administrators.

LEVI POWNALL, dec'd, late of Sadsbury twp.; Deborah G. Pownall, administratrix.

The following Wills have been admitted to probate since October 6, 1877:

JACOB BETZ, late of Lancaster city; John W. Jackson and S. S. Spencer, executors.

MARGARET BELLER, late of Washington bor.; John Herman, executor.

## Divorce Notices.

MARY ECKMAN } Alias Subpœna for Divorce,  
by her next friend }  
George Diehl, } To September Term, 1877,  
vs. }  
ALDUS ECKMAN. } No. 9.

To ALDUS ECKMAN.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 15th day of OCTOBER, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Mary Eckman should not be divorced from the bonds of matrimony contracted with you.

sep23 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, September 15, 1877.

ELLEN A. FULTON } Alias Subpœna for Divorce,  
by her next friend }  
John D. Clinton, } To September Term, 1877.  
vs. }  
DAVID FULTON. } No. 14.

To DAVID FULTON.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 15th day of OCTOBER, A. D. 1877, at 10 o'clock, a. m., to show cause if any you have why the said Ellen A. Fulton should not be divorced from the bonds of matrimony contracted with you.

sep22 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, September 15, 1877.

DELILAH ROCKAFELLOW } Alias Subpœna for Divorce,  
by her next friend }  
Frederick Fry, } September Term, 1877.  
vs. }  
AND. D. ROCKAFELLOW. } No. 23.

To AND. D. ROCKAFELLOW.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 19th day of NOVEMBER, 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Delilah Rockafellow should not be divorced from the bonds of matrimony contracted with you.

oct13 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, October 13th, 1877.

## Auditors' Notices.

Estate of JACOB YEIDER, late of Conestoga twp., Lancaster county, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian Good, administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, NOVEMBER 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. THOS. B. COCHRAN, Auditor.

oct13

Estate of THOMAS BRYON, late of East Earl twp., Lancaster county, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi Weller, trustee to sell the real estate of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, OCTOBER 31st, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. SIMON P. EBY, Auditor.

oct13

Estate of BENJAMIN G. ALDERFER, late of East Earl twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin E. Stauffer, executor, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 30th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. EUGENE G. SMITH, Auditor.

oct6

Estate of JOHN H. HUNCHBERGER, late of Lancaster city, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian H. Hunchberger, administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 3d day of NOVEMBER, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. GEO. M. KLINE, Auditor.

oct6

Estate of PETER GARRA, late of Paradise township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Ranck and Jacob Denlinger, executors, of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 30th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House in the City of Lancaster, where all persons interested in said distribution may attend. A. J. EBERLY, Auditor.

oct6

Estate of JOHN W. MARTIN, late West Lampeter township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Elias Martin, administrator of said deceased, to among those legally entitled to the same, will sit for that purpose THURSDAY, NOVEMBER 1st, 1877, at 11 o'clock a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. A. J. EBERLY, Auditor.

oct6

Estate of JAMES A. GONDER, one of the heirs of Abraham Gonder, late of Lancaster Co., dec'd.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster Co., Pa., to distribute the balance remaining in the hands of Alexander Harris, esq., trustee, appointed by said court, of the estate of James A. Gonder, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, NOVEMBER 2d, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. A. J. EBERLY, Auditor.

oct6

Estate of BENJAMIN GROFF, late of Mount Joy township, dec'd.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Isaac and Leander Groff, executors, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, OCTOBER 27th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. CHAS. DENUES, JNO. M. MAST, Auditors.

oct6

Assigned Estate of NOAH STEFFY and Wife, of Earl twp., Lancaster co.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Levi Weller, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 23d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. JOHN H. FRY, EUGENE G. SMITH, W. F. BEYER, Auditors.

sep29

## Estate Notices.

Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to BENJ. PENROSE, Assignee., Chestnut Level P. O., Lan. Co., Pa. J. HAY BROWN, Att'y.

oct13

Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to B. F. COX, Assignee, PHILIP D. BAKER, Att'y.

oct6

Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to GEO. R. SENSENIG, Assignee, Residing in Lancaster City. GEO. M. KLINE, Att'y.

[oct6

Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to HENRY E. MILLER, Assignee, OWEN P. BRICKER, Att'y, Residing in Litiz, Lancaster co., Pa.

oct6

Estate of ELIAS BEHM, late of Penn twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted there to are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township. EMANUEL KEENER, Administrator.

sep29

Estate of T. R. TORR, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted there to are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city. MARY S. TORR, widow, MICHAEL HABERBUSH, Executors. P. D. BAKER, Att'y.

sep23

Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to BENJ. F. W. URBAN, AMOS S. URBAN, Assignees, Residing in Lancaster City. H. C. BRUBAKER, Att'y.

sep15]

Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep29\* CYRUS R. DOHNER, Residing in Penn twp. BENJAMIN R. DOHNER, Residing in Warwick twp. Administrators.

Estate of MICHAEL KREIDER, late of Pequea township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep23\* AMOS S. KREIDER, ANDREW MEHAFFY, P. D. BAKER, Att'y. Executors.

Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

sep23\* ANNA MARY STROUSE, SAMUEL EBY, Executors.

Estate of JACOB AUMENT, late of Drumore township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep23\* ELIAS AUMENT, HARRY AUMENT, ALDUS AUMENT, P. D. BAKER, Att'y. Executors.

Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ERB, Assignee, Penn twp., Lancaster co., Pa. OWEN P. BRICKER, Att'y. [sep15

Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd,) late of Brecknock twp., Lancaster co., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

sep15 E. BILLINGFEIT, Surviving Executor.

Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

Wm. AUG. ATLEE, Att'y. NOAH SWARTLEY, JONAS SWARTLEY, Administrators. sep1\*

Estate of JACOB G. SWARR, late of Sporting Hill, Rapho twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sporting Hill.

OWEN P. BRICKER, Att'y. ALICE A. SWARR, Administratrix. sep1

Estate of HENRY ZIMMERMAN, late of East Hempfield twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

sep22 HIRAM W. GRAYBILL, LEAH ZIMMERMAN, GEORGE BINGAMIN, GEORGE BRUBAKER, Att'y. Administrators.

Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

sep15] J. I. HARTMAN, Assignee, Residing in Lancaster City. P. D. BAKER, Att'y.

Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 59 North Duke-st.

aug25 J. L. STEINMETZ, Administrator.

Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.

THOS. J. DAVIS, Att'y. JAMES BRYSON, Executor. aug25\*

Estate of JOHN BRENNEMAN, late of Rapho township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

HENRY F. BRENNEMAN, D. G. BAKER, Att'y. Executor. Residing near Mount Joy. aug25

Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

AUGUSTUS GROEZINGER, Assignee, Lancaster, Pa. M. BROSIUS, Att'y. aug18

Estate of SARAH DANCE, late of West Lampier twp., deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampier twp.

SEBASTIAN & LEAMAN, Att'ys. LIZZIE F. SIDES, Executrix. aug19

Estate of MARGARET PLITT, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 AMANDA SHERTZ, D. P. ROSENMIHLER, JR., Att'y. Executrix.

Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN P. WEISE, Assignee. J. HAY BROWN, Att'y. [aug25

Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 MARY E. MUHLENBERG, Administratrix. J. HAY BROWN, Att'y.

Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

aug4 SAM'L BOYD, Chestnut Level P. O. JERE. B. BOYD, Peters Creek P. O. J. HAY BROWN, Atty. Administrators.

Estate of SAMUEL LESHER, late of East Calico twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

EDW. LESHER, East Earl twp. EPH'M S. LESHER, Brecknock twp. Executors. aug4\*

Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

HENRY HOFFMAN, CHN. K. LONG, N. ELLMAKER, } Att'ys. SAM'L HEISTAND, H. B. SWARR. } Executors. aug4\*

Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

HEZEKIAH BROWN, ROBERT WARDEN, Administrators. J. W. JOHNSON, Att'y. aug3

Estate of ISAAC WEILER, late of Providence twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, Att'y. JOHN STROHM, JR., Administrator. y21\*

INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, NOVEMBER 19th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

oct6 CASPER DITTMAN.

LEGAL PRINTING of all kinds neatly and promptly done at The Lancaster Bar printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, OCTOBER 20, 1877.

No. 21.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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No. 16 South Queen-st., Lancaster, Pa.

## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	4:35 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:30 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,	6:50	7:50	2:30
Lancaster—West King Street,	8:00	9:16	3:35
Lancaster—Upper Depot,	8:10	9:30	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:36	5:30	8:10
Lancaster—West King Street,	9:45	5:40	8:20
Quarryville, (arrive)	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:37	1:35	4:11
Reading, (arrive)	10:20	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:13	1:20	7:45
Lancaster—Upper Depot,	9:36	2:00	8:10
Lancaster—West King Street,	9:45		8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

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OCTOBER.

- 20. Calling Judgment Docket. 20. Last day for filing Accounts to November Court 20. Argument for Rules of Affidavit of Defense. 27. Last day for setting down causes for trial for November Court.

NOVEMBER.

- 9. Last day for issuing Writs to November Term. 16. Last day for filing Accounts to December Court 17. Argument for Rules of Affidavit of Defense. 19. Last day for issuing Executions to November Term. 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term. 8. Last day for setting down causes for Argument Court. 15. Argument for Rules of Affidavit of Defense. 22. Last day for filing Accounts to January Court, 1878. 22. Calling Judgment Docket. 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., OCT. 20, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

THE PRESIDENT OF THE ORPHANS' COURT, for the use of JONATHAN HARRIS and his wife, etc. against BENJAMIN BOWER, with notice to LEAH ROCKEY, terre-tenant, etc.

The condemnation of land under a *feri facias*, and the inquisition under a *liberari facias*, set aside on the ground that by the latter it was manifest that the land would not, if extended, pay the plaintiff's debt in seven years. The proceedings, however, were ordered to be set aside, on payment of the costs by the plaintiffs.

Judgment had been rendered on a verdict in this cause in favor of the plaintiffs for \$252.70 debt, and \$12.96 costs. A *feri facias* was issued thereon, and executed by a levy upon a tract of forty acres of land, and the improvements, and an inquisition finding the property sufficient, within seven years, to satisfy the debt, etc. A *liberari facias* was then issued to put the plaintiffs in possession of the premises, and the inquest thereupon summoned to ascertain the value, etc., fixed the rate of the clear yearly rents and profits at \$38.33½.

The court was, therefore, moved, and a rule was granted to show cause why the inquisitions held on the *feri facias* and the *liberari facias* in this case should not be set aside.

*Mr. Montgomery* for the rule:

According to the annual value of the premises, ascertained by the last inquest, it would take eight years, nine months and some days to pay the debt, interests and costs in the plaintiffs' judgment alone. The rule usually adopted is to multiply the debt, interest and cost by eighteen, and strike off two figures to the right; the result will give the yearly value with sufficient accuracy. It will be found that to enable the plaintiffs to realize the amount of their judgment out of this property, the value should have been \$47.81, instead of \$38.33½ per annum.

The act of 1705, "for taking lands in execution for the payment of debts," limits the enjoyment of the land delivered to the plaintiffs to seven years. It is clear, therefore, that if these proceedings stand, the plaintiffs must be deprived of a portion of their debt by the very means the law has provided to realize the whole amount. But the court will not suffer this manifest injustice. It does not admit of a doubt that the first jury erred in their estimate when they found that this property was sufficient within seven years, beyond all reprises, to pay the debt. The second inquisition demonstrates it. In *Hunt vs. McClure*, 2 Y. 387, the inquisition had found that the rents

and profits would pay the debt and costs in seven years, yet the plaintiff succeeded in his motion to set the execution aside on producing an affidavit which showed the lands could not possibly pay the debt by extent, including the interest due thereon. 1 Penn'a Pr. 311. Here we show the same thing by the sheriff's return of the second inquisition.

*Mr. Hopkins* for the defendant:

This experiment, should it succeed, places the poor debtor completely at the mercy of his creditor. I deny that there is any such principle or rule as that one jury must swear like the other, for the doctrine on the other side ends in this, that the jury under the *liberari facias* must value the property just as the first inquest had valued it.

The act of assembly intended to protect the owners of real estate from being destroyed because they happen not to have money at hand to pay off their debts. It constituted a legal mortgage. Why did not the plaintiffs apply for relief on the return of the *feri facias*? Shall they be permitted to play fast and loose in this way? First adopting the *fi. fa.*, and now endeavoring to cast it from them. They acted upon the *fi. fa.*, and the inquisition as a substratum for their possessory execution. They elected their remedy and will not be allowed to abandon it. So the court decided in the case cited from 2 Yeates 387.

In England, relief is always given where the lands are extended at too high a value. The creditor accounts for the actual profits. Such relief is afforded in equity. They do not think of asking the court to set aside their regular process. Why do not the plaintiffs pursue a similar course here? Apply to the court in proper session, to order an account of the rents and profits: *Wall vs. Lloyd's Ex'ors*, 1 S. & R. 320.

We oppose this motion because it is not in time and is not the proper remedy.

*Mr. Montgomery* in reply. The act of 1705 was passed for the protection of debtors, and subjected all lands within the then province of Pennsylvania to sale by execution for the payment of debts, with the proviso in favor of the debtor, that such lands should not be thus sold within seven years, if they would by yearly rents or profits pay the debts and costs of suit. This act differs essentially from the Statute of Elegit, which does not look to the sale of the debtor's lands under any contingency, but provides merely for extending one-half of them to pay the debts out of the issues and profits; and the creditor holds the lands until his claim is satisfied by the rents and profits of the moiety delivered to him. Hence the necessity of an equitable inference to ascertain the extent of his tenure, both on his account and that of the debtor.

The statute does not extend the moiety of the lands for seven years or ten years, but until the debt be paid. Our act, on the contrary, fixes the time beyond which the creditor cannot hold; so that if the first jury err in their estimate, the creditor is actually defeated in realizing the benefit which the law intended by the sale of the land. The appropriate remedy, therefore, is the one we have adopted. An application to the court to set

aside the proceedings, which the court may unquestionably do, either on the ground that those proceedings are calculated to obstruct the purpose of the act of assembly, or by the equitable powers, which the court is often called upon to exercise in order to prevent or remedy injustice.

This motion was made on the same day the *liberari facias* was returned; therefore, at the earliest opportunity, for as to our coming in upon the return of the *fi. fa.*, it was out of the question. The plaintiffs live in Kentucky. The first jury were respectable men. I could not undertake to pronounce their proceedings erroneous, or to hunt up testimony to prove what is now demonstrated by this second inquisition. The defendant is still in possession, and we now ask that these proceedings be all set aside that we may seek a new and proper course to realize the fruits of our judgment.

HAYES, J.

That every man who receive a judgment, is entitled to recover the fruits of it from the sale of the defendant's property, and that the lands of the debtor are chattels in Pennsylvania, for the payment of debts, are principles admitting no dispute.

The act of 1705 restricts the right to sell the real estate of the debtor, where it is sufficient to satisfy all the liens, with the debt, interest and costs of the particular judgment in which execution issues within seven years, in which case it is extended and delivered to the plaintiff until the debt or damages in his execution, with the costs of suit, be satisfied out of the yearly rents or profits. When the clear profits are not sufficient for that purpose, the act directs that it shall be sold—broadly enacting that all lands, tenements and hereditaments whatsoever, within this province, where no sufficient personal estate can be found, shall be liable to be seized and sold upon judgment and execution obtained.

Whether a plaintiff, to whom land has been delivered at a certain reasonable extent, may hold it beyond seven years, until his debt and costs be satisfied, we are not called upon to decide, but I will observe that such a case was evidently not in the contemplation of the legislature in passing this act. Their intention clearly was, that the plaintiff should be allowed to sell the land in every instance of a deficiency of personal property, except only where the yearly rents or profits, beyond all reprises, should be sufficient within the space of seven years to pay. They could not have meant that the plaintiff should be debarred from realizing his demand by an immediate sale when the defendant's land would not be sufficient within that term to satisfy it out of the rents and profits, or that the defendant should have the benefit of an extent of his land beyond that term, instead of a sale to satisfy the judgment. To suppose the contrary, would be to give the language which they have employed a meaning the reverse of what it plainly imports.

In the present application the plaintiffs ask the interposition of the court to secure to them the just fruits of the judgment which they have obtained according to the act of

1705. By the jury, who were summoned under the writ of *liberari facias*, the yearly rents and profits have been estimated at a sum which would hardly be sufficient in nine years to satisfy the plaintiffs. The inquisition under the *feri facias*, was founded, therefore, upon a mistake, the effect whereof, unless corrected, would be to defeat the benefit to which they are entitled by the act in question. The mistake is accounted for by the fact that the residence of the members of the first inquest was in this city, whereas the latter inquest resided in the vicinity of the premises.

I think these proceedings should be set aside according to the motion, but as they have been had at the instance of the plaintiffs, the rule will be made absolute on payment of costs by them.

Rule made absolute upon payment of costs by the plaintiffs.

### SUPREME COURT OF PENNSYLVANIA.

#### GESELL'S APPEAL.

The awarding of an inquest to make partition in a decedent's estate is not such a definitive or final decree to which an appeal to the Supreme Court lies.

[Chief Justice AGNEW and Justices GORDON and WOODWARD dissent.]

Appeal from the Orphans' Court of Lancaster county.

*Wm. Aug. Attee* for appellant.

*M. Brosius and J. B. Good* for appellee.

Opinion by MERCUR, J. October 1, 1877.

This is appeal from an order of the orphans' court awarding an inquest of partition. A motion is made to quash the appeal on the ground that the order is not a final decree.

The 59th section of the act of 29th March, 1832, P. L. 213, declares "any person aggrieved by a definitive sentence or decree of the orphans' court, may appeal from the same to the Supreme Court." It further declares "no appeal shall be allowed unless the same be entered and security given within three years after the final decree." Thus it appears the statute gives no appeal except from a definitive or final decree. It therefore follows that unless the awarding of an inquest be a definitive or final decree no appeal lies in this case.

In one sense every decision or order of the court during the progress of a case may be called final. That particular step may not be retraced. Yet in law they are intermediate or interlocutory, not final or definitive. A writ of error or an appeal will not lie at each stage of the proceeding. However much an intermediate decision or order may affect the result, it is not subject to review here until that final result has first been reached.

Hence a writ of error does not lie to a judgment *quod computet* in account render: *Beitler vs. Zeigler*, 1 P. R. 135; nor to a judgment substituting parties on a *scire facias*: *Bosle vs. John*, 2 Id. 331; nor to a judgment given for the plaintiff upon a demurrer in an action sounding in damages: *Logan vs. Jennings*, 4 Rawle 355; nor on a judgment of *respondet ouster*: *Foster vs. Commonwealth*, 8 W. & S. 83. So a decree

of the orphans' court for a trustee under a will to file his accounts is interlocutory, not final, and no appeal lies therefrom: *Eckfeldt's Appeal*, 1 Harris 172; nor does an appeal lie to an order of the orphans' court to execute a decree of sale: *Robinson's Appeal*, 12 P. F. Smith 213; *Robison et al. vs. Glaney*, 19 Id. 89.

It was held in *Hess' Appeal*, 1 Watts 255, that an order of sale by the orphans' court for the payment of debts was of such a definitive character that an appeal would lie. So it will lie to a decree of sale made after confirmation of partition: *Robinson's Appeal*, *supra*. The reason, therefore, then given by the present chief justice, is "that the decree condemns the property to conversion and the owner's title to divestiture." The opinion distinguishes between the decree of sale and the order of sale that executes the decree.

The awarding of an inquest does not condemn the property to conversion, nor the owner's title to divestiture. It is not necessarily any more than the first step towards a valuation or appraisal. It has none of the characteristics of a decree of sale. It disturbs no right—it settles no title—it authorizes no sale. It may result in a division of the land; but the whole action of the inquest works no conversion of the property. It divests no title. A full execution of the order still leaves the property land, and the title of each owner in every part undivested. The confirmation of the court is necessary to give due effect to the inquisition. All previous action is only so many steps towards this result. When it is reached, the decree in partition is first made. Prior to this time all action is in the nature of an inquiry to ascertain whether, and how, partition can legally be made. When the report of the inquest comes up for confirmation, and the court is asked to decree partition, all persons interested have a right to be heard. Objections to jurisdiction, to the alleged rights of the parties, and to the regularity of the proceedings, may all be considered and determined. The decree then made, that the partition remain firm and staple forever, is definitive and final. Here then is a resting place. The partition proper is then completed. It precedes any order of sale or any allotment of the parts.

From this final decree any person aggrieved may appeal. Any person interested can have his alleged grievances adjudicated, and the validity of the partition determined, before he is required to elect to take a part, or suffer the property to go to a sale. An appeal duly taken, with security, would suspend or supersede further action predicated on the decree.

The cases of *Herr vs. Herr*, 5 Barr 428; *Painter vs. Henderson*, 7 Id. 48; *Lair vs. Hunsicker*, 4 Casey 115, and *Merklein vs. Trapnell et al.*, 10 Id. 42, are not in conflict with the views now stated. They show the conclusive effect of a decree of partition in the orphans' court unappealed from. It cannot be controverted collaterally. We fully assent to their correctness. The effect of a definitive decree in partition is there correctly

stated. But the mere order awarding an inquest has no such conclusive effect. The order is preliminary only. No case has been cited showing this court ever held otherwise. It is in law, as well as in fact, the beginning only, and in no sense the end. It is clearly interlocutory. As was well said by Mr. Chief Justice GIBSON, in *Eckfeldt's Appeal*, *supra*: "It would be oppressive to drag a suitor here on every intermediate order."

As the only assignment of error is to awarding the inquest, and no decree of partition has been made, the appeal is premature.

Appeal quashed.

AGNEW, C. J., dissenting.

This case was decided in the court below distinctly on the ground that Barbara Gesell, being the widow of Abraham Erisman, who died seised, could not set up an adverse title against the petition for partition. She set up in her answer and clearly proved a possession of thirty-two years, a claim of absolute and sole ownership, valuable improvements made and paid for, exclusive perception of the profits, and leases to heirs and rents paid; especially that the father of the petitioner was her tenant for eleven years, paid her rent, and died upon the premises leased.

Yet the orphans' court undertook to decide upon the question of adverse title, and decree partition on the petition of a grandson, the son of her tenant. Mrs. Gesell appealed from this summary disposal of her adverse claim. In this court the point was made that the decree was interlocutory and the case must go to a final consummation of the partition before the question of adverse claim can be determined.

No authorities were cited for a practice so prejudicial to the interest of all the parties, both the adverse claimant and the heirs of the intestate. Its effect is to compel the adverse claimant to pass through the orphans' court, the entire length of the proceeding, without participating in matters which involve only the execution of the award of the partition, and do not touch upon her adverse claim.

As widow she dare not participate without endangering her adverse title; and the heirs if overthrown in the final struggle, will be burdened with a large bill of costs, and a loss of valuable time which would be saved by this appeal.

Abraham Erisman died in September, 1844. This petition was presented August 21, 1876, by a grandson, the son of Samuel Erisman, who died the tenant of Mrs. Gesell, having lived such for eleven years—six at a rent of \$120 and five at a rent of \$140 a year.

Above I have stated the salient points of her answer and proofs. Now, no matter how a trial of Mrs. Gesell's claim at common law may result, here is a claim of adverse title for thirty odd years, with circumstances of a most formidable character, one of which the tenancy of his father, directly ousted the

right of the petitioner to commence this proceeding.

It was a clear case of *prima facie* adverse title. This court has decided that thirty years adverse possession, under the act of 23d April, 1856, bars title even against infants, married woman and others; *Hunt vs. Wall*, 25 P. F. S. 413. Op. by MERCUR, Justice. In *Mehaffey vs. Dobbs*, 9 Watts 363, followed by *Land vs. Patterson*, 1 W. & S. 184, it was held that an entry on the whole by a tenant in common, who holds exclusive possession, and takes the rents and profits without accounting to his co-tenants, or demand made of him for twenty-one years, is an actual ouster, which will be a bar under the statute of limitations; and *Mehaffey vs. Dobbs* also decides, will oust the jurisdiction of the orphans' court to make partition. Both points have been since repeatedly ruled. It is evident, therefore, that Mrs. Gesell presented a strong *prima facie* case of adverse title accruing since the death of her husband, which the orphans' court had no power to try and determine against her.

In *Eall's Estate*, 6 Barr 457, two of the heirs claimed parcels in severalty. C. J. GIBSON said: "where, however, one of the children disclaims to hold jointly or in common with the rest, a difficulty arises which the power of the orphans' court is inadequate to remove. The question of tenure, which lies at the bottom of the whole proceeding cannot be tried, but in an action of ejectment, and to award an issue merely to advise the conscience of the court, as to the fact, would be no better, as the verdict might be set aside or disregarded. But the tenure which is the very basis of every partition must be established by judicial decision; and as the common pleas alone is competent to establish it, it is evident that it retained its jurisdiction in cases like the present, and the orphans' court did not acquire it." Again, "what we have to do is to send the parties into that court to try the preliminary question on the plea of *non tenent insimul*, and when that is done the same court can make partition as beneficially under our statutes as a court of equity could do. If, however, the plaintiffs are actually out of possession of the part claimed by the defendants, they must first regain it by recovery in ejectment, else they would be unable to maintain the issue." In the case before us the grandson petitioner is out of possession which makes his case worse.

In *Herr vs. Herr*, 5 Barr 428, C. J. GIBSON says: "if a party, having no title under the intestate act, petition for an inquest his allegation of title as a tenant in common, if disputed, must, according to *Mehaffey vs. Dobbs*, 9 Watts 363, be first established by ejectment in the common pleas; but if it be admitted, the decree founded on it must necessarily be conclusive." "It would produce wild and fearful disorder were partitions in the orphans' court to be overturned by actions of ejectment to correct mistakes." "The orphans' court, therefore, had no jurisdiction of the controversy between him and the other children." It was, therefore, held

that though the petitioner had no title, it not being disputed, and the premises being decreed to him, the decree was conclusive of the title. So in *Painter vs. Henderson*, 7 Barr 48, on a petition for partition among collateral heirs, the premises were awarded to the widow, who had no right of choice, yet the decree in her favor was conclusive. In *Mecklein vs. Trapnell*, 10 Casey 42, it was decided that a decree awarding the premises to one of the heirs is conclusive of the title as against all the parties claiming under the decedent or his heirs, and hence that persons claiming the title of the eldest son having the election, were concluded, and his deed not being recorded, they were not entitled to notice of the proceeding.

In *Lair vs. Hunsicker*, 4 Casey 115, it was held that the orphans' court, by receiving a petition for an inquest and awarding the inquest and making partition, denied that the petitioner is a proper party, and this cannot be questioned collaterally.

Other cases might be added, but these are sufficient to show that a *bona fide* claim of adverse title arrests the power of the orphans' court to proceed, and that the petition should be dismissed, so that the case may go to the common pleas which alone can summon a jury and try the title.

A plain corollary from these decisions that when the orphans' court illegally undertakes to decide the question of adverse title as was done in this case, the decree against the adverse claimant as it regards his adverse claim is final; for the remainder of the proceeding is only in execution of the award of partition, in which he has no place unless he surrenders his claim.

Hence the danger to Mrs. Gesell if this appeal be quashed. Being the widow of the decedent, and therefore in priority of estate with the heirs, she runs the risk of being concluded by the decree, unless she withdraws and makes herself a stranger to the proceedings, as held in *Mehaffey vs. Dobbs*, *supra*. But if she withdraws then she loses the benefit of her rights as widow, and if she be defeated in her adverse claim all her rights are gone.

It is clearly unjust to place her in this dilemma. Whereas, if the petition be dismissed, and the case sent to the common pleas, her adverse title will be tried, and if found against her she will have her rights as widow awarded to her in a subsequent partition. But it is said she can appeal from the decree of the orphans' court when the premises are finally awarded or sold, if not accepted. No doubt as widow she can appeal, and perhaps as an adverse claimant she might. But as adverse claimant what effect would her appeal have? Clearly, it would not decide the question of her adverse title. If, after final partition, we should conclude that the court erred in deciding upon her question of title, all we could do would be to reverse the whole proceeding and dismiss the petition.

We could not go into the question of title and decide it; we could only decide that she had presented such a claim of adverse title, not merely colorable, that the petition ought to have been dismissed.

But this is the very thing which ought to be done at first instead of at last, after the land has been appraised and divided among the heirs, or perhaps sold.

Her title cannot get before us in this proceeding; there is no means of bringing it before us; all that can come before us is the claim she made and the evidence to show that it was not merely colorable.

The injustice of quashing her appeal from the only decision made against her adverse claim affects all the parties, for if the proceedings be set aside after the lands are awarded or sold they are involved in a large expense incurred in the futile proceeding, and in difficult complications arising in the setting aside of the proceedings, by which they had taken several titles, or a purchaser had taken under a sale.

The difficulty of looking at this case is in confounding Mrs. Gesell's different rights. She presented herself to the orphans' court in the right of a sole owner, not as the widow; but the court looking at her as a widow disregarded her adverse claim and compelled her to submit to a partition as a widow. This is wrong; for it is the very question of tenure which C. J. GIBSON says lies at the foundation of the proceeding, and which the orphans' court cannot determine. But, having determined it as to her adverse claim, it is a final decree as I have shown upon reasons. There is authority also for this. Thus in *Hess' Appeal*, 1 Watts 255, it was held that an order of sale of real estate by the orphans' court is not interlocutory, but definitive before sale and final confirmation. KENNEDY, J., said: "It was literally a decree by force of which and its due execution the owners of the estate were to be divested of all right to it. Could anything then in its nature be more definitive? And if it had been erroneous I think that the most appropriate time for taking the appeal was before its execution, in order to prevent all useless expense as far as practicable, &c."

This case is re-affirmed in *Robinson's Appeal*, 12 P. F. Smith 213, where it is said "the reason is that the decree condemns the property to conversion and the owner's title to divestiture. The order to the administrator which follows is but the process which executes the decree. It is the decree, therefore, which injures the owner." Just so here—it is the award of partition which injures the owner of the adverse title.

The proceeding to make the partition which follows is but the process which executes the decree. Therefore reason, authority and the public good require the appeal to be sustained as from a final decree in regard to the adverse claim of Mrs. Gesell. The question is really one of jurisdiction.

Justices GORDON and WOODWARD concur in this opinion.

IN his evidence before the commission on the occupation of land in Ireland, Lord Glengall stated that he found widows the best tenant farmers. This he attributed to their close attention to the minutiae of farming, and their abstinence from whiskey.



# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., OCT. 20, 1877.

## LISTS OF JURORS.

Names of 24 Grand Jurors, to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, November 19, 1877:

Almus M. Brubaker, saddler, Manor.  
John Binkley, merchant, East Lampeter.  
John Buckwalter, farmer, Upper Leacock.  
James Boyd, farmer, Penn.  
William Bechtel, miller, West Cocalico.  
John W. Dorwart, laborer, 9th Ward, city.  
J. B. Eshleman, justice of peace, West Hempfield.  
Benjamin Fox, gunsmith, 9th Ward, city.  
John Fralich, clerk, Conestoga.  
Alfred D. Grosh, carpenter, Manheim bor.  
Levi Haldeman, clerk, Marietta.  
John Johnson, farmer, Little Britain.  
Wm. Kahl, brickmaker, 9th Ward, city.  
Canova Libhart, farmer, Marietta.  
James Morrison, limeburner, Manor.  
Clayton F. Myers, innkeeper, 3d Ward, city.  
Franklin McNeill, pilot, Conoy.  
Jacob Mace, farmer, Elizabeth twp.  
Tobias D. Martin, farmer, Warwick.  
James A. Patterson, gentleman, Mount Joy bor.  
John Palm, blacksmith, Brecknock.  
John Stober, farmer, West Cocalico.  
John A. Solenberger, carpenter, Upper Leacock.  
Samuel Wright, civil engineer, Columbia.

Names of 48 Petit Jurors to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, November 19, 1877:

Jacob Auwater, founder, Columbia.  
Gideon W. Arnold, manufacturer, 4th Ward, city.  
A. F. Bare, agent, 2d Ward, city.  
A. P. Bear, farmer, East Hempfield.  
John M. Bahill, farmer, Manheim twp.  
H. F. Brunner, lumber merchant, Columbia.  
Joseph C. Biggs, printer, 4th Ward, city.  
Charles Boring, carpenter, 9th Ward, city.  
Samuel Dornbach, farmer, West Cocalico.  
Charles A. Dunlap, farmer, Manheim bor.  
Richard C. Edwards, blacksmith, Drumore.  
Samuel Evans, justice of the peace, Columbia.  
Peter Fraley, shoe manufacturer, Columbia.  
M. D. Foulk, baker, Strasburg.  
Levi S. Gross, farmer, East Hempfield.  
Jacob F. Gable, shoemaker, 3d Ward, city.  
Charles Gibbs, clerk, 6th Ward, city.  
Benj. Huber, gatekeeper, Lancaster twp.  
Wm. F. Hamilton, laborer, Mount Joy twp.  
Henry Hegener, shoemaker, 3d Ward, city.  
Frederick Hartmyer, gentleman, 5th Ward, city.  
Samuel G. Hacker, gentleman, Ephrata.  
James M. Hopkins, farmer, Drumore.  
David F. Harnish, farmer, Manheim twp.  
Maris Hoopes, farmer, Martic.  
Benjamin Kauffman, miller, West Lampeter.  
Samuel Kreiner, tanner, 8th Ward, city.  
Samuel R. Landis, farmer, Manheim twp.  
Andrew Lane, farmer, Manheim twp.  
Barton Lorah, blacksmith, Ephrata.  
Adam Lefever, farmer, West Lampeter.  
David Llyed, farmer, Colerain.  
Amos Martin, farmer, Salisbury.  
Abraham Musser, merchant, Marietta.  
Abraham Morrow, jr., wheelwright, Cærnarvon.  
Jonas Mumma, jr., farmer, East Donegal.  
Ezra Reist, farmer, Manheim bor.

Henry S. Rutter, innkeeper, Paradise.  
Jacob E. Stauffer, farmer, Rapho.  
Jacob C. Stoner, farmer, Manor.  
Jacob H. Strickler, farmer, West Hempfield.  
Brisbin Skiles, innkeeper, Salisbury.  
J. Harvey Scott, farmer, Sadsbury.  
H. H. Tshudy, merchant, Warwick.  
Frederick Waller, pilot, Marietta.  
Danial Will, farmer, Conoy.  
John E. Weaver, grocer, 1st Ward, city.  
John F. Wolf, painter, West Hempfield.

Names of 48 Petit Jurors to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, December 10, 1877:

Peter Albright, laborer, 8th Ward, city.  
Thomas Bechard, gentleman, Cærnarvon.  
Harvey Bachman, farmer, Bart.  
Jacob Brua, butcher, Paradise.  
Samuel L. Carpenter, carpenter, West Earl.  
Preston Cremer, innkeeper, Salisbury.  
James Cushman, gentleman, Marietta.  
E. C. Diller, merchant, Earl.  
Henry Doerr, butcher, 1st Ward, city.  
Jacob Eby, teacher, Paradise.  
Wm. M. Fiellis, teacher, Warwick.  
Clayton Foulk, confectioner, Marietta.  
James Frew, coachmaker, Paradise.  
John H. Good, farmer, Brecknock.  
P. E. Gruger, marble mason, Columbia.  
Elam R. Girvin, merchant, Strasburg twp.  
M. D. Holbrook, printer, 3d Ward, city.  
John R. Herr, farmer, Leacock.  
John Hershey, farmer, Lancaster twp.  
Miles S. Herr, farmer, West Lampeter.  
Franklin Hegener, shoemaker, 3d Ward, city.  
Samuel Harbinson, farmer, Drumore.  
Lewis H. Linville, farmer, Sadsbury.  
Adam L. Landis, farmer, East Lampeter.  
Uriah McCallister, limeburner, Eden.  
Solomon S. Martin, farmer, Earl.  
Samuel McCorkle, farmer, Pequea.  
John B. Mylin, farmer, West Lampeter.  
S. G. Norton, teacher, 6th Ward, city.  
John H. Miller, farmer, West Hempfield.  
Henry March, merchant, Drumore.  
George H. Miller, innkeeper, Eden.  
A. T. McClellan, farmer, Sadsbury.  
Charles H. Pfahler, saddler, Columbia.  
E. H. Rhoades, cabinetmaker, East Cocalico.  
Samuel Roche, farmer, Bart.  
Henry Swarr, innkeeper, Rapho.  
Henry Stauffer, farmer, Brecknock.  
Jacob H. Snavely, farmer, Rapho.  
John Trostle, carpenter, Brecknock.  
B. Frank Taylor, farmer, Little Britain.  
Peter Vaske, painter, Columbia.  
Samuel Worrell, farmer, Strasburg twp.  
Aaron Wissler, machinist, Warwick.  
John F. Witmer, clerk, Paradise.  
George Young, jr., insurance agent, Columbia.  
George Youtz, farmer, Elizabeth twp.  
Henry Zeamer, farmer, West Hempfield.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas commencing on Monday, November 26th, 1877.

A. B. Ayres, assessor, Salisbury.  
Thomas W. Brown, gentleman, 7th Ward, city.  
David Bender, farmer, Brecknock.  
Henry Blickenderfer, gentleman, 9th Ward, city.  
George L. Buckwalter, gentleman, East Lampeter.  
Edward Barkley, drover, Cærnarvon.  
Roland S. Brubaker, merchant, Earl.  
H. L. Baughman, clerk, Columbia.  
John Bachman, farmer, Strasburg twp.  
Jacob Bair, innkeeper, West Earl.  
Franklin Baker, gentleman, Warwick.  
Levi Campbell, jr., cigarmaker, 7th Ward, city.  
James Cresswell, farmer, Eden.

Lemuel Chew, gentleman, East Lampeter.  
Franklin Clark, farmer, Strasburg twp.  
H. M. Engle, nurseryman, East Donegal.  
Samuel Elser, farmer, Clay.  
Jacob Erisman, tailor, 2d Ward, city.  
H. H. Grosh, coachmaker, Warwick.  
W. H. Geiger, merchant, Eden.  
J. H. Hegener, clerk, Marietta.  
William Haines, farmer, East Donegal.  
Edwin Hoptin, innkeeper, East Hempfield.  
John Lutz, merchant, East Cocalico.  
Amos Leachy, laborer, West Lampeter.  
S. P. Lindemuth, agent, 8th Ward, city.  
C. H. Lintner, farmer, 8th Ward, city.  
Henry Metzler, farmer, Rapho.  
Abraham Martin, farmer, Cærnarvon.  
Samuel Peiffer, cigarmaker, Ephrata.  
John Royer, farmer, Leacock.  
Christian J. Reif, merchant, Manheim bor.  
Abraham Rohrer, farmer, East Hempfield.  
Theodore H. Reese, clerk, 7th Ward, city.  
Jacob M. Swarr, farmer, East Hempfield.  
Frederick Smith, grocer, Conoy.  
W. Z. Seuer, lumber merchant, Ephrata.  
Henry Shirk, farmer, Providence.  
Abraham Stauffer, farmer, West Hempfield.  
Amos Silvius, farmer, 8th Ward, city.  
H. E. Slaymaker, agent, 2d Ward, city.  
Jacob L. Stehman, gentleman, Warwick.  
Michael F. Steigerwalt, carpenter, 3d Ward, city.  
Amos Warfel, farmer, Conestoga.  
Peter Witver, farmer, Warwick.  
Henry Wilhelm, engineer, 4th Ward, city.  
Amos Witmer, farmer, East Earl.  
Jacob Zahn, carpenter, Columbia.  
F. X. Ziegler, insurance agent, Columbia.  
Christian Zecher, gentleman, 9th Ward, city.

Names of 50 Petit Jurors to serve in a Court of Common Pleas, commencing on Monday, December 3, 1877.

Barnes Broom, plasterer, 9th Ward, city.  
John Bowers, trader, East Earl.  
Benjamin B. Breneman, farmer, East Hempfield.  
Andrew Chambers, combmaker, 9th Ward, city.  
James D. Clendenning, farmer, Little Britain.  
Mahlon Eckman, farmer, Martic.  
Collin Emerson, farmer, East Donegal.  
David Ebersole, farmer, Conoy.  
Henry Eckman, laborer, Providence.  
Henry Fisher, grocer, 7th Ward, city.  
Christian Graybill, gentleman, East Donegal.  
Samuel S. Geist, shoemaker, Manheim twp.  
D. G. Gonder, contractor, Strasburg.  
Adam Herr, farmer, Strasburg twp.  
John D. Harrar, merchant, Sadsbury.  
Jacob Meyberger, farmer, Bart.  
Abraham Hiestand, innkeeper, 1st Ward, city.  
Samuel Hess, auctioneer, 6th Ward, city.  
Christian Hanlen, cooper, Marietta.  
Edward Harding, merchant, West Cocalico.  
Christian H. Hoffman, farmer, East Hempfield.  
Adam Koffelmacher, tanner, Ephrata.  
Theodore Kinzer, farmer, East Earl.  
Martin Kreider, innkeeper, 4th Ward, city.  
Samuel M. Knox, drover, Leacock.  
George Long, merchant, East Donegal.  
Geo. McNabb, clerk, 7th Ward, city.  
Wm. McClure, slate dealer, Columbia.  
John R. McVey, farmer, Fulton.  
Phillip Miller, gardener, 7th Ward, city.  
William McMullen, drover, Providence.  
Charles Markley, farmer, East Donegal.  
Carson McCully, founder, 8th Ward, city.  
S. C. Pinkerton, merchant, Mount Joy bor.  
James H. Pegan, farmer, Martic.  
W. G. Pinkerton, coachmaker, Columbia.  
Jacob Pickel, shoemaker, Maurer.  
Samuel S. Petersheim, farmer, Upper Leacock.  
Levi Ricksecker, hatter, Mount Joy bor.  
John Rudy, fencemaker, Upper Leacock.  
Samuel Shoek, banker, Columbia.  
Isaac Strohl, shoemaker, Ephrata.  
E. E. Snyder, manager, 4th Ward, city.  
Amos Sourbeer, innkeeper, Conestoga.  
Adam M. Snyder, plasterer, 5th Ward, city.  
David Shultz, sr., hatter, 1st Ward, city.  
Abm. H. Sheaffer, wagenmaker, West Donegal.  
Wm. M. Shrum, gentleman, 1st Ward, city.  
Jacob Walters, innkeeper, Conestoga.  
Henry Wanner, farmer, Salisbury.

**Divorce Notices.**

DEILIAH ROCKAFELLOW, } Alias Subpoena for Divorce  
by her next friend }  
Frederick Fry, } September Term, 1877.  
vs. }  
AND. D. ROCKAFELLOW. } No. 23.

To AND. D. ROCKAFELLOW.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 19th day of NOVEMBER, 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Delilah Rockafellow should not be divorced from the bonds of matrimony contracted with you.  
oct18 H. N. BRENEMAN, Sheriff.  
Sheriff's Office. Lancaster, October 18th, 1877.

**Auditors' Notices.**

**Estate of SAMUEL CHARLES, late of Pequea township, Lancaster Co., dec'd.**  
The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian B. Mylin and Eli K. Mylin, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, NOVEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
WALTER M. FRANKLIN, Auditor.  
oct20

**Estate of JACOB YEIDER, late of Conestoga twp., Lancaster county, dec'd.**  
The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian Good, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, NOVEMBER 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
THOS. B. COCHRAN, Auditor.  
oct18

**Estate of THOMAS BRYON, late of East Earl twp., Lancaster county, dec'd.**  
The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi Weller, trustee to sell the real estate of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, OCTOBER 31st, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
SIMON P. EBY, Auditor.  
oct13

**Estate of BENJAMIN G. ALDERFER, late of East Earl twp., Lancaster Co., dec'd.**  
The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin E. Stauffer, executor, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 30th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
EUGENE G. SMITH, Auditor.  
oct6

**Estate of JAMES A. GONDER, one of the heirs of Abraham Gonder, late of Lancaster Co., dec'd.**  
The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster Co., Pa., to distribute the balance remaining in the hands of Alexander Harris, esq., trustee, appointed by said court, of the estate of James A. Gonder, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, NOVEMBER 2d, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. J. EBERLY, Auditor.  
oct6

**Assigned Estate of NOAH STEFFY and Wife, of Earl twp., Lancaster co.**  
The undersigned Auditors, appointed to distribute the balance remaining in the hands of Levi Weller, assignee, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 23d, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
JOHN H. FRY, }  
EUGENE G. SMITH, }  
W. F. BEYER, } Auditors.  
sep29

**Estate of PETER GARRA, late of Paradise township, Lancaster Co., dec'd.**  
The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Ranck and Jacob Denlinger, executors, of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 30th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.  
oct6 A. J. EBERLY, Auditor.

**Estate of JOHN W. MARTIN, late West Lampeter township, dec'd.**  
The undersigned Auditor, appointed to distribute the balance remaining in the hands of Elias Martin, administrator of said deceased, to among those legally entitled to the same, will sit for that purpose THURSDAY, NOVEMBER 1st, 1877, at 11 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.  
A. J. EBERLY, Auditor.  
oct6

**Estate of BENJAMIN GROFF, late of Meunt Joy township, dec'd.**  
The undersigned Auditors, appointed to distribute the balance remaining in the hands of Isaac and Leander Groff, executors, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, OCTOBER 27th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
CHAS. DENUES, }  
JNO. M. MAST, } Auditors.  
oct6

**Estate of JOHN H. HUNCHBERGER, late of Lancaster city, dec'd.**  
The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian H. Hunchberger, administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 3d day of NOVEMBER, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
oct6 GEO. M. KLINE, Auditor.

**Estate Notices.**

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**  
Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
oct20 EMMA L. SMITH, Executrix.  
THOS. B. COCHRAN, Att'y.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**  
Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.  
oct20 LIZZIE S. WICKEL, Administratrix.  
AND. M. FRANTZ, Att'y.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**  
Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.  
oct20 SAMUEL G. GENSEMER, Assignee.  
GEO. BRUBAKER, Att'y.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**  
Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
HENRY DONER, }  
DANIEL R. DONER, } Administrator.  
oct20 B. F. ESHLEMAN, Att'y.

**Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.**  
Mary A. Demmy, (widow) of Meunt Joy borough, having by deed of voluntary assignment, dated October 5th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
LEVI RICKSECKER, Assignee.  
A. F. SHENK, Att'y. Residing in Mount Joy borough.  
oct20\*

**Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.**  
Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
B. F. COX, Assignee.  
oct6] PHILIP D. BAKER, Att'y.

**Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.**  
Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
GEO. R. SENSENIG, Assignee, Residing in Lancaster City.  
GEO. M. KLINE, Att'y. [oct6

**Estate of ELIAS BEHM, late of Penn twp., deceased.**  
Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.  
EMANUEL KEENER, Administrator.  
sep29

**Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.**  
Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
BENJ. PENROSE, Assignee, Chestnut Level P. O., Lan. Co., Pa.  
oct13 J. HAY BROWN, Att'y.

**Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.**  
Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
HENRY E. MILLER, Assignee,  
OWEN P. BRICKER, Att'y. Residing in Litiz, Lancaster co., Pa.  
oct6

**Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.**  
John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, } Residing in Lancaster City.  
sep15] H. C. BRUBAKER, Att'y.

**Estate of T. R. TORR, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

sep22 MARY S. TORR, widow,  
MICHAEL HABERBUSH, Executors.  
P. D. BAKER, Att'y.

**Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep29\* CYRUS R. DOHNER, Residing in Penn twp.  
BENJAMIN R. DOHNER, Residing in Warwick twp.  
Administrators.

**Estate of MICHAEL KREIDER, late of Pequea township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep23\* AMOS S. KREIDER,  
ANDREW MEHAFFY, Executors.  
P. D. BAKER, Att'y.

**Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

sep22\* ANNA MARY STROUSE,  
SAMUEL EBY, Executors.

**Estate of JACOB AUMENT, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep22\* ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT, Executors.  
P. D. BAKER, Att'y.

**Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.**

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ERB, Assignee,  
Penn twp., Lancaster co., Pa.  
OWEN P. BRICKER, Att'y. [sep15]

**Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd,) late of Brecknock twp., Lancaster co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

sep15 E. BILLINGFEIT,  
Surviving Executor.

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

WM. AUG. ATLEE, NOAH SWARTLEY,  
sep1\* Att'y. JONAS SWARTLEY,  
Administrators.

**Estate of JACOB G. SWARR, late of Sporting Hill, Rapho twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Sporting Hill.

OWEN P. BRICKER, ALICE A. SWARR,  
sep1 Att'y. Administratrix.

**Estate of HENRY ZIMMERMAN, late of East Hampfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

sep22 HIRAM W. GRAYBILL,  
LEAH ZIMMERMAN,  
GEORGE BINGAMIN, Administrators.  
GEORGE BRUBAKER, Att'y.

**Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.**

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

J. I. HARTMAN, Assignee,  
Residing in Lancaster City.  
sep15] P. D. BAKER, Att'y.

**Estate of MARTIN GROSS, late of Ephrata twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the City of Lancaster, Pa. Office, No. 59 North Duke-st.

aug25 J. L. STEINMETZ, Administrator.

**Estate of JOHN B. BITZER, late of West Earl twp., Lancaster Co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.

THOS. J. DAVIS, JAMES BRYSON,  
aug25\* Att'y. Executor.

**Estate of JOHN BRENNEMAN, late of Rapho township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

HENRY F. BRENNEMAN, Executor,  
D. G. BAKER, Att'y. Residing near Mount Jay.  
aug25

**Assigned Estate of SAMUEL FRITZ and WIFE, of Lancaster City.**

Having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel Fritz, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

AUGUSTUS GROEZINGER, Assignee,  
aug18 M. BROSIUS, Att'y. Lancaster, Pa.

**Estate of SARAH DANCE, late of West Lampeter twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in West Lampeter twp.

SHENK & LEAMAN, LIZZIE F. SIDES,  
aug19 Att'ys. Executrix.

**Assigned Estate of WILLIAM H. POOL and Wife, of the City of Lancaster, Pa.**

Wm. H. Pool and Wife, of Lancaster city, having by deed of voluntary assignment, dated Aug. 13, 1877, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said William H. Pool, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN P. WEISE, Assignee.  
J. HAY BROWN, Att'y. [aug25]

**Estate of DR. H. E. MUHLENBERG, late of Lancaster City, dec'd.**

Letters of administration, with will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

aug11 MARY E. MUHLENBERG, Administratrix.  
J. HAY BROWN, Att'y.

**Estate of S. W. P. BOYD, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

SAM'L BOYD, Chestnut Level P. O.  
aug4 JERE. B. BOYD, Peters Creek P. O.  
J. HAY BROWN, Atty. Administrators.

**Estate of SAMUEL LESHER, late of East Calico twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

EDW. LESHER, East Earl twp.  
EPH'M S. LESHER, Brecknock twp.  
aug4\* Executors.

**Estate of CHRISTIAN HEISTAND, sr., late of East Hempfield twp., deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

HENRY HOFFMAN,  
CHN. K. LONG,  
N. ELLMAKER, } Att'ys. SAM'L HEISTAND, Executors.  
H. B. SWARR. }

**Estate of STEPHEN BROWN, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

HEZEKIAH BROWN,  
ROBERT WARDEN, Administrators.  
aug8 J. W. JOHNSON, Att'y.

**Estate of ISAAC WEILER, late of Providence twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, JOHN STROHM, Jr.,  
y21\* Att'y. Administrator.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, NOVEMBER 19th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

oct6 CASPER DITTMAN.

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# The Lancaster Bay.

VOL. IX.

LANCASTER, PA., SATURDAY, OCTOBER 27, 1877.

No. 22.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation; or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	3:40 a. m.	3:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy,	11:20 a. m.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:29 a. m.	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	11:30 p. m.	12:45 a. m.
EASTWARD.		LEAVE LANCASTER.	ARRIVE PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Quarryville,	6:50	7:50	2:30
Lancaster—West King Street,	8:00	9:16	3:35
Lancaster—Upper Depot,	8:10	9:30	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:36	5:30	8:10
Lancaster—West King Street,	9:45	5:40	8:20
Quarryville, (arrive)	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	13:55	3:45
Lancaster Junction,	8:37	1:35	4:11
Reading, (arrive)	10:20	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:13	1:20	7:45
Lancaster—Upper Depot,	9:36	2:00	8:10
Lancaster—West King Street,	9:45		8:20

### Columbia and Port Deposit Railroad.

Passenger trains on this road run as follows:

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45
GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
**Chief Justice**—Morrison R. Waite, of Ohio, 1874  
**Justices**—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
**Attorney General**—Charles E. Devens.

**Supreme Court of Pennsylvania.**

**Chief Justice**—Daniel Agnew.  
**Associate Justices**—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
**Attorney General**—George Lear.  
**Prothonotaries:**

**Eastern District**—Benj. E. Fletcher, Philadelphia.  
**Western District**,—J. B. Switzer, Pittsburgh.  
**Middle District**—Robert Snodgrass, Harrisburg.  
**Northern District**—J. A. J. Cummings, Montandon, Northumberland county.  
**Reporter**—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

**President Judge**—John B. Livingston.  
**Additional Law Judge**—David W. Patterson.  
**Associate Judge**—John J. Libhart.  
**District Attorney**—J. W. Johnson.

**County Officers.**

**Prothonotary**—Lewis S. Hartman.  
**Deputy**—Wm. E. Kreider.  
**Clerks**—P. E. Slaymaker and Thos. B. Hartman.  
**Register**—Harrison Ross.  
**Deputies**—W. M. Slaymaker and C. H. Fasnacht.  
**Recorder**—Samuel S. Martin.  
**Deputy**—Benj. Bauman.  
**Clerks**—Geo. R. Sensenig and M. O. Sensenig.  
**Sheriff**—Henry N. Breneman.  
**Deputies**—Jno. D. Wilson and G. W. Benedict.  
**Clerk of Orphans' Court**—Samuel L. Kauffman.  
**Clerk of Quarter Sessions**—Stephen S. Clair.  
**Deputy**—B. F. W. Urban.  
**Commissioners**—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
**Clerk**—John M. Grider.  
**County Solicitor**—J. Hay Brown.  
**County Treasurer**—Henry S. Eberly.  
**Clerk**—Amaziah C. Barr.  
**Coroner**—Amos Groff.  
**County Surveyor**—M. N. Brubaker.  
**County Auditors**—N. N. Hensel, A. Konigmacher and H. S. Kerna.

**City Officers.**

**Mayor**—Wm. D. Stauffer.  
**Solicitor**—Robert M. Agnew.  
**Recorder**—Walter G. Evans.  
**Aldermen**—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
**Chief of Police**—Phillip L. Sprecher.  
**Treasurer**—Edw. Welchans.  
**Civil Engineer**—Francis S. Burrowes.  
**Street Commissioner**—Charles Schwebel.

THE LANCASTER BAR

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COURT CALENDAR.--1877.

NOVEMBER.

9. Last day for issuing Writs to November Term.  
 16. Last day for filing Accounts to December Court.  
 17. Argument for Rules of Affidavit of Defense.  
 19. Last day for issuing Executions to November Term.  
 24. Calling Judgment Docket.

DECEMBER.

7. Last day for issuing Writs to December Term.  
 8. Last day for setting down causes for Argument Court.  
 15. Argument for Rules of Affidavit of Defense.  
 22. Last day for filing Accounts to January Court, 1878.  
 22. Calling Judgment Docket.  
 29. Last day for setting down causes for trial for January Court, 1878.

**Divorce Notices.**

DELILAH ROCKAFELLOW, } Alias Subpœna for Divorce  
 by her next friend }  
 Frederick Fry, } September Term, 1877.  
 vs. }

AND D. ROCKAFELLOW. ) No. 23.

To AND D. ROCKAFELLOW.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 19th day of NOVEMBER, 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Delilah Rockafellow should not be divorced from the bonds of matrimony contracted with you.  
 oct13 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, October 13th, 1877.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, NOVEMBER 19th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.  
 oct6 CASPER DITTMAN.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
 LANCASTER, PA.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE—No. 32 NORTH DUKE STREET,  
 LANCASTER, PENNA.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., OCT. 27, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

DAVID ROTH and PETER BECKER, executors of the last will and testament of JACOB ROTH, dec'd, against GEORGE STEFFE.

A concurrence of jurisdiction does not imply an authority to transfer a suit commenced in one court to another.

The plaintiffs having improperly transferred a suit from the court of common pleas to the district court, a non-suit in the latter suffered by them was at their instance set aside, on account of its being illegally transferred, and the proceedings were remanded to the court of common pleas.

But the motion to set aside was granted on payment of costs by the plaintiffs.

The motion to set aside the non-suit was an appeal to the discretion of the court, and the question in such a case always is—what does justice require?

The taxation of costs by the prothonotary is an *ex parte* proceeding, without any evidence besides the subpoenas and the affidavit of the party. It may be corrected by the court in exceptions filed by the adverse party.

This was an action of assumpsit brought on generally in the court of common pleas, and transferred to the district court on the 9th May, 1823. It came on for trial in this court on the 22d February, 1828, and when several witnesses had been examined on each side and the testimony was closed, the plaintiffs' counsel suffered a non-suit. Soon afterwards, at the same term, he moved to set aside the non-suit that the cause might be remanded to the common pleas, discovering that it had been improperly removed thence without any certificate of the attorney by whom it was transferred, to ascertain the amount in dispute, which did not, in fact, exceed \$300, although the acts of assembly in such cases required, in order to authorize a transfer from the court of common pleas to the district court, that the amount in controversy should exceed that sum, and that the attorney of the party removing the cause should certify on the præcipe his belief as to the amount.

The motion was resisted on the part of the defendant, for whom it was contended that as the act of the 10th March, 1823, sec. 6, Pamph. L. 66, gave this court the same power, authority and jurisdiction as the court of common pleas possessed; it had general jurisdiction over the present cause, when it was once in court here, without regard to the manner in which it was transferred.

The Court, (BRADFORD, President, and HAYES, J., sitting) after reviewing the several acts of assembly relating to the matter, came to the conclusion that the cause (for the rea-

son above mentioned) had been illegally removed from the common pleas, and that the district court had no jurisdiction over it.

With respect to the position of the defendant's counsel, in support of the jurisdiction, the court remarked that the fallacy of the argument was evident from the consideration that the same reasoning would prove that parties might transfer causes from this court into the court of common pleas. The manifest intention of the act was to enable plaintiffs to bring their suits in either court, at their option, without regard to the sum in controversy; but a concurrence of jurisdiction was never understood to imply the authority of removing causes already commenced from one court into the other. The eighth section of the act of 1823 plainly shows that the legislature did not intend by investing the district court, in the sixth section, with the same powers, jurisdiction, etc., as were vested in the common pleas, to alter or supply that part of the original act which provides for transferring causes from the latter to the former court; otherwise the eighth section, which extended the time for transferring causes, under the provisions of the act of 1820, from the court of common pleas to the district court, would have been wholly superfluous. It was, therefore, clear that the proper steps had not been taken to divest the common pleas of their jurisdiction over this cause, or to vest that jurisdiction in this court. The third reason (that above stated) for setting aside the non-suit, was deemed to be fully sustained, and it was ordered that the same be set aside on payment of costs by plaintiffs, and the cause was remanded to the court of common pleas.

Mr. Champneys for the plaintiffs.

Mr. Wm. Hopkins and Mr. I. Hopkins for the defendant.

The defendant having prepared his bill of costs, and the same being taxed by the prothonotary, the plaintiffs filed exceptions thereto, and, in the argument which ensued, complained of the terms upon which the non-suit had been set aside. The grounds of this complaint, as well as of the exceptions, will sufficiently appear in the following opinion of the court which was delivered by—

HAYES, J. As the plaintiffs have complained of the terms upon which their motion for setting aside the non-suit was granted, the court will, previously to the consideration of the exceptions, which are strictly the only matter before us, state the grounds on which those terms were imposed. When this cause was reached, at the February term, both parties professed themselves prepared and ready for the trial. The trial accordingly began and proceeded regularly for two days, during which the plaintiffs' counsel examined four witnesses and read two depositions, and the defendant's counsel examined seven witnesses. The testimony was then formally announced as being closed. The cause was now at that stage when the counsel proceed to sum up to the jury, and the plaintiffs' counsel voluntarily suffered this non-suit, which he afterwards moved to set aside, because the action had been improperly transferred by

his own clients into the district court. The plaintiffs' complain: 1. That this court, by laying them under terms, have burdened them with a hardship they ought not to bear—that the non-suit should have been set aside without costs; 2. That the court had no authority to impose such terms; and 3. That they should not have been imposed, since the defendant did not ask it of the court.

1. From the evidence in the cause it was very clear that the plaintiffs had not the least chance of a verdict. They proceeded to lay their claim and the testimony in support of it before the court and jury; the defendant proceeded in like manner with his defence, and not before the whole case was thus examined and investigated was the non-suit suffered. The court could not help perceiving that the testimony preponderated most strongly against the demand, and therefore approving the plaintiffs' determination not to prosecute the suit further. When they afterwards moved to set aside this non-suit the court felt bound to grant the motion, not because the plaintiffs were entitled, in point of justice, to have a new investigation of the merits, but for this that the cause was improperly and illegally brought, as they alleged and showed, into the district court. The plaintiffs had taken the non-suit because they found it perfectly useless to proceed further. They moved to set it aside on account of their own mistake in transferring the cause. It was not alleged or pretended that there was any fault on the side of the defendant. He had made no mistake—had committed no error. The court, therefore, considered that in setting the non-suit aside at the instance of the plaintiffs the defendant ought to be protected; that if the plaintiffs chose to proceed in the court of common pleas, to which the cause was remanded, the defendant ought not to pay, even in case of an ultimate recovery, any costs except those of that court in which the suit was brought and ought to have been prosecuted; that, in short, the plaintiffs should have no further advantage by their motion than the saving of the error in proceeding before an improper jurisdiction, and of the statute of limitations, which might probably have barred a new suit for the same cause of action.

If a plaintiff misconceive his action he may become non-suited or discontinued and begin anew; but he must pay the costs. So if he be compelled to proceed without the requisite testimony to support his demand. So if he commence his action prematurely. In none of these cases will the defendant suffer for the mistakes of his adversary. Had not the court ordered the plaintiffs in the present instance to pay the costs on setting aside the non-suit what would have been the consequence? The plaintiffs may either proceed in the common pleas or they may not. If they proceed they may lose or gain a verdict. If they choose to stop short and suffer a non-suit, or proceed and should lose the verdict in that court, the consequence would be (without such order) that although the defendant owed nothing, and had been prosecuted for a false claim, he would be subjected to the payment of nearly two hundred dollars in costs.

which he had incurred on account of the plaintiffs' mistake in transferring the cause into this court. Or suppose the plaintiffs should gain the verdict; the defendant, instead of paying the damages and costs in the court of common pleas, would be obliged to pay in addition nearly two hundred dollars costs and witness fees in the district court, without any agency in bringing the cause into this court, or the slightest advantage from its being thus transferred. Therefore the defendant would be made to suffer for the admitted fault of the plaintiffs and without any fault of his own. In point of fact all the hardship of this case falls upon the defendant, who has sustained the inconvenience of repeated attendance upon the district court, involving loss of time and his personal expenses, besides the charge of counsel fees. For this he can receive no compensation. On the other hand, whatever the plaintiffs are obliged to pay under this order is the proper result of their own mistake, and is the ordinary consequence, as we have seen, where a plaintiff chooses to stop short in his proceedings before judgment. The direction that they should pay the costs in this court was, for all of these reasons, essential to the justice of the case.

2. Whenever the discretion of the court is appealed to the question is—what does justice require? It is admitted that the application to set aside this non-suit constituted such an appeal. To say, therefore, that the court had no power to prescribe terms on setting it aside, is to deny that it has the power to do justice in the matter. The greater authority includes the less. The court could refuse to set the non-suit aside altogether, or set it aside absolutely; it can, therefore, set it aside or refuse *sub modo*—in other words, unless or provided the applicant will do what, in the opinion of the court, the justice of the case requires. The order or decision of the court was equivalent to this: the court will not set aside the non-suit unless the plaintiffs will pay the costs. Though it was anciently doubted whether the court could set aside a non-suit, upon the notion that the parties were no longer in court, I cannot discover that the authority to prescribe the payment of costs was ever doubted: 4 Burr. 1986. In 5 Bac. Ab. 140, it is said that when a judge directs a non-suit the plaintiff may move to set it aside, and generally without costs. "In some particular cases, however, there may be reasons sufficient to induce the court to refuse to set aside the non-suit, unless the plaintiff will pay the costs." It is conceded that the court had power to make the plaintiffs pay the costs of the trial term—the defendant's bill for which amounts to \$58.30; but on what principle it could compel them to pay those costs, and could not compel them to pay the costs of the other terms, I cannot conceive. The concession in yielding a part gives up the whole objection: 2 Tidd's Pr. 891-3; 1 Tidd's Pr. 415.

3. To the third objection the reply of the defendant's counsel is a sufficient answer. They did not ask that terms should be imposed because they resisted the motion altogether. They did not desire it to be granted on terms;

they opposed the granting of it at all in any shape. Judges will generally be enlightened by the research and ingenuity of counsel; but they must after all decide upon their own views and investigations. Their duty being to administer justice according to law, if counsel were inadvertently to omit asking what their client was entitled to demand in these summary proceedings, the court would unquestionably be bound to award it to him notwithstanding the omission: *Vide* Street vs. Hopkinson, 2 Str. 1055; 4 East. 508.

Upon an examination of the bill of costs taxed by the prothonotary, with reference to the exceptions and the allegations and proofs relative thereto, we think the following deductions should be made, viz.: 1. September term, 1826, two days from the number of days taxed, reducing it to two for each witness. 2. September term, 1827, three days from the number of days taxed, reducing it to one for each witness. 3. December term, 1827, all the costs taxed, the plaintiffs having paid the costs of this term, as shown by the receipt exhibited.

The taxation by the prothonotary is an *ex parte* proceeding without any evidence besides the subpoenas and the affidavit of the party. The subpoenas show nothing as to the number of days the witnesses attended. In regard to that there is nothing here but the recollection of the party who has proved somewhat *infirm* in that particular. As to September term, 1826, Peter Good and George Stover both swear that they attended court that year as witnesses in this case but *two* days. There were very important and material witnesses for the defendant, as appears from the notes of their testimony, and it is by no means probable that they would have left court before the plaintiffs' witnesses were discharged. With respect to September term, 1827, Peter Good says he attended but *one* day, and the inference from that fact is corroborated by circumstances. George Stover did not attend at that term though subpoenaed.

Mr. Slaymaker, plaintiffs' counsel, had died the preceding vacation, and Mr. Evans, whose name is marked, does not appear to have taken charge of the case, nor has he been since concerned in it. His name was probably marked on the list by mistake. In relation to December term, 1827, their being nothing to impeach the receipt it is considered as a full acquittance for the whole amount.

#### SUPREME COURT OF PENNSYLVANIA.

##### A. H. BRINKS vs. HEISE & KAUFFMAN.

In regular order, cross-examination concerning a paper should be closed, before the paper offered is read; however, the whole subject is within the discretion of the court.

Facts illustrating the relations and conduct of the parties are relevant and competent to sustain the charge of fraud.

Error to the Court of Common Pleas of Lancaster County.

*H. M. North* for plaintiff in error.

*J. F. Freuauff* and *S. P. Eby* for defendants in error.

Opinion by WOODWARD, J. October 1st, 1877.

It is not apparent how any hazard of mistake or injury was incurred by the permission given to recall Frank P. Day for cross-examination. He was the subscribing witness to the agreement between Reynolds, Brinks and Baldwin, and the question put to him was whether or not payment of part of the consideration for the agreement was made at the time of the execution. In regular order, the cross-examination should have been closed before the paper was read; but its admission or rejection could have been in no manner controlled by the new evidence. Offered at any stage of the trial the effect of the paper would not be changed. The whole subject was within the discretion of the court.

At the very foundation of the case of the plaintiffs, in their attempt to fasten a fraud upon Reynolds and Baldwin, was the allegation that the sum of two thousand eight hundred and eighty-eight dollars had never been advanced by Baldwin, and that the claim for it was fabricated and baseless. Surely it was competent to show by Brinks that the fact of such an advance had not been made known to him up to the time when he bound himself conditionally to pay it in the agreement that was executed on the 29th of October, 1873. It was a fact illustrating the relations and conduct of the parties, and was relevant and competent, if there was any relevant and competent testimony throughout the cause, to sustain the charge of fraud.

Nor are the objections better founded that have been made to the portions of the charge set out in the fifth, sixth and seventh assignments of error. The jury were instructed in substance that an alleged fraud must be established, either by direct proof, or by facts to warrant a presumption of its existence clearly and conclusively proved. They were instructed also that if the assignment to Baldwin was made for the purpose of hindering and delaying the creditors of Reynolds, that fact as against the plaintiffs, who were contesting creditors, would be fatal to its validity. This was in accordance with recognized authority. Lord Mansfield said, in discharging a rule for a new trial, in *Cadogan vs. Kennett*, 2 Cooper 432: "If the transaction be not *bona fide* the circumstance of its being done for a valuable consideration will not alone take it out of the statute. I have known several cases where persons have given a fair and full price for goods, and where the possession was actually changed, yet being done for the purpose of defeating creditors, the transaction has been held fraudulent and therefore void." And it was ruled in *Ashmead vs. Heau & Maulfair*, 1 Harris 584, that a conveyance of real estate, made with the intent on the part of the vendor, known to the vendee, to delay, defeat and hinder a particular creditor from obtaining his debt, though made for a valuable and full consideration, is, as against such creditor, fraudulent and void.

In reality there is but a single significant question in this cause. Was there any evidence of the existence of a fraudulent com-

bination legitimately entitled to the consideration of the jury? On the 2d of October, 1872, A. H. Brinks, the garnishee and defendant below, entered into a written contract to grade sections 6 and 7 of the track of the Columbia and Port Deposit Rail Road Co. One-sixth of the money earned was to be retained until the completion of the contract. On the 9th of January, 1873, J. B. Reynolds entered into a sub-contract with Brinks to grade part of section 7. Brinks was to receive as his profit on the sub-let section one-half of the one-sixth of the estimates retained. Although the contract was executed in January, Reynolds did not begin his work until May, 1873, and until that time, and indeed, until the 1st of July following, remained in the service of the Union R. R. Co., in Baltimore, at a salary of one hundred dollars a month. The work was carried on by him until October, 1873, when his funds were exhausted and he had fallen into debt. Heise & Kauffman, the plaintiffs below, who had furnished him with powder, fuse and other material being among his creditors. In that month Reynolds, Brinks and Baldwin met in Philadelphia. In the course of a conversation between them Reynolds told Brinks that if he had \$1,000 he could pay off all his debts, and go on with the work without any trouble. Brinks replied that he "should not stick for a \$1,000;" and Baldwin then remarked: "If you hav'nt got the money, I have got money in bank, and I will lend it if you endorse or stand good for it." Reynolds and Baldwin went to Baltimore, and a few days afterwards Reynolds returned with a note for \$3,888 instead of \$1,000. This note Brinks refused to sign. Then the agreement of the 29th of October, 1873, was executed, by which Brinks bound himself to pay Baldwin \$1,000 absolutely, and \$2,888, (recited as "having been borrowed at previous dates,") provided that amount should be due to Reynolds on the final estimate for his work under the contract.

The plaintiffs obtained their judgment against Reynolds on the 8th of December, 1873, and issued an attachment against him, making Brinks garnishee, on 6th of February, 1874. A new arrangement, of which the plaintiffs were informed and to which they agreed, was the consequence of this attachment. Reynolds was to continue working, and Brinks was to receive the estimates and pay the wages of the men, the necessary charges for materials, and Reynolds' personal expenses. At the completion of the contract, the balance due Reynolds, if any was, according to the testimony of Brinks, "to go to or for the benefit of the creditors, whoever were entitled to it." The balance found due in the end was \$2,978.96.

In the course of the trial it was ascertained that no notes or receipts had been given for any of the sums of money which it was alleged Reynolds had received from Baldwin. The dates and amounts were obtained from a small memorandum book on one page of which they had been entered in pencil, and it was contended that their appearance indicated that all the entries had been made at

one time. Two sums of \$500 each were charged before Reynolds' work under the contract was begun. Advances to the amount of \$2,500 were charged before he relinquished his position as superintendent of the Union R. R. Co. Nothing was said of these advances in Philadelphia, when Reynolds' need of \$1,000 to pay his debts and complete his contract was explained. Brinks knew nothing of Baldwin's claim until Reynolds brought the note from Baltimore. And no notice was given to the plaintiffs of the existence of that claim when they were informed of the modification of the contract between Reynolds and Brinks. They were encouraged to suspend proceedings on their attachment by the assurance that any balance that should eventually be found due to Reynolds should "go for the benefit of his creditors." To say the least, the acts of the parties in this transaction were in a good many respects exceptional and peculiar. It is not in the usual course of business to make loans at intervals during a period of six months, amounting to a sum so significant as \$2,888, without providing some more authentic evidence of indebtedness than a pencil memorandum made by the lender and remaining undisclosed throughout a protracted negotiation for a fresh loan, for which a third person was to be security. What ought to be the effect of the evidence in relation to Reynolds' statements in Philadelphia? Was the knowledge of Baldwin's claim fraudulently withheld from the plaintiffs? Was the whole arrangement, which was consummated by the agreement of the 29th of October, 1873, a fraudulent contrivance to withdraw any balance due Reynolds on his contract from the grasp of his creditors? These were questions which only a jury could answer. They were to weigh the evidence in each detail and as a whole, and adjust its value. It has not been shown that they did not weigh it justly.

Judgment affirmed.

#### Quarter Sessions of Luzerne County.

##### COMMONWEALTH vs. MORTON.

1. The defendant was indicted under the first section of the act of 1876, for obtaining food and accommodations with intent to defraud the person furnishing the same, and after obtaining credit absconded and removed surreptitiously his baggage and property, without paying for such food and accommodations: *Held*, that under the statute of 1876 a defendant may be convicted, upon proper evidence, when it is established beyond a reasonable doubt that he removed surreptitiously his property out of any one of the places named in the statute, after obtaining credit for food or accommodations.
2. Under this statute proof of any one or more of the offenses enumerated in the first section is sufficient to convict.
3. A defendant who will eat of the bread obtained by the sweat of another man's brow must pay for it, or obtain it in an honest way, or for charity sake.

Rule for a new trial.

Opinion by HANDLEY, J. September 3, 1877.

The defendant in this case was indicted, charged under the Act of 1876, with having received food and accommodations at the

hotel of Joseph Hasler, with intent to defraud the said Hasler; and that on the 16th day of March, 1876, the said Morton did, by the use of false pretenses, obtain credit at the hotel aforesaid; that on the 9th day of June, 1876, after obtaining credit at such hotel, he absconded, and did surreptitiously remove his baggage and property therefrom. The grand jury returned a true bill as to the first and third counts. When called up for trial the defendant plead not guilty, went to trial, and was found guilty. He now moves for a new trial, and in arrest of sentence—

1. Because the law was not in operation at the time when the offense had its inception, or at the time of the commission of the offense.

2. Because the Commonwealth did not show that the notices required under the law had been put up in the hotel; and the refusal of the court to allow the defendant to show that they were not put up.

3. Because there was no evidence showing a surreptitious removal, within the meaning of the act.

4. Because the defendant testified that this action was brought to collect a debt.

5. Because the verdict was contrary to the evidence.

6. Because a gun is not baggage, within the meaning of the act.

This is the first case presented for our consideration under this act. It is provided by the first section, P. L. 1876, p. 45: "That every person who shall at any hotel, inn or boarding house receive or cause to be furnished any food or accommodations, with intent to defraud the owner or proprietor of such hotel, inn, or boarding house out of the value or price of such food or accommodations; and every person who shall obtain credit at any hotel, inn, or boarding house, by the use of any false pretenses or device, or by depositing at such hotel, inn, or boarding house any baggage or property of value less than the amount of such credit, or of the bill by such person incurred, with such fraudulent intent; and any person who, after obtaining credit or accommodations at any hotel, inn, or boarding house, shall abscond from such hotel, inn, or boarding house, and shall surreptitiously remove his baggage or property therefrom, shall, upon conviction, be adjudged guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment in the county jail for a term of not more than six months." This act was approved on the 20th of April, 1876, and the evidence shows that the defendant went to board at the place mentioned in the indictment; that he took to the hotel a trunk and a double barrel gun. The trunk contained nothing of any value; the gun was the most valuable piece of property brought to the hotel, and this was removed by the defendant on the 9th day of June, 1876, by representing he merely desired to loan it for one shot; after obtaining possession of it, the defendant never returned or offered to return the gun.

A defendant may be convicted under the first section of the act of 1876 by establishing by proof beyond a reasonable doubt, any one of the following five enumerated particulars:



1. Where the defendant receives or causes to be furnished any food or accommodations with intent to defraud the proprietor of any hotel, inn, or boarding house out of the value or price of such food or accommodations.

2. Where such defendant obtains credit by the use of false pretenses or device.

3. Where such defendant deposits any baggage or property of value less than the amount of such credit.

4. Where such defendant refuses to pay any bill incurred with such fraudulent intent. (This, of course, includes all lawful bills which may be made by any man or woman stopping at any such place as described in the act, although the accommodation furnished may not be food.)

5. Where any person who, after obtaining credit or accommodation, shall abscond and surreptitiously remove his baggage or property.

From the way this case was submitted to the jury, we are satisfied their verdict was based upon the fifth enumerated division of the first section of this act. The offence is not complete when credit is obtained, but in the language of the law, is complete after the defendant obtains credit, and then absconds and surreptitiously removes the baggage or property. Accepting this interpretation to be the correct meaning of the law, we must, therefore, overrule the defendant's first reason for a new trial.

The second section of this act provides a mode for punishing every violation thereof; but nothing in this section can be called in to assist a defendant when upon trial for the violation of the provisions of the first section. Hence, it would be out of place to admit evidence showing that the proprietor did or did not comply with the provisions of the second section of this act. It is only when such proprietor is upon trial, charged with the violation of any one or more of the offenses enumerated therein, that such evidence is pertinent, and it then becomes the duty of the Commonwealth to prove the offence charged. The defendant's second reason for a new trial is, therefore, overruled.

The defendant's third reason is based upon the assumption that the removal of the gun was not surreptitious. The evidence shows that the defendant obtained possession of the gun under representations which misled the prosecutor. Upon the trial of the case, notwithstanding the defendant was called on to testify, he failed to show why the gun was not returned, and he also failed to establish the truth of his representations when he secured possession of this property. It was left with the jury to say, from all the evidence in the case, whether his obtaining the possession was surreptitious within the meaning of the law. As this was a question of fact, under the instructions given by the court, and the jury found the defendant guilty, we have no reason to disturb their finding, and, therefore, overrule the defendant's third reason for a new trial.

The defendant's fourth and fifth reasons may be considered together. The fact that the defendant testified that this action was

commenced for the purpose of collecting a debt, does not make it so. The jury, by their verdict, must have found otherwise. What we have said concerning the defendant's third reason applies to the fifth. We, therefore, overrule the defendant's fourth and fifth reasons for a new trial.

The sixth and last exception must be overruled. This act expressly says "baggage or property." If a gun is not baggage, then it cannot be said it is not property. It is property in the eyes of the law, and comes clearly within the meaning of the act.

This law was passed to protect the rights of a meritorious class of citizens, and ought to be construed as to fully carry into effect the protection intended for such persons from the wily ways of the hungry and dishonest, who roaming at large without any respect for the rights of others, violate all laws with impunity. There is no crime but what man will commit when hunger stares him in the face; and when that is appeased, there is no more ungrateful creature at large. Parties who will eat of the bread obtained by the sweat of another man's brow must pay for it, or obtain it in an honest way, or for charity sake; otherwise, if he is discovered removing surreptitiously his property out of any such place named in the statute, after obtaining credit for food or accommodations, although such property be but a brass pin, he may be convicted and imprisoned under the act.

Rule for a new trial discharged, and the defendant is called for sentence.—*Luzerne Leg. Reg.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., OCT. 27, 1877.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since October 13, 1877:

ISRAEL R. WICKEL, dec'd, late of Earl twp.; Lizzie S. Wickel, administratrix.

CHARLES STARK, dec'd, late of Lancaster city; Maggie Stark, administratrix.

JONATHAN SPRECHER, dec'd, late of Lancaster city; Samuel Sprecher, administrator.

ELLEN QUINN, dec'd, late of Lancaster city.; Rosanna Moran, administratrix.

ABRAHAM WEIDMAN, dec'd, late of Upper Leacock twp.; Henry Barr, administrator.

ARTHUR QUINN, dec'd, late of Lancaster city; D. A. Altick, administrator with will annexed.

ABRAHAM WEIDMAN, dec'd, late of Upper Leacock twp.; Henry Barr, administrator.

HENRY W. GUNDAKER, dec'd, late of Lancaster city; Emma S. Gundaker, administratrix.

CATHARINE DONER, dec'd, late of East Lampeter twp.; Henry Doner and Daniel R. Doner, administrators.

MARTIN J. DENLINGER, dec'd, late of West Lampeter twp.; Martin Denlinger and John L. Landis, administrators.

JOHN WHITESIDE, dec'd, late of Colerain twp.; James Whiteside, administrator.

EMANUEL STAUFFER, dec'd, late of Manor twp.; Jacob N. Neff, administrator.

MICHAEL G. SOUDERS, dec'd late of East Lampeter twp.; A. E. Moore, administrator.

JOHN GROSS, dec'd, late of West Donegal twp.; John G. Keller, Jacob G. Keller, Samuel G. Keller, Martin G. Keller and Abraham R. Forney, administrators.

ELIZABETH NUDING, dec'd, late of Manor twp.; Christian H. Killheffer, administrator.

The following Wills have been admitted to probate since October 13, 1877:

GEORGE BROWN, late of Elizabethtown bor.; Emanuel Brown, executor.

FREDERICK SMITH, late of Lancaster city; Emma L. Smith, executrix.

LEONARD ROCKEY, late of Sadbury twp.; Leonard H. Rockey and John A. Rockey, executors.

PETER MUMMA, late of West Hempfield twp.; Frederick M. Mumma and Andrew Mumma, executors.

SUSANNA RICKERT, late of Elizabethtown bor.; Geo. Bryod, executor.

#### SHERIFFS' OFFICE.

On Tuesday, November 13th, 1877, H. N. Breneman, sheriff, will sell at the Court House, in the city of Lancaster, the following real estate, viz:

A tract of land, near the village of Georgetown, in Bart twp., containing 45 acres, on which are a two-story frame dwelling house, with one and a half-story frame building attached; frame barn, with wagon shed and corn cribs attached; one-story log tenant house, &c. As the property of Charles McKee.

A lot of ground, No. 333 West James street, Lancaster city, fronting 19 ft., more or less, on said street, and extending southward 64 feet 4½ inches, on which are a two-story brick dwelling house, with a two-story back building, &c. As the property of B. Frank Eberly.

Four lots of ground, in the borough of Columbia. No. 1, situated on South Ninth st., containing in front on said street 40 ft., more or less, and extending in depth 207 ft., more or less; No. 2, situated on south side of Barber st., fronting 21 ft., more or less, on said street, and extending in depth 193 ft., more or less, to a public alley, on which are a two-story frame dwelling house, &c.; No. 3, situated on the northwest corner of Eighth and Locust sts., containing in front on Locust st. 121 ft., more or less, and extending in depth 190 ft., to alley H; No. 4, situated on the north side of North Second st., fronting on said street 20 ft., more or less, and extending in depth 160 ft., more or less, to an alley, on which are a two-story brick dwelling house, with a two-story brick kitchen attached, &c. As the property of Thomas & Mason and Herbert Thomas.

A tract of land (being an island) in the Susquehanna river, situated in Manor twp., containing 54 perches, more or less, on which is a stone battery, used as a fishery. As the property of Daniel Shultz.

A lot of ground on the north side of West Walnut st., Lancaster city, containing in front on said street 21 ft., and extending in depth, along a public alley, 100 ft., more or less, on which are a two-story frame dwelling house, a two-story frame kitchen attached, &c. As the property of Jacob Isenberger, with notice to John Obreiter, assignee.

Two lots of ground in the borough of Mount Joy—No. 1, fronting 55 ft., more or less, on Main st. and extending depth 165 ft., more or less, to Appletree alley, &c., on which are a two-story part brick and part frame hotel and dwelling house (known as the Exchange hotel), frame back building attached, ice

house, &c.; No. 2, fronting on north side of Main st. 100 ft., more or less, and extending in depth 180 ft., more or less, to Appletree alley, on which are a frame barn, &c. Also two lots of ground in East Donegal twp., on the Marietta and Mount Joy turnpike—No. 3, containing one acre, more or less, on which are a two-story log hotel and dwelling house (known as the Half-way house), blacksmith shop, stable, &c.; No. 4, opposite No. 3, and containing 1/4 acre, more or less, on which are a two-story frame dwelling house, frame kitchen attached, frame stable, &c. As the property of Mary A. Demmy.

A lot of ground in the village of Schoeneck, West Cocalico twp., containing 17 1/2 perches, on which are a two-story frame dwelling house, one-story frame kitchen and one-story frame weaver shop attached, &c. As the property of John L. Bechtel.

A lot of ground in Columbia bor., between Front st., and Susquehanna river, and Locust and Union sts., containing in front on said Front st. 75 ft., more or less, and extending 300 ft., more or less, to the Susquehanna river, on which are lumber sheds, &c. As the property of John Peart.

A tract of land in Eden twp., containing 7 acres and 14 perches, more or less, on which are a one and a half-story log weatherboarded dwelling house, with basement and cellar, log weatherboarded barn, corn crib, &c. As the property of Eliza Myers and Augustus T. Myers, her husband.

A tract of land in Paradise twp., on the road from the smelting works to Gap, containing one acre, more or less, on which are a two-story frame dwelling house, &c. As the property of Joseph Bryson.

Two lots of ground on Front st., in the borough of Marietta. No. 1, containing on said Front st. 115 ft., more or less, and extending in depth 75 feet, more or less, to the canal, on which are a large two-story frame hotel and dwelling house, ice house, coal shed, &c.; No. 2, fronting 55 ft., more or less, on said Front st., and extending in depth 210 ft., more or less, to an alley, on which are a one-story frame dwelling with basement, &c. As the property of Hiram Casel.

**COURT PROCLAMATION.**

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIEHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN NOVEMBER, (19th,) 1877.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of October, 1877.  
oct27 H. N. BRENNEMAN, Sheriff.

**INCORPORATION NOTICE.**

Notice is hereby given that the "Lancaster County Mutual Live Stock Insurance Company" have applied to the Court of Common Pleas of Lancaster county for an amendment to their charter, which has been examined by said court and will be presented for final confirmation on MONDAY, NOVEMBER 19, 1877, at 10 o'clock, a. m. prior to which time all persons objecting to such amendment must file their objections.

**Auditors' Notices.**

**Estate of ABRAHAM GOSS, late of Providence township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Joseph B. Erb, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, NOVEMBER 17th, 1877, at 10 1/2 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
SIMON P. EBY, Auditor.  
oct27

**Estate of JOSEPH LANDIS, late of Ephrata township, dec'd.**

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to distribute the balance remaining in the hands of Harriet Landis, administratrix of said deceased, arising from the sale of the estate, owned by the decedent, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, NOVEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
WM. S. AMWEG, Auditor.  
oct27

**Estate of ELIZABETH SALBACH, late of West Hempfield twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Wisler, administrator of said Elizabeth Salbach, dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, NOVEMBER 20th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. D. NORTH, Auditor.  
oct27

**Estate of SUSAN LAWHEAD, late of West Hempfield twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Wisler, administrator of the said Susan Lawhead, dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, NOVEMBER 20th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. D. NORTH, Auditor.  
oct27

**Estate of SAMUEL CHARLES, late of Pequea township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian B. Mylin and Eli K. Mylin, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, NOVEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
WALTER M. FRANKLIN, Auditor.  
oct20

**Estate of JACOB YEIDER, late of Conestoga twp., Lancaster county, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian Good, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, NOVEMBER 3d, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
THOS. B. COCHRAN, Auditor.  
oct13

**Estate of JAMES A. GONDER, one of the heirs of Abraham Gonder, late of Lancaster Co., dec'd.**

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster Co., Pa., to distribute the balance remaining in the hands of Alexander Harris, esq., trustee, appointed by said court, of the estate of James A. Gonder, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, NOVEMBER 2d, 1877, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. J. EBERLY, Auditor.  
oct6

**Estate of THOMAS BRYON, late of East Earl twp., Lancaster county, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Levi Weiler, trustee to sell the real estate of said deceased, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, OCTOBER 31st, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
oct13 SIMON P. EBY, Auditor.

**Estate of BENJAMIN G. ALDERFER, late of East Earl twp., Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin E. Stauffer, executor, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 30th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
oct6 EUGENE G. SMITH, Auditor.

**Estate of PETER GARBA, late of Paradise township, Lancaster Co., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Rauck and Jacob Denlinger, executors, of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, OCTOBER 30th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House in the City of Lancaster, where all persons interested in said distribution may attend.  
oct6 A. J. EBERLY, Auditor.

**Estate of JOHN W. MARTIN, late West Lampeter township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Elias Martin, administrator of said deceased, to among those legally entitled to the same, will sit for that purpose THURSDAY, NOVEMBER 1st, 1877, at 11 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.  
oct6 A. J. EBERLY, Auditor.

**Estate of BENJAMIN GROFF, late of Mount Joy township, dec'd.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Isaac and Leander Groff, executors, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, OCTOBER 27th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
CHAS. DENUES, JNO. M. MAST, Auditors.  
oct6

**Estate of JOHN H. HUNCHBERGER, late of Lancaster city, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian H. Hunchberger, administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 3d day of NOVEMBER, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
oct6 GEO. M. KLINE, Auditor.

**Estate Notices.**

**Estate of JOHN WHITESIDE, late of Colerain township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township.  
oct27 JAMES WHITESIDE, Administrator.  
S. H. RETNOLDS, Att'y.

**Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown.  
oct27 EMANUEL BROWN, Executor.

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARTIN DENLINGER,  
West Lampeter township.  
JOHN L. LANDIS,  
East Lampeter township,  
Administrators.  
oct27  
Wm. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

EMMA L. SMITH,  
Executrix.  
oct30  
Thos. B. COCHRAN, Att'y.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.

LIZZIE S. WICKEL,  
Administratrix.  
oct20  
AND. M. FRANZ, Att'y.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.

SAMUEL G. GENSEMER,  
Assignee.  
oct30  
GEO. BRUBAKER, Att'y.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY DONER,  
Administrator.  
oct20  
B. F. ESHLEMAN, Att'y.

**Assignee ate of JACOB FOOSE and WIFE, of Lancaster city.**

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

B. F. COX,  
Assignee,  
oct6] PHILIP D. BAKER, Att'y.

**Estate of ELIAS BEHM, late of Penn twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

EMANUEL KEENER,  
Administrator.  
sep29

**Estate of MICHAEL KREIDER, late of Pequea township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned d.

AMOS S. KREIDER,  
ANDREW MEHAFFY,  
Executors.  
sep22\*  
P. D. BAKER, Att'y.

**Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.**

Mary A. Demmy, (widow) of Mount Joy borough, having by deed of voluntary assignment, dated October 5th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI RICKSECKER,  
Assignee.  
oct20\*  
A. F. SHENE, Att'y.  
Residing in Mount Joy borough.

**Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.**

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. R. SENSENIG, Assignee,  
Residing in Lancaster City.  
oct6  
GEO. M. KLINE, Att'y.

**Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.**

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. PENROSE, Assignee,  
oct13 Chestnut Level P. O., Lan. Co., Pa.  
J. HAY BROWN, Att'y.

**Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.**

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

HENRY E. MILLER,  
Assignee,  
oct6  
OWEN P. BRICKER, Att'y.  
Residing in Litz, Lancaster co., Pa.

**Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.**

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.  
sep15] H. C. BRUBAKER, Att'y.

**Estate of F. R. TORR, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY S. TORR, widow,  
MICHAEL HABERBUSH,  
Executors.  
sep22  
P. D. BAKER, Att'y.

**Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

ANNA MARY STROUSE,  
SAMUEL EBY,  
Executors.  
sep22\*

**Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

CYRUS R. DOHNER,  
Residing in Penn twp.  
BENJAMIN R. DOHNER,  
Residing in Warwick twp.  
Administrators.  
sep29\*

**Estate of JACOB AUMENT, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT,  
Executors.  
sep22\*  
P. D. BAKER, Att'y.

**Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.**

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ERB, Assignee,  
Penn twp., Lancaster co., Pa.  
oct15  
OWEN P. BRICKER, Att'y.

**Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd,) late of Brecknock twp., Lancaster co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

E. BILLINGFELT,  
Surviving Executor.  
sep15

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

WM. AUG. ATLEE, NOAH SWARTLEY,  
Att'y. JONAS SWARTLEY,  
Administrators.  
sep1\*

**Estate of HENRY ZIMMERMAN, late of East Hempfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HIRAM W. GRAYBILL,  
LEAH ZIMMERMAN,  
GEORGE BINGAMIN,  
Administrators.  
sep22  
GEORGE BRUBAKER, Att'y.

**Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.**

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

J. I. HARTMAN, Assignee,  
Residing in Lancaster City.  
sep15] P. D. BAKER, Att'y.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, NOVEMBER 3, 1877.

No. 28.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

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Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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WM. H. ROY,  
No. 16 South Queen-st., Lancaster, Pa.

## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy,	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:30 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:38 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,	6:50	7:50	2:30
Lancaster—West King Street,	8:00	9:16	3:35
Lancaster—Upper Depot,	8:10	9:30	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:36	5:30	8:10
Lancaster—West King Street,	9:45	5:40	8:20
Quarryville, (arrive)	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:37	1:35	4:11
Reading, (arrive)	10:20	3:20	5:50

  

LEAVE.	GOING SOUTH.		
	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:13	1:20	7:45
Lancaster—Upper Depot,	9:36	2:00	8:10
Lancaster—West King Street,	9:45		8:20

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45

  

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jes. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweitzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
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NOVEMBER.

- 9. Last day for issuing Writs to November Term.
- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 23. Last day for filing Accounts to January Court, 1878.
- 23. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., NOV. 3, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

### WILLIAM RICE *against* JOHN STACY.

A motion for a rule on the plaintiff to show his cause of action where the *capias* was returnable on the 2d February, was too late on the 3d March ensuing.

The motion to show cause of action ought to be made before the expiration of the six weeks during which the bail bond can not be sued.

It seems it ought to be made before the last day of the term to which the writ is returnable.

The court may, however, reduce the amount of bail, though the motion be not in time, if the sum in the bail bond be deemed too large.

The object of special bail being to secure to the plaintiff the amount of his debt and costs, any sum beyond what will afford a liberal security to that extent, is oppressive.

This was an action of slander on which a *capias* was issued on the 16th of December, 1828, returnable to the February term, 1829. Bail was demanded in \$2,000, and the defendant being arrested entered into a bond to the sheriff in that amount. On the 31st March, 1829, the court, on motion of Mr. Champneys granted a rule on the plaintiff to show his cause of action and why the defendant should not be discharged on common bail; returnable on the first day of next term, with notice to Mr. Wm. Hopkins, plaintiff's counsel, at bar. This rule was called up for argument on the 11th June, when the plaintiff's counsel stated, as the ground of his objection that the motion was not in time and cited *Borger vs. Searle*, 2 Dall. 110.

Mr. Champneys for the defendant, referred to the rules of the District Court of Philadelphia, and remarked that in the case of *Borger vs. Searle* it does not appear what the cause of action was, and at any rate the power of the court was not denied. The action was probably on a contract, and bail was of course. The case appears to have been little debated in the Supreme Court, and is loosely reported. In the present case, the bail is not of course, and can only be sustained by a special affidavit. There is no rule adopted by this court upon the subject; the matter is within the discretion of the court, and will be determined upon its circumstances. In the case of *Shraeder vs. Morrison*, 1 Binn. 291, the rule, with respect to the time of making the application, was relaxed on account of the peculiar situation and circumstances of the party. The affidavit of Wm. Rice, the plaintiff, sworn to on the 8th of June, is vague and indefinite, whereas, it "should be clear, certain and correct in the language in which it is drawn." 1 Sell Pr.

109. It does not affirm that the defendant said "he swore lies in court in that cause or action," nor specify any particular cause in which the plaintiff was declared by the defendant to have sworn falsely. With respect to the allegation made by the defendant in the Methodist meeting, they were entirely justifiable: *McMillan vs. Birch*, 1 Binn. 178. No special damage is proved or alleged, and unless this be done, or the words spoken impute a crime of a gross nature, the court uniformly discharges the defendant on common bail: *McCawley vs. Smith*, 4 Yeates 193.

Is there a case in which our courts have held to bail in slander, except where special damage has been sworn to? Here too the amount of bail is excessive. Nothing of the character of the plaintiff, his standing or circumstances has been shown. In the absence of all such information the defendant is held to bail in the large sum of two thousand dollars.

Mr. Wm. Hopkins for the plaintiff.

The *capias* was returnable on the 2d of February, 1829, and the motion was not made until the 31st of March ensuing, consequently more than six weeks had elapsed, and the bond became forfeited. The case cited from 2 Dall. 110, is in point; indeed the present is a stronger case against the defendant than that, for there the motion was made in the term to which the writ was returnable, but was still held to be too late. There was no particular rule of the Supreme Court then existing with respect to the application for a discharge on common bail. The decision was founded upon convenience and the general practice. As to the rules of the Common Pleas and District Court of Philadelphia, which have been referred to, they have no application here. In *Shraeder vs. Morrison* the court relaxed the rule, it is true, but on what grounds? Because the defendant had been confined in jail, and had no counsel until after the expiration of the first week of the term. But there are no circumstances to take this case out of the rule established by the decision in *Borger vs. Searle*.

The affidavit of the plaintiff is sufficiently certain and specific. It cannot be misunderstood. The words uttered by the defendant constitute an actionable slander, and the distinction between such words and those which are not actionable *per se* is material in regard to the sufficiency of affidavits to hold to bail. With respect to the latter description, which will not sustain an action unless special damage is proved, it is reasonable that greater exactness of specifications should be required in the affidavit, than when the words charged are clearly actionable: *Charles vs. Holden*, 1 Binn. 297. In relation to what was said of the sum in which bail has been demanded, the court may, undoubtedly, reduce it if it be thought too high, though I do not believe it will, when the grossness of the slander is considered.

HAYES, J. By a rule of this court we are referred to the English books of practice to ascertain when bail is of course and when it is discretionary. According to these authorities, bail, in the action of slander, is never of

course. When, in England, a plaintiff in such a case wishes to hold to bail he obtains on a full affidavit of the facts, a judge's order for that purpose; and it is not usual to grant an order in this action, unless special damage has been sustained, or the words charge the plaintiff with gross crime, or the defendant is about to quit the kingdom. In some of our courts an affidavit of the cause of action, wherever damages only are sought to be recovered, is required to be filed on the issuing of the *capias*.

The District Court of Philadelphia has adopted a rule that "no bail shall be required in action of trespass *vi et armis*, in actions for libel, or actions for slanderous words, conspiracy or false imprisonment, without a previous affidavit of the cause of action be made and filed upon the issuing of the writ."

But the general practice in this State is for the plaintiff to issue his *capias* without a previous affidavit, and if the defendant think himself aggrieved, he, either by application to a judge before the return of the writ, or the court in term, calls upon the plaintiff to show his cause of action, and why he should not be discharged on common bail. On application to a judge, according to our rule, he issues his citation, appointing a convenient time and place for the hearing.

We have no rule prescribing the time when this court is to be moved for a rule to show cause of action. The Supreme Court, in the case of *Borger vs. Searle*, 2 Dall. 110, decided that such a motion must there be made before the last day of the term to which the *capias* was returnable. The application, they said, ought to be made on the first day, or at least within a reasonable period after the commencement of the term. It does not appear that at the time of this decision any specific rule on the subject existed in the Supreme Court. That case, if not an obligatory authority, furnishes at least a very respectable guide to us on the present occasion.

The writ in this suit was returnable to the February term. According to our rules the bail bond cannot be put in suit until six weeks after the return day, which, in this instance, was the 2d of February.

But the present motion was not made during the February court, nor was it made within the six weeks allowed to the defendant after the return day, to put in special bail; it was not made until the 31st of March. I am, therefore, constrained to say it was not in time. The applicability of *Borger vs. Searle* is denied, however, on the ground that the action in that case was founded on contract, and that slander will not authorize the defendant's arrest, except only where special damages are stated in the plaintiff's affidavit. From the report of the case we cannot tell what the particular cause of action was. But had it been slander (if it was not) the decision, I apprehend, would have been precisely the same. In the case of *Jack vs. Shoemaker*, 3 Binn. 280, which was an action of slander, the Supreme Court, on motion of the defendant supported by affidavit, refused to quash a *capias* issued against him, though he was a freeholder, and they ruled in accordance with

a long subsisting practice, that writs of *capias* may issue in all cases without exception, even against freeholders, who neglect to put in special bail after demand. Judge YEATES, whose knowledge of the practice in Pennsylvania was not surpassed, said: "that bail is not demandable of course in actions of slander. In England the practice is to obtain a judge's order in such cases, founded upon affidavit, stating special damage or peculiarly aggravated circumstances, &c. But no such practice has obtained in the courts of justice of this State. If a defendant is held to bail in an action wherein no bail is required by law he obtains redress by citing the plaintiff to appear before a judge of the court in vacation, or the court when sitting, to show his cause of action, who make the proper orders therein on a hearing."

Under the rule to show cause of action and why the defendant should not be discharged on common bail, it is laid down in the Notes in Practice that the bail may be either discharged or mitigated; and the plaintiff's counsel, in the argument of this cause, conceded that the court might reduce the bail if it were considered excessive. The object of special bail is to secure to the plaintiff the amount of his judgment and costs, and when the sum in which they are bound is greater than may be requisite for that purpose, it becomes oppressive. The amount which the plaintiff in this action may recover, (if he recover anything,) is wholly problematical. No information has been given to the court of the circumstances, occupation, characters or standing of the parties. Without any knowledge of these facts—looking at the object of special bail, and willing that the plaintiff should be liberally protected, I think that one-half of the sum mentioned in the bail bond would be sufficient for the special bail, and it is, therefore, ordered that the defendant enter special bail in the sum of one thousand dollars.

Rule discharged, and the defendant directed to enter special bail in \$1,000.

#### Quarter Sessions of Lancaster County.

##### COMMONWEALTH vs. JAMES E. PANNELL.

1. In a homicide case, after the jury had retired to deliberate on their verdict, the court adjourned, in the absence of the prisoner and his counsel; held to be no ground for an arrest of judgment.
2. Where the law and the facts have been fully and fairly presented to the jury in the general charge and answers, a partial mistake or qualification of one of the points, which, standing alone, might, perhaps, be doubtful, but which, in view of the immediate charge, was not calculated to mislead the jury, is no ground for a reversal.
3. The rules of law as to after-discovered evidence are observed in cases of homicide as well as in civil cases. After-discovered testimony, which is but cumulative or corroborative of evidence given on the trial, is not sufficient reason for a new trial.

Rule for a new trial, &c.

*S. H. Reynolds and Wm. Aug. Atlee* for rule.

*J. W. Johnson* contra.

Opinion by PATTERSON, A. L. J. August 18th, 1877.

The prisoner has been tried by a jury of his

peers and stands convicted of murder in the first degree.

His counsel asked and obtained a rule for a new trial, and we are asked to make it absolute and arrest judgment. The reasons upon which the rule is based are forty in number—part, or some fifteen of which consist of exceptions to the admission and rejection of offers of testimony; of the remaining twenty-five, some nineteen embrace exceptions to the law as announced in the court's charge; four to the answers given to defendant's points; several in arrest of judgment, and one in the nature of after-discovered evidence.

One reason filed, viz.: "that after the jury had been charged by the court, and had retired to deliberate on their verdict, on March 8, 1877, the court adjourned to meet on Mar. 9, 1877, in the absence of the prisoner and both his counsel, and without their consent."

We will consider these reasons, not severally, but as a class, in the order in the order in which we have just presented them, and as we think they were argued and urged upon the consideration of the court.

The questions we are about to consider are in their connection grave ones indeed. In a case of such magnitude as the present it is not improper to state that the court has given it, and all the points presented for our determination by the learned counsel for the prisoner, our careful and anxious consideration, and that our sole desire is that the law may be maintained in its integrity, and that no right of the prisoner shall be invaded, and no possible injustice be done him.

The last reason above mentioned we will first consider. The jury having heard the evidence, the summing up of counsel, and the charge of the court, retired at 6 o'clock P. M. on the 8th day of March, 1877, in charge of sworn officers, to deliberate on their verdict. The court then rose to meet at 10 o'clock P. M. of same day; or, in case of an agreement upon a verdict in the meantime, to meet at the ringing of the bell. At 10 o'clock court met, and the jury not having agreed, and being still in their room, the court was adjourned to meet at 9 o'clock the following day, there being no persons present but the court and its officers, and some half a dozen spectators. The following day the court met pursuant to adjournment, and there then being no intimation from the jury that they had agreed, the court again rose at 9½ o'clock, a. m., to meet at the ringing of the bell. The bell rang at 10 o'clock 40 minutes, when the court met to receive the verdict. After the prisoner and his counsel were found to be present, the jury were brought in and rendered their verdict in due form. To the adjournment of the court at 10 o'clock, on the night of the 8th of March, in the manner stated, is the exception taken. The court can find no precedent or authority, nor was there any cited in the argument, for holding that their action in that particular was irregular or exceptionable. On the other hand, in the case of *Briceland vs. Com'rs*, 24 Smith 463, the record shows frequent adjournments of the court, through four successive days, while the jury were out deliberating on their

verdict. No exception appears to have been taken to that action of the court, nor is it even referred to in the opinion of the Supreme Court, though the verdict there was that of murder in the first degree. And we are unable to see that any possible injustice was done, or could have resulted to the prisoner, by such action of the court; and, in our opinion, this matter of record raises no legal ground for an arrest of judgment.

The class of reasons based upon the objections to the admission and rejection of offers of testimony we have examined with great care. As to the question allowed to be put to some of the witnesses, termed *non-experts*, and especially excepted to in defendant's ninth reason, viz.: (and we recite the question in full as it was generally put) "In all the intercourse you had with the prisoner during the period of your acquaintance, and in all your observations of his conduct, manner and appearance, did you, or did you not, discover anything that led you to think he was insane?"

This question was allowed or denied, according as the witness showed by his testimony he had frequent or unfrequent opportunities of conversation with the prisoner, and many or few opportunities of observation concerning his manners and appearance. The *non-expert* witness, unless he first testified to facts concerning the prisoner—facts to the jury, and sufficient in the judgment of the court to base an opinion, was not permitted to answer the above question. In other words, the question of the admissibility of the above question when propounded is determined by the extent of facts connected with the defendant, as made apparent by his testimony elicited prior to that question being put. Thus, giving both the conclusions of the witness, and the grounds of his conclusion to the jury—the weight or strength of which they were quite competent to judge. We think an examination of the evidence of the witnesses, wherever the question objected to has been allowed, will fail to disclose error. The remaining reasons under this class we overrule as insufficient for the same reason.

The reasons next in order are those embracing exceptions to the law as contained in the charge of the court. The court endeavored to charge fully upon the law as applicable to the facts developed in the trial, and believe they fully observed the rule recognized by the Supreme Court, that the prisoner has a right to have the jury instructed upon all questions of law legitimately raised by the evidence, whether the attention of the court is called to the subject by a point, or request to so charge, or not.

The reason numbered twenty-one and a half was zealously urged in the argument of this rule by the counsel for the prisoner, and we think it but proper to refer to it for a moment. It was contended that the language used by the court here, being the same as that used by the court below in the case of *Myers vs. Commonwealth*, (see *Weekly Notes*, Vol. III, No. 28, p. 497,) and on account of which a reversal was had in the Supreme Court, that it was, therefore, in itself suffi-

cient to arrest judgment. In *Myers vs. Commonwealth* the expression, ruled to be error, was repeated often throughout the charge. It was held that it threw the prisoner upon a degree of proof beyond the legal measure of his defence, and that it *so pervaded* the charge that it misled the jury as to the degree of belief in regard to the defence of insanity.

In the case before us that expression—"beyond a reasonable doubt"—occurs in the charge, and but *once* only, followed by the words: "it is a good defence and must acquit the prisoner." It does not appear in the court's answer to points; and the charge otherwise throughout, the defence being insanity, distinctly states, in effect and substance, that the burden of proof is upon the prisoner to show his insanity, and that the evidence of that need be *only satisfactory* to them, and their conclusions only such as fairly result from the evidence. The jury, therefore, could not have been wrongly impressed in regard to the degree of belief required of them in relation to the defence of insanity—the degree of belief in the evidence submitted by the defendant in support or proof of that plea. And, if that be so, should not this case be ruled by the case of *Green vs. Commonwealth* (*Weekly Notes of Cases*, Vol. III, No. 24, p. 424,) a case in which the verdict was murder in the first degree, and in which the Supreme Court affirmed the judgment below, sustaining the charge of the court and its answers as to points as a whole. The court thus held, in effect, that where the law and the facts have been fully and fairly presented to the jury in the general charge and answers to points, a partial mistake or qualification of one of the points, which, standing alone, might, perhaps, be doubtful, but which, in view of the immediate context, and a reference to the general charge, was *not* calculated to mislead the jury, is no ground for a reversal.

The reason, No. 22, that—"the court erred in its comments upon the testimony of the experts," is hardly sustained by the language of the charge. The charge speaks of the high value of such skilled testimony as that of experts, and especially in a case like the one trying. We told the jury, and we think properly, that they were the judges as to whether the facts which are assumed to have been proved, and upon which the expert is asked the hypothetical question, were actually proven to their satisfaction or not. That the evidence ought to be examined with great care. And as two of the witnesses called by the defence, doctors Silver and Dallum, were medical gentlemen called as experts, and had known the prisoner when a boy, we called the attention of the jury to that fact in the following words, viz.: "But you will keep in mind that several of those witnesses, and some of the experts, testified from their *own personal contact* and knowledge of the defendant." On the question of insanity—the defence taken on the trial—the court can confidently refer to the charge itself to show that it was left, as a fact, entirely to the jury, and also, to convince the judgment and reason of the most humane that the court was conscious

of acting under the solemn consideration of the magnitude of the issue to the prisoner, and therefore was especially careful to present the law on that subject in a manner as favorable to the prisoner as could possibly be allowable under the well recognized rules of law.

The reasons taking exceptions to the court's answers to the four points submitted by defendant's counsel, were not discussed or urged by counsel in their argument in support of the rule before us. The answers are all in response to questions of law, and the court is responsible for the law. The responsibility is weighty we are conscious, yet if there be mistake or error by the court in the law, we are comparatively relieved by the knowledge that our decisions are not final, but are the subjects of review by a higher jurisdiction and an abler bench.

As to the burden of proof of insanity, pleaded as a defence, the court, in its answer to the fourth point, (as well as in the general charge) clearly gave the prisoner the benefit of the humane ruling of the Supreme Court in the case of *Ortwein vs. Commonwealth*, and and in later cases, viz: that where a reasonable doubt, by reason of the production of testimony by defendant to prove insanity is raised in the minds of the jury as to the prisoner's insanity, then such doubt must inure in favor of the prisoner, and he cannot be convicted of murder in the first degree; but if at all, of some lower grade of crime.

We are unable to perceive any error in that or in the answer to the remaining points put by the prisoner.

The remaining ground upon which this rule is asked to be made absolute, is that of after-discovered evidence. That evidence is embraced in the deposition of Dr. Jno. Curwen. Now, evidence of this kind, to avail in a motion for a new trial, must be such as could not be secured at the former trial by reasonable diligence on the defendant's part. It must be material in its object and not merely cumulative or corroborative; it must go to the merits, and it must be such as ought to produce on another trial, an opposite result on the merits. Does this testimony fulfill any of the requirements of the law?

The testimony of Dr. Curwen is: "I am a physician, in practice thirty-three years; am superintendent and physician of the insane, or Penn'a State Lunatic Hospital; I have seen James E. Pannel; I saw him in the Lancaster County Jail in the latter part of March; I talked with him about two hours; from his own history, and what I drew out of him, I was led to believe he was suffering from a form of epilepsy called 'masked' epilepsy, and probably had suffered from it for many years, and that that disease had affected his mind, causing at times very singular and strange conduct; I do not think the man, after those attacks of epilepsy, was responsible for some time; a state of excitement would make the disease worse." This is his testimony in chief, after which he was asked some questions to which he gave answers. Is this after-discovered testimony? Was not Dr. Curwen's residence and profession known,

and could not his opinion have been ascertained before the trial? Is it not wholly cumulative? Is it not only corroborative of Dr. Silver's and other experts, examined for the defence to show an abnormal state of mind in the prisoner? Our judgment would answer all these questions in the affirmative, and therefore, cannot avail under the law to make this rule absolute. The court, after a verdict and motion for a new trial, must judge not only the competency but of the effect of evidence with the proposed new evidence before them, ought not the jury to come to the same conclusion. We are not prepared to say they ought not. The granting of new trials must not depend on the mere caprice of the judge, but upon well established principles of law. And that the rules of law as to after-discovered evidence have always been observed in cases of homicide, as well as in civil cases, we need but quote from the case of the *Commonwealth vs. Flanagan*, in 7 W. & S. 415, wherein the verdict was death. Justice ROGERS, delivering the opinion, says: "And here let me remark that I perceive no difference in this respect between a trial in a civil suit and criminal case. The same rules apply to both. After-discovered testimony, which is but cumulative or corroborative of evidence given on the trial, is not a sufficient reason for a new trial."

A mere reading of the testimony in this case will convince the most superficial mind that, supposing the prisoner to be of sound mind (and that was a question for the determination of the jury), there was in evidence in this case abundant ingredients to constitute murder in the first degree; and, under this conviction, we find no sufficient reason for setting aside the verdict and granting a new trial. Anxious as we are in discharging this rule to have arrived at a correct and just conclusion yet we feel it a relief to know that if our decision in this case involves any error it is open to examination and review before the Supreme Court of the Commonwealth.

The court, therefore, must now dismiss all the reasons filed, and accordingly the motion in arrest of judgment is overruled.

Rule discharged.

#### SUPREME COURT OF PENNSYLVANIA.

MAIN et al. vs. RIDER et al.  
SAME vs. MINER et al.

1. Where a testator directs his name to be written at the end of his will with the view of adding his mark, and thus making his signature, his will will not completely executed until his mark is made.
2. The fact that testator lived with a woman to whom he was not legally married, and that she and her illegitimate offspring were the devisees of much of his property, does not create a presumption in law that his will was executed under undue influences, but the effect thereof is for the jury.

Error to the Court of Common Pleas of Wayne county.

Opinion by MERCUR, J. May 7th, 1877.

These two cases were argued together. They involve the same question. The contention relates to the will of Daniel Miner. All the assignments of error present substantially three questions involving its validity.



1. The manner of its execution.
2. The mental capacity of the testator.
3. The influences under which it was executed.

We will first consider the manner of its execution. Under the act of 1833, it was held that a will signed by the testator putting his mark to it was not properly executed. To cure this ruling, which was questioned in *Vernon vs. Kirk*, 6 Casey 218, the act of 27th of January, 1848, P. L. 16, was passed. It declares that every last will and testament, "to which the testator hath made his mark or cross shall be deemed and taken to be valid in all respects, provided the other requisites under existing laws are complied with."

The will of Daniel Miner bears date the 26th of December, 1872. It appears to have been executed by the testator making his mark or cross at the end thereof. It has two subscribing witnesses, and is wholly regular on its face. It is contended that the act of 1848 applies only to cases where the testator is unable to write his name by reason of want of education, and does not excuse the absence of the signature of one who is able to write. We discover nothing in the act sustaining that view. It makes no mention of insufficient education or of physical inability. It declares that form of execution as sufficient in all cases. The manifest object of the act is to permit a will to be signed as any other written instrument may be signed. Hence, in *Vandruff et al. vs. Rinehart*, 5 Ca. 232, it was held that if one is unable from palsy or other cause to make his signature or mark to his will, another person may steady his hand and aid him in so doing. If so done by the assistance of another, it is the testator's own act. So in *Cozzen's Will*, 11 P. F. Smith 196, the testator was paralyzed, and said he was unable to write, but would put his mark to the will. He was raised in bed, a pen was put into his hand, which was held by another while he made his mark. This was held to be a valid execution of the will.

In the case we are now considering, it appears from the evidence of Thorpe, who drew the will, that he handed it to the testator, who was lying in bed, to sign. The latter said: "You sign it." Case or Stanton said, "Yes, he can make his mark just as well." Case and Stanton each testified, substantially corroborating Thorpe, and added, that Miner made the further remark that he had written his name, but did not know as he should do it then, or did not know that he could do it again. Thereupon Thorpe wrote Miner's name, not in a manner indicating that it was to stand as Miner's fully executed signature, but preparatory only to his making his mark. Thorpe wrote it:

his  
"DANIEL MINER."  
mark.

In that portion of the charge covered by the eighth assignment, the court said: "We therefore charge you that if Thorpe wrote Daniel Miner's name to the will in Miner's presence, and by his express directions, and Miner made the attempt to make his mark, but failed to complete the mark, or to make it in the manner required by the statute, still

the will is sufficiently executed if these facts are proved by two witnesses who were present at the time, although Miner, when he directed his name to be signed, intended to make his mark also, and Thorpe, when he wrote the name, intended that Miner should make his mark." This, we think, was clearly error. It assumes that although the testator directed his name to be written, with the view of adding his mark, and thus making his signature, yet the will is completely executed before the mark is made. This cannot be so. It gives to an unexecuted intention the same effect as if fully executed. It gives the statute a construction not sanctioned by its letter or spirit. It is undoubtedly true the statute does provide, if the testator's name is subscribed by his direction and authority, it is a valid execution of the will. That, however, is where the testator has directed his name to be written as his complete signature. If so directed and intended it becomes sufficient in itself. In such case the testator would not have intended to make any signature with his own hand, and none would be required. The learned judge holds that the will may be sufficiently executed, although the testator failed to make his mark "in the manner required by the statute," and when neither the testator nor the scrivener had done any act which either intended as a full execution of the will, and when the will would show on its face that it was not fully executed.

This error, however, was harmless in its consequences. It is shown by the testimony of four witnesses, who are uncontradicted, that the testator did make his mark. They all testified that his hand was on the pen when his mark was made, and he, thus assisted in making it. As then, the plaintiff in error sustained no injury by this instruction, we will not reverse therefor: *Phelin vs. Kenderdine*, 8 Harris, 354.

The evidence in regard to mental incapacity was very slight. It was fairly submitted to the jury, and substantially in the very language often used by this court. On this branch of the case the learned judge is fully sustained by *Thompson vs. Kyner*, 15 P. F. Smith 368, and the numerous cases therein cited. The fact that the testator lived with a woman to whom he was not legally married, and that she and her illegitimate offspring were the devisees of much of his property, is urged as creating a presumption in law that the will was executed under improper influences. The case of *Dean et al. vs. Negley et al.* is cited to support this view. The opinion of the judge in that case expressly declares that the court does not decide that such relations create a presumption of law, of undue influence, but leaves the effect thereof a question of fact for the jury. To sustain the case of *Rudy vs. Ulrich et al.*, 10 P. F. S. 177. No clearly defined weight can be given to such testimony. Much must depend on the particular circumstances of each case. It is an element undoubtedly to be considered.

It appears that Miner had been entirely separated from his wife and children for

nearly thirty-five years. So far as it appears none of them had met him in all that time. She had not sought any reconciliation for her marital relations, nor they of their filial relations. They all resided in another State. She died in April, 1869. For more than twenty-six years the testator and the woman named in his will as his wife, had lived and cohabited together as husband and wife. During all that time they so recognized each other. She had borne him several children. To them he also devised a portion of his estate. A separation of more than thirty years from his legitimate children naturally weakened his parental affection towards them. It needed no special effort on the part of his other family, with which he had lived more than a quarter of a century, to make them the objects of his bounty. The court fairly submitted the fact of his illicit associations to the jury to consider in determining the question of undue influence.

On the whole record we discover no sufficient cause for reversal.

Judgment affirmed in each case.—*Pitts. Leg. Journal.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., NOV. 3, 1877.

### WEEKLY SUMMARY.

#### ORPHANS' COURT OFFICE.

Appraisements of \$300 allowed by law to widows of decedents, have been filed in the office of the clerk of the Orphans' Court for approval nisi at the City of Lancaster on the third Monday in November, A. D. 1877.

For Esther Dohner, widow of Jacob Dohner, late of Warwick township.

For Maria Brenberger, widow of George Brenberger, late of Providence township.

For Elizabeth Stoner, widow of Frederick Stoner, late of West Hempfield township.

For Mary Brooks, widow of William Brooks, late of Providence township.

For Elizabeth Charles, widow of John Charles, late of Washington borough.

For Sophia Behm, widow of Elias Behm, late of Penn township.

For Alice A. Swarr, widow of Jacob G. Swarr, late of Rapho township.

For Hannah Sourbeer, widow of Christian Sourbeer, late of Manor township.

For Mary A. Davis, widow of John H. Davis, late of East Lampeter township.

For Lizzie K. Leaman, widow of Benjamin K. Leaman, late of Upper Leacock township.

For Maria Kreider, widow of Michael Kreider, late of Pequea township.

For Mary Breneman, widow of John Breneman, late of Rapho township.

For Sarah Aument, widow of Jacob Aument, late of Drumore township.

For Barbara Clark, widow of John H. Clark, late of Salisbury township.

For Mary E. Bowers, widow of Joseph W. Bowers, late of Marietta borough.

For Leah Zimmerman, widow of Henry Zimmerman, late of Petersburg.

For Maggie Stark, widow of Charles Stark, late of Lancaster city.

For Catharine Kurtz, widow of Samuel E. Kurtz, late of Lancaster city.

For Annie Wilson, widow of William Wilson, late of Lancaster city.

For the widow of John Zimmerman, late of Eden township.

**REGISTER'S OFFICE.**

Letters of administration have been granted by the Register on the following estates since October 27, 1877:

HENRY SHAUB, sr., dec'd, late of West Lampeter twp.; Henry Shaub, jr. and Abraham Shaub, administrators.

FREDERICKA SIEFRIED, dec'd, late of Columbia bor.; J. C. Pfahler, administrator.

ANN MORGAN, dec'd, late of West Hempfield twp.; John W. Morgan, administrator.

EVE SNIDER, dec'd, late of West Hempfield twp.; John Rodkey, administrator.

CHRISTIAN RODKEY, dec'd, late of West Hempfield twp.; John Rodkey, administrator d. b. n.

NANCY SHARER, dec'd, late of Rapho twp.; David Nisley, administrator.

WM. B. WILLIAMS, dec'd, late of Columbia bor.; Jane B. Williams, administratrix.

The following Wills have been admitted to probate since October 27, 1877:

RICHARD J. FITZPATRICK, late of Lancaster city; J. J. Fitzpatrick and Bridget Fitzpatrick, executors.

HENRY SCHITZ, late of Elizabethtown bor.; J. Schlegelmilch, executor.

**PROTHONOTARYS' OFFICE.**

The accounts of the following named estates will be presented for confirmation on Monday, November 26th, 1877:

Ephraim D. Bruckart and wife's assigned estate; Jacob H. Oberlin, assignee.

Wm. F. Pickle's assigned estate; D. G. Steacy, assignee.

Henry Schloch's assigned estate; B. F. Helstand, assignee.

Samuel Shirk and wife's assigned estate; Pearson Sample, assignee.

John S. Hibshman and wife's assigned estate; Cyrus Ream et al., assignees.

Joshua Rollman and wife's assigned estate; Cyrus Ream, assignee.

Clemence T. Swartz and wife's assigned estate; Milton Wike, assignee.

Andrew J. and Edward F. Kimper's assigned estate; Martin O. Stirk, assignee.

**RECORDER'S OFFICE.**

The deeds have been recorded in the following assigned estates since October 27th, 1877.

HENRY ANDREWS and WIFE, of Lancaster city; John B. Good, assignee.

JOHN M. GRAVER and WIFE, of Conestoga twp.; Dr. B. S. Kendig, assignee.

**COURT PROCLAMATION.**

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN NOVEMBER, (19th,) 1877.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of October, 1877.  
oct27 H. N. BRENEMAN, Sheriff.

**Auditors' Notices.**

Estate of ABRAHAM GOSS, late of Providence township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Joseph B. Erb, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, NOVEMBER 17th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27

SIMON P. EBY,  
Auditor.

Estate of JOSEPH LANDIS, late of Ephrata township, dec'd.

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to distribute the balance remaining in the hands of Harriet Landis, administratrix of said deceased, arising from the sale of the estate, owned by the decedent, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, NOVEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27

WM. S. AMWEG,  
Auditor.

Estate of ELIZABETH SALBACH, late of West Hempfield twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Wisler, administrator of said Elizabeth Salbach, dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, NOVEMBER 20th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27

E. D. NORTH,  
Auditor.

Estate of SUSAN LAWHEAD, late of West Hempfield twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Wisler, administrator of the said Susan Lawhead, dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, NOVEMBER 20th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27

E. D. NORTH, Auditor.

Estate of SAMUEL CHARLES, late of Pequea township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian B. Mylin and Eli K. Mylin, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, NOVEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct20

WALTER M. FRANKLIN,  
Auditor.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

**Divorce Notices.**

DELILAH ROCKAFELLOW, Alias Subpoena for Divorce by her next friend Frederick Fry, September Term, 1877.

AND D. ROCKAFELLOW. No. 23.

To AND. D. ROCKAFELLOW.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 19th day of NOVEMBER, 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Delilah Rockafellow should not be divorced from the bonds of matrimony contracted with you.

oct13

H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, October 13th, 1877.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, NOVEMBER 19th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

oct6

CASPER DITTMAN.

**INCORPORATION NOTICE.**

Notice is hereby given that the "Lancaster County Mutual Live Stock Insurance Company" have applied to the Court of Common Pleas of Lancaster county for an amendment to their charter, which has been examined by said court and will be presented for final confirmation on MONDAY, NOVEMBER 19, 1877, at 10 o'clock, a. m. prior to which time all persons objecting to such amendment must file their objections.

**Estate Notices.**

Estate of HENRY SHAUB, late of West Lampeter twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER,  
nov8\* Att'y.

HENRY SHAUB, Jr.,  
ABRAHAM SHAUB,  
Administrators.

Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

nov3

BRIDGET FITZPATRICK,  
JOHN J. FITZPATRICK,  
Administrators.

Estate of HENRY SCHITZ, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough.

nov3\*

FRANK SCHLEGMILCH,  
A. F. SHENCK, Att'y. Executor.

Estate of JOHN GROSS, late of West Donegal township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

nov8]

JOHN G. KELLER,  
SAMUEL G. KELLER, } Litiz,  
JACOB G. KELLER, }  
MARTIN G. KELLER, } Elizabethtown,  
ABRAHAM R. FORNEY, } Administrators.  
J. L. STEINMETZ, Att'y.

Estate of JOHN WHITESIDE, late of Colerain township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township.

oct27\*

JAMES WHITESIDE,  
S. H. REYNOLDS, Att'y. Administrator.

Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown.

oct27

EMANUEL BROWN,  
Executor.

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARTIN DENLINGER,  
West Lampeter township,  
JOHN L. LANDIS,  
East Lampeter township,  
Administrators.  
oct27  
WM. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

EMMA L. SMITH,  
Executrix.  
oct20  
THOS. B. COCHRAN, Att'y.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.

LIZZIE S. WICKEL,  
Administratrix.  
oct20  
AND. M. FRANTZ, Att'y.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.

SAMUEL G. GENSEMER,  
Assignee.  
oct20  
GEO. BRUBAKER, Att'y.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY DONER,  
DANIEL R. DONER,  
Administrator.  
oct20  
B. F. ESHLEMAN, Att'y.

**Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.**

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

B. F. COX,  
Assignee.  
oct6  
PHILIP D. BAKER, Att'y.

**Estate of ELIAS BEHM, late of Penn twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

EMANUEL KEENER,  
Administrator.  
sep29

**Estate of MICHAEL KREIDER, late of Pequea township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

AMOS S. KREIDER,  
ANDREW MEHAFFY,  
Executors.  
sep23\*  
P. D. BAKER, Att'y.

**Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.**

Mary A. Demmy, (widow) of Mount Joy borough, having by deed of voluntary assignment, dated October 5th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI RICKSECKER,  
Assignee.  
oct20\*  
A. F. SHENCK, Att'y. Residing in Mount Joy borough.

**Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.**

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. R. SENSENIG, Assignee,  
Residing in Lancaster City.  
GEO. M. KLINE, Att'y. [oct6

**Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.**

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. PENROSE, Assignee,  
Chestnut Level P. O., Lan. Co., Pa.  
oct13  
J. HAY BROWN, Att'y.

**Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.**

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

HENRY E. MILLER,  
Assignee,  
OWEN P. BRICKER, Att'y. Residing in Litz, Lancaster co., Pa.  
oct6

**Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.**

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.  
sep15  
H. C. BRUBAKER, Att'y.

**Estate of T. R. TORR, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY S. TORR, widow,  
MICHAEL HABERBUSH,  
Executors.  
sep23  
P. D. BAKER, Att'y.

**Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

ANNA MARY STROUSE,  
SAMUEL EBY,  
Executors.  
sep23\*

**Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

CYRUS R. DOHNER,  
Residing in Penn twp.  
BENJAMIN R. DOHNER,  
Residing in Warwick twp.  
Administrators.  
sep29\*

**Estate of JACOB AUMENT, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT,  
Executors.  
sep23\*  
P. D. BAKER, Att'y.

**Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.**

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JACOB H. ERB, Assignee,  
Penn twp., Lancaster co., Pa.  
OWEN P. BRICKER, Att'y. [sep15

**Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd.) late of Brecknock twp., Lancaster co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

E. BILLINGFELT,  
Surviving Executor.  
sep15

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

WM. AUG. ATLER, NOAH SWARTLEY,  
Att'y. JONAS SWARTLEY,  
Administrators.  
sep1\*

**Estate of HENRY ZIMMERMAN, late of East Hempfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HIRAM W. GRAYBILL,  
LEAH ZIMMERMAN,  
GEORGE BINGAMIN,  
Administrators.  
sep22  
GEORGE BRUBAKER, Att'y.

**Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.**

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

J. I. HARTMAN, Assignee,  
Residing in Lancaster City.  
sep15  
P. D. BAKER, Att'y.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, NOVEMBER 10, 1877.

No. 24.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

A COMPLETE ASSORTMENT OF

## JUSTICES' BLANKS

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LANCASTER, PA.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way passenger†	.....	4:50 a. m.	7:50 a. m.
Niagara Express,...	.....	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	.....	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy.	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	.....	11:20 a. m.	1:25 p. m.
Sunday Mail,.....	.....	11:20 a. m.	1:30 p. m.
Fast Line,*	.....	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	.....	6:10 p. m.	8:10 p. m.
Columbia Accom.,.....	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	.....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.
EASTWARD.		LEAVE LANCASTER.	ARRIVE PHILADELPHIA.
Atlantic Express,*	.....	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	.....	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	.....	2:00 p. m.	5:00 p. m.
Johnstown Express,...	.....	3:05 p. m.	6:00 p. m.
Day Express,*	.....	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	7:50	2:30
Lancaster—West King Street,...	8:00	9:16	3:35
Lancaster—Upper Depot,.....	8:10	9:30	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:36	5:30	8:10
Lancaster—West King Street,...	9:45	5:40	8:20
Quarryville, (arrive).....	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:10	12:55	3:45
Lancaster Junction,.....	8:37	1:35	4:11
Reading, (arrive).....	10:20	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:13	1:20	7:45
Lancaster—Upper Depot,.....	9:36	2:00	8:10
Lancaster—West King Street,...	9:45		8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom,.....	7:05	1:55	5:45
GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:30

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

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**Supreme Court of the United States.**

*Appointed.*  
*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jes. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

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 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
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*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
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*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Greff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerna.

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*Recorder*—Walter G. Evans.  
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NOVEMBER.

- 16. Last day for filing Accounts to December Court
- 17. Argument for Rules of Affidavit of Defense.
- 19. Last day for issuing Executions to November Term.
- 24. Calling Judgment Docket.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., NOV. 10, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

SAMUEL and WILLIAM CHESTNUTWOOD & CO. against JACOB SANGREE, executor of DANIEL LIVERMORE.

A sheriff's sale of a lot of ground in the village of Richland was set aside, he having described the several lots to be sold, by their numbers on the village plot, and omitted the number belonging to the plot in question which was not described in any other way.

The defect is not aided, if it should appear probable that another number was applied in the advertisement through mistake to this lot as No. 48 instead of No. 41—the presumption being that the public was misled.

Mistakes which neither have misled nor were calculated to mislead any one are immaterial.

The rule is that the sheriff shall sell different houses or lots separately, and not together.

This was a motion to set aside a sheriff's sale of the testator's real estate, consisting of several lots in the village of Richland, Lancaster county. The objection to the sale was founded upon the defects of the advertisement, which it was alleged did not contain a sufficient description of the property to be sold, and was inaccurate in what it did describe. The following were the particular exceptions presented at the argument of the motion, viz:

1. The advertisement states three of the lots with their improvements to be situate in the village of Richland Cross Roads, when there is no village of that name in the county.

2. The lot No. 41 is not mentioned in the advertisement, though it was sold at the vendue.

3. The lots (except Nos. 9 and 10) are situate on the turnpike leading to Harrisburg; which is not mentioned in the advertisement.

4. On No. 41 is a stone house which is not described as such in the advertisement.

5. No. 40 and No. 41 were sold separately when they ought to have been sold together.

There depositions, taken in support of the motion, were read on the hearing. They were offered to show that the property sold for less than its value; and that Nos. 40 and 41 would have sold for more if they had been sold together.

Mr. Champneys for the motion.

Mr. Rogers and Mr. Parke contra, who cited 5 Sergt. & B. 225; Rowley vs. Brown, 1 Binn. 61; 2 Yeates 516-518.

HAYES, J. It does not appear with respect to the first exception, that this misnomer, if it be one, was calculated to mislead, or did in

fact mislead anybody. From the circumstance of the intersection of the turnpike with the village by a road which crosses it, it may be presumed (for there is no direct evidence of the fact) that the addition of "cross roads," is occasionally given, especially as that part of the village which lies towards Mount Joy, is distinguished by the name of "Richland Extended." However this may be, taking the whole advertisement together, its caption notifying that the sale would be held "at the public house of David Martin, in the village of Richland in Donegal township," it seems to me that no one who read it, could possibly be mistaken as to the situation or locality of the property.

2. One of the lots sold by the sheriff (which had been levied upon and condemned,) is designated as No. 41. In the advertisement that number is not mentioned. These lots might have been well described without reference to the numbers which represent their relative situation on the plot or plan of the village. But as the sheriff chose that means of pointing them out in his advertisement. He, in taking a wrong number (48) 5 misled the public by directing them to property which was not for sale and which he had not levied on. The answer to this exception, viz: That the description of the improvements on lot No. 48 in the advertisement would correct any misapprehension produced by the mistake of the number, is not satisfactory; since for aught that appears, the No. lot 48 may contain improvements to which that description is appropriate. Suppose an individual wishing to purchase a lot in the village of Richland, had, on seeing this advertisement, referred to the village plot or other means of information, and then examined lot No. 48. Suppose the situation of that lot was just such as of all others he would least prefer. He of course makes up his mind not to attend the sale, concluding that the property does not suit him. What happens to one may happen to others, having the same views. Thus bidders absent themselves from the sale, and the property goes for a song. Such is the natural and must generally be the actual consequence of an erroneous description like that under consideration. It is not a "proper description," and therefore not such as the law requires. See the act of the 27th March, 1824, Pamph. L. 119.

3. It was not necessary to state, that the lots were on the turnpike, because as the village is situated on both sides of it, it would be understood by all that the lots with houses and improvements were situated on one side or the other.

4. As this stone house is now and been since the death of the testator, occupied as a dwelling, it was no mistake to describe it as such.

5. This exception cannot be sustained—the rule being that the sheriff shall sell different lots of ground or houses separately: 1 Binn. 61.

But, on account of the second exception, the motion must prevail, and the sale be set aside.

## SUPREME COURT OF PENNSYLVANIA.

ADAMS ET AL. vs. BACHERT.

*Execution—Waiver of exemption in judgment note—Ignorance of maker of note of the fact that it contained the waiver—Effect of such ignorance on validity of waiver—Negligence.*

In the absence of any evidence of fraud or mistake a waiver of exemption contained in a judgment-note is not avoided by proof that the maker at the time he signed the note could not read it, did not inquire as to its contents and was not aware that it contained the waiver of exemption.

A. signed a judgment-note containing a waiver of exemption. He testified that he could not read English, that he asked no questions concerning the contents of the note, and was not aware that it contained the waiver. There was no evidence of fraud. The jury found specially that A. did not know that the note contained the waiver.

Held (reversing the charge of the Court below), that the waiver of exemption was not avoided by the fact of A.'s ignorance that it was contained in the note.

PER GORDON, J. The part of a judgment-note containing a waiver of the \$300 exemption law stands on no higher plane than any other \* \* \* \* \* When the plaintiffs proved the execution of the obligation they made out a case that could only be impeached by proof that the signature thereto had been obtained by fraud or through some palpable mistake or misapprehension of the parties.

Error to the Common Pleas of Lehigh Co.

Feigned issue, in which Adams, Haldeman & Co., were plaintiffs, and George Bachert was defendant.

The defendant, in November, 1874, signed the following judgment-note:—

\$116.50. LEHIGHTON, Pa., Nov. 7, 1874.  
"One day after date I promise to pay Adams, Haldeman & Co., or order, one hundred and sixteen  $\frac{5}{8}$  dollars, without defalcation, for value received. And I do hereby confess judgment therefor and release errors; and I do hereby also waive all stay of execution from and after the maturity of the above note, and all laws exempting property from execution; and agree that all of my property and effects whatsoever may be taken in execution to pay the sum aforesaid."

Witness present: GEORGE BACHERT.

J. H. KAULL.

Judgment was entered thereon in May, 1876, and a few weeks later a writ of *fiery facias* was issued. Defendant then obtained a rule to show cause why the judgment should not be opened, and, after argument upon the rule, the writ was stayed and this issue directed to be framed, to try the questions: (1) Whether or not the defendant confessed the above judgment, and (2) whether or not the defendant waived the benefit of the law exempting property from execution.

Upon the trial the defendant testified that he could not read English; that he was indebted to plaintiffs for goods sold, and plaintiffs' agent asked him to sign a note, and produced the note in suit which he signed, that the note was not read or explained to him, and that he did not know that it was a judgment-note, or that it contained a waiver of exemption, and that he did not inquire what kind of a note it was. On behalf of plaintiffs, their agent testified that he had read the note to defendant and explained the contents before defendant signed it.

The plaintiffs submitted the following

points: (1) If the jury believe that there be any evidence of fraud, such evidence must be clear, precise, and indubitable to vitiate the contract. (2) That if the jury believe that there was no fraud, and that the defendant signed the note, knowing or not knowing its contents, without diligently inquiring its explanation, then and in such case the defence falls and the plaintiff must recover. (3) If the jury believe that the defendant was not able to read the note, or did not understand its contents, and did not demand or request to have it read or explained to him, then and in such case he is guilty of negligence, and is not the subject of protection, either in equity or at law, and the plaintiff must recover.

The Court (LONGAKER, P. J.) negatived all these points, saying that they referred to the questions of fraud in this case, and that the only question was whether there was a waiver of exemption.

On this latter question the court charged *inter alia* as follows: "The defendant could only avoid the judgment-note by showing that there was some fraud practiced upon him in the obtaining of his signature to the note. There is no fraud, because there is no testimony in the case from which you will be warranted to find such fraud, and therefore, I instruct you that as regards the issue to determine whether or not it be the defendant's act or deed, you must find that in the affirmative.

"A different question, however, arises as to whether or not the defendant waived the three hundred dollar exemption law. This is a personal privilege given to the defendant under the statute, and I have declared the law to be in cases tried heretofore, that no man can be held to waive a privilege, unless he is informed of that fact. *He cannot be held in law to have waived the three hundred dollar exemption law, unless knowledge was brought to him, at the time he signed the note; and the question then for your determination is: Did the defendant know at the time he signed this note that it was an exemption note, or in other words, that he waived the privilege which the statute conferred upon him to take the benefit of the three hundred dollar exemption law? The plaintiffs assert that the defendant did know this fact. The plaintiffs must prove this by proof stronger than all the opposing proof upon the part of the defendant.*"

The court further charged the jury that they were to determine the single question whether when the defendant signed this note he knew that it contained a waiver of the three hundred dollar exemption law; that if he knew it their verdict should be generally in favor of the plaintiffs, but if he did not know it, then their verdict should be in favor of the plaintiffs for the amount due, striking out the waiver, and that they would have to find the fact specially, that there was no waiver made by the defendant.

The jury found for the plaintiffs on the first branch of the issue, but on the second branch they found specially in favor of the defendant "that he did not know that the note contained a waiver of the three hundred dollar exemption law."

(It did not appear from the record, as printed in the paper-book of plaintiff in error, that any final judgment was entered in the case.)

The plaintiffs took this writ, assigning for error the answer to their points and the charge of the court.

*W. P. Snyder and Butz & Schwartz* for the plaintiffs in error.

In the absence of any allegation of fraud or misrepresentation, no part of the note can be contradicted by the defendant, even if he was not aware of its provisions. *Greenfield's estate*, 2 H. 496; *R. R. Co. vs. Shay*, 33 Leg. Int. 328; *S. C. 3 Weekly Notes*, 45.

If exemption from execution be a personal privilege, it may be waived as any other right, otherwise cases of personal privilege would alter the established law of contracts. *Garrett's appeal*, 8 C. 161; *O'Neil vs. Craig*, 6 Sm. 162; *Kyle's appeal*, 9 Wr. 360; *Bowman vs. Smiley*, 7 C. 225; *Dedson's appeal*, 1 C. 234.

The written instrument being *prima facie* proof of the waiver, the judge was wrong in saying that the burden of proof was on the plaintiffs to show an actual waiver.

*Edwin Albright* contra.

The judgment being opened, and the issue being whether the exemption was waived or not, the burden of proof, as in general cases, was upon the plaintiffs. *McDonough vs. Norris*, 2 Phila. 266; *Dennison vs. Leech*, 9 Barr, 164; *West vs. Irwin*, 24 Sm. 258.

A man cannot be said to have waived a personal privilege unless he knows of the fact. The fact of the waiver must be brought to his notice. *Estate of Bank of Pennsylvania*, 10 Sm. 471.

March 26, 1877. THE COURT. On the 7th day of November, 1874, George Bachert executed and delivered to the plaintiffs, Adams, Haldeman & Co., his judgment-note containing, *inter alia*, a clause waiving the benefit of the act of assembly exempting property from execution, and agreeing that all his goods and effects might be taken in satisfaction of the debt in said note mentioned. Judgment was entered thereon, and a *fi. fa.* issued. Afterwards the court, on motion to open the judgment and stay the writ, directed an issue to try: First, "whether or not the defendant confessed the above judgment;" second, "whether or not the defendant waived the benefit of the law exempting property from execution." Upon the trial of this issue, the learned judge of the court below charged as follows:

[Here follows the portion of the charge of the court below already quoted in the statement of the case, italicized as therein printed.]

That part of the charge which we have italicized is wrong. That part of the note which waived the exemption stood on no higher plane than any other. It was a contract the defendant had a right to make, and it went into the note as part of the consideration. (*Bowman vs. Smiley*, 7 Ca. 225) When the plaintiffs proved the execution of the obligation, they made out their case; a case that could only be impeached by proof that

the signature thereto had been obtained by fraud or through some palpable mistake or misapprehension of the parties. Neither of these proofs, however, was made. What if Bachert did not know that the paper he executed contained an agreement to waive exemption? He did not know, because he did not inquire (we speak from his own testimony). There was no fault on the part of the plaintiffs or their agent, and they got nothing from the defendant that was not lawful and proper for them to take. Under such circumstances, and as against creditors, who are justly entitled to have paid to them the debt represented by the note, the defendant has no standing in either law or equity. (*Greenfield's estate*, 2 Har. 496.)

The verdict and all proceedings in the issue in this case are reversed and set aside, and it is now ordered that the record be remitted to the court below for further proceedings according to law.

Opinion by GORDON, J.

[See *Wireman vs. Schmidt*, ante, 360.]—*Weekly Notes of Cases.*

#### STUART ET AL. vs. SECOND PRESBYTERIAN CHURCH OF BOROUGH OF CARLISLE.

A subscription to pay the debt of a church on condition that "the whole amount be raised" is not binding unless the whole amount be raised.

Error to the Court of Common Pleas of Cumberland county.

The following facts, in the nature of a special verdict, are agreed upon for the opinion of the court, with leave to either party to take out a writ of error without oath or bail.

James Hamilton was a prominent communicant and member of the board of trustees of the Second Presbyterian Church of Carlisle for forty years. He was one of its founders, and always took a deep interest in it. In the summer of 1870 the congregation of that church resolved to erect a new house of worship. It was completed in the early part of 1872, at an aggregate cost of about \$45,000. To meet this expense three subscriptions were made by members of the congregation. One in 1870, and one in 1871, and the other in 1872. In the first, Mr. Hamilton gave \$2,000. On November 20th, 1871, Mr. Hamilton made a will, in which he directed his executors to sell certain real estate in Carlisle, Pennsylvania, and to invest of such sale in government bonds, or real estate security, and when the principal and interest amounted to a sum sufficient to pay off the indebtedness of the Second Presbyterian Church, with any other benefactions or contribution of others for the new church and lecture room, to pay over the same to the trustees of said church. At that time the liabilities incurred by the church were about \$24,000, and the real estate so devised was worth \$7,000.

The second subscription referred to was made in December, 1871, after the making of said will. On December 17, 1871, Mr. Hamilton made his subscription in the following terms:

"I am willing to subscribe on the terms

stated, \$500, and as soon as \$10,000 are subscribed, \$500 additional, and when the full amount of our indebtedness is subscribed, \$1,000 additional.

December 17, 1871. J. HAMILTON."

\$10,000 were subscribed, and Mr. Hamilton gave the additional \$500, which has been paid in full. This subscription left the indebtedness of the church about \$14,000.

On September 9, 1872, at a meeting of the congregation the *third* subscription was made upon the following terms, viz: "We, the undersigned, do hereby severally promise to pay the amounts set opposite our respective names, for the purpose of paying off the entire indebtedness of the Second Presbyterian Church of Carlisle, Penna., exclusive of upholstering and organ funds any surplus, however, to be applied to those purposes; this subscription being on condition that the whole amount be raised.

Mr. Hamilton, on that day, verbally subscribed \$1000 upon those terms, and his name was accordingly entered upon the subscription book for that amount.

On the 11th of September, 1872, he wrote in that book the following offer, viz: "If Mr. W. S. Woods will make his promised additional subscription \$2,000 in that paper, I will do the same.

September 11, 1872. J. HAMILTON."

Mr. Woods failed to agree. The amount subscribed, including the \$1,000 of Mr. Hamilton was about \$7,000, leaving a balance to raise, including the upholstering and organ funds, of about \$7,000. Mr. Hamilton regularly entered these subscriptions in his general account book, and the last mentioned subscription is there entered as follows, viz: "4. Subscription contingent, \$1,000."

On January 10th, 1873, Mr. Hamilton was asked to pay this subscription. With a full knowledge of the condition of the church's affairs he promised to do so, if several other gentlemen would pay theirs. One other gentleman on that day paid \$1,000, his subscription, on the Hamilton promise.

On January 23d, 1873, he made another will in which he devised the same real estate by the will of November 20, 1871, to be sold by his executors, and the proceeds to be paid over to the trustees of said church, to pay off the church's indebtedness, and directed that the said trustees should invest the surplus after paying the indebtedness, and apply the interest to the renting of pews in the church for its poor. Mr. Hamilton died on January 23, 1873. By the codicil to the last will it was made conditional upon his living until March 1st, 1873. Having died before that time, the court decided that the will of 20th of November, 1871, is the operative disposition of his property in order to effectuate his intentions to preserve his charitable legacies. Both these testamentary papers, with the codicil, were proved and recorded in the Register's office, of Cumberland county. The devises therein referred to above are made part of this case, as if fully set forth. The said real estate has been sold for \$7,000. This sum, with the amount of the third subscription, including the one of Mr. Hamilton

for \$1,000, is required to pay off the indebtedness of the church. The others have treated the requisite amount as raised by this legacy from Mr. Hamilton, and have paid or agreed to pay their several subscriptions. The question for the court is, are Mr. Hamilton's executors, under these circumstances, liable to pay the said sum of \$1,000 to the church, in addition to the proceeds of the real estate directed to be sold?

If the court should be of opinion that they are, then judgment to be entered in favor of the plaintiff for \$1,000; but if otherwise, then judgment be entered for the defendant.

The court below entered judgment for the plaintiff below and defendant in error, which was assigned as error.

Opinion by PAXSON, J. June 11th, 1877.

The subscription of Mr. Hamilton, made on the ninth day of June, 1872, was conditional. The debt of the church at that time was about \$14,000. Mr. Hamilton verbally subscribed \$1,000, on the condition that "the whole amount be raised." It never was raised. On January 10th, 1873, \$7,000 of the \$14,000 had been subscribed. This included Mr. Hamilton's subscription. On that day he was asked to pay this \$1,000. He said he would do so "if several other gentlemen would pay theirs." One only of them paid. Thus the matter stood at the time of Mr. Hamilton's death. His executors are now called upon by the church to pay this subscription. The court below gave judgment against them upon the case stated. This was error. The subscription was not binding upon Mr. Hamilton during his lifetime. As we have before said it was conditional; the subsequent promise to pay was conditional, the condition has never been performed.

It was *nudum pactum*, and imposed no liability upon Mr. Hamilton's personal representatives after his death. It may be that he would have paid this \$1,000 had he lived. We are not to interpret this subscription by what he might have done had his life been spared; nor by what the members of this church may think he intended to do. We must look only at what he contracted to do. We find no binding contract to pay. We are dealing with the subscription of a dead man; one, too, who appears to have been very generous to this church in his lifetime, and gave it a munificent donation by his will. But the law in distributing his estate knows nothing of generosity. It merely protects and enforces the legal rights of the parties. It is our duty to see that no injustice is done to Mr. Hamilton's estate. It was strongly urged upon the argument that the devise in Mr. Hamilton's will in favor of the church, fulfilled the condition of the subscription and made his estate liable. We are unable to see the force of this suggestion. The subscription was to be good when the whole amount of the debt should be raised. Raised by whom? Not certainly by himself. He was willing to contribute \$1,000 if other parties would contribute the residue of the debt. This is what the subscription meant. We need not enlarge upon this point. It is too plain.

The judgment is reversed, and judgment is ordered to be entered in favor of the defendants upon the case stated, with costs.—*Pitts. Leg. Journal.*

#### DURBORROW'S APPEAL.

1. Upon an execution against one partner for his private debt, the sheriff cannot seize the property of the firm. He can only sell the interest of the partner against whom the execution issued.
2. A purchaser at such a sale buys nothing that he can lease to another party. He is not entitled to possession of the property of the firm, but merely to an account from another partner.

Appeal of J. R. Durborrow from the decree of the Common Pleas of Huntingdon county.

Opinion by PAXSON, J. June 11th, 1877.

This case is saturated with error. The vice of it runs through all the proceedings of the court below, back to the transactions of the parties based upon the sheriff's sale of the appellant's interest in the property in question. There appears to have been an entire misapprehension of the legal effect of that sale, resulted in protracting proceedings in equity where there was no jurisdiction, and culminating in a decree which the court below was powerless to enforce. Briefly stated the sheriff's sale passed nothing but the interest of the appellant, whatever it may be, in the property levied upon. The reason of this is manifest. The property levied upon and sold by the sheriff to Mr. Musser, belonged to the firm of J. R. Durborrow & Co., which firm was composed of J. R. Durborrow, the appellant, and John A. Nash. We need not cite authority to show that upon an execution against one partner for his private debt the sheriff cannot seize the property of the firm. He can only sell the interest of the partner against whom the execution issued. It follows that all the sheriff sold, and all that Musser bought, was the interest of Durborrow. As the purchaser of such interest, Musser had the right to an account from Nash, nothing more. He could not take the possession of any specific article of property.

The possession and the right of possession were in Nash. Hence the various agreements by which Musser attempted to lease the property to Durborrow were no better than blank paper. They had no validity. Musser bought nothing which could be the subject of a lease. He is undoubtedly entitled to an account from Nash, but to what extent and for what property we are not now called upon to decide. Nash is no party to this record, and his rights cannot and ought not to be affected by any decree in this case. The attempt of the court below to put Musser in possession of his interest was a fruitless proceeding. The writ of assistance commanded the sheriff to do an impossible thing. The attempt of that officer to execute the writ sufficiently appears by the return. A writ of *habere facias possessionem de bonis*, with *fi. fa.* for costs, was first issued. Upon this writ the sheriff demanded the possession of the property from Durborrow, and was refused. Then came the writ of assistance referred to, with *fi. fa.* for costs, under which writ the sheriff went with the appellee to the printing office of J. R. Durborrow & Co., and then and there declared to the appellee that "I delivered to him, the said plaintiff, all the interest of him, the said plaintiff, in the presses, types, imposing stones, cases, racks, and all other printing material purchased by the said J. Hall Musser at a sheriff's sale, on the 25th day of March, 1873, and money made." All this was harmless enough except the concluding words, "and money made." For the money thus made the appellant must have restitution. We have not touched the merits of this controversy. They are not before us.

The decree is reversed and the bill dismissed. The costs, including those collected upon the writ of assistance, to be paid by the appellee.—*Pitts. Leg. Journal.*



COMMON PLEAS TRIAL LIST--First Week.

Commencing Monday, November 26th, 1877.

			<i>Long, W. A. Wil-</i> son. 15 <i>Brosius.</i>	<i>JOSEPH C. BRINSER</i> vs. <i>WM. BANEY.</i>	Feb'y Term, 1876. No. 20. Sum's in assumpsit. Plea, non assumpsit, pay't etc.
<i>Rosenmiller.</i> 1 <i>Price, Given.</i>	H. & J. MYERS vs. SAMUEL EVANS, administra- tor of Henry Leber.	Mar. Term, 1871. No. 50. Sum's in assumpsit. Plea, non assumpsit.	<i>Ailee, Harris.</i> 16 <i>Agnew.</i>	<i>KITCH &amp; KNEEZEL</i> vs. <i>THE CITY OF LANCASTER.</i>	Feb'y Term, 1876. No. 29. Sum's case. Plea, non assumpsit.
<i>Reynolds.</i> 2	DURYE A GLEN COVE STARCH CO. vs. ISAAC MOWRER.	Oct. Term, 1872. No. 50. Sum's case. Plea, non assumpsit.	<i>P. D. Baker,</i> <i>Bricker.</i> 17 <i>W. S. Amweg.</i>	<i>ELLA STURGIS et al.</i> vs. <i>WM. M. SPERA.</i>	Mar. Term, 1876. No. 37. Issue to try by jury, etc. Plea filed.
<i>Reynolds.</i> 3	HENRY F. WITMER vs.	April Term, 1873. No. 74. Sum's case. Plea, non assumpsit, pay't. &c.	<i>Same.</i> 18 <i>Same.</i>	<i>MAUD A. STURGIS et al.</i> vs. <i>SAME DEFENDANT.</i>	Mar. Term, 1876. No. 38. Issue to try by jury, etc. Plea filed.
<i>J. Hay Brown.</i>	JULIUS ODELL & CO.		<i>Wilson.</i> 19 <i>Amwake, Swope,</i> <i>Yundt, Eberly.</i>	<i>GEO. B. SHOBER</i> vs. <i>JOHN B. SNYDER et al.</i>	May Term, 1876. No. 57. Sum's in assumpsit. Plea, non assumpsit, pay't etc.
<i>P. D. Baker,</i> <i>Nauman.</i> 4 <i>Frantz.</i>	MICHAEL BEILER vs. STEHMAN, CLARKSON & CO.	Aug. Term, 1873. No. 4. Sum's case. Plea, non assumpsit.	<i>Hensel.</i> 20 <i>P. D. Baker.</i>	<i>A. J. McCOMSEY'S use</i> vs. <i>ISRAEL McFADDEN et al.</i>	June Term, 1876. No. 134. Sum's case. Plea, non assumpsit, etc.
<i>Geo. &amp; H. C. Bru-</i> <i>baker.</i> 5 <i>Agnew.</i>	HENRY F. WITMER vs. THE CITY OF LANCASTER.	Sept. Term, 1873. No. 65. Sum's case. Plea, not guilty.	<i>McMillen.</i> 21 <i>Price.</i>	<i>JONATHAN BOYNTON'S use</i> vs. <i>ISAAC MONTGOMERY et al.</i>	Aug. Term, 1876. No. 8. Sci. fa. sur mech's lien. Plea filed.
<i>W. A. Wilson.</i> 6 <i>Reynolds.</i>	LEO. LEHMAN vs. THE LAN. CEMETERY et al.	May Term, 1874. No. 25. Sci. fa. sur mech. lien. Plea, payment.	<i>North.</i> 22 <i>Smith.</i>	<i>WESLEY W. UPP</i> vs. <i>B. B. GONDER &amp; SON.</i>	Aug. Term, 1876. No. 12. Sum's case. Plea, non assumpsit.
<i>Eshleman,</i> <i>J. Hay Brown.</i> 7 <i>P. D. Baker.</i>	ABRAHAM GROFF'S adm'rs. vs. DAVID KREIDER.	Dec. Term, 1874. No. 39. Scire facias sur recogni- zance, &c. Plea, pay't with leave.	<i>Brosius.</i> 23 <i>Reynolds, Eshleman</i>	<i>JOHN HOLMES</i> vs. <i>JOHN McCALLA dec'd, ex'ors.</i>	Aug. Term, 1876. No. 118. Sum's in assumpsit. Plea, non assumpsit, etc.
<i>Eberly.</i> 8 <i>Densus.</i>	JULIUS LOEB vs. SAMUEL C. SELLEN.	Mar. Term, 1875. No. 39. Sum's in assumpsit. Plea, non assumpsit, pay- ment, pay't with leave.	<i>Davis.</i> 24 <i>L. Ellmaker.</i>	<i>MECHANICS NAT. BANK OF</i> <i>PHILADELPHIA</i> vs. <i>NATH'L ELLMAKER, Jr.</i>	Sept. Term, 1876. No. 27. Sum's in assumpsit. Plea, non assumpsit.
<i>Reynolds.</i> 9 <i>E. D. North.</i>	SHARPLESS & SONS vs. GEO. H. ARMS.	Mar. Term, 1875. No. 61. Sum's case. Plea, non assumpsit, pay't, etc.	<i>North, Martin,</i> <i>Holahan.</i> 25 <i>Ellmaker.</i>	<i>H. S. SHIRK</i> vs. <i>G. SENNER &amp; SON.</i>	Sept. Term, 1876. No. 45. Sum's in covenant. Plea, covenants performed etc.
<i>Reynolds, Reinahl.</i> 10 <i>Eshleman, North.</i>	TOBIAS NEWCOMER vs. JACOB DETWEILER.	June Term, 1875. No. 93. Sum's in ejectment. Plea, not guilty.	<i>Reynolds.</i> 26 <i>North.</i>	<i>LEVI L. BUSH</i> vs. <i>THE LAN. &amp; READING N. G.</i> <i>R. R. CO.</i>	Sept. Term, 1876. No. 54. Issue trespass quare clau- sum fregit. Plea, not guilty.
<i>Johnson.</i> 11 <i>Brosius.</i>	DR. WM. P. McLAREN vs. J. C. ADAMS.	Aug. Term, 1875. No. 95. App'l by def't from justice. Plea, non assumpsit, pay't, etc.	<i>Eshleman.</i> 27 <i>North.</i>	<i>HANNAH LUTZ</i> vs. <i>SAME DEFENDANT.</i>	Sept. Term, 1876. No. 69. Issue ut supra. Plea, not guilty.
<i>Reynolds.</i> 12 <i>Eshleman.</i>	LANE & CO. vs. DAVID CUNNINGHAM.	Oct. Term, 1875. No. 1. Sum's case. Plea, non assumpsit.	<i>A. C. Reineehl</i> 28 <i>P. D. Baker.</i>	<i>PEARSOL &amp; GEIST</i> vs. <i>A. K. SPURRIER, defendant,</i> <i>P. LANDIS et al. garnishees.</i>	Oct. Term, 1876. No. 7. Attach't ad lev. deb., etc. Plea, nulla bona.
<i>Price.</i> 13 <i>Smith.</i>	WEAVER & KILLIAN vs. THE LAN. CO. MUT'L L. S. INS. CO.	Nov. Term, 1875. No. 14. Sum's in covenant. Plea, covenants performed absque hec.	<i>Johnson.</i> 29 <i>North.</i>	<i>E. B. COTTRELL</i> vs. <i>JOSEPH F. COTTRELL.</i>	Oct. Term, 1876. No. 17. Sum's in partition. Plea, non tenant inensual.
<i>Kready, H. C. Bru-</i> <i>baker.</i> 14 <i>Amwake, Good,</i> <i>P. D. Baker.</i>	COMM. OF PENNA. vs. A. F. SPECHT et al.	Dec. Term, 1875. No. 125. Sci. fa. on judgment. Plea, payment, pay't with leave, etc.	<i>Reynolds.</i> 30 <i>P. D. Baker.</i>	<i>J. G. ROUSE &amp; CO.</i> vs. <i>McKEOWN, MILEY &amp; CO.</i>	Oct. Term, 1876. No. 21. Sum's case. Plea, pay't with leave.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., NOV. 10, 1877.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since November 3, 1877:

MARIA KILLHEFFER, dec'd, late of Ephrata twp.; Jacob Kemper, administrator *c. t. a.*

The following Wills have been admitted to probate since November 3, 1877:

JACOB ESHLEMAN, late of Paradise twp.; Amos L. Eshleman, Milton B. Eshleman, Elam M. Eshleman and Silas K. Eshleman, executors.

REBECCA SHERTZ, late of East Lampeter twp.; Samuel Armstrong, executor.

JACOB SHARRER, late of Rapho twp.; David Nissley, executor.

## COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN NOVEMBER, (19th,) 1877.

In pursuance of which precept *public notice is hereby given* to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of October, 1877.  
oct27 H. N. BRENNEMAN, Sheriff.

## ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE,

No. 13 NORTH DUKE STREET,

LANCASTER, PENNA.

## Auditors' Notices.

Estate of PETER G. GREIDER, late of Lancaster city, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Phillip D. Baker, esq., administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, DECEMBER 1st, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

nov10 A. C. REINCEHL, Auditor.

Estate of ABRAHAM GOSS, late of Providence township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Joseph B. Erb, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, NOVEMBER 17th, 1877, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27 SIMON P. EBY, Auditor.

Estate of JOSEPH LANDIS, late of Ephrata township, dec'd.

The undersigned Auditor, appointed by the Orphans' Court of Lancaster county, Pa., to distribute the balance remaining in the hands of Harriet Landis, administratrix of said deceased, arising from the sale of the estate, owned by the decedent, to and among those legally entitled to the same, will attend for that purpose on THURSDAY, NOVEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27 WM. S. AMWEG, Auditor.

Estate of ELIZABETH SALBACH, late of West Hempfield twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Wisler, administrator of said Elizabeth Salbach, dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, NOVEMBER 20th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27 E. D. NORTH, Auditor.

Estate of SUSAN LAWHEAD, late of West Hempfield twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Wisler, administrator of the said Susan Lawhead, dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, NOVEMBER 20th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27 E. D. NORTH, Auditor.

Estate of SAMUEL CHARLES, late of Pequea township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian B. Mylin and Eli K. Mylin, administrators of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, NOVEMBER 15th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct20 WALTER M. FRANKLIN, Auditor.

## Divorce Notices.

DELILAH ROCKAFELLOW, } Alias Subpoena for Divorce  
by her next friend }  
Frederick Fry, } September Term, 1877.

vs. }  
AND. D. ROCKAFELLOW. } No. 23.

To AND. D. ROCKAFELLOW.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 19th day of NOVEMBER, 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Delilah Rockafellow should not be divorced from the bonds of matrimony contracted with you.

oct13 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster October 13th, 877.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, NOVEMBER 19th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

oct6 CASPER DITTMAN.

## INCORPORATION NOTICE.

Notice is hereby given that the "Lancaster County Mutual Live Stock Insurance Company" have applied to the Court of Common Pleas of Lancaster county for an amendment to their charter, which has been examined by said court and will be presented for final confirmation on MONDAY, NOVEMBER 19, 1877, at 10 o'clock, a. m. prior to which time all persons objecting to such amendment must file their objections.

## Estate Notices.

Estate of HENRY SHAUB, late of West Lampeter twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, } HENRY SHAUB, Jr.,  
nov3\* Att'y. } ABRAHAM SHAUB,  
Administrators.

Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

BRIDGET FITZPATRICK,  
JOHN J. FITZPATRICK,  
Administrators.

nov3

Estate of HENRY SCHITZ, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough.

nov3\* FRANK SCHLEGMILCH,  
A. F. SHENCK, Att'y. } Executor.

Estate of JOHN GROSS, late of West Donegal township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

JOHN G. KELLER, }  
SAMUEL G. KELLER, } Litiz,  
JACOB G. KELLER, }  
MARTIN G. KELLER, } Elizabethtown,  
ABRAHAM R. FORNEY, } Administrators.  
nov3] J. L. STEINMETZ, Att'y.

Estate of JOHN WHITESIDE, late of Colerain township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township.

oct27\* JAMES WHITESIDE,  
S. H. REYNOLDS, Att'y. } Administrator.

Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown.

EMANUEL BROWN,  
Executor.  
oct27

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARTIN DENLINGER,  
West Lampeter township.  
JOHN L. LANDIS,  
East Lampeter township,  
Administrators.  
oct27  
Wm. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

oct20  
EMMA L. SMITH,  
THOS. B. COCHRAN, Att'y. Executrix.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.

oct20  
LIZZIE S. WICKEL,  
AND. M. FRANTZ, Att'y. Administratrix.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.

oct30  
SAMUEL G. GENSEMER,  
GEO. BRUBAKER, Att'y. Assignee.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

oct20  
HENRY DONER,  
DANIEL R. DONER,  
B. F. ESHLEMAN, Att'y. Administrator.

**Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.**

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct6] PHILIP D. BAKER, Att'y. Assignee,  
B. F. COX,

**Estate of ELIAS BEHM, late of Penn twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

sep29  
EMANUEL KEENER,  
Administrator.

**Estate of MICHAEL KREIDER, late of Pequea township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep23\*  
AMOS S. KREIDER,  
ANDREW MEHAFFY,  
P. D. BAKER, Att'y. Executors.

**Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.**

Mary A. Demmy, (widow) of Mount Joy borough, having by deed of voluntary assignment, dated October 5th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct20\*  
LEVI RICKSECKER,  
A. F. SHENCK, Att'y. Assignee.  
Residing in Mount Joy borough.

**Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.**

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct6  
GEO. R. SENSENIG, Assignee,  
Residing in Lancaster City.  
GEO. M. KLINE, Att'y.

**Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.**

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct13  
BENJ. PENROSE, Assignee,  
Chestnut Level P. O., Lan. Co., Pa.  
J. HAY BROWN, Att'y.

**Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.**

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct6  
HENRY E. MILLER,  
OWEN P. BRICKER, Att'y. Assignee,  
Residing in Litiz, Lancaster co., Pa.

**Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.**

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

sep15] BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.  
H. C. BRUBAKER, Att'y.

**Estate of T. R. TORR, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

sep23  
MARY S. TORR, widow,  
MICHAEL HABERBUSH,  
P. D. BAKER, Att'y. Executors.

**Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

sep22\*  
ANNA MARY STROUSE,  
SAMUEL EBY,  
Executors.

**Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep29\*  
CYRUS R. DOHNER,  
Residing in Penn twp.  
BENJAMIN R. DOHNER,  
Residing in Warwick twp.  
Administrators.

**Estate of JACOB AUMENT, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep23\*  
ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT,  
P. D. BAKER, Att'y. Executors.

**Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.**

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

sep15  
JACOB H. ERB, Assignee,  
Penn twp., Lancaster co., Pa.  
OWEN P. BRICKER, Att'y.

**Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd,) late of Brecknock twp., Lancaster co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

sep15  
E. BILLINGFELT,  
Surviving Executor.

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

sep1\*  
Wm. AUG. ATLEE, NOAH SWARTLEY,  
Att'y. JONAS SWARTLEY,  
Administrators.

**Estate of HENRY ZIMMERMAN, late of East Hempfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

sep22  
HIRAM W. GRAYBILL,  
LEAH ZIMMERMAN,  
GEORGE BINGAMIN,  
GEORGE BRUBAKER, Att'y. Administrators.

**Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.**

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

sep15] J. I. HARTMAN, Assignee,  
Residing in Lancaster City.  
P. D. BAKER, Att'y.

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# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, NOVEMBER 17, 1877.

No. 25.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way passenger†	.....	4:50 a. m.	7:50 a. m.
Niagara Express,...	.....	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	.....	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy.	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	.....	11:20 a. m.	1:25 p. m.
Sunday Mail,.....	.....	11:29 a. m.	1:30 p. m.
Fast Line,*	.....	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	.....	3:15 p. m.	COL. 3:45 p. m.
Harrisburg Accom.,.....	.....	6:10 p. m.	8:10 p. m.
Columbia Accom.,.....	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	.....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.

  

EASTWARD.		LANCASTER.	PHILADELPHIA.
Atlantic Express,*	.....	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	.....	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	.....	3:00 p. m.	5:00 p. m.
Johnstown Express,....	.....	3:05 p. m.	6:00 p. m.
Day Express,*	.....	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	7:50	9:30
Lancaster—West King Street,...	8:00	9:16	3:35
Lancaster—Upper Depot,.....	8:10	9:30	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:36	5:30	8:10
Lancaster—West King Street,...	9:45	5:40	8:20
Quarryville, (arrive).....	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00	12:55	3:35
Lancaster—Upper Depot,.....	8:10	1:35	4:11
Lancaster Junction,.....	8:37	1:35	4:11
Reading, (arrive).....	10:20	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:13	1:20	7:45
Lancaster—Upper Depot,.....	9:26	2:00	8:10
Lancaster—West King Street,...	9:45	2:00	8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia.....	5:40	12:01	4:29
Arrive at Peachbottom,.....	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jes. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharawood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

*Prothonotaries:*

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*,—J. B. Sweitzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburg, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. M. Amwake  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

THE LANCASTER BAR

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**COURT CALENDAR.--1877.**

NOVEMBER.

17. Argument for Rules of Affidavit of Defense.  
 19. Last day for issuing Executions to November Term.  
 24. Calling Judgment Docket.

DECEMBER.

7. Last day for issuing Writs to December Term.  
 8. Last day for setting down causes for Argument Court.  
 15. Argument for Rules of Affidavit of Defense.  
 23. Last day for filing Accounts to January Court, 1878.  
 22. Calling Judgment Docket.  
 29. Last day for setting down causes for trial for January Court, 1878.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET,  
 LANCASTER, PA.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE—No. 32 NORTH DUKE STREET,  
 LANCASTER, PENNA.

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**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, NOVEMBER 19th, 1877, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.  
 oct6 CASPER DITTMAN.

**INCORPORATION NOTICE.**

Notice is hereby given that the "Lancaster County Mutual Live Stock Insurance Company" have applied to the Court of Common Pleas of Lancaster county for an amendment to their charter, which has been examined by said court and will be presented for final confirmation on MONDAY, NOVEMBER 19, 1877, at 10 o'clock, a. m. prior to which time all persons objecting to such amendment must file their objections.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., NOV. 17, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JOHN MERCER and MARGARET MERCER against JANE WATSON, PATTERSON WATSON, DAVID WATSON, SAMUEL WATSON, SAMUEL SMOKER, and SARAH, his wife; MARIA WATSON, HETTY WATSON and JANE WATSON.

The Courts of Common Pleas and District Courts have power to issue writs of error *coram nobis* to rectify errors in fact.

The remedy was extended to this country with other parts of the common law, which our ancestors brought with them on their immigration and settlement here.

This writ of error *coram nobis* is applicable wherever jury trials in civil cases obtain.

The disuse of the remedy for any length of time would not destroy the jurisdiction of the court with respect to the writ, nor the privilege of the suitor to employ it in a proper case.

An appearance by attorney and an appearance by counsel are distinctly different, though the characters are with us united in the same individual, and one does not supersede the other. The marking of the name in the margin of the docket may mean that the person bearing the name appears for the party, either as attorney or as counsel, and the adverse party is not thereby estopped to aver that he appeared as counsel, not as attorney.

Where minors have in fact appeared by guardian, it is sufficient, though the fact is not expressly noted on the docket.

It is not necessary to admit specially the Orphans' Court guardian—the act of 1713 declaring that such guardian shall be received and allowed to prosecute and defend all actions and suits relating to orphans and minors in any court, "without further admittance."

When a mother who was a co-defendant with her minor children in ejectment, had been appointed by the Orphans' Court their guardian before the return of the writ, and employed counsel to appear and defend the suit, who marked their names and pleaded *not guilty*, and attended herself in court during the trial, which was a full and fair trial upon the merits—this was held on demurrer to a writ of error *coram nobis*, to be a good appearance of the infants by their guardian.

A new trial having been refused on the application of the defendants in this case, (ante p. 48) judgment was entered upon the verdict for the plaintiffs. The defendants, thereupon, sued out a writ of error *coram nobis* from the Supreme Court. On motion, in behalf of the plaintiffs, that writ was quashed in the Supreme Court. The defendants' counsel thereupon applied to one of the judges of this court in vacation for allowance of a writ of error *coram nobis* in the district court. It was accordingly allowed. At the succeeding term a motion to quash this writ

was also made by the plaintiffs' counsel and was argued by

Mr. Ellmaker and Mr. Buchanan for the plaintiffs, and by

Mr. Montgomery and Mr. Hopkins for the defendants.

Mr. Ellmaker: If the court has the power to issue the writ of error *coram nobis*, it is matter of curious inquiry why the writ has not been allowed before. This writ is nowhere mentioned in any act of assembly; every other is. The act of the 22d May, 1722, (sects. 21, 22,) establishes and fixes the extent of the jurisdiction of the Court of Common Pleas as it now exists. It is a striking circumstance, and I repeat it that in many hundred laws, passed since that time, there is no mention of the writ of error *coram nobis*. The practice has been accordant with the motion that no power to issue the writ exists; for no such writ of error has since been sustained. The case in Browne's Reports does not militate against the argument; for twenty years have elapsed and that decision has not been followed in a single instance. A contemporaneous construction, with an invariable practice agreeing with it, is and ought to be of the greatest weight. Graham's Appeal, 1 Dall. 136. Had a court uniformly exercised an authority for one hundred years no one would question it. If then no court has for a hundred years exercised a power, which is doubted, would not the emission or *non user* for that period be conclusive against the power: 1 Inst. 81, a.

If an authority be not clear, the court ought so to construe their power as would be most equitable and convenient: 1 Dall. 178. The argument *ab inconvenienti* is very strong against entertaining this writ. The party knowing of course the ground on which he sues it, went to trial and took the chance of a verdict in his favor without notice to his adversary of his ulterior purpose. The verdict was against him. He then turns round and on this same ground seeks a new trial; that is denied him, and after taking the writ of error *coram nobis* to the Supreme Court, and being there defeated, he comes back to this court and endeavors to agitate the question of new trial again, in this novel shape. When will there be an end of controversy if this is to be allowed.

In Hill vs. West, 4 Yeates, 385, the counsel for the defendant declared they could find no precedent of a writ of error returnable *coram nobis* in Pennsylvania. These counsel were Jerard Ingersoll and Alex. J. Dallas. In that case the Supreme Court said, after judgment the parties have no day in court. The following acts gave the Supreme Court authority to try issues of facts in Philadelphia, viz: The act of 25th September, 1786, sect. 4; act of the 27th March, 1789; act of the 24 February, 1806; act of the 20th March, 1810.

Issues in fact were by the provisions of these acts, to be tried at courts of *nisi prius* in the city of Philadelphia; and by the act of 1806, it was enacted that after the first day of May no issues in fact in the Supreme Court should be tried in Banc. With respect to

such issues arising out of the city and county of Philadelphia, how were they to be disposed of? If they could not be tried at *nisi prius* in Philadelphia, might they not be decided in Banc as before this act?

With respect to the case of Day vs. Hambright, 1 Browne's R. 75, already alluded to, this precedent never having been followed is an authority the other way; showing, as it does, the effect of the practice and usage which were opposed. The influence of usage, custom and practice in establishing the law of Pennsylvania is remarkable. It has introduced several acts of parliament and excluded others. Recognizances have been determined to be liens from usage and general understanding: 5 Sergt. & R. 147; Ibid 198. By custom the widow is endowed of an equitable estate and an estate in trust: 2 Yeates 515; 2 Sergt. & R. 555. Ejectment lies here for mere equitable estates by usage: 12 Sergt. & R. 18. Let it be observed, too, that in the fee bill there is no fee for a writ of error *coram nobis*; which shows that such writs were unknown to the practice: 1 Plowd. Comm. 75. We owe such a deference to foreign times as to suppose that they have not acted without consideration. We contend, therefore, that no court has the power to issue a writ of error *coram nobis* in Pennsylvania.

2. But suppose this court has the power, will the writ be allowed as a matter of course, or must there be an application for it to the court? What must be shown? Certainly some cause satisfying the court that injustice has been done. The causes for granting a new trial all turn upon this consideration: 3 Sergt. & R. 9; 2 Y. 436; 5 S. & R. 41; 3 S. & R. 604; 3 S. & R. 25. The fact which the defendants would inquire into, they might have brought before the court at the trial; but they said nothing about it. They waited until the verdict was found against them. Writs of error in criminal cases must have a special *allocatur* of a judge of the Supreme Court or the attorney general. Sufficient cause must be shown. It must be some important error affecting the merits of the case: 6 Binn. 403; Comm. vs. Immel. Writs of error ought not to be allowed where the merits have been fairly tried and the party has suffered no injury: 3 Sergt. & R. 199; Comm. vs. Pennock.

A writ of error *coram nobis* is, essentially, an application for a new trial. Here it is but a second application for that purpose. The verdict in this case was found on the 8th December, 1826. The motion for a new trial was for three reasons, of which the only one insisted on was precisely the fact contained in the assignment of error. Upon this question, then, the court has already passed. It was not a sufficient ground to set aside the verdict. In England the writ of error *coram nobis* is said to lie in the common pleas, but we have not been able to find any adjudged cases. In 1 Str. 25, infancy, it is said, cannot be assigned for error in a writ *coram nobis*. There is no precedent of a writ of error *coram nobis* in the Common Pleas of England: 9 Vin. Ab. 488, title error, pl. 13, 15, 16.

*Mr. Montgomery.* The common law was brought to this country by the original settlers. In establishing the several courts the legislature, by the act of 22d May, 1722, refer directly to the English Courts of King's Bench, Exchequer and Common Pleas. By the 22 sect. the Court of Common Pleas in Pennsylvania is vested with the same powers with the Court of Common Pleas in England. The question then is whether if the Common Pleas in England possess the power to issue writs of error *coram nobis*, our courts do not possess the same powers. The courts are but the trustees of the people, to distribute justice among them; length of time is no relinquishment of the rights of the citizen. But the case of *Day vs. Hambright*, 1 *Browne*, 75, is an express authority. This is the decision of a respectable court in this commonwealth upon the point. So the case of *Hill vs. West*, 4 *Yeates*, 385, is an authority bearing directly in our favor. 2 *Tidd's Pr.* 1056 and *Fitzh. N. B.* 21; (edn. of 1794) show conclusively that the Common Pleas of England issues this writ, or has the power to issue it, whilst 9 *Vin. Ab.* 485, pl. 35, explains why writs of error *coram nobis* are usually brought in King's Bench in England.

As our Supreme Court will not take cognizance of these writs of error, the consequence is that we are utterly remediless if the Courts of Common Pleas have not the power to entertain them. Suppose a cause is tried in the absence of the defendant, and a verdict against him for an amount sufficient to sweep away his estate; and after the four days it is discovered that he is dead. His heirs would be without possibility of relief, if this writ were denied them. In 2 *Saund.* 96, n. (a) if an infant suffer a common recovery it shall be reversed after he comes of full age.

With respect to the allowance of this writ in 2 *Crompt. Pr.* 377, it is laid down that it may be allowed by the secondary out of court: *Ibid.* 329. In *Carth. R.* 367-70, is a case in which, after two writs of error, one of which was *coram nobis*, a third writ of error *coram nobis* was sued out and held to be a *supersedeas*.

If this writ be allowable at all, it is granted *ex debito justitiae* and is not like new trials a matter of grace.

*Mr. Hopkins.* This is an application to the court to extend its protection to persons incapable of protecting themselves. Every man who sues is bound to know the character of the defendant, and if the latter be an infant, to place him in such a position before the court that he shall have a legal guardian to defend his interests. This cause was tried without any information to the court that these defendants were not *sui juris*. The judgment exhibits the melancholy spectacle of five persons borne down by the man whose fault it was that they were in court without guardians.

1. The writ of error *coram nobis*, or *coram vobis* is an ordinary proceeding in the Common Pleas in England: 2 *Saund.* 101; recognizes the power of C. B. to entertain proceedings of this kind. A writ of error *coram no-*

*bis* necessarily presupposes that the fact passed without notice of the court; on which account the writ goes to the court where the proceeding took place, the court being in no fault. If a person be an idiot where a common recovery is suffered, the court will correct the judgment by error *coram nobis*: *Fitzh. N. B.* 46. In 2 *Crompt. Pr.* 377, it is said that the House of Lords do not entertain the writ of error *coram nobis*, because it is beneath their dignity to try matters of fact. The Court of Common Pleas have the power *ex necessitate rei*, and if the party wishes to have the matter disposed of *uno flatu*, he takes the writ of error, removing the record into the B. R., and dropping that writ, then takes a writ of error *coram nobis*: *Carth. R.* 367-70; 5 *Cruise's D.* 518, *Hume vs. Burton*.

2. As it is settled law in England that the writ of *coram nobis* lies there, why is it not the law here. We have as our birth right the common law of England. By the act of 22d May, 1722, the same powers are expressly conferred upon our courts as were possessed by the courts of Westminster Hall. The Common Pleas being with us the trying court, it was an object of solicitude so to extend its authority as to embrace all the powers necessary to do substantial justice; the whole subject of judicial investigation is placed under its jurisdiction. Such an authority once given never dies, no matter whether a century has passed without the exercise of it or not—the power lives. The 21st and 22d sections give the power to the Common Pleas to try and determine all pleas and actions, and issue all writs and process necessary therein. Now this is an action or a writ in an action.

We have two adjudications of the Supreme Court, that the power of entertaining writs of error *coram nobis* does exist in Pennsylvania: 1 *Dall.* 165, *Sliver vs. Shelbach*, in which case it did not occur to either court or counsel, all able lawyers, to question the jurisdiction of the court in the matter, 4 *Yeates* 385; in which the remedy was asserted on one side and not denied by the other to exist. Then the Supreme Court had original jurisdiction sufficient to try a question of fact. It is the want of this ancillary power to ascertain the fact, if denied, that prevents them now from entertaining this writ.

What relation or connection is there between a writ of error *coram nobis* and a writ of error in a criminal case? The one is a civil remedy, and is *ex debito justitiae*, the other a criminal proceeding and is on grounds of obvious policy, *ex gratia*, nor is there any resemblance in this writ to the motion for a new trial. These fancied analogies are presented in support of the plaintiffs' position, that this writ is not of course, which is an entire mistake. The argument from usage will only hold in those cases where the law is doubtful. There can be no usage of any validity contrary to law. In *Goodright vs. Right*, 2 *Str.* 25; the defendant came in of his own accord, and the plaintiff could not prevent him, therefore the court said a tender of writ of error *coram nobis* was an abuse.

*Mr. Buchanan* in reply. It is an essential foundation of the argument on the other side that a writ of error *coram nobis* can issue out of chancery in England, returnable to the Common Pleas, for determining an error in fact. Now I assert there is no case of such a writ. The note in 2 *Tidds Pr.* 1056; is by the New York editor and no authority whatever. The first and leading distinction between writs of error and writs of error *coram nobis* is that in the latter the clause of *certiorari* is omitted.

Another distinction is in the judgment; in one case the judgment is *reversetur*, in the other it is *revocatur*. In 2 *Saunders's R.* 107; note (a) which by the by is one of the best books I ever read, this subject is fully explained. In 1 *Brown's R.* 75; *Terms de la ley* is cited, and in page 305 it is laid down that this writ does not lie in the C. B. in England. In *Impey's Pr. of C. B.* not one word is said about the writ of error *coram nobis*. The rationale of the proceedings demonstrates my position. The party must abide by his error in law; he cannot have the advantage of both. If the error occur in the C. B. a common writ of error is sued out from the King's Bench, or rather to take the record thither; and in the King's Bench the party abandons the writ of error and applies for a special writ of error *coram nobis* such is the course of practice in England; showing most clearly, that the Common Pleas there does not possess the jurisdiction ascribed to it by our opponents. *Fitzh. N. B.* 46, note.

But if the court of Common Pleas in England has the power of entertaining a writ of error *coram nobis* has this court the power under our acts of assembly? For its legitimate authority is to be found in these laws. This very point has been decided in another case. In 1722 the legislature created two courts: 1. A Supreme Court which was a court of error in the beginning, 2. A Court of Common Pleas which was a court of original jurisdiction. The separate and distinct authority of these courts is precisely described in the act of 22d May, 1722, and there is nowhere in this act the mention of the writ of error *coram nobis*, and no expression, which can warrant the assumption on the Common Pleas to issue that writ. What the other side, that jurisdiction was given to can be more far fetched than the idea that the writ of error *coram nobis* is an action? This I flatly deny. It is not an action, but a mere excrescence, and no judgment is or can be rendered in the proceeding. The case of *Day vs. Hambright*, in the Common Pleas of Philadelphia, is entitled to no weight. It was decided without authority and has not been followed. Intrinsicly, and on the face of the report it deserves no consideration.

One of the grounds of the decision by the Supreme Court on quashing the writ of error *coram nobis*, before them in this case, was that the court ought not to have the power of issuing the writ; and certainly the argument *ab inconvenienti* is most powerful. This remedy as it is called is in all cases a net of form, it is unnecessary with respect to any

purpose of justice. Suppose judgment goes by default, the court in all proper cases will interpose and set it aside. This they would do in the case of the dead man mentioned by Mr. Montgomery. The authority to afford relief on motion is commensurate with all the demands of equity and law, and furnishes a remedy better and shorter than this. When and where would a lawsuit end? Not when it is fairly decided, if this writ be allowed. It would introduce a new loophole for the retreat of dishonest parties who are averse from complying with their contracts. We should have defendants after a protracted trial of their merits, and a verdict against them and after failing to obtain a new trial, starting up with some error in fact which they had kept in *petto* as a last resource, and thus procuring by this indirect means a second chance of escape, denied to them on a motion for a new trial. Nay, after a new trial granted and had, we should find defendants endeavoring to draw the same matters into controversy for a third time by the writ of error *coram nobis* and having been indulged in this crowning the achievement by prosecuting the common writ of error in the Supreme Court.

If the public interests require that there should be some limit to law suits, I am sure the introduction of this novel proceeding, (for such I deem it to be) will not contribute to their advancement.

HAYES, J. After judgment in this cause, a writ of error *coram nobis* was sued out of the Supreme Court, returnable to the last May term, and the error assigned was the infancy of several of the defendants below, and their appearance by attorney. The defendants in error refusing to plead, the plaintiffs moved for a rule on them to show cause why they should not plead; upon which it was decided, after argument, that the Supreme Court had no cognizance of such a writ of error, because they had no power to try an error in fact. The writ was therefore quashed, the court expressly declining to give an opinion with respect to the future remedy of parties. The present writ was afterwards allowed, as of course, by one of the judges of this court, and issued returnable to June term. A motion on behalf of the defendants was made at that term, to quash the writ on the ground that it does not lie in the District Court. Before the decision of the Supreme Court I believe the impression was very general that the writ of error *coram nobis* was maintainable in that court; and though a question similar to what we have now before us, was formerly decided here.\* Yet the consequences of determining against the jurisdiction of this court, are so different (since the decision of the Supreme Court) from what they were previously supposed to be, that the subject has been discussed as an open question and at large, upon the present motion, with a view, as we conceive, to an independent decision. It is evident that the question now involves the exist-

\*In *Bauman vs. Koenigsmacher and others*, 85 June term, 1830, in which the Court, February 14, 1835, refused to allow the writ of error, c. n.

tence of the remedy by writ of error *coram nobis*; for if the writ does not lie in the District Court, it can be maintained in no court in Pennsylvania, except the Supreme Court sitting at Philadelphia.

CONCLUSION NEXT WEEK.

#### TRIAL LIST.

#### OF NOVEMBER COURT OF QUARTER SESSIONS 1877.

##### MONDAY, NOVEMBER, 19th.

1. Eugene McAnall, larceny. Aug. 126.
2. Isaac S. Lausch, forgery. April 116.
3. Franklin Reese, Elam Bleacher and David Reese, burglary. April 140, 139.
4. Daniel W. Weidler, arson. Nov. 76, 100, 102.
5. Franklin Heneiser, alias Hannagle and Thomas Wilson, attempt at burglary. Aug. 214.
6. Wm. Saylor, larceny. Nov. 21.
7. Abraham Sherbahn, larceny. Nov. 39, 40.
8. Patrick Carr, larceny. Nov. 71.
9. Phillip Sykes, larceny. Nov. 44.
10. Charles Taylor, assault and battery. Nov. 72.
11. Henry Quinn, larceny. Nov. 126.
12. Fred. Melton, attempt at burglary. Nov. 127.
13. Gottlieb Krout, larceny. Nov. 73.
14. Nancy Wilmer, larceny. Nov. 32.
15. Thaddeus Henry, jr., assault and battery. Nov. 74.
16. Wm. Saylor, larceny. Nov. 75.
17. James R. Campbell, larceny, etc. Nov. 31.
18. Samuel Nelson, robbery. Nov. 25.
19. Henry Stein, larceny. Nov. 22.
20. John Herline, larceny. Nov. 23.
21. John Dickson, false pretense. Nov. 24.
22. Albert Green, assault and battery. Nov. 43.
23. Wm. Cooper, larceny. Nov. 20.
24. Boyd Flester, larceny. Nov. 42.

##### TUESDAY, NOVEMBER 20th.

25. Jacob Witmer, assault and battery. Aug. 131.
26. Edward Shultz, assault and battery. Aug. 132.
27. Nelson Glatfelter, horse stealing. Aug. 58.
28. George Peck, robbery. Aug. 118.
29. Jacob Butt, assault and battery. Aug. 52.
30. Wm. Jacobs, fornication and bastardy. Jan. 33.
31. Abraham D. Hall, fornication and bastardy. Aug. 111.
32. Aaron Myers, fornication and bastardy. Aug. 61.
33. Benj. S. Penneger, fornication and bastardy. April 135.
34. Jacob Hogentogler, fornication and bastardy. Aug. 159.
35. Henry C. Smith, larceny. Nov. 60.
36. Wm. A. Hambricht, larceny. Nov. 76 to 96.
37. Margaret Dunn, murder. Nov. 61.
38. Wm. Hauck, false pretense. Aug. 172.
39. A. H. Arndt, larceny. Nov. 52.
40. James Fellenbaum, assault and battery. Aug. 208.
41. John B. Denues, larceny and secreting goods, etc. Aug. 244, 245.
42. Joseph Gochenour, larceny. Aug. 248.
43. Matilda Carberry, disorderly house. Aug. 167.

##### WEDNESDAY, NOVEMBER 21st.

44. Abraham B. Good, false pretense, etc. April 75, 73, 74.
45. Edward N. Seals, aiding a strike, etc. Aug. 66.
46. Miller M. Fraim, inciting to riot, etc. Aug. 148, 149.
47. John Bills, burglary. Aug. 57.
48. Joel Miller, Benton Breneman and Andrew Miller, affray. Nov. 76, 8.
49. Moses Miller, perjury. Nov. 76, 34.
50. John Buffenmoyer, Franklin Keller, violating fish laws. Aug. 229.
51. A. D. Gyger, violating fish laws. Nov. 55.
52. Joseph Robinson, assault and battery. Nov. 65.
53. John Reidenbach, fornication and bastardy.

54. George Helfrich, fornication and bastardy. Nov. 19.
55. Wallace McCreary, fornication and bastardy. Nov. 19.
56. John Hoover, fornication and bastardy. Nov. 16.
57. George Souders, assault and battery. Nov. 36.
58. Margaret Stopp, assault and battery. Nov. 35.
59. Patrick Nolen, assault and battery. Nov. 59.
60. Ellen Kreider, assault and battery. Nov. 34.
61. Thomas Warner, carrying concealed weapons. Nov. 53.
62. Jacob F. Sheaffer, selling liquor on Sunday and to minors. Nov. 56, 58.
63. John M. Erb and Andrew Gerber, forgery. Nov. 48.
64. Henry Bennett, stopping cars on railroad. Nov. 64.
65. Charles Rost, receiving stolen goods. Nov. 57.
66. Adam Dill, malicious trespass. Nov. 51.
67. Charles Green, burglary and larceny. Nov. 1, 12.
68. David Londou, burglary. Nov. 2.
69. Alexander Steward, burglary. Nov. 3.
70. John Dixson, burglary, etc. Nov. 4, 17.
71. Jacob Awi, burglary. Nov. 5.
72. Daniel Landou, burglary. Nov. 13.
73. Elizabeth Green, receiving stolen goods. Nov. 6.
74. Susan Green, receiving stolen goods. Nov. 7.
75. Harriet Green, receiving stolen goods. Nov. 8.
76. Catharine Green, receiving stolen goods. Nov. 9.
77. Margaret Londou, receiving stolen goods. Nov. 10.
78. Elizabeth Minn, receiving stolen goods. Nov. 11.
79. James Burns, larceny. Nov. 14, 15.
80. James Shaw, assault and battery, larceny. Nov. 28, 29.

##### THURSDAY, NOVEMBER 22d.

81. Alice Horner, assault and battery. Aug. 220.
82. Wm. Keyes, larceny. Aug. 7.
83. Henry Brinkman, larceny. Aug. 8.
84. Simon Null, larceny. Aug. 9.
85. George Null, larceny. Aug. 10.
86. Walter McNally, libel. Aug. 139.
87. Abraham K. Huber, false pretense. Nov. 46, 47.
88. Samuel Elliott, assault and battery. Nov. 97.
89. Frederick Gotwald, nuisance. Nov. 26.
90. Joseph Frick, keeping a gambling house. Nov. 70.
91. Joseph Schlegelmilch, assault and battery. Nov. 128.
92. Samuel Taylor, assault and battery. Nov. 98.
93. Joseph C. Miltenberger, forgery. Nov. 99.
94. Simon Jacobs, false pretense. Nov. 100 to 103.
95. Morris Rosenthal, embezzlement. Nov. 104.
96. Cresini Sauer, false pretense. Nov. 62.
97. M. W. Villee, assault and battery. Nov. 50.
98. Daniel B. Esbenshae, malicious mischief. Nov. 45.
99. Davis Kitch, sr., false pretense. Nov. 68.

##### FRIDAY, NOVEMBER 23d.

100. Winfield S. Gelter, accessory after larceny. Aug. 30.
101. Levi Bickhart, Christian Bickhart, malicious mischief. Nov. 118.
102. John Brimmer, larceny. Nov. 119.
103. Andrew Rutter, larceny. Nov. 120.
104. Joseph Gerlitzki, larceny. Nov. 121.

##### SATURDAY, NOVEMBER 24th.

105. Thaddeus Henry, jr., surety of peace. Nov. 122.
106. Joseph Houck, surety of peace. Nov. 125.
107. Jacob Wolhofs, jr., surety of peace. Nov. 37.
108. Samuel Parmer, surety of peace. Nov. 41.
109. Joseph Robinson, surety of peace. Nov. 67.
110. James Shaw, surety of peace. Nov. 30.
111. Barbara Greenwald, surety of peace. Nov. 38.
112. Samuel Elliott, surety of peace. Nov. 123.
113. Frederick Hellman, desertion. Nov. 124.
114. Wm. Moonshower, desertion. Nov. 66.
115. Henry Shaffner, sr., desertion. Nov. 54.



## COMMON PLEAS TRIAL LIST.--Second Week.

Commencing Monday, December 3d, 1877.

			<i>H. C. Brubaker.</i> 15	CHARLES COULTER <i>vs.</i>	May Term, 1876. No. 12. Sum's in assumpsit. Plea, pay't, payment with leave.
			<i>P. D. Baker.</i>	PAYENOUR TICKNOR.	
<i>Reynolds.</i> 1	ANNIE EVANS <i>vs.</i>	Sept. Term, 1873. No. 4. Sum's in slander. Plea, not guilty.	<i>McMullen.</i> 16	S. H. REYNOLDS, assignee. <i>vs.</i>	May Term, 1876. No. 52. Sum's case. Plea, pay't with leave, etc.
<i>Black.</i>	HENRY SHOFFSTALL AND SARAH SHOFFSTALL.		<i>Atlee.</i>	KITCH & KNEEZEL.	
<i>Ellmaker, Kline.</i> 2	JOHN BECKER <i>vs.</i>	Feb'y Term, 1873. No. 60. Sum's in case. Plea, not guilty.	<i>Wilson.</i> 17	FRANKLIN DILLER <i>vs.</i>	May Term, 1876. No. 112. App'l by def't from justice. Plea, non assumpsit, pay- ment, etc.
<i>North.</i>	H. M. WATTS et al.		<i>Wilson.</i> 18	W. F. H. AMWAKE.	
<i>Reynolds.</i> 3	J. B. CRESSWELL <i>vs.</i>	May Term, 1873. No. 47. Sum's case. Plea, non assumpsit.	<i>Ellmaker.</i>	JACOB MESSNER <i>vs.</i>	June Term, 1876. No. 47. Attachment ad lev. deb., etc. Plea, nulla bona.
	JOHN R. MCGOVERN.		<i>Same.</i> 19	F. R. MESSNER <i>vs.</i>	June Term, 1876. No. 48. Attachment ad lev. deb., etc. Plea, nulla bona.
<i>Reynolds.</i> 4	WM. DARLINGTON <i>vs.</i>	April Term, 1874. No. 66. Sum's in case. Plea, non assumpsit, pay't, etc.	<i>Same.</i>	SAME DEFENDANT.	
<i>Yundt.</i>	WALKER & CO.		<i>Brown,</i> <i>H. C. Brubaker.</i> 20	SAMUEL H. PRICE et al. <i>vs.</i>	Aug. Term, 1876. No. 54. Issue to try validity of will. Plea filed.
<i>Reynolds.</i> 5	JACOB RIEGAL & CO. <i>vs.</i>	Dec. Term, 1874. No. 24. Sci. fa. to revive judgment Plea, payment.	<i>Wilson.</i>	HENRY L. MISHLER et al.	
	D. G. MARTIN.		<i>Eby.</i> 21	FREDERICK STONER, Sr. <i>vs.</i>	Aug. Term, 1876. No. 141. Sci. fa. to revive judgm't. Plea, pay't, payment with leave.
<i>Davis.</i> 6	ELI ESHLEMAN <i>vs.</i>	Jan'y Term, 1875. No. 87. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.	<i>Amwake.</i>	REUBEN NEFF.	
<i>Brosius, Steinmetz.</i>	SKILES & FREY.		<i>Reynolds.</i> 22	I. S. MCCAMANT <i>vs.</i>	Sept. Term, 1876. No. 25. Sum's case. Plea, non assumpsit.
<i>Eshleman.</i> 7	JOHN HILDEBRAND <i>vs.</i>	March Term, 1875. No. 79. App'l by def't from justice. Plea, pay't, payment with leave and set-off.	<i>R. J. Evans.</i>	JOHN B. KURTZ.	
<i>Davis, Johnson.</i>	ISAAC K. ROBINSON et al.		<i>Eshleman.</i> 23	NATH'L MAYER, dec'd's ad- ministrators <i>vs.</i>	Sept. Term, 1876. No. 62. Sum's in assumpsit. Plea, non assumpsit, pay- ment, etc.
<i>Yundt.</i> 8	THE SINGER MAN. CO. <i>vs.</i>	May Term, 1875. No. 110. App'l by def't from justice. Plea, non assumpsit.	<i>Davis.</i>	AMOS GROFF.	
<i>W. A. Wilson,</i> <i>Rosenmiller.</i>	MARY KLINEHANTZ.		<i>Nauman, Given.</i> 24	HANOVER JUNCTION AND SUSQUEHANNA R. R. CO. <i>vs.</i>	Oct. Term, 1876. No. 65. App'l by def't from justice. Plea, non assumpsit.
<i>H. C. Brubaker.</i> 9	H. S. STAUFFER <i>vs.</i>	June Term, 1875. No. 114. Sum's in assumpsit. Plea, non assumpsit.	<i>North.</i>	JOHN S. MILLER.	
<i>Franklin, North.</i>	GEO. H. MOORE.		<i>Same.</i> 25	SAME PLAINTIFF <i>vs.</i>	Oct. Term, 1876. No. 70. App'l by def't from justice Plea, non assumpsit.
<i>Reynolds.</i> 10	HARBERGER, McCULLY & CO. <i>vs.</i>	Oct. Term, 1875. No. 2. Sum's case. Plea, non assumpsit, pay't, etc.	<i>Same.</i>	JOHN MUSSER.	
<i>Atlee.</i>	EUREKA BARK MILL CO.		<i>Same.</i> 26	SAME PLAINTIFF <i>vs.</i>	Oct. Term, 1876. No. 71. App'l by def't from justice Plea, non assumpsit.
<i>Johnson.</i> 11	HENRY KUEFELY <i>vs.</i>	Nov. Term, 1875. No. 74. App'l by def't from justice Plea, non assumpsit, pay't, pay't with leave, etc.	<i>Frusauf.</i> 27	WM. BAKER <i>vs.</i>	Nov. Term, 1876. No. 33. Sum's case. Plea, non assumpsit, pay't, etc.
<i>Nauman.</i>	HENRY FRANKE.		<i>Davis.</i>	RHOADS & TAYLOR.	
<i>J. Hay Brown.</i> 12	HENRY C. HOSTETTER <i>vs.</i>	Feb'y Term, 1876. No. 19. Sum's in assumpsit. Plea, pay't, payment with leave, etc.	<i>Smith.</i> 28	MARY ANN CLARK, &c. <i>vs.</i>	Nov. Term, 1876. No. 34.- Issue to try right of prop- erty. Plea filed.
<i>Reynolds, P. D.</i> <i>Baker.</i>	GROFF & CO.		<i>P. D. Baker.</i>	PETER J. STORMFELTZ.	
<i>Johnson.</i> 13	JOHN K. BARR <i>vs.</i>	Feb'y Term, 1876. No. 71. Sum's in covenant. Plea, covenants performed	<i>North.</i> 29	SAMUEL TOWSON et al. <i>vs.</i>	Nov. Term, 1876. No. 45. Issue as in an action of trespass, etc. Plea, not guilty.
<i>Franklin.</i>	GEO. F. EMENAN		<i>Atlee.</i>	THE PEACH BOTTOM RAIL- WAY CO.	
<i>Same.</i> 14	SAME PLAINTIFF <i>vs.</i>	Feb'y Term, 1876. No. 73. Sum's in assumpsit. Plea, non assumpsit, pay't.	<i>Reynolds.</i> 30	JACOB FRITZ, Jr., use <i>vs.</i>	Nov. Term, 1876. No. 64. Sum's case. Plea, non assumpsit, pay't, etc.
<i>Same.</i>	SAME DEFENDANT.		<i>Eshleman.</i>	DAVID KEEN.	

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., NOV. 17, 1877.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since November 10, 1877:

CATHARINE DILLER, dec'd, late of Earl twp.; Lewis Diller and Adam Diller, administrators.

JOHN F. WOLF, dec'd, late of West Hempfield twp.; Mary A. Wolf, administratrix.

ELISHA BATCHELOR, dec'd, late of Fulton twp.; Kirk Brown, administrator.

HARRIET RHOADS, dec'd, late of East Cocalico twp.; Henry Rhoads, administrator.

MARTIN SNAVELY, dec'd, late of Drumore twp.; Abraham Snavely, administrator.

The following Wills have been admitted to probate since November 10, 1877:

JACOB DIETRICH, late of Conestoga twp.; Matilda Dietrich, executrix.

HENRY FRANKE, late of Lancaster city; Edmund Franke, executor.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since November 10th, 1877.

BARBARA MILLER, of Conestoga twp.; Abraham Miller, assignee.

PHILIP C. NOOT and WIFE, of Lancaster city; A. S. Killian and Philip Fertig, assignees.

### COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN NOVEMBER, (19th,) 1877.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of October, 1877. oct27 H. N. BRENEMAN, Sheriff.

### ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE,

No. 13 NORTH DUKE STREET,

LANCASTER, PENNA.

## Auditors' Notices.

Estate of PETER G. GREIDER, late of Lancaster city, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Phillip D. Baker, esq., administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, DECEMBER 1st, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

nov10 A. C. REINCEHL, Auditor.

Estate of ELIZABETH SALBACH, late of West Hempfield twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Wisler, administrator of said Elizabeth Salbach, dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, NOVEMBER 20th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27 E. D. NORTH, Auditor.

Estate of SUSAN LAWHEAD, late of West Hempfield twp., Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry Wisler, administrator of the said Susan Lawhead, dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, NOVEMBER 20th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

oct27 E. D. NORTH, Auditor.

## PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET, LANCASTER, PA.

## Divorce Notices.

ANNIE KNOX by her next friend, Jacob Menge, vs. JOHN KNOX. Allas Subpœna for Divorce, To November Term, 1877.

To JOHN KNOX:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 17th day of DECEMBER, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Annie Knox should not be divorced from the bonds of matrimony contracted with you. nov17 H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, November 17, 1877.

DELLAH ROCKAFELLOW, by her next friend Frederick Fry, vs. AND. D. ROCKAFELLOW. Allas Subpœna for Divorce, September Term, 1877.

To AND. D. ROCKAFELLOW.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 19th day of NOVEMBER, 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Dellah Rockafellow should not be divorced from the bonds of matrimony contracted with you. oct18 H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, October 18th, 1877.

## Estate Notices.

Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

nov17 KIRK BROWN, Administrator. J. HAY BROWN, Atty.

Estate of JOHN F. WOLF, late of West Hempfield twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the village of Mountville. nov17 MARY A. WOLF, Administratrix. THOS. B. COCHRAN, Atty.

Assigned Estate of HENRY FRANKE, of Lancaster City.

Henry Franke, of Lancaster city, having by deed of voluntary assignment, dated October 22d, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Henry Franke, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

nov17 R. W. SHENK, HERMAN MILLER, Assignees. Residing in Lancaster city. GEO. NAUMAN, Atty.

Estate of HENRY SHAUB, late of West Lampeter twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

nov3\* PHILIP D. BAKER, Atty. HENRY SHAUB, JR., ABRAHAM SHAUB, Administrators.

Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

nov3 BRIDGET FITZPATRICK, JOHN J. FITZPATRICK, Administrators.

Estate of HENRY SCHITZ, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough.

nov8\* FRANK SCHLEGMILCH, A. F. SHENCK, Atty. Executor.

Estate of JOHN GROSS, late of West Donegal township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

nov8] JOHN G. KELLER, SAMUEL G. KELLER, JACOB G. KELLER, MARTIN G. KELLER, ABRAHAM R. FORNEY, J. L. STEINMETZ, Atty. Litiz, Elizabethtown, Administrators.

Estate of JOHN WHITESIDE, late of Colerain township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township.

oct27\* JAMES WHITESIDE, S. H. REYNOLDS, Atty. Administrator.

Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown.

oct27 EMANUEL BROWN, Executor.

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARTIN DENLINGER,  
West Lampeter township.  
JOHN L. LANDIS,  
East Lampeter township,  
Administrators.  
oct27  
WM. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

EMMA L. SMITH,  
Executrix.  
oct20  
THOS. B. COCHRAN, Att'y.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.

LIZZIE S. WICKEL,  
Administratrix.  
oct20  
AND. M. FRANTZ, Att'y.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.

SAMUEL G. GENSEMER,  
Assignee.  
oct20  
GEO. BRUBAKER, Att'y.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY DONER,  
Administrator.  
DANIEL R. DONER,  
oct20  
B. F. ESHLEMAN, Att'y.

**Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.**

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

B. F. COX,  
Assignee.  
oct6] PHILIP D. BAKER, Att'y.

**Estate of ELLAS BEHM, late of Penn twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

EMANUEL KEENER,  
Administrator.  
sep29

**Estate of MICHAEL KREIDER, late of Pequea township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

AMOS S. KREIDER,  
ANDREW MEHAFFY,  
Executors.  
sep22\*  
P. D. BAKER, Att'y.

**Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.**

Mary A. Demmy, (widow) of Mount Joy borough, having by deed of voluntary assignment, dated October 5th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI RICKSECKER,  
Assignee.  
A. F. SHENCK, Att'y.  
oct20\* Residing in Mount Joy borough.

**Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.**

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. R. SENSENIG, Assignee,  
Residing in Lancaster City.  
GEO. M. KLINE, Att'y. [oct6

**Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.**

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. PENROSE, Assignee,  
Chestnut Level P. O., Lan. Co., Pa.  
oct13  
J. HAY BROWN, Att'y.

**Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.**

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

HENRY E. MILLER,  
Assignee.  
OWEN P. BRICKER, Att'y.  
oct6 Residing in Litiz, Lancaster co., Pa.

**Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.**

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.  
sep15] H. C. BRUBAKER, Att'y.

**Estate of T. R. TORR, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY S. TORR, widow,  
MICHAEL HABERBUSH,  
Executors.  
P. D. BAKER, Att'y.  
sep23

**Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

ANNA MARY STROUSE,  
SAMUEL EBY,  
Executors.  
sep22\*

**Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

CYRUS R. DOHNER,  
Residing in Penn twp.  
BENJAMIN R. DOHNER  
Residing in Warwick tw  
Administrators  
sep29\*

**Estate of JACOB AUMENT, late of Drumoi township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT,  
Executors.  
sep22\*  
P. D. BAKER, Att'y.

**Assigned Estate of WILLIAM CRIST, of Clay twp., Lancaster co.**

William Crist, of Clay township, having by deed of voluntary assignment, dated September 10, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said William Crist, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JACOB H. ERB, Assignee,  
Penn twp., Lancaster co., Pa.  
OWEN P. BRICKER, Att'y. [sep15

**Estate of ELIZABETH GEHMAN, (widow of John Gehman, dec'd,) late of Brecknock twp., Lancaster co., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Adamstown borough.

E. BILLINGFEIT,  
Surviving Executor.  
sep15

**Estate of SAMUEL E. KURTZ, late of the city of Lancaster, dec'd.**

Letters of administration c. t. a. on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

WM. AUG. ATLEE. NOAH SWARTLEY,  
Att'y. JONAS SWARTLEY,  
Administrators.  
sep1\*

**Estate of HENRY ZIMMERMAN, late of East Hempfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HIRAM W. GRAYBILL,  
LEAH ZIMMERMAN,  
GEORGE BINGAMIN,  
Administrators.  
sep22  
GEORGE BRUBAKER, Att'y.

**Assigned Estate of HENRY GAST and WIFE, of Lancaster City, Lancaster co.**

Henry Gast and Wife having by deed of voluntary assignment, dated September 13, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Gast, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

J. I. HARTMAN, Assignee,  
Residing in Lancaster City.  
P. D. BAKER, Att'y.  
sep15]

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, NOVEMBER 24, 1877.

No. 26.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way passenger†	.....	4:50 a. m.	7:50 a. m.
Niagara Express,...	.....	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	.....	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy.	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	.....	11:20 a. m.	1:25 p. m.
Sunday Mail,.....	.....	11:29 a. m.	1:30 p. m.
Fast Line,*	.....	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	.....	6:10 p. m.	8:10 p. m.
Columbia Accom.,.....	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	.....	7:35 p. m.	8:40 p. m.
Pittsburg Express,.....	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.
EASTWARD.		LANCASTER.	PHILADELPHIA.
Atlantic Express,*	.....	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	.....	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	.....	2:00 p. m.	5:00 p. m.
Johnstown Express,....	.....	3:05 p. m.	6:00 p. m.
Day Express,*	.....	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	7:50	2:30
Lancaster—West King Street,...	8:00	9:16	3:35
Lancaster—Upper Depot,.....	8:10	9:30	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:36	5:30	8:10
Lancaster—West King Street,...	9:45	5:40	8:20
Quarryville, (arrive).....	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:10	12:55	3:45
Lancaster Junction,.....	8:37	1:35	4:11
Reading, (arrive).....	10:20	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:13	1:20	7:45
Lancaster—Upper Depot,.....	9:56	2:00	8:10
Lancaster—West King Street,...	9:45		8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom,.....	7:05	1:55	5:45
GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	3:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1863
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

**Prothonotaries:**

**Eastern District**—Benj. E. Fletcher, Philadelphia.  
**Western District**—J. B. Switzer, Pittsburgh.  
**Middle District**—Robert Snodgrass, Harrisburg.  
**Northern District**—J. A. J. Cummings, Montandou, Northumberland county.

*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensesing and M. O. Sensesing.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Kouigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Commissioner*—Charles Schwebel.

THE LANCASTER BAR

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DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 23. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., NOV. 24, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JOHN MERCER and MARGARET MERCER against JANE WATSON, PATTERSON WATSON, DAVID WATSON, SAMUEL WATSON, SAMUEL SMOKER and SARAH, his wife; MARIA WATSON, HETTY WATSON and JANE WATSON.

[Continued from last week.]

The privilege of pursuing a legal remedy for the infraction of any legal right is essential to the preservation and due enjoyment of the right itself, it being manifest that the right to anything without the means of redress, if it be violated, would be a shadow without the substance. It is, therefore, a necessary rule of every good system of laws that where there is a legal right, there is also a legal remedy by suit or action at law, whenever the right is invaded: 3 Comm. 23. The writ of error *coram nobis* is a remedy, provided at common law, for certain occasions well defined to which it is peculiarly adapted. As a part of that law, it was from the nature of the original settlement of the colonies, extended to this county without any special enactment. In the declaration of the general congress, on the 5th of September, 1774, the delegates asserted, among other things, "that our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural born subjects, within the realm of England, that by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they and their descendants now are entitled to the exercise and enjoyment of all such of them as their local and other circumstances enabled them to exercise and enjoy; that the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinity, according to the course of that law; all which in behalf of themselves and their constituents they claimed, demanded, and insisted on as their indubitable rights and liberties which could not be legally taken from them, altered or abridged by any power whatever, without their consent by their representatives in their several provincial legislatures." 1 Pitk. Pol. & Civ. Hist. U. S. 285. In the case of *Witherow vs. Keller*, 11 Sergt. & R. 271; C. J. TILGHMAN says: "The first settlers in Pennsylvania brought with them the common law in general except such parts thereof as were unfit for colonies." The courts when organized and

established as courts of law, were clothed without any special delegation of authority with common law jurisdiction; and consequently, with the power of administering all the common law remedies which were applicable to our situation and circumstances: 2 Crow. 5. Those remedies being the various actions and proceedings in courts of justice, were among our most important and indispensable rights.

The writ of error *coram nobis* to rectify an error in fact is applicable wherever a trial by jury in civil cases obtains. It has been introduced into New York, Maryland, Massachusetts, and probably most of the other States. In practice it has been adopted and sanctioned by the highest authority, as a proper remedy in this State. The cases of *Sliver vs. Shelbach*, 1 Dall. 165, and *Moore and others vs. McEwen*, 5 Sergt. & R. 373\*, were writs of this description, allowed and prosecuted in the Supreme Court at Philadelphia, the first in 1786, the other so late as in 1819; and the case of *Day vs. Hamburg* was a similar writ in the Court Common Pleas at Philadelphia in 1808. Although the state of facts in which the remedy is required is of very rare occurrence, yet when it does occur the writ of error *coram nobis* is specifically appropriate. An error in fact, when the fact is disputed, cannot be corrected by motion without taking away trial by the jury. The Supreme Court, in *Sliver vs. Shelbach*, say expressly that the fact of infancy, assigned as error, must be tried *per pais*. Four years after that case our constitution was adopted, in which it is declared that the trial by jury shall be as heretofore and the right thereof remain inviolate: Art. IX, Sec. 6. And the recent decision of the Supreme Court in this case that they have no cognizance of the writ of error *coram nobis*, because they have no power to try a fact, recognizes the necessity of a trial by jury for that purpose. To me it seems clear that by the common law, by the decisions of the Supreme Court, and by the Constitution, the citizen of Pennsylvania has an indisputable right to the benefit of this remedy in the proper cases and before the appropriate tribunals.

It is alleged that when the judgment in this case was rendered several of the defendants below were infants, and that they appeared by attorney and not by guardian. That this is a proper case for a writ of error *coram nobis* cannot be doubted. The only question is whether the writ lies in the court or not. The argument upon the present motion turned chiefly on the point, whether such a writ is maintainable in the common pleas in England, assuming that if it lies in that court it lies here, and *vice versa*.

In support of the negative it was asserted and shown that all the forms or precedents of writs of error *coram nobis* were in the King's Bench, and a passage was cited from *Termes de la Ley*, in which it is said that "the court of common pleas cannot redress their errors in fact."

It is to be observed that the precedents in the books are not numerous. The cases,

\*See also *Lessee of Hill vs. West*, 1 Binn. 486.

from the nature of them, in which the remedy is called for, can but seldom occur, and I have not been able to find the forms or precedents of the writ collected, even in the few cases which are reported. The opinion of VAUGHAN, Ch. J., in *Carthew 222*, well explains the reason why no precedents are to be found of this writ in the common pleas. "A writ of error" says he, "out of an inferior court, lies as properly in C. B. as in King's Bench; but generally, writs of error, for many years, have not been brought in C. B." The reason is matter of conveniency because if you bring a writ of error in C. B., and the judgment is affirmed, yet it may be brought into King's Bench and be there reversed; though indeed, if a writ be brought in C. B., we must proceed upon it. But no man will advise his client to bring it in C. B. but rather into King's Bench, where it is final: See 9 Vin. 486 pl. 35. So, by taking out the writ of error *coram nobis*, returnable into King's Bench, the whole matter will be there determined *uno flatu*; whereas, by proceeding in C. B. there judgment would still be subject to a writ of error from the King's Bench.

Authority, however, is not wanting to prove that the writ in question lies in the common pleas. In 5 Comyn's Digest 695—a book of undoubted authority, it is said, error may lie in the same court where the judgment was given, when error is not assigned for any fault in the court, but for some defect in the execution of the process. So for error in fact, as that the defendant, appeared by attorney, being an infant; that the plaintiff was a *femme covert*, or died before issue: 1 Roll, 747, l. 5, 20. In 9 Vin. 16 error, E. pl. 6, it is said: "In the same term outlawry may be reversed in C. B. for error." "Or (pl. 7,) in any term if it be void upon any statute, as for want of proclamations," &c. Het. 93; Pasch. 4; Car. C. B. anon. In 2 Tidd's Pr. 1056, in a note speaking of this writ, it is said that in the common pleas, the record and process being stated to remain before the King's justices, the writ in that court is called a writ of error *coram nobis* or *quae coram vobis resident*. Now it is true that in several of the precedents in the King's Bench, which I have examined, the writ runs *quae coram vobis resident*, whilst in others it is *quae coram nobis*, etc.; still this passage shows that in the opinion of the author, the writ lies as well in the common pleas as in the King's Bench. Such also is the opinion of THOMPSON, C. J., of the Supreme Court of New York, who, in 14 Johns. R. 417, says, that although in England, error in fact lies on a writ of error *coram nobis* in the Common Bench, yet we find that error in fact is assigned sometimes on a writ of error from the King's Bench to the Common Pleas. And in the case of *Day vs. Hamburg*, the Court of Common Pleas of Philadelphia declare that although they entertain no doubt that error will lie on a matter of fact from the common pleas of England to the King's Bench, yet they are clearly of opinion it will lie in the court of common pleas: 1 Browne's R. 82. The paragraph cited from *Termes de la Ley* is entitled to very little consideration,

especially as it is not sustained by any decision, nor, as I think, by any sound principle. The only reference annexed to it is the Stat. 1 Wm. & Mary, c. 4, which contains nothing relative to the subject of the paragraph.

Why may not this writ lie in the common pleas as well as in the King's Bench, its purpose being to correct, not the errors of the court in rendering judgment, but error in the process or error in fact, occasioned by the oversight of parties or by default of the clerks? The court of common pleas cannot, it is true, reverse their own errors, properly so called, neither can the King's Bench reverse theirs; but error in fact is not the error of the judges, and reversing it is, therefore, not reversing their own judgment: 2 Tidd's Pr. 1056; 5 Com. D. 696; 1 Roll. 746, l. 4.; R. Mo. 186. The fact which is the primary object of the writ, must be tried *per pais*; it is to be ascertained by a jury, and may be as well tried in the C. P. when the proceedings and record are there, as in the King's Bench to which they may be removed. The court does nothing but give judgment according to the verdict. There is surely no reason why this may not be as correctly done in the common pleas as in the King's Bench. The writ of error and the writ of error *coram nobis* have nothing in common but the name, and hardly that. The subjects of their operation are wholly distinct as well as the mode of proceeding, and the tribunal to which the contested matter is referred. It is not because the King's Bench is a court of error that the writ of error *coram nobis* lies there, since, as a court of error, its peculiar jurisdiction is over errors of law, (3 Bl. Comm. 407,) but because it can try the error or issue in fact at *nisi prius*. The highest court of error in England—the House of Lords—cannot entertain this writ. The reason is they have not the means of trying an issue according to the course of the common law—the identical reason for which our Supreme Court decides that they have no cognizance of the writ of error *coram nobis* in the present case. Upon authority and principle, therefore, I am strongly inclined to the opinion that this writ lies in the common pleas of England.

But the assumption upon which the argument proceeds, namely, that the court of Common Pleas in Pennsylvania have the same power and jurisdiction with the Common Pleas in England, and our Supreme Court the same with the King's Bench, appears to me to be not well supported. Our courts of Common Pleas stand more in the relation of the King's Bench to the House of Peers than that of the Common Pleas of England to the King's Bench. The House of Peers is the supreme court of judicature there, to which appeals and writs of error lie to rectify the mistakes of law committed by the King's Bench and other courts. It has no original jurisdiction over causes. Thus, in Pennsylvania, the Supreme Court, unlike the King's Bench in England, has no original jurisdiction except in Philadelphia. It is a court of error, and its province is to rectify the mistakes of law committed by the courts of common pleas and other courts, and being the highest court

of judicature in the commonwealth, resembles in these respects the House of Peers. Another point of resemblance is, neither of these jurisdictions entertains the writ of error *coram nobis*.

In addition to this leading argument on the part of the defendants, it was also contended that the act for establishing courts of judicature in this province, passed the 22d May, 1722, does not empower the court of common pleas to entertain the writ of error *coram nobis*; that the acts establishing fee bills give no fee to the prothonotaries of the common pleas for issuing such a writ; that no precedent exists of such a writ allowed by the common pleas, and that even if that court originally possessed the authority, a non-user for one hundred years is tantamount to its non-existence, and that the exercise of it by the common pleas would be productive of great inconvenience, which may be avoided whilst all its benefits are secured by adopting as a substitute the motion for a new trial.

It was evidently not the purpose of the act of 1722, to enumerate specifically all the writs and process which may be issued from the court of common pleas. The words of the act are comprehensive, authorizing the judges to hold pleas of assizes, scire facias, replevins, and hear and determine all and all manner of pleas, actions and causes, civil, personal, real and mixed, according to the laws and constitutions of this province. There is no mention of debt, trespass, ejectment and many other writs, over which the jurisdiction of that court was never doubted. They are embraced by the general description of "all and all manner of pleas, actions and causes, civil, personal, real and mixed," which description will likewise embrace the writ in question; for although it was strongly asserted that this is not an action but a mere excrescence, yet the very authority so justly eulogized by the counsel (Wms. Saunders,) expressly declares that it is considered as a new action; and, therefore, the defendant in the original action may, it is said, change his attorney without obtaining a judge's order for the purpose: 2 Saunders' R. 101, f. (n. 1). See also Litt. sect. 505; Co. Litt. 290. But if the writ of error *coram nobis* is nothing but the excrescence of an action, the common pleas, it would seem, might still have cognizance of it, since the incident naturally follows the principal and the excrescence adheres to that out of which it grows.

The argument, founded upon this act, would be stronger if the writ in question bore anything more than a nominal resemblance to the writ of error. It might then be urged that as the act had expressly given cognizance of writs of error to the Supreme Court, it had impliedly withheld it from the common pleas; that the construction which would enable the latter to entertain writs of error *coram nobis* would enable them also to entertain writs of error to rectify mistakes of law. But the writ of error *coram nobis*, in its real purpose and character, resembles a feigned issue; its object being to ascertain the truth of a disputed fact—and the mode in which this is done being a trial by jury; whereas the object

of a writ of error is to correct an error or mistake of the law, and this is done by the revision, consideration and decree of the judges of a superior court.

The recent decision of the Supreme Court in this cause plainly recognizes the distinction between the writ of error and the writ of error *coram nobis*. Since, if the act of 1722, by the terms "writs of error, in the first section, included writs of error *coram nobis*, that court could not, in the face of the act, have determined that they had no cognizance of the last mentioned writs. But their decision conforms to the act. In the second section the judges are empowered to hear and determine all and all manner of pleas, plaints and causes which shall be removed or brought thither from the respective general quarter sessions of the peace and courts of common pleas, or from any other court of this province, by virtue of any of the said writs (i. e. *habeas corpus*, *certiorari*, writs of error, &c.,) and to examine and correct all and all manner of errors of the justices and magistrates of this province, in their judgments, process and proceedings in the said courts, &c. The errors here described are the errors of the judges, and not errors in fact. Accordingly, the power vested in the Supreme Court, is, upon such examination, "to reverse the said judgments, which is the proper judgment of of the court for correcting errors in fact." The power of the Supreme Court to examine the latter is incidental, and if derivable from this act at all is conferred by the last clause of this second section, in which that court is authorized to administer justice to all persons and exercise their jurisdictions and powers, according to law, as fully and amply to all intents and purposes whatsoever, as the justices of the court of King's Bench, Common Pleas and Exchequer at Westminster may or can do.

In regard to the acts establishing fee bills, it is only necessary to remark that the prothonotary would not fail to find his compensation in the words of the existing act—for issuing "every other writ, seventy-five cents," which are copied with no variation except as to the amount from former laws upon the same matter.

The doctrine of non-user is not sustainable in its application to this subject. In point of fact, this writ has, within the last twenty years, been allowed and prosecuted to judgment in a highly respectable court of common pleas, after full argument upon the question of jurisdiction. See the case of Day vs. Hamburg, in which it was decided that the writ of error *coram nobis* lies in the court of Common Pleas in Pennsylvania: 1 Browne's R. 75. But if the premises were true, the conclusion would not be for the mere disuse even, for one hundred years could not deprive the court of its jurisdiction nor the citizen of his right. Matter of convenience has rendered almost or quite obsolete several of the proceedings formerly in use in the courts of England, as the writ of *audita querela*, account render, some of the writs of right, error from the common bench to the inferior courts, and even some of the

inferior jurisdictions; but these may all be revived; they are not extinct, they only slumber in disuse. Sir WM. BLACKSTONE, speaking of the 19 Geo. 3, C. 70, which requires the court of Westminster to issue writs of execution in aid of the process of the inferior courts, when the person or effects of a defendant are not within the limits of their jurisdiction, observes that this statute may possibly occasion the revival of the practice and proceedings in these courts, which are now in a manner forgotten: 3 Bl. Comm. 33. In *Witherow vs. Keller*, 11 S. & R. 271, the Supreme Court decided that the writ of entry *sur disseisin* may be maintained in Pennsylvania, though it was not pretended that before that case it had ever been used in this State since the first settlement of the province. The same objection was urged against the writ of entry on that occasion, and the opinion of the Chief Justice in regard to it is very applicable to the point we are now considering.

"As to the inference," says he, which is attempted to be drawn from the circumstance of this action never having been used before, I do not think it is well founded. The first settlers of Pennsylvania brought with them the common law in general, except such parts as were unfit for colonies. It might be expected that in a young country many years might elapse before there would be a necessity to make use of all the forms of action in practice in an old country, far advanced in arts, commerce and civilization. Accordingly we find that such has been the case. "But even if the writ of entry had not been used before it would be no answer to the action to say that it was the first of the kind. We have several instances of writs and remedies known to the common law and never introduced into practice here until since our independence. Such was the jury *de meditate lingue*, which was claimed by a foreigner for the first time, and granted in the case of the *Comm. vs. Mescia*, etc. (1783), 1 Dall. 73. And such within the last few years was the assize of nuisance brought by Mr. Lewis. It was a long time before the action of *hominis replegiando* was known among us, yet it was at last perceived to be adapted to certain cases where personal liberty was invaded, and brought into practice without objection. I do not believe the writ of *audita querela* was ever issued in Pennsylvania, yet, if now issued I presume no lawyer would question its legality." This is so full an answer to the argument of non-user urged in the present case that it is unnecessary to add anything—if anything could be added—upon the subject.

I proved to the argument *ab inconvenienti*, which, as a legal topic is available only in cases of doubtful interpretation, I cannot help thinking that the inconvenience of this writ (if there be any) was greatly magnified in the discussion. It has been before remarked that there are but few cases, and those of rare occurrence, in which it is an appropriate remedy. It can very seldom happen that the infancy of the defendant, or the coverture or death of the plaintiff before issue, or any fatal defect

of process will remain unknown and unnoticed until after verdict. The experience of this country, as well as of England, is proof of the fact. If a party were to employ this writ improperly the court would restrain him by quashing it. But their authority to substitute a motion for the writ of error *coram nobis* may be questioned upon the most substantial grounds. They have no power to abolish or alter the forms of actions. Such a power would enable them effectually to deprive the citizen of his remedy and his rights, and its exercise would be tantamount to an act of legislation. In *Crousillat vs. McCall*, 5 Binn. 433, it was contended that the court had the power of modeling the proceedings in the action of account render so as to make it more useful in practice, and that English forms ought to be discarded as tedious, expensive and inconvenient. TILGHMAN, C. J., in relation to that argument, said: "that the proceedings are tedious and inconvenient is certain, and for that on the action has for a long time been little used in England, where the Court of Chancery affords a complete remedy; but it does not follow from the inconvenience of the thing that we have a right to make innovations. When the forms of an action are well ascertained we have no right to alter them, even in our own court, much less have we a right to compel the common pleas to alter them. BRACKENRIDGE, J., concurring with the Chief Justice, observed that to adopt the course contended for "would be taking away the trial by jury from the action of account render, so far as respects the issue in fact," &c. But the substitution suggested in the the present instance would be a much more radical innovation than that contended for in *Crousillat vs. McCall*. It is not merely the modeling anew of a known form of action but an entire change of the proceeding, by referring wholly to the court a question which according to the course of the common law falls exclusively within the province of the jury. There are two great and leading principles of the common law opposed to this innovation. 1. That all decisions of courts upon questions of law shall be subject to revision by some superior tribunal. 2. That all questions of fact shall be determined by a jury. Where there is no fact disputed and no point of law that admits a doubt, the case is a proper one to give relief on motion, but if there be any ground for dispute, concerning either facts or law, the parties should be put to contest the matter in an action; otherwise the court will prevent a trial by jury and a writ of error, *U. S. Law Journal*, 502. Moreover according to the case of *Sliver vs. Shellbach*, and the decision of the Supreme Court in the present case, when lately before them, the fact of infancy when assigned for error must be tried *per pais* which taken in connection with the 6th section of the ninth article of the constitution appears to me conclusive upon this point. The motion for a new trial is an application, it is true, to the discretion of the court; but that discretion is guided by law, though it be not subject to the revision by a superior tribunal. The

motion was introduced in lieu of the ancient writ of attain in which the question was whether or not the jury did right upon the evidence before them; and it should not, I conceive, entirely depart from the purpose of its original.

The Supreme Court, in *Griffith vs. Willing*, 3 Binn. 317, laid it down that there must be a plain mistake of law or fact to justify the interposition of the court by granting a new trial. "I cannot," said the chief justice in that case, "clearly discern any principle of law which the jury have violated, nor will I undertake to say that they have gone so decidedly against the evidence as would justify the court in setting aside the verdict." YEATES, J., said: "Viewing the verdict in all its different aspects I cannot say that it presents so plain a case of mistake of law or fact in the jury as would justify the interposition of the court." When the error is the mistake of neither the judges nor the jury (which is the case of an error in fact), no instance, I believe, can be found in which a new trial was ever allowed. The motion for a new trial implies that as to the evidence and the facts there can be no question or doubt in the mind of the court, whose recollection of the testimony, actually given, is constantly appealed to; of course it is not adapted to an error in fact, which involves an issue of fact to be decided upon new evidence. Upon some motions, in which questions of fact arise, the court may direct a feigned issue; but motions for a new trial do not admit of this reference, and the objection to them as a mode of deciding an error in fact is, therefore, without abatement or qualification.

Nor is the difficulty easily explained whence and how this court derives its authority to determine, without the aid of a jury, a question to which the highest court in the commonwealth have declared their jurisdiction, without such aid, to be inadequate. In fine, to allow the courts of common pleas the power of decreeing an error in fact, upon motion, and denying them cognizance of the writ of error *coram nobis* is "to strain at a gnat and swallow a camel."

The Supreme Court having decided that they have no cognizance of this writ; if it lie not here or in the common pleas, the consequence will necessarily be that the writ and remedy are entirely gone; or, if there be any relief for a party who, in England, would, under similar circumstances, be entitled to his writ of error *coram nobis*, it must be upon motion to the judges, in which he would neither have the privilege of trying the issue by jury, nor that of a writ of error to rectify the mistake of the court, so that it would result in this: that the same common law would afford to the English subject—a trial by jury and a writ of error, and deny both to the citizen of Pennsylvania. An incongruity still more revolting, is that among our own people, living under the same government and laws, the citizen of Philadelphia enjoys a remedy from which the citizen of Lancaster will be excluded.

The late decision has not overruled the case of *Sliver and Shellbach*, and *Moore et al.*



vs. McEwen, according to which the writ of *at error coram nobis* lies in the Supreme Court Philadelphia, when holding a *nisi prius* court, they have the power of trying an issue of fact. The want of this power, when sitting out of Philadelphia, was the reason assigned for their late decision at Lancaster. Now, to say that the writ in question, does not lie in this court, with a full prospect of the consequences, is what I cannot prevail upon myself to do. I think the motion to quash ought to be denied.

Common Pleas of Lancaster County.

[T. B. No. 7, p. 23.]

JACOB KOHR AND WIFE'S ASSIGNED ESTATE.

Rents received by an assignee are personal property.

Lien creditors have no claims to such rents superior to other creditors.

Exceptions to report of Auditor.

*E. H. Yundt* for exceptants.

*W. W. Brown* contra.

Opinion delivered November 17, 1877, by LIVINGSTON, P. J.

Jacob Kohr and wife, by deed of voluntary assignment, assigned and conveyed all the estate, real and personal, of him, the said Jacob Kohr, to Hiram B. Swarr, esq., in trust for the benefit of his creditors.

The inventory as filed shows that no personal property was found, and it contains nothing but a valuation of the real estate assigned.

Mr. Swarr, the assignee, after the assignment, leased the assigned real estate, and in his account, as filed, charges himself with the proceeds of the sale of the real estate, sold by him as the assignee, amounting to \$11,037.13; and with rent received by him for the assigned real estate, between the date of the assignment and the time he gave possession to the purchaser at assignee's sale, \$750.00. The balance for distribution after the payment of the costs and expenses of the assignment, including the rent, being \$10,690.50.

An auditor was appointed to make distribution of this balance to and among those legally entitled thereto.

The auditor, in making such distribution, treats this whole fund as though it was the proceeds of the sale of real estate—as if it was realty; and, after allowing out of it the expenses and costs of the audit, distributes the whole fund among the lien creditors, according to priority, wholly ignoring the claims of those creditors who had procured no liens.

In this we think he has erred. While, as Judge STRONG says, in Miller's Appeal. "By the deed of assignment the equitable ownership of all the assigned property passed to the creditors, (not to the judgment creditors only) they become joint proprietors, and each creditor owned such proportional part of the whole as the debt due to him was of the aggregate of the debts; the extent of his interest was fixed by the deed of trust." That is true so far as assigned personal estate is concerned, but does it hold good in regard to assigned real estate where there are lien creditors? Does the deed of assignment in any

way regulate the rights of lien creditors? Are not their rights fixed, determined and defined under the law by the priority of lien they have obtained prior to the execution of the assignment?

In Miller's Appeal, for aught that appears in the case, there was no fund but that arising from personal estate to distribute. So in Morris vs. Olwine the fund for distribution was personalty. The mortgaged property had been sold by the mortgagee, but did not reach to pay his claim and he then presented it for a dividend out of the personal fund. And so in the other cases cited where this principle is asserted. The extent of the interest, or the rights of a lien creditor in the real estate of a debtor, is never fixed or settled, nor unfixed or unsettled by a deed of assignment for the benefit of creditors. Nor is his right to participate in the proceeds of the sale of the assigned real estate in any manner controlled or regulated by such deed. The assignee is the mere representative of the assignor, and until the passage of the late act of assembly authorizing courts to grant orders to assignees to sell real estate and stay executions, he could, no more than the assignor, even by the aid of the court, prevent the judgment or lien creditor from selling the debtor's real estate by the sheriff in payment of his debt so secured by lien.

In George W. Gump's assigned estate, reported in THE LANCASTER BAR, June 2, 1877, and referred to by the learned auditor, so far as we are able to gather from the report of the case, and the opinion of the court, there were none but lien creditors claiming the fund, except the assignee himself, who claimed to be paid certain fees and expenses accruing subsequent to the assignment, out of the rents received by him for the assigned real estate. These fees and expenses were objected to by the lien creditors, and the court say: "Under the circumstances of this case the assignee ought not be charged with rents, nor with bark or timber taken off by S. W. Gump. His trust was to sell the property, not to retain it and rent it. So far as he did rent it and receive the rents, the money may well go *pro tanto* to his expenses incurred in laying out the lots and attending sales. Any judgment creditor might have proceeded to sell by execution and stay waste; if he did not the rents, &c., would have been lost as to him, if the property had remained in the hands of the assignor." Rent is a certain profit in money, provisions, chattels or labor, issuing out of lands and tenements in retribution for the use thereof. Chattels real are interests annexed to or concerning the realty, as a lease for years of land; and the duration of the term of the lease is immaterial, provided it be fixed and determinate, and there be a reversion or remainder in fee in some other person. It is only personal estate if it be for a thousand years. Falling below the character and dignity of a freehold, it is regarded as a chattel interest, and is governed and descendible in the same manner. It does not attend the inheritance, for in that case it would partake of the quality of an estate in fee. If the landlord dies before the

rent falls due, it goes to the heir, as incident to the reversion; but if he dies after the rent becomes payable, it goes to the executor or administrator as a part of the personal estate.

The lien creditors, in the case before us, had no lien on the rent as it accrued, nor after it became payable. They were creditors of Jacob Kohr. They had liens on his real estate as a security for the payment of their respective debts, according to priority of lien. But they were not the owners of the real estate; they were not entitled to the incomes and profits thereof, any more than other creditors; they could not, by virtue of their liens simply, take possession of or lease the real estate; nor could they, without attachment or execution and sale by legal process, become entitled to collect the rents and apply them to the payment of their claims. They are neither heirs nor devisees. The debtor is alive, and if he had chosen to occupy the property himself until sold, how would the lien creditors, or even the assignee, have been able to recover rent from him while he so occupied it. The assignee is a mere trustee to sell and make distribution. He stands in the place of the assignor. And if the assignor had continued to occupy the premises and taken the incomes and profits thereof to his own use, how could the lien creditors have prevented it, except by exercising the rights given them under the law, and by execution have obtained a lien thereon and caused a sale thereof.

But the assignor gave up the possession of the real estate, and the assignee leased it, and has received as rent \$750, for the use and occupation thereof. He has, in his account, as we think he was bound to do, kept separate the amount he received as purchase money for the assigned real estate sold, and the money he received as rent for its use and occupation.

We are of opinion that the lien creditors have no claims or rights superior to the other creditors of Jacob Kohr, with reference to the rent so received for the use and occupation of the real estate, prior to its sale by the assignee, and that so far as said rents are concerned, after deducting therefrom their proper proportion of the costs and expenses, all the creditors have an equal right to participate in their distribution *pro rata*.

The exceptions are therefore sustained, so far as they relate to the mode of distribution, and the report is recommended to the auditor for the purpose of making distribution of the rents in the manner herein indicated. Of course the proceeds of the sale of the real estate will be distributed according to priority of liens among the lien creditors.

AT the common law moderate chastisement of a servant might be justified; and to an action of assault, battery, and false imprisonment, it was a good plea "that the plaintiff, being a lunatic, the defendant arrested him, confirmed him, and whipped him:" Lord Cambell's "Lives of the Chancellors," Vol. VI. p. 20, note.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., NOV. 24, 1877.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since November 17, 1877:

HENRY HAGY, dec'd, late of West Cocalico twp.; Susanna Hagy and Levi Shirk, administrators.

JAMES HAMMOND, dec'd, late of East Earl twp.; E. Sutton Hammond, administrator.

The following Wills have been admitted to probate since November 17, 1877:

DANIEL S. LANDIS, late of Manheim twp.; Benj. Long, jr., executor.

WM. FRASER, late of Ephrata twp.; Wm. J. Fraser, executor.

JOHN L. POWL, late of East Earl twp.; Martin E. Stauffer, executor.

The accounts of the following persons are filed in the Register's office of Lancaster Co. for confirmation and allowance at an Orphans' Court, to be held in the city of Lancaster, on Monday, December 17th, 1877.

A. N. Breneman, administrator of Adam Breneman.

James I. Glenn, administrator of John L. Burghian.

Horace Brubaker and Mary Brubaker, administrators of Henry E. Brubaker.

Jacob S. Kreider and John D. Kreider, executors of Jacob Kreider.

Cyrus Lingerfeld, administrator of John Lingerfeld.

Michael Stoll, administrator of Rosanna Fahnestock.

Sarah Fahnestock, administratrix of Bonius Huber.

Elisha Kirk, administrator of William T. Kirk, who was guardian of Jacob L. Brown.

Peter Krantz, executor of Lazarus Frey.

Dr. Henry S. Trout, executor of Peter Koch.

Hanson H. Haines, guardian of Hannah J. Hoopes (now Brown).

Elizabeth Bunting, executrix of Elizabeth Bunting.

John S. Given, administrator of Elizabeth Tyson.

Maria Groff, administratrix of John Groff.

James Barber, guardian of Ellsworth B. McLaughlin.

Captain George H. Ettl, guardian of Elizabeth Otto.

Jacob L. and Benjamin Ranck, administrators of Jacob Ranck.

Amanda Long (late Witmyer), administratrix of John F. Witmyer.

Ezra Smedley, executor of Esther R. Cooper.

William Howett, guardian of Aldus J. Barnhart.

Charles Ricker, administrator of Elizabeth Ricker.

Alban Cutter, surviving trustee of John A. Boyd.

Annie Shultz and Henry Baumgardner, administrators of John A. Shultz.

Benjamin Brackbill, guardian of Ann M. Cregg.

Rev. Jacob Reinhold, executor of Maria Mishler.

Charles H. Loag, administrator of Emma J. Loag.

Samuel Greenwalt, executor of John Ortman.

William L. Peiper, guardian of John E. Shaeffer.

George H. Hartman and John I. Hartman, administrators of Lewis Hartman.

Jonas E. Hostetter, guardian of Emma, Henry, John and Samuel Strauch.

William H. and George W. Bean, executors of Thomas Bean.

Jacob K. Nissley, guardian of George F., Mary C. and John F. Schlegelmilch.

Isaac S. Funk and Benjamin C. Kauffman, executors of Martin Funk.

John Hernley, guardian of Elizabeth Brand, (now Berger.)

Daniel and John H. Habacker, executors of David Habacker.

John H. and Michael Keller, executors of John Keller.

Elizabeth H. Lincoln and James Wood, executors of Nathan Haines.

David Weidman, executor of Martin E. Fry.

William Good, administrator of Mary McElroy.

Jacob Burkholder and Jacob J. Byers, executors of Henry Burkholder.

Simon Ackerman, administrator of David Zug.

Levi K. Brown, administrator of Sarah Brown.

Henry F. and Abraham S. Hostetter, executors of Eliza Ann Frantz.

A. B. Myers, guardian of Jacob Buzzard.

Peter Reist, guardian of S. Peirce Bard.

Henry and Thomas Rakestraw, executors of Abraham Rakestraw.

Lizzie H. Becker and Henry B. Becker, administrators of John B. Becker.

Dr. Benjamin M. Frick, trustee of Martin Frick, and children under the will of John Frick.

John Seitz and Abraham H. Mullinger, executors of Barb. Bachman.

Joseph Brackbill, executor of Michael Wilker.

Jacob D. Withers, executor of John Eckert.

Joseph F. Cottrel and Mary H. Musselman, administrators of Abraham H. Musselman.

Margaret Gerz, executrix of Alex. J. Gerz, who was guardian of Catharine, Amelia and Henry Doerr.

Henry Musser, guardian of Bayard P. Myers.

Deborah G. Pownall, who is administratrix of Levi Pownall, who was guardian of Lena, Cornelia and Elizabeth J. Coates.

Jacob Diffenderfer and Adam Overly, administrators of Solomon Diffenderfer.

Jacob S. Ernst, guardian of Sarah, Mary, William and Lizzie Lungan.

Michael, Jacob and Martin Seachrist, executors of Michael Seachrist.

Moses Hollinger, administrator of ——— Ballentine.

Henry Gehr, administrator of Christian Gehr.

Mary Miller, administratrix of Jonas Miller.

Isaiah and Simon Buch, executors of Mary Buch.

Peter S. Reist, executor of John S. Hostetter.

Christian H. Nissley, executor of John Arndt.

Conrad Gast, guardian of Edward M. and John A. II. Hartman.

John A. Brush and Bernhard Mann, executors of George G. Brush.

John N. Eby, guardian of John W. Frahm.

Mary Crowther, administratrix of William Crowther.

D. W. Patterson and Robert S. McIlvain, administrators of John McCally.

John B. Stehman, guardian of Ellen, John and A. Lin. Frey.

Catharine Myers and C. F. Myers, administrators of Frederick Myers.

William A. Morton, administrator of Eliza J. Trimble.

Joseph Frantz and Lem. Eby, executors of Jacob Frantz.

### PROTHONOTARY'S OFFICE.

The accounts of the following named estates will be presented for confirmation on Monday, December 17th, 1877:

Henry Dietrich and wife's assigned estate; Em' P. Keller, assignee.

Jacob L. Landis and wife's assigned estate; Jacob L. Landis, assignee.

Philip Stern's assigned estate; William F. Hamilton, assignee.

Henry C. Eby's assigned estate; William S. Shirk, assignee.

### RULE OF COURT.

AND NOW, November 22d, 1877, it is ordered by the Court: That in all cases in which freeholders, or City Councils, apply by petition to the Court for a warrant to the Street Commissioner of the City, enjoining and requiring him to open any street, or part of any street, in the City of Lancaster, the petitioners shall, after filing their petition, and presenting it to the Court, serve written notice on all freeholders through whose lands such street or part of a street will pass—where they are known and can be found; also on the County Commissioners of Lancaster County, and the Mayor of the City, that application for the opening of such street or part of street has been made, and will be heard by the Court on the Saturday succeeding the first day of the next term, at 10 o'clock a. m., when and where they may appear and present objections if they deem proper; and shall also publish notice of such application in two daily newspapers, published in said city, twice a week, for three weeks prior to such hearing.

ATTEST:

BENJ. F. W. URBAN,  
Dep. Clerk.

nov24-3t

## Auditors' Notices.

Estate of PETER G. GREIDER, late of Lancaster city, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Phillip D. Baker, esq., administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, DECEMBER 1st, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. REINCEHL,  
Auditor.

nov10

## Divorce Notices.

ANNIE KNOX by her next friend, Jacob Menge, vs. JOHN KNOX. } Alias Subpoena for Divorce, To November Term, 1877.

No. 37.

To JOHN KNOX:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 17th day of DECEMBER, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Annie Knox should not be divorced from the bonds of matrimony contracted with you.

nov17 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, November 17, 1877.

## Estate Notices.

Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

nov17 KIRK BROWN,  
J. HAY BROWN, Atty. Administrator.

Estate of JOHN F. WOLF, late of West Hempfield twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the village of Mountville.

nov17 MARY A. WOLF,  
THOS. B. COCHRAN, Atty. Administratrix.

Assigned Estate of HENRY FRANKE, of Lancaster City.

Henry Franke, of Lancaster city, having by deed of voluntary assignment, dated October 22d, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Henry Franke, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

R. W. SHENK,  
HERMAN MILLER,  
Assignees.

GEO. NAUMAN, Atty.  
nov17

Residing in Lancaster city.

**Estate of HENRY SHAUB, late of West Lampeter twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, HENRY SHAUB, JR.,  
nov3\* Att'y. ABRAHAM SHAUB,  
Administrators.

**Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

BRIDGET FITZPATRICK,  
JOHN J. FITZPATRICK,  
nov3 Administrators.

**Estate of HENRY SCHITZ, late of Elizabethtown borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough.

nov3\* FRANK SCHLEGMILCH,  
A. F. SHENCK, Att'y. Executor.

**Estate of JOHN GROSS, late of West Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

JOHN G. KELLER, } Litz,  
SAMUEL G. KELLER, }  
JACOB G. KELLER, } Elizabethtown,  
MARTIN G. KELLER, }  
ABRAHAM R. FORNEY, }  
nov3] J. L. STEINMETZ, Att'y. Administrators.

**Estate of JOHN WHITESIDE, late of Colerain township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township.

oct27\* JAMES WHITESIDE,  
S. H. REYNOLDS, Att'y. Administrator.

**Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown.

oct27 EMANUEL BROWN,  
Executor.

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARTIN DENLINGER,  
JOHN L. LANDIS,  
oct27 West Lampeter township,  
East Lampeter township,  
Administrators.  
WM. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

oct20 EMMA L. SMITH,  
THOS. B. COCHRAN, Att'y. Executrix.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.

oct20 LIZZIE S. WICKEL,  
AND. M. FRANTZ, Att'y. Administratrix.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.

oct20 SAMUEL G. GENSEMER,  
GEO. BRUBAKER, Att'y. Assignee.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

oct20 HENRY DONER,  
DANIEL R. DONER,  
B. F. ESHELMAN, Att'y. Administrator.

**Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.**

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct6] PHILIP D. BAKER, Att'y. Assignee,  
B. F. COX,

**Estate of ELIAS BEHM, late of Penn twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

sep29 EMANUEL KEENER,  
Administrator.

**Estate of MICHAEL KREIDER, late of Pequea township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep22\* AMOS S. KREIDER,  
ANDREW MEHAFFY,  
P. D. BAKER, Att'y. Executors.

**Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.**

Mary A. Demmy, (widow) of Mount Joy borough, having by deed of voluntary assignment, dated October 5th 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct20\* A. F. SHENCK, Att'y. Assignee.  
Residing in Mount Joy borough.

**Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.**

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct6] GEO. R. SENSENIG, Assignee,  
Residing in Lancaster City.  
GEO. M. KLINE, Att'y.

**Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.**

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct13 BENJ. PENROSE, Assignee,  
Chestnut Level P. O., Lan. Co., Pa.  
J. HAY BROWN, Att'y.

**Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.**

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct6] HENRY E. MILLER,  
OWEN P. BRICKER, Att'y. Assignee,  
Residing in Litz, Lancaster co., Pa.

**Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.**

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

sep15] BENJ. F. W. URBAN, } Assignees.  
AMOS S. URBAN, }  
Residing in Lancaster City.  
H. C. BRUBAKER, Att'y.

**Estate of T. R. TORR, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

sep23] MICHAEL HABERBUSH,  
P. D. BAKER, Att'y. Executors.

**Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

sep22\* ANNA MARY STROUSE,  
SAMUEL EBY, Executors.

**Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep29\* CYRUS R. DOHNER,  
Residing in Penn twp.  
BENJAMIN R. DOHNER  
Residing in Warwick tw  
Administrators

**Estate of JACOB AUMENT, late of Drumoi township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep22\* ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT,  
P. D. BAKER, Att'y. Executors.

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# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, DECEMBER 1, 1877.

No. 27.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		EASTWARD.	
LEAVE	ARRIVE	LEAVE	ARRIVE
LANCASTER.	HARRISBURG.	LANCASTER.	PHILADELPHIA.
Pacific Express,*.....	4:05 a. m.	Atlantic Express,*.....	8:00 a. m.
Way passenger†.....	7:50 a. m.	Philadelphia Express,†	7:00 a. m.
Niagara Express,...	10:40 a. m.	Harrisburg Express,....	10:00 a. m.
Hanover Accom.,... ..	10:10 a. m.	Columbia Accom.,.....	12:30 p. m.
Mail Train via Mt. Joy.	1:00 p. m.	Pacific Express,*.....	3:45 p. m.
No. 2, via Columbia,...	1:25 p. m.	Sunday Mail,.....	5:00 p. m.
Sunday Mail,.....	1:30 p. m.	Johnstown Express,....	6:00 p. m.
Fast Line,*.....	3:25 p. m.	Day Express,*.....	7:20 p. m.
Frederick Accom.,.....	3:45 p. m.	Harrisburg Accom.,.....	9:00 p. m.
Harrisburg Accom.,.....	8:10 p. m.		
Columbia Accom.,.....	8:00 p. m.		
Harrisburg Express,....	8:40 p. m.		
Pittsburg Express,.....	10:50 p. m.		
Cincinnati Express,*....	12:45 a. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	7:50	3:30
Lancaster—West King Street,...	8:00	9:16	3:35
Lancaster—Upper Depot,.....	8:10	9:30	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:36	5:30	8:10
Lancaster—West King Street,...	9:45	5:40	8:20
Quarryville, (arrive).....	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:10	12:55	3:45
Lancaster Junction,.....	8:37	1:35	4:11
Reading, (arrive).....	10:20	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:13	1:20	7:45
Lancaster—Upper Depot,.....	9:36	2:00	8:10
Lancaster—West King Street,...	9:45		8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom,.....	7:05	1:55	5:45
GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
**Chief Justice**—Morrison R. Waite, of Ohio, 1874  
**Justices**—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1863  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
**Attorney General**—Charles E. Devens.

**Supreme Court of Pennsylvania.**

**Chief Justice**—Daniel Agnew.  
**Associate Justices**—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
**Attorney General**—George Lear.

**Prothonotaries:**

**Eastern District**—Benj. E. Fletcher, Philadelphia.  
**Western District**—J. B. Switzer, Pittsburgh.  
**Middle District**—Robert Snodgrass, Harrisburg.  
**Northern District**—J. A. J. Cummings, Montandon, Northumberland county.  
**Reporter**—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

**President Judge**—John B. Livingston.  
**Additional Law Judge**—David W. Patterson.  
**Associate Judge**—John J. Libhart.  
**District Attorney**—J. W. Johnson.

**County Officers.**

**Prothonotary**—Lewis S. Hartman.  
**Deputy**—Wm. E. Kreider.  
**Clerks**—P. E. Slaymaker and Thos. B. Hartman.  
**Register**—Harrison Ross.  
**Deputies**—W. M. Slaymaker and C. H. Fasnacht.  
**Recorder**—Samuel S. Martin.  
**Deputy**—Benj. Bauman.  
**Clerks**—Geo. R. Sensenig and M. O. Sensenig.  
**Sheriff**—Henry N. Brenehan.  
**Deputies**—Jno. D. Wilson and G. W. Benedict.  
**Clerk of Orphans' Court**—Samuel L. Kauffman.  
**Clerk of Quarter Sessions**—Stephen S. Clair.  
**Deputy**—B. F. W. Urban.  
**Commissioners**—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
**Clerk**—John M. Grider.  
**County Solicitor**—J. Hay Brown.  
**County Treasurer**—Henry S. Eberly.  
**Clerk**—Amaziah C. Barr.  
**Coroner**—Amos Greff.  
**County Surveyor**—M. N. Brubaker.  
**County Auditors**—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

**Mayor**—John T. Macgonigle.  
**Solicitor**—Robert M. Agnew.  
**Recorder**—Walter G. Evans.  
**Aldermen**—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
**Chief of Police**—John Pontz.  
**Treasurer**—Edw. Welchans.  
**Civil Engineer**—Francis S. Burrowes.  
**Commissioner**—Charles Schwebel.

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COURT CALENDAR--1877.

DECEMBER.

- 7. Last day for issuing Writs to December Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 1, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JANE WATSON, PATTERSON WATSON, etc.,  
against JOHN MERCER and MARGARET MERCER.

The writ of error *coram nobis* having been sustained by the foregoing opinion, the plaintiffs in error two days afterwards assigned errors to which the defendants pleaded specially, and the plaintiffs thereupon demurred. These proceedings are noticed so particularly in the subsequent opinion of the court as to make it unnecessary to insert them here. The demurrer was argued on the 7th and 8th September, 1829, by the same counsel.

*Mr. Montgomery and Mr. Hopkins*, for the demurrer, cited 2 Chitty's P. 507, 630; 1 Chitty's P. 529.

*Mr. Buchanan and Mr. Ellmaker*, contra, cited 2 Tyler R. 45; 1 Chitty's Pl. 517, 518; 1 Saund, R. 8 (n. 2.)

HAYES, J. The plaintiffs, on the 9th June, 1829, assigned for error that Patterson Watson, Hetty Watson, Maria Watson and Jane Watson, defendants in the action of ejectment, appeared by attorney; although at the institution of the suit, and at the time of their appearance, and at the time of the trial and rendition of judgment, they were minors under the age of twenty-one years. To which the defendant replied, by his plea, that before the return day of the writ of ejectment Jane Watson was (viz.: on the 6th June, 1826,) duly appointed by the Orphans' Court of Lancaster County guardian over the persons and estates of her children, the minors aforesaid; that the said Jane Watson, who was co-defendant in that suit, and one of the plaintiffs in error, employed James Hopkins and John R. Montgomery, esquires, to appear as counsel in the action of ejectment, not only for the purpose of defending her own rights, but also the rights of her said wards. That the said James Hopkins and John R. Montgomery, upon the return of the writ of ejectment upon the 12th of June ensuing, appeared for all the defendants, and entered their appearance of record, and on the 11th of September, 1826, put in the plea of "not guilty" for all the defendants; that the said Jane Watson, guardian, etc., personally attended on the 6th of December, 1826, at the trial of the cause, and that the plaintiffs in error never alleged, during the whole trial, nor until after verdict, that the minors were not defending the said ejectment by their guardian, Jane Watson; that after verdict the defendants (now plaintiffs in error) on the 8th of December, 1826, moved the court for a new

trial, alleging as a reason the infancy of the above named minors, verified by the affidavit of David Watson, and not by the oath of Jane Watson, their guardian; and that the district court, after full hearing, discharged the rule which had been granted to show cause.

The plaintiffs, to this plea, have demurred, setting forth the following causes of special demurrer, viz:

1. That the plea is argumentative, evasive, and no answer to the assignment of errors.

2. That it is contradictory and repugnant to the record.

3. That it assigns to J. R. Montgomery and Jas. Hopkins, esquires, the duty of appearing for the defendants as counsel when that duty belongs to attorneys and not to counsel.

4. That the plea has not any relevant, pertinent or issuable matter in it—John Mercer being estopped and precluded by the record of this ejectment from alleging any of the matters in the said plea.

5. That the plea contains no venue; and

6. That it is in other respects uncertain, informal and insufficient in law.

The defendants in error joined in the demurrer, and the court having heard the arguments of counsel and maturely considered them, I now proceed to give my opinion, with the reasons on which it is founded.

And first as to these causes of special demurrer:

1. The plaintiffs object that this plea is argumentative, evasive and no answer to their assignment of errors; but they have omitted to specify in what respect or particular it is chargeable with these faults. There is nothing but the above general allegation. It is, nevertheless, perfectly settled with regard to the degree of particularity with which the special demurrer must assign the ground of objection, under the statutes requiring the party to set down and express his special exceptions in demurring for form—that it is not sufficient to object in general terms that the plea is "uncertain, defective, informal," or the like; but it is necessary to show in what respect it is uncertain, defective, informal, etc.: Hob. 232; Steph. Pl. 161. This objection, in the manner in which it is here stated, is nothing more than the allegation of the general demurrer repeated, and is clearly insufficient as a ground of special demurrer.

2. They object, in the second place, that the plea is contradictory and repugnant to the record. If a pleading be inconsistent with itself, or repugnant in itself, that is a fatal defect on special demurrer; as in an action of trespass the plaintiff declared for taking and carrying away certain timber, lying in a certain place for the completion of a house then lately built; this declaration was considered as bad for repugnancy, since the timber could not be for the building of a house already built. But the objection here stated is not that the plea is repugnant in itself but that it is repugnant to the record, which is equivalent to saying that it is a false plea, because it is contradicted by the evidence of the record. A false plea, however reprehensible, is not to be taken advantage of

by special demurrer, unless the falsity appear by the plea itself; for, though false in fact it may be good as to form; and in general there is no way of proving the falsehood of an allegation in pleading until issue has been taken, and trial had upon it: Stephens' Pl. 378, 444; 1 Salk. 213.

3. With regard to the matter of the third objection, I understand the plea as averring that Jane Watson employed James Hopkins and Jno. R. Montgomery, esqs., to appear as counsel to defend her rights and those of her wards, in the action of ejectment, and that they accordingly did so appear. In this there is no informality nor any kind of inaccuracy. It is true, parties are technically and properly said to appear to suits by attorney and not by counsel; but this plea did not intend to aver a technical appearance of minors by attorney, but an appearance by guardian.

To have averred an appearance by attorney would have confessed the error assigned: Moore and others vs. McEwen, 5 Sergt. & R. 373. Counsellor and counsel are terms familiar to the law. Their province is not simply to appear to actions; it is to conduct the suit by their advice and advocacy through all its progress, and in the difficult emergencies of a trial by jury and of arguments before the court. The fact of the application of the guardian to counsel to defend the rights of her wards, as well as her own, and of their actually engaging in such defense is set forth in this plea with due formality. The third objection is, therefore, not sustained.

4. The fourth is that the defendant is estopped from averring any of the matters in the said plea by the record of the ejectment, and that the plea, therefore, contains no relevant, pertinent or issuable matter in it. The marking of the names of counsellors or attorneys in the margin of the docket is chiefly intended to notify the court and the opposite party of the fact that such attorney or counsellor is concerned in the cause. Additional names are often marked after the regular appearance is entered and the pleadings are concluded, and it not unfrequently happens that counsel appear without any marginal note of the circumstance, or any entry on the record to indicate it. The omission certainly would not preclude a party from averring or showing the real state of the fact; and, therefore, if the attorney's name were marked as appearing for one of several parties, evidence might still be adduced to show that he appeared for all. This objection goes the length of asserting that any entry of an attorney's name on the margin of the docket of a suit shall estop the adverse party from showing that the attorney did not, in fact, appear at all, or that the party appeared by any other person. But the rule of law is that a man shall only be estopped by his own act or acceptance to say the truth. Nor will a record estop when the thing alleged is consistent with it; Co. Litt. 352 a; 4 Com. D. 76, 82. Therefore, where the mere marginal noting may mean that the person whose name is thus marked has engaged his services, either as attorney or counsellor, the adverse party especially is not precluded from saying

that he appeared as counsel, for an estoppel ought to be certain to every interest; and if a thing be not directly and precisely alleged it shall be no estoppel: Co. Litt. 325 b.

5. The fifth objection, of a want of venue in the plea, was properly abandoned on the argument; and the

6. Sixth and last being inoperative and insufficient, on account of its generality, I find nothing in all these objections (and it is not competent to go out of the grounds specially assigned by the plaintiffs) which justly affects the form of this plea: Steph. Pl. 161.

The question then occurs upon the substance of it—the facts therein stated being admitted by the demurrer, whether there was on the action of ejectment a sufficient appearance for the defendants who were minors or not.

On the argument for a new trial no definitive opinion was formed by me upon this question. So far only I proceeded in the investigation as to discover that it was by no means clear that there was not a good appearance by guardian, and I therefore was of opinion that there ought not to be a new trial. I state the fact now, partly because it was assumed on the argument of the demurrer that this question had been decided on the former occasion, and partly in order to introduce the remark that I have on the demurrer taken up the subject *anew* and investigated it without, as I believe, being biased by any preconceptions.

The first principles of justice require that they who are incapable from want of judgment and experience of transacting their own affairs, should not be suffered to become the victims of the cupidity, superior knowledge and skill of others. To this class belong infants or minors. It is accordingly declared by Justinian in his Institutes to be agreeable to the laws of nature that persons under puberty, who, by reason of their unripe age, are unable to protect themselves, should be under the government of such as can protect them; and, therefore, by the civil law, guardians, who were called tutors or curators, were assigned to minors, without whose sanction no contract could bind an infant, though it was binding upon the other party: Cooper's Inst. p. 49 (Lib. 1, Tit. 21, sect. 6); Ibid p. 38, p. 49, 50. Upon the same principle the French Code commits minors to the care of a tutor, who is to take charge of their persons and represent them in all civil transactions, manage their property, and be accountable for the damages or injuries occasioned by their misconduct: Code Napoleon, No. 90. The guardian at common law performs the office both of tutor and curator of the Roman civil law, the former of whom, says Blackstone, had the charge of the education and maintenance of the minor, the latter the care of his fortune. Infants have various privileges and various disabilities, and even their disabilities are privileges since their effect is to secure them from hurting themselves by their own improvident acts: 1 Bl. Comm. 460, 464; 3 Bac. Abr. 597. They are regularly allowed to rescind all contracts *in pais*, made during minority (except only for schooling and necessities), be they ever so much to

their advantage, and the reason assigned is the indulgence the law has thought fit to give infants who are supposed to want judgment and discretion in their contracts and transactions with others, and the care it takes of them in preventing them from being imposed upon or overreached by persons of more years and experience.

Wanting discretion to make a contract to any amount, however inconsiderable, they are *a fortiori* deemed incapable of safely conducting a law suit, and are therefore not allowed to endanger their rights by pursuing a claim or defending a suit in a court of justice without the aid of some one whose ability and judgment may supply their deficiency. Hence, among the privileges conceded to infancy, the rule that they cannot sue but by guardian or *prochein amy*, nor be sued but under the protection of their guardian, whose duty it is to defend them against all attacks, as well by law as otherwise—a rule than which none is more extensively recognized or established upon a better foundation: 3 Bac. Ab. 412; 1 Chitty's P. 412, 449; 1 Saund. 117, f. n. 1; Ibid 212, a. n. 4; Cooper's Eq. Pl. 109; Ibid 29; 2 Fonbl. 236.

What, then, is meant by an appearance and defence in an action, and particularly when it is said that an infant shall appear and defend by guardian? This we have seen is considered as an important privilege, and justly so, for it is evident that his privileges with regard to contracts and other transactions would be of slight utility, if he were liable to be dragged into court and exposed there unprotected, in his ignorance, to contend with skill in business, with learning and experience. There is no imaginable situation in which an infant would be likely to suffer more from imbecility of understanding. Under such circumstances he would soon be stripped of his all. It is to protect him against such danger that the law assigns him a guardian in the suit: 2 Fonbl. 231; 1 Bl. Com. 450, 446; 2 Saund. 95, 96. This guardian is to do for him what, with riper judgment, he would do for himself. He is to appear for him in his proper person, employ competent attorneys and counsel to prepare and plead his cause; he is to collect testimony, summon witnesses, and at the trial afford such aid to his counsel as may be necessary in unexpected difficulties. It is only by exercising that attention and vigilance in the cause of the minor which he would exert in his own, that he fairly discharges his duty. When all this has been done everything in point of privilege has been secured to the infant which the law contemplates or justice demands. It is something more than a mere technical appearance or defense which is required of the guardian, for these he might render and yet abandon the essential interests of his ward by coming in at the return of the writ, entering a plea, and afterwards wholly neglecting the cause. An appearance in general is either by the suitor in his proper person, or by his attorney. But the infant cannot appear in his own person, nor can he authorize an attorney to appear for him; he can only appear by his guardian, who derives his authority, not from the in-

fant, but from the court by which he is appointed.

In England the guardian is either assigned by the court in which the suit is brought, or by writ out of chancery; every court there having the power *ex necessitate* of assigning to an infant suitor a guardian *pro lite*, and it is requisite that the guardian should be specially admitted to prosecute or defend: 2 Fonbl. Eq. 231, n.; 3 Bac. Abr. 616; Carth. 256; 1 Tidd. 70.

The guardian, in case of an infant defendant, is constituted upon the infant's appearance with the person intended, before a judge at his chambers, or else upon his petition, accompanied by an agreement, signed by the intended guardian, and an affidavit of the fact. The judge thereupon grants his *fiat*, upon which the rule or order for the admission is drawn up by the proper clerk. If the defendant does not appear by guardian in the time allowed by the rules of court, the plaintiff must procure an affidavit of the service of the writ, and that the defendant is an infant and has not appeared; upon which an order will be granted that unless the infant appear within six days after personal service of the order, plaintiff may assign John Doe for his guardian and enter an appearance for the defendant: 2 Sell. 68. A record of the admission is made in the common pleas; but in the King's Bench it is only recited in the count, etc.: as I. S. per A. B., *guardianum snum, ad hoc per curiam specialiter admissum*, etc.: 3 Bac. Ab. 617; 3 Co. 53 b. But this record appears not to be essential; for "where the plaintiff, being an infant, had sued by his guardian, but the entry on the roll was no more but *per T. S. guardianum snum*, omitting the clause *per curiam specialiter admissum*, as the common course is, and as it was alleged it ought to be, but *per curiam*; the entry is sufficient, for if in fact the guardian was not admitted by the court, a writ of error lies: Carth. 256; 3 Bac. Ab. 319.

#### Common Pleas of Lancaster County.

ABRAHAM AND SUSAN LONG vs. THE PENNSYLVANIA RAILROAD CO.

[T. B. No. 7, p. 240.]

In the assessment of damages to lands and tenements taken by the Penna. Railroad Company there is no appeal into the common pleas, on the facts, from the report of viewers; neither party have the right of trial by jury.

Charters of private corporations are left exactly as the new constitution found them, and so they must remain, under the new constitution, until the companies holding them shall enter into a new contract with the state, by accepting the benefit of some future legislation.

Motion to strike of the appeal—taken by plaintiff to the report of viewers.

*H. M. North* for motion.

*N. and L. Ellmaker* contra.

Opinion delivered November 17, 1877, by PATTERSON, A. L. J.

On the petition of plaintiffs the court appointed five viewers, to view, appraise, assess the damages, and report, which they did accordingly; and their report was confirmed *nisi* June 16, 1877, and if on exceptions be

filed within thirty days to be confirmed absolutely. On same day plaintiffs appealed from the report of viewers in due form.

On the 8th day of August, 1877, the defendants, by their attorney, moved the court to strike off the said appeal, which devolves on this court to decide.

I am under the impression, however, that this court is left no discretion in the disposition of this motion, as the Supreme Court have already decided the question. I confess I have paused and doubted when considering the law as already announced in the premises by our Supreme Court. And this doubt will continue so long as it cannot, or is not shown by clear and unquestionable authority, that under the new or old constitution of 1838, by an act of assembly, a railroad corporation can be invested with power to do just as they please, and is entirely uncontrolled by constitutional restriction.

While it is true that a railroad corporation is a creature of law, receiving its powers and privileges from the will of the legislature, yet we may be permitted to inquire, can that will be exercised to introduce remedies that intrench upon the organic law—remedies which, in themselves, render the courts powerless to interfere to protect the rights of citizens when their right of property is invaded? Can the legislature infringe the conditions of the bill of rights, or violate the great and essential principles of free government which that bill has specially excepted out of the general powers of government and declared shall forever remain inviolate? It seemed to us that that article of rights was authority paramount to the legislature and its provisions; that of the constitution of 1838, when the acts chartering the defendants were enacted expressly provided that no one could be deprived of his *property, &c.*, "unless by the judgment of his peers, or the law of the land;" that all courts shall be open, and every man for an injury done him in *his lands, &c.*, "shall have remedy by the due course of law;" and that trial by jury shall be as heretofore, and the right thereof remain inviolate: (See sections 9th and 11th and 6th of Art. IX—declaration of rights;) and that all this could only mean that such damages should be determined by a jury according to the course of the common law.

Equity jurisdiction, within this commonwealth, in 1846 and 1848, except the equity administered by the courts under the forms of the common law, was very circumscribed indeed, and was all contained, we think, in the act of 1836, extending equitable remedies to the few cases therein mentioned.

The language used in the ninth section, and just following the word "property;" namely, "unless by the judgment of his peers," seemed to us to be very expressive; the term "peers" itself meaning, in our legal diction, "the freeholders of a neighborhood," (before whom, in England, livery of *seisin* was to be made), "and before whom, as the jury of the county, trials were had." This, all seemed to us to look towards a trial by jury according to the course of common law. And the language employed in the eleventh

section, just following the section containing, in express terms, the inhibition against taking any man's property for public use, without his consent, viz.: "without just compensation being made;" viz.: "for injury done him in his lands," &c.; seemed to us, still more emphatic. If our impressions in that particular are well grounded, then the construction—holding an act of the legislature, whose provisions admit the taking of the lands of private persons by a corporation, for even public purposes, by a process of assessment by viewers to ascertain the compensation to be paid to the owner, and without securing to such owner, if demanded, the right of appeal, so that his compensation may be determined by a jury of twelve men, according to the course of the common law, is, it seems to us, a construction in violation of a constitutional prohibition.

We cannot overcome the conviction that the limited supervisory power, now judicially extended to the courts of common pleas, and that claimed by our Supreme Court, over the proceedings of viewers in the assessment of damages to lands of private persons, taken for public use, viz.: the power only over exceptions for irregularities upon the face of the record, makes it impossible for the courts in such cases to perform the injunction contained in section eleven of the bill of rights—"to administer right and justice by due course of law."

Framing the report of viewers on preliminary assessment of damages mostly becomes a specialty by members of the profession, and hence the report, in most cases, is framed so completely to conform to the judicial law on the subject; and, however contrary to the real facts in the premises, that it cannot be set aside by the courts, and therefore the courts, in many instances, are powerless to administer right and justice.

Exceptions relating to matters of fact the courts cannot recognize under the present ruling, and the misconduct of viewers, their interests and the influences often surrounding them, cannot be known; and with no one authoritatively appointed to instruct them in the law of the case, assessments and reports are often made up, we think, in derogation of the rights of parties, and which the courts in cases of this kind are, when the "report" is regular on its face, entirely unable to prevent. It is true, and a well acknowledged principle, that the private right of an individual must yield to the eminent domain of government whenever the public good requires it.

The state, however, herself is restrained by the constitution from taking private property without compensation, and in proceedings created for that purpose, when executing her public improvements with her own hand, she, by her prerogative of eminent domain, could doubtless, by statute provide, as between herself and the citizen, a special remedy for making compensation, and excluding by its very terms the common law remedy of trial by jury; but why the state, when the state creating an artificial person seeking its being for gain only, should dele-

gate her eminent powers or clothe the creature with her power of eminent domain, is not so comprehensible—and whence the authority for such legislation, in the fundamental law which limits and controls the legislature and paramount to the laws enacted by it, is even still more incomprehensible.

But we must return from this digression and consider the motion to strike off the appeal that was taken by the plaintiff.

The charter of the Penna. Railroad Company is conferred by the act of 13th April, 1846, and its numerous supplements. The fourth section of the supplement of 27th March, 1848, (Pamph. Laws, p. 312) and the twelfth section of the former act, provide for the assessing the damages for property taken for the railroad. The power and manner of assessing such damages are thereby conferred upon five viewers, whose report is made upon their own view, and is subject, when returned, to the confirmation of the court of common pleas.

Those statutes not providing, in express terms, for an appeal by either party from such specific remedy or assessment of damages by the five viewers, the Supreme Court have held, "that the Penna. Railroad Company is regulated by the law of its charter in taking private property for its purposes, and that by the powers and privileges thereby conferred, in appropriating private property for its road," it exercises a part of the sovereign power of the state—that of eminent domain, which is uncontrolled by constitutional restriction, except that of making just compensation. In short, the Supreme Court of Pennsylvania have held those sections of defendants' charter referred to constitutional, and that neither the corporation or the owner of the land taken, have the right of appeal into the common pleas on the facts; that neither have the right of trial by jury: 3 Smith, 445, Penna. Railroad Co. vs. The First Lutheran Congregation of Pittsburgh. See also 2 Harris, 65, McKinney vs. Monongahela Nav. Co. The Penna. Railroad Company, as regards the assessment of damages, is not subject to the act of February 19, 1849: 5 Smith 343, Snyder vs. The Penna. Railroad Company; 12 Smith 71, Heise vs. Penna. Railroad Company.

It was contended on the argument that the appeal in this case could be sustained by force of the eighth section of Article XVI of the constitution of 1874, and the act of assembly entitled: "For further regulation of appeals from assessments of damages to owners of property taken for public use;" approved 13th June, 1874.

But it has not been shown to the court that the Penna. Railroad Company have accepted any beneficial legislation since the adoption of the new constitution of 1874, and without which it is not to be effected by its provisions, nor by the act of 13th of June, 1874. The framers of that constitution seem not to have assumed for it a more extended dominion than that over corporations, incorporated prior to its adoption by the people. For, in section 10, of Article XVII it reads that: "No railroad, canal or other transpor-



tation company in existence at the time of the adoption of this article, shall have the benefit of any future legislation, by general or special laws, except on condition of complete acceptance of all the provisions of this article."

The Supreme Court clearly ruled in the case of *Hays vs. Commonwealth*, 34 *Legal Intelligencer* 48, "that charters of private corporations are left exactly as the new constitution found them, and so they must remain until the companies holding them shall enter into a new contract with the state, by accepting the benefit of some future legislation."

The fourth section of the supplement of 1848 to the charter of the defendants, and its original act of incorporation, having been decided to be constitutional, the above case, would be decisive of the question before us. Other authorities contain the same ruling. See *Penna. Railroad Company vs. Gorsuch*, *Legal Intelligencer*, vol. 34, p. 280, and others.

The court must, therefore, however reluctantly, grant the motion and strike off the appeal in this case. Appeal stricken off.

#### Orphans' Court of Philadelphia.

##### ESTATE OF WM. HARDY, dec'd.

A policy of insurance was made on the life of a wife, payable to her husband, his executors, &c.; the husband died first. Held, that nevertheless, on the death of the wife the proceeds of the policy on her life went to her husband's executors.

Sur exceptions to adjudication.

Opinion by HANNA, J. October 20th, 1877.

The decedent and his wife each obtained a policy of life insurance in favor of the other, and payable to their executors, administrators or assigns. He died, leaving the wife surviving, whereupon the policy upon his life became payable to her. She afterwards died, and the policy of insurance upon her life immediately became payable to the executor or administrator of her deceased husband. He, however, by a last will and testament, devised and bequeathed all his estate, real and personal unto his wife, "for and during the term of her natural life, with full power and authority to appropriate to her own use such of the personal property as to her shall seem meet." And after the death of his wife, he devised and bequeathed "all the rest, residue or remainder" unto his son absolutely. But by a codicil he provided that in case his son should die before testator's wife, without issue surviving, then he gave unto his daughter the income from his residuary estate during life, with remainder to her children absolutely, share and share alike. Testator's widow also left a will, whereby she bequeathed the proceeds of the policy upon her life. After her death the principal of the policy was paid to the administrator *d. b. n. c. t. a.* of her husband's estate, and upon the settlement of his account was claimed by the executors of the will of testator's widow, and also by the residuary legatee for life, under the will of her husband. The auditing judge awarded the

proceeds of the policy to the residuary legatee for life, being the daughter of testator. And this award is the subject of exception by the executors of the will of testator's widow. The single question presented is, to whom did the principal of the policy upon the life of the widow belong at the time of her death? Whether to her or to the executors of her deceased husband? In view of the law, as settled in *Degither's Appeal*, 33 *Legal Intelligencer* 86, we are of opinion, the moment the widow died, the policy became a part of her deceased husband's estate, and to be disposed of according to the provisions of his will. By this, while he bequeathed his entire estate to his wife, yet it was only for life, with power to appropriate to her own use such portions as to her shall seem meet. This language, standing alone, would have given the wife the whole estate absolutely, but that was not the intention of the testator, as is evident from the subsequent clauses of the will. By these he bequeaths the residue of his estate to his son, and then by a codicil, in the event of his death without issue, to his only daughter. Testator, while he contemplated the probable necessity for the use of his entire estate by his widow for her maintenance, yet never intended she should have the power to dispose of, by will, of any portion not used or appropriated by her. The residue remaining at her death he disposed of as his property. The policy of insurance was a part of the residue of his estate; and, as the same was not payable until after the death of the widow, and could not possibly be appropriated by her, the residuary legatee was consequently entitled to the proceeds.

Being of opinion that the auditing judge was correct in the award made by him, the exceptions are dismissed, and the adjudication confirmed.

##### ESTATE OF WILLIAM HAMILL, dec'd.

Evidence to establish the claim of a wife to all the money in her hand as administratrix of her husband, on the ground that it was her own money loaned to him a long number of years previous, must be very clear and strong.

Sur exceptions to adjudication.

Opinion by HANNA, J. October 20th, 1877.

The exceptions all relate to the disallowance of the claim of the widow and administratrix to be awarded the entire balance for distribution, on account of an alleged loan of her separate moneys to the decedent at or before the time of her marriage. This being a question of fact, depends upon the evidence presented, and as we have repeatedly held, the conclusions of the auditing judge, deduced from the evidence, will not be disturbed, unless error clearly appear. The facts shown at the audit were that the decedent, at the time of his marriage, was not the owner of any property, real or personal, but the claimant carried on a business which she disposed of for the sum of five hundred dollars; that she also had money on deposit in a saving fund, and was the owner of a small dwelling, still belonging to her. That directly after decedent's marriage to claimant, he entered into business, and with

his wife's assistance therein, carried on the same from July, 1862, until his death in 1876. Immediately after decedent's death claimant took possession of the shop and goods, and continued the business upon her own account. It also appeared that in July or August, 1862, decedent stated that he had sold gold at a high premium, and that it belonged to his wife. And a short time before his marriage he declared that in a few weeks "he expected to have the handling of from twelve to fifteen hundred dollars." A claim like this, which, if allowed, would absorb the entire estate, to the exclusion of the children of the decedent, cannot be too closely scrutinized. After the lapse of fourteen years from the time of the alleged loan, during which period the claimant personally assisted her husband in conducting his business; and in the absence of any positive evidence of an advancement by claimant of her separate moneys to him as a loan, or the receipt by him as such, or of any subsequent promise to repay the amount, or acknowledgement of indebtedness to his wife, the presumption would be, that claimant intended the money if paid to her husband, as a gift, to enable him to commence a business to which they each would give their personal attention and supervision.

There is a total absence of any evidence that the claimant, during the lifetime of her husband, ever made a pretence of being his creditor; and now, after his death, when his mouth is forever sealed as to the transactions between himself and wife, it would be exceedingly dangerous, upon such evidence as presented, to allow a claim of this character, and give the entire estate to the widow and leave the children penniless.

We think the auditing judge was correct in refusing to allow the claim. The exceptions are therefore dismissed.

A LEGAL JOKE IN CICERO'S TIME.—There is, perhaps, nothing more remarkable in Cicero's dialogue, *De Oratore*, than the examples of what we are expected to regard as jocular eloquence, given to us by Cæsar in the second book. The Romans were, I think, poor at wit, readily pleased with common jokes, and prepared to laugh at very little. It is certainly true that among the material bon-mots which Cicero puts into the mouth of Cæsar there is not one which is not very bad. We will take a special example, because it tells us something, in a side way, of that aspiration of the letter C among the Romans as to which we are somewhat in doubt. An advocate says to a witness, whom we presume to be one of the unwashed—"Video me a te circumveniri." "I see that I have been got the better of by you." But he makes the word sound as "hircumveniri"—I perceive you have come upon me with all the smell of a nasty goat! Such were the barristers' jokes in old Rome. Cicero sometimes joked himself, and descended almost as low as this.—*The Fortnightly Review*

CHIEF JUSTICE GRAY, of Massachusetts, goes to court like a magistrate of Colonial days. He rides in saddle from Pittsfield to Boston—a distance of 100 miles—and goes home in the same fashion when the court is over.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 1, 1877.

## TRIAL LIST.

DECEMBER ADJOURNED COURT OF QUARTER SESSIONS 1877.

MONDAY, DECEMBER, 10th.

1. Jacob Butt, assault and battery. Aug. 52.
2. Joseph C. Meltenberger, forgery. Nov. 99, 139.
3. Levi Bickhart, Christian Bickhart, cruelty to animals. Nov. 118.
4. Joseph Schlegelmilch, assault and battery. Nov. 128.
5. Davis Kitch, sr., false pretense. Nov. 68.
6. Elam Kreider, assault and battery. Nov. 34.
7. Wallace McCreary, fornication and bastardy. Nov. 49.
8. Elizabeth Sourbeer and Joseph May, assault and battery. Nov. 76, 122.
9. Abraham K. Huber, false pretense. Nov. 46, 47.

TUESDAY, DECEMBER 11th.

10. Alice Horner, assault and battery. Aug. 220.
11. Joseph Gerlitzki, larceny. Nov. 121.
12. Andrew Rutter, larceny. Nov. 120.
13. John Brimmer, larceny. Nov. 119.
14. John Reidenbach, fornication and bastardy. Nov. 18.
15. Edward N. Seals, aiding a strike, etc. Aug. 66.
16. George L. Lyle and George Hubleby, aiding a strike, &c. Aug. 228.
17. John K. Seltzer, embezzlement. April 64.
18. Margaret Dunn, murder. Nov. 61.
19. Charles Green, burglary. Nov. 146.
20. James B. Henderson, false pretense. Aug. 75, 168.
21. Jacob F. Sheaffer, selling liquor on Sunday and to minors. Nov. 56, 58.

WEDNESDAY, DECEMBER 12th.

22. William Rochow and Martin Hauk, receiving stolen goods. April 61.
23. Lawrence Wheelen, fornication and bastardy. Nov. 136.
24. Amos Chandler, larceny. Aug. 219.
25. Patrick Nolen, assault and battery. Nov. 59.
26. Abraham D. Hall, fornication and bastardy. Aug. 111.
27. Wm. A. Hambright, entering dwelling &c., larceny. Nov. 76 to 96.
27. Israel Hanlen and George W. Hildebrand, violating election laws. Nov. 129, 130, 131.
28. Adam Schuh, forgery. Nov. 76, 65.
30. Abraham B. Good, false pretense, etc. April 73, 74, 75.
31. Winfield S. Geiter, accessory after larceny. Aug. 30.

THURSDAY, DECEMBER 13th.

32. Thomas Warner, carrying concealed weapons. Nov. 53, 133.
33. Abraham Sherbahn, larceny, etc. Nov. 39, 40.
34. Jacob Witmer, assault and battery. Aug. 131.
35. Edward Shultz, assault and battery. Aug. 132.
36. John M. Erb and Andrew Gerber, forgery. Nov. 48.
37. Daniel B. Esbenshade, malicious mischief. Nov. 45.
38. Cresini Sauer, assault and battery. Nov. 62.
39. John B. Develin, accessory to abortion. April 76, 91.

FRIDAY, DECEMBER 14th.

40. Walter McNally, libel. Aug. 139.
41. Samuel Elliott, assault and battery. Nov. 97.

42. John Bills, burglary. Aug. 57.
43. Esaias Lockhuff, larceny. Aug. 156.
44. Miller M. Fraim, aiding a strike, inciting to riot, etc. Aug. 148, 149.
45. Wm. Keyes, larceny. Aug. 7.
46. Simon Null, larceny. Aug. 9.
47. George Null, larceny. Aug. 10.
48. Frederick Gotwald, nuisance. Nov. 36.
49. The City of Lancaster, nuisance. Nov. 144.

SATURDAY, DECEMBER 15th.

50. Barbara Greenwald, surety of peace. Nov. 38.
51. Louisa Kolp, surety of peace. Nov. 147.
52. Samuel Elliott, surety of peace. Nov. 123.
53. Frederick Heilman, desertion. Nov. 124.

## WEEKLY SUMMARY.

REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since November 17, 1877:

SUSANNA HUNTER, dec'd, late of West Earl twp.; Cyrus McQuaid, administrator.

## ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE,

No. 13 NORTH DUKE STREET,

LANCASTER, PENNA.

## RULE OF COURT.

AND NOW, November 22d, 1877, it is ordered by the Court: That in all cases in which freeholders, or City Councils, apply by petition to the Court for a warrant to the Street Commissioner of the City, enjoining and requiring him to open any street, or part of any street, in the City of Lancaster, the petitioners shall, after filing their petition, and presenting it to the Court, serve written notice on all freeholders through whose lands such street or part of a street will pass—where they are known and can be found; also on the County Commissioners of Lancaster County, and the Mayor of the City, that application for the opening of such street or part of street has been made, and will be heard by the Court on the Saturday succeeding the first day of the next term, at 10 o'clock a. m., when and where they may appear and present objections if they deem proper; and shall also publish notice of such application in two daily newspapers, published in said city, twice a week, for three weeks prior to such hearing.

ATTEST: BENJ. F. W. URBAN,  
Dep. Clerk.

nov24-3t

## Auditors' Notices.

Assigned Estate of HENRY SCHOCH, of the borough of Marietta, Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benj. F. Hiestand, assignee for the benefit of creditors of the said Henry Schoch, to and among those legally entitled to the same, will sit for that purpose on MONDAY, DECEMBER 24th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec1 E. D. NORTH, Auditor.

Estate of PETER G. GREIDER, late of Lancaster city, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Phillip D. Baker, esq., administrator, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, DECEMBER 1st, 1877, at 10 o'clock, a. m., at the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

nov10 A. C. REINCEHL,  
Auditor.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET,  
LANCASTER, PA.

## Divorce Notices.

ANNIE KNOX } Alias Subpœna for Divorce,  
by her next friend, } To November Term, 1877.  
Jacob Menge, }  
vs. }  
JOHN KNOX. } No. 37.

To JOHN KNOX:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 17th day of DECEMBER, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Annie Knox should not be divorced from the bonds of matrimony contracted with you.

nov17 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, November 17, 1877.

## Estate Notices.

Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.

dec1\* W. C. FREW,  
B. F. ESHLEMAN, Att'y. Administrator.

Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned.

GEO. BRUBAKER,  
H. C. BRUBAKER, Att'y. [dec1] Assignee.

Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

nov17 KIRK BROWN,  
J. HAY BROWN, Att'y. Administrator.

Estate of JOHN F. WOLF, late of West Hempfield twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the village of Mountville.

nov17 MARY A. WOLF,  
THOS. B. COCHRAN, Att'y. Administratrix.

Assigned Estate of HENRY FRANKE, of Lancaster City.

Henry Franke, of Lancaster city, having by deed of voluntary assignment, dated October 22d, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Henry Franke, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

R. W. SHENK,  
HERMAN MILLER, } Assignees.  
GEO. NAUMANN, Att'y. } Residing in Lancaster city.  
nov17

Estate of HENRY SHAUB, late of West Lampeter twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, HENRY SHAUB, JR., ABRAHAM SHAUB, Administrators. Att'y.

Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

BRIDGET FITZPATRICK, JOHN J. FITZPATRICK, Administrators. nov8

Estate of HENRY SCHITZ, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough.

FRANK SCHLEGMILCH, A. F. SHENCK, Att'y. Executor. nov8\*

Estate of JOHN GROSS, late of West Donegal township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

JOHN G. KELLER, SAMUEL G. KELLER, JACOB G. KELLER, MARTIN G. KELLER, ABRAHAM R. FORNEY, J. L. STEINMETZ, Att'y. Administrators. Litiz, Elizabethtown. nov8]

Estate of JOHN WHITESIDE, late of Colerain township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township.

JAMES WHITESIDE, S. H. REYNOLDS, Att'y. Administrator. oct27\*

Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown.

EMANUEL BROWN, Executor. oct27

Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARTIN DENLINGER, JOHN L. LANDIS, Administrators. East Lampeter township. oct27 Wm. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

Estate of FREDERICK SMITH, late of Lancaster city, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

EMMA L. SMITH, HOS. B. COCHRAN, Att'y. Executor. oct20

Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.

LIZZIE S. WICKEL, AND. M. FRANTZ, Att'y. Administratrix. oct20

Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.

SAMUEL G. GENSEMER, GEO. BRUBAKER, Att'y. Assignee. oct20

Estate of CATHARINE DONER, late of East Lampeter township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

HENRY DONER, DANIEL R. DONER, Administrator. oct20 B. F. ESHELMAN, Att'y.

Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

B. F. COX, Assignee. oct6] PHILIP D. BAKER, Att'y.

Estate of ELIAS BEHM, late of Penn twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

EMANUEL KEENER, Administrator. sep29

Estate of MICHAEL KREIDER, late of Pequea township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

AMOS S. KREIDER, ANDREW MEHAFFY, P. D. BAKER, Att'y. Executors. sep22\*

Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.

Mary A. Demmy, (widow) of Mount Joy borough, having by deed of voluntary assignment, dated October 5th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI RICKSECKER, A. F. SHENCK, Att'y. Assignee. oct20\* Residing in Mount Joy borough.

Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. R. SENSENIG, Assignee, Residing in Lancaster City. oct6] GEO. M. KLINE, Att'y.

Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. PENROSE, Assignee, Chestnut Level P. O., Lan. Co., Pa. oct18 J. HAY BROWN, Att'y.

Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

HENRY E. MILLER, OWEN P. BRICKER, Att'y. Assignee, Residing in Litiz, Lancaster co., Pa. oct6

Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. F. W. URBAN, AMOS S. URBAN, Assignees. Residing in Lancaster City. sep15] H. C. BRUBAKER, Att'y.

Estate of T. R. TORR, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

MARY S. TORR, widow, MICHAEL HABERBUSH, P. D. BAKER, Att'y. Executors. sep23

Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

ANNA MARY STROUSE, SAMUEL EBY, Executors. sep23\*

Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

CYRUS R. DOHNER, Residing in Penn twp. BENJAMIN R. DOHNER, Residing in Warwick twp. Administrators. sep29\*

Estate of JACOB AUMENT, late of Drumont township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

ELIAS AUMENT, HARRY AUMENT, ALDUS AUMENT, P. D. BAKER, Att'y. Executors. sep22\*

LEGAL PRINTING of all kinds neatly and promptly done at The Lancaster Bar printing office, No. 13 North Duke-st., Lancaster, Pa. [oct6

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, DECEMBER 8, 1877.

No. 28.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES.

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.		ARRIVE HARRISBURG.
	a. m.	p. m.	
Pacific Express,*	2:40	8:00	4:05 a. m.
Way passenger†	4:50	10:10	7:50 a. m.
Niagara Express,...	9:35	3:45	10:40 a. m.
Hanover Accom.,...	9:40	4:00	COL. 10.10 a. m.
Mail Train via Mt. Joy.	11:20	6:15	1:00 p. m.
No. 2, via Columbia,...	11:30	6:25	1:25 p. m.
Sunday Mail,.....	11:29	6:14	1:30 p. m.
Fast Line,*	2:10	7:25	3:25 p. m.
Frederick Accom.,.....	2:15	7:30	COL. 3:45 p. m.
Harrisburg Accom.,.....	6:10	11:25	8:10 p. m.
Columbia Accom.,.....	7:20	12:35	COL. 8:00 p. m.
Harrisburg Express,...	7:25	12:40	8:40 p. m.
Pittsburg Express,.....	9:25	4:40	10:50 p. m.
Cincinnati Express,*	11:30	6:45	12:45 a. m.

  

EASTWARD.	LEAVE LANCASTER.		ARRIVE PHILADELPHIA.
	a. m.	p. m.	
Atlantic Express,*	12:30	7:00	8:00 a. m.
Philadelphia Express,†	4:10	9:40	7:00 a. m.
Harrisburg Express,...	7:35	13:05	10:00 a. m.
Columbia Accom.,.....	9:28	4:58	12:30 p. m.
Pacific Express,*	1:20	6:50	3:45 p. m.
Sunday Mail,.....	3:00	8:30	5:00 p. m.
Johnstown Express,...	3:05	8:35	6:00 p. m.
Day Express,*	5:18	10:48	7:20 p. m.
Harrisburg Accom.,.....	5:50	11:20	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 9:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Quarryville,.....	6:50	7:50	3:30
Lancaster—West King Street,...	8:00	9:15	3:35
Lancaster—Upper Depot,.....	8:10	9:30	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:35	5:30	8:10
Lancaster—West King Street,...	9:45	5:40	8:20
Quarryville, (arrive).....	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00	12:55	3:35
Lancaster—Upper Depot,.....	8:10	12:55	3:45
Lancaster Junction,.....	8:37	1:35	4:11
Reading, (arrive).....	10:20	3:30	5:50

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:13	1:20	7:45
Lancaster—Upper Depot,.....	9:25	2:00	8:10
Lancaster—West King Street,...	9:45	2:20	8:20

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom,.....	7:05	1:55	5:45

  

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Walte, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1873
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweltzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johanson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Roy Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Greff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Heusel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

*Mayer*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

**THE LANCASTER BAR**

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**COURT CALENDAR.--1877.**

DECEMBER.

- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 29. Last day for setting down causes for trial for January Court, 1878.

**ENVELOPES AND LETTER HEADINGS**

Neatly printed at the

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 8, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JANE WATSON, PATTERSON WATSON, etc.,  
against JOHN MERCER and MARGARET MERCER.

[Continued from last week.]

In the present case Jane Watson, the first named defendant and mother of the said minors, was appointed by the orphans' court of this county, between the issuing of the writ and its return, guardian of these minors. She employed counsel to appear and defend her own rights and those of her wards in this suit, who accordingly appeared on the return of the writ and afterwards entered the plea of not guilty for all the defendants (see plea). She moreover personally attended at the trial of the cause, which was conducted on the part of the defendants by her counsel; and it was never alleged during the trial, nor until after verdict, that the minors were not defending by their guardian.

But still it is contended that it was the duty of the plaintiff in the ejectment to apply to this court, conformably to the English practice, for the purpose of having a guardian assigned *ad litem* for the defendants, who were minors. This, however, was urged without adverting to the provisions of the act of assembly, passed the 27th March, 1713, by which the power of appointing guardians is vested in the orphans' courts, and the guardians so appointed are constituted *pro lite* in general, as well as for every other purpose. The seventh section enacts that "all guardians and *prochein amis*, which shall be appointed by any of the said orphans' courts, shall be allowed and received without further admittance to prosecute and defend all actions and suits relating to orphans and minors, as the case may require, in any court or courts of this province;" 1 Sm. L. 81. Thus the necessity and with it the power of assigning guardians *ad litem* is taken from the other courts wherever the orphans' court has made an appointment. Nor is it by any means requisite that the orphans' court guardian should be specially admitted in the other courts; for the express language of the act is that he shall be allowed and received *without further admittance*.

As Jane Watson was, at the return of the writ of ejectment, the lawful guardian of the minors in question, by regular appointment of the orphans' court, any application to this court to assign a guardian *ad litem*, would have been idle and improper.

It is to be observed that this action was well brought. It is not necessary that the

guardian should be joined in the writ; and it was impossible in this case to connect with the minors the name of a guardian as such, because, when the writ issued there was no guardian. But Jane Watson having become the guardian of her co-defendants, who were minors, and been summoned with them, they enjoyed all the advantage of being joined with their guardian in this suit to every intent. Had she been appointed before the suit was brought, and the writ had run against Jane Watson and the minors, naming them, by the said Jane Watson, their guardian, and had all the proceedings, up to the finding of the jury, taken place precisely as they have, would there have been any ground for cavil in this case? And yet, as it would not have been necessary to have added "by Jane Watson, their guardian," though she were guardian, it is difficult to tell why the case would have been better with those words than without them: 1 Tidd. 70; 2 Sell. 68.

But it is contended further that the gentlemen who acted as counsel for the defendants appeared for them as their attorneys in the ejectment, because they are in fact attorneys of the court, because their names are marked upon the record in this suit, and because counsel or counselors are unknown to our laws. If by our laws be meant our acts of assembly, the reference is, I conceive, too limited to establish the position contended for, since these acts constitute but a small portion of the laws by which we are governed. But in point of fact counsel and counselor are terms recognized both by our constitution and by various acts of assembly: Constitution Art. 9, Sec. 9; Acts 21 Mar. 1806, 4 Sm. L. 330; 13 Apr. 1791, 3 Sm. L. 32; 20 Mar. 1810, 5 Sm. L. 161. They are terms also familiar to the language of the bar and the bench, and to the reported decisions of our Supreme Court; and they occur in the rules of all our courts. The first of these rules of the court of common pleas of this county, which are adopted by the district court, commences thus: "No person shall be admitted to practice as attorney or counselor at law unless, etc." It is true the gentlemen who appeared as counsel in this case are attorneys of the court, and their names are marked upon the record of the present action. No conclusive argument, however, is deducible from either of these circumstances.

In England, attorneys and counsel or barristers, constitute separate and distinct orders of the legal profession, and a barrister or counselor can not act as attorney unless he first apply to his society to be disbarred: 3 Bl. Com. 25; Steph. P. 28, 29; 1 Inst. 128; 2 Inst. 249; 2 Hen. Bl. 600. Attorneys at law, properly so called, were introduced by the Stat. of Westm. 2, c. 10, by which suitors were first permitted to appoint agents in their place, *stead or turn*, to manage their matters of law in their absence, anterior to which parties were obliged to appear in person to prosecute or defend their suits, unless by special license under the King's letters patent. Yet it seems, says Stephens, author of learned and admirable treatise on the Principles of Pleading, that this is only to be un-

derstood of appearance by attorney and not of the conduct of the suit after appearance once made: Steph. Pl. Appendix n. 5; Glanv. Book 11 c. 1. Bracton makes express mention of pleaders, counsel and advocates, in the reign of Henry III, and it appears there were persons learned in the law and skillful in pleading causes as early as the reign of William Rufus: Bract. 372, b.

Appearance by attorney and appearance by counsel in a cause are distinctly different; the former being the substitution of a legal agent for the personal attendance of the suitor, the latter the attendance of an advocate without whose aid neither the party attending in proper person, nor his attorney in his stead, could safely proceed: 3 Bl. Comm. 25. The appearance by attorney does not, any more than the personal appearance of the suitor, preclude or supersede the appearance of counsel; so, neither does the appearance by guardian. The infant's privilege would be miserably abridged if his guardian could not avail himself of the aid of counsel in litigation with those who had the advantage of such assistance. With us counsel are always attorneys; and, by the rule of court just cited, members of the bar are admitted to practice either as attorneys or counselors; but though the characters are united in one person the functions of attorney and counsel are as distinct here as in England. Our counsel, then, as attorneys, appear for suitors, representing them before the court as their substitutes, and in their absence; but as counsel they likewise appear to manage and conduct the suit through all its subsequent progress. As counsel, not as attorneys, they appear for those who are before the court *in propriis personis*, for he who appears in his own person cannot be said to appear by attorney; and as counsel not as attorneys, they appear for guardians, who must appear in their proper persons. Upon the entry of the names on the margin of the record some observations were made, in reference to the fourth objection of the special demurrer. These entries are often made in our practice, after appearance by the party, or by attorney. When a counsel is taken in at the trial court it is not unusual, I believe, for him thus to enter his name. The entry denoting, as it may, either an appearance by attorney or an appearance by counsel, is to be construed by the fact, and not the fact by the entry.

To resort to the supposition before made, that the writ in this case had been against Jane Watson and the minors (naming them,) by the said Jane Watson, then guardian, would the marking of the names of counsel employed by her on the docket have furnished the slightest objection? But, as it was not necessary under any circumstances that the writ should have been so framed, and according to the facts it could not have been so framed in the present case, can that *now* be a valid objection which an immaterial and unnecessary addition would have obviated? Every thing appears to have been done by the guardian in defence of this action that the protection of the minors, (the principle on which the institution of guar-

dianship is founded) required to be done. And indeed such was Jane Watson's situation, as co-defendant, with interests in the cause similar to those of her children, that she could not have omitted anything essential, which her duty as guardian demanded, without sacrificing her own rights, together with those of her wards. There has been then, in fact, and to every beneficial purpose, an appearance of the minors by their guardian. Shall it be said that all this is to go for nothing, because the record has not by some formal entry exhibited the fact of such appearance? This proposition it would be difficult to maintain even by the strict precedents of English proceedings. Many acts of parliament now in force require attorneys to file their warrants in every action; yet warrants of attorney are, in England, neither taken nor filed—the practice has wholly fallen into disuse.

By an act of the 25 Geo. 3, it is enacted that no attorney shall commence any action nor appear for any defendant by a warrant of attorney, written or verbal, without delivering a memorandum or minute to the proper officer to be filed of record; yet no omission or defect in the entering or filing of this memorandum shall vitiate the proceedings: 1 Sell. 17, 18.

Our own act of assembly of the 22d May, 1722, requires the attorney for the plaintiff in every action to file his warrant of attorney in the prothonotary's office the same court he declares, and the attorney of the defendant to file his the same court he appears, and provides that if they neglect to do so they shall have no fees nor be suffered to speak in the cause until they file their warrants respectively; evidently intending that this should be the only proper and allowable mode of showing to the court the authority of the attorney to appear in the suit. But it is not the practice, and I presume never has been, in this State to file or take warrants of attorney; still, however, attorneys receive their fees and speak without their authority being called in question: 2 Yeates 547, *Coxe vs. Nichols*. We have seen by the case already cited from Carthew, that although it is error in England, if the guardian be not in fact admitted by the court, yet the omission of the fact on the roll is immaterial. So, applying the reason of that case to the present I would say it is of no consequence that the appearance of the guardian is not entered on this record; for if she had *not, in fact*, appeared, it would have been error. The cases of *Beverly vs. Tyler*, 6 Munford's Reports, and *Priest and others against Hamilton*, 2 Tyler's Reports, support the conclusion to which I am led, being similar decisions upon facts much less forcible. It appears that neither in Virginia nor in Vermont have they a law with a provision like that contained in the 7th section of our act of the 27th of April, 1713, but the minor defends by guardian specially admitted by the court: 2 Munf. 133. In *Priest and others vs. Hamilton*, the infant had no guardian except the natural guardian, his father, who was not connected with the suit as a party, who merely

employed attorneys to defend the minor in the action; but who was not cited as guardian, nor was he appointed or admitted as guardian by the court. On demurrer such appearance was, nevertheless, held to be sufficient. In *Beverly vs. Miller*, the special admission of the guardian by the court is recognized as the regular proceeding in Virginia; but where a suit against infant was defended by their mother, who had been appointed guardian by the county court, and her answer was received for them and full defence, under the sanction and authority of the chancery court, the infants were held to be equally bound by such defence, as if she had been in form appointed by the court guardian *ad litem*. This, it is true, is a case in chancery, but I do not find that the court of chancery is in any degree less strict respecting the admission of guardians and the defence of minors than the courts of common law.

In England the rule in chancery is rigid, that an infant must appear and defend by guardian, and must either come into court to have him appointed or there must be a commission for that purpose: *Cooper's Eq. Pl.* 29, 109; 3 Bac. Ab. 412. Even where an infant was abroad, and therefore, could not be brought into court, Lord ELDON refused to make an order permitting his mother to put in an answer as guardian, but said that a commission must go.

There is, however, another view of the proceedings in the present case, which seems to me to be conclusive, and with which I shall close this argument. In a regular record the place for the appearance of the defendants is in the commencement of the plea, of which it forms a principal part: 1 Chitty's Pl. 529; 3 Bl. Comm., Appendix. The plea in this ejectment was entered conformably to our practice, in short—thus: "Defendants plead not guilty." But pleading in short is matter of indulgence, not of right, for the adverse party may insist, and the court may order that the plea be drawn up at length—the short plea or entry being regarded only as a substitute for the full and perfect plea: *Haak vs. Breidenbach*, 6 Binn. 12; *Stratton vs. Burgis*, 1 Str. 114; 5 Binn. 13.

The counsel having undertaken to defend the rights of the minors in this action, as well as those of Jane Watson, were bound to do it in a proper manner; and they did so by the plea which they caused to be entered and exerted themselves to sustain. The short entry of "defendants plea of not guilty," is equivalent to and stands for the full and perfect plea drawn out in form, which would run thus: And the aforesaid Jane Watson, in her proper person, (or by James Hopkins, her attorney,) and the aforesaid Patterson Watson, Hettie Watson, Maria Watson and Jane Watson, who are minors under the age of twenty-one years, by the said Jane Watson, their guardian, come and defend the force and injury when, etc., and say that they are not guilty of the said supposed trespasses and ejectment above laid to their charge, or any part thereof, in a manner and form as he, the said John Mercer, etc., have above com-

plained against them, and of this they put themselves upon the country, etc.

Under the facts and circumstances of this case, therefore, the short plea of *not guilty* does, in legal contemplation, include the statement of a regular appearance of the minors by their guardian, and it does not lie in the mouths of the defendants, especially who have chosen to use the indulgence of pleading in short to object to this legal, fair and equitable construction.

To conclude; some apology might be deemed necessary for the great and unusual length of this opinion, were not a thorough investigation of the questions which have been raised upon the demurrer demanded by the peculiar circumstances and course of these proceedings, and by the importance of the questions themselves. I also acknowledge a desire of evincing to the counsel that I have not been inattentive to their arguments, and that whatever may be the ultimate issue, I have at least endeavored to find out and pursue the true path the justice of this case.

Let judgment be entered for the defendants in error.

#### Common Pleas of Lancaster County.

JOHN EVANS & SON vs. THE LANCASTER CITY SCHOOL BOARD.

[Aug. T., 1877, No. 46.]

School directors are entitled to witness fees in a case to which their school board is a party.

Where a case is arbitrated under the compulsory arbitration laws, and it takes more than five hours to hear it, the arbitrators are entitled, under the act of March 22, 1877, to two dollars each per day.

Plaintiffs appealed from taxation of costs.

Defendants also appeal from taxation of costs.

*F. S. Pyfer* for plaintiffs.

*A. J. Eberly* for defendants.

Opinion delivered November 17, 1877, by PATTERSON, A. L. J.

The Exceptions by plaintiffs are:

1st. "The Prothonotary erred in taxing witness fees for John I. Hartman and C. F. Eberman; the former being president, and the latter secretary of the Lancaster City School Board."

2d. "The Prothonotary erred in taxing witness fees for H. E. Slaymaker, Eml. J. Erisman, R. A. Evans and Christian Zecher, they being members of the School Board."

These exceptions, we think, are not tenable. The witnesses named were regularly subpoenaed and compelled to attend court. We can find no law to exclude them—none was cited in the argument. They are no party to the record.

In the many suits pro and con—turnpike companies tried in this court—stockholders of the company have often been witnesses on the trial, and, for the same reason urged by exceptant, being a constituent part of the corporation, they should not be allowed witness fees, but the court have never known of such a rule having been maintained before the court or allowed.

For the reason urged by the exceptant; in a suit instituted by or brought against a

banking institution, in its corporate name, and if the officers, or employees of the bank be called as witnesses, they would not be entitled to witness fees, but this court have decided that such officers and employees, when subpoenaed as witnesses, and compelled to attend court in an action, where the bank is a party, are entitled the witness fees and mileage, to be taxed in the costs: *First National Bank of Mt. Joy vs. Greider—Lancaster Bar*, Vol. 5, of May 21, 1873. We can see no sufficient reason why the fees of the witnesses named and excepted to in the present case, should not be allowed; and the appeal of plaintiffs mentioned is accordingly dismissed, and taxation approved.

The exception by defendants to the taxation of the prothonotary is:

To "the disallowance of \$3.00 paid to arbitrators." We quote the exception, as written, and it is far from clear what it means. Our duty is to interpret fairly the act of 22d March, 1877. That act says: "that hereafter the compensation of arbitrators, chosen under the compulsory arbitration laws of this commonwealth, shall be two dollars for each day necessarily employed in the duties of their appointment," &c., &c., "to be taxed with bill of costs in the case, and collected as the other costs of the case are collected." The following proviso follows: "Provided, that in all cases where no defence is made before said arbitrators, and in all cases in which said arbitrators shall be engaged less than five hours in hearing, their fees shall remain as heretofore."

The section clearly makes the compensation of the arbitrators two dollars for each day necessarily employed in the duties of their appointment, and by the application of the general rule in such cases, there is no fraction of a day. The subject matter of this statute is apparent; it was the compensation of arbitrators chosen under the compulsory arbitration laws of this Commonwealth.

The compensation under the act of 1836 was one dollar per day. This statute altered the law of 1836 as to their compensation; it increased it to two dollars, but not absolutely, but conditionally. There is a proviso suffixed to the section, and that clause inserted in an act of the legislature generally contains a condition that a certain thing shall not be done. In other words, the proviso here defeats the operation of the provisions of the main section conditionally.

What are the conditions of the proviso in question? They are: first—"Provided, that in all cases where no defence is made before said arbitrators, their fees shall remain as heretofore;" and secondly—"Provided that in all cases in which said arbitrators shall be engaged less than five hours in hearing, their fees shall remain as heretofore. On the happening of either of the two conditions mentioned the main section shall not take effect, and the fees shall remain as heretofore—shall be one dollar per day. The latter condition is the one, and only one, demanding our attention in the present case. And it signifies clearly that if the arbitrators

sat in hearing a case, say five different days, but the periods of time occupied in such hearing, all added together, were less than five hours, the arbitrators could only demand fees as heretofore. Whilst if the periods of time occupied in such hearing, taken all together, are not less, but greater than five hours, then this condition is fulfilled, and the provisions of the main section take effect, and the compensation of the arbitrators shall be two dollars for each day necessarily employed in the duties of their appointment. This statute affects the public generally: it is a public law, and imports by its provisions that the eyes of the legislators were directed, as a reason for its enactment, to the fact that a case requiring a hearing by arbitrators of more than five hours, would naturally and most probably be a case of comparative importance, in either character, or in the magnitude of the sum at issue, and as such, would demand the greater care and consideration of the arbitrators, and that they should be compensated accordingly.

Under the forgoing interpretation of this act, and the undisputed testimony adduced on the argument showing that the time engaged by the arbitrators in hearing and deciding in the case, greatly exceeded five hours, and that they met on three different days, we think the law secures them in this suit, each the compensation of two dollars for each day so engaged. And we accordingly order the prothonotary to tax the fees of the arbitrators according to the opinion just announced.

Prothonotary's disallowance as excepted to by the defendant is dismissed.

#### HENRY KEEN vs. THE PENNSYLVANIA RAILROAD COMPANY.

[T. B. No. 7, p. 249.]

A report of viewers, appointed to assess railroad damages, should report separately the items of damage, and should report separately the value of the land taken.

Where, however, the inconvenience and damage and the value of the land are all reported in one item, the court will sustain the report.

Exceptions to report of Viewers.

*H. M. North* for exceptants.

*N. and L. Ellmaker* contra.

Opinion delivered November 17, 1877, by LIVINGSTON, P. J.

The report of viewers in this case sets forth, with great particularity and accuracy, the quantity of land taken, and that the quality is number one improved limestone land, used for farming purposes. They also state, that having a due regard to and making a just allowance for the advantages which are likely to result to said Henry Keen in consequence of the making of said road, and after having made a fair and just comparison of the advantages and disadvantages, they estimate and determine the damages as stated in their report.

They fix the damage for fencing rendered necessary, the damage done to the growing crops, and say "for value of land occupied, or appropriated, and for inconvenience and

damage done to the rest of the tract, \$1,500." In thus joining the value of the land taken, with the inconvenience and damage to the balance of the tract, they have, in a measure, followed the form used in *Bruner vs. The Penna. Railroad Company*, in reference to which Judge THOMPSON, in 5 P. F. Smith 321, says: "The value of the property and inconvenience and damage to the balance is an item to which a specific sum is affixed." In that case the court below refused to set aside the report of viewers and the Supreme Court affirmed the decision of the lower court.

While we think that viewers, in cases like the present, should, as far as possible, report separately the items of damage, with the sum affixed to each, showing in detail how their aggregate is arrived at, we are of opinion that the decision referred to is sufficiently broad in its scope and terms to require us to dismiss the first exception. The second exception was not pressed.

The exceptions are dismissed and the report of viewers confirmed.

#### Court of Quarter Sessions of Philadelphia County.

##### COMMONWEALTH vs. ELDER & SCHEIDLER.

1. A jury may find a verdict supported only by the uncorroborated testimony of an accomplice.
2. Comment by counsel upon the neglect or refusal of defendant to testify when not within the provisions of the act of assembly.

Rule for a new trial.

Opinion by LUDLOW, P. J. November 10, 1877.

The verdict in this case has been attacked for three reasons, two relate to the evidence produced and its nature, and the third to the remarks made by the senior counsel for defendants in his address to the jury.

It has been contended that a conviction can not be sustained, because based upon the uncorroborated testimony of an accomplice.

Whatever conflict of opinion may at one time have existed upon this question, it is too late now to contend that a jury have not the legal right to find a verdict, supported only by the uncorroborated testimony of an accomplice. *JERVIS, C. J.* in *Reg vs. Stubbs*, 33 Eng. L. & Eq. 551, long since declared, that it was not a rule of law, "That an accomplice must be confirmed in order to render a conviction valid, and it is the duty of the judge to tell the jury that they may, if they please, act on the unconfirmed testimony of an accomplice; it is a rule of practice, and that only."

The current of American authority runs in the same direction, and is well expressed in *People vs. Costello*, 1 Denio 87, where the court declare: "Such statements should be received with great caution, and the court should always so advise; but after all, if the testimony carries conviction to the mind of the jury, and they are fully convinced of its truth, they should give the same effect to such testimony as should be allowed to that of an unimpeached witness who is in no respect implicated in the offence."



The same doctrine is in substance maintained in Wharton's Criminal Law, 4th Ed. § 783-4, and in the numerous authorities cited.

The jury in this cause were carefully and repeatedly instructed as to the nature of this evidence, and the danger which might exist if convictions were sustained upon such testimony, and with this light and this caution they have found against the defendants.

Under these circumstances I should hesitate to destroy the verdict if it stood supported by Hanel's testimony alone, but when I consider the detailed nature of his statements, the ease with which any one of them might have been contradicted, the fact that the existence of a judgment note and its payment was not, and could not be overthrown, as a receipt for the amount paid was produced in court, I am satisfied that if Hanel was not directly corroborated it was abundantly evident that his story, so far as these defendants are concerned, was not a fabrication, and was in substance true. The last reason assigned for the new trial reads as follows, viz.: "Counsel for the commonwealth, in summing up the evidence, made constant and pointed reference to and comment upon the neglect and refusal of the defendants to testify in the cause, such comment and reference being in direct violation of the constitutional privilege of the accused, and of the express prohibition of the act of assembly."

If the charge, as contained in the above reason, correctly stated what did occur at the trial, I would, without hesitation, grant a new trial, for the act of assembly declares that "his or her neglect, omission or refusal to testify shall not create any presumption against him or her, nor shall any reference be made to, nor shall any comment be made upon such neglect, omission or refusal by counsel in the case during the trial of the cause."

It has already been intimated that the reason filed is too broad in its terms when it declares that "constant and pointed reference to and comment upon the neglect and refusal of the defendants to testify was made in this case. I say too broad, because my attention was specially directed to this point at the beginning of the remarks of the senior counsel, and he was carefully watched to the very end of his speech.

What in substance was said was this, that the defendants had submitted no evidence whatever, no explanation of the serious charges made and supported by strong testimony; it is true that the counsel ingeniously approached the limit of his right, but with a full knowledge of the act of assembly, he avoided the error which would have been fatal to his cause.

When it is remembered that where an explanation is clearly demanded by the Commonwealth's case, and is not furnished by a defendant, the law raises a presumption against him, how can it be contended that the act of assembly destroys the right to refer to this condition of the cause, even in figurative language.

The law had sanctioned a novelty, for "in

all indictments, complaints and other proceedings in any court of criminal jurisdiction, \* \* the person so charged shall, at his own request, but not otherwise, be deemed a competent witness," &c. What does this mean if it does not declare that the accused shall be sworn or affirmed, and shall thus, under a solemn sanction, deliver his evidence?

The fact that he omits, neglects or refuses thus to testify (in the language of the act) shall not be referred to, either directly or indirectly.

The counsel for the Commonwealth did, time and again, refer, sometimes in plain terms, and at others in figurative language, to the fact that no evidence had been submitted for the defendants, but at the trial, and now, I am unable to understand how any jury could have the remotest idea that any reference was made, either directly or indirectly to the vital point, viz.: that the defendants had not been either sworn or affirmed in the case, and that they have not thus dared to testify against the truth of the Commonwealth's case. Unless a clear and satisfactory explanation could be made, the counsel for the defendants did right to produce no evidence, for he might have exposed the weakness of his clients' case; and the Commonwealth's attorney was also right when he argued with force to the jury, the presumption against the defendants which did in point of law arise, always, however, avoiding a reference to the fact that the defendants were not sworn or affirmed, and did not testify.

We have given a strict construction to this act of assembly; unless we do so, its title should be amended, so that it shall no longer be considered "an act to permit defendants to testify in criminal cases," but also an act to delay, embarrass and defeat the administration of justice.

Rule discharged.—*Leg. Int.*

#### SUPREME COURT OF TENNESSEE.

FEATHERSTON & ADKIN vs. JAMES BOAZ  
ET ALs.

1. *Lien*—Passes by assignment of Note—When.—

Where a deed to land retains upon its face a lien for purchase money, an assignment of the vendee's notes will pass the lien, with all the rights of the assignor against the land, and the assignee will have the same power to sell the land in its enforcement, and in the same way, as the vendor might have done, had he retained the notes.

*Cases Cited.*—Graham vs. McCampbell, Meigs R. 55, 56; Green vs. Demoss, 10 Hum. 374.

2. *Dower*.—The dower in such land, entitles the widow to only one-third of the surplus, after the note has been liquidated, her interest being subordinate to its payment.

*Case Cited.*—Williams vs. Wood, 1 Hum. 414.

FREEMAN, J.—This is a bill filed by assignees of two notes given for purchase money of lands, to enforce a vendor's lien retained on the face of the deed in these words: "A lien is retained on the land until the purchase money is paid to the said James R. Beatty," who was the original vendor.

Only two questions are presented for decision in the case:

First. Does this lien pass by assignment of the notes to the assignee, with all the rights of the assignor against the land?

To this question we answer it does, for the following reasons: It is a principle hardly fairly admitting of an exception that the transfer of a debt carries with it all the securities taken for the payment of said debt that are the result of a contract for such security. See Graham vs. McCampbell,

Meigs R. 55-56, top p. C. Ed. and cases cited. In this and the cases cited, as well as in all cases of retention of the legal title as security for the purchase money, it has been uniformly held, the lien passes to the assignee of the note given for the purchase money by the vendee. What can be the difference in principle between a security thus retained, and one of a slightly different character only, but practically amounting to the same thing in substance, to wit: a lien expressly retained on the face of the deed? We confess we are unable to see any. Each in the hands of the vendor is a security retained by contract for payment of the price of the land. Each is a valuable adjunct to the debt, an element of its value, in fact giving the note a market value above and in addition to one in which the solvency of the maker alone is to be relied on. In this commercial age, when the policy of the law, based on the demands of a trading, enterprising people, is most favorable to the free circulation of such paper; it would be to go in the face of that policy to hold that such paper did not carry this element of value with it. Practically it would be to deprive the owner of the right to realize this element of value in his note if he could not transfer it, and if this right be conceded, then no reason can be given why it should not pass under the general principle stated, or why it should be made an exception. We have said in several cases that while we adhered to the principle of the case of Green vs. DeMoss, 10 Hum. 374, that the implied lien of a vendor did not pass by transfer of the note to the assignee by virtue of the simple assignment or indorsement, yet the vendor might, by contract expressly transferring such lien, pass it as well as any other right or element adding value to the paper. That no rule of law or public policy forbade such an assignment. If such a lien as this, the implied one may be transferred, surely one sustained by express contract may be, and should pass as any other security, such as a mortgage, by transfer of the debt to which it is an incident, and for the security of which it is retained in the one case and given in the other. We are well satisfied with the correctness of this view, and that the chancellor correctly gave the benefit of the lien to the assignees in this case. We may add here that this lien gives the precise same rights to sell the land in its enforcement, and in the same way to the assignee as the vendor might have done, had he retained the note.

The other question presented is, as to the right of the widow of the vendee to dower as against the assignee who is seeking by bill to enforce this lien. We have so often decided (following our own cases on the subject) that as against the vendor, her dower right was subordinate to the payment of the purchase money, that we do not deem it proper again to discuss the question. This being so, her rights are certainly no higher against the assignee who holds the same contract and stands in the same rights as we have laid down above.

As to the question suggested that she is to have the entire value of her dower in the surplus and not be endowed of one-third of it, we have settled in a case unreported, indeed in several of them, that the latter is the rule, and see no cause to further review the question. The rule laid down in Williams vs. Woods, 1st Hum. 414, that she was entitled to one-third of the surplus after paying the purchase money for life as dower, has been uniformly followed, and we feel no disposition to disturb it. The result is that the decree of the chancellor in both the original and cross-bill is affirmed.

The clerk of this court will sell the land unless purchase money is paid in ninety days from this date. Costs of the original bill will be paid out of the fund, costs of the cross-bill by the complainant in the same.—*The Legal Reporter.*

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 8, 1877.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since December 1, 1877:

THOMAS H. WALTERS, dec'd, late of Philadelphia; W. C. Frew, esq., administrator.

EVA LANDIS, dec'd, late of East Lampeter twp.; Martin G. Landis, administrator.

JACOB GRAVER, dec'd, late of Warwick twp.; Addison Graver, Margaret Graver and Henry B. Eshleman, administrators.

JOHN LANDIS, dec'd, late of Manheim twp.; Henry S. Landis, administrator d. b. n.

MARTIN GROFF, sr., dec'd, late of Manheim twp.; Samuel Groff and Abm. S. Groff, administrators.

JOSHUA KING, dec'd, late of Fulton twp.; Mary M. King, administratrix.

GEORGE W. REICHENBACH, dec'd, late of Lancaster city; Catharine E. Kraber, administratrix.

ELIZABETH ROTHARMEL, dec'd, late of Lancaster city; Jacob Rotharmel, administrator.

REBECCA PATTERSON, dec'd, late of Little Britain twp.; R. B. Patterson, administrator.

The following Wills have been admitted to probate since December 1, 1877:

MARY STAUFFER, late of Warwick twp.; Emanuel Kauffman and Abm. H. Huber, executors.

JOHN WENRICH, sr., late of West Cocalico twp.; John Wenrich, jr., executor.

CHRISTIAN DIEHL, late of Lancaster city; Victoria Diehl, executrix.

CHRISTIAN STEHMAN, late of Warwick twp.; Jacob L. Stehman, executor.

JOSEPH H. FERGUSON, late of Mount Joy ber.; Henry Schafner, executor.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since December 1st, 1877:

CYRUS BRINTON and WIFE, of Sadsbury twp.; Samuel Whitson, assignees.

PETER BENTZ, of Warwick twp.; Levi B. Brubaker, assignee.

### REPORT OF COURT.

AND NOW, November 22d, 1877, it is ordered by the Court: That in all cases in which freeholders, or City Councils, apply by petition to the Court for a warrant to the Street Commissioner of the City, enjoining and requiring him to open any street, or part of any street, in the City of Lancaster, the petitioners shall, after filing their petition, and presenting it to the Court, serve written notice on all freeholders through whose lands such street or part of a street will pass—where they are known and can be found; also on the County Commissioners of Lancaster County, and the Mayor of the City, that application for the opening of such street or part of street has been made, and will be heard by the Court on the Saturday succeeding the first day of the next term, at 10 o'clock a. m., when and where they may appear and present objections if they deem proper; and shall also publish notice of such application in two daily newspapers, published in said city, twice a week, for three weeks prior to such hearing.

ATTEST:

BENJ. F. W. URBAN, Dep. Clerk.

nov24-3t

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## PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET, LANCASTER, PA.

## THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET, LANCASTER, PA.

## Divorce Notices.

ANNIE KNOX by her next friend, Jacob Menge, vs. JOHN KNOX. No. 87. Alias Subpoena for Divorce, To November Term, 1877.

To JOHN KNOX:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 17th day of DECEMBER, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Annie Knox should not be divorced from the bonds of matrimony contracted with you.

nov17 H. N. BRENNEMAN, Sheriff. Sheriff's Office, Lancaster, November 17, 1877.

## Auditors' Notices.

Assigned Estate of HENRY SCHOCH, of the borough of Marietta, Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benj. F. Healand, assignee for the benefit of creditors of the said Henry Schoch, to and among those legally entitled to the same, will sit for that purpose on MONDAY, DECEMBER 24th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec1 E. D. NORTH, Auditor.

## Estate Notices.

Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec3\* MARY M. KING, Administratrix. J. W. JOHNSON, Att'y.

Estate of EVE LANDIS, late of East Lampeter township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

dec8 MARTIN G. LANDIS, Administrator, East Lampeter twp.

Estate of MARTIN GROFF, Sr., late of Manheim township, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

dec8\* SAMUEL GROFF, ABRAHAM S. GROFF, Administrators. PHILIP D. BAKER, Att'y.

Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.

dec1\* W. C. FREW, Administrator. B. F. ESHLEMAN, Att'y.

Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned.

nov17 GEO. BRUBAKER, Assignee. H. C. BRUBAKER, Att'y. [dec1]

Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

nov17 KIRK BROWN, Administrator. J. HAY BROWN, Att'y.

Estate of JOHN F. WOLF, late of West Hempfield twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the village of Mountville.

nov17 MARY A. WOLF, Administratrix. THOS. B. COCHRAN, Att'y.

Assigned Estate of HENRY FRANKE, of Lancaster City.

Henry Franke, of Lancaster city, having by deed of voluntary assignment, dated October 22d, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Henry Franke, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

nov17 R. W. SHENK, HERMAN MILLER, Assignees. Residing in Lancaster city. GEO. NAUMAN, Att'y.

Estate of HENRY SHAUB, late of West Lampeter twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

PHILIP D. BAKER, HENRY SHAUB, JR.,  
nov3\* Att'y. Administrators.  
ABRAHAM SHAUB,

Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.

BRIDGET FITZPATRICK,  
JOHN J. FITZPATRICK,  
nov3 Administrators

Estate of HENRY SCHITZ, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough.

nov3\* FRANK SCHLEGMILCH,  
A. F. SHENCK, Att'y. Executor.

Estate of JOHN GROSS, late of West Donegal township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

JOHN G. KELLER, }  
SAMUEL G. KELLER, } Litiz,  
JACOB G. KELLER, }  
MARTIN G. KELLER, } Elizabethtown,  
ABRAHAM R. FORNEY, }  
nov3] J. L. STEINMETZ, Att'y. Administrators.

Estate of JOHN WHITESIDE, late of Colerain township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township.

oct27\* JAMES WHITESIDE,  
S. H. REYNOLDS, Att'y. Administrator.

Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown.

oct27 EMANUEL BROWN,  
Executor.

Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARTIN DENLINGER,  
West Lampeter township.  
JOHN L. LANDIS,  
East Lampeter township,  
oct27 Administrators.  
WM. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

Estate of FREDERICK SMITH, late of Lancaster city, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

oct20 EMMA L. SMITH,  
ROS. B. COCHRAN, Att'y. Executrix.

Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.

oct20 LIZZIE S. WICKEL,  
AND. M. FRANTZ, Att'y. Administratrix.

Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.

oct20 SAMUEL G. GENSEMER,  
GEO. BRUBAKER, Att'y. Assignee.

Estate of CATHARINE DONER, late of East Lampeter township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

oct20 HENRY DONER,  
DANIEL R. DONER,  
B. F. ESHELMAN, Att'y. Administrator.

Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct6] PHILIP D. BAKER, Att'y. Assignee,  
B. F. COX,

Estate of ELIAS BEHM, late of Penn twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

sep29 EMANUEL KEENER,  
Administrator.

Estate of MICHAEL KREIDER, late of Pequea township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep22\* AMOS S. KREIDER,  
ANDREW MEHAFFY,  
P. D. BAKER, Att'y. Executors.

Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.

Mary A. Demmy, (widow) of Mount Joy borough, having by deed of voluntary assignment, dated October 5th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct20\* LEVI RICKSECKER,  
A. F. SHENCK, Att'y. Assignee.  
Residing in Mount Joy borough.

Assigned Estate of HIRAM SHIRK and WIFE, of Earl township, Lancaster Co.

Hiram Shirk and Wife, of Earl township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Hiram Shirk and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. R. SENSENIG, Assignee,  
Residing in Lancaster City.  
GEO. M. KLINE, Att'y. [oct6

Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

oct13 BENJ. PENROSE, Assignee,  
Chestnut Level P. O., Lan. Co., Pa.  
J. HAY BROWN, Att'y.

Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

OWEN P. BRICKER, Att'y. Assignee,  
oct6 Residing in Litiz, Lancaster co., Pa.

Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 20, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

sep15] BENJ. F. W. URBAN, } Assignee.  
AMOS S. URBAN, }  
Residing in Lancaster City.  
H. C. BRUBAKER, Att'y.

Estate of T. R. TORR, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

sep23 MARY S. TORR, widow,  
MICHAEL HABERBUSH,  
P. D. BAKER, Att'y. Executors.

Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

sep22\* ANNA MARY STROUSE,  
SAMUEL EBY,  
Executors.

Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep29\* CYRUS R. DOHNER,  
Residing in Penn twp.  
BENJAMIN R. DOHNER  
Residing in Warwick tw  
Administrators

Estate of JACOB AUMENT, late of Drumoi township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

sep22\* ELIAS AUMENT,  
HARRY AUMENT,  
ALDUS AUMENT,  
P. D. BAKER, Att'y. Executors.

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# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, DECEMBER 15, 1877.

No. 29.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 18 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Sunday Mail,.....	11:20 a. m.	1:30 p. m.
Fast Line,*	3:10 p. m.	3:25 p. m.
Frederick Accom.,...	3:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,...	6:10 p. m.	8:10 p. m.
Columbia Accom.,...	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,....	7:35 a. m.	10:00 a. m.
Columbia Accom.,...	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	3:00 p. m.	5:00 p. m.
Johnstown Express,....	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:30 p. m.
Harrisburg Accom.,....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,.....	6:50	7:50	2:30
Lancaster—West King Street,...	8:00	9:16	3:35
Lancaster—Upper Depot,.....	8:10	9:30	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:36	5:30	8:10
Lancaster—West King Street,...	9:45	5:40	8:20
Quarryville, (arrive).....	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:10	12:55	3:45
Lancaster Junction,.....	8:27	1:35	4:11
Reading, (arrive).....	10:20	3:20	5:50

  

LEAVE.	GOING SOUTH.		
	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:13	1:20	7:45
Lancaster—Upper Depot,.....	9:26	2:00	8:10
Lancaster—West King Street,...	9:45		8:20

### Columbia and Port Deposit Railroad.

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Columbia,.....	5:40	12:01	4:20
Arrive at Peachbottom,.....	7:05	1:55	5:45

  

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Peachbottom,.....	7:15	2:05	5:55
Arrive at Columbia,.....	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio.	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharwood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District—J. B. Sweltzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and G. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**COURT CALENDAR.—1877.**

DECEMBER.

- 23. Last day for filing Accounts to January Court, 1878.
- 22. Calling Judgment Docket.
- 20. Last day for setting down causes for trial for January Court, 1878.

**RULE OF COURT.**

AND NOW, November 22d, 1877, it is ordered by the Court: That in all cases in which freeholders, or City Councils, apply by petition to the Court for a warrant to the Street Commissioner of the City, enjoining and requiring him to open any street, or part of any street, in the City of Lancaster, the petitioners shall, after filing their petition, and presenting it to the Court, serve written notice on all freeholders through whose lands such street or part of a street will pass—where they are known and can be found; also on the County Commissioners of Lancaster County, and the Mayor of the City, that application for the opening of such street or part of street has been made, and will be heard by the Court on the Saturday succeeding the first day of the next term, at 10 o'clock a. m., when and where they may appear and present objections if they deem proper; and shall also publish notices of such application in two daily newspapers, published in said city, twice a week, for three weeks prior to such hearing.

ATTEST:

BENJ. F. W. URBAN,  
 Dep. Clerk.

nov24-3t

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 15, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JOHN TANGERT, administrator of his late wife, CATHERINE TANGERT, dec'd, against FREDERICK METZGAR, surviving executor of JACOB METZGAR, deceased.

A testator leaves his widow the interest of £ 200 during her life and directs that after her decease whatever is in the executor's hands shall be divided equally among all his children.

He left three children, C., his daughter, married and died, leaving several children. Afterwards the widow died. Held, that C's third part of the sum of £ 200 vested in her at the death of the testator, and that her husband, who administered upon her property, was entitled to receive it from the executor, and not her children.

The following facts were agreed on in a case stated for the opinion of this court, viz: On the 19th April, 1790, Jacob Metzgar, defendant's testator, made his last will and testament, in which he bequeathed to his wife, Susanna, the third of all his personal estate; also twelve pounds, the interest of two hundred pounds, yearly, during her natural life; the third and interest to have and to hold to her, his wife Susanna, her natural life, and if any remainder should be after her decease it was his will that each and every of his children should have an equal share. On the 5th of August, 1790, the said will was duly proved and letters testamentary granted to Susanna, the widow, and Frederick Metzgar, the executors therein named. The testator left a widow and three children, to wit, Frederick Metzger, the defendant, Jacob Metzger, and Catharine, since married to John Tangert, the plaintiff.

In the year 1793 the executors sold the real estate of the testator. Catharine Tangert, wife of plaintiff, died in 1811, leaving several children who are yet in full life. In November, 1828, Susanna the testator's widow died, leaving the said two hundred pounds in the hands of the surviving executor. This sum was raised out of the sale of the testator's real estate, and was kept at interest during her life, and the interest was paid to her.

The question submitted to the court is, whether the plaintiff is entitled to recover the one-third part of the said two hundred pounds in right of his late wife, of whom he is the administrator, or whether the children of the said Catharine Tangert are entitled to the same. If the court should be of opinion that the plaintiff is entitled to recover, judgment is to be entered for him; if the court should be of opinion that the children of the said Catharine are entitled to the said

one-third, then judgment is to be entered for the defendant.

By his will the testator had directed his real estate to be sold after his son Jacob came of age, to which was added this clause, "that all the money raised from my said plantation, and all my personal estate, and all other money which may come to the hands of my executrix and executor shall be divided in equal shares among all my children—though after my widow's thirds is deducted."

Mr. E. C. Reigart for the plaintiff, cited 2 Bl. Comm. 335; Reeves' Domestic Relations 60; 6 Johns. R. 112, Whitacre vs. Whitacre's executors.

HAYES, J. The two hundred pounds, now in the hands of the defendant, were made out of the sale of the testator's plantation, which was sold pursuant to the directions of the will, after the testator's son Jacob came of age. In regard to the distribution of the money arising from the sale, the will contains a clause directing "that all the money raised from my said plantation, and all my personal estate, and all other money which may come to the hands of my executrix and executor, shall be divided in equal shares among all my children—though after my widow's thirds is deducted."

The right of Catharine Tangert, daughter of the testator, to her share of the £ 200 in question vested in her instantly upon the death of her father, and was not affected as a vested legacy by the fact that the testator's widow survived her. The consequence is that John Tangert, her administrator, is entitled to have and receive the one-third part of the said sum of two hundred pounds with interest from the time of the decease of Susanna, widow of the intestate: 4 Bac. Ab. 339, Legacy, B. 1; Minkhouse vs. Holmes, 1 Br. Ch. R. 298; Benyon vs. Maddison, 2 Br. Ch. R. 75; Barnes vs. Allen, 1 Br. Ch. R. 181.

Let judgment be entered for the plaintiff.

## Common Pleas of Lancaster County.

BECKER vs. WATTS ET AL.

[Feb'y T. 1873, No. 60.]

A declaration may be amended after an award of arbitrators and appeal from it; also on second trial, after trial and reversal had.

A plaintiff cannot amend a declaration by the introduction of a new and entirely different cause of action, nor by the introduction of matter barred by statute of limitations.

In trespass, however, a plaintiff may add a count, substantially different from the declaration, if it adhere to the original cause of action.

Rule to strike off additional count to narr.

H. M. North for rule.

N. Ellmaker and Geo. M. Kline contra.

Opinion delivered November 17, 1877, by PATTERSON, A. L. J.

This suit was brought to February T., 1873, No. 60, and the original narr. in the case was filed March 3d, 1877; and on May 5th, 1877, the plaintiff filed the additional count by leave of court. The rule to strike off, &c., was obtained by defendant on the 21st May, 1877.

Should the motion to strike off prevail; or, in other words, is the amendment proposed to plaintiff's declaration allowable?

The motion to strike off is clearly recognized as a rule of practice though demurrer may be invoked.

The fact that the suit was at issue before the amendment was proposed will not preclude the amendment. A plaintiff may amend his narr. after an award of arbitrators and an appeal from it: 4 W. 258, Dennison's case; and also on second trial, after trial and reversal had: 1 R. 149, Lee's case. It is true plaintiff cannot amend by the introduction of a new and entirely different cause of action; nor by introducing matter barred by statute of limitation. But in an action of trespass a plaintiff may add a count, substantially different from the declaration, if he adhere to the original cause of action. See 23 Smith 290, Knapp vs. Hartung. It does not appear to the court that the additional count introduces a new cause of action.

The additional count contains a mere specification of a trespass already substantially declared upon. The ruling in Knapp vs. Hartung, we think, disposes of this motion, and that no error is committed in allowing the amendment.

Entertaining these views we must discharge the rule to strike off the additional count.

Rule discharged.

WALTER COLE, now for the use of JAMES WATSON, vs. WASHINGTON COLE.

[April T., 1877, No. 65, Ex. Doc.]

A warrant of attorney by a minor to confess a judgment is void, no matter under what circumstances it was given; and the judgment should be vacated on motion, on the infancy being shewn; especially when due diligence has been shown.

Rule to show cause why the judgment should not be opened and defendant let into a defence, and execution set aside.

W. M. Franklin and W. B. Given for rule.

A. J. Kauffman contra.

Opinion delivered November 17, 1877, by PATTERSON, A. L. J.

This is an application, submitted without argument, to open a judgment and set aside an execution, entered upon a bond or note and warrant, dated 17th day of September, 1875, for \$200. A *fi. fa.* issued February 28, 1877, returnable to third Monday of April, 1877. The defendant's attorney, on affidavit filed, obtained a rule to show cause, &c., on April 17th, 1877.

Depositions were taken, in which the defendant and party asking relief, says he never received any consideration for this judgment, and that he was in his minority when he signed the same; that he did so at the request of the plaintiff, who is a brother, and who said he would protect him from anybody he owed, &c.; that he, the defendant, could not read or write; that other witnesses testified to a book (which was produced) as containing the record of the children's ages and kept in the family, and by which it appears the defendant, Washington Cole, was born August, 1st, 1856.

The adverse party also took testimony, which somewhat contradicts that of the defendant, as to the facts above recited, but fails to show entire consideration for the obligation. From all that has been made to appear, and it being manifest that the party when apprised of the execution, showed diligence in coming into court and asking relief, we think the judgment should be opened and the execution set aside—the lien to remain meantime: 10 Harris 337, Knox vs. Flack.

Rule absolute.

Common Pleas No. 1 of Philadelphia.

RUSSELL vs. SPEAR.

1. A debtor has a right to purchase a cross-demand to extinguish a demand against himself.
2. But a security borrowed, merely for the purpose of a set-off, will not be allowed.

Rule to show cause why judgment should not be opened, &c.

Opinion by BIDDLE, J. October 27th, 1877.

A debtor has as good a right to purchase a cross-demand, to extinguish a claim against himself, by set-off, as he has to accomplish the same object by a direct payment: Rider vs. Johnson, 8 Harris, 192. If, however, the security offered as a set-off has been merely borrowed for the purpose, it will not be allowed: 29 P. F. S. 472, McGowan vs. Budlong.

The question in this case is, therefore, whether the two notes offered in settlement of plaintiff's claim were actually transferred to defendants, or whether they were merely lent to them to make an offer of set-off, with an agreement to take them back in case they did not prove available.

Mr. Harrison, the owner of the notes, swears that he sold them to the defendants, receiving in return the notes of their firm, secured by a judgment on the property of Theodore D. Spear, one of the partners.

He also says: "That it was agreed between us that if these notes were not permitted as a set-off, that we would protect them."

In McGowan vs. Budlong, *supra*, the note was taken in the settlement of an account, with an agreement that if not admitted as a set-off, allowance would be made for it. The court says: "That Abbott regarded Budlong's note as worthless, and agreed not to claim on McGowan's note given therefor, in case the set-off was not allowed, is not material."

We think, therefore, the defendant should be allowed to use these notes as a set-off to the amount which is still due upon them.

Rule absolute.

LISTS OF JURORS.

Names of 50 Petit Jurors to serve in a Court of Common Pleas, commencing on Monday, January 28, 1878.

- James K. Alexander, tailor, Eden.
- Eli Batten, cigar maker, Upper Leacock.
- Joseph H. Black, innkeeper, Columbia.
- John S. Brown, assessor, Drumore.
- Samuel Bell, farmer, Rapho.
- Elias B. Bomberger, miller, Manheim-bor.

- B. F. Clair, carpenter, Columbia.
- Henry Diffenderfer, assessor, Manheim-bor.
- Henry R. Erb, farmer, Warwick.
- Harrison Graham, farmer, Bart.
- Samuel B. Good, farmer, Conestoga.
- Ellwood Greist, editor, 4th Ward, city.
- Jacob Gable, plumber, 3d Ward, city.
- Reuben Garber, farmer, West Hempfield.
- Jacob G. Grider, farmer, East Hempfield.
- A. H. Hamilton, gentleman, Warwick.
- Maris Hoopes, jr., farmer, Eden.
- Eli Heisey, farmer, East Donegal.
- Reuben Hershey, salesman, 1st Ward, city.
- Edwin Hopton, innkeeper, East Hempfield.
- G. Ed. Hegener, printer, 3d Ward, city.
- Amos L. Hunsecker, miller, Manheim.
- John J. Keylor, farmer, Bart.
- James Lynch, jr., farmer, West Donegal.
- Abraham S. Musser, farmer, West Hempfield.
- William Millar, jeweler, 1st Ward, city.
- James McNaughton, cigar maker, 1st Ward, city.
- John H. Moore, miller, Rapho.
- Jos. B. Morrison, farmer, Bart.
- William G. Miller, merchant, Sadsbury.
- James Montgomery, farmer, Eden.
- Frank Mylin, farmer, Pequea.
- C. W. Minnich, butcher, Columbia.
- Tobias Martin, farmer, Warwick.
- Thomas Nixon, blacksmith, Salisbury.
- Jeremiah Roth, merchant, Ephrata.
- Adam S. Rehner, farmer, East Lampeter.
- John F. Reith, carpenter, 1st Ward, city.
- B. F. Shenk, insurance agent, 6th Ward, city.
- Abraham Sides, engineer, West Lampeter.
- Joseph Samsen, brushmaker, 6th Ward, city.
- Edward Schaefer, farmer, Clay.
- William E. Seiple, gentleman, Washington-bor.
- Jacob S. Shirk, gentleman, East Lampeter.
- Samuel Sprecher, civil engineer, 6th Ward, city.
- Edwin M. Sheaffer, saddler, 2d Ward, city.
- H. M. Tehudy, merchant, Warwick.
- Isaac Watson, laborer, Mount Joy.
- Martin Winters, farmer, West Donegal.
- Jeremiah Zeamer, banker, Columbia.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas commencing on Monday, February 4th, 1878:

- John Albright, gentleman, East Donegal.
- Adam Bertzfeld, farmer, Conestoga.
- D. W. Bissel, miller, Sadsbury.
- John Becker, blacksmith, Rapho.
- John D. Borland, farmer, Sadsbury.
- C. Brimmer, farmer, Earl.
- Samuel Dorsey, miller, Fulton.
- Augustus Erck, farmer, Warwick.
- Benj. K. Eshleman, blacksmith, Manor.
- Peter C. Eckert, farmer, Leacock.
- Henry Eby, farmer, Upper Leacock.
- Henry S. Eshleman, farmer, West Hempfield.
- Daniel W. Echternacht, farmer, Strasburg.
- Henry N. Eaby, farmer, West Hempfield.
- Daniel D. Farman, farmer, West Hempfield.
- John B. Gochley, merchant, East Cocalico.
- B. F. Hiestand, lumber dealer, East Donegal.
- Levi Hacker, merchant, Warwick.
- David Hartman, farmer, 6th Ward, city.
- Henry P. Hostetter, farmer, Warwick.
- Benj. Hoffman, farmer, Conoy.
- Samuel Hoover, blacksmith, West Earl.
- D. F. Hamaker, farmer, Rapho.
- Samuel Harnish, sawyer, Conestoga.
- Henry Hershey, dealer, 7th Ward, city.
- Andrew H. Hammond, printer, 6th Ward, city.
- Jacob Kestler, confectioner, Columbia.
- John C. Linnvill, farmer, Salisbury.
- Jacob Libhart, sr., machinist, East Donegal.
- John G. Mentzer, merchant, East Cocalico.
- John Miller, farmer, Conoy.
- Martin L. Oberholzer, merchant, Manor.
- John Prescott, assessor, West Donegal.

- Joseph D. Pownall, farmer, Sadsbury.
- John Rose, shoemaker, 9th Ward, city.
- John M. Read, merchant, Columbia.
- Barton P. Ream, farmer, East Cocalico.
- H. Z. Rhoads, jeweler, 8th Ward, city.
- Jeremiah Rohrer, liquor dealer, 2d Ward, city.
- Christian Rowe, merchant, Strasburg-bor.
- John Shirich, blacksmith, Manor.
- Christian Smith, lumber dealer, Ephrata.
- Percy Shoch, editor, Marietta.
- Isaac G. Sprecher, merchant, Ephrata.
- Edw. N. Smith, civil engineer, Columbia.
- Tobias Seachrist, farmer, Manor.
- H. E. Stehman, farmer, Penn.
- Urias Warfel, merchant, Conestoga.
- H. H. Wiley, farmer, Conoy.
- Henry J. Young, blacksmith, 7th Ward, city.

Names of 24 Grand Jurors, to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, January 21, 1878:

- William Bechtel, miller, West Cocalico.
- Benjamin Breitigam, miller, Manheim-bor.
- Henry Brown, carpenter, Columbia.
- H. C. Eichholtz, gunsmith, 3d Ward, city.
- Samuel Echternacht, confectioner, Strasburg-bor.
- Geo. W. Eaby, innkeeper, 1st Ward, city.
- Charles R. Frailey, clerk, 6th Ward, city.
- Samuel G. Garber, farmer, Rapho.
- Christian Huber, farmer, Strasburg.
- Jesse M. Jacoby, farmer, Clay.
- Hiram Kline, farmer, Warwick.
- Thomas Lebasius, carpenter, Martic.
- Jacob E. Landis, farmer, Mount Joy.
- Henry Miller, farmer, Conestoga.
- Henry Mellinger, blacksmith, Washington-bor.
- John W. Nauman, jr., carpenter, Mount Joy.
- Adam Overlin, farmer, West Cocalico.
- Ellwood Paxson, saddler, Colerain.
- George Rusacl, farmer, East Earl.
- Elin G. Snyder, salesman, 9th Ward, city.
- John Snively, farmer, Warwick.
- B. N. Winters, innkeeper, Ephrata.
- Elias P. Will, carpenter, Penn.
- Jacob Zinn, laborer, Earl.

Names of 48 Petit Jurors to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, January 21, 1878:

- Franklin Bailey, carpenter, Columbia.
- Henry Bechtold, real estate agent, 5th Ward, city.
- Benj. Barr, confectioner, Columbia.
- John Bachman, farmer, Conoy.
- Joseph Blackburn, farmer, Fulton.
- John Baer, gentleman, East Cocalico.
- Joseph F. Cottrell, iron master, East Donegal.
- John J. Cochran, jr., printer, 6th Ward, city.
- Geo. Dissinger, jr., wheelwright, Ephrata.
- S. S. Detwiler, banker, Columbia.
- Washington Etter, tailor, 2d Ward, city.
- Adam Finger, grocer, 6th Ward, city.
- William Fisher, cigarmaker, 5th Ward, city.
- John Fendrich, tobacconist, Columbia.
- John W. High, farmer, Upper Leacock.
- Benj. M. Herr, farmer, West Lampeter.
- W. Y. Haldy, marble mason, 2d Ward, city.
- John S. Hoover, farmer, West Hempfield.
- Geo. Hillman, cigarmaker, 8th Ward, city.
- Martin Jacoby, merchant, Earl.
- Francis Kilburn, reporter, 4th Ward, city.
- H. L. Landis, farmer, Manheim.
- John Musser, farmer, East Donegal.
- John Meck, farmer, West Lampeter.
- John Masterson, merchant, Rapho.
- Joseph Metzler, cigarmaker, Conoy.
- John H. Metzler, real estate agent, 6th Ward, city.
- Thomas McGowan, farmer, Sadsbury.
- William Marshall, shoemaker, 5th Ward, city.
- S. S. Nagle, contractor, Marietta.
- Samuel Nissly, farmer, East Hempfield.
- William Overly, clerk, Ephrata.
- J. C. Otto, carpenter, Martic.
- Michael Ober, farmer, Rapho.
- Richard Reager, cabinetmaker, Adamstown-bor.
- Reuben Bemley, carpenter, 8th Ward, city.
- Jacob E. Ranck, farmer, Paradise.
- B. F. Scott, farmer, Drumore.
- Jonathan Steward, carpenter, East Hempfield.
- Hiram Steinmetz, clerk, Clay.
- Seth Thomas, farmer, Sadsbury.
- D. S. Vonieda, photographer, Ephrata.
- Jacob Weaver, machinist, Strasburg-bor.
- John R. Wilson, merchant, Salisbury.
- Day Wood, farmer, Fulton.
- Barton M. Weaver, farmer, East Earl.
- J. M. Westhaeffer, bookseller, 2d Ward, city.
- Albert Yeager, machinist, East Lampeter.

COMMON PLEAS ARGUMENT LIST.

Commencing Monday, December 17th, 1877.

<i>Reynolds, Shenk, Leaman.</i> 1	BAIR & SHENK vs. JNO. K. BARR, defendant, and FARMERS' MUT. FIRE INS. CO., garnishee.	Oct. Term, 1873. No. 108. Rule for a new trial.
<i>Same.</i> 2	SAME PLAINTIFF vs. SAME DEFT & GARNISHEE.	Oct. Term, 1873. No. 109. Rule for a new trial.
<i>Reynolds, Steinmetz, Rhy. W. J. Cutter et al.</i> 3	vs. EDW. K. SEIBERT et al.	Equity Doc. No. 2, p. 108. Master's Report.
<i>Holahan.</i> 4	SAMUEL KEELER'S Assigned Estate.	Trust Book No. 7, p. 170. Exceptions to auditor's report.
<i>B. F. Davis.</i> 5	DORA S. DITTMAN vs. JNO. W. BUCKWALTER et al.	Equity Dec. No. 2, p. 120. Examiner's testimony filed
<i>Franklin.</i> 6	THOS. BAUMGARDNER vs. GEORGE SHOFF.	Sept. Term, 1875. No. 108. Rule for a new trial.
<i>Brown.</i> 7	GOTLIEB SWILKEY vs. JACOB SHABLEY.	June Term, 1877. No. 8. Rule to dissolve attachment.
<i>Same.</i> 8	WILLIAM WISNER vs. JACOB SHABLEY.	June Term, 1877. No. 9. Rule at supra.
<i>Same.</i> 9	FREDERICK KINSLER vs. JACOB SHABLEY.	June Term, 1877. No. 10. Rule at supra.
<i>Davis.</i> 10	J. M. HESS vs. ALBERT McCARDLE.	Nov. Term, 1876. No. 82. Rule to perfect bail.
<i>Johnson.</i> 11	SPECHER & HIGH vs. MARTIN H. FRY.	Sept. Term, 1874. No. 67. Rule to arrest judgment.
<i>W. M. Franklin.</i> 12	JOEL WENGER vs. SAMUEL WITMER.	Nov. Term, 1877. No. 4. Case stated.
<i>Hensel.</i> 13	JNO. J. & JACOB KELLER vs. WILLIAM RICE.	May Term, 1876. No. 110. Case stated.
<i>McMullen.</i> 14	G. C. DARRACH vs. HANOVER J. AND SUSQUEHANNA R.R. CO.	May Term, 1877. No. 20. Rule for a new trial.
<i>North, Martin.</i> 15	SAMUEL ELDER & CO. vs. SHENK, BAUMMAN, CARPENTER & CO.	Sept. Term, 1869. No. 63. Rule for a new trial.
<i>Reynolds, Shenk, Leaman.</i> 16	CASPER HILLER, ex'or, vs. BENJ. GOOD.	Feb'y Term, 1874. No. 52. Rule to enter credit on a judgment.

<i>Same.</i> 17	SAME PLAINTIFF vs. BENJ. GOOD, defendant, and J. M. FRANTZ, garnishee.	June Term, 1877. No. 47. Rule to set aside attachment.
<i>Atlee.</i> 18	HIRAM HARTING'S Assigned Estate.	Trust Book No 6, p. 278. Exceptions to auditor's report.
<i>Davis.</i> 19	JOHN W. MENTZER vs. FRED. QUADE.	Nov. Term, 1877. No. 132. Ex. Doc. Rule to open judgment.
<i>Rosenmiller.</i> 20	WM. H. KOHRING'S Assigned Estate.	Trust Book No. 7, p. 228. Rule to show cause, etc.
<i>Elizabeth, Eby.</i> 21	HEISE & KAUFFMAN vs. J. B. REYNOLDS, defendant, A. H. BRINKS & CO. and PENN'A R. R. CO. garnishees.	Feb'y Term, 1874. No. 131. Exceptions to taxation of costs.
<i>Reynolds, Eby.</i> 22	JACOB B. GOOD vs. TOBIAS G. FUNK.	Oct. Term, 1875. No. 37. Rule for a new trial.
<i>Eberly.</i> 23	JACOB B. AMWAKE vs. CLARA GERHART.	Nov. Term, 1877. No. 131. Rule to show cause.
<i>Amwaks.</i> 24	ADAM J. EBERLY vs. DANIEL BRENNAN.	Nov. Term, 1877. No. 132. Rule to show cause.
<i>Reynolds.</i> 25	PETER WEBER vs. GEO. BRUBAKER, guardian.	Jan'y Term, 1876. No. 48. Rule for a new trial.
<i>Keady, H. O. Brubaker.</i> 26	COMM. OF PENN'A vs. A. F. SPECHT et al.	Dec. Term, 1875. No. 125. Rule for a new trial.
<i>Weaver.</i> 27	COMM. OF PENN'A vs. ISAAC WEAVER.	Nov. Term, 1877. No. 58. Certiorari. Exceptions filed.
<i>Shenk, Leaman.</i> 28	BAIR & SHENK'S use vs. WILLIAM GOOD.	Nov. Term, 1877. No. 175. Ex. Doc. Rule to open judgment.
<i>B. F. Eshleman.</i> 29	NANCY AND JOSEPH WILMER vs. SAMUEL STAFFORD.	Oct. Term, 1877. No. 12. Rule to strike off suit, etc.
<i>Hensel.</i> 30	A. J. McCOMSEY'S use vs. ISRAEL McFADDEN et al.	June Term, 1876. No. 134. Case stated.
<i>Reynolds, Davis.</i> 31	C. M. BUCHER et al. vs. D. W. COBLE et al.	Equity Doc. No. 2, p. 148. Demurrer, etc.
<i>Eshleman.</i> 32	ABM. GROFF'S adm'ors vs. DAVID KRIDER.	Dec. Term, 1874. No. 89. Rule for a new trial.
<i>P. D. Baker.</i> 33	SELOMON LINVILLE'S As- signed Estate.	Trust Book No. 7, page Exceptions to return sales.



Same. 34 Ellmaker.	WM. LINVILLE'S Estate.	Assigned } Trust Book No. 7, page Exceptions to return of sale.	Davis. 51 Wilson, Frantz, Eshleman.	HEBB & BRENNER vs. J. B. & BENJ. GOOD, def'ts, and J. M. FRANTZ, garnishee.	} June Term, 1877. No. 43. Rule to set aside attach- ment.
North. 35 W. A. Wilson.	COLUMBIA FIRE INS. CO. vs. GEO. S. SWEIGART.	} Nov. Term, 1877. No. 90. Rule to strike off appeal.	Smith, Eshleman. 52 Franklin, Ellmaker	SUSAN SEITZ vs. CHRISTIAN SEITZ.	} Equity Doc. No. 2. Exceptions to bill filed.
Same. 36 Same.	SAME PLAINTIFF vs. JOSEPH BRICKER.	} Nov. Term, 1877. No. 91. Rule ut supra.	53 Reinehl, Hensel.	M. F. HILDEBRAND vs. D. G. WHEELER et al.	} Nov. Term, 1877. No. 43. Certiorari. Exceptions filed.
Same. 37 Same.	SAME PLAINTIFF vs. GEO. W. LEWIS.	} Nov. Term, 1877. No. 92. Rule ut supra.	W. S. Amweg. 54 J. Hay Brown.	LENEAS AUXER vs. JACOB STONER.	} Jan'y Term, 1878. No. 16. Ex. Doc. Rule to open judgment.
Same. 38 Same.	SAME PLAINTIFF vs. GEO. F. WAGNER.	} Nov. Term, 1877. No. 93. Rule ut supra.	Puffer. 55 North.	D. A. ALTICK & SON vs. PENN'A R. R. CO.	} Sept. Term, 1874. No. 79. Rule to show cause, etc.
Same. 39 Same.	SAME PLAINTIFF vs. J. G. DONECKER.	} Nov. Term, 1877. No. 94. Rule ut supra.	Atlee. 56 J. Hay Brown.	ANN C. WILEY et al. vs. MARGARET WILEY et al.	} Equity Doc. No. 2, p. 150. Bill of complaint.
Same. 40 Same.	SAME PLAINTIFF vs. ADDISON EBY.	} Nov. Term, 1877. No. 95. Rule ut supra.	57	COMM. OF PENN'A vs. ADMINISTRATOR C. T. A. of SHUMACHER, dec'd.	} Jan'y Term, 1878. No. Case stated.
Same. 41 Same.	SAME PLAINTIFF vs. GEO. M. LEWIS.	} Nov. Term, 1877. No. 96. Rule ut supra.	Newpher. 58 Baker, Newpher.	HENRY LORAH and WIFE'S Assigned Estate.	} Trust Book No. 7, p. 44. Exceptions to auditor's re- port.
Same. 42 Same.	SAME PLAINTIFF vs. GEO. F. WAGNER.	} Nov. Term, 1877. No. 97. Rule ut supra.	Reynolds. 59 Ellmaker.	JAMES MAY'S Assigned Es- tate.	} Trust Book No. 6, p. 29. Rule to show cause, etc.
Same. 43 Same.	SAME PLAINTIFF vs. JOHN PRESCOTT.	} Nov. Term, 1877. No. 98. Rule ut supra.	Frueauff. 60 Davis.	WM. BAKER vs. RHOADS & TAYLOR.	} Nov. Term, 1876. No. 33. Rule for a new trial.
Same. 44 Same.	SAME PLAINTIFF vs. JOSEPH BRICKER.	} Nov. Term, 1877. No. 99. Rule ut supra.	<b>ORPHANS' COURT ARGUMENT LIST.</b>		
Same. 45 Same.	SAME PLAINTIFF vs. ADDISON EBY.	} Nov. Term, 1877. No. 100. Rule ut supra.	Estate of Christian Barr, dec'd. Rule to recommit auditor's report, for purpose of properly adjusting claim of Bair & Shenk. H. C. Brubaker for rule. Wm. Leaman and R. W. Shenk contra.		
Reynolds, Atlee. 46 J. Hay Brown, Agnew.	KITCH & KNEEZEL vs. THE CITY OF LANCASTER.	} Feb'y Term, 1876. No. 29. Rule for a new trial.	Estate of Isaac Renninger, dec'd. Rule to show cause why adminis- tration account should not be reviewed. J. B. Good for rule. A. J. Eberly contra.		
Agnew. 47 Amwake.	WHEELER & WILSON MAN- UFACTURING CO. vs. LEVI WISE.	} Jan'y Term, 1877. No. 97. Ex. Dec. Rule to open judgment.	Estate of Jacob Busser, dec'd. Exceptions to auditor's report. Geo. Brubaker and J. B. Amwake for exceptants.		
Reinehl. 48 J. Hay Brown.	C. GAST and J. D. SKIEES, as- signees, vs. THOS. B. COCHRAN.	} Equity Doc. No. 2, p. 138. Exceptions to master's re- port.	Estate of Barbara Greiner, dec'd. Exceptions to report of auditor. D. G. Baker for exceptants. H. M. North contra.		
H. C. Brubaker, Reynolds, P. D. Baker. 49 Franklin, Price.	JNO. M. AMWEG vs. SAMUEL J. DEMUTH.	} June Term, 1876. No. 124. Rule to show cause, etc.	Estate of Benjamin Frederick, dec'd. Exceptions to report of auditor. M. Brosius and A. M. Frantz for exceptants. W. R. Wilson contra.		
Same. 50 Same.	SAME PLAINTIFF vs. SAME DEFENDANT.	} June Term, 1876. No. 124. Exceptions to costs.	<b>QUARTER SESSIONS ARGUMENT LIST.</b>		
			East Cocalico Township. Exceptions to report of viewers. A. J. Eberly for exceptants. Geo. Brubaker contra.		
			Bart Township. Exceptions to report of reviewers annexing lands of Samuel Shimp for school purposes. W. U. Hensel for excep- tants. W. S. Amweg contra.		
			Commonwealth vs. D. W. Weidler. Indictment arson, Demurrer. S. H. Reynolds and H. C. Brubaker for demurrer. J. W. John- son contra.		

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 15, 1877.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since December 8, 1877:

SARAH SHIRK, dec'd, late of Warwick twp.; Emanuel R. Shirk, administrator.

DR. HENRY REEMSYNDER, dec'd, late of Ephrata twp.; Mary J. Reemnyder, administratrix.

The following Wills have been admitted to probate since December 8, 1877:

JOHN W. BENDER, late of Upper Leacock twp.; Anna W. Bender, executrix.

FANNY SHENK, late of Mount Joy bor.; Ephraim Hershey, executor.

MARY DANNER, late of Ephrata twp.; Jacob Kemper, executor.

## Divorce Notices.

MARGARET FRAZIER, by her next friend Benj. Cutler, vs. E. K. FRAZIER. No. 26. December Term, 1877.

To E. K. FRAZIER.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Margaret Frazier should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, December —, 1877.

HANNAH GROOM by her next friend Sam'l Evans, vs. JOSEPH GROOM. No. 37. December Term, 1877.

To JOSEPH GROOM.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Hannah Groom should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, December —, 1877.

PHILIP HARMAN vs. LOUISA HARMAN. No. 41. December Term, 1877.

To LOUISA HARMAN.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Philip Harman should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, December —, 1877.

WILLIAM B. MOORE vs. MARIA MOORE. No. 51. December Term, 1877.

To MARIA MOORE.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said William B. Moore should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, December —, 1877.

ANNE KNOX by her next friend, Jacob Menge, vs. JOHN KNOX. No. 37. Alias Subpoena for Divorce, To November Term, 1877.

To JOHN KNOX.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 17th day of DECEMBER, A. D. 1877, at 10 o'clock, a. m., to show cause, if any you have, why the said Annie Knox should not be divorced from the bonds of matrimony contracted with you.

nov17 H. N. BRENEMAN, Sheriff. Sheriff's Office, Lancaster, November 17, 1877.

## Auditors' Notices.

Assigned Estate of SAMUEL SHIRK and WIFE, of Cernarvon twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Pearson Sample, assignee of Samuel Shirk and wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, JANUARY 10th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec15 E. D. WHITE, Auditor.

Assigned Estate of THE INLAND INSURANCE AND DEPOSIT COMPANY.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel H. Reynolds, assignee of The Inland Insurance and Deposit Company, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JANUARY 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. Creditors who presented their claims at the previous audit need not do so again; but all who have not yet handed in their claims are requested to do so on the above mentioned day.

dec15 W. A. WILSON, Auditor.

Assigned Estate of JACOB KORB and WIFE, of Manheim township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Hiram B. Swarr, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JANUARY 10th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec15 B. C. KREABY, Auditor.

Assigned Estate of HENRY SCHOCH, of the borough of Marietta, Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benj. F. Hiestand, assignee for the benefit of creditors of the said Henry Schoch, to and among those legally entitled to the same, will sit for that purpose on MONDAY, DECEMBER 24th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec1 E. D. NORTH, Auditor.

## PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,

LANCASTER, PA.

## Estate Notices.

Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.

nov17 M. BROSIUS, CATHARINE KRABER, dec15 Attorney. Administratrix.

Estate of JACOB GRAVER, late of Warwick township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARGARET GRAVER, Warwick township; ADDISON GRAVER, Manheim township; HENRY B. ESHLEMAN, Manheim township, Administrators. dec15 D. G. BAKER, O. P. BRICKER, Att'ys.

Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec15 SAMUEL WHITSON, Assignee, M. BROSIUS, Att'y. Atglen, Chester Co., Pa.

Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 3, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec15 LEVI BRUBAKER, Assignee, A. J. EBBELLY, Att'y. Millway P. O., Lan. Co.

Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec3\* MARY M. KING, Administratrix. J. W. JOHNSON, Att'y.

Estate of EVE LANDIS, late of East Lampeter township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

dec8 MARTIN G. LANDIS, Administrator, East Lampeter twp.

Estate of MARTIN GROFF, Sr., late of Manheim township, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

dec8\* SAMUEL GROFF, ABRAHAM S. GROFF, PHILIP D. BAKER, Att'y. Executors.

Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.

dec1\* W. C. FREW, Administrator. B. F. ESHLEMAN, Att'y.

Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

nov17 KIRK BROWN, Administrator. J. HAY BROWN, Atty.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned. **GEO. BRUBAKER, H. C. BRUBAKER, Att'y. [dec1] Assignee.**

**Estate of JOHN F. WOLF, late of West Hempfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the village of Mountville. **nov17 MARY A. WOLF, THOS. B. COCHRAN, Att'y. Administratrix.**

**Assigned Estate of HENRY FRANKE, of Lancaster City.**

Henry Franke, of Lancaster city, having by deed of voluntary assignment, dated October 22d, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Henry Franke, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to **R. W. SHENK, HERMAN MILLER, Assignees.**

**GEO. NAUMAN, Att'y. nov17 Residing in Lancaster city.**

**Estate of HENRY SHAUB, late of West Lampeter twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. **HENRY SHAUB, JR., ABRAHAM SHAUB, Administrators.**

**PHILIP D. BAKER, nov3\* Att'y.**

**Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city. **BRIDGET FITZPATRICK, JOHN J. FITZPATRICK, Administrators.**

**nov3**

**Estate of HENRY SCHITZ, late of Elizabethtown borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough. **nov3\* FRANK SCHLEGMILCH, A. F. SHENCK, Att'y. Executor.**

**Estate of JOHN GROSS, late of West Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. **JOHN G. KELLER, SAMUEL G. KELLER, JACOB G. KELLER, MARTIN G. KELLER, ABRAHAM R. FORNEY, Administrators.**

**nov3] J. L. STEINMETZ, Att'y. Litiz, Elizabethtown.**

**Estate of JOHN WHITESIDE, late of Celerain township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Celerain township. **oct27\* JAMES WHITESIDE, S. H. REYNOLDS, Att'y. Administrator.**

**Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown. **EMANUEL BROWN, Executor. oct27**

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. **MARTIN DENLINGER, JOHN L. LANDIS, Administrators. West Lampeter township, East Lampeter township. oct27**

**WM. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.**

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city. **EMMA L. SMITH, Executrix. oct20**

**MRS. B. COCHRAN, Att'y.**

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland. **LIZZIE S. WICKEL, Administratrix. oct20**

**AND. M. FRANTZ, Att'y.**

**Assigned Estate of EPHRAIM O. EBY, of Mannheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him. **SAMUEL G. GENSEMER, Assignee. oct20**

**GEO. BRUBAKER, Att'y.**

**Estate of CATHERINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. **HENRY DONER, DANIEL R. DONER, Administrator. oct20**

**B. F. ESHLEMAN, Att'y.**

**Assigned Estate of JACOB FOOSE and WIFE, of Lancaster city.**

Jacob Foose and wife, having by deed of voluntary assignment, September 29, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob Foose, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to **B. F. COX, Assignee. oct6] PHILIP D. BAKER, Att'y.**

**Assigned Estate of MARY A. DEMMY, (widow) of Mt. Joy bor., Lancaster Co.**

Mary A. Demmy, (widow) of Mount Joy borough, having by deed of voluntary assignment, dated October 5th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Mary A. Demmy, (widow) he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to **LEVI RICKSBCKER, Assignee. oct20\* Residing in Mount Joy borough.**

**Assigned Estate of SARAH ASHTON, of Little Britain twp., Lancaster county.**

Sarah Ashton, of Little Britain township, having by deed of voluntary assignment, dated October 6th, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Sarah Ashton, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to **BENJ. FENROSE, Assignee. oct13**

**J. HAY BROWN, Att'y. Chesnut Level P. O., Lan. Co., Pa.**

**Assigned Estate of DANIEL MILLER, and WIFE, of Warwick twp., Lancaster Co.**

Daniel Miller and Wife, of Warwick township, having by deed of voluntary assignment, dated September 29th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Daniel Miller, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to **HENRY E. MILLER, Assignee. oct16**

**OWEN P. BRICKER, Att'y. Residing in Little Britain, Lancaster co., Pa.**

**Assigned Estate of JOHN W. URBAN and WIFE, of Conestoga twp., Lan. co.**

John W. Urban and Wife, of Conestoga twp., having by deed of voluntary assignment, dated August 30, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John W. Urban, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to **BENJ. F. W. URBAN, AMOS S. URBAN, Assignees. sep15] Residing in Lancaster City.**

**H. C. BRUBAKER, Att'y.**

**Estate of T. R. TORR, late of Lancaster City, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city. **MARY S. TORR, widow, MICHAEL HABERBUSH, Executors. sep23**

**P. D. BAKER, Att'y.**

**Estate of JOSEPH STROUSE, late of the Borough of Elizabethtown, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough. **ANNA MARY STROUSE, SAMUEL EBY, Executors. sep23\***

**Estate of JACOB DOHNER, late of Warwick twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. **CYRUS R. DOHNER, BENJAMIN R. DOHNER, Administrators. sep29\***

**Estate of JACOB AUMENT, late of Drumont township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. **ELIAS AUMENT, HARRY AUMENT, ALDUS AUMENT, Executors. sep22\***

**P. D. BAKER, Att'y.**

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# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, DECEMBER 22, 1877.

No. 30.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	9:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:55 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:55 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,	6:50	7:50	2:30
Lancaster—West King Street,	8:00	9:16	3:35
Lancaster—Upper Depot,	8:10	9:30	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:36	5:30	8:10
Lancaster—West King Street,	9:45	5:40	8:20
Quarryville, (arrive)	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:37	1:35	4:11
Reading, (arrive)	10:20	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:13	1:20	7:45
Lancaster—Upper Depot,	9:36	2:00	8:10
Lancaster—West King Street,	9:45		8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:49	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharwood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

**Prothonotaries:**

Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District—J. B. Sweltzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Greff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerna.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**RULE OF COURT.**

AND NOW, November 22d, 1877, it is ordered by the Court: That in all cases in which freeholders, or City Councils, apply by petition to the Court for a warrant to the Street Commissioner of the City, enjoining and requiring him to open any street, or part of any street, in the City of Lancaster, the petitioners shall, after filing their petition, and presenting it to the Court, serve written notice on all freeholders through whose lands such street or part of a street will pass—where they are known and can be found; also on the County Commissioners of Lancaster County, and the Mayor of the City, that application for the opening of such street or part of street has been made, and will be heard by the Court on the Saturday succeeding the first day of the next term, at 10 o'clock a. m., when and where they may appear and present objections if they deem proper; and shall also publish notice of such application in two daily newspapers, published in said city, twice a week, for three weeks prior to such hearing.

ATTEST:

BENJ. F. W. URBAN,  
 Dep. Clerk.

NOV 24 - St

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ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET,

LANCASTER, PA.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 22, 1877.

## Common Pleas of Lancaster County.

C. B. GRUBB vs. A. B. GRUBB.

[Eq. Doc. No. 2, p. 84.]

Equity powers and jurisdiction of courts in Pennsylvania are not confined to cases of accident, mistake, fraud, the cancellation or reformation of papers, or to accounts between parties; but are extended to apply to the prevention or restraint of the commission or continuance of acts contrary to law and equity, and prejudicial to the interests of the community, or the rights of individuals.

The intention of the grantor is the ruling principle in construing deeds, &c., and is to be gathered from the deed, which can not be varied by parol. Where the intention of the parties is not clear, but in *equilibrio*, the words should receive their natural interpretation.

Particular expressions are to be referred to the particular subject matter, so that full and complete force may be given to the whole. If there be doubt as to the intent, surrounding circumstances and the acts of the parties at and subsequent to the transaction may be considered to ascertain it.

Exceptions to Master's report.

H. M. North, D. W. Sellers, Geo. M. Kline and T. E. Franklin for complainant.

S. H. Reynolds and A. Slaymaker for respondent.

Opinion delivered November 17th, 1877, by LIVINGSTON, P. J.

The bill in this case was filed June 25th, 1875. And the answer was filed October 4, 1875.

On November 13, 1875, an Examiner and Master was appointed and sworn.

The Master and Examiner at the several times appointed by him, met the parties and heard the testimony, and afterwards reported the facts, as found by him from the testimony, to the court, together with his opinion, based upon said state of facts.

He finds that two facts present themselves for decision.

The first is: Whether a court of equity has jurisdiction of the controversy or case as developed?

The second: What is the amount and extent of the right vested in A. Bates Grubb, to take ore from Cornwall.

The first question he does not discuss, believing it to be his duty to ascertain the law and facts essential to a decision of the case upon its merits, stating, however, that it may be proper to say, that as no fraud, accident or mistake has been proved; as no evidence has been laid before him which would call for the cancellation or reformation of any paper; and, as there are not mutual or complicated accounts between the parties, the jurisdiction of a court of equity in this case is, to say the least, doubtful.

The bill, *inter alia*, charges that A. B. Grubb, the respondent, is *wrongfully* and *continuously* taking ore sufficient for the whole

supply of a certain furnace owned by him, from property owned by complainant, (with others in fee,) when he has a right to take *only a moiety* of said supply; and that his so doing is continuous and recurring, and causes, and will cause a multiplicity of suits about the same, against which relief in equity only can be obtained; and asks, that the respondent may, by a decree in equity, be compelled to account with the co-proprietors of said complainant in the ore banks, as to the moiety of the ore taken therefrom, as any one not seized in any estate therein, &c. And asks, further, to have such relief decreed as will prevent a surcharge of the grant made, or intended to be made by the complainant to the respondent, and as purchased and paid for by him, as per deed dated October 29, 1845, and referred to in said bill.

By the act of June 16, 1836, section 13, the legislature has declared that, the Supreme Court and the several courts of common pleas of this Commonwealth should have the jurisdiction and powers of a court of chancery with reference to the matters therein enumerated and specified. And, that the Supreme Court, when sitting in *banc*, in the city of Philadelphia, and the court of common Pleas for said city and county, shall besides the powers thereinbefore enumerated, have the power and jurisdiction of courts of chancery so far as relates to—

V. "The prevention of restraint of the commission or continuance of acts contrary to law and prejudicial to the interests of the community, or the rights of individuals." And by the act of February 14, 1857, the legislature declares: "That the several courts of common pleas of this Commonwealth, in addition to the powers and jurisdictions heretofore possessed and exercised, shall have the same chancery powers and jurisdictions which are now by law vested in the court of common pleas, or district court of the city and county of Philadelphia;" and provides for an appeal from their decrees to the Supreme Court.

It may, therefore, be said, as decided in *Denny vs. Brownson*, 5th Cas. 382, &c., "That by the 13th section of the act of 16th of June, 1836, the equity jurisdiction of the courts therein specified, and those to which it has been extended by subsequent legislation, extends to" "the prevention or restraint of the commission or continuance of acts contrary to law and prejudicial to the interests of the community, or the rights of individuals."

And waste, as an act contrary to law, is within the purview of the legislation of this Commonwealth on the equitable powers of the courts, and the jurisdiction conferred expressly extends to its prevention or restraint, and all the courts of common pleas in the State now possess, in addition to their writs of estoppelment, the power to restrain and stop waste by injunction.

In *Sheetz's* and *Stout's* appeal, 11th Cas. 88, &c., it is decided that: "The courts of common pleas have jurisdiction in equity to restrain by injunction repeated acts of trespass upon the legal rights of a complainant."

In *Unangst's* appeal, 5 P. F. Smith, 128, it was held, that a corporation obtaining a concession to enter, on condition of refraining from a particular injury, in its nature irreparable, and not readily estimated in damages, forfeits its license, when it violates the condition and *should be restrained, till it does equity*.

And in *Stockdale vs. Ullery*, 1 Wr. 486, it was held that the courts in granting injunctions are not restricted to acts "contrary to law," but may exercise this power to restrain acts contrary to equity also; equity being so much a part of the law of Pennsylvania as that, the word "law" often means both law and equity, or either.

The equity powers and jurisdiction of courts, being no longer confined to cases of accident, mistake, fraud, the cancellation or reformation of papers, or to complicated accounts between parties, but having, as we have seen, been extended and made to apply to the "prevention or restraint of the commission or continuance of acts contrary to law and prejudicial to the interests of the community, or the rights of individuals." We think the powers and jurisdiction of a court of equity are sufficiently broad and comprehensive to extend to and embrace the *controversy or case as here developed*, and will, therefore, proceed to discuss the second question proposed.

What is the amount and extent of the right vested in A. Bates Grubb to take ore from Cornwall ore banks?

Whatever the amount and extent of the rights vested in A. Bates Grubb to dig, take and carry away ore from the "Cornwall ore banks" may be, they are contained in the grant specified and set fourth in the deed of conveyance from C. B. Grubb and wife to said A. Bates Grubb, dated October 29, 1845. Prior to the date of that deed he had no such right, except as it may have been given him from time to time, by lease from the proprietors; one of whom for a time was his partner, the other his lessor.

The deed of C. B. Grubb and wife to A. Bates Grubb, dated October 29, 1845, the Supreme Court in 24 Sm. 25, say: "separated the interest of Clement B. Grubb in the mine hills from the remainder of the Mount Hope estate, which passed by his deed to A. Bates Grubb. By this conveyance he granted to Alfred only a special and limited right or privilege of taking ore for the use of Mount Hope furnace, retaining in himself the corporeal estate in the Cornwall mine hills, which he did not convey."

It is unnecessary, therefore, for us to go back to the year 1745, and follow up the history of the Cornwall ore banks, and of the numerous and various furnaces they have supplied with ore from that time to the present; or of the various parties, who at different periods, were the owners thereof in fee; or, of the variety of *undivided interests* into which they have at different times, by death, and by legal proceedings, been parted, for none of these things will be likely to aid us in construing the language of the grant in the deed of conveyance before us. Suffice it to say, that the learned master finds that, at

the time of the conveyance, in 1845, Edward B. Grubb and Clement B. Grubb together, and as tenants in common, owned in fee the Mount Hope furnace estate, and each owned, as tenant in common with other persons, an undivided interest or portion in fee in the Cornwall ore banks; Clement B. Grubb's interest being the one undivided twelfth part of said ore banks. And being so seized and possessed thereof Clement B. Grubb and Mary Ann, his wife, by deed, dated October 29th, 1845, sold and conveyed to Alfred B. Grubb, his heirs and assigns, as in said deed specified, all the *one equal undivided half part, or moiety*, of them, the said Clement B. Grubb and Mary Ann, his wife, of, in and to the Mount Hope estate, then owned in common and equal interest by and between Edward B. Grubb and Clement B. Grubb, consisting of a furnace, grist-mill, saw-mill, dwelling houses, barns and other buildings; and of the following lands thereto belonging, to wit: one tract, situate partly in Rapho township, Lancaster county, and partly in Lebanon township, Lebanon county, adjoining, &c., &c., and containing 1,789 acres, with the said furnace, grist-mill, saw-mill, smith shop, coal house, two dwelling houses, and fifteen workmen's houses thereon erected.

One other tract, situate in Londonderry township, Lebanon county, adjoining, &c., &c., and containing 273 acres 28 perches, with a tenant house thereon.

One other tract, situate in Londonderry township, Lebanon county, adjoining, &c., &c., and containing 202 acres 73 perches, with a small tenant house thereon.

One other tract, in Lebanon township, Lebanon county, adjoining &c., &c., and containing 130 acres 49 perches, with a small tenant house thereon erected.

One other tract, in Londonderry township, Lebanon county, adjoining, &c., &c., and containing 125 acres.

And the undivided part of one other tract, in Rapho township, Lancaster county, adjoining, &c., &c., containing 82 acres, with a small log house thereon erected, held as a tenancy in common with the heirs of Thomas B. Coleman. And of, in and to all the houses, out-houses, edifices, buildings, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever thereunto belonging, or in anywise appertaining; and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, profession, claim and demand whatsoever of them, the said C. B. Grubb and Mary, his wife, in law or equity, or otherwise howsoever, of, in and to the same. And then is inserted the ore right in words following: "Together also with the right, title and interest, so far as the said Alfred Bates Grubb's right, under this conveyance, in the said Mount Hope estate is interested and concerned, of them, the said Clement B. Grubb and Mary Ann Grubb, his wife, to raise, dig up, take and carry away, for the use and advantage of said furnace, iron ore out of and from three certain mine hills in Lebanon township, Lebanon

county, bounded on all sides by lands of Thos. B. Coleman, deceased, and known and called by the name of 'Cornwall Ore Banks,' and held as tenants in common with the heirs of Thomas B. Coleman and James Coleman, deceased; with ingress, egress and regress to and from said mine hills, and every part thereof, for the purpose only of procuring ore for the said Mount Hope furnace, but for so long, and for such time only, as the said furnace can be carried on and kept in operation by means of charcoal." Then the habendum: "To have and to hold the said one equal undivided moiety, &c., with the appurtenances, and with the ore right aforesaid, unto," &c., &c. After which the warranty, warranting the premises conveyed, with the ore right as aforesaid, unto the said Alfred Bates Grubb, his heirs and assigns forever.

What, then, is the amount and extent of the right thus vested in A. Bates Grubb to take ore from Cornwall?

The learned master, after examining the deed, and reviewing the facts and circumstances surrounding the parties at the time of the conveyance, as he has reported them, is of opinion that at the time of the conveyance A. B. Grubb's undivided half of Mount Hope furnace, was interested and concerned to such an extent as was necessary to give it its full value, namely, to the extent of a right of a full supply, which should be available to its owner under all circumstances, independently of his relations with partners or co-tenants; as the right conveyed was not held in common or jointly with any one.

That the grant to A. Bates Grubb, so far as his right in the furnace was interested and concerned, was of the same right that Clement B. Grubb possessed to dig ore for Mount Hope furnace, limited however to that furnace only, and so long as it was operated by means of charcoal. That Clement had a right to dig as much as he pleased. And further: if it had been intended to limit the right granted, to the right to dig but one-half the ore needed for Mount Hope furnace, "how easy it would have been to have expressed this intention in so many words." According to his opinion sufficient meaning can be given to these restrictive words by construing them to limit the right to dig ore for Mount Hope furnace, to the owner of the undivided half of the furnace, to mean that the right is given to A. Bates Grubb, his heirs and assigns forever, holding the said undivided half, but only in case the furnace is kept in operation by means of charcoal; and being of opinion that, at the time of the execution and delivery of the deed to A. Bates Grubb, the intention of the parties was, that a right should be granted to a full supply of ore, and that this right should be annexed to the ownership of the undivided half of Mount Hope furnace, he recommends that the bill in this case be dismissed.

To the finding and opinion of the learned master exceptions have been filed by both parties, complainant and respondent.

The exceptions on the part of the complainant are:

1. The master erred in finding that

whether the defendant obtained his ore from Cornwall, as lessee from Clement B. Grubb, as assignee of the lease from Edward to Clement, or by virtue of rights obtained from both landlords, does not appear. On the contrary, it does appear from the evidence, and the master erred in not finding, that at the time of the execution and delivery of deed from C. B. Grubb and wife to A. Bates Grubb, in October, 1845, A. Bates Grubb was operating Mount Hope furnace under a joint lease from Edward B. Grubb and Clement B. Grubb, and by virtue of which he obtained his supply of ore from Cornwall.

2. The master erred in finding that under the deed of October, 1845, from C. B. Grubb and wife to A. Bates Grubb, a right to a full supply of ore from Mount Hope furnace was granted.

3. The master erred in his inference from the testimony, that there has not been a contemporaneous interpretation by the parties to said deed, showing that only a half supply of ore was intended to be conveyed.

4. The master erred in his recommendation, that the bill be dismissed, and in not finding that the plaintiff is entitled to the relief prayed for.

Those on the part of the respondent are:

1. The master erred in not deciding that the facts proved in the case, are not such as are required to bring it within the jurisdiction of a court of equity.

2. The master erred in his conclusion that the defendant, by virtue merely of his ownership of Mount Hope furnace, and as appurtenant thereto, was not entitled to take from Cornwall ore banks, whatever quantity of ore was required for that furnace.

The first exception filed by defendant is answered and disposed of by this opinion, in holding that the case as presented is within the jurisdiction of a court of equity; the master not having fully examined this question.

And the second we take to be disposed of and settled, so far, at least, as that portion of the Mount Hope furnace estate, conveyed by C. B. Grubb and wife to A. Bates Grubb, is concerned, by the decision of the Supreme Court in Grubb vs. Grubb, 24 P. F. Smith, 25: "This deed (October 29, 1829,) separated the interest of Clement B. Grubb in the mine hills from the remainder of the Mount Hope estate, which passed by his deed to Alfred B. Grubb. By this conveyance he granted to Alfred only a special and limited right or privilege of taking ore for the use of Mount Hope furnace, retaining in himself the corporeal estate in the Cornwall mine hills, which he did not convey." His right to take ore from Cornwall is not by virtue merely of his ownership of Mount Hope furnace, and as an appurtenant thereto, but by virtue of the of the right and privilege granted him by C. B. Grubb and wife in the deed of October 29, 1845, so far as the estate therein granted is concerned.

The exceptions filed by the defendant are, therefore, overruled.

With reference to the first exception filed by the complainant.

Neither of the leases referred to are given in evidence, their absence accounted for, nor their contents proven, so far as we are able to discern from the testimony reported, or the facts found. Why not, if they are favorable to the cause of either C. B. Grubb or A. B. Grubb, we are at a loss to determine. What they contain, therefore, does not appear. But it is shown that Clement B. Grubb had leased Edward's interest in Mount Hope, and was operating it under the lease; that he leased the whole thereof to A. Bates Grubb in 1842. That A. Bates Grubb thus held it until 1844, when Edward B. Grubb and Clement B. Grubb, joint owners of Mount Hope, extended said lease of A. Bates Grubb for one year, which would reach to and embrace the time when the deed of conveyance was executed to A. Bates Grubb. And, as none of these leases, nor the assignments thereof, have been produced, nor the contents of any of them attempted to be proved by A. Bates Grubb, to whom they were executed or assigned and transferred, it is at least fair to assume that the leases so made, assigned and delivered to A. Bates Grubb, would not have shown anything in his favor, or he would have produced them, or proved their contents. Most certainly so, if either of them would have shown that under it Clement B. Grubb was to furnish all the ore necessary from Cornwall during its continuance.

It does not appear, from the facts found, nor the report presented by the learned master, that prior to the conveyance to A. Bates Grubb, on October 29, 1845, and to the rights therein granted, A. Bates Grubb was the owner of any part of the Mount Hope estate; nor had he, prior to that time, any interest therein, or any right to supply the furnace thereon with ore from Cornwall, independent of the lease from E. B. Grubb to C. B. Grubb, and the assignment thereof by C. B. Grubb to him, and of the rights acquired by the joint extension of said lease, in 1844, for one year. We are therefore of opinion that the learned master erred in his finding from the evidence, as reported, that at the time of the execution and delivery of the deed of October 29, 1845, A. B. Grubb was operating and conducting Mount Hope furnace under a joint lease from E. B. Grubb, by virtue of which alone he obtained a supply of ore from Cornwall, and without which he would have had no right to take or remove ore from Cornwall for any purpose.

With reference to the third exception, which we now proceed to consider, before taking up the second, because the first and third are of very little importance, except in so far as they may aid in elucidating the facts or assist in construing the deed of October 29, 1845, which contains the point disputed, and out of which this controversy arises. And in disposing of this exception, we shall not be so scrupulously exact or exacting as if we believed the decision of the cause depended upon the accuracy or inaccuracy of the inference drawn by the master from the testimony with reference to the contemporaneous interpretation of the deed by the parties thereto.

The learned master cannot find in the evi-

dence produced, or facts proven before him, any evidence of the contemporaneous construction of the deed by the parties as alleged by complainant.

The facts reported by the learned master, and the testimony presented to him, show that at no time since the execution and delivery of the deed by C. B. Grubb and wife, to A. Bates Grubb, and before he became the full owner of Mount Hope, has A. Bates Grubb taken, or presumed to take, more ore than a half supply for Mount Hope furnace under his grant from Clement. He furnished and paid for raising a half supply, and Edward B. Grubb, owning the other undivided half of Mount Hope, and owning an interest in fee in the Cornwall ore banks, furnished and paid for the other half supply, so long as together they owned Mount Hope; and after Edward's death his heirs continued to do so, until, by due process of law, A. Bates Grubb became sole owner of Mount Hope; and the fact that he never pretended to claim that, under the grant from C. B. Grubb and wife, he was entitled to take a full supply of ore for Mount Hope from Cornwall until after he, by process of law, became owner of the other undivided half of Mount Hope, (whether by becoming the owner thereof he obtained or failed to obtain a supply of ore from Cornwall commensurate with his new interest, thus acquired, is not at present a question for our consideration;) is one from which it might be fairly inferred that, so far as he was concerned, he understood his grant to give him only a supply commensurate with his interest in the estate conveyed. It does not appear, from the facts as reported, testimony presented, or opinion of the master, that Clement B. Grubb ever knew, until the year 1875, after A. Bates Grubb became owner of the other undivided half of Mount Hope furnace and property, that A. Bates Grubb claimed that, under his grant from C. B. Grubb and wife, he was entitled to take, or had actually taken, a full supply of ore for Mount Hope. And, it does appear, that as soon as he became aware of such claim of right on the part of Alfred, he denied this right by letter to Alfred, dated April 22, 1875, and published in the proceedings before us. This shows how Clement understood the grant. And while the master, perhaps without error, might have found otherwise, we are not prepared to say his inference as reported is error.

The consideration of the second exception of complainant renders it necessary for us to scrutinize the grant and see whether or not, in our judgment, the opinion of the learned master is correct, as to its amount and extent. And, in doing this, we acknowledge the correctness of the mode adopted by the learned master, under the authorities cited and relied on in ascertaining such amount and extent. Many other cases might be cited and relied on with reference to the points presented, among which are 2 S. & R. 186: "No rule of law is more adapted to the common reasons of all mankind than that in judging of a writing; we must take the whole into consideration, and assign to each clause

and word contained in it their rational, distinct meaning, if this can possibly be done."

9 W. & S. 44, &c.: "In the construction of all instruments of writing *inter partes*, the intention is the governing rule."

7 Cas. 475: "The nature and quantity of the interest conveyed by a deed is always to be ascertained from the instrument itself, and is not open to explanation by parol evidence."

7 Cas. 489: "It is, however, a settled rule that a deed must be construed *ex visceribus suis*. When the interest is clearly expressed no evidence of extraneous facts or circumstances can be received to alter it." "It may be admitted that when the deed leaves the subject matter of the grant in doubt, parol evidence may be resorted to in order to ascertain it, but the nature and quantity of the interest conveyed is always to be ascertained from the instrument itself."

2 Jones 214: "The intention of the grantor must be gathered from the deed, and its construction cannot be varied by parol."

24 Sm. 269: "The intent of the grantor is the ruling principle in construing deeds, &c."

20 Sm. 367: "Although a strange interpretation may be admissible where an absurdity would ensue, yet if intention of the parties is not clear but in *equilibrio*, the words should receive their natural interpretation." "Particular expressions are to be referred to the particular subject matter so that full and complete force may be given to the whole."

11 Sm. 283: "If there be doubt as to the intent, surrounding circumstances, and the acts of the parties at and subsequent to the transaction, may be considered to ascertain it."

These cases appear to cover all points required to be considered in construing this deed and the grants therein contained so fully that we deem it unnecessary to refer to many others that might be cited.

In the deed from C. B. Grubb and wife to A. Bates Grubb, dated October 29, 1845, and now before us, there are, as we read it, with reference to the right granted to A. Bates Grubb, to take ore from Cornwall, two separate and distinct limitations or restrictions, if the whole of the words of the grant are to receive their legitimate meaning and their proper construction. One, as to the quantity and extent of the interest granted; the other, as to the term or time of enjoyment of such quantity and interest so granted. These two limitations are entirely independent of each other, and in the absence of the one the other would be perfect; and to attempt to dovetail them together, so as to make but a single limitation as to the time of enjoyment, would seem to be putting upon them such a "strained interpretation" as to create rather than remove an absurdity. It will be remembered, that at the time of this conveyance, Clement B. Grubb, the grantor, was the owner of but a half interest, the one undivided half interest in Mount Hope furnace property. He was, therefore, only conveying, and did only convey, to Alfred Bates Grubb, an undivided half interest therein, the one equal undivided half thereof. He was aware that the owner of the other undivided half had a right to take from the Cornwall ore banks sufficient ore to supply his interest in said furnace. And he knew that without a grant from him A. Bates Grubb would have no such right wherewith to supply his interest therein. Hence, we have the grant in the deed: "Together, also,



with the right, title and interest, so far as the said Alfred Bates Grubb's right under this conveyance in the said Mount Hope furnace is interested and concerned, to dig, raise, take and carry away for the use and advantage of said furnace, iron ore out of and from three certain mine hills in Lebanon township, Lebanon county, bounded on all sides by lands of Thomas B. Coleman, deceased, and known and called by the name of 'Cornwall ore banks,' and held as a tenancy in common with the heirs of Thomas B. Coleman and James Coleman, deceased, with ingress, egress and regress to and from said mine hills, and every part thereof, for the purpose only of procuring ore for the said Mount Hope furnace." This grant, with this single limitation, is complete within itself without any reference to the limitation or restriction as to time, &c., and, in our judgment, is but a grant equal to and commensurate with the amount of the interest conveyed in the furnace—a grant sufficient to supply the interest conveyed; a grant of a sufficient quantity of ore for the half supply of said furnace. And, we think, that by no fair construction of the whole deed and grant, can it be made to mean an intention on the part of the grantor to grant to A. Bates Grubb a right to a supply of ore not only for his own half of the furnace, but a supply for Edward B. Grubb's half also; we can discover no such intention therein. "But," says the learned master, "if it had been intended to limit the right granted, to the right to dig but one-half the ore needed for Mount Hope, 'how easy' it would have been to have expressed this intention in so many words." We think it is expressed in just about so many words, "so far as the said Alfred Bates Grubb's right under this conveyance in the said Mount Hope furnace is interested and concerned." But if no such limitation, or no limitation, except as to the time of enjoyment, was intended, why use this language at all—if a full supply for Edward's half interest, as well as Bates Grubb's interest was intended—a full supply for the whole furnace. "How easy" it would have been to have omitted these restrictive words altogether, and then we should have had a full grant without restriction thus: "Together, also, with the right, title and interest of them, the said C. B. Grubb and Mary Ann, his wife, to raise, dig up, take and carry away for the use and advantage of said furnace iron ore, out of and from three certain mine hills in Lebanon township, Lebanon county, bounded on all sides by lands of Thomas B. Coleman, deceased, and known and called by the name of 'Cornwall ore banks,' and held as a tenancy in common with the heirs of Thomas B. Coleman and James Coleman, deceased, with ingress, egress and regress to and from the said mine hills, and every part thereof, for the purpose only of procuring ore for said 'Mount Hope furnace.'" And if Clement B. Grubb had been conveying to Alfred Bates Grubb the whole Mount Hope estate, or had, in conveying to him only an undivided half thereof, intended to grant a full and unlimited supply for the whole furnace, we have no doubt that this would have been the language used by the learned scrivener who drew the deed of conveyance between these parties; the words of limitation or restriction used were in no way necessary; if a full supply was intended to be granted, their use appears to us to preclude the idea of such intention. It is said, however, that sufficient meaning can be given to these words, by construing them to limit the right to dig ore for Mount Hope to the owner of the undivided half of the furnace, to mean that the right is given to A. Bates Grubb, his heirs and assigns forever, holding the said undivided half, but only in case the furnace is kept in operation by means of charcoal; that is to construe them to refer to the extent or restriction of the mode of making iron and the time of

the enjoyment of the grant; but these words have no such application, and, in our judgment, no process of soldering can fasten them upon this last restriction, without a most terribly strained interpretation, which would inevitably result in the production of a most glaring absurdity; and why, because the grant with the last restriction is full and complete without them, and there is no limb, or even bud, left to engraft them upon. The grant, if the last restriction only was intended, would read thus: "Together, also, with the right, title and interest of them, the said Clement B. Grubb and Mary Ann, his wife, to raise, dig up, take and carry away, for the use and advantage of said furnace, iron ore out of and from three certain mine hills in Lebanon township, Lebanon county, bounded on all sides by lands of Thomas B. Coleman, dec'd, and known and called by the name of the 'Cornwall ore banks,' and held as a tenancy in common with the heirs of Thomas B. Coleman and James Coleman, deceased, with ingress, egress and regress to and from the said mine hills, and every part thereof for, the purpose only of procuring ore for the said Mount Hope furnace, but for so long and such time only as the said furnace can be carried on and kept in operation by means of charcoal. This would be a full and complete grant, with a full and complete restriction as to the mode of making the iron and the time of enjoyment.

Taking, therefore, the whole deed into consideration, and assigning to each clause and word therein contained, what we conceive to be their rational, distinct meaning, we are of opinion that the learned Master erred, and we cannot adopt his opinion in deciding that "the intention of the parties, at the time of making the deed, was that a right should be granted to a full supply of ore, and that this right should be annexed to the ownership of the undivided half of Mount Hope furnace, and in recommending that the bill should be dismissed. On the contrary, we think that he should have found and reported, from the language of the deed, and the circumstances of the parties at the time of making it, that the grant, as set forth in the deed, only entitles A. Bates Grubb, the grantee, to take from Cornwall ore banks a half supply of the ore needed to operate Mount Hope furnace, a supply commensurate with and equal to his interest in said Mount Hope furnace, as the same was conveyed to him by C. B. Grubb and wife in and by the deed referred to by the master in his report; and should have recommended that it should be decreed by this court that the interest and right of said A. Bates Grubb to take ore from said Cornwall ore banks is to the extent of a moiety only, (commensurate with the interest in the Mount Hope furnace, conveyed to him by C. B. Grubb,) necessary to be used in operating Mount Hope furnace, so long and for such time only as the same can be carried on and kept in operation by means of charcoal.

That said Alfred Bates Grubb should be decreed to account with the co-proprietors of Clement B. Grubb in the Cornwall ore banks as to the amount of ore, over and above that which under his grant he was entitled to take, as any one not seized in any estate therein.

That said Alfred Bates Grubb be decreed to submit to such method of determining his right to take ore as shall fully protect the rights of C. B. Grubb.

And that such decree be made by the court as will prevent a surcharge of the grant made by said C. B. Grubb and wife to said A. Bates Grubb.

Plaintiff's first, second and third exceptions are sustained.

We, therefore, enter our decree in accordance with the opinion and decline to dismiss the bill.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 22, 1877.

### COURT CALENDAR.--1878.

#### JANUARY.

5. Argument for Rules of Affidavit of Defense.
11. Last day for issuing Writs to January Term.
12. Last day for setting down causes for trial for February 11th and 18th.
21. Last day for issuing Executions to January Term.
26. Calling Judgment Docket.

#### FEBRUARY.

8. Last day for issuing Writs to February Term.
9. Argument for Rules of Affidavit of Defense.
16. Last day for filing Accounts to March Court.
23. Calling Judgment Docket.

#### MARCH.

8. Last day for issuing Writs to March Term.
9. Last day for setting down causes for Argument Court.
9. Argument for Rules of Affidavit of Defense.
16. Last day for filing Accounts for April Court.
23. Last day for setting down causes for April Court.
23. Calling Judgment Docket.

#### APRIL.

5. Last day for issuing Writs to April Term.
6. Argument for Rules of Affidavit of Defense.
15. Last day for issuing Executions to April Term.
20. Last day for setting down causes for trial for May 20 and 27.
20. Calling Judgment Docket.

#### MAY.

4. Argument for Rules of Affidavit of Defense.
10. Last day for issuing Writs to May Term.
18. Last day for filing Accounts for June Court.
25. Calling Judgment Docket.

#### JUNE.

7. Last day for issuing Writs to June Term.
8. Last day for setting down causes for Argument Court.
15. Argument for Rules of Affidavit of Defense.
22. Calling Judgment Docket.

#### JULY.

30. Last day for filing Accounts to August Court.
37. Last day for setting down causes for trial for August Court.

#### AUGUST.

9. Last day for issuing Writs to August Term.
17. Last day for filing Accounts to September Court.
19. Last day for issuing Executions to August Term.
24. Calling Judgment Docket.
31. Last day for setting down causes for Sept. 30.

#### SEPTEMBER.

6. Last day for issuing Writs to September Term.
7. Last day for setting down causes for Argument Court.
7. Last day for setting down causes for trial for October 7 and 14.
7. Argument for Rules of Affidavit of Defense.
21. Calling Judgment Docket.

#### OCTOBER.

5. Argument for Rules of Affidavit of Defense.
11. Last day for issuing Writs to October Term.
19. Last day for filing Accounts to November Court.
26. Last day for setting down causes for trial for November Court.
26. Calling Judgment Docket.

#### NOVEMBER.

8. Last day for issuing Writs to November Term.
9. Argument for Rules of Affidavit of Defense.
16. Last day for filing Accounts to December Court.
18. Last day for issuing Executions to November Term.
23. Calling Judgment Docket.

#### DECEMBER.

6. Last day for issuing Writs to December Term.
7. Last day for setting down causes for Argument Court.
7. Argument for Rules of Affidavit of Defense.
21. Last day for filing Accounts to January Court, 1879.
21. Calling Judgment Docket.
28. Last day for setting down causes for trial for January Court, 1879.

**WEEKLY SUMMARY.**

**REGISTER'S OFFICE.**

Letters of administration have been granted by the Register on the following estates since December 15, 1877:

- DAVID F. BOWMAN, dec'd, late of Lancaster city; Ellen Bowman, administratrix.
- DR. WM. IRWIN, dec'd, late of Sadsbury twp.; Eliza J. Irwin, administratrix.
- ABRAHAM R. BRENNEMAN, dec'd, late of Columbia bor.; Florence B. R. Breneman, administratrix.
- DAVID HUNSBERGER, dec'd, late of Conoy twp.; Catharine Hunsberger, administratrix.
- JACOB HOLTZINGER, dec'd, late of Earl twp.; E. Burkholder, administrator.

The following Wills have been admitted to probate since December 15, 1877:

- DANIEL HIRNISEN, late of West Cocalico twp.; Cyrus Hirnisen and Jeremiah Hirnisen, executors.
- B. K. GOCKLEY, late of West Cocalico twp.; Maranda Gockley, executrix.
- GEORGE RYNEER, late of Paradise twp.; Catharine Ryneer, executrix.
- GEORGE B. SHOBER, late of Warwick twp.; B. Catharine Shober and Augustus W. Shober, executors.
- AMOS M. HUBER, late of Manheim twp.; Anna Huber, executrix.

**Divorce Notices.**

MARGARET FRAZIER, by her next friend Benj. Cutler, vs. E. K. FRAZIER. } Alias Subpœna for Divorce December Term, 1877. No. 36.  
To E. K. FRAZIER.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Margaret Frazier should not be divorced from the bonds of matrimony contracted with you.  
dec15 H. N. BRENNEMAN, Sheriff. Sheriff's Office, Lancaster, December —, 1877.

HANNAH GROOM by her next friend Sam'l Evans, vs. JOSEPH GROOM. } Alias Subpœna for Divorce December Term, 1877. No. 27.  
To JOSEPH GROOM.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Hannah Groom should not be divorced from the bonds of matrimony contracted with you.  
dec15 H. N. BRENNEMAN, Sheriff. Sheriff's Office, Lancaster, December —, 1877.

PHILIP HARMAN vs. LOUISA HARMAN. } Alias Subpœna for Divorce December Term, 1877. No. 41.  
To LOUISA HARMAN.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Philip Harman should not be divorced from the bonds of matrimony contracted with you.  
dec15 H. N. BRENNEMAN, Sheriff. Sheriff's Office, Lancaster, December —, 1877.

WILLIAM B. MOORE vs. MARIA MOORE. } Alias Subpœna for Divorce December Term, 1877. No. 51.  
To MARIA MOORE.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said William B. Moore should not be divorced from the bonds of matrimony contracted with you.  
dec15 H. N. BRENNEMAN, Sheriff. Sheriff's Office, Lancaster, December —, 1877.

**WILLIAM B. WILEY,**

**ALDERMAN,**

OFFICE — No. 32 NORTH DUKE STREET, LANCASTER, PENNA.

**COMMISSIONER OF DEEDS**

FOR THE STATES OF

New York, Iowa, Minnesota, Illinois, Indiana, Missouri, Ohio, Michigan, Kansas, Wisconsin, West Virginia.

**PHILIP D. BAKER,**

**ATTORNEY-AT-LAW,**

OFFICE — No. 25 NORTH DUKE STREET, LANCASTER, PA.

**ORDER FIXING COURTS FOR THE YEAR 1878.**

The regular terms of the Courts of Common Pleas, Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, and Orphans' Court, shall be and remain as fixed by rule of Court in printed rules, pages 11, 51 and 43.

**ADJOURNED COURTS FOR THE YEAR 1878.**

It is ordered by the Court that adjourned Courts for the trial of causes by Jury in the Courts of Common Pleas, Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace shall be held as follows, viz:

*In the Court of Common Pleas.*

- One week commencing MONDAY, Feb'y 11, 1878.
- One week commencing MONDAY, Feb'y 18, 1878.
- One week commencing MONDAY, May 20, 1878.
- One week commencing MONDAY, May 27, 1878.
- One week commencing MONDAY, Sept. 30, 1878.
- One week commencing MONDAY, Oct. 7, 1878.
- One week commencing MONDAY, Oct. 14, 1878.

*In the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace.*

- One week commencing MONDAY, Feb'y 25, 1878.
- One week commencing MONDAY, March 4, 1878.
- One week commencing MONDAY, Oct. 21, 1878.
- One week commencing MONDAY, Oct. 28, 1878.

And at such other times as may hereafter be ordered and directed by the Court.

It is further ordered that all defaulting Jurors shall be fined \$15.

All Jurors attending Court and failing to be present and answer when called for the trial of a cause, shall forfeit one day's pay for every failure to answer, unless a legal or sufficient reason be given to the Court for such absence and failure to answer.

The above order to be inserted in all the newspapers published in the city and county, one insertion in each, the bills to be presented at the County Commissioners' office.

By the Court.

Attest: LEWIS S. HARTMAN, Prothonotary.

dec22

**Auditors' Notices.**

Estate of BARBARA BACHMAN, late of East Hempfield township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Seltz and Abraham H. Mellinger, executors of said dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JANUARY 8th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

SIMON P. EBY, Auditor.

dec22

Estate of JOHN ARNDT, late of Mount Joy township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian A. Nisley, executor of the will of John Arndt, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JANUARY 8th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JNO. M. MAST, Auditor.

dec22

Assigned Estate of SAMUEL SHIRK and WIFE, of Cœrnarvon twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Pearson Sample, assignee of Samuel Shirk and wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, JANUARY 10th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. D. WHITE, Auditor.

dec15

Assigned Estate of THE INLAND INSURANCE AND DEPOSIT COMPANY.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel H. Reynolds, assignee of The Inland Insurance and Deposit Company, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JANUARY 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. Creditors who presented their claims at the previous audit need not do so again; but all who have not yet handed in their claims are requested to do so on the above mentioned day.

W. A. WILSON, Auditor.

dec15

Assigned Estate of JACOB KOHR and WIFE, of Manheim township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Hiram B. Swarr, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JANUARY 9th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

B. C. KREADY, Auditor.

dec15

Assigned Estate of HENRY SCHOCH, of the borough of Marietta, Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Benj. F. Hiestand, assignee for the benefit of creditors of the said Henry Schoch, to and among those legally entitled to the same, will sit for that purpose on MONDAY, DECEMBER 24th, 1877, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. D. NORTH, Auditor.

dec1

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

**Estate Notices.**

Estate of GEORGE RINEER, late of Paradise township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

CATHERINE RINEER, B. F. ESHLEMAN, Att'y. Executrix.

dec22\*

Estate of JACOB HOLSINGER, late of Hinkle-town, Earl township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted there-to are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

E. BURKOLDER, Administrator.

dec22

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 13, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
dec22\* ABRAHAM MILLER, Assignee,  
C. DENYES, Att'y. Residing in Millersville.

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.  
M. BROSIUS, CATHARINE KRABER,  
dec15 ded15 Attorney. Administratrix.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. MARGARET GRAVER,  
Warwick township;  
ADDISON GRAVER,  
Manheim township;  
dec15 HENRY B. ESHLEMAN,  
D. G. BAKER, } Att'ys. Manheim township,  
O. P. BRICKER, } Administrators.

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
dec15 SAMUEL WHITSON, Assignee,  
M. BROSIUS, Att'y. Atglen, Chester Co., Pa.

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 3, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
dec15\* LEVI BRUBAKER, Assignee,  
A. J. EBERLY, Att'y. Millway P. O., Lan. Co.

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
dec3\* MARY M. KING,  
J. W. JOHNSON, Att'y. Administratrix.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.  
MARTIN G. LANDIS,  
dec8 Administrator, East Lampeter twp.

**Estate of MARTIN GROFF, Sr., late of Manheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
dec8\* SAMUEL GROFF,  
ABRAHAM S. GROFF,  
PHILIP D. BAKER, Att'y. Executors.

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.  
dec1\* W. C. FREW,  
B. F. ESHLEMAN, Att'y. Administrator.

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
nov17 KIRK BROWN,  
J. HAY BROWN, Atty. Administrator.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned. GEO. BRUBAKER,  
H. C. BRUBAKER, Att'y. [dec1] Assignee.

**Estate of JOHN F. WOLF, late of West Hempfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the village of Mountville.  
nov17 MARY A. WOLF,  
THOS. B. COCHRAN, Att'y. Administratrix.

**Assigned Estate of HENRY FRANKE, of Lancaster City.**

Henry Franke, of Lancaster city, having by deed of voluntary assignment, dated October 22d, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Henry Franke, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
R. W. SHENK,  
HERMAN MILLER,  
GEO. NAUMAN, Att'y. Assignees.  
nov17 Residing in Lancaster city.

**Estate of HENRY SHAUB, late of West Lampeter twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
HENRY SHAUB, Jr.,  
PHILIP D. BAKER, ABRAHAM SHAUB,  
nov3\* Att'y. Administrators.

**Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city.  
BRIDGET FITZPATRICK,  
JOHN J. FITZPATRICK,  
nov3 Administrators

**Estate of HENRY SCHITZ, late of Elizabeth-town borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough.  
nov3\* FRANK SCHLEGMILCH,  
A. F. SHENCK, Att'y. Executor.

**Estate of JOHN GROSS, late of West Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
JOHN G. KELLER,  
SAMUEL G. KELLER, } Litiz,  
JACOB G. KELLER, }  
MARTIN G. KELLER, } Elizabethtown,  
ABRAHAM R. FORNEY, } Administrators.  
nov3] J. L. STEINMETZ, Att'y.

**Estate of JOHN WHITESIDE, late of Colerain township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township.  
oct27\* JAMES WHITESIDE,  
S. H. REYNOLDS, Att'y. Administrator.

**Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown.  
EMANUEL BROWN,  
oct27 Executor.

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. MARTIN DENLINGER,  
West Lampeter township.  
JOHN L. LANDIS,  
East Lampeter township,  
oct27 Administrators.  
WM. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
oct20 EMMA L. SMITH,  
HOS. B. COCHRAN, Att'y. Executrix.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland.  
oct20 LIZZIE S. WICKEL,  
AND. M. FRANTZ, Att'y. Administratrix.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him.  
oct30 SAMUEL G. GENSEMER,  
GEO. BRUBAKER, Att'y. Assignee.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
HENRY DONER,  
DANIEL R. DONER,  
oct20 Administrator  
B. F. ESHLEMAN, Att'y.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, DECEMBER 29, 1877.

No. 31.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES.

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

	WESTWARD.		EASTWARD.	
	LANCASTER.	HARRISBURG.	LANCASTER.	PHILADELPHIA.
Pacific Express,*	2:40 a. m.	4:05 a. m.	12:30 a. m.	3:00 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.	4:10 a. m.	7:00 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.	7:35 a. m.	10:00 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10:10 a. m.	9:25 a. m.	12:00 p. m.
Mail Train via Mt. Joy,	11:20 a. m.	1:00 p. m.	11:20 a. m.	1:25 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.	11:20 a. m.	1:30 p. m.
Sunday Mail,	11:20 a. m.	1:30 p. m.	11:20 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.	11:30 p. m.	2:10 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.	2:15 p. m.	3:10 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.	2:20 p. m.	3:15 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.	2:20 p. m.	3:15 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.	2:20 p. m.	3:15 p. m.
Pittsburg Express,	9:35 p. m.	10:50 p. m.	2:20 p. m.	3:15 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.	2:20 p. m.	3:15 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,	6:50	7:50	3:30
Lancaster—West King Street,	8:00	9:16	3:35
Lancaster—Upper Depot,	8:10	9:26	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:36	5:30	3:10
Lancaster—West King Street,	9:45	5:40	3:20
Quarryville, (arrive),	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:37	1:35	4:11
Reading, (arrive),	10:20	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:13	1:30	7:45
Lancaster—Upper Depot,	9:36	2:00	8:10
Lancaster—West King Street,	9:45		8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:29
Arrive at Peachbottom,	7:05	1:55	5:45
GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:30

### Lancaster and Millerstown Railroad.

STREET CARS leave Lancaster, P. E. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millerstown at 3, 5, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
Chief Justice—Morrison R. Waite, of Ohio,	1874
Justices—Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1873
Attorney General—Charles E. Devens.	

**Supreme Court of Pennsylvania.**

Chief Justice—Daniel Agnew.  
 Associate Justices—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

Attorney General—George Lear.

**Prothonotaries:**

Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Switzer, Pittsburg.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.

Reporter—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburg, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

President Judge—John B. Livingston.  
 Additional Law Judge—David W. Patterson.  
 Associate Judge—John J. Libhart.  
 District Attorney—J. W. Johnson.

**County Officers.**

Prothonotary—Lewis S. Hartman.  
 Deputy—Wm. E. Kreider.  
 Clerks—P. E. Slaymaker and Thos. B. Hartman.  
 Register—Harrison Ross.  
 Deputies—W. M. Slaymaker and C. H. Fasnacht.  
 Recorder—Samuel S. Martin.  
 Deputy—Benj. Bauman.  
 Clerks—Geo. R. Sensenig and M. O. Sensenig.  
 Sheriff—Henry N. Breneman.  
 Deputies—Jno. D. Wilson and G. W. Benedict.  
 Clerk of Orphans' Court—Samuel L. Kaufman.  
 Clerk of Quarter Sessions—Stephen S. Clair.  
 Deputy—B. F. W. Urban.  
 Commissioners—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
 Clerk—John M. Grider.  
 County Solicitor—J. Hay Brown.  
 County Treasurer—Henry S. Eberly.  
 Clerk—Amaziah C. Barr.  
 Coroner—Amos Groff.  
 County Surveyor—M. N. Brubaker.  
 County Auditors N. N. Hensel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

Mayor—John T. Macgonigle.  
 Solicitor—Robert M. Agnew.  
 Recorder—Walter G. Evans.  
 Aldermen—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jaek, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
 Chief of Police—John Pontz.  
 Treasurer—Edw. Welchans.  
 Civil Engineer—Francis S. Burrowes.  
 Street Commissioner—Charles Schwebel.

THE LANCASTER BAR

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JNO. H. BARNES.

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**RULE OF COURT.**

AND NOW, November 22d, 1877, it is ordered by the Court: That in all cases in which freeholders, or City Councils, apply by petition to the Court for a warrant to the Street Commissioner of the City, enjoining and requiring him to open any street, or part of any street, in the City of Lancaster, the petitioners shall, after filing their petition, and presenting it to the Court, serve written notice on all freeholders through whose lands such street or part of a street will pass—where they are known and can be found; also on the County Commissioners of Lancaster County, and the Mayor of the City, that application for the opening of such street or part of street has been made, and will be heard by the Court on the Saturday succeeding the first day of the next term, at 10 o'clock a. m., when and where they may appear and present objections if they deem proper; and shall also publish notice of such application in two daily newspapers, published in said city, twice a week, for three weeks prior to such hearing.

ATTEST:

BENJ. F. W. URBAN,  
 Dep. Clerk.

nov24-3t

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 29, 1877.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

ROBERT EVANS and JAMES EVANS *against*  
JESSE SIDWELL.

The party obtaining a rule to show cause must proceed to sustain it by evidence, and if he has alleged that property was not duly advertised, as an exception to a sheriff's sale, he must begin and show it was not.

Under the act of the 27th March, 1824, land taken in execution must be advertised once a week during three successive weeks, that is for twenty-one days before the sale.

A service of notice of levy and inquisition on the tenant, the defendant, who is the landlord, living out of the State, is sufficient.

The sheriff is presumed to have complied with the law in regard to the advertisement of his sales, and the party alleging that he did not must be prepared to support his allegation so far as to destroy the force of that presumption.

This was a rule to show cause why a sheriff's sale of the defendant's land should not be set aside. The affidavit on which the motion was founded set forth, among other reasons, want of notice of the sale and inquisition, and that the property was not advertised according to law.

On the opening of the discussion a question was raised with respect to the order of proceeding.

Mr. Rogers and Mr. Hopkins, for the rule, contending that the plaintiffs ought to show that the sheriff had regularly advertised the sale; that the court would not enforce upon the defendant the proof of a negative; that no presumption existed in favor of the acts of a ministerial officer, and none could be entertained by the court here after the affidavit of the defendant stating the objection.

Mr. Buchanan and Mr. Jenkins, for the plaintiffs, that the defendant should proceed in the usual way to establish his exceptions, if he was able.

And the court decided that the defendant, who was the party objecting to the sale, and who obtained the rule to show cause, should begin and proceed with his exhibits and evidence in support of his exceptions.

The defendant's counsel then showed that the property, though advertised in the German paper, in which it was directed to be inserted, once a week in three successive weeks, viz.: on the 25th February, 4th March and 11th March, 1829, and that the sale took place on the 13th March ensuing, was not advertised for more than fifteen days; and they cited the act of the 27th March, 1824, Pamph. L. 119; also the case of *Carney vs. Guest*, in the Court of Common Pleas of Lancaster County,

in which the land was advertised once a week in three successive weeks, but for eighteen days only before the sale, and the court held the advertisement insufficient.

Mr. Buchanan and Mr. Jenkins declined arguing this point; and—

PER CURIAM: The first advertisement of the property in question, which was published in the German paper, appeared on the 25th of February, the second on the 4th of March, and the third on the 11th of March. The property was advertised *once a week*, as the act requires, but for fifteen days only, the sale having taken place on the 13th of March: whereas the law requires that it should be advertised for *three successive weeks*. The force of the proposition for in this clause of the act indicates duration of time, and its meaning is equivalent to "during." Had the legislature intended that three weekly advertisements should be sufficient, the word *in* would have properly expressed such intention thus—*once a week in three successive weeks*. Suppose the law had directed the property to be advertised for *one week*. This would certainly have required seven days advertisement; and once a week for *three weeks* must require twenty-one days. *For* is defined by Johnson to mean "through a certain duration." *For or during three successive weeks* is the meaning which a beneficial and true construction must assign to this clause, and as this property was not advertised for twenty-one days, but only for fifteen, the sale must, therefore, be set aside.

Mr. Hopkins now moved that the inquisition be set aside on the alleged ground that no notice had been served of the levy or inquisition.

Mr. Rogers and Mr. Hopkins, in support of this motion, cited the act of the 21st March, 1806, sect. 11, 4 Smith L. page 329, and contended that it was the sheriff's duty to give actual notice to every person occupying the premises, when the defendant was out of the bailiwick. Here the deputy sheriff only deposes that he left a copy with Mr. Alexander, the tenant.

Mr. Buchanan and Mr. Jenkins admitted that actual notice was necessary, but insisted that this had been given, according to the testimony of the sheriff's officer who served it. The defendant's affidavit stated not that A. Alexander was not his tenant, nor that he had other tenants, but that no notice was served upon *him* by the sheriff or his deputy. The only question which can be raised upon this affidavit is whether notice was necessary to be served upon Jesse Sidwell, who lived out of the State. How could the sheriff do more than serve the notice on the tenant when the landlord lives out of the State? His authority did not extend beyond the county: 2 Bin. 215.

PER CURIAM. This motion is denied, it appearing to the court that the notice of the levy and inquisition was served on the tenant upon the premises.

The above rule having been made absolute, the defendant's land was again sold by virtue *venditioni exponas*, issued the 3d of July, 1829. On the 7th September ensuing Mr. Hopkins

presented another affidavit of the defendant, stating that the property had not been duly advertised with reference to that sale; that means were used by the plaintiffs at the sale to disparage the value of the land, by reason whereof the same had been sacrificed, and that the advertisements published in the papers were not inserted in papers of different politics; and upon this he moved for a rule to show cause why this said sale should not be set aside.

The rule being granted, the defendant exhibited at the hearing, on the 19th March, 1830, the deposition of J. McCarty, under-sheriff, who testified that he had attended the sale as deputy; that he had left one of the advertisements of the sale at the mansion house on the premises with Mr. Alexander, who lived there; that there were two small houses besides on the land, one occupied by an old black woman, the other by an old man and his daughter; that he left no advertisement with these people or at these houses; that he gave Jesse Sidwell, the defendant, no notice, nor did he give any to Mr. Hopkins; that there was a person at the sale from Mr. Sidwell's neighborhood who ran down the property; and that the advertisements were published in Mrs. Dickson's paper and in Mr. Wille's German paper.

Mr. Rogers for the defendant: The act of 1705, sect. 4, 1 Sm. L. 57, requires ten days notice to the defendant of the sale. In the common pleas it has been repeatedly decided that in writs of *renditioni exponas* notice must be served upon the defendant. Here they will contend that they served notice on the tenants. But these are in all cases entitled to notice. Even if J. Sidwell had lived in the county they must have been served. But the tenants were not, in fact, all served. There were three tenements, and yet notice was served upon one tenant only. Again, the tenants are not agents of the defendant; his agents are the attorneys on the record. Further, the under-sheriff does not prove that the sale was advertised in the papers for three successive weeks as the act of the 27th March, 1824, requires.

Mr. Jenkins for the plaintiffs: When the sheriff, or any other execution officer, is by law required to do anything, the presumption is that he does it; for he will be presumed to have done his duty until the contrary is proved. We say the act of 1824 was complied with—that notice was duly given: 6 Sergt. & R. 173; 1 Penna. Pr. 318. Is there any evidence to support the allegations of the affidavit? The defendant has proved nothing and we may fold our arms. We show the writ—the authority to sell; we show the sale and the advertisement. Nothing further can be required. On the former occasion they produced Mr. Wille and his German paper to show that the property was not duly advertised; they proved their exceptions and the sale was set aside. With regard to notice they have established for the defendant that there was notice. But what does notice imply? Not a literal service upon the defendant, for in that case all that any defendant would have to do to prevent his property

from being sold would be to leave the State or skulk. As to attorneys no notice to them is required by any act of assembly. If there be such let it be produced. With respect to the number of tenants there is no proof out of the affidavit, and the statements of the affidavit are no evidence. With respect to the allegation of a person attending at the sale and depreciating the property, it is put down by the deposition or turned against the defendant, and would have availed nothing, though proved as it was stated, unless they had connected the plaintiffs with that person.

Mr. Hopkins in reply: There are several grave questions which enter into the heart's blood of judicial proceedings on sheriff's sales. The court is to take into view the combined operation of two acts of assembly, the act of 1705 and the act of 1824, which were intended to be considered as one law. This being a requisition upon the ministerial officer a strict compliance was necessary. He is bound precisely to obey; he cannot act above or beneath it. That everything is to be presumed to be rightly done I deny. If there be no objection I grant it, but if there be, the burden of proof is cast on the officer. From the moment objection is made he is bound to show all things to have been *rite acta*, for this plain reason, because the action of the court must combine with his in order to give validity to what is done. There is a distinction between the case cited from 6 Sergt. & R. 173, and this application. In that the deed had been acknowledged without objection, the plaintiff was paid for his land, and the question was in an ejectment whether, the defendant could regain that possession which he had before the deed, the confirmation of the sale and the payment of the purchase money. But the question here is on the objection taken at the inception of the title to the acknowledgement of the deed.

Now with respect to notice, the law requires it and no court can dispense with it. The court of common pleas has set aside numerous sales on this ground. By the act of 1705, sec. 4, notice shall be given to the defendant. I do not say this is to be construed with literal strictness. The sheriff shall also put up notice, at least ten days before the sale. The act of 1824 extends the notice to three full weeks, and carries every provision of the act of 1705 into effect. The property must be published in hand-bills for three successive weeks as well as newspapers. We say this property was not advertised for three successive weeks.

In the absence of the defendant (for I do not contend that the notice should in all cases served personally upon the defendant) the notice should be left with a member of his family, or where a person has usually acted as his agent, and is his known agent, notice should be served on him: 1 Penn'a Pr. 156: 3 Yeates 157, Bauman and Wife vs. Tinn & Kimmel.

We have then two distinct objections to this notice. 1. We say there were three several mansions and three families on the premises, and contend it was necessary to

sent the defendant. Besides, the tenants are entitled to notice to save their own interests. So if notice be given to each tenant it multiplies the chances of the defendant for obtaining notice. Now as only one of the three was noticed, the notice was defective in that particular. 2. Mr. Rogers and myself were the defendants attorneys on the record, and had acted in the protection of this real estate upon the first sale. The plaintiffs knew we were his agents in the county, and that he was absent out of it. They were bound, therefore, to serve us with notice.

HAYES, J. There are several objections to this sale, contained in the affidavit which are reducible to these two; 1. The disparagement of the property at the sale. 2. The insufficiency of the notice.

1. As to the first, a single remark may suffice. It is not shown that the property was sold for less than its real value, and if the person who spoke disparagingly of the defendant's title and the value of the land did affect the sale by his remarks, there is no evidence of the slightest connection between him and the purchaser. This objection was not insisted on in the argument.

2. But it was contended that there ought, under the acts of 1705 and 1824, to have been written or printed notices served upon each of the three persons occupying the premises as tenants; that the property should have been advertised in handbills as well as in the newspapers, for three successive weeks, and that the plaintiffs were bound, upon the defendant's objection, to prove that this was accordingly done. The point respecting the want of publication in papers of different political sentiments was not seriously urged.

The court is of opinion, that as the sheriff gave to Alexander, the principal tenant of defendant, at the mansion house on the premises, more than ten days' notice in writing, of this sale, he sufficiently complied with the law in that particular. There is no evidence that there were three distinct tenants of the defendant. From all that Mr. McCarty states in his deposition, it may be presumed, and is most probable, that the black woman and the old man who occupy the small tenant houses, spoken of by him, are sub-tenants of Alexander.

It was not necessary to give notice to the attorneys on the record. Their authority as such was only to appear and defend their client in that suit. The idea of their being general agents of the defendant because his attorneys in that suit is untenable. Nor does the law require even that the defendant's agent, if he had one, should be specially notified of the sale. But there is no evidence that he had an agent. Being out of the county and the State, the act appears to me to have been best complied with by serving the notice upon his tenant, Mr. Alexander, who more closely represented him in regard to the premises than any other person.

As this application stood at the hearing, it was the business of the defendant to show that the sheriff had not advertised as the law requires. This was his allegation. The sher-

iff is presumed to have complied with the law, and the party alleging that he did not, should be prepared to support his allegation so far as to destroy the force of that presumption. The papers in which the advertisement in this case were inserted, were as accessible to the defendant as to the plaintiffs, and it is beyond a doubt that if the defendant could have found in these papers any confirmation of his suggestion in the argument, he would have again produced them as he did on a former occasion.

The rule to show cause is discharged.

#### Common Pleas of Lancaster County.

GOTTLIEB SWILKEY vs. JACOB SHAIBLEY.

[June T., 1877, No. 8.]

The temporary absence of a debtor from the State for business purposes, his wife and family continuing to reside here, does not render his property liable to a foreign attachment. The defendant, by his appearance becomes a party to the suit, and the plaintiff may proceed to obtain judgment the same as if he had commenced by summons.

Rule to show cause of action, and to show cause why the foreign attachment should not be dissolved.

J. F. Frueauff for rule.

W. W. Brown contra.

Opinion delivered December 22, 1877, by LIVINGSTON, P. J.

The uncontradicted testimony presented to the court is, that since 1860 Jacob Shaibley, the defendant, has resided in the county of Lancaster; that he, from 1860 to 1866, resided in Columbia; that about 1866 he removed to Lancaster City, which is still his home; that in 1876 he went westward to hunt work, came back again in May, 1877, remained here some time, and then went to West Virginia to work at a job where he is still employed, and that his wife is still in this city.

These facts being proven bring the case clearly within the provisions of the law, as held in Fuller vs. Bryan, 20 Penn. St. 144, and Hentz vs. Asahl, 1 W. N. C. 282, to wit: the temporary absence of a debtor from the State for business purposes, his wife and family continuing to reside here, does not render his property liable to a foreign attachment. The attachment in this case is therefore dissolved.

But, while this restores the property, it does not defeat the plaintiff's right to proceed in the cause as if a summons had been issued. The defendant, by his appearance, becomes a party to the suit, and the plaintiff, as is said in 64 Penn. St. 183, Blyler vs. Klise, may proceed and obtain judgment against the defendant, which has the like force and effect as in the case of an action commenced by summons.

WHERE an assignee sold property encumbered by a chattel mortgage, without an order of court, and the mortgagee brought trover against the purchaser in a State court, in a county where the parties and their witnesses resided. *Held*, that even if the District Court had jurisdiction to restrain the prosecution of the suit, it ought not to do so under the circumstances of the case.

## UNITED STATES SUPREME COURT.

E. G. PRATT vs. THE GRAND TRUNK RAILWAY COMPANY.

*Common Carriers—Connecting Lines—What constitutes delivery from one to the other.*

1. The liability of a common carrier commences when the goods are delivered to him or his authorized agent, and is discharged by the delivery of the goods. If he is an intermediate carrier, this duty is performed by a delivery to a succeeding carrier for further transportation and an acceptance by him.
2. The court states what will be considered a delivery from one company of a connecting line to another, having an apartment in the depot of the former company, the goods having been destroyed by fire while in the depot. In the case before the court it was held that the delivery from the first connecting line was complete, and that it was not thereafter liable for the loss of the goods.—*Chicago Legal News.*

In Error to the Circuit Court of the United States for the Eastern District of Michigan.

Opinion filed October 22, 1877.

HUNT J.—The defendant is a corporation engaged as a common carrier in the transportation of persons and property. This action seeks to recover damages for a violation of its duty in respect to certain merchandise shipped from Liverpool to St. Louis, and carried over its road from Montreal to Detroit. The goods reached the city of Detroit on the 17th of October, 1865, and on the night of the 18th of the same month were destroyed by fire.

The defendant claims to have made a complete delivery of the goods to the Michigan Central Railroad Company, a succeeding carrier, and thus to have discharged itself from liability before the occurrence of the fire.

If the liability of the succeeding carrier had attached, the liability of the defendant was discharged. *Ransom vs. Holland*, 59 N. Y. 611; *O'Neil vs. N. Y. C. R. R. Co.*, 60 Id. 138.

The question, therefore, is, had the duty of the succeeding carrier commenced when the goods were burned.

The liability of a carrier commences when the goods are delivered to him or his authorized agent for transportation, and are accepted. *Rogers vs. Wheeler*, 52 N. Y. 262; *Grosvenor vs. N. Y. C. R. R. Co.*, 59 Id. 34.

If a common carrier agrees that property intended for transportation by him may be deposited at particular place without express notice to him, such deposit amounts to notice and is a delivery. *Merriam vs. Hartford R. R. Co.*, 24 Conn. 354; *Converse vs. N. & N. Y. Tr. Co.* 33 Id. 166.

The liability of the carrier is fixed by accepting the property to be transported, and the acceptance is complete whenever the property thus comes into his possession with his assent. *Illinois R. R. Co. vs. Smyser*, 38 Ill. 354.

If the deposit of the goods is a mere accessory to the carriage, that is, if they are deposited for the purpose of being carried, without further orders, the responsibility of the carrier begins from the time they are received, but when they are subject to the further order of the owner, the case is otherwise. *Ladere vs. Griffith*, 25 N. Y. 364;

*Blossom vs. Griffin*, 13 Id. 569; *Wade vs. Wheeler*, 47 Id. 658; *Michigan R. R. vs. Schurlz*, 7. Mich. 515.

The same proposition is stated in a different form when it is said that the liability of a carrier is discharged by a delivery of the goods. If he is an intermediate carrier, this duty is performed by a delivery to the succeeding carrier for further transportation, and an acceptance by him. *Authorities supra.*

The precise facts upon which the question here arises are as follows:

At the time the fire occurred, the defendant had no freight room or depot at Detroit, except a single apartment in the freight depot of the Michigan Central Railroad Company. Said depot was a building several hundred feet in length and some three or four hundred feet in width, and was all under one roof. It was divided into sections or apartments, without any partition wall between them. There was a railway track in the center of the building, upon which cars were run into the building to be loaded with freight. The only use which the defendant had of said section was for the deposit of all goods and property which came over its road or was delivered for shipment over it. This section, in common with the rest of the building, was under the control and supervision of the Michigan Central Railroad Company, as hereinafter mentioned. The defendant employed in this section two men, who checked freight which came into it. All freight which came into the section was handled exclusively by the employees of the Michigan Central Railroad Company, for which, as well as for the use of said section, said defendant paid said company a fixed compensation per hundred weight. Goods which came into the section from defendant's road, destined over the road of the Michigan Central Railroad Company, were, at the time of unloading from defendant's cars, deposited by said employees of the Michigan Central Railroad Company in a certain place in said section, from which they were loaded into the cars of said latter company by said employees when they were ready to receive them; and, after they were so placed, the defendants' employees did not further handle said goods. Whenever the agent of Michigan Central Railroad Company would see any goods deposited in the section of said freight building set apart for the use of the defendant, destined over the line of said Central Railroad, he would call upon the agent of the defendant in said freight building, and, from a way-bill exhibited to him by said agent, he would take a list of said goods, and would then, also, for the first time, learn their ultimate place of destination, together with the amount of freight charges due thereon; that, from the information thus obtained from said way-bill in the hands of the defendant's agent, a way-bill would be made out by the Michigan Central Railroad Company for the transportation of said goods over its line of railway, and not before.

These goods were, on the 17th of October, 1865, taken from the cars and deposited in the apartment of said building used as afore-

said by the defendant in the place assigned as aforesaid for goods so destined.

At the time the goods in question were forwarded from Montreal, in accordance with the usage in such cases, a way bill was then made out in duplicate, on which was entered a list of said goods, the names of the consignees, the place to which the goods were consigned, and the amount of charges against them from Liverpool to Detroit. One of these way-bills was given to the conductor who had charge of the train containing the goods, and the other was forwarded to the agent of the defendant in Detroit. On arrival of the goods at Detroit, the conductor delivered his copy of said way-bill to the checking clerk of defendant in said section, from which said clerk checked said goods from the cars into said section. It was the practice of the Michigan Central Railroad Company, before forwarding such goods, to take from said way-bill in the custody of said checking clerk, in the manner aforesaid, the place of destination and a list of said goods and the amount of accumulated charges, and to collect the same, together with its own charges, of the connecting carrier.

We are all of the opinion that these acts constituted a complete delivery of the goods to the Michigan Central Company, by which the liability of the Grand Trunk Company was terminated.

1. They were placed within the control of the agents of the Michigan Company.

2. They were deposited by the one party and received by the other for transportation, the deposit being an accessory merely to such transportation.

3. No farther orders or directions from the Grand Trunk Company were expected by the receiving party. Except for the occurrence of the fire the goods would have been loaded into the cars of the Michigan Central Company, and forwarded, without further action of the Grand Trunk Company.

4. Under the arrangement between the parties the presence of the goods in the precise locality agreed upon, and the marks upon them, "P. & F., St. Louis," were sufficient notice that they were there for transportation over the Michigan road toward the city of St. Louis, and such was the understanding of both parties.

The cases heretofore cited in 20th Conn. 354 and 33 Id. 166, are strong authorities upon the point last stated.

In the latter case a railroad company and a steamboat company had a covered wharf in common, at their common terminus, used as a depot and a wharf, and it was the established usage for the steamboat company to land goods for the railroad, on the arrival of its boats in the night, upon a particular place in the depot, whence they were taken by the railroad company at its convenience for further transportation, both companies having equal possession of the depot. There was no evidence of an actual agreement that the goods deposited were in the possession of the railroad company, and the goods in question had not been in the manual possession of the railroad company when they were des-



troyed by fire on the Sunday afternoon following their deposit on the previous night. It was held that there was a tacit understanding that the steamboat company should deposit their freight at that particular spot, and that the railroad company should take it thence at their convenience. The delivery to the succeeding carrier was held to be complete, and a recovery against the first carrier for the loss of the goods was reversed.

In *Merriam vs. Hartford R. R. Co.*, 20 Conn. 354, it was held that if a common carrier agree that property intended for transportation by him may be deposited at a particular place without express notice to him, such deposit alone is a sufficient delivery; and that such an agreement may be shown by a constant practice and usage so to receive property without special notice.

The plaintiff contends that the goods were not in the custody and under the control of the Michigan road, for the reason that the case states that they "are in a section of the freight depot set apart for the use of the defendant." This is not an accurate statement of the position. The expression quoted is used incidentally in stating that when the agent of the Michigan road saw "goods deposited in the section of the freight building set apart for the use of the defendant, destined on the line of said Central Railroad, he would call upon the agent of defendant from a way-bill" obtain a list of the goods, and their destination. Just how and in what manner it was thus set apart appears from the facts already recited. It was a portion of the freight house of the Michigan Company, in which a precise spot was selected or set apart, where the defendant might deposit goods brought on its road and intended for transportation over the Michigan road, and which, by usage and practice and the expectation of the parties, were then under the control of the Michigan Company, and to be loaded on its cars at its convenience, without further orders from the defendant.

We are of the opinion that the ruling and direction of the circuit judge, that upon the facts stated, the defendant was entitled to a verdict and judgment in its favor, was correct, and the judgment should be affirmed.

#### SUPREME COURT OF PENNSYLVANIA.

DORSEY vs. ABRAHAMS ET AL.

A check upon a bank given as collateral security for delivery of oil, was certified by the cashier "good when properly endorsed." Held, that such certificate created no liability to the holder on the part of the bank, such an act not being within the duty and power of the cashier.

Error to the court of common pleas of Clarion county.

Opinion by PAXSON, J. November 19th, 1877.

This was a suit brought against the defendants, an unincorporated banking association, to recover the amount of a check held by plaintiff, a copy of which is here given:

East Brady, Pa., December 30, 1877.

Citizens' Savings Bank, East Brady, Pa., pay to P. Dorsey, esq., or order, two thousand dollars.

A. W. McCULLOUGH.

To hold as collateral for 1,000 P. T. oil, pipeage paid to January 1, 1876.

Good when properly endorsed.

J. Y. FOSTER, Cashier.

[Endorsement on back of check:

"P. DORSEY."]

Mr. J. Y. Foster, who certified the check, is the cashier of the defendants' bank. It was alleged upon the trial, and there is evidence tending to prove, that the certificate of Mr. Foster was a forgery. The plaintiff contended that, if a forgery, Mr. Foster had recognized and confirmed it by his subsequent acts and declarations. We do not regard the question of the alleged forgery as an important element in the discussion of the case. It was conceded that at the time McCullough drew the check upon the bank he had no funds there and no right to draw. It is also apparent that the check was entirely out of the usual course of banking business. This is plain from the face of the instrument. Instead of being a mere order upon the bank to pay a certain sum of money to a person therein designated, or to bearer, it has the significant endorsement in one corner "to hold as collateral for one thousand P. T. oil," etc. This indicates plainly that the check was given merely as collateral security for the delivery of the oil. If any doubt could exist upon this point, it is put at rest by the testimony of Dorsey (plaintiff) himself. He says: "The first check was given for borrowed oil; if the oil was not returned the check was to be paid; that check was carried for thirty days; supposed it was all right and not forged; the second check was taken when oil was advancing, and I would not extend the check without he would give me a check which would secure me for the return of the oil." If the certificate of Foster that the check was "good when properly endorsed" is to bind the bank, then the cashier has made the bank security for the delivery of 1,000 barrels of oil. This he could not do without authority. It is an act entirely outside of the ordinary recognized duties of the cashier of a bank. There is not a word in the evidence to show that the defendants, or any of them, knew of the transaction, much less sanctioned it. An attempt was made to show a similar course of dealings by the bank as to prior transactions; that is to say, to certify checks drawn without funds, to be held as collateral for oil. It was not successful, however. The checks certified were what the witnesses called "straight checks," by which we understand commercial checks for the payment of money, free from clog or condition. As to such checks, it is not, perhaps, outside of the line of a cashier's duties to certify them when requested, and the drawer has the funds in the bank. It has been decided that he has a right to make such a certificate by virtue of his office: *Cook vs. The Bank*, 52 N. Y. 96. The effect of such a certificate we need not discuss, as the question is not before us. Nor need we consider at length the proposition that the plaintiff was a *bona fide* holder for value. The face of the check was notice that it was not drawn in the usual course of business—

that it was not a commercial check. The plaintiff's own testimony shows, as we have seen, that he was to hold it only as security for the oil. He had no right to draw the money upon the check, until default in the delivery of the oil. There was ample evidence to put him upon inquiry as to the authority of the cashier. We are of opinion that the learned judge of the court below was entirely accurate in his rulings embraced in the first assignment. This practically disposes of the case. We may say, however, in regard to the fifth assignment, that the point referred to was not based upon any evidence in the cause. There was no error, therefore, in declining to answer it.

Judgment affirmed.—*Legal Intelligencer.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., DEC. 29, 1877.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since December 22, 1877:

MICHAEL SHERICH, dec'd, late of Manor twp.; Samuel D. Baker, administrator *d. b. n. e. t. a.*

CHARLOTTE MILLER, dec'd, late of Lancaster city; George Ackerman, administrator *e. t. a.*

GEORGE SPOTTS, dec'd, late of Manor twp.; Cyrus Smith, administrator *d. b. n. e. t. a.*

CATHERINE BRANDT, (widow) dec'd, late of Rapho twp.; Elizabeth Rahl, administratrix.

JOSEPH COOPER, dec'd, late of East Lampeter twp.; Salome Cooper and Joseph Cooper, administrators.

HENRY ROSENFELT, dec'd, late of Lancaster city; Barbara Rosenfelt, administratrix.

The following Wills have been admitted to probate since December 22, 1877:

GEORGE FREY, sr., late of Manor twp.; George K. Frey and Rudolph K. Frey, executors.

ADA B. CHARLES (afterwards Moss), late of Columbia bor.; John Beamer, executor.

DAVID ROYER, late of Ephrata twp.; Isaac L. Royer and Martin M. Brubaker, executors.

MARIA KISSNER, late of Mt. Joy bor.; John H. Zeller, esq., executor.

BENJ. D. DANNER, late of Manheim twp.; Henry S. Danner, executor.

#### PROTHONOTARY'S OFFICE.

The accounts of the following named estates will be presented for confirmation on Monday, January 21st, 1878:

John Shiffner and wife's assigned estate; George Shiffner, assignee.

Jacob Curran and wife's assigned estate; B. F. Henderson, assignee.

Francis H. Arndt's assigned estate; John H. Zeller, assignee.

Isaac N. Bowers' assigned estate; N. Ellmaker, jr., et al., assignees.

John Bachman (lunatic) trust estate; John M. Bachman, committee.

**COURT PROCLAMATION.**

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

**THIRD MONDAY IN JANUARY, (21st) 1878.**

In pursuance of which precept *public notice is hereby given* to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do these things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the 24th day of December, 1877.  
dec29 H. N. BRENEMAN, Sheriff.

**ORDER FIXING COURTS FOR THE YEAR 1878.**

The regular terms of the Courts of Common Pleas, Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, and Orphans' Court, shall be and remain as fixed by rule of Court in printed rules, pages 11, 51 and 43.

**ADJOURNED COURTS FOR THE YEAR 1878.**

It is ordered by the Court that adjourned Courts for the trial of causes by Jury in the Courts of Common Pleas, Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace shall be held as follows, viz:

*In the Court of Common Pleas.*

- One week commencing MONDAY, Feb'y 11, 1878.
- One week commencing MONDAY, Feb'y 18, 1878.
- One week commencing MONDAY, May 20, 1878.
- One week commencing MONDAY, May 27, 1878.
- One week commencing MONDAY, Sept. 30, 1878.
- One week commencing MONDAY, Oct. 7, 1878.
- One week commencing MONDAY, Oct 14, 1878.

*In the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace.*

- One week commencing MONDAY, Feb'y 25, 1878.
- One week commencing MONDAY, March 4, 1878.
- One week commencing MONDAY, Oct. 21, 1878.
- One week commencing MONDAY, Oct. 28, 1878.

And at such other times as may hereafter be ordered and directed by the Court.

It is further ordered that all defaulting Jurors shall be fined \$15.

All Jurors attending Court and failing to be present and answer when called for the trial of a cause, shall forfeit one day's pay for every failure to answer, unless a legal or sufficient reason be given to the Court for such absence and failure to answer.

The above order to be inserted in all the newspapers published in the city and county, one insertion in each, the bills to be presented at the County Commissioners' office.

By the Court.  
Attest: LEWIS S. HARTMAN,  
dec22 Prothonotary.

**Divorce Notices.**

MARGARET FRAZIER, } Alias Subpoena for Divorce  
by her next friend }  
Benj. Cutler, } December Term, 1877.  
vs. }  
E. K. FRAZIER. } No. 36.

To E. K. FRAZIER.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Margaret Frazier should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

HANNAH GROOM } Alias Subpoena for Divorce  
by her next friend }  
Sam'l Evans, } December Term, 1877.  
vs. }  
JOSEPH GROOM. } No. 27.

To JOSEPH GROOM.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Hannah Groom should not be divorced from the bonds of matrimony contracted with you.

cec15 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

PHILIP HARMAN } Alias Subpoena for Divorce  
vs. }  
LOUISA HARMAN. } December Term, 1877.  
No. 41.

To LOUISA HARMAN.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Phillip Harman should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

WILLIAM B. MOORE } Alias Subpoena for Divorce  
vs. }  
MARIA MOORE. } December Term, 1877.  
No. 51.

To MARIA MOORE.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said William B. Moore should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENEMAN, Sheriff.  
Sheriff's Office Lancaster, December —, 1877.

**Auditors' Notices.**

Estate of ELIZABETH TYSON, late of the borough of Columbia, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John S. Given, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, JANUARY 24, 1878, at 10 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

dec29 WALTER M. FRANKLIN,  
Auditor.

Estate of MARIA MISHLER, late of the City of Lancaster, Pa., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Rev. Jacob Reinhold, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 19th day of JANUARY, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec29 J. W. DENLINGER, Auditor.

Estate of BARBARA BACHMAN, late of East Hempfield township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Seitz and Abraham H. Mellinger, executors of said dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JANUARY 8th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec23 SIMON P. EBY,  
Auditor.

Assigned Estate of THE INLAND INSURANCE AND DEPOSIT COMPANY.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel H. Reynolds, assignee of The Inland Insurance and Deposit Company, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JANUARY 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. Creditors who presented their claims at the previous audit need not do so again; but all who have not yet handed in their claims are requested to do so on the above mentioned day.

dec15 W. A. WILSON,  
Auditor.

Estate of JOHN ARNDT, late of Mount Joy township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian A. Nisley, executor of the will of John Arndt, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JANUARY 8th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec23 JNO. M. MAST,  
Auditor.

Assigned Estate of SAMUEL SHIRK and WIFE, of Cærnarvon twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Pearson Sample, assignee of Samuel Shirk and wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, JANUARY 10th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec15 E. D. WHITE,  
Auditor.

Assigned Estate of JACOB KOHR and WIFE, of Manheim township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Hiram B. Swarr, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JANUARY 9th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec15 B. C. KREADY,  
Auditor.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, JANUARY 31st, 1878, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

dec29 WM. BRYSON, JR.

**Estate Notices.**

Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec29 ELIZABETH RUHL,  
J. HAY BROWN, Att'y. Administratrix.

Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 26th, 1877, assigned and transferred all their estate and affects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ZELLER,  
J. HAY BROWN, Attorney. Assignee,  
dec29 Residing in Mount Joy borough.

Estate of GEORGE RINEER, late of Paradise township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

dec23\* CATHERINE RINEER,  
B. F. ESHLEMAN, Att'y. Executrix.

Estate of JACOB HOLSINGER, late of Hinkletown, Earl township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

dec23 E. BURKHOLDER,  
Administrator.

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 13, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to dec22\* ABRAHAM MILLER, Assignee, C. DENUS, Att'y. Residing in Millersville.

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city. M. BROSIUS, CATHARINE KRABER, dec15 Attorney. Administratrix.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. MARGARET GRAVER, Warwick township; ADDISON GRAVER, Manheim township; dec15 HENRY B. ESHLEMAN, D. G. BAKER, O. P. BRICKER, } Att'ys. Manheim township. Administrators.

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to dec15 SAMUEL WHITSON, Assignee, M. BROSIUS, Att'y. Atglen, Chester Co., Pa.

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 3, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to dec15\* LEVI BRUBAKER, Assignee, A. J. EBERLY, Att'y. Millway P. O., Lan. Co.

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. dec3\* MARY M. KING, J. W. JOHNSON, Att'y. Administratrix.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay. MARTIN G. LANDIS, Administrator, East Lampeter twp. dec5

**Estate of MARTIN GROFF, Sr., late of Manheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAMUEL GROFF, ABRAHAM S. GROFF, PHILIP D. BAER, Att'y. Executors. dec3\*

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise. dec1\* W. C. FREW, B. F. ESHLEMAN, Att'y. Administrator.

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township. nov17 KIRK BROWN, J. HAY BROWN, Att'y. Administrator.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned. GEO. BRUBAKER, H. C. BRUBAKER, Att'y. [dec1] Assignee.

**Estate of JOHN F. WOLF, late of West Hempfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the village of Mountville. nov17 MARY A. WOLF, THOS. B. COCHRAN, Att'y. Administratrix.

**Assigned Estate of HENRY FRANKE, of Lancaster City.**

Henry Franke, of Lancaster city, having by deed of voluntary assignment, dated October 22d, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Henry Franke, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to R. W. SHENK, HERMAN MILLER, Assignees. GEO. NAUMAN, Att'y. Residing in Lancaster city. nov17

**Estate of HENRY SHAUB, late of West Lampeter twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. HENRY SHAUB, JR., ABRAHAM SHAUB, Administrators. PHILIP D. BAKER, Att'y. nov3\*

**Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city. BRIDGET FITZPATRICK, JOHN J. FITZPATRICK, Administrators. nov3

**Estate of HENRY SCHITZ, late of Elizabeth-town borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough. nov3\* FRANK SOHLGEMILCH, A. F. SHENCK, Att'y. Executor.

**Estate of JOHN GROSS, late of West Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. JOHN G. KELLER, SAMUEL G. KELLER, JACOB G. KELLER, MARTIN G. KELLER, ABRAHAM R. FORNEY, J. L. STEINMETZ, Att'y. Litiz, Elizabethtown, Administrators. nov3]

**Estate of JOHN WHITESIDE, late of Colerain township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township. oct27\* JAMES WHITESIDE, S. H. REYNOLDS, Att'y. Administrator.

**Estate of GEORGE BROWN, late of Elizabethtown borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown. EMANUEL BROWN, Executor. oct27

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. MARTIN DENLINGER, JOHN L. LANDIS, East Lampeter township, Administrators. oct27 WM. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city. oct30 EMMA L. SMITH, HOS. B. COCHRAN, Att'y. Executrix.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland. oct30 LIZZIE S. WICKEL, AND. M. FRANTZ, Att'y. Administratrix.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him. oct30 SAMUEL G. GENSEMER, GEO. BRUBAKER, Att'y. Assignee.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. oct30 HENRY DONER, DANIEL R. DONER, B. F. ESHLEMAN, Att'y. Administrator.

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, JANUARY 5, 1878.

No. 32.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES.

—AT—

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LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy,	11:20 a. m.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:39 a. m.	11:39 a. m.	1:50 p. m.
Fast Line,*	2:10 p. m.	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:35 p. m.	7:35 p. m.	9:40 p. m.
Pittsburg Express,	9:35 p. m.	9:35 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	11:30 p. m.	12:45 a. m.
EASTWARD.		LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:35 a. m.	9:35 a. m.	12:00 p. m.
Pacific Express,*	1:30 p. m.	1:30 p. m.	3:45 p. m.
Sunday Mail,	3:00 p. m.	3:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	5:18 p. m.	7:30 p. m.
Harrisburg Accom.,	5:50 p. m.	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:35.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,	6:50	7:50	3:30
Lancaster—West King Street,	8:00	9:15	3:35
Lancaster—Upper Depot,	8:10	9:30	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:35	5:30	8:10
Lancaster—West King Street,	9:45	5:40	8:20
Quarryville, (arrive)	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		8:55
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:37	1:35	4:11
Reading, (arrive)	10:20	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:13	1:30	7:45
Lancaster—Upper Depot,	9:25	2:00	8:10
Lancaster—West King Street,	9:45		8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia,	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45
GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,	7:15	3:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

Official Directory.

Supreme Court of the United States.

Appointed. Chief Justice—Morrison E. Waite, of Ohio, 1874 Justices—Nathaniel Clifford, of Maine, 1858 Noah H. Swayne, of Ohio, 1862 Samuel F. Miller, of Iowa, 1862 Stephen J. Field, of California, 1863 William Strong, of Pennsylvania, 1870 Jos. P. Bradley, of New Jersey, 1870 Ward Hunt, of New York, 1872 Attorney General—Charles E. Devens.

Supreme Court of Pennsylvania.

Chief Justice—Daniel Agnew. Associate Justices—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

Attorney General—George Lear.

Prothonotaries:

Eastern District—Benj. E. Fletcher, Philadelphia. Western District,—J. B. Swetsler, Pittsburgh. Middle District—Robert Snodgrass, Harrisburg. Northern District—J. A. J. Cummings, Montandon, Northumberland county.

Reporter—A. Wilson Norris.

Places and time for holding Court:

At Philadelphia, commencing 1st Monday in January. At Harrisburg, commencing 1st Monday in May. At Pittsburgh, commencing 1st Monday in October. At Sunbury, commencing 3d Monday in September.

Second Judicial District.

President Judge—John B. Livingston. Additional Law Judge—David W. Patterson. Associate Judge—John J. Libhart. District Attorney—J. W. Johnson.

County Officers.

Prothonotary—Lewis S. Hartman. Deputy—Wm. E. Kreider. Clerks—P. E. Slaymaker and Thos. B. Hartman. Register—Harrison Rosa. Deputies—W. M. Slaymaker and C. H. Fasnacht. Recorder—Samuel S. Martin. Deputy—Benj. Bauman. Clerks—Geo. R. Sensenig and M. O. Sensenig. Sheriff—Henry N. Breneman. Deputies—Jno. D. Wilson and G. W. Benedict. Clerk of Orphans' Court—Samuel L. Kauffman. Clerk of Quarter Sessions—Stephen S. Clair. Deputy—B. F. W. Urban. Commissioners—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller. Clerk—John M. Grider. County Solicitor—J. Hay Brown. County Treasurer—Henry S. Eberly. Clerk—Amaziah C. Barr. Coroner—Amos Groff. County Surveyor—M. N. Brubaker. County Auditors N. N. Hensel, A. Konigmacher and H. S. Kerns.

City Officers.

Mayer—John T. Macgonigle. Soltitor—Robert M. Agnew. Recorder—Walter G. Evans. Aldermen—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake. Chief of Police—John Pontz. Treasurer—Edw. Welchans. Civil Engineer—Francis S. Burrowes. Street Commissioner—Charles Schwebel.

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JANUARY.

- 5. Argument for Rules of Affidavit of Defense. 11. Last day for issuing Writs to January Term. 12. Last day for setting down causes for trial for February 11th and 18th. 21. Last day for issuing Executions to January Term. 26. Calling Judgment Docket.

FEBRUARY.

- 8. Last day for issuing Writs to February Term. 9. Argument for Rules of Affidavit of Defense. 16. Last day for filing Accounts to March Court. 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term. 9. Last day for setting down causes for Argument Court. 9. Argument for Rules of Affidavit of Defense. 16. Last day for filing Accounts for April Court. 23. Last day for setting down causes for April Court. 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term. 6. Argument for Rules of Affidavit of Defense. 15. Last day for issuing Executions to April Term. 20. Last day for setting down causes for trial for May 20 and 27. 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense. 10. Last day for issuing Writs to May Term. 18. Last day for filing Accounts for June Court. 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term. 8. Last day for setting down causes for Argument Court. 15. Argument for Rules of Affidavit of Defense. 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court. 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term. 17. Last day for filing Accounts to September Court. 19. Last day for issuing Executions to August Term. 24. Calling Judgment Docket. 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term. 7. Last day for setting down causes for Argument Court. 7. Last day for setting down causes for trial for October 7 and 14. 7. Argument for Rules of Affidavit of Defense. 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense. 11. Last day for issuing Writs to October Term. 19. Last day for filing Accounts to November Court. 26. Last day for setting down causes for trial for November Court. 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term. 9. Argument for Rules of Affidavit of Defense. 16. Last day for filing Accounts to December Court. 18. Last day for issuing Executions to November Term. 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term. 7. Last day for setting down causes for Argument Court. 7. Argument for Rules of Affidavit of Defense. 21. Last day for filing Accounts to January Court, 1879. 21. Calling Judgment Docket. 28. Last day for setting down causes for trial for January Court, 1879.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE — No. 32 NORTH DUKE STREET,

LANCASTER, PENNA.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JAN. 5, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

EDWARD CONNELLY, administrator of JAMES GRAYHAM, deceased, against MICHAEL WITHERS, junior, and GEORGE WITHERS, executors of MICHAEL WITHERS, senior, deceased.

A purchaser at sheriff's sale cannot set up the Commonwealth dues for original purchase money, patent fees and interest, as liens discharged by the sale. Such dues are secured by the paramount title of the State, which is not affected by judicial sales.

The recognizance, securing the interest of the widow's third part of the valuation money, is a lien by act of assembly, not dischargeable by a sheriff's sale.

Lands conveyed to partners, as tenants in common, without any stipulation as to their being a partnership purchase, are not a partnership fund.

The issue provided for by the second section of the act of the 16th April, 1827, relative to the distribution of money in court, is to ascertain disputed facts.

To entitle a party to this issue the facts must be material and relevant—must be doubtful upon a view of all the testimony, and controverted at the hearing.

It is not demandable upon a mere allegation disputing a fact alleged on the other side, much less upon a general allegation, disputing the right to the money in court.

A proper practice, is to specify the disputed facts in the written request for an issue.

Under a *feri facias* issued in this case, the sheriff had levied upon the interest of Michael Withers, deceased, in seventeen tracts of land—ten in Drumore township, three in Colerain, three in Bart, and one in Little Britain. A *venditioni exponas* was then issued, by virtue of which he sold fifteen of the tracts levied on—eleven of which were purchased by James Hopkins, Esquire, including one in Bart township, for which he paid \$58, and which contains 160 acres. In pursuance of a rule taken upon him, the sheriff paid the proceeds of the sales into court—the net amount of which for distribution was \$1,212.17.

On the 3d February, 1830, Mr. Hopkins moved for a rule to show cause why the money in court should not be paid in discharge of the recognizance and lien in the orphans' court upon the lands sold by Henry Eckman to the firm of Withers.

June 14, 1830, Mr. Porter moved for a rule to show cause why the money in court should not be applied to the payment of the judgment in favor of Isaac Keagy, administrator of John Fulmer, vs. George Withers & Company, of June Term, 1829, No. 51.

June 16, 1830, Messrs. Parke and Mont-

gomery moved the court to rule the prothonotary to pay to them the sum of \$1,212.17, the amount paid into court towards satisfaction of the judgment in the common pleas of Lancaster county, to April term, 1821, No. 391, and revived to the use of William Miller by *scire facias* to January term, 1826, No. 56. This is the oldest unsatisfied judgment against Michael Withers, deceased.

The tracts of land thus sold were held by Michael, George and John Withers, as tenants in common, and most, if not all of them, liable to the Commonwealth dues for original purchase money and interest. Michael, John and George Withers carried on the iron business for a series of years before Michael's death, which happened on the 19th of August, 1821. His will was proved on the 21st August; by which he devised his estate to Michael Withers, junior, and Geo. Withers, the defendants. Mr. Hopkins, who purchased eleven of the tracts of land, as above mentioned, gave notice, on moving for the rule to show cause to the attorney general and his deputies in this county, in order that they might look to the claims of the Commonwealth for patent fees and arrears of interest, which he supposed might be a claim upon the proceeds of these sales paid into court.

The hearing came on at the June Term, 1831.

Mr. Hopkins, for the rule obtained by him, produced the petition of Henry Eckman to the orphans' court in relation to the estate of John Eckman, Esq., deceased, who died intestate, together with the several proceedings thereon from which it appeared that Henry Eckman took or accepted one purpart of the estate of the deceased, in Bart township—a tract of land containing 151 acres, and entered into a recognizance to pay the widow of John Eckman, deceased, the interest of the of sum \$343.08, charged on the said purpart; during her life and the principle sum to his heirs, etc., after the widow's decease. This land Henry Eckman conveyed to Michael Withers, John Withers and George Withers, in fee, subject to that charge. It is the same which was sold by the sheriff to Mr. Hopkins for fifty-eight dollars, and was described in the conditions of sale as containing 160 acres, more or less. He then proceeded to contend that the Commonwealth dues and the lien of the recognizance of Henry Eckman must be paid out of the money in court. The Supreme Court building up a new system by which real property, sold by the sheriff, is to be sold free and discharged from all liens and incumbrances whatever. The benefits which must result from these measures will be very great. Property will advance in value. The Commonwealth will receive her dues without expense, for courts cannot stop short. In appropriating the proceeds of sale to the payment of liens, the oldest and highest lien—that of the Commonwealth for fees and arrears of interest cannot be disregarded. Let the system be carried out. Let all lien creditors without exception look to the purchase money. Such must be the legitimate consequence of the rule now established, that judicial sales of land discharge all liens,

whether general or specific: 1 Penna. R. 44, McGrew vs. McLenegan; 1 Penna. R. 96, McLenegan vs. Wyant. They discharge the lien of a legacy: 2 Rawle 56, Willard vs. Norris. The purchaser at sheriff's sale does not take the land subject to a prior judgment against a former owner, unless expressly sold subject thereto: 14 Serg't & R. 257, Commonwealth vs. Alexander. The Commonwealth has a lien upon land acquired by all sorts of original title, which lien is *in rem* and not a personal charge: 13 Serg't & R. 307, Helfenstein vs. Waggoner. The purchaser, under an order of the orphans' court, takes the property divested of the liens for distributive shares by recognizance: 17 Serg't & R. 276, Gilmore vs. Glass; 2 Binn. 146, Bartleon vs. Smith; 5 Binn. 552, Gordon's case.

Mr. Porter, for the rule of the 14th June: I claim this money on the ground that these lands were partnership property, belonging to the company consisting of John Withers, Michael Withers and George Withers. It was purchased for the iron works of that firm and was used in carrying them on. As partnership property it was, as we contend, liable, in the first place, to the partnership debts, and must therefor, be appropriated to Isaac Keagy's debt against the surviving partners of this company before it can be claimed as applicable to any other demand. His debt was founded on a note dated the 5th February, 1827, for \$1,430, with interest from the date. Judgment in a suit on this note was confessed by John Withers and George Withers on the 24th November, 1829.

Mr. Montgomery, for the rule of June 16, 1830: Mr. Parke and myself claim this money on the oldest judgment against the property—that of Michael Withers, jr., vs. Michael Withers, sr., entered 25th July, 1821—penalty \$4,000, conditioned for the payment of \$2,000. 1823, May 13, judgment assigned to William Miller, millwright. On this a *feri facias* was issued to April term, 1823, No. 126; returned *nulla bona, testatum fi. fa.* to Chester county, to August term, 1823, No. 69. Return, property levied, inquisition held and condemned. *Sci. fa.* issued to January term, 1826, No. 56—Michael Withers vs. John and George Withers, executors of Michael Withers, deceased, in which arbitrators were appointed, who awarded for the plaintiff, on 2d March, 1826, \$2,551.66. This was the oldest subsisting lien at the time of the sale. They seek now to defeat our claim on two grounds: 1. Mr. Hopkins contends for the application of the funds to the lien of Henry Eckman's recognizance, and 2. Mr. Porter, assuming that the land was a partnership fund, insists that the proceeds shall be applied to the payment of I. Keagy's debt, which he says is a partnership debt. With respect to the recognizance; it was intended to secure the interest of the widow of John Eckman, esq., and bound the land in possession of the recognizer and his assigns. Henry Eckman, the recognizer, conveyed it to the Messrs. Withers, as tenants in common. This application was not made at the instance or request of the widow. What power has the

court to change the nature of the widow's security, and that, too, without her asking it? Here is a usufructuary interest. The principal sum she is not entitled to—that goes to the heirs after her death, and is charged upon the land, to remain there charged for their security, as well as hers, until that event. Will the court disturb this arrangement of the law? But the demand is more monstrous yet. They ask to take these proceeds of the undivided interest of Michael Withers and apply them to the two thirds of John and George Withers; nay, more, they ask even to apply the proceeds of the sale of other lands, not affected by the recognizance, to that purpose. Suppose the \$58 were applied in discharge of the recognizance, what assurance has the court that the widow would obtain one cent of the interest, or the heirs, after her decease, one cent by the principal? With respect to the partnership demand it is sufficient to say that there is no partnership in lands. Lands purchased by partners are held by them in common, and as tenants in common. The deeds on their face show that the grantees took and held these lands as tenants in common. But by the case of *Doner vs. Stauffer*, 1 Penna. R. 196, it is said in so many words, that joint creditors have no claim to the proceeds arising from the sale of partnership effects, because the separate execution creditor sells but the interest of the partner. To let in the partnership creditors would be to destroy this rule, even if the lands here were a partnership fund. But Mr. Porter's claim is founded on a note six years after Michael Withers' death. Now, death is one of the causes of the dissolution of the partnership. He says, however, it was given to renew an old partnership note; but that will not help him, for even if the fact be as alleged the old security is gone. It has been abandoned—Michael Withers is discharged. Nor can these proceeds be claimed upon the foundation of that old security.

*Mr. Champneys*, for the execution creditor: I have taken no part in the question with respect to the Commonwealth dues, and do not intend to say anything in relation to that point. The case of *Doner vs. Stauffer* is conclusive in reference to I. Keagy's claim. Moreover lands are never held as partnership property unless they have been so taken by express stipulation. I obtained a judgment, of June term, 1827, No. 6, entered 12th February, 1827, on a bond for \$998.30. A judgment *de bonis*, and the claim which conflicts with mine, is that of Messrs. Montgomery and Parke. On their judgment a *test. fi. fa.* issued to August term, 1823, and was levied on land in Chester county. Michael Withers and George Withers, executors of Michael Withers, sen., deceased, exhibited an inventory amounting to \$3,902.45, and an additional amount of book accounts, \$8,477.09, against Eden and Conowingo furnaces. This was the 6th September, 1821. A citation was issued March 18, 1824, to these executors to settle their account on or before the first Monday in May ensuing. December 21, 1824, their account was exhibited, showing a balance against them of \$152.24. Debits \$13,395.36;

credits \$12,837.02. It will be perceived that this estate is unsettled, and the question is how are the executors to pay themselves? Can they come into court and claim the proceeds of the real estate when there are at the same time large funds in the hands of the executors, who, it appears, have charged themselves with more than \$8,000 due to the testator from the Eden and Conowingo furnaces? I ask for an issue to ascertain what funds are in the hands of the executors; for, I contend, if they have funds this judgment is paid and satisfied.

*Mr. Parke*, who was with Mr. Montgomery: The court does not sit to settle accounts. It is called on now to distribute the money in court according to the claims of the several parties before them. Real and personal property, when sold under an execution, will be distributed under the intestate laws when executors or administrators are defendants *i. e.* in discharge of the debts according to the order of payment: 2 Yeates 488; 9 Sergt. & R. 318, 221; 11 Sergt. & R. 444. Has not Michael Withers a complete right to come into court and ask the court to appropriate the money in court to his judgment? He is entitled to it—both under the intestate law, and under the law respecting the efficacy of judgment liens. If, indeed, they could show that our judgment had been paid there would be an end to our claim upon this fund. But they produce the administration account, from which it appears that the only fund in their hands is the balance of \$152.24.

*Mr. Champneys* in reply: I shall at present only present in form the request for an issue which has already been made. The proceeding is under the act of the 16th April, 1827, 2d sect. Pamph. L., p. 472, which provides that when the facts are disputed, the court shall, upon the request of either party in writing, direct an issue to ascertain the same. I now submit my request of an issue in writing.

*Mr. Montgomery*: This money was paid into court in February, 1830, and never until yesterday was a whisper heard respecting the objection now made on behalf of the execution creditor. I will proceed to show most conclusively that it has no foundation. In 1821 Michael Withers' executors brought a suit against John Withers' administrator, which was arbitrated, and in which there was a report for the plaintiff of \$1,269.57. From this report the administrator appealed. In 1827 he presented his petition to the orphans' court, which, upon a hearing afterwards, decreed that the sum of \$1,269.57, and interest, amounting to \$1,790.09, should be paid by the clerk of the orphans' court to John Withers' administrator. So that in regard to the item of \$1,224.63 it is evident that our clients have not received that in the capacity of Michael Withers' executors. Then with respect to the sum of \$8,847.09, suits were commenced against the executors of Michael Withers by George Withers and John Withers, in the common pleas of this county, and have since been transferred to the district court, in which they are pending. George Withers, in his declaration, claims damages to the value

of \$60,000, and John counts for \$40,000. Besides this, John Withers, in 1824, sued Michael Withers' executors and obtained an award for \$15.02, balance after deducting the sum of \$1,224.63, mentioned in the administration account. In relation to the issue demanded, I will make this suggestion, that there is not a disputed fact in the case; the only matter is an inference from facts undisputed. There is not a tittle of evidence that since the administration account one cent has come into the hands of these executors. On the contrary, the evidence, from the documents which we have just laid before the court, is that nothing has been received. The administration account stands confirmed by the time which has elapsed without any exception. As to rents, issues and profits—these are accounted for to the time of filing the account, and the land was sold before the exhibition and passing of the account, so that it is manifest nothing was or could have been afterwards received; besides the plaintiff has a complete remedy by citing the executors before the orphans' court if they have any personal assets as he infers.

*Mr. Porter* now presents a claim in writing of John Withers and George Withers, who survived Michael Withers, upon the money in court, to the amount of \$211, and he refers to 2 Rawle 166.

*Mr. Parke*: There are two objections to our rule: 1. The first is founded upon claims paramount or overleaping ours, as they pretend, and the first of these is on account of Henry Eckman's recognizance, in support of which his petition has been presented, stating facts of which there is no proof. They claim the whole amount of his recognizance. But what right have they, or has he even, to the \$58, the price of the tract on which it was fixed. The lien was permanently attached to it during the life of the widow, both by the law and by the terms of the conditions of sale, as well as the terms of the deed from Eckman to the Messrs. Withers. The policy of the law is to keep the charge fixed on the land. As to the ground rent or rent charge—that is not sold out. The claimants may come in and claim the sum due at the time of the sale but nothing more. So in an execution against the widow—her interest accrued may be disposed of, but not her continuing right to interest afterwards accruing. The recognizance that Henry Eckman entered into never constituted a debt of the Messrs. Withers, but was a charge upon the land through all its transitions of ownership. Mr. Hopkins purchased subject to it. The recognizance did not raise a partnership debt in any shape or form. As to Mr. Porter's partnership claim, when the note is produced it turns out to be no partnership transaction, having been drawn five or six years after Michael Withers' death. Now, one partner cannot bind another by bond or judgment: 1 Dall. 119; nor by a note of the partnership to pay off his own private debt: 4 Sergt. & R. 397. In point of fact there was no partnership debt shown by either Mr. Hopkins or by Mr. Porter. But on execution against one of many partners, the undivided interest of the part-

ner is sold, and whatever money is brought into court, shall be subject to the demand of the execution creditors: 1 Penna. R. 198, *Dener vs. Stauffer*. In no case can the partners come into court and claim the proceeds or ask for a stay of the appropriation until the partners account, in order to ascertain whether they have not a claim upon the proceeds of the sale of one of the partner's share: *Gov on Partnership*, 250, 252, 174 note 1; 2 Conn. R. 524; 2 Johns. Ch. R. 549. These authorities decide that if a court of law would not stay the execution, chancery will not enjoin, and when the proceeds are brought into court they will be appropriated to the execution in preference to partnership claims: 5 Sergt. & R. 88, 89; 17 Vez., Jr. 576; 11 Vez. 5, and the authorities cited. Now, supposing the land were a partnership fund, what is the position of the claim? It must be governed by the law relating to the sale of personal property. The application of the proceeds cannot be interfered with by any one claiming to be an original owner or as partner. But lands, purchased by partners, are not partnership property, unless in the contract for buying or articles of partnership it is expressly agreed that the land shall be a partnership fund, or unless it has been appropriated.

[CONCLUSION NEXT WEEK.]

Common Pleas of Lancaster County.

INLAND INSURANCE AND DEPOSIT COMPANY'S ASSIGNED ESTATE.

[Trust Book No. 7, p. 23.]

1. Auditors' findings, if not supported by evidence, will be set aside or disregarded; but, like a verdict, must stand, unless clearly against the weight of the evidence.
2. Where an estate is so situated that legal advice is proper, or where counsel must be employed to obtain what is honestly supposed to be the rights of the estate, the estate ought to pay the reasonable counsel fees.
3. Where a banking institution has been rendered insolvent by mismanagement the president of the same can participate as a creditor in the distribution of the assets, where actual legal fraud has not been found against him.
4. Commissions in the settlement of an estate are not governed by any certain rule; much may depend on the circumstances attending the settlement of the particular estate.

Exceptions to report of auditors.

*D. G. Baker, A. C. Reinahl, B. C. Kready, A. J. Eberly and P. D. Baker* for exceptants.  
*Geo. M. Kline and A. Slaymaker* contra.

Opinion delivered November 28, 1877, by LIVINGSTON, P. J.

The 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th additional exceptions refer wholly to facts found by the auditors from the testimony presented to and examined by them.

It is said by the Supreme Court, in 21 Sm. 25, that "auditors' findings, if not supported by evidence, will be set aside or disregarded; but, like a verdict, must stand, unless clearly against the weight of the evidence." We have patiently and carefully waded through the huge mass of testimony presented to and passed upon by the learned auditors, concerning the points raised by these exceptions, and are not prepared to say that the conclusions arrived at by the auditors with reference to these points are clearly against the weight of

the evidence. These additional exceptions are, therefore, overruled.

The 4th exception filed claims that the auditors erred in allowing the credit of \$1,000, attorney fees to D. McMullen, esq., credited in the assignee's account.

On the argument of the exceptions no one appeared to dispute the fact that Mr. McMullen had earned and was fully entitled to all the money paid him for services professionally rendered, but it was argued that the amount so paid should have been paid by the assignee, out of his commissions, and not out of the funds proper of the assigned estate. In 14 Sm. 308, it is said by the Supreme Court that "where an estate is so situated that legal advice is proper to direct the course of the executors, or where they must bring suits to recover part of the estate, or defend suits brought against them, counsel must be employed to obtain what is honestly supposed to be the rights of the estate, the estate ought to pay the reasonable counsel fees."

A glance at the inventory filed, the account, and the evidence reported by the learned auditors, will, we think, convince the most incredulous that this assigned estate is just such an estate as is contemplated by and embraced in the language used by the court in the case above cited, and that the employment of counsel was necessary to protect the interests of the numerous creditors of the estate. The learned auditors have found the fact that Mr. McMullen was employed as counsel soon after the assignment; that he was the only resident counsel employed by the assignee with reference to the general business of the assigned estate up to the time of filing the account; that he had performed his duties with fidelity to his employer, and to the interests of the creditors, and that the sum paid him was not excessive. We concur in their finding, and are of opinion that Mr. McMullen was properly paid out of the funds of the estate. We therefore dismiss the 4th exception.

The 5th exception alleges error on the part of the auditors in allowing a dividend on the claim of Dr. H. E. Muhlenberg's estate.

We have carefully examined the report of the learned auditors together with the whole testimony presented on this point. The learned auditors find that Dr. Henry E. Muhlenberg was guilty of no act of fraud—nothing which can be said to be legal fraud or fraud in law. That there is nothing in the path of his claim that is not characterized by evidence of good faith on his part, and that this is wherein his claim is distinguished from the claim made by Kisterbock, in the case cited on the argument, and reported in 1 Sm. 483. In that case Kisterbock was not only guilty of the knowledge of the commission of fraud, but really participated and assisted in committing the fraud, and had actually loaned or furnished the very money he sought to recover, for the purpose and with the intent of completing or carrying out the fraud so committed. If he had not been found to have been guilty of actual legal fraud there would have been no impediment to his participation in the distribution of the fund. Taking the facts as found from the evidence, presented to

and reported by the learned auditors to the court, in connection with the law governing the Kisterbock case, as explained by WOODWARD, J., in the case of John A. Ahl, for use, &c., vs. John P. Rhoads and Samuel S. Shryock, assignees of the Farmers and Mechanics' Bank of Shippensburg, and reported in *Legal Int.* vol. 34, p. 392, (of date of Nov. 9, 1877,) we see no reason why the estate of Dr. H. E. Muhlenberg should be deprived of the right to participate in the distribution of this estate; and, being of opinion that the learned auditors committed no error in permitting it so to do, we overrule the 5th exception.

The 1st, 2d and 3d exceptions filed by counsel for creditors, and the 3d and 4th exceptions filed by counsel for assignee, all relate to the commissions or compensation of the assignee, and will, therefore, be considered together.

The question of compensation, or commissions to be allowed for services performed by executors, administrators, trustees and assignees, in the settlement of estates entrusted to their care, is a vexed and very perplexing one; and, as has been so often and well said, no iron or inflexible rule has been or can be adopted and made to apply to all cases. Some variation must be and is frequently made, taking into consideration the quantity and nature of the estate, and the amount of trouble, care and responsibility attending its settlement.

A thorough examination of the decisions of the Supreme Court, from *Pusey vs. Clemson*, 9 S. & R. 204, down to *Lloyd's Estate*, 1 Nor. 143, will show that while there is no positive or inflexible rule, in by far the greater majority of estates administered and settled by executors, trustees, assignees, &c., five per cent. on personal estate and two and a half per cent. on real estate has been the commissions charged, or compensation paid for their services.

The old rule, in *Stevenson's Estate*, of allowing two and a half per cent. in all cases, and then guessing, as it were, at the value of the services in each case, if not quite overruled or dispensed with, appears to have been, at least, somewhat shaken in later cases. In *Skinner's Estate*, 17 *Leg. Int.* p. 381, THOMPSON, J. says that in Pennsylvania "the usual commissions to an executor or administrator are two and a half per cent. on sales of real estate and five per cent. on personal estate, and these should not be varied except for cause." And this seems to have been followed in all the later cases where no cause has been shown requiring or warranting a variation from it. In *Eshleman's Appeal*, (*Gyger's Estate*) a late case, MERCUR, J., says, where auditors had allowed two and a half per cent. on real estate sales and five per cent. on the personal estate, which amounted to \$75,000, "we cannot establish any inflexible rule—much may depend on the circumstances attending the settlement of the particular estate. The auditors found that the administration of this estate 'appears to have been attended with the quantity of trouble, care and responsibility which the settlement of intestates' estates ordinarily imposes.' They, therefore, allowed the usual commissions. The court confirmed



it. It is no larger than has frequently been allowed to executors and administrators. The general enhancement of values within the last twelve years must not be wholly ignored in determining the reasonableness of commissions." In *Lowrie's Appeal*, 1 Grant 373, it is said that "for any extra services rendered by trustees, they are entitled to extra compensation beyond the ordinary allowance for receipts and disbursements, and where a trustee renders professional services, such as compelling a guardian to perform his duty, he is entitled to such reasonable compensation as he would have paid had he been obliged to employ counsel."

There is, therefore, no inflexible rule as to the compensations or commissions of executors, trustees, assignees, &c.; nor are we willing to recognize any rule as perfectly just to assignees, in a case like the present, in which there are hundreds of claims against individuals, ranging from \$10 to \$2,000 and upwards, to be looked after, cared for, secured, and, if possible, collected; and hundreds of claims against the estate to be adjusted, examined and settled—in which numerous suits, some of them involving large amounts, and requiring great prudence, skill and care, were necessarily commenced and prosecuted, and other suits defended—which would wholly deprive the assignee of commissions or compensation, except on the moneys actually received and accounted for by them, for in numberless instances they have more annoyance, vexation and trouble in attempting to secure doubtful claims of small amount, and perhaps in small estates, and ultimately failing, than in collecting and receiving large amounts, in large estates, or in the same estate; and because no such rule obtains, courts, when called upon to adjust or fix the commission and compensation of a trustee or an assignee, should take into consideration all the facts and circumstances connected with the settlement of the particular estate, and from them ascertain what should be allowed him.

In this case, as the evidence shows, and as we know, in the trial of causes in connection with the settlement of this assigned estate, the assignee, who is a professional man, rendered on several occasions valuable professional services to the estate, and if a proper commission or compensation for the usual and ordinary services had been set out in or as one item of credit, and a proper claim made for professional services as another item, we should have had much less perplexity in arriving at a proper decision. The accountant's failure to thus state the account should have been corrected by the learned auditors, and they should have considered and found separate amounts. They have failed to do so, and have reported (the majority) a gross sum for the whole. With their report, in reference to this question, we cannot agree.

The third auditor, who dissents from the report of the majority with reference to the compensation, appears to us to have taken such an illiberal and contracted view of the subject that we cannot agree with him in his finding. He makes no allowance whatever for the numerous and commendable efforts of the assignee, as shown by the evidence, to col-

lect doubtful and bad claims, where he failed to recover or collect the amount; allows nothing for settlements where sums were set off against good claims; nothing for professional skill and services in commencing and conducting suits against Boyd, Eberman, Goos, Musser, Rudy, Weise, Arndt, Kauffman, Henderson, Strickler, Jackson, Goed, Sheak, Taylor, McGinnis, Musketnuss and others, but limits the commissions or compensation to the usual rates in cases of settling an ordinary decedent's estate on the money he alleges was actually received by the accountant.

Our first impression was that we ought to refer the report back to the auditors and require them to report more specifically and in detail on this question. But as there is a large amount of money lying idle awaiting distribution, and as a reference back would necessarily cause considerable delay, we came to the conclusion to analyze the inventory, account, testimony and report of auditors, and from the whole endeavor to arrive at what, in our judgment, is a proper decision.

Something was said during the argument as to a second account having been filed, in which commissions are charged. We have, therefore, examined the second account filed, and are satisfied that no commission or compensation is therein charged for any item or sum for which commissions are asked in the first account, or before the auditors appointed to pass thereon, but simply commissions on amounts collected since filing the first account; and for which credit is taken therein.

Having very carefully examined the inventory, account and testimony, and having thrown out of view all items for which credit is asked, and such other items as do not appear to be fully and finally disposed of, and allowing commissions at the usual rates upon such only as appear to be entirely disposed of by collection or otherwise, and allowing what we believe, under the testimony produced, to be a very reasonable, indeed very low compensation for the professional services, rendered strictly as such in this estate by the assignee, the amount arrived at is \$3,058.73—we are of opinion, therefore, that for all services, including professional services rendered as such, in the causes hereinbefore enumerated, and all other cases tried prior to the filing of the report of the auditors, and for all matters embraced in the first account filed, there should be allowed to the assignee the sum of three thousand dollars, and we fix his commission or compensation at that sum.

Exception 9. This exception, under the decisions, and under our rules in like cases, where objections are made, must be sustained, and the sum allowed the assignee for attending audit must be disallowed and returned to the estate for distribution.

Exception 10. "The allowance of \$300 to Messrs. Kline, Slaymaker and McMullen for counsel fees is excepted to." A careful review and critical examination of the decisions of the Supreme Court, in cases analogous to the case before us, satisfies us that this item is properly allowed, and that the exception taken thereto should be overruled. This exception is therefore overruled.

Exception 11. "The auditors' fees are excepted to as being excessive." A full examination of the whole case convinces us that of all the charges made with reference to the settlement of this assigned estate, that of the auditors is the most unreasonable, excessive and exorbitant, when compared with like cases in this city and under the sanction of this court. If such charges as are made in the present case were to be sanctioned by the courts many assigned estates would be insufficient to pay the fees of the auditors appointed to distribute them, and fortunate indeed would be the man who received the appointment of auditor. With every disposition to be liberal toward auditors, and to see that every one appointed by this court is amply paid for the services he is required to perform, we, after the most thorough examination, are satisfied that \$250 each will fully pay the learned auditors for all services performed, and we therefore fix the compensation of the auditors at \$250 each, instead of \$400 each.

This disposes of all the exceptions, and this disposition thereof surcharges the assignee or accountant with \$908.23 commissions disallowed, \$100 for assignee attending audit disallowed, and \$450 auditors' fees disallowed—in all \$1,458.23, which sum we direct to be added to the balance of the second account filed and distributed with the balance of said account. This will render a re-distribution of the balance of the first account unnecessary, and enable the assignee to pay out at once to the creditors the amounts awarded them by the auditors, without awaiting a re-distribution. With the exceptions above made the report is confirmed.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JAN. 5, 1878.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since December 29, 1877:

HENRY PICKEL, dec'd, late of West Hempfield twp.; D. W. Shertzer, administrator.

The following Wills have been admitted to probate since December 29, 1877:

DANIEL ROOT, late of Mount Joy ber.; B. M. Root, executor.

ABRAHAM SNYDER, late of Mount Joy twp.; Abraham Snyder and Daniel Heistand, executors.

ISAAC WARR, late of East Cocalico twp.; John Bucher, executor.

#### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since December 29th, 1877:

JOSEPH H. BRANDT and WIFE, of West Donegal twp.; John H. Zeller, assignee.

**COURT PROCLAMATION.**

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN JANUARY, (21st) 1878.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the 24th day of December, 1877.  
dec29 H. N. BRENNEMAN, Sheriff.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

**Divorce Notices.**

MARGARET FRAZIER, } Alias Subpœna for Divorce  
by her next friend }  
Benj. Cutler, } December Term, 1877.  
vs. }  
E. K. FRAZIER. } No. 36.

To E. K. FRAZIER.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Margaret Frazier should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

PHILIP HARMAN } Alias Subpœna for Divorce  
vs. } December Term, 1877.  
LOUISA HARMAN. } No. 41.

To LOUISA HARMAN.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Philip Harman should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

WILLIAM B. MOORE } Alias Subpœna for Divorce  
vs. } December Term, 1877.  
MARIA MOORE. } No. 51.

To MARIA MOORE.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said William B. Moore should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

HANNAH GROOM } Alias Subpœna for Divorce  
by her next friend }  
Sam'l Evans, } December Term, 1877.  
vs. }  
JOSEPH GROOM. } No. 27.

To JOSEPH GROOM.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Hannah Groom should not be divorced from the bonds of matrimony contracted with you.

dec15 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

**Auditors' Notices.**

Assigned Estate of HENRY C. EBY and WIFE.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William S. Shirk, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JANUARY 29th, 1878, at 1½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jan5 CHAS. I. LANDIS, Auditor.

Estate of ELIZABETH TYSON, late of the borough of Columbia, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John S. Given, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, JANUARY 24, 1878, at 10 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

dec29 WALTER M. FRANKLIN, Auditor.

Estate of MARIA MISHLER, late of the City of Lancaster, Pa., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Rev. Jacob Reinhold, executor, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, the 19th day of JANUARY, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec29 J. W. DENLINGER, Auditor.

Estate of BARBARA BACHMAN, late of East Hempfield township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John Seltz and Abraham H. Mellinger, executors of said dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JANUARY 8th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec22 SIMON P. EBY, Auditor.

Assigned Estate of THE INLAND INSURANCE AND DEPOSIT COMPANY.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Samuel H. Reynolds, assignee of The Inland Insurance and Deposit Company, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, JANUARY 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. Creditors who presented their claims at the previous audit need not do so again; but all who have not yet handed in their claims are requested to do so on the above mentioned day.

dec15 W. A. WILSON, Auditor.

Estate of JOHN ARNDT, late of Mount Joy township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christian A. Nisley, executor of the will of John Arndt, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JANUARY 8th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec22 JNO. M. MAST, Auditor.

Assigned Estate of SAMUEL SHIRK and WIFE, of Cœrnarvon twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Pearson Sample, assignee of Samuel Shirk and wife, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, JANUARY 10th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec15 E. D. WHITE, Auditor.

Assigned Estate of JACOB KOBE and WIFE, of Manheim township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Hiram B. Swarr, assignee, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JANUARY 9th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

B. C. KREADY, Auditor.  
dec15

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed MONDAY, JANUARY 21st, 1878, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

dec20 WM. BRYSON, Jr.

**Estate Notices.**

Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.

jan5 SIMON F. ALBRIGHT, Executor.  
B. H. REYNOLDS, Att'y.

Estate of BENJ. D. DANNER, late of Manheim borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

jan5 HENRY S. DANNER, Executor.  
P. D. BAKER, Att'y.

Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec29 ELIZABETH RUHL, Administratrix.  
J. HAY BROWN, Att'y.

Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ZELLER, Assignee.  
J. HAY BROWN, Attorney. Residing in Mount Joy borough.  
dec29

Estate of GEORGE RINEER, late of Paradise township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

dec22\* CATHERINE RINEER, Executrix.  
B. F. ESHELMAN, Att'y.

Estate of JACOB HOLSINGER, late of Hinkle-town, Earl township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

E. BURKHOLDER, Administrator.  
dec22

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 13, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to dec22\* ABRAHAM MILLER, Assignee, C. DENNIS, Att'y. Residing in Millersville.

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city. M. BROSIUS, CATHARINE KRABER, dec18 Attorney. Administratrix.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. MARGARET GRAVER, Warwick township; ADDISON GRAVER, Manheim township; dec15 HENRY B. ESHLEMAN, D. G. BAKER, O. P. BRUCKER, Att'ys. Manheim township. Administrators.

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to dec15 SAMUEL WHITSON, Assignee, M. BROSIUS, Att'y. Atglen, Chester Co., Pa.

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 8, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to dec15\* LEVI BRUBAKER, Assignee, A. J. EBERLT, Att'y. Millway P. O., Lan. Co.

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. dec3\* MARY M. KING, J. W. JOHNSON, Att'y. Administratrix.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay. MARTIN G. LANDIS, Administrator, East Lampeter twp. dec8

**Estate of MARTIN GROFF, Sr., late of Manheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAMUEL GROFF, ABRAHAM S. GROFF, dec3\* PHILIP D. BAKER, Att'y. Executors.

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise. dec1\* W. C. FREW, B. F. ESHLEMAN, Att'y. Administrator.

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township. nov17 KIRK BROWN, J. HAY BROWN, Att'y. Administrator.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned. GEO. BRUBAKER, H. C. BRUBAKER, Att'y. [dec1] Assignee.

**Estate of JOHN F. WOLF, late of West Hempfield twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the village of Mountville. nov17 MARY A. WOLF, THOS. B. COCHRAN, Att'y. Administratrix.

**Assigned Estate of HENRY FRANKE, of Lancaster City.**

Henry Franke, of Lancaster city, having by deed of voluntary assignment, dated October 22d, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Henry Franke, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to R. W. SHENK, HERMAN MILLER, Assignees. GEO. NAUMAN, Att'y. Residing in Lancaster city. nov17

**Estate of HENRY SHAUB, late of West Lampeter twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. HENRY SHAUB, JR., ABRAHAM SHAUB, Administrators. PHILIP D. BAKER, Att'y. nov8\*

**Estate of RICHARD J. FITZPATRICK, late of Lancaster City, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said city. BRIDGET FITZPATRICK, JOHN J. FITZPATRICK, Administrators. nov3

**Estate of HENRY SCHITZ, late of Elizabeth-town borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Marietta borough. nov3\* FRANK SCHLEGMILCH, A. F. SHENCK, Att'y. Executor.

**Estate of JOHN GROSS, late of West Donegal township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. JOHN G. KELLER, SAMUEL G. KELLER, JACOB G. KELLER, MARTIN G. KELLER, ABRAHAM R. FORNEY, J. L. STRINWITZ, Att'y. Litiz, Elizabethtown, Administrators. nov3]

**Estate of JOHN WHITESIDE, late of Colerain township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Colerain township. oct27\* JAMES WHITESIDE, S. H. REYNOLDS, Att'y. Administrator.

**Estate of GEORGE BROWN, late of Elizabeth-town borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Middletown, Dauphin Co., or to Addison Eby, residing in Elizabethtown. EMANUEL BROWN, Executor. oct27

**Estate of MARTIN J. DENLINGER, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. MARTIN DENLINGER, JOHN L. LANDIS, East Lampeter township, Administrators. oct37 WM. D. WEAVER, Att'y, 47 Grant st., Lancaster, Pa.

**Estate of FREDERICK SMITH, late of Lancaster city, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city. oct30 EMMA L. SMITH, HOA. B. COCHRAN, Att'y. Executrix.

**Estate of ISRAEL R. WICKEL, late of Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in New Holland. oct30 LIZZIE S. WICKEL, AND. M. FRANTZ, Att'y. Administratrix.

**Assigned Estate of EPHRAIM O. EBY, of Manheim township, Lancaster Co.**

Having by deed of voluntary assignment, dated October 19th, 1877, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Ephraim O. Eby, notice is hereby given to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to him. oct30 SAMUEL G. GENSEMER, GEO. BRUBAKER, Att'y. Assignee.

**Estate of CATHARINE DONER, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. oct30 HENRY DONER, DANIEL E. DONER, B. F. ESHLEMAN, Att'y. Administrator.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, JANUARY 12, 1878.

No. 33.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,

LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10. 10 a. m.
Mail Train via Mt. Joy.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Sunday Mail,	11:29 a. m.	1:30 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:10 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:35 p. m.	8:40 p. m.
Pittsburg Express,	9:35 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express.*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,	6:50	7:50	2:30
Lancaster—West King Street,	8:00	9:16	3:35
Lancaster—Upper Depot,	8:10	9:30	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:36	5:30	8:10
Lancaster—West King Street,	9:45	5:40	8:20
Quarryville, (arrive)	10:50	7:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:10	12:55	3:45
Lancaster Junction,	8:37	1:35	4:11
Reading, (arrive)	10:20	3:30	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:13	1:20	7:45
Lancaster—Upper Depot,	9:6	2:00	8:0
Lancaster—West King Street,	9:45		8:20

### Columbia and Port Deposit Railroad.

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Columbia	5:40	12:01	4:20
Arrive at Peachbottom,	7:05	1:55	5:45

  

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Peachbottom,	7:15	2:05	5:55
Arrive at Columbia,	8:40	4:00	7:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	Appointed.
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1853
Noah H. Swayne, of Ohio.	1863
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.

*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*,—J. B. Sweitzer, Pittsburg.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.

At Harrisburg, commencing 1st Monday in May.

At Pittsburg, commencing 1st Monday in October.

At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—J. W. Johnson.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. E. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—M. N. Brubaker.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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COURT CALENDAR.--1878.

JANUARY.

- 21. Last day for issuing Executions to January Term.
- 26. Calling Judgment Docket.

FEBRUARY.

- 8. Last day for issuing Writs to February Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 6. Argument for Rules of Affidavit of Defense.
- 15. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JAN. 12, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

EDWARD CONNELLY, administrator of JAMES GRAYHAM, deceased, against MICHAEL WITHERS, junior, and GEORGE WITHERS, executors of MICHAEL WITHERS, senior, deceased.

[Continued from last week.]

Nothing of this kind has been done with respect to the land in question. It is not partnership property. The court then has only to look to the liens. Liens are of three kinds: 1. By the act of parties. 2. By decree of court. 3. By judgments, &c. With regard to debts due from a decedent, the creditor may either go into the orphans' court, or pursue his remedy against the executors or administrators. Mr. Champneys proceeded to obtain judgment and issue execution against the executors; and the question now between us depends upon the priority of liens. Our judgment was obtained during the lifetime of Michael Withers, sr. His was a specialty demand only at the death of Michael Withers, sr., and the judgment subsequently obtained did not alter its dignity. The money now in court must be distributed according to the order of payment established by the intestate laws. Nor can any objection to our claim be urged on the ground of the levy in Chester county, under the *testatum fi. fa.* This availed us nothing, and the bare seizing of land under execution to the value of the debt is not satisfaction. It does not prevent the plaintiff from resorting to the goods of the defendant afterwards.

Mr. Porter in reply: Referred to the different deeds, some of which described the grantees by the addition of "iron masters;" six of them recognize them as a company, and all in the *habendum* and *tenendum* say to hold to them "as tenants in common." The first consideration regards the effect of judicial sales. The current of decisions—the final decision upon the matter—and the strong leaning of the Supreme Court, is to hold judicial sales, as divesting all liens whatever. But the difficulty here is with respect to the lien in favor of the widow, which is charged on the land during her life. He refers to the deed of Henry Eckman to Michael Withers, John Withers and George Withers, for the land purchased by Mr. Hopkins for \$58. Even if the proceeds were liable to be applied to this lien to any amount it could not be for more than this sum. With respect to the claim of Michael Withers, jr., advocated by Messrs. Montgomery and Parke, it would be a different thing if the court were asked to de-

creed that this money should go into the hands of the executors. 1. I think the judgment is not fairly and *bona fide* revived so as to remain a lien upon the land. 2. The levy in Chester county furnishes a strong presumption that the plaintiff has been satisfied. I do not mean by that levy, but by some other means—in some other way. Our claim is upon the proceeds as a partnership fund, and the question is whether an old note by a firm may not be continued by renewals so as to preserve the character of the original note. (Parke here cites: *Watson on Partnership*, 60, 81; 12 *Serg't & R.* 9; 1 *Serg't & R.*) It will be found that the cases of *Groh vs. Townsend*, 1 *Penna. R.* 429, and *Barnet vs. Washebaugh*, 16 *Serg't & R.*, are contradictory.

The claim exhibited by me this morning was on an old note of 1816, renewed up to this time, and if there be any deficiency of evidence the court will not shut us out from the opportunity, of proving what may be necessary. As to the character of this claim, the case of *Doner vs. Stauffer*, contains nothing adverse to us. With respect to the date of our judgment, our suit was commenced before the sale, and judgment was obtained before the confirmation. All we have to show and all the court will require is that we are *rectus in curia*.

Mr. Hopkins in conclusion. This case has two aspects. 1. The matter of fact. 2. The operation of the law upon it. The estate was originally John Eckman's. It was appraised after his death and taken by Henry Eckman, one of his sons, who entered into a recognizance to pay the widow the interest of a certain sum charged on this land. The question then is—what is the operation of the recognizance? Is it a lien on the whole estate? Who was to make up the money called for by this recognizance? The recognizer or those claiming under him? To apply this money immediately to the object to which it was pledged; theirs, to take the money away from that object.

Mr. Hopkins refers to the deed from Henry Eckman to the Messrs. Withers, and was proceeding to comment upon a paper purporting to be a release from Catharine Heckman to John Withers, George Withers, &c., of her interest in \$762.86½, dated—December, 1825, when Mr. Montgomery and Mr. Parke objected: 1. That the paper was not in evidence; and, 2. That it could not, even if proved, as it is not, be introduced at the close of the discussion.

Mr. Hopkins, resuming the discussion, refers to the act of the 28th May, 1815, sec. 4, *Purd. D.* 163; and the act of 1795, sec. 2. Is this a probate of the release? Yes. It was done in a court of record in open court. Does this deed relate to lands? Yes; for the widow had a life estate in the land to the extent of the sum of \$843.08. (The court desired Mr. H. to pass on to some other matter as this paper could not be regarded.) There are two liens here. The lien of the recognizance and the lien of the deed of Henry Eckman: 16 *Serg't & R.* 410. Judge Rodgers' opinion as to encumbrances not notified at the sale: 2 *Rawle* 160. As to

the amount of the sale it only shows the deterioration of the property which was sold for its full value. Generally, by the laws of the State, lands sold by the sheriff are sold clear of all encumbrance whatever. It is said this application is not on behalf of the widow, but by her son Henry Eckman. This is true, and for the best reason in the world. He is immediately and directly interested to the value of \$79, and he is mediately interested with his sureties in the recognizance which bind them to pay the interest. It is objected further that we demand the payment of this whole recognizance from one of the tenants in common. But they are each equally bound for the whole; and it is no injustice to the other tenants. As to Mr. Porter's claim: It is founded on a note by the surviving partners five or six years after the death of Michael Withers, and the money in court has arisen from the sale of Michael Withers's property. As to Messrs. Withers's note for \$211: There is no sort of foundation for this claim. We ask, then, for the appropriation of the fifty dollars in No. 1 and the fifty-eight dollars in No. 13 to the purposes of this recognizance, and we contend that, according to the decisions in relation to judicial sales, the lien of the Commonwealth for her dues is discharged: 1 *Penna. R.* 46.

HAYES, J. There are four rules for the distribution of the money in court.

1. Mr. Hopkins' rule—notice of which he has served on the deputies of the attorney general in this county, and which demands the appropriation of so much of the money paid into court as may be necessary to discharge the recognizance of Henry Eckman.

1. The greater part, if not all the tracts sold by the sheriff, and of which the proceeds have been paid into court by him, are, it is said, unpatented; and it was contended by Mr. Hopkins that, under the late decisions of the Supreme Court with regard to the effect of judicial sales in discharging all liens, whether general or special, the court must take into consideration the Commonwealth dues for patenting fees, purchase money and interest. The dues of the Commonwealth are dependent, not upon a lien, but upon a paramount title which no sheriff's sale can affect. The Commonwealth makes no claim to the money paid into court in this case and is clearly not entitled to it.

2. The recognizance of Henry Eckman affects one only of the eleven tracts sold by the sheriff to Mr. Hopkins. That tract was sold for fifty-eight dollars. The lien, as it now exists, binds it to the amount of \$843.08 or \$762.86½, the widow's third of the valuation and appraisement of that part of her deceased husband's real estate. The land was accepted by Henry Eckman, the son, and sold by him to George, John and Michael Withers as tenants in common. It was the undivided right and interest of Michael Withers that the sheriff sold for fifty-eight dollars, which he has paid into court.

From this brief statement it is obvious that the only question that can arise is whether these fifty-eight dollars shall be applied towards the satisfaction of that lien; or rather,

whether by the sheriff's sale the lien of this recognizance was divested or discharged with respect to Michael Withers' interest, in the tract of land. The act of assembly gives the interest of one-third of the valuation of the real estate of the intestate to the widow, during her life, in lieu of her dower at common law; and directs that "she shall not be entitled to the sum at which her purpart or share of the estate shall have been valued, but the same, together with the interest thereof, shall be and remain charged upon the premises, and the interest thereof shall be annually and regularly paid by the eldest son or such other child to whom the said lands shall be adjudged, his or her heirs or assigns, holding the said lands, to be recovered by such mother by distress or otherwise, as rents in this Commonwealth are usually recovered, to his or her said mother during her natural life." Act 19th April, 1794, sect. 22; 3 Smith 143. This enactment, I apprehend, is too clear and precise to admit of a doubt. The decisions of the Supreme Court do not apply to a case like this, where an act of assembly makes the lien permanent during the period of the widow's life. "Generally, by the laws of this State," says Judge HUSTON, who professes his willingness to go beyond his brethren in disencumbering real estate, "a purchaser at sheriff's sale takes the land clear of all encumbrances of what kind or nature soever, ground rents in fee and certain cases provided by act of assembly excepted:" 2 Rawle 166, *Fickes vs. Essick*. It is too plain for discussion that to order the money arising from the sheriff's sale of land, charged with the widow's third of the valuation, to be paid over to her would be in direct opposition to the obvious policy and explicit language of the act of assembly referred to. This is, undoubtedly, one of the cases alluded to by Judge HUSTON as excepted under the provisions of the acts of assembly. The lien of the recognizance was not divested by the sheriff's sale; and no part of the money in court is to be appropriated to Henry Eckman's recognizance.

2. Mr. Porter's rule. This rule is supported upon two grounds: 1. That the lands in which Michael Withers' interest was sold were partnership property. 2. That the judgment of Fulmer's executor was for a partnership debt.

These lands were not partnership lands. They were not purchased as such, for the deeds are all to the Messrs. Withers as tenants in common, and there was no stipulation that the lands should be held or considered as partnership property: 7 Sergt. & R. 438, *McDermot vs. Lawrence*.

By the death of Michael Withers, senior, which occurred in August, 1821, the partnership of George, John and Michael Withers was dissolved. The note on which the judgment of Isaac Keagy, administrator of John Fulmer, against George Withers & Co. was founded, was dated the 5th of February, 1827; as there is no proof that the original firm was to be continued by the survivors after the death of any of the members. This note was therefore, not a partnership transaction of the firm of George, John and Michael

Withers: 11 Sergt. & R. 41, *Gratz vs. Bayard*.

This rule cannot be sustained upon either of the grounds assumed.

3 and 4. The other two rules are those on behalf of the execution creditor, Edward Connelly, administrator of James Graham, deceased, and in behalf of Michael Withers, jr., who has the oldest judgment.

Mr. Champneys, for the execution creditors, alleges that Michael Withers, jr., as one of the executors of Michael Withers, sr., has sufficient personal assets in his hands to satisfy his judgment, and therefore contend that he cannot claim the money in court. Another objection to his claim is that he issued a *testatum fl. fa.* on his judgment, which was levied upon land in Chester county, and that this land was appraised and condemned in pursuance of the levy; though it does not appear that there was any further proceeding. There was no *venditioni exponas*. As it cannot be pretended that the *testatum fl. fa.* levy and condemnation were satisfaction of Michael Withers' judgment, its character as lien upon the property sold, the proceeds of which are brought into court, is not affected by this unsuccessful attempt to obtain payment from another fund. The judgment of Graham's administrator was a judgment against the executors of Michael Withers *de bonis testatoris* only, and authorized him to proceed against the personal, not the real estate, of the testator in the first instance. If there were personal assets, is not the objection on that account equally as strong against the execution upon the real estate by James Graham's administrator as against that by Michael Withers, jr.? If there be personal assets and the rule granted to James Graham's administrator should be discharged he may levy upon those assets in the hands of the executors. Is there anything then in point of equity which should postpone the claim of Michael Withers, jr., to this money, admitting that the executors of his uncle, (of whom he is one,) have sufficient personal assets to discharge his judgment. The money in court is the proceeds of the sale of real estate, applicable by the settled law to the liens upon it, according to their priority, and Michael Withers' judgment is the first lien. Whilst this lien remains unimpeached and in full force can the court refuse to appropriate the money to it and appropriate the same to a younger judgment? I am strongly inclined to think it cannot, for its authority is to determine disputes about the distribution of money according to law as well as equity: Act of April 16, 1827, relative to distribution of money, &c. sec. 1, Ph. L. 471. The executor has no better right to the money than any other person with the same security would have, but he has a less or an inferior right, because he is executor? He is *prior in tempore*, why is he not *prior in jure*? These inquiries are of consequence with respect to the issue which is asked for in this case, for if it should be considered that the alleged fact of Michael Withers having in his hands a large amount of assets, sufficient to pay his demands is immaterial in deciding the question between his claim and that of

Graham's administrator, then such issue would be wholly useless.

Mr. Champneys, in support of his position that Michael Withers, jr., as one of the executors of Michael Withers, sen., has large personal funds sufficient to satisfy his judgment, produced the inventory of the personal estate of Michael Withers, sen., and the administration account of the executors. In the first is stated an item of book accounts against the Conowingo and Eden furnaces of \$8,477.09; and in the latter, after charging themselves therewith, the executors take credit for the same, as "being in litigation, and no part collected;" and they also take credit for "\$1,224.63, the amount of an obligation against the administrators of John Withers, deceased, it being in suit and uncollected." This account was passed in 1824. Exceptions had been taken to several of its items by Messrs. Jenkins and Slaymaker, but these were withdrawn and the account was confirmed, exhibiting a balance in the hands of the accountants of one hundred and fifty-two dollars twenty-four cents. A request in writing has been presented by Mr. Champneys, in behalf of the plaintiff in the execution on which the lands were sold, "disputing the right of the judgment creditor (Mr. Withers, jr.) to receive the money, and alleging, as he thinks he has shown to the court, that Michael Withers who is claiming under the said judgment last aforesaid, and who is one of the executors of Michael Withers, sr., deceased has in his hands a personal fund of decedent unaccounted for, sufficient to satisfy said judgment;" and the court were asked to direct an issue under the provisions of the second section of the act of the 16th April, 1827; which section is in these words: "And be it further enacted by the authority aforesaid, that, when the facts connected with any such distribution are disputed, the courts, at the request in writing of any party in interest, shall direct an issue to try the same, and the judgment on such issue shall be subject to a writ of error in the same manner as other causes wherein writs of error do now lie." The true construction of this section is of considerable importance.

Is the court, upon an allegation that one party disputes the right of another to the money and a written request to direct an issue, bound to direct such issue upon that allegation alone? The right to the money in court may depend upon a question of law. It may depend upon the construction of an instrument of writing. It may and often does depend upon the mere inspection of records. The right to the money may be well controverted without disputing any one fact which a jury may determine; but it is only "when the facts connected with the distribution of the money are disputed" that the courts are required to order an issue.

When and what are the "facts disputed" in the sense of this section of the act referred to? In the first place, the facts must be material or relevant; they must conduce to the support or defeat of the party's right; otherwise it would be wholly idle and fruitless to send an issue to the jury; for ultimately the

court must decide the right, and the intervention of the jury is provided for in order that they may determine such facts as the decision shall involve, and such only as "are connected" with it. When are facts to be considered as "disputed"? Is it when the circumstances on which a party claims the proceeds of a sheriff's or coronor's sale are denied or merely contradicted? If so, there are but few cases of money levied by execution which would not be first brought into court and there detained, often for years, until a jury trial might be had in relation to alleged facts concerning the distribution. A construction involving so much inconvenience must, I think, strike every mind as unreasonable. A glance at the practice of our courts in cases of money paid into court by the sheriff for distribution, and the practice of courts of equity in directing issues, will probably clear up any difficulty that may present itself in the correct reading of the law in question. When money is paid into court which has been made by an execution, the practice was, anterior to the passage of the act of 1827, to move the court for a rule to show cause why it should not be paid over to a particular creditor who conceived himself entitled to it. This rule being placed on the argument list, the applicant, and such of those who were interested in the distribution, as happened to know anything of the matter, prepared to try the right before the court, as in other cases, upon depositions taken under a rule and notice. Upon such motions the court decided every point that arose. Issues were seldom directed in these cases, though, I believe, the power of the court to order them was uncontested. It was always desirable that the decision should be speedy, and the courts, in effecting this purpose, drew to themselves the determination of the facts as well as the law involved in the case, and their decision was final. Several evils occurred under this practice. The rights of parties who were not before the court and who had not been warned were often effected by the decision. This was a glaring mischief for which the 1st section of the act has provided a remedy, by requiring that when any of the persons interested should not appear, the courts should cause notice to be given to them, either personally or by such advertisements as they may deem proper, prior to making their decision. By assuming the entire determination of the right to the money courts also, in many cases, decided questions of fact upon which the right depended. Such questions, however, by the principles of the common law, belong to the province of juries; and the second section, as we have seen, enacts that when the facts connected with the distribution of money are disputed the courts, at the request in writing of any party in interest, shall direct an issue to try the same. It was an inconvenience that the decision of the court should be final in cases which, not unfrequently, involved large sums of money, as well as important principles; and the third section has, therefore, provided, in all cases which the court should decide without the intervention of a jury, that any person or

persons who might consider themselves appeal to the Supreme Court within twenty days after such decision.

I believe some persons in the profession have doubted the authority of our courts to entertain motions for the distribution of money paid into court by the sheriff or coroner. It is a practice unknown to the English jurisprudence, and it was probably introduced here by consent of parties and to avoid the delay of a suit at law. To remove all such doubts the act of 1827 says: "That the respective courts of common pleas, district courts, circuit courts and courts of *nisi prius*, within this Commonwealth, are hereby declared to have full power and authority to hear and determine all such cases according to law and equity."

The act of assembly, having provided the remedies just recited for the evils which existed, has prescribed no alteration in other respects in the usual practice. This proceeding, by motion to the court for the distribution of money paid in, as the proceeds of sheriff's or coronor's sales, is analogous to motions in chancery or bills of interpleader. Evidence is derived from depositions obtained under a rule and notice to the opposite party to attend and cross-examine. And, when all the testimony is before the court, it proceeds to hear the parties by their counsel upon their proofs and allegations, and afterwards to determine the controversy. Such is the general course in chancery; and when the depositions are published, as it is termed, and the cause comes on for a hearing, if, upon the testimony, any material fact is controverted or disputed, the chancellor directs an issue, referring it to a jury to ascertain the truth of the fact; and upon their verdict he proceeds to decree: 2 Madd. Principles and Prac. in Chancery, p. 363. And although the chancellor has a right, it is said, to take upon himself, if he chooses, the decision of every fact put in issue upon the record, yet he exercised it, according to Lord Eldon, very tenderly and sparingly. To satisfy his conscience in relation to doubts concerning facts he directs an issue in all cases where such doubts exist. This is done upon the hearing—upon investigation of the testimony, and after arguments of counsel or solicitors. If the testimony place the matter of fact beyond all controversy, the chancellor will not order an issue, for he can have no doubts to be satisfied. If the testimony be all one way, *a fortiori*; he will not direct an issue, for there can be no controversy about the facts. They are then indisputable. The chancellor grants an issue only "when the facts are disputed" at the hearing of the cause upon the testimony before him. It would be an abuse of his discretion, were he to grant it when the facts were established by the testimony so as to leave no doubt: 1 Johns. C. 436; 6 Johns. R. 255-7. As we presume that the legislature did not intend that an issue should be directed upon the mere allegation and denial of facts, we must, likewise, presume that they did not intend it should be directed when, upon the testimony, no doubt could exist in relation to any material fact connected with the distribution of money paid into court. They prescribed an issue only when "facts are disputed;" and when facts are clearly and undoubtedly proved they are not disputable and of course cannot, as disputed facts, be referred to a jury. It is admitted that from the peremptory language of this section (the 2d) a slight doubt or any

material diversity in the testimony or impeachment of the credit of witnesses would make it the imperative duty of the court, upon the written request of a party, to order an issue, and that where the facts are really disputed the court has not a discretion either to grant or refuse it. But the testimony must create a doubt. Otherwise the trial by jury would be fruitless; and if the facts are not controvertible upon the evidence the parties are not, in my opinion, entitled to ask an issue. The issue when directed, is not to ascertain by the verdict of a jury the right to the money, for that the court must decide, but it is to ascertain the truth of disputed facts.

From these considerations the following inferences may be deduced. 1. The facts must be material and relevant to call for an issue. 2. They must be doubtful upon a review of all the testimony. 1. They must be controverted at the hearing, upon the depositions and other testimony adduced, and, I will add, as a proper rule of practice that the disputed facts should be specified in the written request for the issue. The request in the present case was submitted at the proper time, at the hearing of the rule to show cause. The allegation is that Michael Withers, jr., as one of the executors of Michael Withers, sr., has a personal fund of the decedent, unaccounted for, sufficient to satisfy his judgment. I have already said I am inclined to think this fact immaterial, if true, but waving that objection, is there a possibility of doubt with respect to the fact. The accountants are credited with the accounts against the two furnaces of Mt. Eden and Conowingo, and with the obligation against John Withers' administrators, both which of are stated to be in litigation and uncollected.

The account was passed and confirmed, and as it was alone exhibited in support of the allegation, so far from sustaining it, its effect was to contradict and disprove it altogether. The supposition, however, was that as these two items amount to nearly \$10,000, a portion of that sum had been collected and received by the executors, sufficient to discharge the judgment of Michael Withers, jr. But there was no attempt to prove this beyond the mere production of the inventory and account as before mentioned. On the other side, the record of the suit of Michael Withers, jr., and George Withers, executors, of Michael Withers, against John Withers' administrators, was produced, by which it was proved that the suit brought on the obligation had terminated having been finally decided against the plaintiffs, and the records of two suits by George Withers and by John Withers against Michael Withers' executors, in which the former counts for \$60,000, and the latter for \$40,000 were also produced, both of which are still pending in this court. George Withers, John Withers and Michael Withers, sr., composed the partnership to which the Mount Eden and Conowingo furnaces belonged.

Now, these records are not to be controverted, nor was that attempted. While nothing, on the one side, was shown to prove the reception of the alleged personal fund by the executors, the gratuitous supposition of the fact has been completely refuted by the other. Upon the evidence adduced there can, therefore be no dispute or possibility of doubt concerning that fact; and the conclusion is that the court is not obliged to direct the issue requested on behalf of James Graham's administrator.

Upon the whole, it seems to me, that no sufficient reason has been offered to prevent Michael Withers from receiving the money in court, by virtue of his prior lien upon the land which was sold—and I am of opinion that the rule granted to Messrs. Parke and Montgomery should be made absolute, and the other three rules be discharged.



COMMON PLEAS TRIAL LIST--First Week.

Commencing Monday, January 28th, 1878.

<i>Brosius, Champneys.</i> 1	CAROLINE EVANS, adm'ix. <i>vs.</i>	Nov. Term, 1869. No. 33. Sum's in assumpsit. Plea, non assumpsit, pay't. etc.
<i>Baker, Kline.</i>	GEORGE K. REED.	
<i>Ellmaker, Kline.</i> 2	JOHN BECKER <i>vs.</i>	Feb'y Term, 1873. No. 60. Sum's case. Plea, not guilty.
<i>North.</i>	HENRY M. WATTS et al.	
<i>Reynolds.</i> 3	J. V. CRESSWELL <i>vs.</i>	May Term, 1873. No. 47. Sum's case. Plea, non assumpsit.
<i>Shenk, Leaman.</i>	JOHN R. MCGOVERN.	
<i>Amwake, North, Given.</i> 4	SAMUEL WILL <i>vs.</i>	Jan'y Term, 1874. No. 7. Sum's in ejectment. Plea, not guilty.
<i>Reynolds.</i>	JACOB SHULTZ.	
<i>Baker, Frueauff.</i> 5	DAVID HANAUR <i>vs.</i>	Mar. Term, 1874. No. 45. Attach't ad lev. deb., etc. Garnishees plead nulla bona.
<i>North.</i>	J. B. REYNOLDS, defendant. A. H. BRINKS and PENN'A R. R. CO. garnishees.	
<i>Reynolds.</i> 6	WILLIAM DARLINGTON <i>vs.</i>	April Term, 1874. No. 66. Sum's case. Plea, non assumpsit, pay't etc.
<i>Yundt.</i>	WALKER & CO.	
<i>McMullen.</i> 7	JACOB MINNICH <i>vs.</i>	Jan'y Term, 1875. No. 53. Sum's in debt. Plea, nil debet non est factum.
<i>Frantz.</i>	JOHN S. HOSTETTER.	
<i>Reynolds, Reinohl.</i> 8	TOBIAS NEWCOMER <i>vs.</i>	June Term, 1875. No. 93. Sum's in ejectment. Plea, not guilty.
<i>Eshleman North.</i>	JACOB DETWEILER.	
<i>Eby.</i> 9	CATHARINE LEAMAN <i>vs.</i>	Aug. Term, 1875. No. 23. Issue to try by jury, etc. Plea filed.
<i>P. D. Baker.</i>	ELIZA ANN BURK.	
<i>Smith.</i> 10	BARBARA POWL'S use <i>vs.</i>	Aug. Term, 1875. No. 24. Issue to try by jury, etc. Plea filed.
<i>P. D. Baker.</i>	SAME DEFENDANT.	
<i>North.</i> 11	WEISER SON & CARL <i>vs.</i>	Sept. Term, 1875. No. 11. Sum's case. Plea, non assumpsit.
<i>Reynolds.</i>	JAMES B. REYNOLDS.	
<i>Same.</i> 12	PERROTTET & HOYT <i>vs.</i>	Sept. Term, 1875. No. 12. Sum's case. Plea, non assumpsit.
<i>Same.</i>	JAMES B. REYNOLDS.	
<i>Price.</i> 13	WEAVER & KILLIAN <i>vs.</i>	Nov. Term, 1875. No. 14. Sum's in covenant. Plea, non est factum cove- nants perf'med absque hoc.
<i>Smith.</i>	LAN. CO. MUT. LIVE STOCK INS. CO.	
<i>Franklin.</i> 14	FARMERS' NAT'L BANK OF LANCASTER <i>vs.</i>	Dec. Term, 1875. No. 104. Sum's case. Plea, non assumpsit.
<i>Kline.</i>	THOMAS & MASON.	
<i>North.</i> 15	JOHN F. CHARLES <i>vs.</i>	Jan'y Term, 1876. No. 63. Sum's case. Plea, non assumpsit.
<i>Smith.</i>	B. B. GONDER & SON.	

<i>Brown, Price.</i> 16	JOHN MCCLURE <i>vs.</i>	Jan. Term, 1876. No. 67. Sum's case. Plea, non assumpsit, pay't, etc.
<i>Baker.</i>	DANIEL ENGLE et al., ex'ors.	
<i>J. Hay Brown.</i> 17	HENRY C. HOSTETTER <i>vs.</i>	Feb'y Term, 1876. No. 68. Sum's in assumpsit. Plea, pay't, payment with leave.
<i>Reynolds, P. D. Baker.</i>	GROFF & CO.	
<i>Long, W. A. Wil-son.</i> 18	JOSEPH C. BRINSER <i>vs.</i>	Feb'y Term, 1876. No. 20. Sum's in assumpsit. Plea, non assumpsit, pay't etc.
<i>Brosius.</i>	WM. BANEY.	
<i>Shenk, Leaman.</i> 19	CASPER HILLER, ex'or, <i>vs.</i>	April Term, 1876. No. 28. Issue to determine what is due on judg't, etc. Plea, pay't, payment with leave.
<i>Ellmaker, Eshle- man.</i>	JOHN B. GOOD.	
<i>D. G. &amp; B. F. Esh- leman.</i> 20	W. W. JONES & BRO. <i>vs.</i>	May Term, 1876. No. 23. Issue to try by jury, etc. Plea filed.
<i>Reynolds.</i>	D. P. LOCHER & SON.	
<i>Wilson.</i> 21	GEO. B. SHOBER, dec'd, ex'ors <i>vs.</i>	May Term, 1876. No. 57. Sum's in assumpsit. Plea, non assumpsit, pay't, pay't with leave, etc.
<i>Amwake, Yundt, Eberly, Swope.</i>	JOHN B. SNYDER et al.	
<i>B. F. Davis.</i> 22	PONTZ & BRO. <i>vs.</i>	M. L. D. No. 3, page 460. Mechanic's lien, etc. Plea, pay't, payment with leave.
<i>Good, W. A. Wil- son.</i>	ELIZABETH SMITH, owner, and A. N. BASCH, contractor.	
<i>Brown.</i> 23	MARY AND GRACE B. Mc- SPARRAN <i>vs.</i>	Aug. Term, 1876. No. 7. Sci. fa. to revive judgment etc. Plea, payment.
<i>J. Hay Brown.</i>	ISAAC W. TOWSON.	
<i>Brown, H. C. Bru- baker.</i> 24	SAMUEL H. PRICE et al. <i>vs.</i>	Aug. Term, 1876. No. 54. Issue to try validity of will. Plea filed.
<i>Wilson.</i>	H. L. MISHLER et al.	
<i>H. C. Brubaker.</i> 25	J. G. OLDWEILER et al., ad- ministrators <i>vs.</i>	Aug. Term, 1876. No. 119. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.
<i>W. A. Wilson.</i>	M. C. AND JOS. C. BRINSER.	
<i>Slaymaker.</i> 26	SAM'L C. SLAYMAKER AND JANE E. SLAYMAKER <i>vs.</i>	Sept. Term, 1876. No. 1. Sum's case. Plea, not guilty.
<i>P. D. Baker.</i>	SOLOMON LINVILLE.	
<i>Davis.</i> 27	MECHANICS NAT. BANK OF PHILADELPHIA <i>vs.</i>	Sept. Term, 1876. No. 27. Sum's in assumpsit. Plea, non assumpsit.
<i>L. Ellmaker.</i>	N. ELLMAKER, JR.	
<i>North, Martin, Holahan.</i> 28	H. S. FICK <i>vs.</i>	Sept. Term, 1876. No. 45. Sum's in covenant. Plea, covenants performed etc.
<i>Ellmaker.</i>	G. SENER & SONS.	
<i>Brown.</i> 29	DAVIS A. BROWN <i>vs.</i>	Sept. Term, 1876. No. 85. App'l by def't from justice. Plea, non assumpsit.
<i>Johnson.</i>	EUGENE M. HAINES.	
<i>Brosius, Steinmetz.</i> 30	JOSEPH WALLACE <i>vs.</i>	Oct. Term, 1876. No. 8. Sum's in ejectment. Plea, not guilty.
<i>Davis.</i>	ROBERT KANE.	

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JAN. 12, 1878.

## Applications for License to January Sessions, 1878.

### TAVERN.

- Brecknock—John C. Eshleman.
- Columbia bor.—John A. Slade, Adam Storch, Jos. Schlegelmilch, Peter Bitner, David Hinkle, Rosina Stoll, John Claus.
- East Cocalico—Samuel H. Miller, Samuel M. Brubaker.
- West Cocalico—Jacob B. Flickinger.
- Colerain—Abraham Roop.
- Clay—Henry Wealand, Daniel K. Widmyer.
- Drumore—Abraham H. Kauffman.
- East Earl—Samuel Yundt, Henry Deltrich, Lazarus Wolf.
- West Earl—Jacob Bear.
- Eden—George H. Miller, Jacob Fritz.
- Fulton—E. J. Pierce.
- East Hempfield—Jacob Immel, Christian H. Newcomer.
- West Hempfield—Catharine Bard, Joel Foreman.
- Little Britain—Francis W. Hickman.
- West Lampeter—H. Miller.
- East Lampeter—E. J. Buckwalter.
- Upper Leacock—Michael G. Dissinger.
- Lancaster twp.—Samuel W. Potts.
- Lancaster City—1st Ward, Henrietta Albert, Margaret McGrann, Edmund Franke, Silas Wright; 2d Ward, H. Copland; 3d Ward, Jacob Effinger, John Shoenberger; 6th Ward, Isaac Musser, Wm. Roehm, L. J. Lindemuth; 7th Ward, Christian Bender; 8th Ward, Albert Kohlhaus, Lucas Fritz; 9th Ward, Peter Lotz.
- Manheim bor.—John Bimesderfer.
- Mount Joy twp.—Abm. G. Balmer.
- Penn—Franklin G. Carpenter.
- Salisbury—John P. Swigart.
- Warwick—John Lowry, Ed. S. Sturgis.

### EATING HOUSE.

- Lancaster City—1st Ward, Wm. Fisher, Henrietta Albert, Henry Neimer; 2d Ward, Chas. W. Widmyer, Jno. A. Snyder; 3d Ward, P. C. Reinfried; 6th Ward, Peter Wirth; 7th Ward, Jacob Utzinger.
- Manheim bor.—D. B. Hackman, Peter Apple.
- Mount Joy bor.—H. L. Mooney, A. B. Culp.
- Marietta bor.—Fredrick Haas, Jacob N. Hanlen.
- East Donegal—Frederick Hester.
- Earl—Isaac Holl.
- Warwick—Reuben Diehm.

### LIQUOR STORE.

- Lancaster City—1st Ward, Horting & Sheaffer, Isaac Mishler; 2d Ward, J. Rohrer; 4th Ward, S. Clay Miller; 6th Ward, A. Z. Ringwalt; 7th Ward, Henry Brinkman.
- Columbia bor.—Frederick Smith, George Wehrly.
- Mount Joy bor.—Frederick Gantz.
- Manheim bor.—Fanny Leed.
- Marietta bor.—Simon Groh.
- Brecknock—J. F. Kerns.
- Earl—A. B. Sheaffer.
- Warwick—S. D. Shreiner.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since January, 5, 1878:

JOHN ALEXANDER, dec'd, late of Martie twp.; Samuel Alexander and John A. Alexander, administrators.

JACOB MYERS, dec'd, late of Eden twp.; Christian Myers, administrator.

A. J. BOWERS, dec'd, late of Earl twp.; H. S. Bowers, administrator.

The following Wills have been admitted to probate since January 5, 1878:

JACOB BUCH, late of Warwick twp.; Jacob A. Buch executor.

ANNA FEFF, late of West Hempfield twp.; Elizabeth Neff, executrix.

DAVID M. GEIST, late of Bart twp.; Dr. John Martin, executor.

HANNAH HEISE, late of Columbia bor.; B. F. Heise, executor.

### ORPHANS' COURT OFFICE.

Appraisements of \$300 allowed by law to widows of decedents, have been filed in the office of the clerk of the Orphans' Court for approval nisi at the City of Lancaster on the third Monday in January, A. D. 1878.

For Mary M. King, widow of Joshua King, late of Fulton twp.

For Catharine Stehman, widow of Christian Stehman, late of Warwick twp.

For Ellen Bowman, widow of David F. Bowman, late of Lancaster city.

For Eliza J. Irwin, widow of Dr. William Irwin, late of Sadsbury twp.

For Mary J. Reemsnyder, widow of Dr. Henry Reemsnyder, late of Ephrata twp.

For Eva Foehtinger, widow of Frederick Foehtinger, late of Marietta bor.

For Lizzie S. Wickel, widow of Israel R. Wickel, late of Earl twp.

For Mary A. Wolf, widow of John F. Wolf, late of West Hempfield twp.

For Susanna Hagy, widow of Henry Hagy, late of West Cocalico twp.

For Mary Schitz, widow of Henry Schitz, late of Elizabethtown bor.

For Anna Denlinger, widow of Martin J. Denlinger, late of West Lampeter twp.

For Deborah G. Pownall, widow of Levi Pownall, late of Sadsbury twp.

For Mary Stauffer, widow of Emanuel Stauffer, late of Manor twp.

For Eliza A. Souder, widow of Michael G. Souder, late of East Lampeter twp.

For Elizabeth Shaub, widow of Henry Shaub, late of West Lampeter twp.

For Margaret Holl, widow of Wendell Holl, late of Earl twp.

For Margaret Graver, widow of Jacob Graver, late of Warwick twp.

For Hannah Holtzinger, widow of Jacob Holtzinger, late of Hinkletown, Earl twp.

For Catharine Hunchberger, widow of David Hunchberger, late of Conoy twp.

### COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN JANUARY, (21st) 1878.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the 24th day of December, 1877. dec29 H. N. BRENEMAN, Sheriff.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE—No. 33 NORTH DUKE STREET,  
LANCASTER, PENNA.

## Divorce Notices.

MARGARET FRAZIER, } Alias Subpœna for Divorce  
by her next friend }  
Benj. Cutler, } December Term, 1877.  
vs. }  
E. K. FRAZIER. } No. 36.

To E. K. FRAZIER.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Margaret Frazier should not be divorced from the bonds of matrimony contracted with you.  
dec15 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

PHILIP HARMAN } Alias Subpœna for Divorce  
vs. } December Term, 1877.  
LOUISA HARMAN. } No. 41.

To LOUISA HARMAN.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Philip Harman should not be divorced from the bonds of matrimony contracted with you.  
dec15 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

WILLIAM B. MOORE } Alias Subpœna for Divorce  
vs. } December Term, 1877.  
MARIA MOORE. } No. 51.

To MARIA MOORE.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said William B. Moore should not be divorced from the bonds of matrimony contracted with you.  
dec15 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

HANNAH GROOM } Alias Subpœna for Divorce  
by her next friend }  
Sam'l Evans, } December Term, 1877.  
vs. }  
JOSEPH GROOM. } No. 27.

To JOSEPH GROOM.—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Hannah Groom should not be divorced from the bonds of matrimony contracted with you.  
dec15 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, December —, 1877.

## Auditors' Notices.

Assigned Estate of ANDREW J. KIMPER and EDWARD F. KIMPER, of Lancaster, Pa.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin O. Stirk, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, FEBRUARY 4th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. HUGH R. FULTON, Auditor.  
Jan12

**Assigned Estate of HENRY C. EBY and WIFE.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William S. Shirk, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, JANUARY 29th, 1878,** at 1½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 Jan 5 CHAS. I. LANDIS, Auditor.

**Estate of ELIZABETH TYSON, late of the borough of Columbia, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John S. Given, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, JANUARY 24, 1878,** at 10 o'clock a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.  
 dec 29 WALTER M. FRANKLIN, Auditor.

**Estate of MARIA MISHLER, late of the City of Lancaster, Pa., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Rev. Jacob Reinhold, executor, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 19th day of JANUARY, 1878,** at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 dec 29 J. W. DENLINGER, Auditor.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed **MONDAY, JANUARY 21st, 1878,** at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.  
 dec 29 WM. BRYSON, JR.

**Estate Notices.**

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litiz.  
 Jan 13\* JACOB A. BUCH, Executor.  
 D. G. ESHLEMAN, Att'y.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.  
 Jan 12 HARVEY S. BOWERS, Administrator.  
 PHILIP D. BAKER, Att'y.

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.  
 Jan 12\* CHRISTIAN MYERS, Administrator.

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.  
 Jan 5 SIMON F. ALBRIGHT, Executor.  
 S. H. RYNDOLDS, Att'y.

**Estate of BENJ. D. DANNER, late of Manheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.  
 Jan 5\* HENRY S. DANNER, Executor.  
 P. D. BAKER, Att'y.

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
 dec 29 ELIZABETH RUHL, Administratrix.  
 J. HAY BROWN, Att'y.

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 25th, 1877, assigned and transferred all their estate and affects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 JOHN H. ZELLER, Assignee.  
 J. HAY BROWN, Attorney. Residing in Mount Joy borough.  
 dec 29

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.  
 dec 22\* CATHERINE RINEER, Executrix.  
 B. F. ESHLEMAN, Att'y.

**Estate of JACOB HOLSINGER, late of Hinkletown, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.  
 E. BURKHOLDER, Administrator  
 dec 23

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 12, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 dec 22\* ABRAHAM MILLER, Assignee,  
 C. DENUES, Att'y. Residing in Millersville.

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.  
 M. BROSIUS, CATHARINE KRABER, Administratrix.  
 dec 15 Attorney.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
 MARGARET GRAVER, Warwick township;  
 ADDISON GRAVER, Manheim township;  
 HENRY B. ESHLEMAN, Manheim township,  
 dec 15 } Att'ys.  
 D. G. BAKER, }  
 O. P. BRICKER, } Administrators.

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 dec 15 SAMUEL WHITSON, Assignee,  
 M. BROSIUS, Att'y. Atglen, Chester Co., Pa.

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 3, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 dec 15\* LEVI BRUBAKER, Assignee,  
 A. J. EBERLY, Att'y. Millway P. O., Lan. Co.

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
 dec 3\* MARY M. KING, Administratrix.  
 J. W. JOHNSON, Att'y.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.  
 MARTIN G. LANDIS, Administrator,  
 dec 8 East Lampeter twp.

**Estate of MARTIN GROFF, Sr., late of Manheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
 SAMUEL GROFF, ABRAHAM S. GROFF, Executors.  
 PHILIP D. BAKER, Att'y.  
 dec 8

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.  
 dec 1\* W. C. FREW, Administrator.  
 B. F. ESHLEMAN, Att'y.

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
 nov 17 KIRK BROWN, Administrator.  
 J. HAY BROWN, Atty.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned.  
 GEO. BRUBAKER, Assignee.  
 H. C. BRUBAKER, Att'y. [dec 1]

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, JANUARY 19, 1878.

No. 34.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.		ARRIVE HARRISBURG.	
	a. m.	p. m.	a. m.	p. m.
Pacific Express,*	2:40		4:05	
Way Passenger†	4:50		7:50	
Niagara Express,...	9:35		10:40	
Hanover Accom.,...	9:40		COL. 10.10	a. m.
Mail Train via Mt. Joy*	11:20		1:00	p. m.
No. 2, via Columbia,...	11:20		1:25	p. m.
Fast Line,*	2:10		3:25	p. m.
Frederick Accom.,...	2:15		COL. 2:45	p. m.
Harrisburg Accom.,...	6:00		8:10	p. m.
Columbia Accom.,...	7:20		COL. 8:00	p. m.
Harrisburg Express,...	7:25		8:40	p. m.
Pittsburg Express,...	9:25		10:50	p. m.
Cincinnati Express,*	11:30		12:45	a. m.

  

EASTWARD.	LEAVE LANCASTER.		ARRIVE PHILADELPHIA.	
	a. m.	p. m.	a. m.	p. m.
Atlantic Express,*	12:30		3:00	
Philadelphia Express,†	4:10		7:00	
Harrisburg Express,...	7:35		10:00	
Columbia Accom.,...	9:25		12:30	
Pacific Express,*	1:20		3:45	
Sunday Mail,...	2:00		5:00	
Johnstown Express,...	3:05		6:00	
Day Express,*	5:15		7:20	
Harrisburg Accom.,...	5:50		9:00	

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.—Columbia and Port Deposit Branch.

GOING SOUTH.			
	a. m.	p. m.	
Leave Columbia, .....	10:20		6:45
		p. m.	
Arrive at Port Deposit, .....		1:20	8:45

  

GOING NORTH.			
	a. m.	p. m.	
Leave Port Deposit, .....	6:30		2:00
Arrive at Columbia, .....	8:30		5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Quarryville, .....	6:50	8:00	2:30
Lancaster—West King Street, ..	8:00	9:30	3:35
Lancaster—Upper Depot, .....	8:10	9:40	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot, .....	9:46	4:30	8:10
Lancaster—West King Street, ..	9:55	4:40	8:20
Quarryville, (arrive) .....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street, ..	8:00		3:35
Lancaster—Upper Depot, .....	8:15	12:55	3:45
Lancaster Junction, .....	8:35	1:35	4:11
Reading, (arrive) .....	10:10	3:20	5:50

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Reading, .....	7:35	11:40	6:05
		p. m.	
Lancaster Junction, .....	9:21	1:20	7:45
Lancaster—Upper Depot, .....	9:46	2:00	8:10
Lancaster—West King Street, ..	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>	
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874	
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858	
Noah H. Swayne, of Ohio.	1862	
Samuel F. Miller, of Iowa,	1862	
Stephen J. Field, of California,	1863	
William Strong, of Pennsylvania,	1870	
Jos. P. Bradley, of New Jersey,	1870	
Ward Hunt, of New York,	1872	
<i>Attorney General</i> —Charles E. Devens.		

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharwood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District—J. B. Sweltzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Greff.  
 County Surveyor—A. W. Snader.  
*County Auditors* N. N. Hensel, A. Konigmacher and H. S. Kerna.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans.  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*City Engineer*—Francis S. Burrowes.  
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THE LANCASTER BAR

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COURT CALENDAR--1878.

JANUARY.

- 21. Last day for issuing Executions to January Term.
- 26. Calling Judgment Docket.

FEBRUARY.

- 8. Last day for issuing Writs to February Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 5. Argument for Rules of Affidavit of Defense.
- 5. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JAN. 19, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

JOSEPH HOPKINS *against* JAMES DUFFY.

The preference of the United States as a creditor, under the revenue laws, begins with the insolvency of the debtor and attaches to all the property vested in him at the time.

An insolvency, to create this preference, must be a legal insolvency. Such is a discharge under the insolvent laws.

The debtor's property, if personal, is divested by a *fi. fa.* so as not to be liable to the preference of the United States accruing thereafter; if real, it is divested by a levy and sale by the sheriff.

The sheriff, in obedience to a rule upon him, paid into court in this case the sum of \$434.16, the proceeds of a sale of the defendant's real estate under a *venditioni exponas* issued by the plaintiff. The suit was brought in the court of common pleas to April term, 1816, and was referred under the act of 1810 regarding arbitrations. On the 25th March, 1817, the arbitrators reported in favor of the plaintiff for \$300. The report being filed, the defendant, on the 7th April, 1817, appealed. The cause was afterwards transferred to the district court, when it was tried and a verdict found, on the 3d April, 1827, for the plaintiff in the sum of \$480.50. The same day the money was paid in by the sheriff; the court was moved to order the same to be paid over to Joseph Hopkins, the plaintiff, towards satisfaction of his judgment in the above suit. This motion was opposed on behalf of the United States, and a rule to show cause being granted, the same was afterward argued by Mr. Hopkins for the plaintiff, and Mr. Champneys for the United States.

For the United States, the money, or a part of it was claimed on two grounds: 1. Because Joseph Hopkins' judgment was satisfied. It was the first judgment against James Duffy; and in a suit by John Brannan vs. James Duffy, to June term, 1823, a judgment was rendered on the 8th September, 1823, for the plaintiff for \$400, with interest from January term, 1822, and the defendant's real estate being seized and taken in execution under this judgment, was sold in part for \$725. After which, to December term, 1825, an *alias pluries venditioni exponas* was issued and returned *unsold*. A second *pluries venditioni exponas* was issued to December term, 1826, and not returned, but a credit was given on this writ for \$440. Now, what became of the surplus of the first sale over and above the amount thus credited? May it not be inferred that it was applied to Joseph Hopkins' judgment—the first lien? 2. The United

States brought suit to August term, 1817, against the defendant, James Duffy, and obtained judgment therein on the 20th September, 1822, for \$126.79, with interest from the 8th January, 1818. James Duffy is insolvent. On the 15th March, 1830, he was discharged under the insolvent laws by an order of the court of common pleas of Lancaster county. His petition was presented in January, 1830. In all cases of insolvency the United States are entitled to priority of satisfaction. This is declared by several acts of congress: Act 1790, ch. 35, sect. 45; Act 1797, ch. 74, sect. 5; Act 1799, ch. 128, sect. 65; 2 Wheat. 400, *Thalussion vs. Smith*, 2 Cranch 358, *United States vs. Fisher and others*; 3 Cranch 91, *United States vs. Hooe et al.*; 8 Cranch 434, *Prince vs. Bartlett*; 3 Johns. 369; 2 Sergt. & R. 326, *Downing vs. Kintzing and others*, assignees.

Mr. Hopkins: With respect to the first of the objections to our rule. I will assume that after our judgment, the sheriff had sold property to an extent sufficient to pay it, and we did not receive the money, still we are not precluded. If we did not choose to receive the proceeds our judgment remained a lien: 1 Rawle 295, *Bank of Penn'a use, &c. vs. Winger*. When another creditor sells a part of the real property how could Joseph Hopkins be affected without notice? What evidence is there that he had any notice. Until the appeal was decided, which was not until the 3d of April, 1827, he had no possible right to demand the money. This objection then is answered: 1. By saying he had no connection with the sale under Brannan's execution—of which he had no notice. 2. He had no authority to interfere with the disposition of the proceeds. 3. Even if he had a right to interfere, he had also a choice whether to have the money brought into court for distribution or not.

As to the preference claimed for the United States, it is unfounded in this case. Our judgment was obtained in 1817. The *feri facias* was to September Term, 1827. The property was levied upon and condemned. Was not the defendant then a perfectly solvent man? There is no evidence to the contrary. He was not insolvent until 1830. The principle of the United States cases is that there must be an open known act of insolvency. Can an insolvency which occurred in 1830, retrospect for the benefit of this claimant to 1827. Suppose the levy in the case of the United States had been upon this very property, what difference would that make? Execution is no lien on real estate: 2 Sergt. & R. 326; 3 Johns. R. 369.

Mr. Champneys in reply: With regard to the first position, concerning the presumed satisfaction of this judgment by the sales under younger judgments, it is the practice of the sheriff to retain where there is an award appealed from. He sells free of encumbrances and must appropriate the proceeds according to priority of liens: 1 Penna. R. 44, *McGrew vs. McLenegan*; 14 Sergt. & R., *Commonwealth vs. Alexander and others*. There are other cases which go to establish the point, that after a sale by the sheriff the lien is di-

vested. In relation to the priority or preference of the United States debt, it seems to be perfectly sustained by the terms of the 5th section of the act of the 3d of March, 1797, entitled "an act to provide more effectually for the settlement of accounts between the United States and revenue officers": 2 Wheaton 399, 401.

HAYES, J. The priority of the United States begins with the time of the debtor's insolvency, and attaches to all the property vested in him at that time. This property constitutes the fund out of which they are to be first satisfied in preference to all other creditors, whatever may be the mode or means of their security; provided the debtor is not thereby divested of the property. A *bona fide* conveyance and mortgage to secure a debt, and a seizure of his property under a *fi. fa.*, are each held to divest him of his property, so that it is not liable to the right of preference claimed by the United States. In the case under consideration James Duffy became insolvent on the 15th March, 1830, being discharged on that day, by the court of common pleas, under the insolvent laws of this Commonwealth. His petition for the benefit of those laws was presented in January, 1830.

It is settled by the decisions of the Supreme Court of the United States, that by insolvency is to be understood a legal insolvency; and in this case we have, indeed, no evidence of any other. The legal insolvency of James Duffy occurred in March, 1830; or, if it should be considered to have relation to his petition, in January preceeding. Then it was the right of preference accrued to the United States. In whom was the fund, to which they lay claim, vested at that time? Was it in James Duffy? This is the question. What is this fund? It is the proceeds of the real estate of the defendant. The *fi. fa.* under which it was sold was issued to September term, 1827, and it was actually sold by virtue of a *venditioni exponas*, returnable to June term, 1829.

It is admitted that if this money were the proceeds of a sale of personal property, the *fi. fa.* would have divested the defendant so as to have precluded the priority of the United States. But it is contended that a *fi. fa.* has not the same operation upon the real estate, because it does not by the levy divest the possession of the defendant.

It is unnecessary to decide upon the validity of this distinction in the present case since no one will deny that the sale by the sheriff completely divested him both of possession and title to the real estate; and that sale took place long before the defendant's insolvency. When the right of preference accrued to the United States, the fund in question was not the property—certainly was not in the possession of James Duffy. In the hands of the sheriff, it was distributable among his creditors according to the priority of their liens, and being less than the judgment of Joseph Hopkins, which is the first lien, must be paid to him. It is only necessary to remark with regard to the first objection—the presumption of satisfaction—that it is

fully repelled in this case, by the suspension of the award in consequence of the appeal and writ of error, by the circumstance that the other liens and sales were partial, by the appropriation of the proceeds to other judgments, and by the schedule annexed to the defendant's petition, in which he states this judgment to be an existing debt.

Let the rule in behalf of the plaintiff be made absolute.

#### Orphans' Court of Lancaster County.

##### ESTATE OF SILAS OMOHUNDRO, Dec'd.

Our courts will not order money to be paid to a foreign executor or administrator for the payment of debts until he produces satisfactory proof that he has properly applied the funds already received by him.

Exceptions to report of auditor.

*D. G. Eshleman* for exceptants.

*W. W. Brown* contra.

Opinion delivered January 5, 1878, by LIVINGSTON, P. J.

At the time of his decease Silas Omohundro left a will in writing, dated March 16th, A. D. 1864, which, after his decease, was proved at the city of Richmond, Va., in the circuit court, on July 4th, 1864; and afterwards, on November 4th, 1865, admitted to probate in the register's office at Lancaster, Pennsylvania.

On February 22d, 1866, Wm. Carpenter was appointed administrator with the will annexed on the estate of said decedent by the register of wills of Lancaster county, Pa.

On May 18, 1866, William Carpenter filed an administration account on said estate in the register's office at Lancaster, which was, on June 18, 1866, confirmed *nisi* by the orphans' court of said county, in which the accountant charges himself with having received the sum of \$7,479.87, of which \$6,525.00 was proceeds of sales of real estate in the city of Lancaster, the balance rents and personalty; and, after deducting his credits, shows a balance in his hands of \$6,549.76, of which balance accountant states, on his account, he had, at the time of filing the same, paid to R. Cooper, executor, in Virginia, \$300.00, and to Corinne Omohundro (widow), on account of her share, \$800.00—in all \$1,100.

On June 20, 1866, on motion of Mr. Brown, Geo. M. Kline, esq., was appointed auditor to distribute said balance to and among these legally entitled to the same.

The learned auditor reports that Corinne Omohundro was not the wife of the testator, and that the estate was liable to collateral inheritance tax. He ascertains the balance, after deducting expenses of audit, to be \$6,447.26, from which he deducts collateral tax, \$322.36—leaving \$6,124.90, of which he directs the accountant, first deducting therefrom the *United States legacy duty, one-sixth*, (\$6,020.81) to Corinne Omohundro, and five-sixths (\$5,104.09) to Richard Cooper, executor, for the use set forth in testator's will, as will fully appear on reference to the report, confirmed *nisi* September 22, 1866, and to which no exceptions appear to have been filed.

On February 13, 1869, Wm. Carpenter filed his final account on the estate of said decedent, in the register's office at Lancaster, in which he charges himself with \$26,114 which includes the proceeds of sale of decedent's real estate in Philadelphia, Penna., (\$26,000) and in which he takes credit for two payments to R. Cooper, executor—one of \$390, the other \$2,500—and shows a balance in his hands in favor of the estate of \$21,592.18, as will appear by said account, confirmed by the orphan's court of Lancaster county, March 15, 1869.

On March 16, 1869, H. B. Swarr, esq., was appointed auditor to distribute this balance according to the will of the decedent.

The learned auditor, from the evidence produced before him, held that decedent, Silas Omohundro, had been married to Corinne Omohundro, that she was his widow, and that his estate was not liable to collateral inheritance tax; and, after deducting the costs of audit \$478, he awards of the remaining \$21,114.18, to Corinne Omohundro, as widow, one-sixth (\$3,519.03); from the remainder, \$17,595.19, he deducts as United States legacy tax \$176.00; and of the balance \$17,419.13, he awards to Alice Morton Street one-fifth (\$3,483.83), and to Richard Cooper, executor, for the other children of decedent, four-fifths, \$13,935.32, as will appear by his report, confirmed *nisi* by the orphans' court of Lancaster county, June 21, 1869.

To this report exceptions were filed on behalf of the Commonwealth, claiming collateral inheritance tax, and by counsel for Alice Morton Street, a daughter of decedent, and on November 14, 1869, the exceptions were overruled by the court below, and the report of the auditor confirmed.

An appeal was then taken to the Supreme Court of Pennsylvania. The cause was heard in said court at May term, 1870. The Supreme Court (66 P. S. R. page 113) reversing the decision of the auditor and of the court below, decided that there was no marriage, that Corinne was not the widow of the decedent, and that the Commonwealth was entitled to collateral inheritance tax.

On September 22, 1870, Richard Cooper, the executor, presented a petition to this court setting forth: the Commonwealth is only entitled to collateral tax on any sum left after payment of the debts of the decedent; that debts had been presented and obtained judgments upon them against the estate to the amount of \$17,800, exclusive of interest, and that he believed that the whole remaining estate of the decedent would be required for the payment of debts and expenses, and asked the court by appointment of an auditor, or otherwise, to ascertain what portion of the balance in the hands of Wm. Carpenter, the administrator, will be required for the payment of debts of the decedent and expenses, so that collateral inheritance tax may be collected on the balance remaining only. And on the same day the court appointed H. B. Swarr, auditor, as prayed for.

On June 4th, 1870, a rule was granted to show cause why a *fi. fa.* should not issue in favor of Richard Cooper, executor, against

Wm. Carpenter, administrator, for \$13,935.32, to which rule Mr. Carpenter, on June 20, 1870, filed an answer, and on June 23, 1870, the orphans' court made a decree directing Wm. Carpenter to pay forthwith to Richard Cooper \$11,000, and in default thereof execution to issue for said sum of \$11,000.

On December 19, 1871, a rule was granted by the orphans' court here, to show cause why execution should not issue against William Carpenter, administrator, for the amount amount awarded to Alice Morton Street (less collateral tax) with interest. To this rule Mr. Carpenter filed an answer on January 2, 1872, and no execution was awarded or issued.

The matter continuing in the situation and undisposed of Wm. Carpenter, administrator, in consequence of ill health, presented a petition to this court, on April 26, 1875, setting forth that the whole balance of his first account had been paid out as ordered by this court, and releases taken therefor; that of the balance of his last account he paid, as directed by the court, to Richard Cooper, executor, \$11,000, and after paying costs and expenses, and depositing (being compelled so to do) the sum of \$2,860 in the Penna. Company, for insurance on lives, and granting annuities for the purpose of securing the purchasers of decedent's real estate against the claims of the United States and of this State for United States legacy tax and collateral inheritance tax, to be paid on call, on the joint order of said Wm. Carpenter, Chas. H. Masson and W. F. Snyder, (which sum, with accrued interest at the time of presenting the petition, amounted to \$3,426.93), there remained in his hands \$8,202.46. He therefore asked leave to pay into court said \$8,202.46 and the certificate of deposit for the \$3,426.93, and upon his so doing to be discharged from further duties as administrator of the said estate. And on the same day, upon due consideration, this court ordered, adjudged and decreed that William Carpenter, upon endorsing over unto Richard Cooper, executor of the will of Silas Omohundro, deceased, the certificate of deposit in the Penna. Company for insurance on lives and granting annuities for the sum of \$2,860, with its accrued interest, and paying into the orphans' court here the sum of \$8,202.46 in cash, be discharged as administrator with the will annexed of the estate of Silas Omohundro, late of the city of Richmond, in the State of Virginia, deceased.

The certificate was endorsed over to Mr. Cooper, as we are informed by his counsel, and the \$8,202.46 paid into court, and Mr. Carpenter discharged. The money paid into court was, by an order of court, deposited in bank, at interest, on April 26, 1875, where it remained until after letters of administration *d. b. n. c. t. a.* on said estate were granted to B. F. Eshleman, esq., on December 13, 1875. On April 22, 1876, B. F. Eshleman, as administrator, by order of court, and in his capacity as administrator, drew said sum, with the interest accrued thereon, out of bank and deposited it in a bank of his own selection, and in his own name as administrator. On Febru-

ary 16, 1877, B. F. Eshleman, esq., as administrator, filed his account, which has since been audited and confirmed, and the balance in hand found to be, as per opinion of his Honor, Judge PATTERSON, \$8,108.84.

This is, therefore, the only fund now within the control of this court, and we are now asked to say how much of it, if any, should, on the evidence presented, be directed by the court to be paid to Richard Copoer, executor, to be by him applied to the payment of debts of Silas Omohundro, deceased, in the State of Virginia.

The learned auditor, appointed to ascertain and report the amount necessary, upon the examination he has made, reports to the court that, in his judgment, the whole of said sum or amount will be needed, and should be paid over to the executor for the purpose of paying the debts of the testator.

To this report numerous exceptions have been filed.

The 1st, 5th, 6th and 10th exceptions are overruled.

The claim presented by counsel for the executor, and embraced in the 7th exception, and allowed by the auditor, for \$600, having, by writing filed December 20, 1877, and attached to the report of the auditor, been wholly withdrawn, need not now be considered.

The auditor in this case having been appointed more than seven years since, and the hearing of the case fully before him having been postponed and continued from time to time, by reason of matters occurring in the State of Virginia over which neither he nor this court have properly had control, his progress has been impeded and delayed without fault on his part, so that when we consider the length of time he has been engaged, the testimony and documents he has been obliged to investigate and examine before making his report, we do not think his fee is unreasonable and exorbitant, and therefore overrule and dismiss the 8th exception. The fee of the auditor, \$250.00, and expenses of audit, \$13.00—in all \$263.00, being deducted from the amount in hands of the administrator, \$8,108.84, leaves remaining \$7,845.84.

The 2nd exception is sustained. The auditor should not have reduced the balance, admitted to be in the hands of the executor, by deducting the sums named in the exception upon the evidence presented.

The 3d exception is sustained so far as part of the fund in hand is concerned. The learned auditor should not have, upon the proofs before him, reported that the whole fund should be paid to the executor, and he should have instituted a more strict inquiry and required more satisfactory proof of the application of all the moneys in Virginia to the payment of the debts before so reporting.

The 4th exception is sustained.

With reference to the 9th exception, we think the auditor erred in awarding the whole fund in Pennsylvania, to Richard Cooper, executor, for the payment of debts in Virginia, because the proofs presented to him do not show that the whole sum is necessary for such purpose.

With reference to the 11th exception, we say that the learned auditor had no authority to award money to any one; he was not appointed to distribute, but simply to report how much of the moneys in hand, if any, should be paid to the executor in Virginia, to pay debts of the decedent there. The same may be said with reference to the first two exceptions filed by counsel for the Commonwealth. Neither the learned auditor nor the court have authority, under the present proceeding, to make such awards or orders.

The 3d exception filed by counsel for the Commonwealth must be overruled, as the Commonwealth is not entitled to be paid counsel fees until the collection is made and money ordered to be paid.

This disposes of all the exceptions filed. And now we come to consider how much of said fund, if any, should be paid to the executor for the purpose stated.

We have carefully examined the testimony presented to and reported by the learned auditor. It is incomplete and quite unsatisfactory, and falls far short of convincing the court that the executor in Virginia has not already sufficient, or very nearly sufficient; funds in hands to pay the debts remaining unsatisfied, if his accounts were properly and legally examined and adjusted, and his settlement of the estate in Virginia legally closed. Of course we have no control over the accounts of the executor in the State of Virginia. The estate of the decedent in Virginia, and coming to the hands of the executor, was, of course, first liable for the payment of the debts, and should have been applied to that purpose, and before we order money to be paid to the executor for payment of debts the executor should produce satisfactory proof that he has properly applied the funds already received. He has produced no such proofs to the auditor nor to this court. His accounts, as presented, are incomplete and contain many credits which we are satisfied must be disallowed on final settlement, and we are only furnished with a portion of his receipts and payments in Virginia. Of course we do not wish to be understood to say that he should sell the lots in Richmond, bequeathed to Corinne, before applying for the fund here, but he should have applied all else belonging to the estate to the payment of the debts before doing so.

As shown by the papers before us, the executor has received in cash from the administrator in Pennsylvania \$2,500 and 10,450—in all \$12,950, and has paid debts and expenses, counsel fees and commission, \$6,800 or thereabouts only, and has, notwithstanding the indebtedness of the estate, actually paid or delivered of the moneys of the estate to Corinne Omohundro and her children about \$6,450, and taken credit therefor; and, at the time of furnishing his last statements, he admits having in his hands \$17,645.52, of which he continues to pay the interest to Corinne Davidson—the interest on the debts being allowed to accumulate.

Taking the above balance of \$17,645.52, and adding or surcharging the executor with the sum paid Corinne Davidson and decedent's children in Virginia, say \$6,450, we have \$24,095.52; to this add the amount of the certificate of deposit and accrued interest transferred to the executor, \$3,426.93, and we have \$27,522.45, without directing any of the present fund to be paid to the executor, in addition to this. In his testimony, taken in 1871, he states that in addition to the houses and lots in Richmond, bequeathed to Corinne, there remained then undisposed of fifty-four and a half acres of land in Henrico county, Va., which was assessed for purposes of taxation at \$11,800. None of the accounts presented show that the executor has sold or charged himself with the purchase money of this real estate.

As there is one of the heirs and legatees of Silas Omohundro—Alice Morton Street—a resident of this Commonwealth, who, by her counsel, is now claiming the amount heretofore awarded her in the distribution of the fund now before us; and as the Commonwealth claims to be paid collateral inheritance tax, we shall, from said fund, \$7,845.84, deduct the amount heretofore awarded Alice Morton Street, \$3,483.83; and to secure the claim of the Commonwealth, if entitled to recover, \$1,500.00; which leaves remaining \$2,862.01. This sum we direct to be paid by the administrator, on receipt of a proper voucher, to Richard Cooper, executor of the will of Silas Omohundro, deceased, for the payment of debts, or the purposes set forth in and by the will of the decedent.

#### COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN JANUARY, (21st) 1878.

In pursuance of which precept *public notice is hereby given* to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the 24th day of December, 1877.  
dec 29 H. N. BRENEMAN, Sheriff.

#### VICK'S

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E. H. BURKHOLDER,

JUSTICE OF THE PEACE,  
FARMERSVILLE, LAN. CO., PA.

SPECIAL ATTENTION PAID TO COLLECTIONS.



COMMON PLEAS TRIAL LIST--Second Week.

Commencing Monday, February 4th, 1878.

<i>Rosenmiller.</i> 1	H. AND J. MYERS vs. SAMUEL EVANS, adm'or of HENRY LEBER, dec'd.	Mar. Term, 1873. No. 50. Sum's case. Plea, non assumpsit.
<i>Price, Given.</i>		
<i>Reynolds.</i> 2	HENRY F. WITMER vs. ODELL & CO.	April Term, 1871. No. 74. Sum's in case. Plea, payment, pay't with leave.
<i>J. Hay Brown.</i>		
<i>Nauman, P. D.</i> <i>Baker, Amwake.</i> 3	MICHAEL BEILER vs. STEHRMAN, CLARKSON & CO.	Aug. Term, 1873. No. 4. Sum's case. Plea, non assumpsit.
<i>Frantz, Reynolds,</i>		
<i>A. J. Kauffman,</i> <i>B. F. Eshleman.</i> 4	DANIEL YINGER vs. PAUL YINGER.	April Term, 1874. No. 42. Sum's in account render. Plea, non assumpsit.
<i>North.</i> 5	CRESSWELL, SLACK & GEMMILL vs. AARON SHARTZER.	May Term, 1874. No. 56. Sum's case. Plea, non assumpsit, pay- ment, etc.
<i>A. J. Kauffman.</i>		
<i>Same.</i> 6	BLIMYER & SON vs. GEO. H. ARMS.	April Term, 1875. No. 44. Sum's case. Plea, non assumpsit.
<i>E. D. North.</i>		
<i>H. C. Brubaker.</i> 7	HENRY S. STAUFFER vs. M. H. AND JNO. H. MOORE, Committee of GEO. H. MOORE.	June Term, 1875. No. 114. Sum's in assumpsit. Plea, non assumpsit.
<i>Franklin, North.</i>		
<i>Eberly.</i> 8	JOHN W. MISH vs. URIAH ECKERT.	Aug. Term, 1875. No. 33. Sum's in assumpsit. Plea, pay't, payment with leave, etc.
<i>P. D. Baker.</i>		
<i>Same.</i> 9	SAME PLAINTIFF vs. SAMUEL BITZER.	Aug. Term, 1875. No. 34. Sum's in assumpsit. Plea, pay't, payment with leave, etc.
<i>Same.</i>		
<i>Price.</i> 10	ALBERT FRAIM vs. DR. AUG. W. CAIN.	Dec. Term, 1875. No. 72. Sum's case. Plea, not guilty.
<i>J. Hay Brown.</i>		
<i>North.</i> 11	PHIL'A & READING COAL AND IRON CO. vs. C. S. KAUFFMAN.	Dec. Term, 1875. No. 122. Sum's case. Plea, non assumpsit.
<i>A. J. Kauffman.</i>		
<i>Same.</i> 12	SAME PLAINTIFF vs. SAME DEFENDANT.	Dec. Term, 1875. No. 123. Sum's case. Plea, non assumpsit.
<i>Same.</i>		
<i>Amwake.</i> 13	W. DRESSEL & CO. vs. ISAAC KAUFFMAN.	Feb'y Term, 1876. No. 4. Replevin. Plea, non cepit property and lien.
<i>North.</i>		
<i>Eshleman, Hensel.</i> 14	FIRST NATIONAL BANK OF STRASBURG vs. DAVID GRAHAM.	Feb'y Term, 1876. No. 60. Sum's in assumpsit. Plea, pay't, payment with leave.
<i>Reynolds.</i>		

<i>Price.</i> 15	AUG. C. RHOADS vs. WM. BALDWIN, contractor, etc.	Feb'y Term, 1876. No. 119. Sum's case. Plea, not guilty.
<i>North.</i>		
<i>Shenk, Leaman,</i> <i>Good.</i> 16	ADOLPH N. BASCH vs. ESHLEMAN & RATHVON.	April Term, 1876. No. 29. Issue to try by a jury, etc. Plea filed.
<i>Yundt, B. F.</i> <i>Eshleman.</i>		
<i>Price.</i> 17	ISABELLA SHARP vs. HENRY GEILFUS.	May Term, 1876. No. 50. Issue to try by a jury, etc. Plea filed.
<i>Eshleman.</i>		
<i>Davis.</i> 18	J. W. MATTERN vs. MARY AND JOHN NOEL et al.	May Term, 1876. No. 102. Sum's in ejectment. Plea, not guilty.
<i>Wilson, W. S.</i> <i>Amweg.</i>		
<i>McMullen.</i> 19	DAVID HERSHEY vs. LEVI B. NEFF.	June Term, 1876. No. 107. App'l by def't from justice Plea, payment.
<i>Amwake.</i>		
<i>Reynolds, P. D.</i> <i>Baker,</i> 20	URIAH BITZER vs. THE CITY OF LANCASTER.	Aug. Term, 1876. No. 117. Sum's case. Plea, not guilty.
<i>Agnew.</i>		
<i>Eby, Wilson.</i> 21	FRED. STONER, Sa. (dec'd) executors vs. REUBEN NEFF.	Aug. Term, 1876. No. 141. Scire facias on judgment. Plea, pay't, payment with leave.
<i>Amwake.</i>		
<i>Reynolds.</i> 22	ISAAC S. McCAMMANT vs. JOHN B. KURTZ.	Sept. Term, 1876. No. 25. Sum's case. Plea, non assumpsit, etc.
<i>R. J. Evans.</i>		
<i>Reynolds.</i> 23	LEVI L. BUSH vs. THE LAN. & READING N. G. R. R. CO.	Sept. Term, 1876. No. 54. Issue as in trespass quare clausum fregit. Plea not guilty.
<i>North.</i>		
<i>North.</i> 24	GACKEL & CO. vs. FREDERICK BLETZ.	Sept. Term, 1876. No. 77. Sum's case. Plea, non assumpsit, pay't.
<i>Reynolds.</i>		
<i>Given.</i> 25	HANOVER J. AND SUSQUE- HANNA R. R. CO. vs. MUSSEY & MILLER.	Sept. Term, 1876. No. 81. App'l by def't from justice, etc. Plea, non assumpsit, etc.
<i>North.</i>		
<i>Reinohl.</i> 26	PEARSOL & GEIST vs. A. K. SPURRIER, def't, and C. BARR's (deceased) executors garnishees.	Oct. Term, 1876. No. 7. Attachment ad lev. deb., etc. Garn'ees plead nulla bona.
<i>P. D. Baker.</i>		
<i>Eshleman.</i> 27	JOHN WENGER vs. FARMERS MUT. INS. CO.	Oct. Term, 1876. No. 11. Sum's in covenant. Plea, non est factum, cov- enants performed, etc.
<i>Reynolds.</i>		
<i>Given.</i> 28	HANOVER J. AND SUSQUE- HANNA R. R. CO. vs. DANIEL ENGEL.	Oct. Term, 1876. No. 52. App'l by def't from justice, etc. Plea, non assumpsit.
<i>North.</i>		
<i>Same.</i> 29	SAME PLAINTIFF vs. SAMUEL ENGLE.	Oct. Term, 1876. No. 54. App'l by def't from justice Plea, non assumpsit.
<i>Same.</i>		
<i>Martin.</i> 30	E. H. MYERS & CO. vs. RABER & SON.	Nov. Term, 1876. No. 35. App'l by def't from justice Plea, non assumpsit.
<i>H. C. Brubaker.</i>		

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JAN. 19, 1878.

### TRIAL LIST.

JANUARY COURT OF QUARTER SESSIONS, 1878.

MONDAY, JANUARY 21st.

1. Alice Horner, assault and battery. Aug. 230.
2. Henry Jackson, perjury. Aug. 37.
3. Wm. Keyes, Simon Null, George Null, larceny. Aug. 7, 9, 10.
4. Patrick Nolen, assault and battery. Nov. 59.
5. Israel Hanlen and George W. Hildebrand, violating election laws. Nov. 129, 130, 131.
6. John Buzzard and Martin Buzzard, burglary. Jan. 16, 17.
7. David Homsher and Jacob Taylor, burglary. Jan. 14, 15.
8. George Richardson, forgery. Jan. 23, 24.
9. John Dohn, carrying concealed deadly weapons. Jan. 22.
10. Phillip Haas, Bryson Painter et al., riot. Jan. 32.
11. Bryson Painter, assault and battery. Jan. 51.
12. Benjamin Owens, assault and battery. Jan. 36.
13. John Drachbar, assault and battery. Jan. 39.
14. Benjamin Barnes, inciting to riot. Jan. 43.
15. Edward Williams, larceny. Jan. 45.
16. Charles Taylor, assault and battery. Jan. 57.
17. Charles Taylor, carrying concealed deadly weapons. Jan. 58.
- Henry J. Kegel, larceny. Jan. 61.
- Henry Miller, alias Shaeffer, horse stealing. Jan. 62.

TUESDAY, JANUARY 22d.

18. Winfield S. Geiter, accessory after larceny. Aug. 30.
19. Jacob Witmer, assault and battery. Aug. 131.
20. Edward Shultz, assault and battery. Aug. 132.
21. Abraham Sherbahn, larceny, etc. Nov. 39, 40.
22. Margaret Dunn, murder. Nov. 61.
23. Amos Witmer, assault and battery. Jan. 21.
24. Aaron Wisler, embezzlement. Jan. 18.
25. Adam Kuhlman, assault. Jan. 49.
26. Benjamin Kuhlman, assault and battery. Jan. 50.
27. Philip Rhoads, felon, assault and battery. Jan. 26.
28. John H. Shroad, felonious assault and battery. Jan. 27.
29. Wm. Clark, disturbing religious meeting. Jan. 28.
30. Henry Nixdorf, assault and battery. Jan. 25.
31. Hannah Haines, assault and battery. Jan. 31.
32. Daniel Helsey, fornication and bastardy. Jan. 29.
33. E. B. Lindslee, larceny as bailee. Jan. 46.
34. Frank Archey, assault and battery. Jan. 52.
35. Lizzie Constine, perjury. Jan. 53.
36. Em'l Daveler, fornication. Jan. 54.
37. James Gallagher, larceny. Jan. 59.

WEDNESDAY, JANUARY 23d.

38. Jacob F. Sheaffer, selling liquor on Sundays and to minors. Nov. 56, 58.
39. Cresani Saur, assault and battery. Nov. 62.
40. John M. Reidlinger, entering store, etc. Aug. 215.
41. Christian Sangrey, fornication and bastardy. Aug. 69.
42. John Hogentogler, fornication and bastardy. Aug. 159.
43. Mark Pogson, fornication and bastardy. Nov. 27.
44. Harrison Enck, fornication and bastardy. Nov. 140.

45. Harrison Elchelberger, fornication and bastardy. Jan. 11.
  46. Levi Hart, larceny. Jan. 1.
  47. Michael Kover, adultery. Jan. 2.
  48. David Flora, Stephen J. Walter, larceny. Jan. 7, 8.
  49. Winfield S. McCreary, adultery. Jan. 5.
  50. Ross McCleneghan, larceny. Jan. 9.
  51. Abraham J. Snyder, murder. Jan. 3.
- THURSDAY, JANUARY 24th.
52. Samuel Elliott, assault and battery. Nov. 97.
  53. Abraham B. Goed, false pretense, &c. April 73, 74, 75.
  54. Miller M. Fraim, aiding strike, inciting to riot, &c. Aug. 148, 149.
  55. James M. Clark, attempt to bribe. Nov. 135.
- FRIDAY, JANUARY 25th.
56. Walter McNally, libel. Aug. 139.
  57. Esalas Lockhuff, larceny. Aug. 156.
  58. Frederick Grotwald, nuisance. Nov. 126.
  59. The City of Lancaster, nuisance. Nov. 144.
- SATURDAY, JANUARY 26th.
60. John Troup, surety of the peace. Jan. 4.
  61. Louisa Kolp, surety of the peace. Nov. 147.
  62. Samuel Elliott, surety of the peace. Nov. 123.
  63. Frederick Hellman, desertion. Nov. 124.
  64. Abraham Zell, desertion. Nov. 150.
  65. Amos Witmer, surety of the peace. Jan. 20.
  66. David H. Peters, surety of the peace. Jan. 19.
  67. William Clark, surety of the peace. Jan. 47.
  68. Frank Archey, surety of the peace. Jan. 48.
  69. Michael H. Kauffman, surety of the peace. Jan. 56.
  70. Nathan Wappenstein, surety of the peace. Jan. 60.

### WEEKLY SUMMARY.

REGISTER' OFFICE.

The following Wills have been admitted to probate since January 12, 1878:

- SARAH WALTER, late of Lancaster city; George Kendig, executor.  
 DAVID BROWN, late of Cecil co., Md.; D. Webster McVey and Margery E. Brown, executors.  
 JACOB ZIEGLER, late of East Hempfield twp.; Jane R. Ziegler, executrix.

### ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE,

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LANCASTER, PENNA.

### Divorce Notices.

NATHAN WAPPENSTEIN } Alias subpoena for Divorce  
 vs. } To January Term, 1878.  
 ELIZ'N WAPPENSTEIN. } No. 87.

To ELIZABETH WAPPENSTEIN:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 15th day of FEBRUARY, A. D., 1878, at 10 o'clock, a. m., to show cause if any you have, why the said Nathan Wappenstein should not be divorced from the bonds of matrimony contracted with you.  
 Jan 19 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, January 14, 1878.

WM. L. RITTENHOUSE } Alias Subpoena for Divorce  
 vs. } To January Term, 1878.  
 MAGGIE RITTENHOUSE. } No. 88.

To MAGGIE RITTENHOUSE:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Wm. L. Rittenhouse should not be divorced from the bonds of matrimony contracted with you.  
 Jan 19 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, January 14, 1878.

MARGARET FRAZIER, } Alias Subpoena for Divorce  
 by her next friend } December Term, 1877.  
 Benj. Cutler, }  
 vs. }  
 E. K. FRAZIER. } No. 34.

To E. K. FRAZIER:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Margaret Frazier should not be divorced from the bonds of matrimony contracted with you.  
 dec 15 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, December —, 1877.

PHILIP HARMAN } Alias Subpoena for Divorce  
 vs. } December Term, 1877.  
 LOUISA HARMAN. } No. 41.

To LOUISA HARMAN:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Philip Harman should not be divorced from the bonds of matrimony contracted with you.  
 dec 15 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, December —, 1877.

WILLIAM B. MOORE } Alias Subpoena for Divorce  
 vs. } December Term, 1877.  
 MARIA MOORE. } No. 51.

To MARIA MOORE:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said William B. Moore should not be divorced from the bonds of matrimony contracted with you.  
 dec 15 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, December —, 1877.

HANNAH GROOM } Alias Subpoena for Divorce  
 by her next friend } December Term, 1877.  
 Sam'l Evans, }  
 vs. }  
 JOSEPH GROOM. } No. 27.

To JOSEPH GROOM:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas, to be held on MONDAY, the 21st day of JANUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Hannah Groom should not be divorced from the bonds of matrimony contracted with you.  
 dec 15 H. N. BRENEMAN, Sheriff.  
 Sheriff's Office, Lancaster, December —, 1877.

### Auditors' Notices.

Estate of JOHN L. BURGAIN, late of Drumore township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James J. Glenn, administrator of said deceased, to and among these legally entitled to the same, will sit for that purpose on TUESDAY, FEBRUARY 12th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 WALTER M. FRANKLIN,  
 Jan 19 Auditor.

Assigned Estate of ANDREW J. KIMPER and EDWARD F. KIMPER, of Lancaster, Pa.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin O. Stirk, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, FEBRUARY 4th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 HUGH R. FULTON,  
 Jan 12 Auditor.

**Assigned Estate of HENRY C. EBY and WIFE.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William S. Shirk, to and among those legally entitled to the same, will sit for that purpose on **TUESDAY, JANUARY 29th, 1878**, at 1½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jan5 CHAS. I. LANDIS, Auditor.

**Estate of ELIZABETH TYSON, late of the borough of Columbia, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John S. Given, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on **THURSDAY, JANUARY 24, 1878**, at 10 o'clock a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec29 WALTER M. FRANKLIN, Auditor.

**Estate of MARIA MISHLER, late of the City of Lancaster, Pa., deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Rev. Jacob Reinhold, executor, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, the 19th day of JANUARY, 1878**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

dec29 J. W. DENLINGER, Auditor.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County for the benefit of the insolvent laws, and that the said Court has fixed **MONDAY, JANUARY 21st, 1878**, at 10 o'clock a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you see proper.

dec29 WM. BRYSON, Jr.

**Estate Notices.**

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litiz.

Jan12\* JACOB A. BUCH, Executor.  
D. G. ESHLEMAN, Att'y.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.

Jan12 HARVEY S. BOWERS, Administrator.  
PHILIP D. BAKER, Att'y.

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.

Jan13\* CHRISTIAN MYERS, Administrator.

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.

Jan5 SIMON F. ALBRIGHT, Executor.  
S. H. REYNOLDS, Att'y.

**Estate of BENJ. D. DANNER, late of Manheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

Jan5\* HENRY S. DANNER, Executor.  
P. D. BAKER, Att'y.

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec29 ELIZABETH RUHL, Administratrix.  
J. HAY BROWN, Att'y.

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 28th, 1877, assigned and transferred all their estate and affects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ZELLER, Assignee.  
J. HAY BROWN, Attorney. Residing in Mount Joy borough.  
dec29

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

dec22\* CATHERINE RINEER, Executrix.  
B. F. ESHLEMAN, Att'y.

**Estate of JACOB HOLSINGER, late of Hinkletown, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

E. BURKHOLDER, Administrator.  
dec23

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 13, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec22\* ABRAHAM MILLER, Assignee.  
C. DENUES, Att'y. Residing in Millersville.

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.

M. BROSIUS, CATHARINE KRABER, Administratrix.  
dec15 Attorney.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARGARET GRAVER, Warwick township;  
ADDISON GRAVER, Manheim township;  
HENRY B. ESHLEMAN, Manheim township,  
D. G. BAKER, } Att'ys.  
O. F. BRICKER, } Administrators.  
dec15

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec15 SAMUEL WHITSON, Assignee.  
M. BROSIUS, Att'y. Atglen, Chester Co., Pa.

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 8, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec15\* LEVI BRUBAKER, Assignee.  
A. J. EBERLY, Att'y. Millway P. O., Lan. Co.

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec3\* MARY M. KING, Administratrix.  
J. W. JOHNSON, Att'y.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

MARTIN G. LANDIS, Administrator.  
dec8 East Lampeter twp.

**Estate of MARTIN GROFF, Sr., late of Manheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

SAMUEL GROFF, ABRAHAM S. GROFF, Executors.  
PHILIP D. BAKER, Att'y.  
dec8\*

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.

dec1\* W. C. FREW, Administrator.  
B. F. ESHLEMAN, Att'y.

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

nov17 KIRK BROWN, Administrator.  
J. HAY BROWN, Atty.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned.

Geo. BRUBAKER, Assignee.  
H. C. BRUBAKER, Att'y. [dec1]

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# The Lancaster Bar.

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LANCASTER, PA., SATURDAY, JANUARY 26, 1878.

No. 35.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE	ARRIVE
		LANCASTER.	HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way Passenger†	.....	4:50 a. m.	7:50 a. m.
Niagara Express,...	.....	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	.....	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	.....	11:20 a. m.	1:25 p. m.
Fast Line,*	.....	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	.....	6:00 p. m.	8:10 p. m.
Columbia Accom.,.....	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	.....	7:35 p. m.	8:40 p. m.
Pittsburg Express,.....	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.

  

EASTWARD.		LANCASTER.	PHILADELPHIA.
Atlantic Express,*	.....	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	.....	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	.....	9:35 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	.....	2:00 p. m.	5:00 p. m.
Johnstown Express,...	.....	3:05 p. m.	6:00 p. m.
Day Express,*	.....	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.		
Leave Columbia,.....	a. m.	p. m.
	10:20	6:45
Arrive at Port Deposit,.....	p. m.	
	1:20	8:45

  

GOING NORTH.		
Leave Port Deposit,.....	a. m.	p. m.
	6:30	2:00
Arrive at Columbia,.....	p. m.	
	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:00	2:30
Lancaster—West King Street,...	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:45	4:30	8:10
Lancaster—West King Street,...	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....		p. m.	
		1:20	7:45
Lancaster—Upper Depot,.....	9:45	2:00	3:10
Lancaster—West King Street,...	9:55		3:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio.	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, James P. Sterret.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweltzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and O. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

THE LANCASTER BAR

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**COURT CALENDAR--1878.**

FEBRUARY.

- 8. Last day for issuing Writs to February Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Term.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 8. Argument for Rules of Affidavit of Defense.
- 15. Last day for filing Accounts for April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 13. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 23. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JAN 26, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

THE COMMONWEALTH against I. McFADDEN, Jailor.

A defendant in an action being surrendered by his special bail, and new special bail, who is unexceptionable, being entered, but the prisoner still detained, is entitled to his discharge on a writ of *habeas corpus*.

Isaac Ringwalt, defendant in an action of Jacob Huber against him was surrendered to prison by his special bail—upon which a *habeas corpus* was sued out; and the jailor produced the prisoner, together with the bail piece and surrender as the cause of his imprisonment and detention.

Mr. R. Frazer, for the prisoner, cited the act of the 18th February, 1785, "for better securing personal liberty and preventing wrongful imprisonments;" and 3 Binn. 410.

Mr. Champneys, contra, contended that this was not a case for the writ of *habeas corpus*, there being here evidently no wrongful restraint of the prisoner's liberty.

The court being of that opinion remanded the prisoner. Special bail was thereupon entered before the prothonotary, a certificate of the entry was produced, and a new writ of *habeas corpus* awarded. To this the jailor made the same return as before.

It being then shown, on behalf of the prisoner, that special bail was duly entered since his surrender; that the special bail had justified and was in fact unexceptionable; that the plaintiff, Jacob Huber's counsel had notice thereof and of this writ, (Mr. Champneys did not attend at this second hearing) and that the prisoner was notwithstanding, still restrained of his liberty—the court considering his further detention as wrongful, directed that he should be forthwith discharged. And he was discharged accordingly.

## Common Pleas of Lancaster County.

HILLER, Executor vs. GOOD, Defendant, and FRANTZ, Garnishee.

HERR & BRENNER vs. SAME.

[June T., 1877, No. 47.]

Where money, paid into court by a garnishee, is claimed by several parties, the court will not depart from the well established practice in regard to disputed facts, but will direct an issue to decide to whom the money shall be paid.

A garnishee is bound to make every legal defense, which the parties interested in the fund could make.

Attachment *ad. lev. deb.*, etc.

S. H. Reynolds, R. W. Shenk and William Leaman for attachment.

W. R. Wilson, A. M. Frantz and D. G. Eshleman contra.

Opinion delivered January 19, 1878, by LIVINGSTON, P. J.

October 15, 1877, on petition of Jonas B. Good, rule to show cause why attachments to June Term, 1877, numbers 43 and 47, should not be dissolved and set aside, and the money in court be paid to Jonas B. Good.

Benjamin Good, as plaintiff in a suit in this court against Jacob M. Frantz, defendant, to March Term, 1873, No. 10, on October 27th, 1876, obtained a verdict in his favor and against Frantz, the defendant, for \$861.22, upon which verdict judgment was entered on November 6, 1876.

On April 2, 1877, by assignment in writing under seal, said Benjamin Good transferred to Abraham Myers, or order, all moneys due, owing to him, or in any wise coming to him from Jacob M. Frantz, and authorized and empowered Frantz to pay the same to Myers on presentation of the assignment or transfer.

On July 14, 1877, by an assignment in writing under seal, on the back of the above mentioned transfer, Abraham Myers assigned and set over unto Jonas B. Good, his heirs and assigns, all his right, title and interest in said claim, so assigned to him by Benjamin Good, and authorized and empowered said Jonas B. Good to collect all money due and owing thereon.

And on October 11, 1877, Jonas B. Good, by assignment in writing under seal, dated on said day, transferred the claim—all moneys due or owing or in any wise coming to him from Jacob M. Frantz, unto Michael Kroider, and authorized Frantz to pay the same to him whenever said transfer was presented.

Herr & Brenner obtained a judgment against J. B. Good and Benjamin Good, in the court of common pleas of Lancaster county, on January 24, 1876, to January term, 1876, for \$1,143.49. On this judgment they issued an attachment *ad. lev. deb.* against J. B. Good and Benjamin Good, defendants, and Jacob M. Frantz, garnishee, on May 28, 1877, to June term, 1877, No. 43, which attachment was served on May 28, 1877.

The Lancaster County National Bank obtained a judgment against Benjamin Good, November 9, 1874, to February term, 1874, No. 53, for \$1,588.95, in the court of common pleas of Lancaster county, which now stands to the use of Casper Hiller, executor of the will of Christian Good, deceased. On this judgment an attachment *ad. lev. deb.* was issued, on May 28, 1877, against Benjamin Good, defendant, and Jacob M. Frantz, garnishee. This attachment was issued on May 29, 1877.

After the issuing and service of these attachments, on August 14, 1877, D. G. Eshleman, esq., as counsel for Jonas B. Good, and for him, entered an appearance on the records of said attachments, as assignee, holder and owner of the judgment against Jacob M. Frantz, and claimant of the money due thereon. After which, on motion of T. J. Davis, esq., counsel for Herr & Brenner, the

court permitted Jacob M. Frantz to pay into court the money due on the judgment against him, and claimed by the several parties before mentioned; and after the payment thereof into court it was ordered to be deposited by the prothonotary in the banking house of Bair & Shenk, at interest at the rate of four per cent. per annum.

The court is now asked to depart from the usual and well known rule of practice, and direct the money paid into court as aforesaid to be paid to the assignee of the judgment, and to dissolve and set aside the attachments. While, if we were obliged so to do, we might, without reference to a jury, decide and dispose of the questions of fact here presented, we do not propose to depart from the usual and well known rule of practice where there are disputed facts which should be presented to a jury; and the fact that the money is paid into court does not change the rights of the claimants to the amount so claimed and paid into court.

A garnishee is bound to contest every inch of the ground: 4 Har. 392. He is bound to make every just and legal defense known to him, which the parties interested in the fund could make, or he will be answerable therefor to them: 3 Har. 103.

If the money be paid into court by permission, it will be so permitted for the protection of the garnishee: 6 Phila. 273. And if the garnishee is permitted to pay the money into court, the issue should and must be tried between the opposing claimants on the usual evidence as to title: 76 P. S. R., p. 852.

We, therefore, direct an issue to be joined between the parties claiming the fund in court for the purpose of ascertaining by the verdict of a jury who, among the claimants, are entitled to the fund paid into court by the garnishee, Jacob M. Frantz.

## Common Pleas of Luzerne County.

MILLER vs. TURNBACH.

Plaintiff sold his farm to defendant; there was a judgment against the former which both parties supposed was a lien on the farm, and which they treated as such, though in fact the lien of the judgment had expired; defendant paid to plaintiff the whole consideration money except an amount equivalent to the amount of the judgment, and this he retained, promising to apply it to the satisfaction of the judgment; he failed to do so, and plaintiff was obliged to pay the judgment himself; thereupon plaintiff brought suit against defendant to recover the amount so paid; defendant resisted on the ground that his promise was a mere verbal promise to pay the debt of another, and hence, was void under the statute of frauds and perjuries: *Held*, that plaintiff was entitled to recover the amount of purchase money retained by defendant, and that the promise of the latter to pay the judgment against the former, no matter whether it was a lien against the farm, or not, with money thus retained, was not a promise to pay the debt of another within the meaning of the statute of frauds and perjuries.

This case was tried before Stanley Woodward, esq., referee. He found the facts to be as follows:

1. On the 27th of August, 1867, George W. Drum, guardian of certain minor children, recovered a judgment against Jeremiah Mil-

ler, in the Court of Common Pleas of Luzerne county, for the sum real of two thousand two hundred and ninety-eight dollars and sixty-three cents, with interest from August 13th, 1867, with costs.

2. On the 16th of June, 1874, *scire facias* was issued to revive and continue the lien of said judgment, and on 21st of September, 1874, judgment was entered thereon in favor of the plaintiff, for the sum of seven hundred and sixty dollars and forty-nine cents, with interest and costs. It should be observed, in this connection, that the five years lien of the original judgment expired on the 27th of August, 1872.

3. On the 6th of October, 1874, Jeremiah Miller paid the amount of this judgment to George W. Drum, guardian, &c., plaintiff.

4. On or about the 2d of October, 1872, Jeremiah Miller, the plaintiff, who, by buying out the interests of his brothers and sisters in a farm in Sugarloaf township, formerly owned by their father, had become possessed of the whole legal title, sold and conveyed the same to John Turnbach, the defendant, for the consideration of eight thousand dollars. A part of the consideration money was paid down, and the balance, excepting an amount equal to the Drum judgment, was secured by judgment notes, about which no contention exists. But with reference to the Drum judgment, then amounting to seven hundred and sixty dollars and forty-nine cents, or thereabouts, the referee finds, that Turnbach then and there verbally agreed to pay it. This added to the down payment in cash, and to the judgment notes, before referred to, made up the eight thousand dollars. Turnbach took possession of the farm and remained on it until November, 1873, when, by contract in writing, dated November 11, 1873, he sold the property back to Jeremiah Miller and John Miller, for the sum of six thousand dollars. Payments were to be made as follows: "First, all money shall be applied on judgments and liens which are entered against the said John Turnbach, in such payments as may be agreed upon by the plaintiffs in said judgments or liens with the said Jeremiah and John Miller; and after paying such judgments or liens, the balance to be paid to John Turnbach, his heirs or assigns, on demand."

5. That during all this time the parties dealt in good faith, severally believing that the Drum judgment was a valid and subsisting lien upon the land conveyed by Miller to Turnbach.

6. The original declaration of the plaintiff, besides charging generally a promise on the part of the defendant to pay the liens and incumbrances against the property, and particularly the Drum judgment, contained the ordinary common counts in *assumpsit*. After the close of the evidence and arguments, the plaintiff's counsel desired to file an amended declaration, setting out specifically the promise and undertaking of the defendant in connection with the sale and the Drum judgment. Permission was accorded, the amended declaration was filed, though against the objection of defendant's counsel.

Under the facts and pleadings, the following questions seem to have been raised:

1. Does the promise of the defendant fall within the terms of the act of April 26, 1865, known as the statute of frauds and perjuries?

2. Does the fact that the judgment in question had ceased to be a lien at the time the alleged promise was made, and thus become a personal debt of Jeremiah Miller, bring the case within the statute referred to? or,

3. Is this a case where the statute of fraud and perjuries is not applicable, and to be considered as an action brought to recover a portion of the purchase money for land sold and conveyed by one man to another?

The answers of the referee to the questions thus raised, and also his general finding are as follows:

1. That the case does not fall within the statute of frauds, for the reason that the defendant's promise was, in effect, to pay his own debt, and not that of another; and, therefore, it was not necessary that it should be in writing.

2. That the fact that the judgment had lost its lien at the time the promise was made is not of material consequence.

3. That the action is to be regarded as founded upon a promise, with a good consideration to support it, made by the defendant for the payment of money due from him to the plaintiff. While delivery of a deed is generally tantamount to a receipt in full for the purchase money, still it is not necessarily so as between vendor and vendee, and the transaction may be investigated and explained.

Reference is made to *Malone et al vs. Keener*, 8 Wr. 109; *Arnold vs. Stedman*, 9 Wr. 189, and cases there cited; *Taylor vs. Preston*, 29 P. F. S. 436.

The referee concludes his report as follows: "Judgment to be entered in favor of plaintiff, and against the defendant, for the sum of eight hundred and fifty-five dollars and fifty-four cents, with interest from December 5th, 1876."

The following exceptions were taken to the report:

1. The referee erred in finding as matter of fact that all parties considered the judgment in favor of Drum, guardian, &c., as a lien on the land sold Turnbach.

2. The referee erred in allowing an amendment of the declaration after the evidence had been concluded and the case argued before him, which introduced a new cause of action, and which called for a different defense.

3. The referee erred in not finding, under the pleadings upon which the case was tried, that the alleged parol promise of Turnbach to pay the Drum judgment was a promise to pay the debt of another, and, therefore, void by the statute of frauds and perjuries.

4. The referee erred in not finding for the defendant upon all the facts and the law.

THE COURT. The first exception to this report amounts simply to a complaint that the referee did not look upon the facts elicited by the testimony in the case with the eyes of defendant's counsel. It has been repeatedly held by this court that such an exception was

altogether untenable: *Enterprise Ins. Co. vs. Thornton*, 1 Luz. Leg. Reg. 32; *Lackawanna Iron and Coal Co. vs. Fales*, Id. 743; *Garrison vs. Bryant*, 2 Luz. Leg. Reg. 9; *Long vs. Davis*, 5 Luz. Leg. Reg. 66.

The second exception is grounded in the fact that the referee permitted an amendment of the plaintiff's declaration, after the evidence had been closed and the argument of counsel made. This amendment, it is urged on the part of the defense, contained a new cause of action. We cannot adopt this view. The amendment contained no new cause of action; besides, the original declaration was sufficient without it. The allowance of the amendment, therefore, whether proper or not at that stage of the proceedings, was immaterial, and brought the defendant no hurt.

The third exception is a mistaken one also. It charges upon the referee the error of not finding that the defendant's promise, on which the action was founded, was a mere verbal promise to pay the debt of another, and hence void under the statute of frauds and perjuries. Let us look at the facts: In October, 1872, the defendant purchased the plaintiff's farm for eight thousand dollars; there was a judgment against the latter, in favor of George W. Drum, guardian, unsatisfied and on record, the lien of which, so far as the farm was concerned, had expired, though neither the plaintiff nor the defendant were aware of this, both supposing the judgment to be still a subsisting lien, and treating it as such; the defendant paid the plaintiff all the purchase money for the farm, except a sum equal to the amount unpaid on the judgment before referred to, and this he promised to pay in satisfaction of that judgment; or, in other words, to pay the judgment itself. He failed to do so, and the plaintiff was subsequently obliged to pay the judgment himself. Thereupon he brought this action to recover from the defendant the amount so paid; or, in other words to recover the balance of consideration money due him for the farm. The referee, after full hearing, found that the defendant's promise was not a promise to pay the debt of another, but a promise to pay his own debt, and hence not within the statute of frauds and perjuries. We think this finding was correct. The Drum judgment constituted the exact measure of the balance of purchase money due from the defendant to the plaintiff for the farm; the defendant, instead of paying that balance directly to the plaintiff, retained it in his own hands promising to appropriate it in satisfying a judgment against the plaintiff; the fact that this judgment was not a lien against the farm, though both the plaintiff and the defendant thought it was, was not material as between them; the whole consideration money for the farm belonged exclusively to the plaintiff; its ownership was in nowise changed by the agreement in connection with the Drum judgment; the plaintiff's action, therefore, was well founded.

The fourth exception, being the general one that the referee erred in not finding for the defendant upon all the facts, and upon the law, falls necessarily with the others.

And now, January 2, 1878, it is ordered that judgment be entered in this case in accordance with the findings of the referee.

Opinion by HARDING, P. J. January 2d, 1878.—*Luz. Leg. Reg.*

In *Montgomery vs. Armstrong County*, the question whether the county was legally required to provide a separate dwelling house for either the sheriff or jailor was proposed. The court decided that no statute imposed this obligation on the county. No case has been cited affirming such a duty, on the contrary the case of *County vs. Bridenhart*, 4 Harris, 458, denies that such an obligation rests on the county. It therefore follows that the county is not liable upon the agreement of the County Commissioners to pay the sheriff for the rent of a house occupied by his jailor.

ROGER M. SHERMAN, of New York city, was flattering to a judge who had asked him to restate a proposition "so that he could understand it." Sherman paused in his argument, looked at the judge a moment and then observed: "Your honor is not aware of the difficulty of the task you impose on me."

#### LISTS OF JURORS.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas, commencing on Monday, February 11th, 1878:

Samuel S. Becker, farmer, Brecknock.  
Henry Cafroth, drover, West Earl.  
M. P. Cooper, farmer, Salisbury.  
J. F. Diehl, merchant, Warwick.  
John H. Dehaven, farmer, Caernarvon.  
James Doebler, restaurant, 4th Ward, city.  
Samuel Evans, justice of the peace, Columbia.  
E. H. Eberman, saddler, West Lampeter.  
John P. Frank, justice of the peace, Columbia.  
James Ferree, mason, Colerain.  
Jacob M. Frantz, farmer, Lancaster.  
William T. Fisher, clerk, 7th Ward, city.  
William Garvin, carpenter, 7th Ward, city.  
W. W. Groff, merchant, East Lampeter.  
Amos Greist, farmer, Eden.  
Isaac H. Greybill, farmer, West Earl.  
Daniel L. Glackin, farmer, Drumore.  
Aaron F. Gible, laborer, Penn.  
William Hartz, innkeeper, East Earl.  
Levi Heldler, farmer, West Hempfield.  
Amos R. Kachel, agent, Upper Leacock.  
John B. Kurtz, farmer, Salisbury.  
David K. Kraatz, millwright, Ephrata.  
Daniel Lefever, farmer, Drumore.  
John R. Messner, clerk, Ephrata.  
Patrick Moss, farmer, Martic.  
James A. McPherson, farmer, Drumore.  
Watson H. Miller, agent, 5th Ward, city.  
Noah Martin, clerk, Mount Joy.  
Christian Muselman, farmer, East Hempfield.  
John Mason, innkeeper, Salisbury.  
H. W. Nissley, miller, West Donegal.  
Samuel Pence, farmer, East Donegal.  
Joseph C. Roop, innkeeper, 1st Ward, city.  
Jacob Rife, farmer, Salisbury.  
Samuel Ricksecker, hatter, Mount Joy-bor.  
A. B. Reist, merchant, Elizabeth.  
Robert T. Robinson, gentleman, 2d Ward, city.  
Augustus Rhoads, jeweler, 5th Ward, city.  
E. S. Royer, merchant, Ephrata.  
Joseph Roop, farmer, West Earl.  
Isaac Sheaffer, farmer, West Earl.  
Isaac Snyder, saddler, Columbia.  
Jacob Seitz, jr., farmer, Manor.  
Samuel C. Stevenson, cabinetmaker, Martic.  
John Thomas, tailor, 2d Ward, city.  
Jacob Umble, farmer, Salisbury.  
Henry Wolf, cabinetmaker, 3d Ward, city.

Henry M. Weller, farmer, West Hempfield.  
G. W. H. Witmer, clerk, Providence..

Names of 50 Petit Jurors to serve in a Court of Common Pleas, commencing on Monday, February 18, 1878:

Jacob Baxtresser, merchant, Elizabethtown-bor.  
Isaac Bushong, esq., farmer, Upper Leacock.  
Jacob M. Baker, drover, Warwick.  
Samuel M. Brubaker, merchant, East Cocalico.  
William Binkley, miller, East Cocalico.  
Fred. W. Coonley, brickmaker, 9th Ward, city.  
James M. Channel, clerk, 2d Ward, city.  
William Dague, farmer, Salisbury.  
Christian C. Fralich, drover, West Hempfield.  
Joseph Grissinger, farmer, Rapho.  
Jacob Gamber, gentleman, Manor.  
E. S. Hoover, farmer, Manheim.  
Reuben D. Herr, limeburner, Strasburg.  
Milton E. Hershey, farmer, Lancaster.  
Aaron Habbecker, wheelwright, Warwick.  
Elias E. Harnish, merchant, Leacock.  
Sylvester Kennedy, farmer, Salisbury.  
Henry H. Kready, farmer, Manor.  
Henry N. Kahler, gentleman, West Hempfield.  
Abraham L. Lane, carpenter, Manheim.  
Thomas Lane, carpenter, Paradise.  
E. McMellen, carpenter, 3d Ward, city.  
Jacob McDonnell, laborer, 6th Ward, city.  
Jacob Miller, jr., coffee roaster, 7th Ward, city.  
Cyrus Miller, marblemason, Adamstown-bor.  
Wm. H. McFalls, wood dealer, Providence.  
Jacob Musser, merchant, Conestoga.  
Daniel Meckley, farmer, Conoy.  
Simoa K. Nissley, farmer, Mount Joy.  
George Nagle, jr., cigarmaker, 7th Ward, city.  
Cyrus Newpher, carpenter, East Earl.  
John B. Raff, laborer, Upper Leacock.  
Adam Ream, gentleman, Elizabethtown-bor.  
E. H. Rauch, printer, 2d Ward, city.  
Jacob Rohrer, farmer, Strasburg.  
M. S. Shuman, oil refiner, Columbia.  
John B. Sensesig, farmer, Earl.  
Calvin Sultzbach, gentleman, Marietta.  
F. W. Sensesig, tanner, East Earl.  
Michael Segrist, farmer, West Hempfield.  
Cyrus B. Shultz, farmer, Washington-bor.  
Moses Spangler, miller, East Earl.  
B. S. Shindle, printer, 5th Ward, city.  
G. Duffield Slaymaker, lime burner, Paradise.  
Ellwood H. Townson, farmer, Little Britain.  
Samuel Wetzel, farmer, 7th Ward, city.  
Abraham R. Witmer, gentleman, West Hempfield.  
Isaac C. Weldler, gentleman, Upper Leacock.  
Reuben Winters, laborer, West Cocalico.  
William Yudith, brickmaker, 8th Ward, city.

Names of 48 Petit Jurors, to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, February 25, 1878:

Thomas Anderson, machinist, 4th Ward, city.  
Jacob H. Beachler, painter, 7th Ward, city.  
Jacob S. Brubaker, farmer, Clay.  
Edward H. Brown, cashier, 3d Ward, city.  
Samuel Burkholder, jr., farmer, Clay.  
Thomas S. Collins, farmer, Colerain.  
John Carpenter, farmer, Warwick.  
John B. Caldwell, farmer, Leacock.  
Amos Diller, gentleman, Earl.  
Samuel Eberly, mill wright, East Cocalico.  
John B. Erb, farmer, Strasburg twp.  
Evan Flory, farmer, West Cocalico.  
Jacob D. Frey, farmer, Manor.  
Simon Groh, farmer, East Donegal.  
Solomon Garner, farmer, East Cocalico.  
A. D. Gault, farmer, Salisbury.  
George J. High, farmer, East Lampeter.  
Jerome Hipple, carpenter, Marietta.  
John B. Hacker, farmer, West Cocalico.  
Thomas Hays, grocer, 4th Ward, city.

John Hull, tobaccoist, 5th Ward, city.  
Joseph Hinkle, bricklayer, Columbia.  
Emanuel Keener, farmer, Penn.  
John B. Kreider, farmer, West Lampeter.  
John Lenhard, farmer, West Hempfield.  
Hugh S. Long, farmer, Drumore.  
Benjamin H. Myers, farmer, Upper Leacock.  
David E. Mayer, farmer, Mount Joy twp.  
Charles Markley, farmer, East Donegal.  
Michael Morris, blacksmith, Mount Joy bor.  
Horace Overdeer, carpenter, 8th Ward, city.  
J. G. Pence, clerk, Columbia.  
S. B. Pownall, farmer, Sadsbury.  
A. N. Rutter, drover, Drumore.  
John M. Rutter, farmer, Sadsbury.  
Jacob Stock, laborer, Providence.  
Jacob Souders, justice of the peace, Mt. Joy twp.  
Samuel Sherich, blacksmith, West Hempfield.  
Henry S. Shenk, farmer, East Hempfield.  
A. S. Stauffer, laborer, Washington bor.  
Balsor Schnader, farmer, Brecknock.  
Henry Stauffer, farmer, Brecknock.  
Adam Smith, assessor, Conoy.  
John W. Wenger, gentleman, Rapho.  
W. W. Withers, farmer, Eden.  
John Weimer, supervisor, Providence.  
Henry S. Weller, shoemaker, West Hempfield.  
Abraham R. Witmer, farmer, East Lampeter.

Names of 48 Petit Jurors to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, March 4, 1878:

Abraham Bausman, farmer, Manor.  
Frank Breneman, farmer, Providence.  
Michael Book, butcher, Strasburg bor.  
R. R. Bitzer, lumber and coal dealer, Ephrata.  
John Crawford, farmer, Martic.  
Thomas F. Cooper, leather dealer, 2d Ward, city.  
Emanuel Cassel, farmer, Rapho.  
Jacob Eaby, grain dealer, Manheim bor.  
William F. Eberman, tailor, 1st Ward, city.  
Elam Eshleman, miller, Paradise.  
Amos H. Erb, farmer, Manheim bor.  
J. R. Fitzgerald, assessor, Mount Joy bor.  
Peter Fink, gentleman, Ephrata.  
Benjamin F. Fox, gunsmith, 9th Ward, city.  
Samuel M. Frantz, farmer, Manheim twp.  
Valentine Gardner, farmer, Drumore.  
C. S. B. Herr, farmer, West Lampeter.  
H. W. Harberger, machinist, 4th Ward, city.  
E. B. Herr, merchant, Manor.  
Peter Johns, farmer, East Lampeter.  
Conrad Krouse, painter, Manor.  
Franklin Kemper, clerk, Earl.  
Adam S. Keller, farmer, Manheim twp.  
Horatio S. Kerns, drover, Sadsbury.  
Jacob R. Kobb, farmer, Conoy.  
Jacob Koulichmacher, farmer, Ephrata.  
John L. Lightner, farmer, Leacock.  
A. Lechler, lightning rod dealer, 3d Ward, city.  
Peter Lutz, butcher, 9th Ward, city.  
Edward McMullen, farmer, Penn.  
James M. McCreary, merchant, Drumore.  
George W. Mehaffey, gentleman, Marietta.  
Isaac G. Martin, miller, Earl.  
F. B. Musselman, gentleman, Strasburg bor.  
Reuben Metzler, miller, Salisbury.  
Jacob R. Musser, farmer, Upper Leacock.  
H. E. Miller, merchant, Warwick.  
James A. McElhone, clerk, 4th Ward, city.  
William Morrison, farmer, Conestoga.  
Israel Penrose, farmer, Drumore.  
Cyrus K. Reeger, farmer, East Cocalico.  
John W. Rich, merchant, Marietta.  
William B. Strine, printer, 5th Ward, city.  
Frederick Smith, gentleman, Conoy.  
Addison Stauffer, clerk, Manheim bor.  
R. R. Tshudy, justice of the peace, Warwick.  
Joel Wenger, miller, West Earl.  
John Wieland, tax collector, Clay.



COMMON PLEAS TRIAL LIST--First Week.

Commencing Monday, February 11th, 1878.

			<i>W. A. Wilson, Kready.</i> 13	HARVEY SWIFT <i>vs.</i>	Nov. Term, 1876. No. 5. Sum's in ejectment.
			<i>H. C. Brubaker.</i>	PRUDENCE GUINNEY et al.	Plea, not guilty.
<i>McMullen.</i> 1	CHRIST. HAMP <i>vs.</i>	} June Term, 1872. No. 120. App'l by def't from justice. Plea, non assumpsit, pay't, pay't with leave, etc.	<i>H. C. Brubaker.</i> 14	CATHARINE GERLACH et al. <i>vs.</i>	Nov. Term, 1876. No. 11. Sum's in ejectment.
<i>Reynolds.</i>	ZACH MINNICH.		<i>Amwake.</i>	DAVID GERLACH.	Plea, not guilty.
<i>North, A. F. Shenck.</i> 2	J. M. HERSHEY <i>vs.</i>	} Dec. Term, 1873. No. 106. Sum's in ejectment. Plea, not guilty.	<i>Reynolds.</i> 15	JACOB FRITZ, Jr., use <i>vs.</i>	Nov. Term, 1876. No. 64. Sum's case.
<i>W. A. Wilson.</i>	LEWIS NAUMAN et al.		<i>Eshleman.</i>	DAVID KEEN.	Plea, non assumpsit, pay't, etc.
<i>North.</i> 3	JOHN YEAGER <i>vs.</i>	} Feb'y Term, 1874. No. 60. Sum's case. Plea, non assumpsit, pay't etc.	<i>Kline, North.</i> 16	ABRAHAM COLLINS <i>vs.</i>	Nov. Term, 1876. No. 67. Sum's trespass vi et armis.
<i>Fulton.</i>	AMOS F. EVES.		<i>Reynolds, Eberly, Cottrell.</i>	BENJ. F. HEISTAND et al.	Plea, not guilty.
<i>Eshleman.</i> 4	JOHN HILDEBRAND, assignee &c. <i>vs.</i>	} March Term, 1875. No. 75. App'l by def't from justice Plea, nul tiel record. Nil debet.	<i>J. Hay Brown.</i> 17	SAM'L BOYD et al., adm'ors <i>vs.</i>	Dec. Term, 1876. No. 19. Sum's in assumpsit.
<i>Davis, Johnson.</i>	AMOS GROFF.		<i>Kline.</i>	CHARLES YARD.	Plea, non assumpsit.
<i>Same.</i> 5	SAME PLAINTIFF <i>vs.</i>	} March Term, 1875. No. 76. App'l by def't from justice. Plea, nul tiel record. Nil debet.	<i>Price.</i> 18	JOS. R. ROYER <i>vs.</i>	Dec. Term, 1876. No. 42. App'l by def't from justice.
<i>Same.</i>	SAME DEFENDANT		<i>Davis.</i>	ARCH. WARREN, garnishee.	Plea, nulla bona.
<i>Same.</i> 6	JOHN HILDEBRAND <i>vs.</i>	} March Term, 1875. No. 77. App'l by def't from justice. Plea, nul tiel record. Nil debet.	<i>J. Hay Brown.</i> 19	A. H. SUMMY <i>vs.</i>	Dec. Term, 1876. No. 44. Sum's sur assumpsit.
<i>Same.</i>	SAME DEFENDANT.		<i>Eshleman, Baker.</i>	DAVID BAKER.	Plea, pay't, payment with leave, etc.
<i>Same.</i> 7	SAME PLAINTIFF <i>vs.</i>	} March Term, 1875. No. 78. App'l by def't from justice. Plea, nul tiel record. Nil debet.	<i>Brostius.</i> 20	MILLER & MERCER <i>vs.</i>	Dec. Term, 1876. No. 69. Sum's in assumpsit.
<i>Same.</i>	SAME DEFENDANT.		<i>H. C. Brubaker.</i>	JACOB WEINHOLD.	Plea, non assumpsit, pay't etc.
<i>Same.</i> 8	SAME PLAINTIFF <i>vs.</i>	} March Term, 1875. No. 79. App'l by def't from justice. Plea, pay't, payment with leave, etc.	<i>Reynolds.</i> 21	A. B. FARQUHAR <i>vs.</i>	Jan'y Term, 1877. No. 8. Sum's case.
<i>Same.</i>	ISAAC K. ROBINSON et al.		<i>Ellmaker.</i>	JOHN B. ESHBACH.	Plea, non assumpsit, pay't, etc.
<i>Same.</i> 9	SAME PLAINTIFF <i>vs.</i>	} March Term, 1875. No. 80. App'l by def't from justice. Plea, nul tiel record. Nil debet.	<i>Eberly.</i> 22	AMOS HESS et al., adm'ors <i>vs.</i>	Jan'y Term, 1877. No. 56. Sum's in assumpsit.
<i>Same.</i>	AMOS GROFF.		<i>W. M. Franklin.</i>	JOHN M. MUSSER.	Plea, non assumpsit.
<i>Long, Eby.</i> 10	C. E. BOMBERGER, adminis- tor, &c. <i>vs.</i>	} Aug. Term, 1875. No. 96. Sum's case. Plea, non assumpsit, pay't. etc.	<i>Same.</i> 23	SAME PLAINTIFFS <i>vs.</i>	Jan'y Term, 1877. No. 57. Sum's in assumpsit.
<i>W. A. Wilson, J. Hay Brown.</i>	JACOB W. HERSHEY		<i>Same.</i>	JOHN H. MARTIN.	Plea, non assumpsit.
<i>McMullen.</i> 11	S. H. REYNOLDS, assignee <i>vs.</i>	} April Term, 1876. No. 38. Sum's case. Plea, non assumpsit.	<i>Eberly, Kline.</i> 24	A. J. EBERLY, assignee, &c. <i>vs.</i>	Feb'y Term, 1877. No. 43. Issue trespass quare claus- um fregit.
<i>J. Hay Brown.</i>	SAM'L BOYD et al., adm'ors.		<i>E. D. &amp; H. M. North.</i>	THE LAN. & READING N. G. R. R. CO.	Plea, not guilty.
<i>H. C. Brubaker.</i> 12	BENJ. BRACKBILL <i>vs.</i>	} Aug. Term, 1876. No. 96. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.	<i>Same.</i> 25	HENRY GORRECHT, executor &c. <i>vs.</i>	Feb'y Term, 1877. No. 44. Issue trespass quare claus- um fregit.
<i>Ellmaker, Eby.</i>	MICHAEL WIKER,		<i>Same.</i>	SAME DEFENDANT.	Plea, not guilty.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., JAN. 26, 1878.

## WEEKLY SUMMARY.

### REGISTER' OFFICE.

The following Wills have been admitted to probate since January 19, 1878:

GEORGE W. COMPTON, late of Caernarvon twp.; Jane E. Compton, executrix.

GOTLIEB F. WITMYER, late of Manheim bor.; Henry W. Witmyer, executor.

CHRISTIAN METZLER, late of Paradise twp.; Abraham Metzler and Christian Hershey executors.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since January 19th, 1878:

JACOB B. POKE and WIFE, of West Earl twp.; E. Burkholder, assignee.

ISAAC S. MOONEY and WIFE, of Fulton twp.; E. Henry Haines, assignee.

JACOB R. GREENLEAF and WIFE, of Colerain twp.; Martin Y. Greenleaf, assignee.

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E. H. BURKHOLDER,

JUSTICE OF THE PEACE,

FARMERSVILLE, LAN. CO., PA.

SPECIAL ATTENTION PAID TO COLLECTIONS.

## DAYS OF APPEAL FOR 1878.

### TO THE TAXABLE INHABITANTS OF LANCASTER COUNTY.

Pursuant to the provisions of the laws of the Commonwealth, the undersigned Commissioners of Lancaster County, hereby give notice to the taxable inhabitants, within the respective city, boroughs and townships of said county, that the days of appeal from the assessment of 1878, will be held in the Commissioners' Office, in the city of Lancaster, on the days following to wit:

Lancaster City, 9 Wards,	Tuesday, Feb. 12.
Adamstown Borough, Washington Borough, 2 Wards, Columbia Borough, 3 Wards, Marietta Borough,	Wednesday Feb. 13.
Mount Joy Borough, Elizabethtown Borough, Manheim Borough, Strasburg Borough,	Thursday, Feb. 14.
Bart, Little Britain, Eden, Colerain, Fulton,	Friday, Feb. 15.
Brecknock, Caernarvon, Cocalico East, Cocalico West, Clay,	Saturday, Feb. 16.
Drumore, Martic, Providence, Pequea, Conestoga,	Wednesday Feb. 20.
Donegal East, Donegal West, Conoy, Mount Joy, Penn,	Thursday, Feb. 21.
Ephrata, Elizabeth, Warwick, Manheim,	Friday, Feb. 22.
Earl, Earl East, Earl West, Paradise, Sadsbury,	Saturday, Feb. 23.
Hempfield East, Hempfield West, Rapho, Strasburg, Lancaster,	Tuesday, Feb. 26.
Lampeter East, Lampeter West, Leacock, Leacock Upper,	Wednesday, Feb. 27.
Salisbury, Manor,	Thursday, Feb. 28.

No change in the valuation of Real Estate can be made except where new buildings are put up, or buildings destroyed by fire or otherwise.

At the same time and place the appeal from the Military Rolls will be held.

S. F. EAGLE,  
SAMUEL M. MYERS,  
EM'L P. KELLER,  
Commissioners.

Jan 26  
Papers in county copy.

## VICK'S

### ILLUSTRATED MONTHLY MAGAZINE.

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PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,

LANCASTER, PA.

## Divorce Notices.

NATHAN WAPPENSTEIN } Alias subpoena for Divorce  
vs. } To January Term, 1878.  
ELIZ' H WAPPENSTEIN. } No. 87.

To ELIZABETH WAPPENSTEIN:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D., 1878, at 10 o'clock, a. m., to show cause if any you have, why the said Nathan Wappenstein should not be divorced from the bonds of matrimony contracted with you.  
Jan 19 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

WM. L. RITTENHOUSE } Alias Subpoena for Divorce  
vs. } To January Term, 1878.  
MAGGIE RITTENHOUSE. } No. 88.

To MAGGIE RITTENHOUSE:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Wm. L. Rittenhouse should not be divorced from the bonds of matrimony contracted with you.  
Jan 19 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed SATURDAY, FEBRUARY 23d, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.

Jan 26 JACOB NEISS.

## Auditors' Notices.

Assigned Estate of HENRY DIETRICH and WIFE, of Manheim twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel P. Keller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 28th day of FEBRUARY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
Jan 26 A. C. ILLYUS, Auditor.

Estate of ABRAHAM H. MUSSLEMAN, late of East Donegal twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of M. H. Musselman and J. F. Cottrell, administrators, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, FEBRUARY 20th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jan 26 WM. B. GIVEN, Auditor.

JOHN G. BEAR, for the use of Henry Kafroth, vs. THOMAS B. SOHL. In the Court of Common Pleas of Lancaster County. Pl. fas. Jan'y Term, 1878. Nos. 103 and 103.

Money ruled into Court.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster Co., Pa., to distribute the moneys ruled into court, made under the above pl. fas., will sit for the purposes of his appointment, in the Library Room of the Court House, in the City of Lancaster, on FRIDAY, FEBRUARY 15th, 1878, at 2 o'clock, p. m., on said day, when and where all persons interested in said distribution may attend if they think proper.

Jan 26 SAMUEL H. PRICE, Auditor.

Estate of JOHN L. BURGAIN, late of Drumore township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James J. Glenn, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, FEBRUARY 12th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

Jan 19 WALTER M. FRANKLIN, Auditor.

**Assigned Estate of ANDREW J. KIMPER and EDWARD F. KIMPER, of Lancaster, Pa.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin O. Strk, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, FEBRUARY 4th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. HUGH K. FULTON, Auditor. jan12

**Assigned Estate of HENRY C. EBY and WIFE.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William S. Shirk, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JANUARY 29th, 1878, at 1½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. CHAS. I. LANDIS, Auditor. jan5

WILLIAM B. WILEY,

ALDERMAN,

OFFICE - No. 32 NORTH DUKE STREET,

LANCASTER, PENNA.

**Estate Notices.**

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to EZRA BURKHOLDER, Assignee, Residing in West Earl township. jan26

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litiz. JACOB A. BUCH, Executor. jan12\* D. G. ESHLEMAN, Att'y.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp. HARVEY S. BOWERS, Administrator. jan12 PHILIP D. BAKER, Att'y.

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O. CHRISTIAN MYERS, Administrator. jan12\*

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown. SIMON F. ALBRIGHT, Executor. jan5 S. H. REYNOLDS, Att'y.

**Estate of BENJ. D. DANNER, late of Mannheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough. HENRY S. DANNER, Executor. jan5\* P. D. BAKER, Att'y.

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. ELIZABETH RUHL, Administratrix. dec29 J. HAY BROWN, Att'y.

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 25th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JOHN H. ZELLER, Assignee, Residing in Mount Joy borough. J. HAY BROWN, Attorney. dec29

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township. CATHERINE RINEER, Executrix. dec22\* B. F. ESHLEMAN, Att'y.

**Estate of JACOB HOLSINGER, late of Hinkletown, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville. E. BURKHOLDER, Administrator. dec22

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 12, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to ABRAHAM MILLER, Assignee, Residing in Millersville. C. DENUSS, Att'y. dec22\*

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city. M. BROSIUS, Attorney. CATHARINE KRABER, Administratrix. dec15

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. MARGARET GRAVER, Warwick township; ADDISON GRAVER, Mannheim township; HENRY B. ESHLEMAN, Mannheim township; D. G. BAKER, } Att'ys. O. P. BRICKER, } Administrators. dec15

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to SAMUEL WHITSON, Assignee, Atglen, Chester Co., Pa. M. BROSIUS, Att'y. dec15

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 3, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to LEVI BRUBAKER, Assignee, Millway P. O., Lan. Co. A. J. EBERLY, Att'y. dec15\*

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township. MARY M. KING, Administratrix. dec3\* J. W. JOHNSON, Att'y.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay. MARTIN G. LANDIS, Administrator, East Lampeter twp. dec8

**Estate of MARTIN GROFF, Sr., late of Mannheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. SAMUEL GROFF, ABRAHAM S. GROFF, Executors. PHILIP D. BAKER, Att'y. dec8\*

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise. W. C. FREW, Administrator. B. F. ESHLEMAN, Att'y. dec1\*

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township. KIRK BROWN, Administrator. nov17 J. HAY BROWN, Atty.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned. GEO. BRUBAKER, Assignee. H. C. BRUBAKER, Att'y. [dec1]

LEGAL PRINTING of all kinds neatly and promptly done at The Lancaster Bar-printing office, No. 13 North Duke-st., Lancaster, Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, FEBRUARY 2, 1878.

No. 36.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,...	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,...	6:00 p. m.	8:10 p. m.
Columbia Accom.,...	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,...	7:35 p. m.	8:40 p. m.
Pittsburg Express,...	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,...	7:35 a. m.	10:00 a. m.
Columbia Accom.,...	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,...	2:00 p. m.	5:00 p. m.
Johnstown Express,...	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,...	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.	a. m.	p. m.
Leave Columbia,.....	10:20	6:45
	p. m.	
Arrive at Port Deposit,.....	1:20	8:45

  

GOING NORTH.	a. m.	p. m.
Leave Port Deposit,.....	6:30	2:00
Arrive at Columbia,.....	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.		a. m.	p. m.
Quarryville,.....	LEAVE.	6:50	8:00
Lancaster—West King Street,...		8:00	9:30
Lancaster—Upper Depot,.....		8:10	9:40

  

GOING SOUTH.		a. m.	p. m.
Lancaster—Upper Depot,.....	LEAVE.	9:46	4:30
Lancaster—West King Street,...		9:55	4:40
Quarryville, (arrive).....		11:00	6:00

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
Lancaster—West King Street,...	LEAVE.	a. m.	p. m.
Lancaster—Upper Depot,.....		8:00	3:35
Lancaster Junction,.....		8:15	12:55
Reading, (arrive).....		8:35	4:11
		10:10	3:20

  

GOING SOUTH.			
Reading,.....	LEAVE.	a. m.	p. m.
Lancaster Junction,.....		7:35	11:40
Lancaster—Upper Depot,.....			6:05
Lancaster—West King Street,...		9:21	1:20
		9:46	2:00
		9:55	3:10

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.

*Attorney General*—George Lear.

**Prothonotaries:**

Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Switzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—F. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and O. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrows.  
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**COURT CALENDAR.--1878.**

FEBRUARY.

- 8. Last day for issuing Writs to February Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 8. Argument for Rules of Affidavit of Defense.
- 5. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 2, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

THE BANK OF PENNSYLVANIA for the use of G. B. PORTER, Esq. against JOHN POLK, Drawer, and JOHN GROSS and JACOB BECK, Indorsers.

A suit having been brought against a drawer and his two indorsers, one of the latter, the drawer being insolvent, agreed to pay the plaintiff half of the debt, interest and costs, if he might not be further molested, which was acceded to by the plaintiff, who afterwards obtained judgment and then received pursuant to this agreement one-half of the debt, interest and costs. Subsequently the plaintiff on being paid the other half assigned the judgment and all right to recover the amount so paid, to the person who paid the same: *Held*, that this assignee was bound by the arrangement between the plaintiff and the indorser who paid the first half, and that he could not enforce against the said indorser an execution for the amount assigned to himself.

The bank obtained judgment in this case on the 14th September, 1825. Jacob Beck being anxious to get rid of all trouble and perplexity in relation to this matter, went to the bank in October and paid the one-half of the judgment and costs. Peter Martin, who was his special bail, had called on Mr. Ogilby, the cashier, at request of Beck, and stated his wish to pay the one-half in discharge of his responsibility. The cashier referred him to J. R. Montgomery, esq., and Martin called upon him. Mr. Montgomery doubted; but afterwards (says Martin in his deposition) he agreed and the matter was arranged. Beck was not to be troubled any further.

On the 30th December, 1825, two months after this transaction, the balance of the debt and interest in the above mentioned judgment was assigned by the bank to G. B. Porter, esq., without recourse, and the same day a *feri facias* was issued to February term, 1826, upon which the return was—"real estate of John Polk levied, inquisition held and condemned." On the execution docket of this term, No. 7, is the following entry: "Polk's property since sold and the proceeds applied to other judgments." An *alias fi. fa.* was issued on the 12th, June, 1827, and on the 16th June, 1827, on motion of Mr. Wright and affidavit filed, the court granted a rule to show cause why the execution in this case should not be set aside, so far as respects Jacob Beck, one of the defendants—in the same time proceedings against him to be stayed. This rule was argued by—

Mr. W. Hopkins for J. Beck; and

Mr. Porter for the plaintiff.

By the former it was contended: 1. That

the judgment was satisfied and discharged by the acceptance of one-half of the amount of debt, interest and costs from Jacob Beck. The statements of Peter Martin's deposition and the cashier's receipt establish the fact, nor could the assignee in this case complain of hardship. He was a volunteer purchaser of the security, and was bound in duty to call on the debtor and ascertain whether there were any circumstances to affect the security of the amount due. It was his own fault if he neglected this: 1 Peere Williams, 497. If a man assign over a satisfied bond as a security for a just debt, the assignee cannot set up this bond in equity—which being satisfied before can receive no new force from the assignment. It is the business of the assignee to ascertain from the obligor, previous to the assignment, whether he has any defence: 11 Sergt. & R. 77, Mann vs. Dungan, assignee of Morris; 14 Sergt. & R. 132; 2 Johns. C. R. 443; Whart. Dig. 90, pl. 4. In the present case it is evident that the assignee had notice that Beck had paid the one-half of the debt, interest and costs. The bank gave Beck a receipt discharging him. Now a receipt, not under seal, to one of several joint debtors, for a part of the debt, discharges the rest: 1 Rawle 391, Milliken and another vs. John Brown. Did not the bank in point of fact undertake to discharge Beck altogether? Did he not make prompt payment for the purpose of preventing any further trouble by discharging himself entirely from any further demand or question? But 2. If the judgment is not wholly discharged, it is at any rate discharged as to Jacob Beck. For this the case already cited, from 1 Rawle 391, was again referred to—see p. 394. The counsel there did not contend that Watson, who stood in a predicament similar to J. Beck, was not discharged. In Fitzgerald vs. Trent, 11 Mod. 254, it was held that a covenant not to sue one of several joint obligors, is no discharge against the others, but it is a *quasi* release as to the covenantee: 1 Ld. Raymond 690, Lacy vs. Kinaston. Covenant not to sue, though not a release technically, yet operates as such to avoid circuity of action: 12 Mod. 551, S. Case—3 Even if this were not so, yet the court exercising its equitable jurisdiction, will not interfere to prevent the execution against J. Beck. Mr. Porter is a volunteer in this business—he is an equitable assignee, and, asking equity, he must do equity. The court will, therefore, in order to do justice—substantial justice, direct execution to issue against John Gross: 2 Jac. Law Dict. 480, Execution. Mr. Porter is neither party nor privy. He comes in here by virtual permission of the court, and is, therefore, subject to its discretion. He cannot interfere with this judgment except by permission. Suppose he had come before the court with a direct application to allow him to take out execution, and all these facts had been submitted, unquestionably he would not have been suffered to proceed against Jacob Beck. In a case of the Commonwealth, to the use of B. Young, vs. I. Sweigart and others, this court, on an application for the purpose, decided that execution should go against I. Sweigart for the one moiety only.

Mr. Porter for plaintiff: Without the slightest evidence to the contrary, it must be taken for granted that I am the real and not merely the nominal assignee of this judgment. I paid the money out of my own pocket and have an assignment in writing for a valuable consideration.

1. I deny that there was any agreement of the bank to discharge Jacob Beck or not to sue him or prosecute him further. No matter what was the previous talk on the subject the whole agreement must now be looked for in the written receipt of Mr. Ogilby. The difference between the terms of that receipt and of the receipt in Milliken vs. Brown, 1 Rawle 391, is striking. There the receipt was for so much for his part of the judgment—as operative as if it had been said in full of his part, &c. As to the cases cited from 1 Peere Wms. 11 and 12, modern and 1 L. Raymond, are cases *in pais*, but here the judgment is on record with the amount fixed. I say further that if Mr. Montgomery made the agreement alleged, which I deny, he as attorney of the bank had no right to make it. An attorney at law has no right to make a compromise to bind his client. 7 Cranch 436, Holker vs. Parker, Ibid. 452. Plaintiff's attorney has no right to discharge the defendant arrested on a *ca. sa.* without receiving the money: 8 Johns. R. 361, Jackson vs. Bartlett. His power after judgment extends only to receiving the money, and issuing execution within a year and a day: 10 Johns. R. 220, Kellog vs. Gilbert. The attorney on record can do those things only which pertain to the conducting of the suit, and has no power to make a compromise by which land is to be taken instead of money: 14 Sergt. & R. 307. 2. If the arrangement was actually made and were binding upon the parties, it cannot affect the assignee. (Mr. Hopkins here cites 1 Penna. R. 257, Frantz's use vs. Brown; 16 Sergt. & R. 368, Lynch and others vs. The Commonwealth; 4 Johns. C. R. 22, Briggs vs. Law.) It cannot be and was not pretended that I had any notice of this arrangement. It is an undoubted rule of equity that a purchaser is not to be affected by any arrangements of which he had no notice. This is the transfer of a judgment, while the cases cited are transfers of bonds, notes, &c. Where was the assignee in this case to look but to the record. How could he be required to go to the defendant when the best information was to be found on the record? What is the use of a record but to give indubitable evidence of what it bears on its face. I contend that I had neither actual or constructive notice. Fraud cannot be imputed to the bank: the character of its officer forbids it. Hence, I infer the bank was ignorant of the alleged agreement. There is nothing in Mr. Ogilby's receipt that can countenance a belief that there was any reference to such an arrangement. It merely shows that there was a payment on account of a part of the whole sum, for which Jacob Beck was bound. Ought he not to have had the payment made by him, and the agreement placarded on the record? 9 Sergt. & R. 141, Davis vs. Barr. But the act of assembly referred to in this case does not apply to the

judgments at all; nor do the decisions under it apply here. We have, therefore, only the equity principle; being a purchaser for valuable consideration, without notice, actual or constructive, how am I to be affected by the agreement, even if it was made. Let Beck bring his action against Gross for contribution. I protest against the presumption of any connection between John Gross and myself. The court will not, I trust, interfere with the execution. The creditor may collect his money from any of the joint debtors he pleases. And in this case it was proper that the whole money should be collected from Jacob Beck, who was the father-in-law of Polk, the principal debtor. In *Milliken vs. Brown, &c.*, 1 Rawle 391, the agreement was established, discharging Dr. Watson, but here there was no agreement. The cases in *Modern Reports* have no applicability, nor have those which were cited from 14 and 16 *Sergt. & R.* The case cited from 4 *Johns. C. R.* differs from the case at bar in being a case of express agreement.

*Mr. W. Hopkins* in reply: In regard to its being taken for granted that Mr. Porter's interest in this assignment is real, I beg to demur. There is evidence of the contrary which is circumstantial indeed, but most satisfactory. Besides there is no conceivable motive for his purchasing this judgment except to screen John Gross, his client. A *bona fide* purchaser would not readily take an assignment of a security without recourse to the assignor. If the assignee here paid his own money, and not that of John Gross, what has he done? Why, at the best, he has paid money out of his pocket to-day to receive it back to-morrow, without the least profit or benefit to himself. It is a striking circumstance that the execution issued the same day with the assignment. John Gross had a motive to advance his money to purchase this assignment. It was to shelter himself, under this transfer, from the payment of his moiety of the debt, and cast the whole upon his co-surety. He had a motive, whereas his attorney, Mr. Porter, had none under heaven. It is, therefore, clear that John Gross is the real assignee to whom the other has lent his name as a screen. Mr. Porter has given no reason why he should have purchased for himself; but the position in which he stands requires that he should satisfy the court that he was a real purchaser. Even if this were the fact, he can proceed against John Gross who is able to pay. The Supreme Court, in the case of *Milliken vs. Brown*, did not confine themselves to the receipt, but regarded the argument, acts and conversations of the parties. The idea that all previous agreements were merged in Mr. Ogilby's receipt cannot for a moment be sustained. In the case in 1 Rawle the Supreme Court expressly decide that when one of two joint debtors pays his proportion the whole debt is discharged. With respect to the cases in which the effect of the acts of attorneys was considered, the rule which has been sanctioned by the Pennsylvania decisions is that the client is bound in all cases by the act of his attorney when it is without fraud. The case of *Davis vs. Barr*, 9 *Sergt. & R.*, is reviewed by *GIBSON, C. J.*, in 1 *Penna. R.*

257, and the construction adopted therein is pronounced to be too narrow for the act. The assignee is bound to take notice of secret trusts, and everything which affects the existence of the debt between the original parties, unless the obligor, after inquiry made, has withheld the requisite information. The facts mentioned in the assignment that a part of the money had been paid; or, which is the same thing, that the balance only was assigned, were sufficient to prevent Mr. Porter from purchasing—if he were acting for himself—certainly sufficient to put him on inquiry. Had he made inquiry what would have been his information? The deposition of Martin and the letter of Mr. Montgomery explain, without obscurity or doubt, the object of Jacob Beck. It is too plain to admit of question. The agreement is manifest. Jacob Beck paid the one moiety to be discharged from any further liability or molestation. His object was stated. The bank, after deliberation, agreed to receive it in that way; and yet, according to the argument on the other side, he has paid one half only to have the other half enforced against him.

The contents of P. Martin's deposition and of the letter referred to in the foregoing discussion are so fully noticed in the opinion of the court that it has been deemed unnecessary to insert them here. The opinion was delivered by—

*HAYES, J.* This rule, by its terms, is not to affect the plaintiff's remedy against John Gross. The question is, whether, in consequence of Peter Martin's conversations with Mr. Ogilby and Mr. Montgomery, Mr. Montgomery's letter to him, and Jacob Beck's payment of \$91.10, one-half of the debt and interest, and \$4.06, one-half of the costs, together with Mr. Ogilby's receipt—Jacob Beck ought to be discharged from this execution? The matter may be considered: 1. As between the bank and Jacob Beck. 2. As between the latter and Mr. Porter.

[CONCLUSION NEXT WEEK.]

#### Common Pleas of Lancaster County.

*HEISE & KAUFFMAN vs. J. B. REYNOLDS*, Defendant, and *BRINKS & CO.* and *PENNA. R. R. CO.*, Garnishees.

[Feb'y T., 1874, No. 121.]

The general rule is that the plaintiff may have as many forms of execution as the law will afford, and may pursue them all at the same time, until satisfaction be obtained on one of them, and that he is entitled to his costs on all the writs issued.

In no case can a garnishee be made liable for costs unless more be found in his hands than he admits by his plea or answer.

Garnishees are entitled to recover costs from the plaintiff on the issue determined in their favor.

Appeal from taxation of costs, etc.

*N. Ellmaker* and *S. P. Eby* for plaintiffs.

*H. M. North* for defendant.

Opinion delivered January 19, 1878, by *LIVINGSTON, P. J.*

The plaintiffs in the case now presented obtained a judgment against *J. B. Reynolds*, defendant, in the court of common pleas of Lancaster county, to January term, 1874, No. 214.

To satisfy this judgment they issued three several writs of attachment, one against *Reynolds*, as defendant, and *Brinks & Co.* and the *Penna. R. R. Co.*, as garnishees, to February term, 1874, No. 121; one against the same defendant and the *Columbia and Port Deposit R. R. Co.*, as garnishees, to December term, 1875, No. 109; and one against the same defendant and the *Columbia National Bank and Columbia Deposit Bank*, as garnishees, to September term, 1876, No. 23. Interrogatories were filed in each case by plaintiffs, and the answer of the garnishees in each case was that they had no money or property of the defendant in their hands liable to attachment. Plaintiffs were not satisfied with these answers, and the garnishees in the first attachment issued were required to plead. An issue was formed; a trial by jury followed, and plaintiffs obtained a verdict showing money of defendant in the hands of *Brinks & Co.*, garnishees, more than sufficient to pay plaintiffs' debt, interest and costs. After which plaintiffs pursued their other writs of attachment no further. They filed their bill of costs and proceeded to have the prothonotary to tax the costs; and, in doing so, the prothonotary included \$10.10 costs in the attachment to December term, 1875, No. 109, and \$13.32 in attachment to September term, 1876, No. 23, which were issued by the same plaintiffs against the same defendant, but different garnishees, and to satisfy the same debt or judgment held by them against the defendant.

An appeal was taken from this taxation, and the error alleged is that the costs in December term, 1875, No. 109, and September term, 1876, No. 23, should not have been included in the taxation, plaintiffs having filed interrogatories, and answers were filed that the garnishees had no money of defendant in their hands.

So far as the garnishees in the last named cases are concerned it is certainly true that, as the cases stand, no costs could be recovered by plaintiffs in them against those garnishees, for in no case can a garnishee be made liable for costs unless more be found in his hands than he admits by his plea or answer: 2 *Dall.* 113.

The issue against each garnishee is in the nature of a separate suit, and the garnishees are entitled to recover full costs from plaintiffs on the issue determined in their favor: 1 *Troub. & H.* 737; 1 *Barr* 213.

But these are execution attachments, and are all issued against the same defendant to satisfy the same judgment against him; and, under one of these attachments, more than sufficient money has been found in the hands of the garnishees, belonging to the defendant, to satisfy the judgment against him and all costs accrued in collecting the same, so that really no question of costs arises between the plaintiffs and the garnishees. The question is between plaintiffs and defendant. Is defendant liable to plaintiffs for the costs which have accrued on attachments to December term, 1875, No. 109, and September term, 1876, No. 23.

It is not an uncommon occurrence for plaintiffs to issue two or more attachments in execution to satisfy the same judgment.

These were writs of execution—execution process; and the general rule is that you may have as many forms of execution as the law will afford, and may pursue them all at the same time until satisfaction be obtained on one of them: 4 Wr. 311. And before imprisonment for debt was abolished a *ca. sa.*, a *fi. fa.*, and attachments in execution, might all be out at one and the same time for the costs on which defendant was liable.

The law, therefore, affords to and permits a plaintiff to issue and pursue two or more writs of attachment against a defendant and garnishees, in satisfaction of his claim or judgment, and permits him where he recovers, to recover his reasonable costs. This being so, why should not defendant pay these costs, and why should they not be taxed in with the other costs against him and paid out of his money, held and secured by virtue of this execution process, it being admitted on the argument that there is more than enough of his money in the hands of the garnishees in the attachment to pay the debt and interest and all the costs of plaintiff. The defendant caused the delay in payment, and by so doing caused all this litigation, and we think the costs and expense thereof should be borne by him who wrongfully caused litigation: 7 Wr. 490. This is a rule of law, and it is obviously just, and is enforced wherever the forms of proceeding are provided for such a case, or are deemed plastic enough to admit it.

Being of opinion that the prothonotary has not erred in his taxation of the costs in the matters complained of we dismiss the appeal from said taxation.

**SUPREME COURT OF PENNSYLVANIA.**

**LAIRD'S et al. APPEAL.**

1. An express direction in a will to sell real estate converts it to personalty, notwithstanding that it permitted a son to take it at a valuation and pay the other devisees.
2. A posthumous child was born two months after her father's decease. *Held*, that the father "did not die without issue then living."

Appeal from the Orphans' Court of Westmoreland county.

The appellee in this case claimed, as administrator of E. M. Johnston, a posthumous child of William R. Johnston, deceased. Eliza M. Johnston, the mother of William R., was the daughter of Francis Laird, and took under his will a share as personal estate.

By the terms of her will she devised to William Laird, in trust for her two sons, her whole estate, except a few specific legacies to be by him equally divided between the sons as each arrived at his majority, with a power in the trustee to defer the partition until the younger should reach the age of twenty-two years. This devise is unqualified in its terms, but is restricted by two later provisions in the will, which are as follows:

"Item. If either of my said sons should die within the period of twenty-one years from my decease, without issue then living, then and in that event I devise all I have devised to him, or to said trustee for his use, real and personal, to the survivor, his heir and assigns."

"Item. If both of my said sons should die

within the period of twenty-one years from my decease, without issue then living, then and in that event I devise all I have devised to them both, real and personal, or to said trustee for them, to my husband, James R. Johnston, for life, so that he may take the interest and rents and profits for life, but not the principal, and the remainder and principal thereof, after his death, I devise to my brother and sister, who may then be living, their heirs and assigns forever."

Within the period of twenty-one years from the testatrix death her son, Francis L., died unmarried, without issue, leaving surviving his brother William, and within the same period William R. died, leaving surviving him a widow and posthumous child, Eliza M. Johnston, the younger, who now, through her administrator, is in court claiming this fund as the issue and heir-at-law of William R. Johnston.

Opinion by MERCUR, J. November 5, 1877.

Francis Laird, by his last will and testament, directed that after the death of his wife all his estate should be appraised and sold. He further directed that if any of his sons thought proper to take the farm at the appraisal, he should have the privilege of doing so, on paying the other heirs their respective shares; and that all the money arising from the sale be equally divided among his children, share and share alike. He died leaving sons and daughters. The rule is too well settled to need the citation of authorities, that an express and explicit direction, by the will, to sell the real estate of the testator, and divide the proceeds, works a conversion of it into personalty on his death. In this case there was an express direction to sell. The fact that it further permitted one of the sons, at his option, to take it at the valuation to be made, did not change the effect of the direction to sell. Whether or not a son acquired it, it was nevertheless a sale, and the one taking it became a purchaser. Until that point of time it continued personalty.

The only other question we deem necessary to consider is whether William R. Johnston died "without issue then living." Eliza M. Johnston devised the property in question in trust for her two sons, Francis L. and William R.; but provided in case either of them died within the period of twenty-one years from her decease, without issue then living, the whole should go to the survivor and his heirs. The will further provided that in case both of her said sons should die within twenty-one years, without issue then living, then devise over to other persons. Francis died within less than five years after the death of his mother, without issue. William R. died afterwards; but within twenty-one years after his mother's death. He left a widow, then *en ventre*, who in less than two months thereafter gave birth to a child.

It is unnecessary to cite authorities to prove that a child in *ventre sa mere* is in law born for all purposes of inheritance. This is an acknowledged principle of English law. Under our statute it can inherit in like manner as if born in the lifetime of the intestate. The language "then living" manifestly refers to the time of the death of the son. Hence it follows that William R. died "leaving issue then living," and the devise took full effect.

Decree affirmed.—*Legal Int.*

**TRIAL LIST.**  
FEBRUARY ADJOURNED COURT OF QUARTER SESSIONS, 1878.

**FIRST WEEK.**

**MONDAY, FEBRUARY 25th.**

1. Patrick Nolen, assault and battery. Nov. 59.
2. Christian Sangrey, fornication and bastardy. Aug. 69.
3. Harrison Eichelberger, fornication and bastardy. Jan. 11.
4. Daniel W. Weidler, arson. Nov. 76, 100, 102.
5. Israel Hanlen and George W. Hildebrand, violating election laws. Nov. 129, 130, 131.

**TUESDAY, FEBRUARY 26th.**

6. Esalas Lockhuff, larceny. Aug. 156.
7. Margaret Dunn, murder. Nov. 61.
8. Walter McNally, libel. Aug. 139.
9. Henry Gantz, fraudulent insolvency. Jan. 77, 23.

**WEDNESDAY, FEBRUARY 27th.**

10. Abraham K. Huber, false pretense. Nov. 46, 47.
11. Isaac Diller Worst, no license, selling on Sunday and to minors. Nov. 148, 149.
12. Abraham B. Good, fraudulent removal of goods. April 73.
13. The City of Lancaster, nuisance. Nov. 144.

**THURSDAY, FEBRUARY 28th.**

14. Daniel B. Esbenshade, maliciously breaking down fence. Nov. 45.
15. John M. Erb and Andrew Gerber, forgery. Nov. 48.
16. Frederick Grotwald, nuisance. Nov. 26.
17. Jona. Shultz, larceny. Aug. 174.

**FRIDAY, MARCH 1st.**

18. Charles Taylor, carrying concealed deadly weapons. Jan. 58.
19. Henry McClune, entering shop, &c. Jan. 66.
20. Henry J. Kegel, larceny. Jan. 61.

**SATURDAY, MARCH 2d.**

21. Frederick Heilman, desertion. Nov. 124.

Any case on list for first week and not disposed of will be continued for trial in the second week.

**SECOND WEEK.**

**MONDAY, MARCH 4th.**

1. Emanuel Daveler, fornication and bastardy. Jan. 54.
2. Elijah Lindsley, larceny as ballee. Jan. 46.
3. John B. Devellin, accessory to abortion. April 76, 91.

**TUESDAY, MARCH 5th.**

4. Davis Kitch, sr., false pretense. Nov. 68.
5. Abraham J. Snyder, murder. Jan. 3.
6. Henry Miller, alias Shaeffer, horse stealing. Jan. 62.
7. Henry Breiter, false pretense. Jan. 68.

**WEDNESDAY, MARCH 6th.**

8. Henrietta Krug, assault and battery. Jan. 70.
9. Benj. Kuhlman, assault and battery. Jan. 50.
10. Aaron Wissler, embezzlement. Jan. 18.
11. Phillip Rhoads, felonious assault and battery. Jan. 26.
12. Abraham Buch, neglect of duty. Jan. 75.

**THURSDAY, MARCH 7th.**

13. James M. Clark, attempt to bribe. Nov. 135.
14. Elizabeth Constein, perjury. Jan. 53.
15. Urias Lenhart and Geo. McCloud, neglect of duty. Jan. 23.

**FRIDAY, MARCH 8th.**

16. Henry Nixdorf, aggravated assault and battery. Jan. 25.
17. Philip Hass, Bryson Painter et al., riot. Jan. 32.
18. John H. Shroad, felonious assault and battery. Jan. 27.
19. Bryson Painter, assault and battery. Jan. 51.
20. Benjamin Owens, assault and battery. Jan. 36.
21. Benjamin Rayn, assault and battery. Jan. 79.



## COMMON PLEAS TRIAL LIST--Second Week.

Commencing Monday, February 18th, 1878.

			<i>Reynolds.</i> 14 <i>North.</i>	FREDERICK S. BLETZ <i>vs.</i> NEWCOMER & SENER.	} Dec. Term, 1876. No. 66. Sum's case, &c. Plea, non assumpsit.
<i>B. F. Davis.</i> 1 <i>Amwake.</i>	WM. SHULTZ <i>vs.</i> JOSEPH STARK.	} Dec. Term, 1877. No. 56. App'l by def't from justice, &c. (manual labor.) Plea, non assumpsit, pay't, pay't leave and set-off.	<i>Kaufman.</i> 15 <i>Eby.</i>	ED. BOOKMYER <i>vs.</i> H. S. SHREINER.	} Jan'y Term, 1877. No. 26. Sci. fa. sur meeh. lien, &c. Plea, non assumpsit, pay't, etc.
<i>P. D. Baker.</i> 2 <i>Frantz.</i>	LEVINA EOKERT'S use <i>vs.</i> WM. RUDOLPH'S (dec'd) heirs.	} April Term, 1878. No. 67. Sci. fa. to revive judgm't. Plea, non assumpsit.	<i>North.</i> 16 <i>Reynolds.</i>	GRIER BELL <i>vs.</i> FREDERICK S. BLETZ.	} March Term, 1877. No. 96. Sum's case. Plea, non assumpsit, pay't, etc.
<i>North.</i> 3 <i>A. J. Kaufman.</i>	THE COL. NAT. BANK <i>vs.</i> CHRISTIAN S. KAUFFMAN.	} Dec. Term, 1875. No. 92. Sum's case. Plea, non assumpsit, pay't etc.	<i>H. C. Brubaker,</i> <i>J. S. Bossler.</i> 17 <i>Eberly.</i>	FREDERICK F. STEINER <i>vs.</i> ANDREW ZELLER.	} April Term, 1877. No. 33. App'l by def't from justice. Plea, non assumpsit, pay't, etc.
<i>Same.</i> 4 <i>Kline.</i>	SAME PLAINTIFF <i>vs.</i> M. M. STRICKLER.	} Dec. Term, 1875. No. 93. Sum's case. Plea, non assumpsit, pay't etc.	<i>Rosenmiller.</i> 18 <i>Newpher.</i>	HENRY KAUFFMAN <i>vs.</i> JOHN RUMMEL.	} May Term, 1877. No. 17. Sum's in ejectment. Plea, not guilty.
<i>Same.</i> 5 <i>Kline,</i> <i>A. J. Kaufman.</i>	SAME PLAINTIFF <i>vs.</i> M. M. STRICKLER AND JOHN P. STAMAN.	} Dec. Term, 1877. No. 94. Sum's case. Plea, non assumpsit, pay't, etc.	<i>Yundt.</i> 19 <i>H. C. Brubaker.</i>	HANNAH E. HIBSHMAN'S use <i>vs.</i> JOHN MUSSER.	} May Term, 1877. No. 124. App'l by def't from justice. Plea, non assumpsit, pay't, pay't with leave.
<i>E. Franklin.</i> 6 <i>P. D. Baker.</i>	FREDERICK GEMPERLING <i>vs.</i> JACOB PONTZ.	} Feb'y Term, 1876. No. 78. Sum's in covenant. Plea, covenants performed absque hoc.	<i>Frueauff, Kline.</i> 20 <i>North.</i>	ELIZABETH MARKLEY <i>vs.</i> GEO. GOHN.	} Feb'y Term, 1877. No. 111. Sum's in assumpsit. Plea, non assumpsit.
<i>Good.</i> 7 <i>Rhenk, Leaman,</i> <i>Yundt, B. F.</i> <i>Eshleman.</i>	A. N. BASCH <i>vs.</i> ESHLEMAN & RATHVON.	} April Term, 1876. No. 29. Issue to try by jury, etc. Plea filed.	<i>A. J. Kaufman.</i> 21 <i>Frueauff.</i>	GIDEON H. SMITH et al. <i>vs.</i> THOS. G. FOX et al., ex'ors.	} Mar. Term, 1877. No. 3. Issue to try by jury the right of property. Plea filed.
<i>Amwake.</i> 8 <i>Davis.</i>	JACOB BRENNER et al. <i>vs.</i> BENJ. F. HOOKEY.	} April Term, 1876. No. 52. Issue to try by jury, etc. Plea filed.	<i>B. F. Davis.</i> 22 <i>P. D. Baker.</i>	JOHN STALEY <i>vs.</i> GEO. WALL et al.	} May Term, 1877. No. 10. Sum's in ejectment. Plea, not guilty.
<i>Reynolds.</i> 9 <i>H. C. Brubaker.</i>	JOHN W. LUTZ <i>vs.</i> JOHN M. STEHMAN et al., executors.	} June Term, 1876. No. 5. Sum's case. Plea, non assumpsit, pay't, etc.	<i>E. Franklin.</i> 23 <i>Eberly.</i>	JOHN R. SMITH <i>vs.</i> JACOB KAUTZ.	} June Term, 1877. No. 54. Replevin. Plea, non cept, property.
<i>Reynolds.</i> 10 <i>P. D. Baker.</i>	AARON W. MILLER <i>vs.</i> SENSENG, MENTZER & CO.	} Aug. Term, 1876. No. 66. Issue to try by jury, etc. Plea filed.	<i>Rosenmiller.</i> 24 <i>P. D. Baker.</i>	CASPER E. WEAVER <i>vs.</i> ELIZABETH MICHAEL.	} May Term, 1877. No. 56. Sum's in assumpsit. Plea, non assumpsit.
<i>Price, John M.</i> <i>Amweg.</i> 11 <i>W. A. Wilson.</i>	FRED. LEPP <i>vs.</i> MICHAEL STOLL.	} Nov. Term, 1876. No. 8. Sum's case sur slander. Plea, not guilty.	<i>Eshleman.</i> 25 <i>Eby.</i>	CHARLES J. WALSER <i>vs.</i> ANTHONY ISKE.	} Feb'y Term, 1877. No. 74. Issue to try amount due. Plea, pay't, payment with leave, etc.
<i>Nauman.</i> 12 <i>Smith.</i>	McCLENAHAN & BRO. <i>vs.</i> B. B. GONDER & SON.	} Nov. Term, 1876. No. 28. Sum's in assumpsit. Plea, non assumpsit.	<i>Price.</i> 26 <i>Smith.</i>	WEAVER & KILLIAN <i>vs.</i> LAN. CO. MUT. INS. CO.	} Nov. Term, 1876. No. 14. Sum's in covenant. Plea, covenants performed absque hoc.
<i>Martin.</i> 13 <i>H. C. Brubaker.</i>	E. H. MYERS & CO. <i>vs.</i> RABER & SON.	} Nov. Term, 1876. No. 35. App'l by def't from justice. Plea, non assumpsit.			

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 2, 1878.

## WEEKLY SUMMARY.

### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since January, 26, 1878:

SUSAN ROETHER, dec'd, late of Manheim twp.; Allison Roether, administrator.

ADAM C. KENDIG, dec'd, late of Preble co., Ohio; P. M. Bruner, administrator.

JOHN C. BAXTRESSER, dec'd, late of Elizabethtown bor.; Jacob Baxtresser, administrator.

LEVI DENISON, dec'd, late of Conoy twp.; Adam Denison, administrator.

The following Wills have been admitted to probate since January 26, 1878:

WILLIAM BEAR, late of Leacock twp.; Roland Diller, executor.

## Divorce Notices.

NATHAN WAPPENSTEIN } Alias subpoena for Divorce  
vs. } To January Term, 1878.  
ELIZ' H WAPPENSTEIN. } No. 87.

To ELIZABETH WAPPENSTEIN:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D., 1878, at 10 o'clock, a. m., to show cause if any you have, why the said Nathan Wappenstein should not be divorced from the bonds of matrimony contracted with you.  
an19 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

WM. L. RITTENHOUSE } Alias Subpoena for Divorce  
vs. } To January Term, 1878.  
MAGGIE RITTENHOUSE. } No. 88.

To MAGGIE RITTENHOUSE:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Wm. L. Rittenhouse should not be divorced from the bonds of matrimony contracted with you.  
jan19 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed SATURDAY, FEBRUARY 23d, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.  
jan26 JACOB NEISS.

E. H. BURKHOLDER,

JUSTICE OF THE PEACE,

FARMERSVILLE, LAN. CO., PA.

SPECIAL ATTENTION PAID TO COLLECTIONS.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET,  
LANCASTER, PA.

## DAYS OF APPEAL FOR 1878.

TO THE TAXABLE INHABITANTS OF LANCASTER COUNTY.

Pursuant to the provisions of the laws of the Commonwealth, the undersigned Commissioners of Lancaster County, hereby give notice to the taxable inhabitants, within the respective city, boroughs and townships of said county, that the days of appeal from the assessment of 1878, will be held in the Commissioners' Office, in the city of Lancaster, on the days following to wit:

Lancaster City, 9 Wards, } Tuesday, Feb. 12.

Adamstown Borough, }  
Washington Borough, 2 Wards, } Wednesday Feb. 13.  
Columbia Borough, 3 Wards, }  
Marietta Borough, }

Mount Joy Borough, }  
Elizabethtown Borough, } Thursday, Feb. 14.  
Manheim Borough, }  
Strasburg Borough, }

Bart, }  
Little Britain, } Friday, Feb. 15.  
Eden, }  
Colerain, }  
Fulton, }

Brecknock, }  
Carnarvon, } Saturday, Feb. 16.  
Cocalico East, }  
Cocalico West, }  
Clay, }

Drumore, }  
Martic, } Wednesday Feb. 20.  
Providence, }  
Pequea, }  
Conestoga, }

Donegal East, }  
Donegal West, } Thursday, Feb. 21.  
Conoy, }  
Mount Joy, }  
Penn, }

Ephrata, }  
Elizabeth, } Friday, Feb. 22.  
Warwick, }  
Manheim, }

Earl, }  
Earl East, } Saturday, Feb. 23.  
Earl West, }  
Paradise, }  
Sadsbury, }

Hempfield East, }  
Hempfield West, } Tuesday, Feb. 26.  
Rapho, }  
Strasburg, }  
Lancaster, }

Lampeter East, }  
Lampeter West, } Wednesday, Feb. 27.  
Leacock, }  
Leacock Upper, }

Salisbury, }  
Manor, } Thursday, Feb. 28.

No change in the valuation of Real Estate can be made except where new buildings are put up, or buildings destroyed by fire or otherwise.

At the same time and place the appeal from the Military Rolls will be held.

S. F. EAGLE,  
SAMUEL M. MYERS,  
EM' L P. KELLER,  
Commissioners.

jan26  
Papers in county copy.

## VICK'S

### ILLUSTRATED MONTHLY MAGAZINE.

Each number contains THIRTY-TWO PAGES of reading, many fine Wood Cut Illustrations, and one COLORED PLATE. A beautiful Garden Magazine, printed on elegant paper, and full of information. In English and German. Price, \$1.25 a year. Five copies \$5.00

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PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

## Auditors' Notices.

JOHN H. COOPER and } In the Court of Common Pleas  
SAMUEL TRUSCOTT, } of Lancaster County.  
executors of will of }  
John Cooper, dec'd, } Nov. Term, 1877. No. 135.

vs. }  
JOHN PEART. } Levavi Facias.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster county, to make distribution of the money made on the above writ and paid into court, will sit for that purpose on THURSDAY, FEBRUARY 28th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend  
feb2 W. LEAMAN,  
Auditor.

HIRAM WILSON } In the Court of Common Pleas  
vs. } of Lancaster County.  
W. B. C. DENNIS. } Jan'y Term, 1878. No. 37.

Execution Docket.  
The undersigned Auditor, appointed by said Court to distribute the money ruled into Court, made under the above execution, will sit for that purpose in the Library Room of the Court House, in the City of Lancaster, on TUESDAY, FEBRUARY 26th, 1878, at 2 o'clock, p. m., when and where all persons interested are requested to attend and present in said distribution their claims.  
feb2 AND. M. FRANTZ, Auditor.

Estate of ANNA MARTIN, late of Salisbury twp., Lancaster co., deceased.

The undersigned Auditor, appointed by the Orphans' Court of said county to pass upon the exceptions to the account filed by John Wanner, jr., and Jacob Martin, jr., administrators of the estate of David S. Martin, deceased, who was administrator of the estate of the said Anna Martin, deceased, and to distribute the balance in the hands of the accountants, will sit for the purpose of his appointment in the Library Room of the Court House, Lancaster, on THURSDAY, FEBRUARY 21, 1878, at 11 o'clock, a. m., when all persons interested may attend.  
feb4 W. LEAMAN, Auditor.

Assigned Estate of HENRY DIETRICH and WIFE, of Manheim twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel P. Keller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 28th day of FEBRUARY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
jan26 A. C. ILLYUS, Auditor.

Estate of ABRAHAM H. MUSSLEMAN, late of East Donegal twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of M. H. Musselman and J. F. Cottrell, administrators, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, FEBRUARY 20th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
WM. B. GIVEN,  
Auditor.  
jan26

JOHN G. BEAR, } In the Court of Common Pleas  
for the use of Henry } of Lancaster County.  
Kafroth, } Fi. fas. Jan'y Term, 1878.  
vs. } Nos. 102 and 103.  
THOMAS B. SOHL. } Money ruled into Court.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster Co., Pa., to distribute the moneys ruled into court, made under the above f. fas., will sit for the purposes of his appointment, in the Library Room of the Court House, in the City of Lancaster, on FRIDAY, FEBRUARY 15th, 1878, at 2 o'clock, p. m., on said day, when and where all persons interested in said distribution may attend if they think proper.  
SAMUEL H. PRICE,  
Auditor.  
jan26

Estate of JOHN L. BURGAIN, late of Drumore township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James J. Glenn, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, FEBRUARY 12th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
WALTER M. FRANKLIN,  
Auditor.  
jan19

**Assigned Estate of ANDREW J. KIMPER and EDWARD F. KIMPER, of Lancaster, Pa.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin O. Stirk, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on **MONDAY, FEBRUARY 4th, 1878**, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **HUGH R. FULTON,**  
Jan 19 Auditor.

**WILLIAM B. WILEY,**

**ALDERMAN,**

**OFFICE — No. 32 NORTH DUKE STREET,**

**LANCASTER, PENNA.**

**Estate Notices.**

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.  
Feb 2  
**J. HAY BROWN, Att'y.** **C. M. GOOD,**  
Administrator.

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to the undersigned without delay, and those having claims to present them to  
**jan 26** **EZRA BURKHOLDER, Assignee,**  
Residing in West Earl township.

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litiz.  
**jan 19\*** **JACOB A. BUCH,**  
**D. G. ESHLEMAN, Att'y.** Executor.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.  
**jan 19** **HARVEY S. BOWERS,**  
**PHILIP D. BAKER, Att'y.** Administrator.

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.  
**jan 19\*** **CHRISTIAN MYERS,**  
Administrator.

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.  
**jan 5** **SIMON F. ALBRIGHT,**  
**S. H. RAYNOLDS, Att'y.** Executor.

**Estate of BENJ. D. DANNER, late of Mannheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.  
**jan 5\*** **HENRY S. DANNER,**  
**P. D. BAKER, Att'y** Executor.

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
**dec 29** **ELIZABETH RUHL,**  
**J. HAY BROWN, Att'y.** Administratrix.

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 28th, 1877, assigned and transferred all their estate and affects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JOHN H. ZELLER,**  
**J. HAY BROWN, Attorney.** Assignee,  
**dec 29** Residing in Mount Joy borough.

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.  
**dec 22\*** **CATHERINE RINEER,**  
**B. F. ESHLEMAN, Att'y.** Executrix.

**Estate of JACOB HOLSINGER, late of Hinkletown, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.  
**dec 22** **E. BURKHOLDER,**  
Administrator

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 13, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**dec 22\*** **ABRAHAM MILLER, Assignee,**  
**C. DENUES, Att'y.** Residing in Millersville.

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.  
**M. BROSIUS,** **CATHARINE KRABER,**  
**dec 15** Attorney. Administratrix.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
**MARGARET GRAVER,** Warwick township;  
**ADDISON GRAVER,** Mannheim township;  
**dec 15** **HENRY B. ESHLEMAN,** Mannheim township;  
**D. G. BAKER,** } Att'ys. Administrators.  
**O. P. BRICKER,** }

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**dec 15** **SAMUEL WHITSON, Assignee,**  
**M. BROSIUS, Att'y.** Atglen, Chester Co., Pa.

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 3, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**dec 15\*** **LEVI BRUBAKER, Assignee,**  
**A. J. EBERLY, Att'y.** Millway P. O., Lan. Co.

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
**dec 3\*** **MARY M. KING,**  
**J. W. JOHNSON, Att'y.** Administratrix.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.  
**MARTIN G. LANDIS,**  
**dec 8** Administrator,  
East Lampeter twp.

**Estate of MARTIN GROFF, Sr., late of Mannheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
**SAMUEL GROFF,**  
**dec 8\*** **ABRAHAM S. GROFF,**  
**PHILIP D. BAKER, Att'y.** Executors.

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.  
**dec 1\*** **W. C. FREW,**  
**B. F. ESHLEMAN, Att'y.** Administrator.

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
**nov 17** **KIRK BROWN,**  
**J. HAY BROWN, Atty.** Administrator.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned.  
**GEO. BRUBAKER,**  
**H. C. BRUBAKER, Att'y.** [dec 1] Assignee.

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# The Lancaster Bar.

Vol. IX.

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No. 37.

## The Lancaster Bar.

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JNO. H. BARNES,

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PHILIP D. BAKER, EDITOR.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

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"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,...	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,...	6:00 p. m.	8:10 p. m.
Columbia Accom.,...	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,...	7:25 p. m.	8:40 p. m.
Pittsburg Express,...	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,...	7:35 a. m.	10:00 a. m.
Columbia Accom.,...	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,...	3:00 p. m.	5:00 p. m.
Johnstown Express,...	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,...	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landsville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.	a. m.	p. m.
Leave Columbia,.....	10:20	6:45
Arrive at Port Deposit,.....	1:20	8:45

  

GOING NORTH.	a. m.	p. m.
Leave Port Deposit,.....	6:20	2:00
Arrive at Columbia,.....	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:00	2:30
Lancaster—West King Street,...	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45

  

LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30	8:10
Lancaster—West King Street,...	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00	1:35	3:35
Lancaster—Upper Depot,.....	8:15	1:50	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	3:20	5:50

  

LEAVE.	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:21	1:20	7:45
Lancaster—Upper Depot,.....	9:46	2:00	8:10
Lancaster—West King Street,...	9:55	2:00	8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkay.  
*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweltzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 2d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and O. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Greff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**FEBRUARY.**

- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

**MARCH.**

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

**APRIL.**

- 5. Last day for issuing Writs to April Term.
- 3. Argument for Rules of Affidavit of Defense.
- 5. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

**MAY.**

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

**JUNE.**

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

**JULY.**

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

**AUGUST.**

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

**SEPTEMBER.**

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

**OCTOBER.**

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

**NOVEMBER.**

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

**DECEMBER.**

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 9, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

THE BANK OF PENNSYLVANIA for the use of G. B. PORTER, Esq. against JOHN POLK, Drawer, and JOHN GROSS and JACOB BECK, Indorsers.

[Continued from last week.]

1. Peter Martin, as agent for Jacob Beck, first called on the cashier of the bank, pending the action, and stated that Jacob Beck would pay one-half of the debt and cost immediately if the bank would discharge him from the suit. Upon this application Mr. Ogilby, the cashier, said he would consult Mr. Montgomery, the solicitor of the bank, and Mr. Martin accompanied him. Mr. Montgomery doubted whether it would be proper to discharge one of the indorsers upon paying one-half of the debt. Some time after Mr. Martin called on Mr. Montgomery again to press the proposed arrangement, and mentioned that Mr. Beck was very anxious to effect it. Mr. Montgomery said he would consider of it, and accordingly, on the 14th September, 1825, wrote to Martin that the business was arranged and would be conducted as he asked it should be.

On the next day judgment was entered against Poke, the principal, and the two indorsers, Gross and Beck. Poke was insolvent, and Beck, on 21st of October ensuing, paid one-half of the debt, interest and costs. "By making and accepting an offer," says Judge SHIPPEN, (2 Dall. 49,) "every bargain is consummated." The offer here was to pay the one-half of the debt and costs in order that Beck might be relieved from any further trouble. Mr. Montgomery's letter shows that this offer was accepted; "the business has been arranged says the letter, and will be conducted as you wished it should be done." The acceptance was therefore without qualification and the agreement being performed on the part of Beck, pursuant to his offer, was thereby consummated. What was the agreement? It was not to release Jacob Beck from the judgment, for the Bank, the day after the date of the letter, proceeded to obtain judgment against all the parties, and Jacob Beck's subsequent payment, with a knowledge of that proceeding shows that it was not his understanding that he should be released from the judgment. The bank could not have released him without discharging the others, and unquestionably this was not intended; it could direct its execution to be issued against all the defendants, to be levied upon the property of any one of them, and as Jacob Beck had agreed to pay and did pay one-half of the

debt and costs, the bank might equitably engage to cause its execution to be executed for the residue upon the property of the other solvent defendant. That was certainly the arrangement by which the business was to be conducted, so as to save Jacob Beck from any further trouble. Whatever might have been the case, had Mr. Montgomery, without consulting or being consulted by the bank, entered into this arrangement, there cannot exist a doubt of his authority, after the facts proved, to do all that he has done; for he was not only appealed to by the bank but the arrangement so far as it was conducted by him, was ratified by the bank's acceptance. The agreement then being on the part of the bank not to proceed with the execution against Jacob Beck, would it have been equitable in the bank thus to have proceeded? Would it not have been precluded from thus proceeding? Would not chancery enjoin the execution as against Jacob Beck?

The case of Milliken, &c. vs. Brown, is a complete answer to these plain questions. Had the present execution been issued by the bank instead of the assignee this court it is quite clear must have interfered to set aside any proceeding under it against Jacob Beck: 1 Rawle 391.

2. How stands the case between Mr. Porter, assignee of the bank, and Jacob Beck? If he had notice, it is not to be doubted that he is affected by the agreement no less than if he had been a party to it. Now notice is either actual or constructive. The following circumstances are referred to as establishing the fact of actual notice. Mr. Porter was attorney for John Gross, the other indorser and defendant. He had paid off and taken a transfer of another judgment of the Farmers' Bank against him, and two others in which he was likewise attorney for the said John Gross who was an indorser there also. As it would have been inequitable in the bank to have attempted to enforce execution against Beck, so it would have been unfair and dishonest to have transferred the judgment without informing the assignee of the agreement. Hence it is to be inferred that the bank did give such information which was requisite at least for the assignee's protection as for that of Beck. This inference is strengthened by the terms of the assignment, which states that one-half of the debt and interest, to wit: \$91.10, and one-half of the costs, to wit, \$4.06 were paid by Jacob Beck, one of the defendants, and that the amount paid by G. B. Porter, esq., was the residue of the note, and \$4.06, one-half of the costs. In consideration of the amount thus paid, this judgment and "all right of recovery of the amount so paid by him, together with four dollars and six cents, being the one-half of the costs which he has paid" was assigned to him the said Geo. B. Porter, esq., his heirs, executors, administrators and assigns, "without recourse to the bank." But if notice was not actually given to him of the arrangement which the bank had made with Jacob Beck, yet if on the face of the transfer or assignment there was sufficient to put him on inquiry, this is equivalent to notice, it amounts to construc-

tive notice, and takes from the transferee all grounds of complaint: 2 Fombl. Eq. 151. In all cases where the purchaser cannot make out a title, but by a deed which leads him to another fact, the purchaser shall not be a purchaser without notice of that fact, but shall be presumed cognizant thereof, for it was *crassa negligentia* that he sought not after it, and this is in law a notice. So where in a jointure there was a covenant against incumbrances, except leases or copies, determinable on three lives, the exception of leases *ut supra* gave notice of former leases, and therefore, he must take notice of the covenants contained in them. So there was sufficient notice in law or an implied notice where the mortgage was excepted to in the defendants' conveyance; and, therefore, they could not be ignorant of the mortgage, and they ought to have seen it; and that would have led them to the other deeds, in which, pursued from one to the other, the whole case must have been discovered to them.

These cases illustrate the general rule, which is, that whatever is sufficient to put the party upon an inquiry is good notice in equity: 2 Fombl. Eq. 151, note (m.); 2 Bin. 466. The assignee saw, upon the assignment, that one of the indorsers had paid the half of the debt and interest and the half of the costs; that the bank guarded the transfer by the words—"all right of recovery of the amount so paid by him," (the assignee) and that *without recourse*. Surely this was enough to suggest the propriety of inquiring why Jacob Beck had paid, and the bank had received the one-half of the debt, interest and costs, and whether there was no agreement between him and the bank, and what it was? What was more natural than the inquiry why do you add the words "all right of recovery of the amount so paid"—and why do you say "without recourse to the bank" when I pay you the entire residue of your demand? And, if not satisfied with their answer, would it not have occurred to him, before he paid his money, to call on Mr. Beck and ascertain from him what agreement had been made, if any, with the bank. But whether he had notice or not is he not affected with the agreement between the assignor and Jacob Beck? The bank had no right to proceed with their execution against the latter and could not transfer such right to another. Had this been an assignment of a bond or note under the act of assembly it would not bear discussion.

It has often been ruled in our courts that the innocent assignee, without notice of a bond, stands in the place of the obligee, so as to let in every defence the obligor had against the obligee at the time of the assignment or notice thereof: 2 Yeates 23, Rundle et al. vs. Etwein; 2 Yeates 464; 1 Dall. 28; 1 Peina. R. 257.

In Frantz vs. Brown it was decided that the assignee is bound to take notice of everything, as well a secret trust as want of consideration or set-off, that may affect the existence of the debt between the original parties, unless the obligor after inquiry made, has withheld the requisite information. So, in

England, a bond passes into the hands of an assignee subject to all the equity it had in the hands of the assignor: 6 Vin. 692, 675; 10 Mod. 445; 1 P. Wms. 383, 452, 459.

In *Turton vs. Benson*, 1 P. Wms. 496, the case was this: A son on his marriage was to have £3,000 portion with his wife, and privately, without notice to his parents, who treated for the marriage, gave a bond to the wife's father to pay back £1,000 of the portion seven years afterwards. This bond was assigned in trust for the benefit of the obligee's creditors, against whom the obligor prayed to be relieved. After the cause was greatly debated the master of the rolls granted a perpetual injunction upon the £1,000 bond, declaring that the creditors of Benson, the obligee, could not be in a better situation than Benson himself; that supposing a man should assign over a satisfied bond as a security for a just debt, the assignee could not set up this bond in equity, which, being satisfied before, could receive no new force from the assignment, and that it was incumbent on any one who took an assignment of a bond to be informed by the obligor concerning the quantum due upon such bond, which, if he neglected to do it, was his own fault, and he should not take advantage of his own laches. Lord Chancellor Parker, who affirmed the master's decree, on appeal said *inter alia* that as to Benson's pretended assignment of the bond, it was upon no consideration; but if it were, yet in truth, it was not an assignment, but on agreement only that the assignor should have all the fair and equitable advantage and benefit of the bond that the assignee himself was entitled to, and if nothing was done, nothing could be assigned over.

Whether the assignment be legal or equitable, the assignee cannot set up want of notice in discharge of the equity to which the obligor was entitled, as against the obligee, at the time of the assignment, unless he has called upon the obligor before the assignment and been informed by him that he had no defence, or unless he has been encouraged or induced by the obligor to take the assignment without intimating that he had any defence: 1 Rawle 227, *Metzgar vs. Metzgar*.

But it is contended that the cases, with regard to bonds, will not apply here because this was a judgment, which was transferred to G. B. Porter, esq., and the assignee had therefore, only to look at the record. I am not able, I confess, to perceive the force of this distinction. The assignee of the bond might as well say he had only to look at the bond. He, however, is bound to inquire of the obligor whether anything, and how much is due, and omitting to do so, is liable to every equitable objection and defense which existed between the obligor and obligee. May there not exist a good legal and equitable defense against a judgment as well as a bond? There may even be a set-off of one judgment against another. Judgments may also be paid and satisfied. They may have been fraudulent and without consideration, and yet the record disclose nothing of all this. Is the defendant therefore, to be precluded from

showing his defense? Shall he be compelled to pay his debt twice, or to pay what he does not owe, because the assignee of the plaintiff had a record to look at and chose to look no further? The assignee of a judgment enjoys as good means of discovering whether there is a defense to it as the assignee of a bond. The record gives him all the information that the bond gives the other, and why should he not be as much bound to go to the defendant as the assignee of the bond is to resort to the obligor, since a defense may obtain against the one security as well as the other. At common law no chose in action could be assigned or granted over, and though this nicety is now disregarded, yet the form of assignment, says BLACKSTONE, is in the nature of a declaration of trust, and an agreement to permit the assignee to make use of the name of the assignor, in order to recover possession, and the person to whom it is transferred is rather an attorney than an assignee. But courts of equity, considering that in a commercial country almost all personal property must necessarily be in contract, will protect the assignment of a chose in action, as much as the law will that of a chose in possession: 2 Bl. Comm. 442. The universal principle of equity is that he who asks equity shall do equity, in order that courts may not be made the instruments of fraud and oppression. Hence, as the assignment is but an agreement that the assignee shall have all the fair and equitable advantage and benefit of the chose transferred to him he shall not be allowed to exact, upon the face of the instrument, more than the assignor was himself justly entitled to demand: 1 P. Wms. 498. This principle applies equally to the transfer of a bond and of a judgment, and appears to me to afford the true foundation for the rule which requires the assignee to ascertain from the debtor whether anything and how much is due.

I am accordingly of opinion that the assignee of the bank in the present case had no better or other right to enforce this execution against Jacob Beck, than the bank itself had. I believe a court of chancery would enjoin his proceeding with the execution against that defendant, and that we ought to set it aside as to him by staying all proceedings against him.

Let the rule to that effect be made absolute.

#### Common Pleas of Lancaster County.

COLUMBIA FIRE INS. CO. *vs.* SWEIGART.

[Nov. T., 1877, No. 90.]

On an appeal from the judgment of a magistrate, the recognizance, to secure costs, must be taken before the magistrate who passed the judgment. The court will not, however, strike off the appeal, but will direct the recognizance to be perfected.

Rule to show cause why the appeal should not be stricken off.

*W. A. Wilson* for rule.

*H. M. North* contra.

Opinion delivered January 19, 1878, by LIVINGSTON, P. J.

It was commenced by the plaintiff against the defendant before Samuel Evans, esq.,

and judgment entered in favor of plaintiff for \$66.39, on October 2, 1877.

On October 16, 1877, defendant appealed from this judgment; and, in completing his appeal, he made the oath required before Henry Harmany, another justice of the peace of Lancaster county, and before the said justice, Harmany, he, with his surety, entered into a recognizance, which after being executed and acknowledged, was forwarded to Samuel Evans, esq., before whom suit was brought and judgment obtained. After its receipt by Samuel Evans, esq., he made out a transcript for an appeal and returned it, together with the recognizance and oath, taken before Henry Harmany, esq., to the office of the prothonotary of Lancaster county, where it was entered as an appeal to November term, 1877, No. 90. After which the present rule was granted, and the following reasons assigned:

1. The affidavit for the appeal, and the alleged recognizance of bail, were not made or taken before Samuel Evans, esq., before whom the judgment had been entered.

2. No proceedings relating to the appeal were had before Samuel Evans, esq., except by filing with him a paper in the case, on which paper defendant says he appeals, and said paper purports to contain an affidavit and recognizance of bail entered before another justice of the peace than said Evans.

This court, in *Gakel & Co., vs. Bletz*, LANCASTER BAR, vol. 9, page 6, decided that the oath necessary to be made upon an appeal from an award of arbitrators may be made before a justice of the peace, and need not necessarily be made before the prothonotary—a justice having a general power to administer oaths and affirmations; and there seems to be good and sufficient reason for the decision. A defendant may, after the rendition of the judgment, be prostrated by sickness or accident, and be wholly unable to travel and appear before the magistrate before whom the cause was tried to make the oath necessary to procure and complete his appeal. But the same reasons do not prevail, or even present themselves, with reference to the recognizance or bail. The defendant is not even required or obliged to join in the recognizance: 6 Binn. 52. This can be done by the bail alone.

Where a party against whom judgment has been passed by a magistrate is dissatisfied, and determines to appeal, he must take with him or send to the magistrate (passing the judgment) a competent person to serve as bail, and claim his appeal within twenty days from the rendition of the judgment. And when bail is offered it is the duty of the magistrate to inquire into its sufficiency, either on oath or affirmation, or by other means. If he is satisfied of the insufficiency of the bail, notwithstanding his oath, he has power to and should reject him and require the production of other bail. The act of 1810 required the bail to be taken by the justice who tried the cause, and gave the form of recognizance. In the fifth section thereof it declares: "that the special bail, directed to be taken by the justice in case of appeal, shall

be conditioned for the appearance of the party appealing at the next court of common pleas, to prosecute his suit with effect; and on failure thereof that the bail will pay the debt and costs, if the appeal is made by the defendant, or the costs, if the appeal is made by the plaintiff; or that the bail will, on or before the first day of next term after judgment shall be rendered against the principal, surrender him to the jail of the proper county: on which surrender being so made, the bail shall be exonerated, but not otherwise." After this there does not appear to have been any change made in the law with respect to recognizances to be taken by justices on appeals, until the passage of the act of 1842 abolishing imprisonment for debt. The 33d section of that act, Pam. L., 1842, pg. 347, changes the condition of such recognizances, and declares that they shall be "conditioned that no part of the property of the defendant, which is liable to be taken in execution, shall be removed, secreted, assigned or in any way disposed of, except for the necessary support of himself and family, until the plaintiff's demand shall be satisfied, or until the expiration of ten days after such plaintiff shall be entitled to have an execution issued on the judgment obtained in such cause, if he shall obtain judgment." And Sect. 34 of the same act declares that all the provisions of the act of March 20, 1810, and its supplements, not expressly repealed by this act, and not inconsistent with its provisions, are and shall be in full force. The next change in the law was the act of March 20, 1845, Pam. L., 1845, pg. 188-9, which required the condition to be for the payment of all costs accrued or that may be legally recovered in such cases against the appellants. That the bail should be bail absolute in double the probable amount, &c., and produced the form of recognizance now in general use, but did not alter the manner of taking them.

It appears clear to us, therefore, that the bail should, in all cases of appeal from the judgment of a justice be produced before the justice who entered the judgment, and enter into and acknowledge the recognizance before him, so that he may inquire into its sufficiency, and approve or reject it as he finds his duty requires.

This was not done in the case before us. The testimony taken shows that the justice told defendant, on the day of the hearing, that he would not pass judgment on that day; that there were some points he wanted to consider over, and said that if judgment was passed against defendant he would send him the necessary papers and he could go before a justice of the peace at Elizabethtown and take out his appeal there, and return them to him, Evans, and he would perfect them and send them to Lancaster. This Squire Evans admits is substantially true and correct. Defendant was thus thrown off his guard and did as the justice advised and requested him to do, instead of producing his bail before the justice from whose judgment he was taking an appeal, and entering into and acknowledging the recognizance before him as the

law requires. Shall the defendant be deprived of a trial by jury, and have his appeal dismissed by reason of having filed a recognizance which has been improperly or imperfectly acknowledged by reason of an error on the part of the magistrate, or shall the appeal be permitted to stand and defendant be permitted to perfect his recognizance and bail?

In *Means vs. Trout* the Supreme Court say: "If the recognizance given on appeal from the award of arbitrators, or a justice of the peace be defective, the party should be called on by rule to perfect his bail within a given period, or in default thereof, to have his appeal dismissed. The court ought not to quash the appeal in the first instance:" 16 S. & R. 349, 2 Penna. 431.

In *Bream vs. Spangler*, "upon a motion to quash an appeal from the judgment of a justice of the peace, on the ground of a defective recognizance, the appellant should be permitted to amend it and thus perfect the appeal:" 1 W. & S. 378.

In *Adams vs. Null*, the court say: "This recognizance is undoubtedly bad. \* \* \* It is immaterial that the appellant did not offer to amend pending the motion to quash; it was the appellee's business to call on him for a good recognizance by a rule:" 5 W. & S. 363-4; 3 Cas. 267.

In *Koenig vs. Bauer*, AGNEW, J., says: "It has been said so often that it will scarcely bear repeating that the proper course, when the recognizance of an appellant is defective or invalid, is not to dismiss the appeal, but to rule him to amend or perfect it, and to dismiss only as the penalty of neglect or refusal. The right of appeal and of trial of jury is too precious to be frustrated by the ignorance, incompetency or malice of inferior magistrates and officers:" 7 Sm. 171.

Following these decisions this court in the case of *A. D. Hummer vs. Ephrata School Distr't*, where the particular act of assembly, under and by virtue of which the appeal in that case was taken, required that there should be "two sufficient sureties," and the recognizance taken and filed, contained the name of but "one surety," on a rule to strike off or dismiss the appeal, discharged the rule, and permitted the the appellant to perfect his recognizance: LAN. BAR, vol. 5, (Feb. 14, 1874.)

And in the case of *Gakel & Co. vs. Bletz*—Opinion by Judge PATTERSON—on a rule to strike off the appeal, the appellant was allowed to perfect his recognizance and the rule was discharged: LAN. BAR, vol. 9, pg. 6.

We, therefore, in the present case, discharge the rule to show cause why the appeal should not be stricken off, and direct a rule on appellant to be entered requiring him to perfect his recognizance within fifteen days from this date, and in case of his failure so to do the court will strike off his appeal on motion, and we direct that the rule be served by the prothonotary on appellant's counsel of record.

COMMONWEALTH vs. SPECHT ET AL.

[Dec. T., 1875, No. 125.]

The repeal of the act of 1856, relative to liquors, by the act of 1875, does not prevent a recovery upon

the bond given by the applicant for license before the repeal.

Rule for a new trial.

*J. B. Amwake, J. B. Good and Philip D. Baker* for rule.

*B. C. Kready and H. C. Brubaker* contra.

Opinion delivered January 19, 1878, by LIVINGSTON, P. J.

At January Sessions, 1873, license was granted to Augustus F. Specht, of the city of Lancaster, entitling him to sell liquor by the quart—ordinarily called a "liquor store license." This license was granted at January term, 1873; and at the time the court granted the license, the applicant presented his bond—judgment bond—with Adam Smith and Catharine Specht as his sureties, in the sum of \$500. On this bond the parties therein named authorized the entry of judgment for the \$500 penalty. On January 8, 1873, this bond was filed, and on January 29, 1873, when the license was granted, it was approved by the court. On February 4, 1873, Augustus F. Specht paid to the county treasurer the amount of money required of him for license and lifted his license.

At August Sessions, 1873, two bills of indictment were presented and found against him; one numbered 84, for selling liquor on Sunday—the other numbered 86, for selling without license, or contrary to license. On these indictments defendant was convicted March 3, 1874, and sentenced March 4, 1874, to pay \$100 fine and costs in each case.

On March 25, 1875, the judgment filed in the quarter sessions January 29, 1873, was entered as a judgment in the court of common pleas of Lancaster county, to January term, 1875, No. 499; and, in order to ascertain the amount due on this judgment thus entered, a *scire facias* was issued to December term, 1875, No. 125, and upon this *sc. fa.* the trial was had.

At the trial on this *sc. fa.* to ascertain the amount due on the judgment, we charged the jury that upon the evidence the Commonwealth was entitled to recover the amount they should ascertain from the evidence to be due her, and that the repeal of the act of assembly of 1856, by the act of 1875, did not prevent a recovery in the case before the court. To this charge of the court the counsel for defendants took exception and made this exception their basis for the application for granting a new trial.

We have listened with pleasure to the arguments of the learned counsel, but they have failed to convince us that a fair construction of the several acts of assembly referred to, and of the repealing clauses connected therewith, require us to set aside the verdict in this case; or that there is anything in them that would warrant the court in granting a new trial.

The rule is therefore discharged.

Rule discharged.

In 1770 the King of Portugal issued an edict forbidding widows of above 50 years of age to marry: "Because experience has shown that woman of that age commonly marry young men of no property, who dissipate their fortunes to the prejudice of the children and other near relations of their wives."



## SUPREME COURT OF PENNSYLVANIA.

ADAMS, HALDEMAN &amp; CO., vs. GEORGE BACHERT.

It is not necessary in proving the execution of a judgment note containing a waiver of exemption to show that the defendant knew at the time of signing it that it contained a waiver. That part of the note which contains the waiver stands on no higher plane than the rest.

Error to the Court of Common Pleas of Lehigh county.

Opinion by GORDON, J. March 26, 1877.

On the 7th day of November, 1874, George Bachert executed and delivered to the plaintiffs, Adams, Haldeman & Co., his judgment note, containing *inter alia*, a clause waiving the benefit of the act of assembly exempting property from execution, and agreeing that all his goods and effects might be taken in satisfaction of the debt in said note mentioned. Judgment was entered thereon and a *fi. fa.* issued. Afterwards the court, on motion to open the judgment and stay the writ, directed an issue to try: first—"whether or not the defendant confessed the above judgment;" second—"whether or not the defendant waived the law exempting property from execution."

Upon the trial of this issue the learned judge of the court below charged as follows: "The defendant could only avoid the judgment note by showing that there was fraud practiced upon him in the obtaining of his signature to the note. There is no fraud—because there is no testimony in the case from which you will be warranted to find such a fraud; and, therefore, I instruct you that, as regards the issue to determine whether or not it be the defendant's act or deed, you must find that in the affirmative. A different question, however, arises as to whether or not the defendant waived the three hundred dollar law. This is a personal privilege given to the defendant under the statute, and I have declared the law to be, in cases tried heretofore, that no man can be held to waive a privilege unless he is informed of that fact. *He cannot be held in law to have waived the three hundred dollar exemption law, unless knowledge was brought to him at the time he signed the note, and the question then for your determination is, did the defendant know at the time he signed this note that it was an exemption note; or, in other words, that he had waived the privilege which the statute had conferred on him? The plaintiffs assert that the defendant did know this fact. The plaintiffs must prove this by stronger proof than all opposing proof on the part of the defendant.*

That part of the charge which we have italicized is wrong. That part of the note which waived the execution stood on no higher plane than any other. It was a contract the defendant had a right to make, and it went into the note as part of the consideration: *Bowman vs. Smily*, 7 Casey, 225. When the plaintiffs proved the execution of the obligation, they made out their case; a case that could only be impeached by proof that the signature thereto had been obtained by fraud, or through some palpable mistake or misapprehension of the parties. Neither

of these proofs, however, was made. What if Bachert did not know that the power he executed contained an agreement to waive exemption? He did not know because he did not inquire. (We speak from his own testimony.) There was no fault on part of the plaintiffs or their agents, and they got nothing from the defendant that was not lawful and proper for them to take. Under such circumstances, and as against creditors who are justly entitled to have paid to them the debt represented by the note, the defendant has no standing in either law or equity: *Greenfield's Estate*, 2 Har. 496.

The verdict and all proceedings in the issue in this case are reversed and set aside; and it is now ordered that the record be remitted to the court below for further proceedings according to law.—*Pitts. Leg. Jour.*

## KING'S APPEAL.

1. The children of a wife and mother living with husband at the time of her decease are not entitled to \$300 out of her separate estate.
2. The act of 1851 is meant for the benefit of the widows, it was not intended to apply to the property of a wife.

Appeal from the Orphans' Court of Adams county.

Opinion by MERCUR, J. October 1, 1877.

The precise point for contention is presented for the first time in this court. That is whether in case a wife and mother living with her husband, and owning separate property, dies, leaving children, they are entitled to \$300 worth of her property, under the act of 14th of April, 1851? That act declares "the widow or the children of any decedent dying within this Commonwealth, testate or intestate, may retain either real or personal property belonging to said estate to the value of three hundred dollars, and the same shall not be sold but suffered to remain for the use of the family." Although the act says "the widow or the children" may retain, yet it has been held if there be a widow, the children of the decedent are not entitled to any portion of his exempt property. It all vests in the widow only: *Nevin's Appeal*, 11 Wright 230. In so far as the widow's affection influences her, she may be said to hold for herself and family; that is, for the use of those children who remain with the family. The widow, however, has the sole right of its appropriation and disposal. The main object of the act is to provide for the widow. On the death of the husband and father, so much of his property is transferred to his widow, to be used by her as he might have used the same in his life time. It is only in case no widow survived to accept this charity of the statute that it passed to the children. Hence it was well said by Mr. Justice STRONG, in *Nevin's Appeal*, *supra*, the act "has always been construed rather according to its spirit than its letter."

The husband and father is liable for the support and maintenance of his wife and children while they remain members of his family. To entitle the widow to the three hundred dollars worth of her husband's property she must have sustained the rela-

tion of his wife at the time of his death. Hence, if she had deserted him, so long as not to be a part of his family, she thereby forfeits her right to this property: *Tozer vs. Tozer*, not reported; *Spier's Appeal*, 2 Casey, 233; *Hettrick vs. Hettrick*, 5 P. F. Smith, 290; *Terry's Appeal*, Id. 344.

As part compensation for the loss of his support and maintenance, his property, to a limited amount, shall be substituted. The wife is not to a like extent liable for the support of her children. She may be removed by death, yet the husband, the head of the family, with his continued liability, remain. It is contended, that inasmuch as the children now claiming through their guardian, are not heirs of the surviving husband, but of their deceased mother, that this statute applies to their mother's property and transmits it to them. So far as her property is given to them under the intestate laws, they undoubtedly take it; but that is not the question now before us. The attempt here is, to take the property out of the operation of the intestate laws. We think this cannot be done. During the life of the wife her property was not primarily liable for the support of these children. The effort is not then to require it to "remain" for their support, as before, but to subject it to new uses and purposes.

The main purpose of the act is to provide for the widow. Its meaning and spirit limits operation to the property left by the husband or father. It was not intended to apply to the property of a wife. This view is in harmony with all our decisions giving construction to the statute. The learned judge therefore erred in making the rule absolute.

Decree reversed, and rule discharged at the costs of the appellee.—*Luz. Law Times.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 9, 1878.

### WEEKLY SUMMARY.

#### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since February 2, 1878:

SAMUEL S. GOOD, dec'd, late of Mount Joy ber.; C. M. Good, administrator.

CATHARINE HINSTAND, dec'd, late of East Hempfield twp.; Christian K. Long, administrator.

CARL VOGT, dec'd, late of Lancaster city; Udit Vogt, administratrix c. t. a.

MARGARET SWEIGART, dec'd, late of West Donegal twp.; Jacob S. Sweigart administrator.

DAVID H. HERSHEY, dec'd, late of East Hempfield twp.; Jacob H. Hershey, administrator.

JOEL ESHLEMAN, dec'd, late of Brecknock twp.; Jacob Weinholt and Christian Eshleman, administrators d. b. a.

The following Wills have been admitted to probate since February 2, 1878:

PETER MOYER, late of Mount Joy twp.; Jacob Risser, executor.

ELIZABETH GOOD, late of Maric twp.; Benj. B. Mylin and D. H. Huber, executors.

FRANCES WARFEL, late of Conestoga twp.; Benj. Kneisley, executor.

DAYS OF APPEAL FOR 1878.

TO THE TAXABLE INHABITANTS OF LANCASTER COUNTY.

Pursuant to the provisions of the laws of the Commonwealth, the undersigned Commissioners of Lancaster County, hereby give notice to the taxable inhabitants, within the respective city, boroughs and townships of said county, that the days of appeal from the assessment of 1878, will be held in the Commissioners' Office, in the city of Lancaster, on the days following to wit:

Table listing appeal dates for various boroughs and townships in Lancaster County, including Lancaster City, Adamstown, Mount Joy, and others, with dates from Feb. 12 to Feb. 23.

No change in the valuation of Real Estate can be made except where new buildings are put up, or buildings destroyed by fire or otherwise.

At the same time and place the appeal from the Military Rolls will be held. S. F. EAGLE, SAMUEL M. MYERS, EM'L P. KELLER, Commissioners.

VICK'S ILLUSTRATED MONTHLY MAGAZINE. Each number contains THIRTY-TWO PAGES of reading, many fine Wood Cut Illustrations, and one COLORED PLATE. A beautiful Garden Magazine, printed on elegant paper, and full of information. In English and German. Price, \$1.25 a year. Five copies \$5.00.

PHILIP D. BAKER, ATTORNEY-AT-LAW, OFFICE—No. 25 NORTH DUKE STREET, LANCASTER, PA.

Divorce Notices.

NATHAN WAPPENSTEIN vs. ELIZ' H WAPPENSTEIN. Alias subpoena for Divorce To January Term, 1878. No. 87. To ELIZABETH WAPPENSTEIN:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D., 1878, at 10 o'clock, a. m., to show cause if any you have, why the said Nathan Wappenstein should not be divorced from the bonds of matrimony contracted with you.

WM. L. RITTENHOUSE vs. MAGGIE RITTENHOUSE. Alias Subpoena for Divorce To January Term, 1878. No. 88. To MAGGIE RITTENHOUSE:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Wm. L. Rittenhouse should not be divorced from the bonds of matrimony contracted with you.

INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed SATURDAY, FEBRUARY 23d, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper. JACOB NEISS.

Auditors' Notices.

Assigned Estate of F. H. ARNDT and WIFE, of Mount Joy borough. The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, MARCH 7th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. C. M. MARTIN, Auditor.

In the estate of JOHN BACHMAN, Lunatic. In the Court of Common Pleas of Lancaster County. Trust Book, No. 6, page 272. The undersigned Auditor, appointed by said court to distribute the balance in the hands of John M. Bachman, committee of John Bachman, (lunatic), appearing upon the account of said committee, exhibited in the said court, Dec. 31, 1877, and confirmed nisi January 21, 1878, will sit for that purpose in the Library Room of the Court House, at Lancaster, on TUESDAY, the 5th day of MARCH, 1878, at 10 o'clock, a. m., when and where all persons interested in said distribution are requested to attend and present their claims. AND. M. FRANTZ, Auditor.

SAMUEL MILLER vs. HAYES DICKINSON. In the Court of Common Pleas of Lancaster County. Lev. Fac. Jan'y Term, 1878. No. 5. The undersigned Auditor, appointed by said Court to make distribution of the money made on the above suit and paid into court, will sit for that purpose on TUESDAY, MARCH 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. ROBT B. RISK, Auditor.

Assigned Estate of HENRY DIETRICH and WIFE, of Manheim twp. The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel P. Keller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 28th day of FEBRUARY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. A. C. ILLYUS, Auditor.

HIRAM WILSON vs. W. B. C. DENNIS. In the Court of Common Pleas of Lancaster County. Jan'y Term, 1878. No. 37. Execution Docket. The undersigned Auditor, appointed by said Court to distribute the money ruled into Court, made under the above execution, will sit for that purpose in the Library Room of the Court House, in the city of Lancaster, on TUESDAY, FEBRUARY 26th, 1878, at 2 o'clock, p. m., when and where all persons interested are requested to attend and present in said distribution their claims. AND. M. FRANTZ, Auditor.

Estate of ANNA MARTIN, late of Salisbury twp., Lancaster co., deceased. The undersigned Auditor, appointed by the Orphans' Court of said county to pass upon the exceptions to the account filed by John Wanner, jr., and Jacob Martin, jr., administrators of the estate of David S. Martin, deceased, who was administrator of the estate of the said Anna Martin, deceased, and to distribute the balance in the hands of the accountants, will sit for the purpose of his appointment in the Library Room of the Court House, Lancaster, on THURSDAY, FEBRUARY 21, 1878, at 11 o'clock, a. m., when all persons interested may attend. W. LEAMAN, Auditor.

JOHN H. COOPER and SAMUEL TRUSCOTT, executors of will of John Cooper, dec'd, vs. JOHN PEART. In the Court of Common Pleas of Lancaster County. Nov. Term, 1877. No. 135. Levari Facias. The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster county, to make distribution of the money made on the above writ and paid into court, will sit for that purpose on THURSDAY, FEBRUARY 28th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. W. LEAMAN, Auditor.

Estate of ABRAHAM H. MUSSLEMAN, late of East Donegal twp., dec'd. The undersigned Auditor, appointed to distribute the balance remaining in the hands of M. H. Musselman and J. F. Cottrell, administrators, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, FEBRUARY 20th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. WM. B. GIVEN, Auditor.

JOHN G. BEAR, for the use of Henry Kastroth, vs. THOMAS B. SOHL. In the Court of Common Pleas of Lancaster County. Fl. fas. Jan'y Term, 1878. Nos. 103 and 103. Money ruled into Court. The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster Co., Pa., to distribute the moneys ruled into court, made under the above fl. fas., will sit for the purposes of his appointment, in the Library Room of the Court House, in the City of Lancaster, on FRIDAY, FEBRUARY 15th, 1878, at 2 o'clock, p. m., on said day, when and where all persons interested in said distribution may attend if they think proper. SAMUEL H. PRICE, Auditor.

Estate of JOHN L. BURGAIN, late of Drumore township, dec'd. The undersigned Auditor, appointed to distribute the balance remaining in the hands of James J. Glenn, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, FEBRUARY 12th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. WALTER M. FRANKLIN, Auditor.

Estate Notices.

Estate of PETER MOYER, late of Mount Joy twp., dec'd. Letters testamentary on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township. GEO. BRUBAKER, Att'y. JACOB RISSER, Executor.

**Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.**

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI K. BROWN,  
Assignee,  
P. D. BAKER, Att'y. Residing at Goshen, Fulton twp.  
feb9

**Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.**

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,

H. C. BRUBAKER, JACOB WEINHOLD,  
WM. D. WEAVER, East Earl twp.,  
Att'ys. CHRISTIAN ESHLEMAN,  
Brecknock twp.,  
feb9 Administrators d.b.n.

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.

C. M. GOOD,  
Assignee,  
J. HAY BROWN, Att'y. Administrator.  
feb2

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

EZRA BURKHOLDER, Assignee,  
Residing in West Earl township.  
jan26

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litiz.

JACOB A. BUCH,  
Executor.  
D. G. ESHLEMAN, Att'y.  
jan12\*

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.

HARVEY S. BOWERS,  
Administrator.  
PHILIP D. BAKER, Att'y.  
jan12

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.

CHRISTIAN MYERS,  
Administrator.  
jan12\*

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.

SIMON F. ALBRIGHT,  
Executor.  
S. H. REYNOLDS, Att'y.  
jan5

**Estate of BENJ. D. DANNER, late of Manheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

HENRY S. DANNER,  
Executor.  
P. D. BAKER, Att'y.  
jan5\*

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

ELIZABETH RUHL,  
Administratrix.  
J. HAY BROWN, Att'y.  
dec29

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ZELLER,  
Assignee,  
J. HAY BROWN, Attorney. Residing in Mount Joy borough.  
dec29

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

CATHERINE RINEER,  
Executrix.  
B. F. ESHLEMAN, Att'y.  
dec22\*

**Estate of JACOB HOLSINGER, late of Hinkle-town, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

E. BURKHOLDER,  
Administrato  
dec22

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 13, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

ABRAHAM MILLER, Assignee,  
Residing in Millersville.  
C. DENUES, Att'y.  
dec22\*

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.

CATHARINE KRABER,  
Administratrix.  
M. BROSIUS, Attorney.  
dec15

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARGARET GRAVER,  
Warwick township;  
ADDISON GRAVER,  
Manheim township;  
HENRY B. ESHLEMAN,  
Manheim township,  
D. G. BAKER, } Att'ys.  
O. P. BRICKER, } Administrators.  
dec15

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL WHITSON, Assignee,  
Atglen, Chester Co., Pa.  
M. BROSIUS, Att'y.  
dec15

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 3, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI BRUBAKER, Assignee,  
Millway P. O., Lan. Co.  
A. J. EBERLY, Att'y.  
dec15\*

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

MARY M. KING,  
Administratrix.  
J. W. JOHNSON, Att'y.  
dec3\*

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

MARTIN G. LANDIS,  
Administrator,  
East Lampeter twp.  
dec8

**Estate of MARTIN GROFF, Sr., late of Manheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

SAMUEL GROFF,  
ABRAHAM S. GROFF,  
Executors.  
PHILIP D. BAKER, Att'y.  
dec3\*

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.

W. C. FREW,  
Administrator.  
B. F. ESHLEMAN, Att'y.  
dec1\*

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

KIRK BROWN,  
Administrator.  
J. HAY BROWN, Atty.  
nov17

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned.

GEO. BRUBAKER,  
Assignee.  
H. C. BRUBAKER, Att'y. [dec1]

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# The Lancaster Bar.

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LANCASTER, PA., SATURDAY, FEBRUARY 16, 1878.

No. 38.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

	WESTWARD.		EASTWARD.	
	LANCASTER.	HARRISBURG.	LANCASTER.	PHILADELPHIA.
Pacific Express,*	2:40 a. m.	4:05 a. m.	Atlantic Express,*	12:30 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.	Philadelphia Express,†	4:10 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.	Harrisburg Express,	7:35 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.	Columbia Accom.,	9:28 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.	Pacific Express,*	1:20 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.	Sunday Mail,	2:00 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.	Johnstown Express,	3:05 p. m.
Frederick Accom.,	3:15 p. m.	COL. 2:45 p. m.	Day Express,*	5:18 p. m.
Harrisburg Accom.,	6:00 p. m.	8:10 p. m.	Harrisburg Accom.,	5:50 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.		
Harrisburg Express,	7:25 p. m.	8:40 p. m.		
Pittsburg Express,	9:25 p. m.	10:50 p. m.		
Cincinnati Express,*	11:30 p. m.	12:45 a. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.			
	a. m.	p. m.	
Leave Columbia	10:20	6:45	
Arrive at Port Deposit,	p. m.	8:45	
	1:20		
GOING NORTH.			
	a. m.	p. m.	
Leave Port Deposit,	6:30	2:00	
Arrive at Columbia,	8:30	5:00	

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
	a. m.	a. m.	p. m.
Quarryville,	6:50	8:00	2:30
Lancaster—West King Street,	8:00	9:30	3:35
Lancaster—Upper Depot,	8:10	9:40	3:45
GOING SOUTH.			
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:46	4:30	8:10
Lancaster—West King Street,	9:55	4:40	8:20
Quarryville, (arrive)	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:15	12:55	3:45
Lancaster Junction,	8:35	1:35	4:11
Reading, (arrive)	10:10	3:20	5:50
GOING SOUTH.			
	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:21	1:20	7:45
Lancaster—Upper Depot,	9:48	2:00	8:10
Lancaster—West King Street,	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio.	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1868
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.

*Prothonotaries:*

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweltzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.

At Harrisburg, commencing 1st Monday in May.

At Pittsburgh, commencing 1st Monday in October.

At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**COURT CALENDAR.--1878.**

FEBRUARY.

- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 3. Argument for Rules of Affidavit of Defense.
- 5. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 16, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

**HENRY B. BAUMAN** against **BENJ. SCHISSLER.**  
A plaintiff in an execution, by virtue of which he claims money paid into court, must, in a contest with another execution creditor for the same, produce the judgment on which his execution is founded. The execution alone is not evidence, except as between the parties to the judgment.

November 2, 1830, Mr. R. Frazer moved for a rule to show cause why the money in court should not be paid over to Samuel Stork on his execution issued by Benjamin Pennell, esq., on the 2d January, 1830.

June 24, 1831, he presented a statement showing the facts on which his claim was founded, which, among other matters, contained the following: Samuel Stork vs. Benjamin Schissler; execution issued by Benjamin Pennell, esq., one of the justices of the peace for the county of Lancaster, on the 2d January, 1830, to Peter Frankfort, constable, for seventy dollars, together with costs of suit. January 4th, constable levied on the goods and chattels of the said defendant and endorsed a schedule of the levy on the said execution. He also exhibited the original execution, together with a deposition of Frankfort, the constable, proving the levy and other facts therewith connected; but the judgment on which it was issued was not produced. Cause was shown by Mr. Porter who appeared for another execution creditor.

After argument the following opinion was delivered by—

**HAYES, J.** If the claim of Samuel Stork was contested by Benjamin Schissler, the defendant, I should be in favor of making the rule in his behalf absolute, on the exhibition of his execution and the other proof. But it is contested by another creditor of the defendant, for whom the objection has been taken that there is no judgment shown of Samuel Stork against Benjamin Schissler, and that the execution alone is not evidence of his claim. The rule of law is that proof of a writ of execution is not evidence of a judgment, except as against a party to the cause. (See *Stark*, on Evidence, part 2, page 246, note v.) If an action of trespass for taking goods in execution, is brought by the party against whom the *feri facias* issued, it will be sufficient for the officer to give the writ in evidence, without a copy of the judgment. But if the plaintiff is not the party against whom the writ issued, and claims the goods by a prior execution or sale, the officer, in order to prove the sale or the execution fraudulent, must produce not only the writ but also a copy of the

judgment: *Phill. Evid.* 294; *High vs. Wilson*, 2 Johns. R. 46.

In *Wilson & Gibbs vs. Conine*, 2 Johns. R. 280, it was declared by **KENT, C. J.**, that the exemplification of a decretal order of a court of chancery, directing execution to issue after the affirmance in the court of errors of a prior decree, is not admissible evidence on a trial in a court of law, but the original decree must be produced; and it was further decided that an execution from chancery will not be received in evidence without producing the original decree on which it is founded. With respect to the first point, the chief justice said it would be too great a relaxation of the rules of evidence to allow the recital of a decree to be a substitute for the decree itself; and with respect to the second point, that the execution was properly rejected by the circuit court as being no justification to the vendee in a sale under it without producing the judgment or decree by which it was warranted.

As the president of this court was satisfied, after hearing the counsel and the evidence, that the rule should be made absolute in favor of Samuel Stork, the consequence of my dissent is that Samuel Stork takes nothing by his present motion. The money, therefore, will remain in court subject to the claims of those who are justly entitled to it.

On the part of Martin Munderbach the following paper was presented on the 24th inst., viz: Mr. Porter, attorney for Martin Munderbach, on his execution, issued to January Term, 1830, No. 15, objects to this money being paid to Samuel Stork, and claims the same for his client, Martin Munderbach, on the same execution. The sum paid into court is but small, and the delay will be productive of little inconvenience; but it is of great importance in my opinion, that the court should proceed with caution in the enlarged jurisdiction vested in it with regard to the distribution of money arising from sheriff's sales, on motion—lest, in deciding upon trifling controversies, it should establish precedents which may be extensively injurious.

Rule discharged and the money to remain in court subject to its future order.

Upon this decision Mr. Porter and Mr. Frazer both asked for rules to show cause why the money in court should not be paid to their respective clients, and their applications were both admitted. Afterward at the December Term and again at the February Term, Mr. Frazer presented justice Pennell's docket of the judgment of Samuel Stork vs. Benjamin Schissler, on which the execution in question was issued, which was inspected by the court, together with depositions to establish the identity of the judgment, &c. Being satisfied with this proof, the court then ordered that the rule in behalf of Samuel Stork be made absolute.

## Common Pleas of Lancaster County.

**DARRACH** vs. **HANOVER JUNCTION AND SUSQUEHANNA R. R. CO.**

[May T., 1876, No. 20.]

A resolution by the directors of a corporation, limiting the pay of an employee, not made known to

such employee, and no express agreement having been made with him for services, will not prevent such employee from recovering what his services are reasonably worth.

Rule to show cause why a new trial should not be granted.

*Geo. Nauman* and *W. B. Given* for rule.

*D. McMullen* contra.

Opinion delivered January 19th, 1878, by **LIVINGSTON P. J.**

We have carefully examined and considered the reasons presented in support of the rule. In regard to the 4th reason presented—we think no error was committed in rejecting the offer as presented to the court, as a by-law of the corporation—defendant—gives the board of directors power to fix the compensation of all its employees; and that the board, in 1873, in pursuance of this by-law, fixed the compensation of assistant engineer at \$75 per month—which by-law was kept in possession of the officer of the company, and was not in any way or manner communicated to plaintiff before entering the service of the company. Especially as we had ruled out plaintiff's offer to show that when Meigs, the chief engineer of the company, employed him on behalf of the defendant, and stated to him at the time the salary was \$100 per month. No contract having been made, and services having been rendered by plaintiff at defendant's request, plaintiff was entitled to recover what such services were reasonably worth, as he would have been in case any individual or corporation had employed him or requested him to labor, without a definite contract as to wages, having first resolved, without his knowledge, to pay him but half what his services were worth.

We have also examined our answer to defendant's point and believe it was fairly and properly answered.

Nor do we perceive any error in permitting the plaintiff to swear he had received certain moneys on account from defendant, and had given a receipt for it, even though such receipt were on a pay roll. He swore positively to receiving certain moneys from defendant, and added that he had, on one or two occasions, signed a pay roll for the amount received. If he had received more than he admitted; it would have been defendant's duty in making his defense to show it. When plaintiff admitted payments made to him, it was not necessary for him to notify defendant to produce any voucher he may have given therefor. He was a competent witness and could state payments made to him as he would state any other fact.

The additional reasons filed, as to after discovered evidence, are not so fully supported by the testimony presented as to warrant us in setting aside the verdict, even if the matters alleged were clearly within the rules required as to after discovered evidence.

The testimony does not clearly and positively show that no pay rolls were kept by the company during the time plaintiff was in its employ. Mr. Given, the only witness examined, says he was treasurer, and he does not recollect whether the company kept pay rolls at the time *Mr. Darrach* was employed or not; that

since the trial in this case he has looked over all his papers and can find none for that period—"if there had been they would have been in his possession." *Not finding them in his possession he concludes there were none.*

The second additional reason, if clearly proven, would contradict nothing which took place on the trial. *There was no evidence, or even allegation on the trial, that Darrach ever submitted any estimates of work to the company.* Plaintiff, in his examination, stated that he made estimates, attended to all the work along the line, made estimates and drawings for a bridge; these were lost and he made others for defendant. And the testimony on the part of defence was that Darrach's estimates were all submitted to Meigs, who was chief engineer of the company; and after the defense closed. Mr. Darrach was recalled and stated that he made final estimates of all the work done and to be done on the line, made revisions, and gave Mr. Ryan a detailed statement of the whole. The fact that he had made estimates was brought out in answer to a question on cross-examination, as to what services he had performed during a certain portion of the time he was in the employ of the company. And the fact that he did make estimates was proved by defendant, and that they were submitted to Meigs, but it was not proven that plaintiff ever submitted an estimate to the defendant.

We see nothing in the trial, or in the testimony taken and presented since the trial, which, in our judgment, would warrant us in setting aside the verdict and granting a new trial. The rule is, therefore, discharged.

Rule discharged.

**JOH vs. FRY.**

[Sept. T., 1874, No. 67.]

Where paper, assignable by indorsement, be delivered without indorsement, the transferee has but an equitable title; he has, however, a right to a legal title. A court of equity will compel such indorsement.

Rule to show cause why judgment should not be arrested.

*W. R. Wilson* for rule.

*J. W. Johnson* contra.

Opinion delivered January 19th, 1878, by LIVINGSTON, P. J.

Because the evidence shows that neither at the rendition of the verdict nor the commencement of this suit had the plaintiff any interest in the case or demand against defendant.

Suit was originally brought by Sprecher & High as plaintiffs, against Martin Fry, and a narr. filed by them as plaintiffs; after which their counsel asked leave and was permitted to strike out of the caption the names of plaintiffs and insert in lieu thereof the name of Martin Joh, and to amend the body of the declaration in conformity therewith.

On the trial Martin Joh, who had been substituted as plaintiff, testified that the note upon which suit was brought had been given him by the defendant, but shortly after receiving it he sold it to Sprecher & High for value, and passed it to them without having endorsed it, and that he had, therefore, no demand himself against defendant.

According to the testimony, Sprecher & High, at the time the note in question was lost, were *bona fide* holders thereof. That is they had acquired the paper in good faith for a valuable consideration from one capable of transferring the paper; by payment of value they acquired title.

Where paper, assignable properly only by indorsement, be delivered without indorsement, the transferee has but an equitable title. He may have, however, a right to a legal title, and therefore to an indorsement, if that be necessary to make his title legal; and a court of equity would compel such indorsement. The absence of indorsement is a merely technical objection; for the actual transfer and delivery for value passes the property in the paper substantially, and the indorsement is needed only to make the transfer formal.

In *Jones vs. Witley*, 13 Mass. '304, a negotiable promissory note was held to be assigned by delivery only, without writing, for an adequate consideration. And the assignee might recover thereon in the name of the payee, notwithstanding payment was made by the maker to the payee after notice of the assignment. Many other cases might be cited did we deem it necessary.

In the case before us there can be no doubt from the evidence that Sprecher & High were *bona fide* holders of the note for value, at the time of its loss, and that they, under the authorities above cited, were entitled, as equitable owners, to have the legal title formally transferred to them; and the most the defendant is entitled to for his protection is to have this cause or judgment marked to their use on the docket or record, so that the record may show that they are entitled to receive payment thereon. This we think he is entitled to and therefore direct that it be done.

We, therefore, discharge the rule to show cause, and direct judgment to be entered for plaintiff, which judgment, when entered, shall be transferred and marked to the use of Sprecher & High (Isaac G. Sprecher and S. S. High, late partners, trading as Sprecher & High).

Rule discharged.

**SUPREME COURT OF PENNSYLVANIA.**

**WHITAKER vs. HOUGHTON.**

A plaintiff in trover is not bound to accept an offer by the defendant to restore the goods of which he has been unlawfully deprived, if in the meantime they have been injured or deteriorated in value.

Error to the Court of Common Pleas No. 2 of Philadelphia county.

Opinion by PAXSON, J. January 20, 1878.

There was some evidence in the case that the goods in controversy had been injured prior to the offer to return them to the plaintiff. Houghton (plaintiff) says in his cross-examination: "After receiving the notice from Mr. Whitaker, not immediately, but, on account of sickness, as soon as I could, I went to the factory and found my goods honey-combed—thrown out in the yard, rusted and worthless. This was some four or five weeks

after the sale." In view of such evidence it was not error to decline the defendant's point. Had the plaintiff accepted the tender or offer of the goods, the measure of damages indicated by the point would not have been inaccurate. Thus, in *Rank vs. Rank*, 5 Barr 211, where the goods had been unconditionally received by the plaintiff after suit brought, the measure of damages was held to be the difference in value at the time of the conversion and that of the delivery, and it may be stated generally that in an action of trover, where the goods have been accepted or regained by the plaintiff, such fact goes in mitigation of damages. He cannot accept a return of his goods and yet recover their full value. We need not refer at length to the authorities cited in support of the proposition that in trover a plaintiff is bound to accept a tender or offer to return the property. In nearly all of them there was no deterioration of it after conversion. This was so in *Kutland & W. R. R. Co. vs. The Bank*, 32 Vermont, 639, where the property consisted of the bonds of the plaintiff, for which they were liable in full, and which, therefore, could not have suffered any deterioration as to them. It was held that plaintiffs were bound to accept them when tendered, but it was distinctly said that such a rule would not apply where the goods had deteriorated in value. This principle runs through most of the cases. Whether a plaintiff in trover is bound, under all circumstances, to accept a return of the goods, is a question not necessarily involved in the decision of this case. It is sufficient to say that under the evidence the plaintiff was not bound to accept the offer, and that the measure of damages, based upon the affirmative of this proposition, was not the correct one. Hence, it was not error for the learned president of the court below to say: "Where one demands his chattels, and there is such a withholding of them as amounts to a conversion, a right of action accrues which will not be divested by a subsequent offer to return the goods, or a notice to the plaintiff to come and take them away." This is evidently accurate whether we view it as an abstract proposition or an instruction upon the evidence in the case. At most a tender could only affect the measure of damages. It does not go to the right of action. However it may be in the case of an offer to return an article that has sustained no injury, it is clear both upon reason and authority that an offer to return property that has been damaged while in the possession of the wrongdoer imposes no obligation upon the injured party to accept it.

Judgment affirmed.—*Leg. Intelligencer.*

**Orphans' Court of Allegheny County.**

*In re Estate of JOHN WATT, dec'd. Account of LEVINIA W. WATT and W. C. AUGHINBAUGH, Executors.*

1. Actual signature to an account is not necessary to fix the joint liability of executors.
2. Joint liability of executors always arise from one of two conditions: (1) joint action in fact or (2) constructive joint action.

3. Where an executor has assumed the duties of administration, he cannot divest himself of that character at his mere option nor by consent of his co-executor and act under another; he can do no act with regard to the estate for which he is not answerable as executor.

In the Orphans' Court for the county of Allegheny.

Opinion by HAWKINS, J. Filed January 26th, 1878.

A preliminary question in reference to the liability of Mrs. Watt as executrix, in this proceeding, was suggested at the audit, and must be determined before noticing the several sets of exceptions which have been filed to this account. Her liability was denied on three grounds: (1) because she had not in fact signed the account; (2) because, it was claimed, she had renounced the executorship; and (3) because, it was alleged, she had not joined with her co-executor, Mr. Aughinbaugh, in the administration of the estate of her testator.

The facts are these: John Watt died October 22d, 1874, having first made a will, in which he appointed his wife, Levinia W. Watt, executrix, and W. C. Aughinbaugh, executor. Both executrix and executor were duly qualified and assumed the duties of the trust, and letters testamentary were issued accordingly October 28th, 1874. Subsequently to the grant of letters, a paper dated November 2d, 1874, purporting to be a renunciation of her right to act as executrix was filed by Mrs. Watt in the register's office. Mr. Aughinbaugh appears to have no notice of this fact; and notwithstanding the so-called renunciation, Mrs. Watt continued to act in the character of executrix in conjunction with him in the administration of the estate. They united in the selection of appraisers. They were in frequent consultation in reference to the transaction of the business of the estate. Mrs. Watt was assigned, by arrangement with her co-executor, a considerable amount of money with which to pay certain debts of decedent; and at the request of that co-executor, after the service of the citation, furnished a list of those debts which she had paid, with a view to assist in preparing an account in answer to the citation. They were sued and defended jointly. They were parties to a series of acts by which a large portion of the assets belonging to the trust which they had assumed were directed from their proper channel, and which were the main cause of the controversy which afterward arose on the account filed. Amongst the assets included in the inventory of the personal estate was the interest of John Watt in the firm of Watt, Lang & Co. That interest was appraised at the sum of \$51,850.00—of which sum \$27,093.82 represented stock on hand, and \$24,757.12 book accounts, bills receivable, &c. An arrangement was suggested by Mrs. Watt and agreed to by Mr. Aughinbaugh, and by Mr. Lang, surviving partner, by which John W. Watt, should purchase his father's interest in the stock on hand at the valuation put thereon by the appraisers, and \$15,594.96 of that amount be charged to the shares of Mrs. Watt as widow, Wm. Watt, for whom Mrs. Watt was guar-

dian, and the said John W. Watt—the balance being secured by notes of the new firm. Receipts were accordingly given to Mr. Aughinbaugh by Mrs. Watt in her own right for \$8,663.86; as guardian of Wm. Watt for \$3,465.35 and by John W. Watt for \$3,465.35. In addition to these amounts credit is claimed for the payment of different sums, out of other assets to Mrs. Watt, Wm. Watt (by his guardian), John W. Watt and Mrs. Jane W. Scott, on account of their distributive shares. The total amount paid on account of distribution is \$18,461.63. The balance on hand, as shown in the account, is \$10,482.93, and the aggregate amount of claims of creditors of decedent presented at the audit for payment was \$19,858.00—thus making the deficit for the payment of debts of decedent the sum of \$9,371.07.

The present account was filed in response to a citation directed to Mrs. Watt and Mr. Aughinbaugh. It purports in the heading to be the joint account of Mrs. Levinia W. Watt, executrix, and W. C. Aughinbaugh, executor, and was so advertised; but was in fact only signed by W. C. Aughinbaugh. The reason given by Mr. Aughinbaugh for Mrs. Watt's failure to sign it was, that it was too late when the account was completed, to present it to her for signature. She does not appear to have seen it as completed until after filing. She filed no separate account nor answer and raised no objection to the account filed until long after the time for filing exceptions had passed. In the meantime several sets of exceptions had been filed by other parties.

(1.) It is a fair inference from these facts that Mrs. Watt intended originally to unite with Mr. Aughinbaugh in filing an account of the administration of the estate of John Watt, deceased. She was cited jointly with him and manifested no disposition to sever in her action until long after the account had been filed and advertised, and the time for filing exceptions had passed. Her conduct ought rather to be presumed to have been in obedience to than in contempt of the order of court. Her subsequent repudiation of the account seems an after thought which was suggested by the difficulties raised by the exceptions which had been filed in the meantime.

Actual signature to the account was not necessary to fix Mrs. Watt's joint liability. The object of the law in requiring the filing of an account is to exhibit to parties interested a history of the administration of the estate of a decedent. That object may be accomplished by the signature of one of several joint executors as well as those of all: Snyder vs. Snyder, 6 Bin. 497; Kennedy vs. Wachmuth, 12 S. & R. 171. Indeed it is sometimes accomplished without the signature of any one of several joint executors: Witman's App., 4 Casey 376. It is obvious then that the joint liability of executors does not necessarily depend upon the merely formal act of joint signature to an account, but that it may arise from other sources. Where, however, there is a joint liability it would seem to follow logically that there should be a

joint account; and if a proper signature be wanting, the court will presume that to have been done which ought to have been done.

(2.) In determining the question of Mrs. Watt's liability her so-called renunciation may be left out of consideration. It is not in conformity with law and the conduct of Mrs. Watt after its filing was in disregard of it. "It is a general rule that where an executor has once proved the will he cannot renounce his representative character and act under another. He can do no act in regard to the estate for which he is not answerable as executor:" 3 Wm. Executors, 1833. His liability arises from his relation to the trust and continues until he has been legally discharged from the duties of that trust.

(3.) The joint liability of executors always depends upon one of two conditions: (1) joint action in fact or (2) joint action superinduced by duty in the administration of the estate: Hovey vs. Blakeman, 4 Ves. 596, note, (Sumner's Ed.); Gill vs. Attorney General, Hardress 314; 3 Wm. Ex'rs, 1:27; Williams vs. Nixon, 2 Beav. 72; 2 Story's Eq. 1284.

It needs no argument to prove that where executors have actually united in the administration of an estate their liability cannot be apportioned. Each becomes liable for the whole. What constitutes joint action is a more difficult question; but that the facts of this case establish that relation between Mrs. Watt and Mr. Aughinbaugh seems scarcely to admit of a reasonable doubt. It can make no difference that with respect to some transactions in the course of administration, the relation of Mrs. Watt was simply advisory—that is an important and essential part of, and an act of participation in joint administration. It is evidence of joint control over the assets. Nor will it avail Mrs. Watt to say that she acted in the character of a beneficiary, and not in that of a representative. She could not, as has been seen, divest herself of her fiduciary relation at her own mere option or by the consent of her co-executor.

By the principles of the trust which Mrs. Watt assumed, not only all the funds which came into her hands, but those the misapplication of which she could have prevented, are presumed to be held by her primarily, for the payment of the debts of her decedent, and secondarily, for distribution amongst heirs: Swearingen vs. Pendleton, 4 S. & R. 389; Pim vs. Downing, 11 S. & R. 71; Irwin's Ap. 11 Casey 295; Clarke vs. Clarke, 8 Paige 160; 3 Wm. Ex'trs. 1827; Monell vs. Monell, 5 Johns. Ch. 294. Lord Chancellor Cottenham states the result of a review of the cases to be "that it is the duty of all executors to watch over, and, if necessary, to correct the conduct of the other:" 1 Macn. & G. 433, Styles vs. Gay. And Mr. Justice STORY says that "if by any positive act, direction, or agreement of one joint executor, guardian or trustee, the trust money is paid over, and comes into the hands of the other, when it might and should have been otherwise controlled or secured by both, there each of them will be chargeable for the whole:" 2 Story's Eq. 1284. The existence of a duty to apply assets to a certain mode implies a liability



for failure to so apply. *Swearingen vs. Pendleton, supra*. This rule is held much more strictly as between creditors and executors than as between heirs and executors: *Verner's Est*, 6 Watts 250; *Brown's Ap.*, 1 Dal. 311; 3 Wm. Ex'ts. 1827.

It follows from the foregoing that Mrs. Watt is jointly liable with Mr. Aughinbaugh in the administration of the estate of John Watt, deceased, and consequently, in this proceeding.

(The court then disposes of the exceptions *seriatim*).—*Pitts. Leg. Journal*.

#### Common Pleas of Luzerne County.

##### *In re* ASSIGNMENT OF THE ELLENWOLD COAL COMPANY (limited).

1. Under a sale by an assignee the claims of miners, mechanics, laborers, and clerks for wages have a preference on the fund arising therefrom over a claim for rent or taxes.

2. Rent is only a preferred claim when the fund arises from a sale under an execution.

Exceptions to report of auditor.

Opinion by STANTON, J. January 15th, 1878.

The Ellenwold Coal Company (limited), organized under an act of assembly, entitled "an act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances," approved June 2d, A. D. 1874, for the purpose of mining anthracite coal, and carrying on a business incident thereto, in Luzerne county, by deed of assignment, dated and delivered the 8th day of August, A. D. 1877, assigned and conveyed all her property to Nathan Van Horn, esq., in trust for the benefit of creditors. The said assignee, on the 11th day of October, A. D. 1877, made sale of a portion of the personal property of said company, and the balance remaining in his hands, after payment of the costs and expenses of assignment, was \$5,021.34. An auditor was appointed by the court to distribute this fund to and among the parties entitled thereto. A number of persons appeared before the auditor, and made claim to this fund. The auditor, after hearing these parties, made *pro rata* distribution of the fund, less the costs of the audit, amounting to \$185, among about three hundred and fifteen persons, claiming in the aggregate \$8,171.03, for labor and services rendered for said company by them respectively, in the capacity of miners, mechanics, laborers and clerks, during a period not exceeding six months immediately preceding the said assignment, together with M. J. Philbin, Chas. A. Zeigler and John F. Donahoe, the sum of whose claims, \$90.87, was predicated on services not performed for said company, but for persons who brought suits before them against said company.

To this distribution exceptions were duly filed by some of said claimants, to wit: John Leonard, Burke and Callahan, Chas. Shovlin, G. S. Richmond, and Samuel Raub and J. C. Fuller.

Leonard excepts thereto on the ground that the auditor did not allow \$96.50 in his

favor, and Burke and Callahan except because the auditor disallowed their claims of \$36.65. We do not find in the auditor's report that any proof of such claims was made before him. F. A. Driesbach made proof before the auditor that said company, at the time of assignment, owed John Leonard \$4.75, and this sum the auditor allowed him. The docket of Alderman Donahoe, offered in evidence before the auditor for the purpose of establishing his claim on said fund, although evidence of the fact that said Leonard and Burke and Callahan had judgments respectively against said company for the said sums of \$96.50 and \$56.65, was not proof sufficient that the debts on which these judgments were founded were due for such services as would give them preferred claims on said fund. We, therefore, cannot sustain the exceptions of Leonard and Burke and Callahan.

The very words of Charles Shovlin's exception, that his claim of \$98.76 is for "costs made in serving process as constable upon said company previous to their assignment," are the strongest justification that the auditor can have for not allowing it in the distribution. The auditor's report does not even show that any proof was made before him in support of this claim. Shovlin's exception is not sustained.

G. S. Richmond excepts to the distribution on the ground that no part of said fund is applied to his claim for taxes, amounting to \$70.51, for which a levy had been made by him prior to the sale by the assignee. We think the auditor acted justly in not making application of any part of said fund to this claim. The assignment of the sixty-four cars was made at least three months before levy was made on them by collector Richmond. The taxes were not a lien on them until the seizure of October 1st, 1877: 10 P. F. Smith, 46. Under the third section of the act of 1872, relating to wages, the moment the assignment was made, that moment it seems to us, the claim of the said miners, mechanics, laborer and clerks employed by said company became preferred claims. Even had the collector his levy made prior to the assignment, and sale were made by him after, we hold that, under the act of 1872, the said claims of the miners, mechanics, laborers and clerks would have the preference on the fund created by such sale. The exception is, therefore, not sustained.

Samuel Raub and J. C. Fuller file as exceptions to the finding and distribution of said auditor—first that he "erred in distributing the first moneys to the claims for labor;" second, that he "erred in not distributing the first moneys to the claims for rent due Raub and Fuller." The auditor's report shows that proof was made before him that at the time of said assignment \$6,000 were due by said company at lessees of J. C. Fuller, Caroline M. Fuller, Samuel Raub and Caroline Raub for rent on lease of coal land mined by them. The auditor, however, refused to apply any of said fund to this claim, and without error, we think. Even if a lessor's claim for rent could be a preferred one under a sale by an assignee, the claim of these exceptants

lacks certain requisites. The auditor's report shows no proof produced before him that said \$6,000 did not exceed one year's rent or that the goods and chattels sold by the assignee were upon the lands demised, and were liable to distress by them for rent, or that there was any tenancy by the owners of the goods at the time of their said sale. But granting that a claim for rent can be a preferred claim under an assignee's sale, it certainly does not take the first place whenever a claim for wages as aforesaid is presented. There is no doubt that when the Legislature passed the act of 1872, relative to wages, they had the act of 16th of June, A. D. 1836, giving a preference to claims for rent fully in view; and to emphasize the fact (for it needed no express words to explain their meaning) that the said act of 1872 repealed said act of 1836. As far as the wages of labor are concerned, they inserted in said act of 1872 the words: "In all cases of executions, landlord's warrants, \* \* hereafter to be issued against any person or persons or chartered company, engaged as before mentioned, it shall be lawful for such miners, laborers, mechanics or clerks to give notice in writing of their claim or claims and the amount thereof, to the officers executing either of such writs, at any time before the actual sale of the property levied on; and such officers shall pay to such miners, laborers, mechanics and clerks out of the proceeds of sale the amount each is justly and legally entitled to receive, not exceeding \$100.00." Under this provision of the act, this fund would certainly be distributable among the miners, mechanics, laborers and clerks employed by this company, even if it were in the hands of these lessors instead of in the hands of the assignee, as the result of the sale by them on a landlord's warrant. But it seems the general assembly apprehended that this portion of the act of 1872 would not be sufficient to satisfy lessors that labor had a preference to rent on a fund arising from a sale by an assignee, and they, therefore, inserted also in said act of 1872 the words: "In all cases of the death, insolvency, or assignment of any person or persons or chartered company, engaged in operating as hereinbefore mentioned, or of execution issued against them, the lien of preference mentioned in the first section of this act, with the like limitations and powers, shall extend to every property of said persons or chartered company." Giving these lessors even the right to a preference on a fund arising from a sale by an assignee, this last quoted provision of the act of 1872 says in express words that their claim must stand in abeyance until labor is compensated. But we cannot see that these lessors have any preferred rights whatever on the fund arising from the sale by the assignee, and we, therefore, refuse to sustain the exceptions.

The distribution of said fund as made by the auditor is sustained, except as to the amounts of \$9.34, \$10.31, and \$34.15, respectively, allowed in said distribution to Alderman M. J. Philbin, Alderman Chas. A. Zeigler and Alderman John F. Donahoe as costs on judgments obtained before them against said company. The claims of said aldermen, if they have any standing as to said fund, are not in any manner preferred claims, and can take nothing from said fund until the claims of the miners, mechanics, laborers and clerks employed by the company as aforesaid are fully satisfied. We, therefore, remit the report to the same auditor, that he may disallow the claims of the said M. J. Philbin, Charles A. Zeigler and John F. Donahoe on said fund, and distribute the amount thereof, namely, \$53.80, proportionately among those entitled to said fund.—*Luz. Leg. Reg.*

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 16, 1878.

## WEEKLY SUMMARY.

### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since February, 9, 1878:

- MARTHA KELLER, dec'd, late of Lancaster city; Susan Bertzfeld, administratrix.
- ELIZABETH BEILER, dec'd, late of Leacock twp.; John L. Beiler, administrator.
- ELLIS D. SHULTZ, dec'd, late of Strasburg bor.; Alex. Schultz, administrator.
- GEORGE ENTERLINE, dec'd, late of Mount Joy twp.; John Gantz and John H. Hoffer, administrators.
- JOHN C. ESHLEMAN, dec'd, late of Brecknock twp.; Rebecca Eshleman, administratrix.
- GEORGE RUDISILL, dec'd, late of Marietta bor.; Geo. Rudisill, administrator.

The following Wills have been admitted to probate since February 9, 1878:

- MARY MESSEKOP, late of Lancaster city; Geo. L. Messenkop, executor.
- ELIZABETH SHERR, late of Lancaster city; Barbara Sherr, executrix.
- CHARLES KLINE, late of Lancaster city; Geo. M. Kline, esq., executor.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since February 2, 1878:

- GEO. G. BENDER and WIFE, of West Cain twp., Chester co.; B. F. Meredith, assignee.
- ISAAC BECHTEL and WIFE, of West Cocalico twp.; E. L. Bechtel, assignee.
- LEWIS BROWN and WIFE, of Fulton twp.; Levi K. Brown, assignee.
- JOHN JONES and WIFE, of Conestoga twp.; Adam Bertzfeld, assignee.
- JESSE MESSNER and WIFE, of Brecknock twp.; Abraham Lutz, assignee.
- AMOS REESE and WIFE, of Providence twp.; John Hildebrand, assignee.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE - No. 32 NORTH DUKE STREET,

LANCASTER, PENNA.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE - No. 25 NORTH DUKE STREET,

LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE - No. 34 NORTH DUKE STREET,

LANCASTER, PA.

## Divorce Notices.

NATHAN WAPPENSTEIN } Alias subpoena for Divorce  
vs. } To January Term, 1878.  
ELIZ' H WAPPENSTEIN. } No. 87.

To ELIZABETH WAPPENSTEIN:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D., 1878, at 10 o'clock, a. m., to show cause if any you have, why the said Nathan Wappenstein should not be divorced from the bonds of matrimony contracted with you.  
Jan 19 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

WM. L. RITTENHOUSE } Alias Subpoena for Divorce  
vs. } To January Term, 1878.  
MAGGIE RITTENHOUSE. } No. 88.

To MAGGIE RITTENHOUSE:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Wm. L. Rittenhouse should not be divorced from the bonds of matrimony contracted with you.  
Jan 19 H. N. BRENNEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

## DAYS OF APPEAL FOR 1878.

### TO THE TAXABLE INHABITANTS OF LANCASTER COUNTY.

Pursuant to the provisions of the laws of the Commonwealth, the undersigned Commissioners of Lancaster County, hereby give notice to the taxable inhabitants, within the respective city, boroughs and townships of said county, that the days of appeal from the assessment of 1878, will be held in the Commissioners' Office, in the city of Lancaster, on the days following to wit:

Brecknock, Carnarvon, Cocalico East, Cocalico West, Clay, Drumore, Martic, Providence, Pequea, Conestoga, Donegal East, Donegal West, Conoy, Mount Joy, Penn, Ephrata, Elizabeth, Warwick, Manheim, Earl, Earl East, Earl West, Paradise, Sadsbury, Hempfield East, Hempfield West, Rapho, Strasburg, Lancaster,	} Saturday, Feb. 16.
Lampeter East, Lampeter West, Leacock, Leacock Upper, Salisbury, Manor,	} Wednesday, Feb. 27.
	} Thursday, Feb. 28.
	} Friday, Feb. 22.
	} Saturday, Feb. 23.
	} Tuesday, Feb. 26.
	} Thursday, Feb. 21.
	} Wednesday Feb. 20.

No change in the valuation of Real Estate can be made except where new buildings are put up, or buildings destroyed by fire or otherwise.

At the same time and place the appeal from the Military Rolls will be held.

S. F. EAGLE,  
SAMUEL M. MYERS,  
EM' L P. KELLER,  
Commissioners.

Jan 26  
Papers in county copy.

E. H. BURKHOLDER,

JUSTICE OF THE PEACE,

FARMERSVILLE, LAN. CO., PA.

SPECIAL ATTENTION PAID TO COLLECTIONS.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed SATURDAY, FEBRUARY 23d, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.

Jan 26

JACOB NEISS.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st.. Lancaster, Pa.

## Auditors' Notices.

Estate of JOHN MCCALLY, late of Colerain twp., deceased.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of D. W. Patterson and Robert S. McIlvain, executors of the will of said decedent, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MARCH 6th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEORGE M. KLINE,  
GEORGE NAUMAN,  
Auditors.

feb 16

Assigned estate of D. KINPORTS & SON, of Ephrata twp., Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. S. Royer, assignee of D. Kinports & Son, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MARCH 5, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. S. HERSHEY,  
Auditor.

feb 15

COMMONWEALTH } In the Court of Quarter Ses-  
vs. } sions of Lancaster Co.  
NELSON GLADFELTER } Aug. Sessions, 1877. No. 125.  
} Forfeited Recognizance.

The undersigned Auditor, appointed by the court of Quarter Sessions of Lancaster County, Pa., to distribute the proceeds of the forfeited recognizance in the above case, will sit for that purpose on SATURDAY, MARCH 9th, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in City of Lancaster, where all persons interested in said distribution may attend.

A. F. SHENCK,  
Auditor.

feb 16

Assigned Estate of F. H. ARNDT and WIFE, of Mount Joy borough.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, MARCH 7th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

C. M. MARTIN,  
Auditor.

feb 9

SAMUEL MILLER } In the Court of Common Pleas  
vs. } of Lancaster County.  
HAYES DICKINSON. } Lev. Fac. Jan'y Term, 1878.  
} No. 5.

The undersigned Auditor, appointed by said Court to make distribution of the money made on the above suit and paid into court, will sit for that purpose on TUESDAY, MARCH 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ROBT B. RISK, Auditor.

feb 9

Assigned Estate of HENRY DIETRICH and WIFE, of Manheim twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel P. Keller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 28th day of FEBRUARY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. ILLYUS, Auditor.

Jan 26

In the estate of JOHN BACHMAN, Lunatic. } In the Court of Common Pleas of Lancaster County. Trust Book, No. 6, page 272.

The undersigned Auditor, appointed by said court to distribute the balance in the hands of John M. Bachman, committee of John Bachman, (lunatic,) appearing upon the account of said committee, exhibited in the said court, Dec. 31, 1877, and confirmed nisi January 21, 1878, will sit for that purpose in the Library Room of the Court House, at Lancaster, on TUESDAY, the 5th day of MARCH, 1878, at 10 o'clock, a. m., when and where all persons interested in said distribution are requested to attend and present their claims.

AND. M. FRANTZ, Auditor.  
feb9

HIRAM WILSON vs. W. B. C. DENNIS. } In the Court of Common Pleas of Lancaster County. Jan'y Term, 1878. No. 37. Execution Docket.

The undersigned Auditor, appointed by said Court to distribute the money ruled into Court, made under the above execution, will sit for that purpose in the Library Room of the Court House, in the city of Lancaster, on TUESDAY, FEBRUARY 26th, 1878, at 2 o'clock, p. m., when and where all persons interested are requested to attend and present in said distribution their claims.

AND. M. FRANTZ, Auditor.  
feb3

Estate of ANNA MARTIN, late of Salisbury twp., Lancaster co., deceased.

The undersigned Auditor, appointed by the Orphans' Court of said county to pass upon the exceptions to the account filed by John Wanner, jr., and Jacob Martin, jr., administrators of the estate of David S. Martin, deceased, who was administrator of the estate of the said Anna Martin, deceased, and to distribute the balance in the hands of the accountants, will sit for the purpose of his appointment in the Library Room of the Court House, Lancaster, on THURSDAY, FEBRUARY 21, 1878, at 11 o'clock, a. m., when all persons interested may attend.

feb4 W. LEAMAN, Auditor.

JOHN H. COOPER and SAMUEL TRUSCOTT, executors of will of John Cooper, dec'd, vs. JOHN PEART. } In the Court of Common Pleas of Lancaster County. Nov. Term, 1877. No. 135. Levari Facias.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster county, to make distribution of the money made on the above writ and paid into court, will sit for that purpose on THURSDAY, FEBRUARY 28th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

feb2 W. LEAMAN, Auditor.

Estate of ABRAHAM H. MUSSLEMAN, late of East Donegal twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of M. H. Musselman and J. F. Cottrell, administrators, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, FEBRUARY 20th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

jan26 WM. B. GIVEN, Auditor.

**Estate Notices.**

Assigned Estate of JESSE MESSNER and WIFE, of Brecknock twp., Lancaster Co.

Jesse Messner and Wife, of Brecknock township, having by deed of voluntary assignment, dated February 11, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse Messner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

ABRAHAM LUTZ, Assignee,  
Residing in Adamstown.  
feb16

Estate of PETER MOYER, late of Mount Joy twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

GEO. BRUBAKER, } Att'y.  
feb9 JACOB RISSER, } Executor.

Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI K. BROWN, Assignee,  
P. D. BAKER, Att'y.  
Residing at Goshen, Fulton twp.  
feb9

Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,

H. C. BRUBAKER, } Att'ys. JACOB WEINHOLD,  
WM. D. WEAVER, } East Earl twp.,  
Att'ys. CHRISTIAN ESHLEMAN, } Brecknock twp.,  
Administrators d. b. n.  
feb9

Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.

feb2 C. M. GOOD, Administrator.  
J. HAY BROWN, Att'y.

Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

EZRA BURKHOLDER, Assignee,  
Residing in West Earl township.  
jan26

Estate of JACOB BUCH, late of Warwick township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lititz.

jan12\* JACOB A. BUCH, Executor.  
D. G. ESHLEMAN, Att'y.

Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.

jan12 HARVEY S. BOWERS, Administrator.  
PHILIP D. BAKER, Att'y.

Estate of JACOB MYERS, late of Eden twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.

CHRISTIAN MYERS, Administrator.  
jan12\*

Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.

jan5 SIMON F. ALBRIGHT, Executor.  
S. H. RAYNOLDS, Att'y.

Estate of BENJ. D. DANNER, late of Manheim borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

jan5\* HENRY S. DANNER, Executor.  
P. D. BAKER, Att'y.

Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec29 ELIZABETH RUHL, Administratrix.  
J. HAY BROWN, Att'y.

Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ZELLER, Assignee,  
J. HAY BROWN, Attorney.  
Residing in Mount Joy borough.  
dec29

Estate of GEORGE RINEER, late of Paradise township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

dec22\* CATHERINE RINEER, Executrix.  
B. F. ESHLEMAN, Att'y.

Estate of JACOB HOLSINGER, late of Hinkletown, Earl township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

dec23 E. BURKHOLDER, Administrator.

Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.

Having by deed of voluntary assignment, dated November 1<sup>st</sup>, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec22\* ABRAHAM MILLER, Assignee,  
C. DENUES, Att'y. Residing in Millersville.

Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.

M. BROSIUS, } Attorney.  
CATHARINE KRABER, } Administratrix.  
ded15

Estate of JACOB GRAVER, late of Warwick township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARGARET GRAVER, Warwick township;  
ADDISON GRAVER, Manheim township;  
HENRY B. ESHLEMAN, } Att'ys. Manheim township,  
D. G. BAKER, } Administrators.  
O. F. BRICKER, }  
dec15

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, FEBRUARY 23, 1878.

No. 39.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## JUSTICES' BLANKS

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BLANK BOOKS always on hand.

Particular attention paid to the binding of Law Books and Periodicals.

Old Books carefully rebound.

Every variety of Paper Ruling done to order.

WM. H. ROY,  
No. 16 South Queen-st., Lancaster, Pa.

## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way Passenger†	.....	4:50 a. m.	7:50 a. m.
Niagara Express,...	.....	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	.....	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	.....	11:20 a. m.	1:25 p. m.
Fast Line,*	.....	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	.....	6:00 p. m.	8:10 p. m.
Columbia Accom.,.....	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	.....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.
EASTWARD.		LANCASTER.	PHILADELPHIA.
Atlantic Express,*	.....	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	.....	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	.....	2:00 p. m.	5:00 p. m.
Johnstown Express,...	.....	3:05 p. m.	6:00 p. m.
Day Express,*	.....	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.		a. m.	p. m.
Leave Columbia,.....	.....	10:20	6:45
Arrive at Port Deposit,.....	.....	P. m. 1:20	8:45
GOING NORTH.		a. m.	p. m.
Leave Port Deposit,.....	.....	6:30	2:00
Arrive at Columbia,.....	.....	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:00	2:30
Lancaster—West King Street,...	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30	8:10
Lancaster—West King Street,...	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		8:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....	9:21	1:20	7:45
Lancaster—Upper Depot,.....	9:46	2:00	3:10
Lancaster—West King Street,...	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

*Appointed.*  
*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and O. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerna.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrows.  
*Street Commissioner*—Charles Schwebel.

THE LANCASTER BAR  
**BOOK AND JOB PRINTING OFFICE.**

JNO. H. BARNES.

GENERAL

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**COURT CALENDAR--1878.**

FEBRUARY.

- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 5. Argument for Rules of Affidavit of Defense.
- 5. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 23, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

### THE COMMISSIONERS OF LANCASTER COUNTY against GEO. STAUFFER.

The seizure and sale by the sheriff of a delinquent collector's land, under a treasurer's and commissioners' warrants, pursuant to the act of the 11th April, 1799, to raise and collect county rates and levies, are valid, though the treasurer's warrant was not issued until three years after the delivery of the corrected duplicates of taxes.

The seizure of the land under the treasurer's warrant constitutes a lien. The seizure is effected by the sheriff's levy under the warrant—not by its delivery to the sheriff nor its exit.

The sheriff's deed conveys to the purchaser at such sale a good title, which will enable him to recover against the delinquent collector, his heirs and assigns, a title preferable to that of a purchaser under a judgment execution and sale by the sheriff of the same premises, which judgment was entered subsequently to the levy under the treasurer's warrant.

This was a case stated in the following words, viz:

In the District Court for the city and county of Lancaster:

THE COMMISSIONERS OF LANCASTER CO.	} Of Sept. Term, 1831. No. 39.
vs. GEORGE STAUFFER.	
	Ejectment.

### CASE STATED.

20 February 1824, George Stauffer, the defendant, was appointed the collector of county taxes, by the commissioners of Lancaster county, for the city of Lancaster, for the year 1824. 7 March, 1825, George Stauffer re-appointed collector as above for the year 1825. 20 March, 1826, George Stauffer re-appointed collector as above for the year 1826.

The following is a copy of the entry, appearing on the docket of the prothonotary of the court of common pleas of Lancaster county, and is for the balance then said to be due for the year 1825:

EMANUEL REIGART, Treasurer of Lancaster Co.,	} Aug. Term, 1825. No. 164 Balance due by deft to plaintiff \$2339.15. Entered here 3 Sep., 1825.
vs. GEORGE STAUFFER.	

27 June, 1829, John Reynolds, treasurer of Lancaster county, issued three several warrants, directed to the sheriff of Lancaster county, commanding him to seize and secure the real and personal estate of the said George Stauffer, a delinquent collector, returnable 15 July, 1829; levy made 4 July 1829 (prout the levy).

The amounts stated to be due in said warrants are as follows, to wit:

For the year 1824,	- - -	\$ 471.03
" " 1825,	- - -	1130.15
" " 1826,	- - -	1118.21

1829, the commissioners of Lancaster county issued three several warrants to the said sheriff, commanding him to sell the estate of the said George Stauffer, the delinquent collector (prout the same).

26 September, 1829, the sheriff of Lancaster county sold on the said warrants a house and lot of ground, to R. M. Barr, esq, who purchased the same for the use of the commissioners of Lancaster county. The defendant, George Stauffer, at the time of the said sale, gave written notice that he would resist the the said sale and all proceedings against his real estate (prout said notice).

26 November, 1829, the said sheriff offered a deed for the said real estate to the court of common pleas of Lancaster county, for acknowledgement, the counsel of the said Geo. Stauffer and the judgment creditors of the said Stauffer objecting to the said sale, and acknowledgement of the deed (prout the exceptions filed). 5 December, 1829, exceptions argued c. a. v. 28 December, 1829, the court permit the deed to be acknowledged (prout the opinion of the court).

The following judgments are entered against said George Stauffer in the courts of common pleas and district court:

E. C. Reigart vs. George Stauffer, of April Term, 1829. No. 112. Judgment for \$100, payable in one year, with interest. Entered 13 July, 1829.

Same vs. Same, of April Term, 1829. No. 114. Judgment for \$100, payable in one year. Entered 15 July, 1829.

Salome Stauffer vs. George Stauffer, of June Term, 1829, No. 68. Judgment for \$156. Entered 20 July, 1829.

Christ. Hager vs. George Stauffer, of Aug. Term, 1829, No. 68. Judgment for \$86.79. Entered 10 September, 1829.

Salome Stauffer vs. George Stauffer, of Aug. Term, 1829, No. 73. Judgment for \$52.50. Entered 21 September, 1829.

28 December, 1829, *feri facias* issued on Christopher Hager's judgment, to January Term, 1830, No. 9. Sheriff levied on the one story brick house and piece of ground, &c., sold on the said commissioners' warrants, by the sheriff to the plaintiffs, and for which this ejectment is brought.

21 January, 1830, *venditioni exponas* to April Term, 1830, No. 9, on which the said one-story brick house and piece of ground was sold by the sheriff to Emanuel C. Reigart, who now claims the same by virtue of the said sale and the deed to him from the sheriff. At the time of the said sale notice was given by R. M. Barr, for the commissioners, cautioning all persons against purchasing the said real estate (prout said notice).

The said George Stauffer is still in possession of the premises in question. If the court should be of opinion that the seizure and sale of the defendant's real estate so, as aforesaid, seized and sold by virtue of the treasurer's and commissioners' warrants, is good, legal and valid, and that according to law the plaintiffs are entitled to recover the said premises, then judgment is to be entered for the plaintiffs; and if the court should be of opinion that the sale made by virtue of the judgment and executions aforesaid, is good and valid, and that the purchaser on the ex-

ecutions has a preferable title to the said premises, then judgment is to be rendered accordingly, saving to either party the right of taking a writ of error to the Supreme Court.

GEO. HAVERSTICK,  
JACOB KURTZ,  
Commissioners of Lancaster Co.

E. C. Reigart, att'y for Def'ts and Creditors.

Mr. Long for the plaintiffs said the question was, whether the commissioners, by reason of their warrant had obtained a lien on the premises sold. This depends on the act of 11 April 1799, 3 Smith L. 393, Sec. 16 and 18. The treasurer's warrant, dated 27 June, 1829, I contend operated as a lien from that time when it went into the sheriff's hand on the defendant's real estate. The warrants entered 1825, No. 154, had lost their lien when the property was sold. This I admit. The matter may be assimilated to the case of a *testatum fi. fa.*, which, from the time it reaches the sheriff's hands, where the lands lie, becomes a lien on the defendant's property within that county. So the Supreme Court has decided: 8 Sergt. & R. 505, Cowder vs. Brady; 6 Binn. 139, Calhoun vs. Snyder.

2. I contend that even if these warrants were not a lien this is not the proper forum for the party. The application should have been made in the common pleas to set aside the sale, or to have the money brought into court, and afterwards applied to the liens: 2 Binn. 227, Young vs. Taylor. When the levy was made the property was in the custody of the law, the warrants in the sheriff's hands were a lien on Stauffer's real estate.

Mr. Reigart, for the defendant: The argument on the other side seems to revive the act of 1724, 1 Dall. L. 216, Sec. 23; 3 Yeates 50, Wanner and others vs. Emory. But the act of 1799, Sec. 16, which was particularly referred to, gives a specific remedy by making the transcript of the balance filed a judgment and, therefore, a lien. Liens must be constituted such by law. Taxes are a personal charge, and not a lien on real estate: 9 Sergt. & R., Burd vs. Ramsey. There is indeed no lien by construction in Pennsylvania: 7 Sergt. & R. 72, Kaulfelt vs. Bower; and no liens but liens of record: 13 Sergt. & R. 227, Lindle vs. Neville. Even a recognizance, though a matter of record, is not a lien on the lands of the cosutors. 16 Sergt. & R. 17, Allen vs. Reeser. With respect to the *testatum fi. fa.*, it must be entered of record to make it a lien, by express enactment: Act 1 April, 1823, sec. 1. I contend, therefore, that these warrants are no liens. 2. In regard to the second point, I must refer to the opinion of Judge FRANKLIN in the court of common pleas. An analysis of the acts of 1724 and 1799 will demonstrate that we have not mistaken the forum. I would especially refer to sections 14, 15 and 16 of the former, and to sections 18, 19 and 20 of the latter act.

Mr. Long in reply. Previous to the act of 1823, relative to the *testatum fi. fa.*, it was not necessary to have the writ entered in the prothonotary's office. The act of assembly altered the law relative to the *testatum fi. fa.*, but the principle stands good as to the purpose for which I used it. Suppose the lien

England, a bond passes into the hands of an assignee subject to all the equity it had in the hands of the assignor: 6 Vin. 692, 675; 10 Mod. 445; 1 P. Wms. 383, 452, 459.

In *Turton vs. Benson*, 1 P. Wms. 496, the case was this: A son on his marriage was to have £3,000 portion with his wife, and privately, without notice to his parents, who treated for the marriage, gave a bond to the wife's father to pay back £1,000 of the portion seven years afterwards. This bond was assigned in trust for the benefit of the obligee's creditors, against whom the obligor prayed to be relieved. After the cause was greatly debated the master of the rolls granted a perpetual injunction upon the £1,000 bond, declaring that the creditors of Benson, the obligee, could not be in a better situation than Benson himself; that supposing a man should assign over a satisfied bond as a security for a just debt, the assignee could not set up this bond in equity, which, being satisfied before, could receive no new force from the assignment, and that it was incumbent on any one who took an assignment of a bond to be informed by the obligor concerning the quantum due upon such bond, which, if he neglected to do it, was his own fault, and he should not take advantage of his own *laches*. Lord Chancery Parker, who affirmed the master's decree, on appeal said *inter alia* that as to Benson's pretended assignment of the bond, it was upon no consideration; but if it were, yet in truth, it was not an assignment, but on agreement only that the assignor should have all the fair and equitable advantage and benefit of the bond that the assignee himself was entitled to, and if nothing was done, nothing could be assigned over.

Whether the assignment be legal or equitable, the assignee cannot set up want of notice in discharge of the equity to which the obligor was entitled, as against the obligee, at the time of the assignment, unless he has called upon the obligor before the assignment and been informed by him that he had no defence, or unless he has been encouraged or induced by the obligor to take the assignment without intimating that he had any defence: 1 Rawle 227, *Metzgar vs. Metzgar*.

But it is contended that the cases, with regard to bonds, will not apply here because this was a judgment, which was transferred to G. B. Porter, esq., and the assignee had therefore, only to look at the record. I am not able, I confess, to perceive the force of this distinction. The assignee of the bond might as well say he had only to look at the bond. He, however, is bound to inquire of the obligor whether anything, and how much is due, and omitting to do so, is liable to every equitable objection and defense which existed between the obligor and obligee. May there not exist a good legal and equitable defense against a judgment as well as a bond? There may even be a set-off of one judgment against another. Judgments may also be paid and satisfied. They may have been fraudulent and without consideration, and yet the record disclose nothing of all this. Is the defendant therefore, to be precluded from

showing his defense? Shall he be compelled to pay his debt twice, or to pay what he does not owe, because the assignee of the plaintiff had a record to look at and chose to look no further? The assignee of a judgment enjoys as good means of discovering whether there is a defense to it as the assignee of a bond. The record gives him all the information that the bond gives the other, and why should he not be as much bound to go to the defendant as the assignee of the bond is to resort to the obligor, since a defense may obtain against the one security as well as the other. At common law no chose in action could be assigned or granted over, and though this nicety is now disregarded, yet the form of assignment, says BLACKSTONE, is in the nature of a declaration of trust, and an agreement to permit the assignee to make use of the name of the assignor, in order to recover possession, and the person to whom it is transferred is rather an attorney than an assignee. But courts of equity, considering that in a commercial country almost all personal property must necessarily be in contract, will protect the assignment of a chose in action, as much as the law will that of a chose in possession: 2 Bl. Comm. 442. The universal principle of equity is that he who asks equity shall do equity, in order that courts may not be made the instruments of fraud and oppression. Hence, as the assignment is but an agreement that the assignee shall have all the fair and equitable advantage and benefit of the chose transferred to him he shall not be allowed to exact, upon the face of the instrument, more than the assignor was himself justly entitled to demand: 1 P. Wms. 498. This principle applies equally to the transfer of a bond and of a judgment, and appears to me to afford the true foundation for the rule which requires the assignee to ascertain from the debtor whether anything and how much is due.

I am accordingly of opinion that the assignee of the bank in the present case had no better or other right to enforce this execution against Jacob Beck, than the bank itself had. I believe a court of chancery would enjoin his proceeding with the execution against that defendant, and that we ought to set it aside as to him by staying all proceedings against him.

Let the rule to that effect be made absolute.

#### Common Pleas of Lancaster County.

COLUMBIA FIRE INS. CO. *vs.* SWEIGART.

[Nov. T., 1877, No. 90.]

On an appeal from the judgment of a magistrate, the recognizance, to secure costs, must be taken before the magistrate who passed the judgment. The court will not, however, strike off the appeal, but will direct the recognizance to be perfected.

Rule to show cause why the appeal should not be stricken off.

*W. A. Wilson* for rule.

*H. M. North* contra.

Opinion delivered January 19, 1878, by LIVINGSTON, P. J.

It was commenced by the plaintiff against the defendant before Samuel Evans, esq.,

and judgment entered in favor of plaintiff for \$66.39, on October 2, 1877.

On October 16, 1877, defendant appealed from this judgment; and, in completing his appeal, he made the oath required before Henry Harmany, another justice of the peace of Lancaster county, and before the said justice, Harmany, he, with his surety, entered into a recognizance, which after being executed and acknowledged, was forwarded to Samuel Evans, esq., before whom suit was brought and judgment obtained. After its receipt by Samuel Evans, esq., he made out a transcript for an appeal and returned it, together with the recognizance and oath, taken before Henry Harmany, esq., to the office of the prothonotary of Lancaster county, where it was entered as an appeal to November term, 1877, No. 90. After which the present rule was granted, and the following reasons assigned:

1. The affidavit for the appeal, and the alleged recognizance of bail, were not made or taken before Samuel Evans, esq., before whom the judgment had been entered.

2. No proceedings relating to the appeal were had before Samuel Evans, esq., except by filing with him a paper in the case, on which paper defendant says he appeals, and said paper purports to contain an affidavit and recognizance of bail entered before another justice of the peace than said Evans.

This court, in *Gakel & Co., vs. Bletz*, LANCASTER BAR, vol. 9, page 6, decided that the oath necessary to be made upon an appeal from an award of arbitrators may be made before a justice of the peace, and need not necessarily be made before the prothonotary—a justice having a general power to administer oaths and affirmations; and there seems to be good and sufficient reason for the decision. A defendant may, after the rendition of the judgment, be prostrated by sickness or accident, and be wholly unable to travel and appear before the magistrate before whom the cause was tried to make the oath necessary to procure and complete his appeal. But the same reasons do not prevail, or even present themselves, with reference to the recognizance or bail. The defendant is not even required or obliged to join in the recognizance: 6 Binn. 52. This can be done by the bail alone.

Where a party against whom judgment has been passed by a magistrate is dissatisfied, and determines to appeal, he must take with him or send to the magistrate (passing the judgment) a competent person to serve as bail, and claim his appeal within twenty days from the rendition of the judgment. And when bail is offered it is the duty of the magistrate to inquire into its sufficiency, either on oath or affirmation, or by other means. If he is satisfied of the insufficiency of the bail, notwithstanding his oath, he has power to and should reject him and require the production of other bail. The act of 1810 required the bail to be taken by the justice who tried the cause, and gave the form of recognizance. In the fifth section thereof it declares: "that the special bail, directed to be taken by the justice in case of appeal, shall

be conditioned for the appearance of the party appealing at the next court of common pleas, to prosecute his suit with effect; and on failure thereof that the bail will pay the debt and costs, if the appeal is made by the defendant, or the costs, if the appeal is made by the plaintiff; or that the bail will, on or before the first day of next term after judgment shall be rendered against the principal, surrender him to the jail of the proper county: on which surrender being so made, the bail shall be exonerated, but not otherwise." After this there does not appear to have been any change made in the law with respect to recognizances to be taken by justices on appeals, until the passage of the act of 1842 abolishing imprisonment for debt. The 33d section of that act, Pam. L., 1842, pg. 347, changes the condition of such recognizances, and declares that they shall be "conditioned that no part of the property of the defendant, which is liable to be taken in execution, shall be removed, secreted, assigned or in any way disposed of, except for the necessary support of himself and family, until the plaintiff's demand shall be satisfied, or until the expiration of ten days after such plaintiff shall be entitled to have an execution issued on the judgment obtained in such cause, if he shall obtain judgment." And Sect. 34 of the same act declares that all the provisions of the act of March 20, 1810, and its supplements, not expressly repealed by this act, and not inconsistent with its provisions, are and shall be in full force. The next change in the law was the act of March 20, 1845, Pam. L., 1845, pg. 189-9, which required the condition to be for the payment of all costs accrued or that may be legally recovered in such cases against the appellants. That the bail should be bail absolute in double the probable amount, &c., and produced the form of recognizance now in general use, but did not alter the manner of taking them.

It appears clear to us, therefore, that the bail should, in all cases of appeal from the judgment of a justice be produced before the justice who entered the judgment, and enter into and acknowledge the recognizance before him, so that he may inquire into its sufficiency, and approve or reject it as he finds his duty requires.

This was not done in the case before us. The testimony taken shows that the justice told defendant, on the day of the hearing, that he would not pass judgment on that day; that there were some points he wanted to consider over, and said that if judgment was passed against defendant he would send him the necessary papers and he could go before a justice of the peace at Elizabethtown and take out his appeal there, and return them to him, Evans, and he would perfect them and send them to Lancaster. This 'Squire Evans admits is substantially true and correct. Defendant was thus thrown off his guard and did as the justice advised and requested him to do, instead of producing his bail before the justice from whose judgment he was taking an appeal, and entering into and acknowledging the recognizance before him as the

law requires. Shall the defendant be deprived of a trial by jury, and have his appeal dismissed by reason of having filed a recognizance which has been improperly or imperfectly acknowledged by reason of an error on the part of the magistrate, or shall the appeal be permitted to stand and defendant be permitted to perfect his recognizance and bail?

In *Means vs. Trout* the Supreme Court say: "If the recognizance given on appeal from the award of arbitrators, or a justice of the peace be defective, the party should be called on by rule to perfect his bail within a given period, or in default thereof, to have his appeal dismissed. The court ought not to quash the appeal in the first instance:" 16 S. & R. 349, 2 Penna. 431.

In *Bream vs. Spangler*, "upon a motion to quash an appeal from the judgment of a justice of the peace, on the ground of a defective recognizance, the appellant should be permitted to amend it and thus perfect the appeal:" 1 W. & S. 378.

In *Adams vs. Null*, the court say: "This recognizance is undoubtedly bad. \* \* \* It is immaterial that the appellant did not offer to amend pending the motion to quash; it was the appellee's business to call on him for a good recognizance by a rule:" 5 W. & S. 363-4; 3 Cas. 267.

In *Koenig vs. Bauer*, AGNEW, J., says: "It has been said so often that it will scarcely bear repeating that the proper course, when the recognizance of an appellant is defective or invalid, is not to dismiss the appeal, but to rule him to amend or perfect it, and to dismiss only as the penalty of neglect or refusal. The right of appeal and of trial of jury is too precious to be frustrated by the ignorance, incompetency or malice of inferior magistrates and officers:" 7 Sm. 171.

Following these decisions this court in the case of *A. D. Hummer vs. Ephrata School Distr't*, where the particular act of assembly, under and by virtue of which the appeal in that case was taken, required that there should be "two sufficient sureties," and the recognizance taken and filed, contained the name of but "one surety," on a rule to strike off or dismiss the appeal, discharged the rule, and permitted the the appellant to perfect his recognizance: LAN. BAR, vol. 5, (Feb. 14, 1874.)

And in the case of *Gakel & Co. vs. Bletz*—Opinion by Judge PATTERSON—on a rule to strike off the appeal, the appellant was allowed to perfect his recognizance and the rule was discharged: LAN. BAR, vol. 9, pg. 6.

We, therefore, in the present case, discharge the rule to show cause why the appeal should not be stricken off, and direct a rule on appellant to be entered requiring him to perfect his recognizance within fifteen days from this date, and in case of his failure so to do the court will strike off his appeal on motion, and we direct that the rule be served by the prothonotary on appellant's counsel of record.

## COMMONWEALTH vs. SPECHT ET AL.

[Dec. T., 1875, No. 125.]

The repeal of the act of 1856, relative to liquors, by the act of 1875, does not prevent a recovery upon

the bond given by the applicant for license before the repeal.

Rule for a new trial.

*J. B. Amwake, J. B. Good and Philip D. Baker* for rule.

*B. C. Kready and H. C. Brubaker* contra.

Opinion delivered January 19, 1878, by LIVINGSTON, P. J.

At January Sessions, 1873, license was granted to Augustus F. Specht, of the city of Lancaster, entitling him to sell liquor by the quart—ordinarily called a "liquor store license." This license was granted at January term, 1873; and at the time the court granted the license, the applicant presented his bond—judgment bond—with Adam Smith and Catharine Specht as his surities, in the sum of \$500. On this bond the parties therein named authorized the entry of judgment for the \$500 penalty. On January 8, 1873, this bond was filed, and on January 29, 1873, when the license was granted, it was approved by the court. On February 4, 1873, Augustus F. Specht paid to the county treasurer the amount of money required of him for license and lifted his license.

At August Sessions, 1873, two bills of indictment were presented and found against him; one numbered 84, for selling liquor on Sunday—the other numbered 86, for selling without license, or contrary to license. On these indictments defendant was convicted March 3, 1874, and sentenced March 4, 1874, to pay \$100 fine and costs in each case.

On March 25, 1875, the judgment filed in the quarter sessions January 29, 1873, was entered as a judgment in the court of common pleas of Lancaster county, to January term, 1875, No. 499; and, in order to ascertain the amount due on this judgment thus entered, a *scire facias* was issued to December term, 1875, No. 125, and upon this *sci. fa.* the trial was had.

At the trial on this *sci. fa.* to ascertain the amount due on the judgment, we charged the jury that upon the evidence the Commonwealth was entitled to recover the amount they should ascertain from the evidence to be due her, and that the repeal of the act of assembly of 1856, by the act of 1875, did not prevent a recovery in the case before the court. To this charge of the court the counsel for defendants took exception and made this exception their basis for the application for granting a new trial.

We have listened with pleasure to the arguments of the learned counsel, but they have failed to convince us that a fair construction of the several acts of assembly referred to, and of the repealing clauses connected therewith, require us to set aside the verdict in this case; or that there is anything in them that would warrant the court in granting a new trial.

The rule is therefore discharged.

Rule discharged.

IN 1770 the King of Portugal issued an edict forbidding widows of above 50 years of age to marry: "Because experience has shown that woman of that age commonly marry young men of no property, who dissipate their fortunes to the prejudice of the children and other near relations of their wives."



## SUPREME COURT OF PENNSYLVANIA.

ADAMS, HALDEMAN &amp; CO., vs. GEORGE BACHERT.

It is not necessary in proving the execution of a judgment note containing a waiver of exemption to show that the defendant knew at the time of signing it that it contained a waiver. That part of the note which contains the waiver stands on no higher plane than the rest.

Error to the Court of Common Pleas of Lehigh county.

Opinion by GORDON, J. March 26, 1877.

On the 7th day of November, 1874, George Bachert executed and delivered to the plaintiffs, Adams, Haldeman & Co., his judgment note, containing *inter alia*, a clause waiving the benefit of the act of assembly exempting property from execution, and agreeing that all his goods and effects might be taken in satisfaction of the debt in said note mentioned. Judgment was entered thereon and a *fi. fa.* issued. Afterwards the court, on motion to open the judgment and stay the writ, directed an issue to try: first—"whether or not the defendant confessed the above judgment;" second—"whether or not the defendant waived the law exempting property from execution."

Upon the trial of this issue the learned judge of the court below charged as follows: "The defendant could only avoid the judgment note by showing that there was fraud practised upon him in the obtaining of his signature to the note. There is no fraud—because there is no testimony in the case from which you will be warranted to find such a fraud; and, therefore, I instruct you that, as regards the issue to determine whether or not it be the defendant's act or deed, you must find that in the affirmative. A different question, however, arises as to whether or not the defendant waived the three hundred dollar law. This is a personal privilege given to the defendant under the statute, and I have declared the law to be, in cases tried heretofore, that no man can be held to waive a privilege unless he is informed of that fact. *He cannot be held in law to have waived the three hundred dollar exemption law, unless knowledge was brought to him at the time he signed the note; and the question then for your determination is, did the defendant know at the time he signed this note that it was an exemption note; or, in other words, that he had waived the privilege which the statute had conferred on him? The plaintiffs assert that the defendant did know this fact. The plaintiffs must prove this by stronger proof than all opposing proof on the part of the defendant.*

That part of the charge which we have italicized is wrong. That part of the note which waived the execution stood on no higher plane than any other. It was a contract the defendant had a right to make, and it went into the note as part of the consideration: *Bowman vs. Smily*, 7 Casey, 225. When the plaintiffs proved the execution of the obligation, they made out their case; a case that could only be impeached by proof that the signature thereto had been obtained by fraud, or through some palpable mistake or misapprehension of the parties. Neither

of these proofs, however, was made. What if Bachert did not know that the power he executed contained an agreement to waive exemption? He did not know because he did not inquire. (We speak from his own testimony.) There was no fault on part of the plaintiffs or their agents, and they got nothing from the defendant that was not lawful and proper for them to take. Under such circumstances, and as against creditors who are justly entitled to have paid to them the debt represented by the note, the defendant has no standing in either law or equity: *Greenfield's Estate*, 2 Har. 496.

The verdict and all proceedings in the issue in this case are reversed and set aside; and it is now ordered that the record be remitted to the court below for further proceedings according to law.—*Pitts. Leg. Jour.*

## KING'S APPEAL.

1. The children of a wife and mother living with husband at the time of her decease are not entitled to \$300 out of her separate estate.
2. The act of 1851 is meant for the benefit of the widows, it was not intended to apply to the property of a wife.

Appeal from the Orphans' Court of Adams county.

Opinion by MERCUR, J. October 1, 1877.

The precise point for contention is presented for the first time in this court. That is whether in case a wife and mother living with her husband, and owning separate property, dies, leaving children, they are entitled to \$300 worth of her property, under the act of 14th of April, 1851? That act declares "the widow or the children of any decedent dying within this Commonwealth, testate or intestate, may retain either real or personal property belonging to said estate to the value of three hundred dollars, and the same shall not be sold but suffered to remain for the use of the family." Although the act says "the widow or the children" may retain, yet it has been held if there be a widow, the children of the decedent are not entitled to any portion of his exempt property. It all vests in the widow only: *Nevin's Appeal*, 11 Wright 230. In so far as the widow's affection influences her, she may be said to hold for herself and family; that is, for the use of those children who remain with the family. The widow, however, has the sole right of its appropriation and disposal. The main object of the act is to provide for the widow. On the death of the husband and father, so much of his property is transferred to his widow, to be used by her as he might have used the same in his life time. It is only in case no widow survived to accept this charity of the statute that it passed to the children. Hence it was well said by Mr. Justice STRONG, in *Nevin's Appeal*, *supra*, the act "has always been construed rather according to its spirit than its letter."

The husband and father is liable for the support and maintenance of his wife and children while they remain members of his family. To entitle the widow to the three hundred dollars worth of her husband's property she must have sustained the rela-

tion of his wife at the time of his death. Hence, if she had deserted him, so long as not to be a part of his family, she thereby forfeits her right to this property: *Tozer vs. Tozer*, not reported; *Spier's Appeal*, 2 Casey, 233; *Hettrick vs. Hettrick*, 5 P. F. Smith, 290; *Terry's Appeal*, Id. 344.

As part compensation for the loss of his support and maintenance, his property, to a limited amount, shall be substituted. The wife is not to a like extent liable for the support of her children. She may be removed by death, yet the husband, the head of the family, with his continued liability, remain. It is contended, that inasmuch as the children now claiming through their guardian, are not heirs of the surviving husband, but of their deceased mother, that this statute applies to their mother's property and transmits it to them. So far as her property is given to them under the intestate laws, they undoubtedly take it; but that is not the question now before us. The attempt here is, to take the property out of the operation of the intestate laws. We think this cannot be done. During the life of the wife her property was not primarily liable for the support of these children. The effort is not then to require it to "remain" for their support, as before, but to subject it to new uses and purposes.

The main purpose of the act is to provide for the widow. Its meaning and spirit limits operation to the property left by the husband or father. It was not intended to apply to the property of a wife. This view is in harmony with all our decisions giving construction to the statute. The learned judge therefore erred in making the rule absolute.

Decree reversed, and rule discharged at the costs of the appellee.—*Luz. Law Times.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 9, 1878.

## WEEKLY SUMMARY.

## REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since February, 2, 1878:

SAMUEL S. GOOD, dec'd, late of Mount Joy bet.; C. M. Good, administrator.

CATHARINE HINSTAND, dec'd, late of East Hempfield twp.; Christian K. Long, administrator.

CARL VOGT, dec'd, late of Lancaster city; Udit Vogt, administratrix *c. t. a.*

MARGARET SWEIGART, dec'd, late of West Donegal twp.; Jacob S. Sweigart administrator.

DAVID H. HERSHEY, dec'd, late of East Hempfield twp.; Jacob H. Hershey, administrator.

JOEL ESHLEMAN, dec'd, late of Brecknock twp.; Jacob Weinhold and Christian Eshleman, administrators *d. b. n.*

The following Wills have been admitted to probate since February 2, 1878:

PETER MOYER, late of Mount Joy twp.; Jacob Risser, executor.

ELIZABETH GOOD, late of Martic twp.; Benj. B. Mylin and D. H. Huber, executors.

FRANCES WARFEL, late of Conestoga twp.; Benj. Kneisley, executor.

**DAYS OF APPEAL FOR 1878.**

**TO THE TAXABLE INHABITANTS OF LANCASTER COUNTY.**

Pursuant to the provisions of the laws of the Commonwealth, the undersigned Commissioners of Lancaster County, hereby give notice to the taxable inhabitants, within the respective city, boroughs and townships of said county, that the days of appeal from the assessment of 1878, will be held in the Commissioners' Office, in the city of Lancaster, on the days following to wit:

Lancaster City, 9 Wards,	Tuesday, Feb. 12.
Adamstown Borough,	Wednesday Feb. 13.
Washington Borough, 3 Wards,	
Columbia Borough, 3 Wards,	
Marietta Borough,	
Mount Joy Borough,	Thursday, Feb. 14.
Elizabethtown Borough,	
Manheim Borough,	
Strasburg Borough,	
Bart,	Friday, Feb. 15.
Little Britain,	
Eden,	
Colerain,	
Fulton,	Saturday, Feb. 16.
Brecknock,	
Cornarvon,	
Cocalico East,	
Cocalico West,	Wednesday Feb. 20.
Clay,	
Drumore,	
Martic,	
Providence,	Thursday, Feb. 21.
Pequea,	
Conestoga,	
Donegal East,	
Donegal West,	Friday, Feb. 22.
Conoy,	
Mount Joy,	
Penn,	
Ephrata,	Saturday, Feb. 23.
Elizabeth,	
Warwick,	
Manheim,	
Earl,	Tuesday, Feb. 26.
Earl East,	
Earl West,	
Paradise,	
Sadsbury,	Wednesday, Feb. 27.
Hempfield East,	
Hempfield West,	
Rapho,	
Strasburg,	Thursday, Feb. 28.
Lancaster,	
Lampeter East,	
Lampeter West,	
Leacock,	
Leacock Upper,	
Salisbury,	
Manor,	

No change in the valuation of Real Estate can be made except where new buildings are put up, or buildings destroyed by fire or otherwise.

At the same time and place the appeal from the Military Rolls will be held.

S. F. EAGLE,  
SAMUEL M. MYERS,  
EM' L. P. KELLER,  
Commissioners.

Jan 26  
Papers in county copy.

**VICK'S ILLUSTRATED MONTHLY MAGAZINE.**

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PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,  
LANCASTER, PA.

**Divorce Notices.**

NATHAN WAPPENSTEIN } Alias subpoena for Divorce  
vs. } To January Term, 1878.  
ELIZ' H WAPPENSTEIN. } No. 87.

To ELIZABETH WAPPENSTEIN:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D., 1878, at 10 o'clock, a. m., to show cause if any you have, why the said Nathan Wappenstein should not be divorced from the bonds of matrimony contracted with you.  
an 19 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

WM. L. RITTENHOUSE } Alias Subpoena for Divorce  
vs. } To January Term, 1878.  
MAGGIE RITTENHOUSE. } No. 88.

To MAGGIE RITTENHOUSE:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Wm. L. Rittenhouse should not be divorced from the bonds of matrimony contracted with you.  
Jan 19 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed SATURDAY, FEBRUARY 23d, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.  
Jan 26 JACOB NEISS.

**Auditors' Notices.**

Assigned Estate of F. H. ARNDT and WIFE, of Mount Joy borough.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, MARCH 7th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. C. M. MARTIN, Auditor.  
feb 9

In the estate of } In the Court of Common Pleas  
JOHN BACHMAN, } of Lancaster County.  
Lunatic. } Trust Book, No. 6, page 272.

The undersigned Auditor, appointed by said court to distribute the balance in the hands of John M. Bachman, committee of John Bachman, (lunatic.) appearing upon the account of said committee, exhibited in the said court, Dec. 31, 1877, and confirmed nisi January 21, 1878, will sit for that purpose in the Library Room of the Court House, at Lancaster, on TUESDAY, the 5th day of MARCH, 1878, at 10 o'clock, a. m., when and where all persons interested in said distribution are requested to attend and present their claims. AND. M. FRANTZ, Auditor.  
feb 9

SAMUEL MILLER } In the Court of Common Pleas  
vs. } of Lancaster County.  
HAYES DICKINSON. } Lev. Fac. Jan'y Term, 1878.  
No. 5.

The undersigned Auditor, appointed by said Court to make distribution of the money made on the above suit and paid into court, will sit for that purpose on TUESDAY, MARCH 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
feb 9 ROBT B. RISK, Auditor.

Assigned Estate of HENRY DIETRICH and WIFE, of Manheim twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel P. Keller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 28th day of FEBRUARY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
Jan 26 A. C. ILLYUS, Auditor.

HIRAM WILSON } In the Court of Common Pleas  
vs. } of Lancaster County.  
W. B. C. DENNIS. } Jan'y Term, 1878. No. 37.  
Execution Docket.

The undersigned Auditor, appointed by said Court to distribute the money ruled into Court, made under the above execution, will sit for that purpose in the Library Room of the Court House, in the city of Lancaster, on TUESDAY, FEBRUARY 26th, 1878, at 2 o'clock, p. m., when and where all persons interested are requested to attend and present in said distribution their claims.  
feb 2 AND. M. FRANTZ, Auditor.

Estate of ANNA MARTIN, late of Salisbury twp., Lancaster co., deceased.

The undersigned Auditor, appointed by the Orphans' Court of said county to pass upon the exceptions to the account filed by John Wanner, jr., and Jacob Martin, jr., administrators of the estate of David S. Martin, deceased, who was administrator of the estate of the said Anna Martin, deceased, and to distribute the balance in the hands of the accountants, will sit for the purpose of his appointment in the Library Room of the Court House, Lancaster, on THURSDAY, FEBRUARY 21, 1878, at 11 o'clock, a. m., when all persons interested may attend.  
feb 4 W. LEAMAN, Auditor.

JOHN H. COOPER and } In the Court of Common Pleas  
SAMUEL TRUSCOTT, } of Lancaster County.  
executors of will of }  
John Cooper, dec'd, } Nov. Term, 1877. No. 135.

vs. } Levari Facias.  
JOHN PEART.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster county, to make distribution of the money made on the above writ and paid into court, will sit for that purpose on THURSDAY, FEBRUARY 28th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
feb 2 W. LEAMAN, Auditor.

Estate of ABRAHAM H. MUSSELMAN, late of East Donegal twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of M. H. Musselman and J. F. Cottrell, administrators, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, FEBRUARY 20th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
WM. B. GIVEN, Auditor.  
Jan 26

JOHN G. BEAR, } In the Court of Common Pleas  
for the use of Henry } of Lancaster County.  
Kafroth, } Fl. fas. Jan'y Term, 1878.  
vs. } Nos. 102 and 103.  
THOMAS B. SOHL. } Money ruled into Court.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster Co., Pa., to distribute the moneys ruled into court, made under the above fl. fas., will sit for the purposes of his appointment, in the Library Room of the Court House, in the City of Lancaster, on FRIDAY, FEBRUARY 15th, 1878, at 2 o'clock, p. m., on said day, when and where all persons interested in said distribution may attend if they think proper. SAMUEL H. PRICE, Auditor.  
Jan 26

Estate of JOHN L. BURGAIN, late of Drumore township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of James J. Glenn, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, FEBRUARY 12th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
WALTER M. FRANKLIN, Auditor.  
Jan 19

**Estate Notices.**

Estate of PETER MOYER, late of Mount Joy twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.  
GEO. BRUBAKER, }  
feb 9 Att'y. } JACOB RISSER, }  
Executor.

**Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.**

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

P. D. BAKER, Att'y. Assignee,  
feb9 Residing at Goshen, Fulton twp.

**Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.**

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,

H. C. BRUBAKER, JACOB WEINHOLD,  
East Earl twp.,  
Wm. D. WEAVER, Att'ys. CHRISTIAN ESHLEMAN,  
Brecknock twp.,  
feb9 Administrators d.b.n.

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.

feb9 J. HAY BROWN, Att'y. Administrator.  
C. M. GOOD,

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

jan26 EZRA BURKHOLDER, Assignee,  
Residing in West Earl township.

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litiz.

jan12\* JACOB A. BUCH, Executor.  
D. G. ESHLEMAN, Att'y.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.

jan13 HARVEY S. BOWERS, Administrator.  
PHILIP D. BAKER, Att'y.

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.

jan12\* CHRISTIAN MYERS, Administrator.

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.

jan5 SIMON F. ALBRIGHT, Executor.  
S. H. REYNOLDS, Att'y.

**Estate of BENJ. D. DANNER, late of Mannheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

jan5\* HENRY S. DANNER, Executor.  
P. D. BAKER, Att'y.

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec29 ELIZABETH RUHL, Administratrix.  
J. HAY BROWN, Att'y.

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 26th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec29 JOHN H. ZELLER, Assignee,  
Residing in Mount Joy borough.  
J. HAY BROWN, Attorney.

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

dec22\* CATHERINE RINEER, Executrix.  
B. F. ESHLEMAN, Att'y.

**Estate of JACOB HOLSINGER, late of Hinkletown, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

dec22 E. BURKHOLDER, Administrator.

**Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.**

Having by deed of voluntary assignment, dated November 13, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec22\* ABRAHAM MILLER, Assignee,  
C. DENUES, Att'y. Residing in Millersville.

**Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.

dec15 CATHARINE KRABER, Administratrix.  
M. BROSIUS, Attorney.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

dec15 HENRY B. ESHLEMAN, Administrators.  
D. G. BAKER, } Att'ys.  
O. P. BRICKER, }

**Assigned estate of CYRUS BRINTON and WIFE, of Sadsbury twp., Lancaster co.**

Cyrus Brinton and Wife having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cyrus Brinton, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec15 SAMUEL WHITSON, Assignee,  
M. BROSIUS, Att'y. Atglen, Chester Co., Pa.

**Assigned estate of PETER BENTZ, of Warwick twp., Lancaster co.**

Peter Bentz, of Warwick township, having by deed of voluntary assignment, dated December 3, 1877, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said Peter Bentz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec15\* LEVI BRUBAKER, Assignee,  
A. J. EBERLY, Att'y. Millway P. O., Lan. Co.

**Estate of JOSHUA KING, late of Fulton twp., Lancaster Co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec3\* MARY M. KING, Administratrix.  
J. W. JOHNSON, Att'y.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to him without delay.

dec8 MARTIN G. LANDIS, Administrator,  
East Lampeter twp.

**Estate of MARTIN GROFF, Sr., late of Mannheim township, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

dec8\* SAMUEL GROFF, ABRAHAM S. GROFF, Executrix.  
PHILIP D. BAKER, Att'y.

**Estate of THOMAS H. WALTERS, late of the City of Philadelphia, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise.

dec1\* W. C. FREW, Administrator.  
B. F. ESHLEMAN, Att'y.

**Estate of ELISHA BATCHELOR, late of Fulton twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

nov17 KIRK BROWN, Administrator.  
J. HAY BROWN, Atty.

**Assigned Estate of ISAAC ANDERSON and WIFE, of Paradise twp., Lancaster Co.**

The undersigned, having been appointed Assignee of the above estate, under a deed of voluntary assignment, hereby gives notice to all persons indebted thereto to make payment, and those having claims against the same will present them for settlement to the undersigned.

dec1 GEO. BRUBAKER, Assignee.  
H. C. BRUBAKER, Att'y.

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# The Lancaster Bar.

Vol. IX.

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No. 38.

## The Lancaster Bar.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

	WESTWARD.		EASTWARD.	
	LANCASTER.	HARRISBURG.	LANCASTER.	PHILADELPHIA.
Pacific Express,*	2:40 a. m.	4:05 a. m.	12:30 a. m.	8:00 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.	4:10 a. m.	7:00 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.	7:35 a. m.	10:00 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10:10 a. m.	9:28 a. m.	12:30 p. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.	1:20 p. m.	3:45 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.	2:00 p. m.	5:00 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.	3:05 p. m.	6:00 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	6:00 p. m.	8:10 p. m.	5:50 p. m.	9:00 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.		
Harrisburg Express,	7:25 p. m.	8:40 p. m.		
Pittsburg Express,	9:25 p. m.	10:50 p. m.		
Cincinnati Express,*	11:30 p. m.	12:45 a. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

	GOING SOUTH.		GOING NORTH.	
	a. m.	p. m.	a. m.	p. m.
Leave Columbia	10:20	6:45	6:30	2:00
Arrive at Port Deposit,	1:20	8:45	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

	GOING NORTH.			GOING SOUTH.		
	LEAVE.	a. m.	a. m.	p. m.	p. m.	p. m.
Quarryville,	6:50	8:00	2:30			
Lancaster—West King Street,	8:00	9:30	3:35			
Lancaster—Upper Depot,	8:10	9:40	3:45			
Lancaster—Upper Depot,	9:46	4:30	8:10			
Lancaster—West King Street,	9:55	4:40	8:20			
Quarryville, (arrive)	11:00	6:00	9:25			

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

	GOING NORTH.			GOING SOUTH.		
	LEAVE.	a. m.	p. m.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35			
Lancaster—Upper Depot,	8:15	12:55	3:45			
Lancaster Junction,	8:35	1:35	4:11			
Reading, (arrive)	10:10	3:20	5:50			
Reading,	7:35	11:40	6:05			
Lancaster Junction,	9:21	1:20	7:45			
Lancaster—Upper Depot,	9:46	2:00	8:10			
Lancaster—West King Street,	9:55		8:20			

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Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio.	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

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*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.

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 Western District—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

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At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

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*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

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*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
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*Clerk of Quarter Sessions*—Stephen S. Clair.  
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*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

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*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
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**COURT CALENDAR--1878.**

FEBRUARY.

16. Last day for filing Accounts to March Court.  
 23. Calling Judgment Docket.

MARCH.

8. Last day for issuing Writs to March Term.  
 9. Last day for setting down causes for Argument Court.  
 9. Argument for Rules of Affidavit of Defense.  
 16. Last day for filing Accounts for April Court.  
 23. Last day for setting down causes for April Court.  
 23. Calling Judgment Docket.

APRIL.

5. Last day for issuing Writs to April Term.  
 3. Argument for Rules of Affidavit of Defense.  
 5. Last day for issuing Executions to April Term.  
 20. Last day for setting down causes for trial for May 20 and 27.  
 20. Calling Judgment Docket.

MAY.

4. Argument for Rules of Affidavit of Defense.  
 10. Last day for issuing Writs to May Term.  
 18. Last day for filing Accounts for June Court.  
 25. Calling Judgment Docket.

JUNE.

7. Last day for issuing Writs to June Term.  
 8. Last day for setting down causes for Argument Court.  
 15. Argument for Rules of Affidavit of Defense.  
 22. Calling Judgment Docket.

JULY.

20. Last day for filing Accounts to August Court.  
 27. Last day for setting down causes for trial for August Court.

AUGUST.

9. Last day for issuing Writs to August Term.  
 17. Last day for filing Accounts to September Court.  
 19. Last day for issuing Executions to August Term.  
 24. Calling Judgment Docket.  
 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

6. Last day for issuing Writs to September Term.  
 7. Last day for setting down causes for Argument Court.  
 7. Last day for setting down causes for trial for October 7 and 14.  
 7. Argument for Rules of Affidavit of Defense.  
 21. Calling Judgment Docket.

OCTOBER.

5. Argument for Rules of Affidavit of Defense.  
 11. Last day for issuing Writs to October Term.  
 19. Last day for filing Accounts to November Court.  
 26. Last day for setting down causes for trial for November Court.  
 26. Calling Judgment Docket.

NOVEMBER.

8. Last day for issuing Writs to November Term.  
 9. Argument for Rules of Affidavit of Defense.  
 16. Last day for filing Accounts to December Court.  
 18. Last day for issuing Executions to November Term.  
 23. Calling Judgment Docket.

DECEMBER.

6. Last day for issuing Writs to December Term.  
 7. Last day for setting down causes for Argument Court.  
 7. Argument for Rules of Affidavit of Defense.  
 21. Last day for filing Accounts to January Court, 1879.  
 21. Calling Judgment Docket.  
 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 16, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

**HENRY B. BAUMAN** against **BENJ. SCHISLER.**  
A plaintiff in an execution, by virtue of which he claims money paid into court, must, in a contest with another execution creditor for the same, produce the judgment on which his execution is founded. The execution alone is not evidence, except as between the parties to the judgment.

November 2, 1830, Mr. R. Frazer moved for a rule to show cause why the money in court should not be paid over to Samuel Stork on his execution issued by Benjamin Pennell, esq., on the 2d January, 1830.

June 24, 1831, he presented a statement showing the facts on which his claim was founded, which, among other matters, contained the following: Samuel Stork vs. Benjamin Schissler; execution issued by Benjamin Pennell, esq., one of the justices of the peace for the county of Lancaster, on the 2d January, 1830, to Peter Frankfort, constable, for seventy dollars, together with costs of suit. January 4th, constable levied on the goods and chattels of the said defendant and endorsed a schedule of the levy on the said execution. He also exhibited the original execution, together with a deposition of Frankfort, the constable, proving the levy and other facts therewith connected; but the judgment on which it was issued was not produced. Cause was shown by Mr. Porter who appeared for another execution creditor.

After argument the following opinion was delivered by—

**HAYES, J.** If the claim of Samuel Stork was contested by Benjamin Schissler, the defendant, I should be in favor of making the rule in his behalf absolute, on the exhibition of his execution and the other proof. But it is contested by another creditor of the defendant, for whom the objection has been taken that there is no judgment shown of Samuel Stork against Benjamin Schissler, and that the execution alone is not evidence of his claim. The rule of law is that proof of a writ of execution is not evidence of a judgment, except as against a party to the cause. (See Stark. on Evidence, part 2, page 246, note v.) If an action of trespass for taking goods in execution, is brought by the party against whom the *feri facias* issued, it will be sufficient for the officer to give the writ in evidence, without a copy of the judgment. But if the plaintiff is not the party against whom the writ issued, and claims the goods by a prior execution or sale, the officer, in order to prove the sale or the execution fraudulent, must produce not only the writ but also a copy of the

judgment: Phill. Evid. 294; High vs. Wilson, 2 Johns. R. 46.

In *Wilson & Gibbs vs. Conine*, 2 Johns. R. 280, it was declared by **KENT, C. J.**, that the exemplification of a decretal order of a court of chancery, directing execution to issue after the affirmance in the court of errors of a prior decree, is not admissible evidence on a trial in a court of law, but the original decree must be produced; and it was further decided that an execution from chancery will not be received in evidence without producing the original decree on which it is founded. With respect to the first point, the chief justice said it would be too great a relaxation of the rules of evidence to allow the recital of a decree to be a substitute for the decree itself; and with respect to the second point, that the execution was properly rejected by the circuit court as being no justification to the vendee in a sale under it without producing the judgment or decree by which it was warranted.

As the president of this court was satisfied, after hearing the counsel and the evidence, that the rule should be made absolute in favor of Samuel Stork, the consequence of my dissent is that Samuel Stork takes nothing by his present motion. The money, therefore, will remain in court subject to the claims of those who are justly entitled to it.

On the part of Martin Munderbach the following paper was presented on the 24th inst., viz: Mr. Porter, attorney for Martin Munderbach, on his execution, issued to January Term, 1830, No. 15, objects to this money being paid to Samuel Stork, and claims the same for his client, Martin Munderbach, on the same execution. The sum paid into court is but small, and the delay will be productive of little inconvenience; but it is of great importance in my opinion, that the court should proceed with caution in the enlarged jurisdiction vested in it with regard to the distribution of money arising from sheriff's sales, on motion—lest, in deciding upon trifling controversies, it should establish precedents which may be extensively injurious.

Rule discharged and the money to remain in court subject to its future order.

Upon this decision Mr. Porter and Mr. Frazer both asked for rules to show cause why the money in court should not be paid to their respective clients, and their applications were both admitted. Afterward at the December Term and again at the February Term, Mr. Frazer presented justice Pennell's docket of the judgment of Samuel Stork vs. Benjamin Schissler, on which the execution in question was issued, which was inspected by the court, together with depositions to establish the identity of the judgment, &c. Being satisfied with this proof, the court then ordered that the rule in behalf of Samuel Stork be made absolute.

## Common Pleas of Lancaster County.

**DARRACH** vs. **HANOVER JUNCTION AND SUB QUEHANNA R. R. CO.**

[May T., 1876, No. 20.]

A resolution by the directors of a corporation, limiting the pay of an employee, not made known to

such employee, and no express agreement having been made with him for services, will not prevent such employee from recovering what his services are reasonably worth.

Rule to show cause why a new trial should not be granted.

*Geo. Nauman* and *W. B. Given* for rule.  
*D. McMullen* contra.

Opinion delivered January 19th, 1878, by **LIVINGSTON P. J.**

We have carefully examined and considered the reasons presented in support of the rule. In regard to the 4th reason presented—we think no error was committed in rejecting the offer as presented to the court, as a by-law of the corporation—defendant—gives the board of directors power to fix the compensation of all its employees; and that the board, in 1873, in pursuance of this by-law, fixed the compensation of assistant engineer at \$75 per month—which by-law was kept in possession of the officer of the company, and was not in any way or manner communicated to plaintiff before entering the service of the company. Especially as we had ruled out plaintiff's offer to show that when Meigs, the chief engineer of the company, employed him on behalf of the defendant, and stated to him at the time the salary was \$100 per month. No contract having been made, and services having been rendered by plaintiff at defendant's request, plaintiff was entitled to recover what such services were reasonably worth, as he would have been in case any individual or corporation had employed him or requested him to labor, without a definite contract as to wages, having first resolved, without his knowledge, to pay him but half what his services were worth.

We have also examined our answer to defendant's point and believe it was fairly and properly answered.

Nor do we perceive any error in permitting the plaintiff to swear he had received certain moneys on account from defendant, and had given a receipt for it, even though such receipt were on a pay roll. He swore positively to receiving certain moneys from defendant, and added that he had, on one or two occasions, signed a pay roll for the amount received. If he had received more than he admitted; it would have been defendant's duty in making his defense to show it. When plaintiff admitted payments made to him, it was not necessary for him to notify defendant to produce any voucher he may have given therefor. He was a competent witness and could state payments made to him as he would state any other fact.

The additional reasons filed, as to after discovered evidence, are not so fully supported by the testimony presented as to warrant us in setting aside the verdict, even if the matters alleged were clearly within the rules required as to after discovered evidence.

The testimony does not clearly and positively show that no pay rolls were kept by the company during the time plaintiff was in its employ. Mr. Given, the only witness examined, says he was treasurer, and he does not recollect whether the company kept pay rolls at the time *Mr. Darrach* was employed or not; that

since the trial in this case he has looked over all his papers and can find none for that period—"if there had been they would have been in his possession." *Not finding them in his possession he concludes there were none.*

The second additional reason, if clearly proven, would contradict nothing which took place on the trial. *There was no evidence, or even allegation on the trial, that Darrach ever submitted any estimates of work to the company.* Plaintiff, in his examination, stated that he made estimates, attended to all the work along the line, made estimates and drawings for a bridge; these were lost and he made others for defendant. And the testimony on the part of defence was that Darrach's estimates were all submitted to Meigs, who was chief engineer of the company; and after the defense closed. Mr. Darrach was recalled and stated that he made final estimates of all the work done and to be done on the line, made revisions, and gave Mr. Ryan a detailed statement of the whole. The fact that he had made estimates was brought out in answer to a question on cross-examination, as to what services he had performed during a certain portion of the time he was in the employ of the company. And the fact that he did make estimates was proved by defendant, and that they were submitted to Meigs, but it was not proven that plaintiff ever submitted an estimate to the defendant.

We see nothing in the trial, or in the testimony taken and presented since the trial, which, in our judgment, would warrant us in setting aside the verdict and granting a new trial. The rule is, therefore, discharged.

Rule discharged.

JOH vs. FRY.

[Sept. T., 1874, No. 67.]

Where paper, assignable by indorsement, be delivered without indorsement, the transferee has but an equitable title; he has, however, a right to a legal title. A court of equity will compel such indorsement.

Rule to show cause why judgment should not be arrested.

W. R. Wilson for rule.

J. W. Johnson contra.

Opinion delivered January 19th, 1878, by LIVINGSTON, P. J.

Because the evidence shows that neither at the rendition of the verdict nor the commencement of this suit had the plaintiff any interest in the case or demand against defendant.

Suit was originally brought by Sprecher & High as plaintiffs, against Martin Fry, and a narr. filed by them as plaintiffs; after which their counsel asked leave and was permitted to strike out of the caption the names of plaintiffs and insert in lieu thereof the name of Martin Joh, and to amend the body of the declaration in conformity therewith.

On the trial Martin Joh, who had been substituted as plaintiff, testified that the note upon which suit was brought had been given him by the defendant, but shortly after receiving it he sold it to Sprecher & High for value, and passed it to them without having endorsed it, and that he had, therefore, no demand himself against defendant.

According to the testimony, Sprecher & High, at the time the note in question was lost, were *bona fide* holders thereof. That is they had acquired the paper in good faith for a valuable consideration from one capable of transferring the paper; by payment of value they acquired title.

Where paper, assignable properly only by indorsement, be delivered without indorsement, the transferee has but an equitable title. He may have, however, a right to a legal title, and therefore to an indorsement, if that be necessary to make his title legal; and a court of equity would compel such indorsement. The absence of indorsement is a merely technical objection; for the actual transfer and delivery for value passes the property in the paper substantially, and the indorsement is needed only to make the transfer formal.

In *Jones vs. Wiltier*, 13 Mass. '304, a negotiable promissory note was held to be assigned by delivery only, without writing, for an adequate consideration. And the assignee might recover thereon in the name of the payee, notwithstanding payment was made by the maker to the payee after notice of the assignment. Many other cases might be cited did we deem it necessary.

In the case before us there can be no doubt from the evidence that Sprecher & High were *bona fide* holders of the note for value, at the time of its loss, and that they, under the authorities above cited, were entitled, as equitable owners, to have the legal title formally transferred to them; and the most the defendant is entitled to for his protection is to have this cause or judgment marked to their use on the docket or record, so that the record may show that they are entitled to receive payment thereon. This we think he is entitled to and therefore direct that it be done.

We, therefore, discharge the rule to show cause, and direct judgment to be entered for plaintiff, which judgment, when entered, shall be transferred and marked to the use of Sprecher & High (Isaac G. Sprecher and S. S. High, late partners, trading as Sprecher & High.

Rule discharged.

#### SUPREME COURT OF PENNSYLVANIA.

WHITAKER vs. HOUGHTON.

A plaintiff in trover is not bound to accept an offer by the defendant to restore the goods of which he has been unlawfully deprived, if in the meantime they have been injured or deteriorated in value.

Error to the Court of Common Pleas No. 2 of Philadelphia county.

Opinion by PAXSON, J. January 20, 1878.

There was some evidence in the case that the goods in controversy had been injured prior to the offer to return them to the plaintiff. Houghton (plaintiff) says in his cross-examination: "After receiving the notice from Mr. Whitaker, not immediately, but, on account of sickness, as soon as I could, I went to the factory and found my goods honey-combed—thrown out in the yard, rusted and worthless. This was some four or five weeks

after the sale." In view of such evidence it was not error to decline the defendant's point. Had the plaintiff accepted the tender or offer of the goods, the measure of damages indicated by the point would not have been inaccurate. Thus, in *Rank vs. Rank*, 5 Barr 211, where the goods had been unconditionally received by the plaintiff after suit brought, the measure of damages was held to be the difference in value at the time of the conversion and that of the delivery, and it may be stated generally that in an action of trover, where the goods have been accepted or regained by the plaintiff, such fact goes in mitigation of damages. He cannot accept a return of his goods and yet recover their full value. We need not refer at length to the authorities cited in support of the proposition that in trover a plaintiff is bound to accept a tender or offer to return the property. In nearly all of them there was no deterioration of it after conversion. This was so in *Rutland & W. R. R. Co. vs. The Bank*, 32 Vermont, 639, where the property consisted of the bonds of the plaintiff, for which they were liable in full, and which, therefore, could not have suffered any deterioration as to them. It was held that plaintiffs were bound to accept them when tendered, but it was distinctly said that such a rule would not apply where the goods had deteriorated in value. This principle runs through most of the cases. Whether a plaintiff in trover is bound, under all circumstances, to accept a return of the goods, is a question not necessarily involved in the decision of this case. It is sufficient to say that under the evidence the plaintiff was not bound to accept the offer, and that the measure of damages, based upon the affirmative of this proposition, was not the correct one. Hence, it was not error for the learned president of the court below to say: "Where one demands his chattels, and there is such a withholding of them as amounts to a conversion, a right of action accrues which will not be divested by a subsequent offer to return the goods, or a notice to the plaintiff to come and take them away." This is evidently accurate whether we view it as an abstract proposition or an instruction upon the evidence in the case. At most a tender could only affect the measure of damages. It does not go to the right of action. However it may be in the case of an offer to return an article that has sustained no injury, it is clear both upon reason and authority that an offer to return property that has been damaged while in the possession of the wrongdoer imposes no obligation upon the injured party to accept it.

Judgment affirmed.—*Leg. Intelligencer.*

#### Orphans' Court of Allegheny County.

*In re Estate of JOHN WATT, dec'd. Account of LEVINIA W. WATT and W. C. AUGHINBAUGH, Executors.*

1. Actual signature to an account is not necessary to fix the joint liability of executors.
2. Joint liability of executors always arise from one of two conditions: (1) joint action in fact or (2) constructive joint action.

3. Where an executor has assumed the duties of administration, he cannot divest himself of that character at his mere option nor by consent of his co-executor and act under another; he can do no act with regard to the estate for which he is not answerable as executor.

In the Orphans' Court for the county of Allegheny.

Opinion by HAWKINS, J. Filed January 26th, 1878.

A preliminary question in reference to the liability of Mrs. Watt as executrix, in this proceeding, was suggested at the audit, and must be determined before noticing the several sets of exceptions which have been filed to this account. Her liability was denied on three grounds: (1) because she had not in fact signed the account; (2) because, it was claimed, she had renounced the executorship; and (3) because, it was alleged, she had not joined with her co-executor, Mr. Aughinbaugh, in the administration of the estate of her testator.

The facts are these: John Watt died October 22d, 1874, having first made a will, in which he appointed his wife, Levinia W. Watt, executrix, and W. C. Aughinbaugh, executor. Both executrix and executor were duly qualified and assumed the duties of the trust, and letters testamentary were issued accordingly October 28th, 1874. Subsequently to the grant of letters, a paper dated November 2d, 1874, purporting to be a renunciation of her right to act as executrix was filed by Mrs. Watt in the register's office. Mr. Aughinbaugh appears to have no notice of this fact; and notwithstanding the so-called renunciation, Mrs. Watt continued to act in the character of executrix in conjunction with him in the administration of the estate. They united in the selection of appraisers. They were in frequent consultation in reference to the transaction of the business of the estate. Mrs. Watt was assigned, by arrangement with her co-executor, a considerable amount of money with which to pay certain debts of decedent; and at the request of that co-executor, after the service of the citation, furnished a list of those debts which she had paid, with a view to assist in preparing an account in answer to the citation. They were sued and defended jointly. They were parties to a series of acts by which a large portion of the assets belonging to the trust which they had assumed were directed from their proper channel, and which were the main cause of the controversy which afterward arose on the account filed. Amongst the assets included in the inventory of the personal estate was the interest of John Watt in the firm of Watt, Lang & Co. That interest was appraised at the sum of \$51,850.00—of which sum \$27,093.82 represented stock on hand, and \$24,757.12 book accounts, bills receivable, &c. An arrangement was suggested by Mrs. Watt and agreed to by Mr. Aughinbaugh, and by Mr. Lang, surviving partner, by which John W. Watt, should purchase his father's interest in the stock on hand at the valuation put thereon by the appraisers, and \$15,594.96 of that amount be charged to the shares of Mrs. Watt as widow, Wm. Watt, for whom Mrs. Watt was guar-

dian, and the said John W. Watt—the balance being secured by notes of the new firm. Receipts were accordingly given to Mr. Aughinbaugh by Mrs. Watt in her own right for \$8,663.86; as guardian of Wm. Watt for \$3,465.35 and by John W. Watt for \$3,465.35. In addition to these amounts credit is claimed for the payment of different sums, out of other assets to Mrs. Watt, Wm. Watt (by his guardian), John W. Watt and Mrs. Jane W. Scott, on account of their distributive shares. The total amount paid on account of distribution is \$18,461.63. The balance on hand, as shown in the account, is \$10,482.93, and the aggregate amount of claims of creditors of decedent presented at the audit for payment was \$19,858.00—thus making the deficit for the payment of debts of decedent the sum of \$9,371.07.

The present account was filed in response to a citation directed to Mrs. Watt and Mr. Aughinbaugh. It purports in the heading to be the joint account of Mrs. Levinia W. Watt, executrix, and W. C. Aughinbaugh, executor, and was so advertised; but was in fact only signed by W. C. Aughinbaugh. The reason given by Mr. Aughinbaugh for Mrs. Watt's failure to sign it was, that it was too late when the account was completed, to present it to her for signature. She does not appear to have seen it as completed until after filing. She filed no separate account nor answer and raised no objection to the account filed until long after the time for filing exceptions had passed. In the meantime several sets of exceptions had been filed by other parties.

(1.) It is a fair inference from these facts that Mrs. Watt intended originally to unite with Mr. Aughinbaugh in filing an account of the administration of the estate of John Watt, deceased. She was cited jointly with him and manifested no disposition to sever in her action until long after the account had been filed and advertised, and the time for filing exceptions had passed. Her conduct ought rather to be presumed to have been in obedience to than in contempt of the order of court. Her subsequent repudiation of the account seems an after thought which was suggested by the difficulties raised by the exceptions which had been filed in the meantime.

Actual signature to the account was not necessary to fix Mrs. Watt's joint liability. The object of the law in requiring the filing of an account is to exhibit to parties interested a history of the administration of the estate of a decedent. That object may be accomplished by the signature of one of several joint executors as well as those of all: Snyder vs. Snyder, 6 Bin. 497; Kennedy vs. Wachmuth, 12 S. & R. 171. Indeed it is sometimes accomplished without the signature of any one of several joint executors: Witman's App., 4 Casey 376. It is obvious then that the joint liability of executors does not necessarily depend upon the merely formal act of joint signature to an account, but that it may arise from other sources. Where, however, there is a joint liability it would seem to follow logically that there should be a

joint account; and if a proper signature be wanting, the court will presume that to have been done which ought to have been done.

(2.) In determining the question of Mrs. Watt's liability her so-called renunciation may be left out of consideration. It is not in conformity with law and the conduct of Mrs. Watt after its filing was in disregard of it. "It is a general rule that where an executor has once proved the will he cannot renounce his representative character and act under another. He can do no act in regard to the estate for which he is not answerable as executor:" 3 Wm. Executors, 1833. His liability arises from his relation to the trust and continues until he has been legally discharged from the duties of that trust.

(3.) The joint liability of executors always depends upon one of two conditions: (1) joint action in fact or (2) joint action superinduced by duty in the administration of the estate: Hovey vs. Blakeman, 4 Ves. 596, note, (Sumner's Ed.); Gill vs. Attorney General, Hardress 314; 3 Wm. Ex'rs, 1:27; Williams vs. Nixon, 2 Beav. 72; 2 Story's Eq. 1284.

It needs no argument to prove that where executors have actually united in the administration of an estate their liability cannot be apportioned. Each becomes liable for the whole. What constitutes joint action is a more difficult question; but that the facts of this case establish that relation between Mrs. Watt and Mr. Aughinbaugh seems scarcely to admit of a reasonable doubt. It can make no difference that with respect to some transactions in the course of administration, the relation of Mrs. Watt was simply advisory—that is an important and essential part of, and an act of participation in joint administration. It is evidence of joint control over the assets. Nor will it avail Mrs. Watt to say that she acted in the character of a beneficiary, and not in that of a representative. She could not, as has been seen, divest herself of her fiduciary relation at her own mere option or by the consent of her co-executor.

By the principles of the trust which Mrs. Watt assumed, not only all the funds which came into her hands, but those the misapplication of which she could have prevented, are presumed to be held by her primarily, for the payment of the debts of her decedent, and secondarily, for distribution amongst heirs: Swearingen vs. Pendleton, 4 S. & R. 389; Pim vs. Downing, 11 S. & R. 71; Irwin's Ap. 11 Casey 295; Clarke vs. Clarke, 8 Paige 160; 3 Wm. Ex'trs. 1827; Monell vs. Monell, 5 Johns. Ch. 294. Lord Chancellor Cottenham states the result of a review of the cases to be "that it is the duty of all executors to watch over, and, if necessary, to correct the conduct of the other:" 1 Macn. & G. 433, Styles vs. Gay. And Mr. Justice STORY says that "if by any positive act, direction, or agreement of one joint executor, guardian or trustee, the trust money is paid over, and comes into the hands of the other, when it might and should have been otherwise controlled or secured by both, there each of them will be chargeable for the whole:" 2 Story's Eq. 1284. The existence of a duty to apply assets to a certain mode implies a liability



for failure to so apply. *Swearingen vs. Pendleton, supra*. This rule is held much more strictly as between creditors and executors than as between heirs and executors: *Verner's Est*, 6 Watts 250; *Brown's Ap.*, 1 Dal. 311; 3 Wm. Ex'ts. 1827.

It follows from the foregoing that Mrs. Watt is jointly liable with Mr. Aughinbaugh in the administration of the estate of John Watt, deceased, and consequently, in this proceeding.

(The court then disposes of the exceptions *seriatim.*)—*Pitts. Leg. Journal.*

#### Common Pleas of Luzerne County.

##### *In re* ASSIGNMENT OF THE ELLENWOLD COAL COMPANY (limited).

1. Under a sale by an assignee the claims of miners, mechanics, laborers, and clerks for wages have a preference on the fund arising therefrom over a claim for rent or taxes.

2. Rent is only a preferred claim when the fund arises from a sale under an execution.

Exceptions to report of auditor.

Opinion by STANTON, J. January 15th, 1878.

The Ellenwold Coal Company (limited), organized under an act of assembly, entitled "an act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances," approved June 2d, A. D. 1874, for the purpose of mining anthracite coal, and carrying on a business incident thereto, in Luzerne county, by deed of assignment, dated and delivered the 8th day of August, A. D. 1877, assigned and conveyed all her property to Nathan Van Horn, esq., in trust for the benefit of creditors. The said assignee, on the 11th day of October, A. D. 1877, made sale of a portion of the personal property of said company, and the balance remaining in his hands, after payment of the costs and expenses of assignment, was \$5,021.34. An auditor was appointed by the court to distribute this fund to and among the parties entitled thereto. A number of persons appeared before the auditor, and made claim to this fund. The auditor, after hearing these parties, made *pro rata* distribution of the fund, less the costs of the audit, amounting to \$185, among about three hundred and fifteen persons, claiming in the aggregate \$8,171.03, for labor and services rendered for said company by them respectively, in the capacity of miners, mechanics, laborers and clerks, during a period not exceeding six months immediately preceding the said assignment, together with M. J. Philbin, Chas. A. Zeigler and John F. Donahoe, the sum of whose claims, \$90 87, was predicated on services not performed for said company, but for persons who brought suits before them against said company.

To this distribution exceptions were duly filed by some of said claimants, to wit: John Leonard, Burke and Callahan, Chas. Shovlin, G. S. Richmond, and Samuel Raub and J. C. Fuller.

Leonard excepts thereto on the ground that the auditor did not allow \$96.50 in his

favor, and Burke and Callahan except because the auditor disallowed their claims of \$36.65. We do not find in the auditor's report that any proof of such claims was made before him. F. A. Driesbach made proof before the auditor that said company, at the time of assignment, owed John Leonard \$4.75, and this sum the auditor allowed him. The docket of Alderman Donahoe, offered in evidence before the auditor for the purpose of establishing his claim on said fund, although evidence of the fact that said Leonard and Burke and Callahan had judgments respectively against said company for the said sums of \$96.50 and \$56.65, was not proof sufficient that the debts on which these judgments were founded were due for such services as would give them preferred claims on said fund. We, therefore, cannot sustain the exceptions of Leonard and Burke and Callahan.

The very words of Charles Shovlin's exception, that his claim of \$98.76 is for "costs made in serving process as constable upon said company previous to their assignment," are the strongest justification that the auditor can have for not allowing it in the distribution. The auditor's report does not even show that any proof was made before him in support of this claim. Shovlin's exception is not sustained.

G. S. Richmond excepts to the distribution on the ground that no part of said fund is applied to his claim for taxes, amounting to \$70.51, for which a levy had been made by him prior to the sale by the assignee. We think the auditor acted justly in not making application of any part of said fund to this claim. The assignment of the sixty-four cars was made at least three months before levy was made on them by collector Richmond. The taxes were not a lien on them until the seizure of October 1st, 1877: 10 P. F. Smith, 46. Under the third section of the act of 1872, relating to wages, the moment the assignment was made, that moment it seems to us, the claim of the said miners, mechanics, laborer and clerks employed by said company became preferred claims. Even had the collector his levy made prior to the assignment, and sale were made by him after, we hold that, under the act of 1872, the said claims of the miners, mechanics, laborers and clerks would have the preference on the fund created by such sale. The exception is, therefore, not sustained.

Samuel Raub and J. C. Fuller file as exceptions to the finding and distribution of said auditor—first that he "erred in distributing the first moneys to the claims for labor;" second, that he "erred in not distributing the first moneys to the claims for rent due Raub and Fuller." The auditor's report shows that proof was made before him that at the time of said assignment \$6,000 were due by said company at lessees of J. C. Fuller, Caroline M. Fuller, Samuel Raub and Caroline Raub for rent on lease of coal land mined by them. The auditor, however, refused to apply any of said fund to this claim, and without error, we think. Even if a lessor's claim for rent could be a preferred one under a sale by an assignee, the claim of these exceptants

lacks certain requisites. The auditor's report shows no proof produced before him that said \$6,000 did not exceed one year's rent or that the goods and chattels sold by the assignee were upon the lands demised, and were liable to distress by them for rent, or that there was any tenancy by the owners of the goods at the time of their said sale. But granting that a claim for rent can be a preferred claim under an assignee's sale, it certainly does not take the first place whenever a claim for wages as aforesaid is presented. There is no doubt that when the Legislature passed the act of 1872, relative to wages, they had the act of 16th of June, A. D. 1836, giving a preference to claims for rent fully in view; and to emphasize the fact (for it needed no express words to explain their meaning) that the said act of 1872 repealed said act of 1836. As far as the wages of labor are concerned, they inserted in said act of 1872 the words: "In all cases of executions, landlord's warrants, \* \* hereafter to be issued against any person or persons or chartered company, engaged as before mentioned, it shall be lawful for such miners, laborers, mechanics or clerks to give notice in writing of their claim or claims and the amount thereof, to the officers executing either of such writs, at any time before the actual sale of the property levied on; and such officers shall pay to such miners, laborers, mechanics and clerks out of the proceeds of sale the amount each is justly and legally entitled to receive, not exceeding \$100.00" Under this provision of the act, this fund would certainly be distributable among the miners, mechanics, laborers and clerks employed by this company, even if it were in the hands of these lessors instead of in the hands of the assignee, as the result of the sale by them on a landlord's warrant. But it seems the general assembly apprehended that this portion of the act of 1872 would not be sufficient to satisfy lessors that labor had a preference to rent on a fund arising from a sale by an assignee, and they, therefore, inserted also in said act of 1872 the words: "In all cases of the death, insolvency, or assignment of any person or persons or chartered company, engaged in operating as hereinbefore mentioned, or of execution issued against them, the lien of preference mentioned in the first section of this act, with the like limitations and powers, shall extend to every property of said persons or chartered company." Giving these lessors even the right to a preference on a fund arising from a sale by an assignee, this last quoted provision of the act of 1872 says in express words that their claim must stand in abeyance until labor is compensated. But we cannot see that these lessors have any preferred rights whatever on the fund arising from the sale by the assignee, and we, therefore, refuse to sustain the exceptions.

The distribution of said fund as made by the auditor is sustained, except as to the amounts of \$9.34, \$10 31, and \$34.15, respectively, allowed in said distribution to Alderman M. J. Philbin, Alderman Chas. A. Zeigler and Alderman John F. Donahoe as costs on judgments obtained before them against said company. The claims of said aldermen, if they have any standing as to said fund, are not in any manner preferred claims, and can take nothing from said fund until the claims of the miners, mechanics, laborers and clerks employed by the company as aforesaid are fully satisfied. We, therefore, remit the report to the same auditor, that he may disallow the claims of the said M. J. Philbin, Charles A. Zeigler and John F. Donahoe on said fund, and distribute the amount thereof, namely, \$53 80, proportionately among those entitled to said fund.—*Luz. Leg. Reg.*

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 16, 1878.

## WEEKLY SUMMARY.

### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since February, 9, 1878:

- MARTHA KELLER, dec'd, late of Lancaster city; Susan Bertzfeld, administratrix.
- ELIZABETH BEILER, dec'd, late of Leacock twp.; John L. Beiler, administrator.
- ELLIS D. SHULTZ, dec'd, late of Strasburg bor.; Alex. Schultz, administrator.
- GEORGE ENTERLINE, dec'd, late of Mount Joy twp.; John Gantz and John H. Hoffer, administrators.
- JOHN C. ESHLEMAN, dec'd, late of Brecknock twp.; Rebecca Eshleman, administratrix.
- GEORGE RUDISILL, dec'd, late of Marietta bor.; Geo. Rudisill, administrator.

The following Wills have been admitted to probate since February 9, 1878:

- MARY MESSEKOP, late of Lancaster city; Geo. L. Messenkop, exe uter.
- ELIZABETH SHERR, late of Lancaster city; Barbara Sherr, executrix.
- CHARLES KLINE, late of Lancaster city; Geo. M. Kline, esq., executor.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since February 2, 1878:

- GEO. G. BENDER and WIFE, of West Caln twp., Chester co; B. F. Meredith, assignee.
- ISAAC BECHTEL and WIFE, of West Cocalico twp.; E. L. Bechtel, assignee.
- LEWIS BROWN and WIFE, of Fulton twp.; Levi K. Brown, assignee.
- JOHN JONES and WIFE, of Conestoga twp.; Adam Bertzfeld, assignee.
- JESSE MESSNER and WIFE, of Brecknock twp.; Abraham Lutz, assignee.
- AMOS REESE and WIFE, of Providence twp.; John Hildebrand, assignee.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE—No. 32 NORTH DUKE STREET,

LANCASTER, PENNA.

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE—No. 25 NORTH DUKE STREET,

LANCASTER, PA.

THOMAS B. COCHRAN,

ATTORNEY-AT-LAW,

OFFICE—No. 34 NORTH DUKE STREET,

LANCASTER, PA.

## Divorce Notices.

NATHAN WAPPENSTEIN } Alias subpoena for Divorce  
vs. } To January Term, 1878.  
ELIZ'N WAPPENSTEIN. } No. 87.

To ELIZABETH WAPPENSTEIN:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D., 1878, at 10 o'clock, a. m., to show cause if any you have, why the said Nathan Wappenstein should not be divorced from the bonds of matrimony contracted with you.  
Jan 19 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

WM. L. RITTENHOUSE } Alias Subpoena for Divorce  
vs. } To January Term, 1878.  
MAGGIE RITTENHOUSE. } No. 88.

To MAGGIE RITTENHOUSE:—You are hereby notified and commanded to be and appear in your proper person before our Judges at Lancaster, at the Court of Common Pleas to be held on MONDAY, the 18th day of FEBRUARY, A. D. 1878, at 10 o'clock, a. m., to show cause, if any you have, why the said Wm. L. Rittenhouse should not be divorced from the bonds of matrimony contracted with you.  
Jan 19 H. N. BRENEMAN, Sheriff.  
Sheriff's Office, Lancaster, January 14, 1878.

## DAYS OF APPEAL FOR 1878.

### TO THE TAXABLE INHABITANTS OF LANCASTER COUNTY.

Pursuant to the provisions of the laws of the Commonwealth, the undersigned Commissioners of Lancaster County, hereby give notice to the taxable inhabitants, within the respective city, boroughs and townships of said county, that the days of appeal from the assessment of 1878, will be held in the Commissioners' Office, in the city of Lancaster, on the days following to wit:

Brecknock, Cernarvon, Cocalico East, Cocalico West, Clay, Drumore, Martic, Providence, Pequea, Conestoga, Donegal East, Donegal West, Conoy, Mount Joy, Penn,	}	Saturday, Feb. 16.
Ephrata, Elizabeth, Warwick, Manheim, Earl, Earl East, Earl West, Paradise, Sadsbury, Hempfield East, Hempfield West, Rapho, Strasburg, Laneaster,		}
Lampeter East, Lampeter West, Leacock, Leacock Upper, Salisbury, Manor,	}	
		}
	}	
		}
	}	
		}

No change in the valuation of Real Estate can be made except where new buildings are put up, or buildings destroyed by fire or otherwise.  
At the same time and place the appeal from the Military Rolls will be held.

S. F. EAGLE,  
SAMUEL M. MYERS,  
EM'L P. KELLER,  
Commissioners.

Jan 26  
Papers in county copy.

E. H. BURKHOLDER,

JUSTICE OF THE PEACE,

FARMERSVILLE, LAN. CO., PA.

SPECIAL ATTENTION PAID TO COLLECTIONS.

## INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed SATURDAY, FEBRUARY 23d, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.

Jan 26

JACOB NEISS.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

## Auditors' Notices.

Estate of JOHN MCCALLY, late of Colerain twp., deceased.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of D. W. Patterson and Robert S. McIlvain, executors of the will of said decedent, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MARCH 6th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEORGE M. KLINE,  
GEORGE NAUMAN,  
Auditors.

feb 16

Assigned estate of D. KINPORTS & SON, of Ephrata twp., Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. S. Royer, assignee of D. Kinports & Son, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MARCH 5, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. S. HERSHEY,  
Auditor.

feb 15

COMMONWEALTH } In the Court of Quarter Sessions of Lancaster Co.  
vs. } Aug. Sessions, 1877. No. 125.  
NELSON GLADFELTER } Forfeited Recognizance.

The undersigned Auditor, appointed by the court of Quarter Sessions of Lancaster County, Pa., to distribute the proceeds of the forfeited recognizance in the above case, will sit for that purpose on SATURDAY, MARCH 9th, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in City of Lancaster, where all persons interested in said distribution may attend.

A. F. SHENCK,  
Auditor.

feb 16

Assigned Estate of F. H. ARNDT and WIFE, of Mount Joy borough.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, MARCH 7th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

C. M. MARTIN,  
Auditor.

feb 9

SAMUEL MILLER } In the Court of Common Pleas of Lancaster County.  
vs. } Lev. Fac. Jan'y Term, 1878.  
HAYES DICKINSON. } No. 5.

The undersigned Auditor, appointed by said Court to make distribution of the money made on the above suit and paid into court, will sit for that purpose on TUESDAY, MARCH 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ROBT B. RISK, Auditor.

feb 9

Assigned Estate of HENRY DIETRICH and WIFE, of Manheim twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel P. Keller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 28th day of FEBRUARY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. ILLYUS, Auditor.

Jan 26

In the estate of JOHN BACHMAN, Lunatic. } In the Court of Common Pleas of Lancaster County. Trust Book, No. 6, page 273.

The undersigned Auditor, appointed by said court to distribute the balance in the hands of John M. Bachman, committee of John Bachman, (lunatic,) appearing upon the account of said committee, exhibited in the said court, Dec. 31, 1877, and confirmed nisi January 21, 1878, will sit for that purpose in the Library Room of the Court House, at Lancaster, on TUESDAY, the 5th day of MARCH, 1878, at 10 o'clock, a. m., when and where all persons interested in said distribution are requested to attend and present their claims.

AND. M. FRANTZ, Auditor.

HIRAM WILSON vs. W. B. C. DENNIS. } In the Court of Common Pleas of Lancaster County. Jan'y Term, 1878. No. 37. Execution Docket.

The undersigned Auditor, appointed by said Court to distribute the money ruled into Court, made under the above execution, will sit for that purpose in the Library Room of the Court House, in the city of Lancaster, on TUESDAY, FEBRUARY 26th, 1878, at 2 o'clock, p. m., when and where all persons interested are requested to attend and present in said distribution their claims.

AND. M. FRANTZ, Auditor.

Estate of ANNA MARTIN, late of Salisbury twp., Lancaster co., deceased.

The undersigned Auditor, appointed by the Orphans' Court of said county to pass upon the exceptions to the account filed by John Wanner, jr., and Jacob Martin, jr., administrators of the estate of David S. Martin, deceased, who was administrator of the estate of the said Anna Martin, deceased, and to distribute the balance in the hands of the accountants, will sit for the purpose of his appointment in the Library Room of the Court House, Lancaster, on THURSDAY, FEBRUARY 21, 1878, at 11 o'clock, a. m., when all persons interested may attend.

W. LEAMAN, Auditor.

JOHN H. COOPER and SAMUEL TRUSCOTT, executors of will of John Cooper, dec'd, vs. JOHN PEART. } In the Court of Common Pleas of Lancaster County. Nov. Term, 1877. No. 135. Levari Facias.

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster county, to make distribution of the money made on the above writ and paid into court, will sit for that purpose on THURSDAY, FEBRUARY 28th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

W. LEAMAN, Auditor.

Estate of ABRAHAM H. MUSSELMAN, late of East Donegal twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of M. H. Musselman and J. F. Cottrell, administrators, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, FEBRUARY 20th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

WM. B. GIVEN, Auditor.

Estate Notices.

Assigned Estate of JESSE MESSNER and WIFE, of Brecknock twp., Lancaster Co.

Jesse Messner and Wife, of Brecknock township, having by deed of voluntary assignment, dated February 11, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse Messner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

ABRAHAM LUTZ, Assignee, Residing in Adamstown.

Estate of PETER MOYER, late of Mount Joy twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

GEO. BRUBAKER, } Att'y. JACOB RISSER, } Executor.

Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI K. BROWN, Assignee, Residing at Goshen, Fulton twp.

Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,

H. C. BRUBAKER, } JACOB WEINHOLD, } East Earl twp., } Att'ys. CHRISTIAN ESHLEMAN, } Brecknock twp., } Administrators d. b. n.

Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.

C. M. GOOD, Administrator.

Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

EZRA BURKHOLDER, Assignee, Residing in West Earl township.

Estate of JACOB BUCH, late of Warwick township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litiz.

JACOB A. BUCH, Executor.

Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.

HARVEY S. BOWERS, Administrator.

Estate of JACOB MYERS, late of Eden twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.

CHRISTIAN MYERS, Administrator.

Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.

SIMON F. ALBRIGHT, } Executor. } H. RAYNOLDS, Att'y.

Estate of BENJ. D. DANNER, late of Manheim borough, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

HENRY S. DANNER, Executor.

Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

ELIZABETH RUHL, Administratrix.

Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 25th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ZELLER, Assignee, Residing in Mount Joy borough.

Estate of GEORGE RINEER, late of Paradise township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

CATHERINE RINEER, Executrix.

Estate of JACOB HOLSINGER, late of Hinkletown, Earl township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

E. BURKHOLDER, Administrator.

Assigned Estate of BARBARA MILLER, of Conestoga township, Lancaster county.

Having by deed of voluntary assignment, dated November 13, 1877, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Barbara Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

ABRAHAM MILLER, Assignee, Residing in Millersville.

Estate of GEORGE W. REICHENBACH, late of Lancaster City, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.

CATHARINE KRABER, Administratrix.

Estate of JACOB GRAVER, late of Warwick township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARGARET GRAVER, Warwick township; ADDISON GRAVER, Manheim township; HENRY B. ESHLEMAN, Manheim township; } Att'ys. } D. G. BAKER, } O, P. BRICKER, } Administrators.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, FEBRUARY 23, 1878.

No. 39.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	2:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	9:40 a. m.	COL. 10:10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:00 p. m.	6:00 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:35 p. m.	9:35 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	11:30 p. m.	12:45 a. m.

  

EASTWARD.		LEAVE LANCASTER.	ARRIVE PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.		a. m.	p. m.
Leave Columbia,	10:20	10:20	6:45
Arrive at Port Deposit,	1:20	1:20	8:45

  

GOING NORTH.		a. m.	p. m.
Leave Port Deposit,	6:30	6:30	2:00
Arrive at Columbia,	8:30	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,	6:50	8:00	2:30
Lancaster—West King Street,	8:00	9:30	3:35
Lancaster—Upper Depot,	8:10	9:40	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:46	4:30	8:10
Lancaster—West King Street,	9:55	4:40	8:20
Quarryville, (arrive)	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00	13:55	3:35
Lancaster—Upper Depot,	8:15	13:55	3:45
Lancaster Junction,	8:35	1:35	4:11
Reading, (arrive)	10:10	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:21	1:20	7:45
Lancaster—Upper Depot,	9:46	2:00	8:10
Lancaster—West King Street,	9:55	2:00	8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<small>Appointed.</small>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.

**Prothonotaries:**

Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerna.

**City Officers.**

*Mayer*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrer, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrows.  
*Street Commissioner*—Charles Schwebel.

THE LANCASTER BAR

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COURT CALENDAR.--1878.

FEBRUARY.

- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 6. Argument for Rules of Affidavit of Defense.
- 5. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 23, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. This BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

### THE COMMISSIONERS OF LANCASTER COUNTY against GEO. STAUFFER.

The seizure and sale by the sheriff of a delinquent collector's land, under a treasurer's and commissioners' warrants, pursuant to the act of the 11th April, 1799, to raise and collect county rates and levies, are valid, though the treasurer's warrant was not issued until three years after the delivery of the corrected duplicates of taxes.

The seizure of the land under the treasurer's warrant constitutes a lien. The seizure is effected by the sheriff's levy under the warrant—not by its delivery to the sheriff nor its exit.

The sheriff's deed conveys to the purchaser at such sale a good title, which will enable him to recover against the delinquent collector, his heirs and assigns, a title preferable to that of a purchaser under a judgment execution and sale by the sheriff of the same premises, which judgment was entered subsequently to the levy under the treasurer's warrant.

This was a case stated in the following words, viz:

In the District Court for the city and county of Lancaster:

THE COMMISSIONERS OF LANCASTER CO.	} Of Sept. Term, 1831. No. 39.
vs. GEORGE STAUFFER.	
	Ejectment.

### CASE STATED.

20 February 1824, George Stauffer, the defendant, was appointed the collector of county taxes, by the commissioners of Lancaster county, for the city of Lancaster, for the year 1824. 7 March, 1825, George Stauffer re-appointed collector as above for the year 1825. 20 March, 1826, George Stauffer re-appointed collector as above for the year 1826.

The following is a copy of the entry, appearing on the docket of the prothonotary of the court of common pleas of Lancaster county, and is for the balance then said to be due for the year 1825:

EMANUEL REIGART, Treasurer of Lancaster Co.,	} Aug. Term, 1825. No. 164 Balance due by debt to plaintiff \$2339.15. Entered here 3 Sep., 1825.
vs. GEORGE STAUFFER.	

27 June, 1829, John Reynolds, treasurer of Lancaster county, issued three several warrants, directed to the sheriff of Lancaster county, commanding him to seize and secure the real and personal estate of the said George Stauffer, a delinquent collector, returnable 15 July, 1829; levy made 4 July 1829 (prout the levy).

The amounts stated to be due in said warrants are as follows, to wit:

For the year 1824,	- - -	\$ 471.03
" " 1825,	- - -	1130.15
" " 1826,	- - -	1118.21

1829, the commissioners of Lancaster county issued three several warrants to the said sheriff, commanding him to sell the estate of the said George Stauffer, the delinquent collector (prout the same).

26 September, 1829, the sheriff of Lancaster county sold on the said warrants a house and lot of ground, to R. M. Barr, esq, who purchased the same for the use of the commissioners of Lancaster county. The defendant, George Stauffer, at the time of the said sale, gave written notice that he would resist the the said sale and all proceedings against his real estate (prout said notice).

26 November, 1829, the said sheriff offered a deed for the said real estate to the court of common pleas of Lancaster county, for acknowledgement, the counsel of the said Geo. Stauffer and the judgment creditors of the said Stauffer objecting to the said sale, and acknowledgement of the deed (prout the exceptions filed). 5 December, 1829, exceptions argued c. a. v. 28 December, 1829, the court permit the deed to be acknowledged (prout the opinion of the court).

The following judgments are entered against said George Stauffer in the courts of common pleas and district court:

E. C. Reigart vs. George Stauffer, of April Term, 1829. No. 112. Judgment for \$100, payable in one year, with interest. Entered 13 July, 1829.

Same vs. Same, of April Term, 1829. No. 114. Judgment for \$100, payable in one year. Entered 15 July, 1829.

Salome Stauffer vs. George Stauffer, of June Term, 1829, No. 68. Judgment for \$156. Entered 20 July, 1829.

Christ. Hager vs. George Stauffer, of Aug. Term, 1829, No. 68. Judgment for \$86.79. Entered 10 September, 1829.

Salome Stauffer vs. George Stauffer, of Aug. Term, 1829, No. 73. Judgment for \$52.50. Entered 21 September, 1829.

28 December, 1829, *feri facias* issued on Christopher Hager's judgment, to January Term, 1830, No. 9. Sheriff levied on the one story brick house and piece of ground, &c., sold on the said commissioners' warrants, by the sheriff to the plaintiffs, and for which this ejectment is brought.

21 January, 1830, *venditioni exponas* to April Term, 1830, No. 9, on which the said one-story brick house and piece of ground was sold by the sheriff to Emanuel C. Reigart, who now claims the same by virtue of the said sale and the deed to him from the sheriff. At the time of the said sale notice was given by R. M. Barr, for the commissioners, cautioning all persons against purchasing the said real estate (prout said notice).

The said George Stauffer is still in possession of the premises in question. If the court should be of opinion that the seizure and sale of the defendant's real estate so, as aforesaid, seized and sold by virtue of the treasurer's and commissioners' warrants, is good, legal and valid, and that according to law the plaintiffs are entitled to recover the said premises, then judgment is to be entered for the plaintiffs; and if the court should be of opinion that the sale made by virtue of the judgment and executions aforesaid, is good and valid, and that the purchaser on the ex-

ecutions has a preferable title to the said premises, then judgment is to be rendered accordingly, saving to either party the right of taking a writ of error to the Supreme Court.

GEO. HAVERSTICK,  
JACOB KURTZ,

Commissioners of Lancaster Co.

E. C. Reigart, atty for Defts and Creditors.

Mr. Long for the plaintiffs said the question was, whether the commissioners, by reason of their warrant had obtained a lien on the premises sold. This depends on the act of 11 April 1799, 3 Smith L. 393, Sec. 16 and 18. The treasurer's warrant, dated 27 June, 1829, I contend operated as a lien from that time when it went into the sheriff's hand on the defendant's real estate. The warrants entered 1825, No. 154, had lost their lien when the property was sold. This I admit. The matter may be assimilated to the case of a *testatum fi. fa.*, which, from the time it reaches the sheriff's hands, where the lands lie, becomes a lien on the defendant's property within that county. So the Supreme Court has decided: 8 Sergt. & R. 505, Cowder vs. Brady; 6 Binn. 139, Calhoun vs. Snyder.

2. I contend that even if these warrants were not a lien this is not the proper forum for the party. The application should have been made in the common pleas to set aside the sale, or to have the money brought into court, and afterwards applied to the liens: 2 Binn. 227, Young vs. Taylor. When the levy was made the property was in the custody of the law, the warrants in the sheriff's hands were a lien on Stauffer's real estate.

Mr. Reigart, for the defendant: The argument on the other side seems to revive the act of 1724, 1 Dall. L. 216, Sec. 23; 3 Yeates 50, Wanner and others vs. Emory. But the act of 1799, Sec. 16, which was particularly referred to, gives a specific remedy by making the transcript of the balance filed a judgment and, therefore, a lien. Liens must be constituted such by law. Taxes are a personal charge, and not a lien on real estate: 9 Sergt. & R., Burd vs. Ramsey. There is indeed no lien by construction in Pennsylvania: 7 Sergt. & R. 72, Kaulfelt vs. Bower; and no liens but liens of record: 13 Sergt. & R. 227, Lindle vs. Neville. Even a recognizance, though a matter of record, is not a lien on the lands of the cosutors. 16 Sergt. & R. 17, Allen vs. Reeser. With respect to the *testatum fi. fa.*, it must be entered of record to make it a lien, by express enactment: Act 1 April, 1823, sec. 1. I contend, therefore, that these warrants are no liens. 2. In regard to the second point, I must refer to the opinion of Judge FRANKLIN in the court of common pleas. An analysis of the acts of 1724 and 1799 will demonstrate that we have not mistaken the forum. I would especially refer to sections 14, 15 and 16 of the former, and to sections 18, 19 and 20 of the latter act.

Mr. Long in reply. Previous to the act of 1823, relative to the *testatum fi. fa.*, it was not necessary to have the writ entered in the prothonotary's office. The act of assembly altered the law relative to the *testatum fi. fa.*, but the principle stands good as to the purpose for which I used it. Suppose the lien

expires, as it does, in two years, have not the commissioners the right still to have a warrant issued? Certainly so. I admit if any of these judgments had been entered before the levy, they would have the preference over the warrants. But when the levy was made, the property was then in the custody of the law. The proceedings were under the 18th section of the act of 1799.

HAYES, J. The following are the questions which have arisen in this case:

1. Were the proceedings, under the treasurer's and commissioner's warrants, authorized by law, and is the sheriff's deed to the plaintiffs available?

2. Was the seizure of the real estate of the defendant, under the treasurer's warrants, a lien attaching the same for the benefit of the commissioners in preference to judgment creditors, whose judgments were subsequently entered?

3. When was the property seized by virtue of the treasurer's warrants?

1. The collector, in this case, was delinquent, according to the 16th section of the act of 1799, in consequence of the non-payment for more than three months of the balances due on his duplicates of taxes. The treasurer thereupon issued his warrants to seize and secure all his real and personal estate pursuant to the 18th section. Afterwards the commissioners, on notice to the delinquent and his default to pay the arrears due, issued their warrants, pursuant to the 19th section, requiring the sheriff to sell the property so seized and secured. The sheriff accordingly sold it, and has executed and acknowledged a deed for the same to the plaintiff. The act of assembly does not say when the treasurer shall issue his warrant. He may not, indeed, issue it before the three months from the delivery of the corrected duplicates have expired. In the present case his warrants were issued three years afterwards—an indulgence of which the delinquent can have no reason to complain. The section authorizing the treasurer to issue his warrant does not refer to the balance filed as the foundation of that proceeding, but the sums due on the duplicate and their non payment. Can it be conceived that the legislature meant if the treasurer did not commence proceedings against the delinquents immediately on the expiration of the three months, that he should be debarred from proceeding ever afterwards? They have not said so, nor is such an intention consistent with their enactment. The balance is a lien for two years, and consequently secures the property during that period to the commissioners. But the treasurer's warrant, pursuing the words of the act, directs the sheriff to *seize and secure* the property in order that the commissioners may afterwards sell the same. If the treasurer must issue his warrant *eo instanti* of the expiration of the three months, or even during the two years the law requires the officer to *secure* that which is already secured by the lien that the law establishes in favor of the commissioners. Is it not evident from this consideration that the legislature had in view a procedure by the treasurer and commissioners

subsequently to the term of the lien? The balance of taxes charged in the corrected duplicates binds the estate of the delinquent collector, and being filed in the prothonotary's office operates to all intents and purposes, as if a judgment were then entered for such balance in a court of record.

Suppose the balance should not be filed for one year after the lien commenced; may it not still be filed so as to secure all the benefit of a judgment during the residue of the two years? Of this I presume there can be no doubt. But if the balance, though not filed at the instant of the expiration of the three months, may nevertheless be filed afterwards so as to operate, under the provisions referred to, as a judgment, it cannot with any reason be argued that the treasurer's warrant, though issued more than three months from the delivery of the corrected duplicates to the delinquent collector, would be ineffectual.

The seizure under the treasurer's warrants, the return, the commissioners' warrants and the sale appear to have been exactly conformable to the requisitions of the act of 1799. Should it be suggested that in this proceeding the delinquent has no opportunity of establishing a defense, the answer is that the amount is fixed by his failure to pay within three months, the penalty for which is that he shall be answerable for and charged with the whole balance so remaining unpaid; that is to say, excluding all deductions which the commissioners in their discretion might have made for unavoidable losses and for services in collecting. Again, the collector, after the seizure of his lands, was duly notified to attend the meeting of the board of commissioners where he might have claimed and obtained any deductions to which he was entitled from the balance charged against him. Having failed to appear before them, he cannot complain of a want of opportunity. Besides the same objection might be offered against the proceedings, no matter when begun, and is therefore entitled to the less consideration.

The conclusion is that the proceedings were legal, and the sheriff's deed to the purchaser is according to the 20th section, absolute and available against the defendant, his heirs and assigns.

2. Did the seizure of the lots, etc., under and by virtue of the treasurer's warrants, constitute a lien?

By the 16th section all the real and personal estate of the collector is bound for the balance remaining unpaid three months after the delivery of the corrected duplicate of the taxes; but this lien, which commenced at the expiration of those three months, continued but two years, and had expired when the treasurer issued his warranty in 1829. The requisition of the warrant is that the sheriff shall seize and secure all the estate, real and personal, of the collector. But it is nowhere intimated that the warrant itself shall bind the land or even the delivery of it to the sheriff. I cannot, therefore, adopt the position that either the exit or delivery of the warrant constitutes a lien. For if this were so, what be the congruity of enjoining it upon the

sheriff, as the warrant does to *seize and secure* the property? What is the effect of seizing and securing the real estate, if it be not to establish a lien by legally attaching the land for the benefit of the commissioners? The language of this section shows undeniably that the object of the law was, that the seizure of the sheriff should constitute a lien securing the estate of the delinquent collector, so that the commissioners might proceed to sell the same to satisfy their claim for arrearages due.

3. When was the property (house, lot, &c.) seized and secured under the treasurer's warrants, issued in this case? It does not admit of a question that the levy made by the sheriff was the seizure intended by the act—the formal attachment of the property for the use and benefit of the commissioners.

The treasurer's warrants issued the 27th of June, 1829, and the sheriff made his levy under them of defendant's property, on the 4th of July, subsequently to which the first judgment was entered, to wit, on the 13th July. The consequence is that the proceedings under the treasurer's and commissioners' warrants being legal and valid, and the levy under the treasurer's warrants, being a prior lien with reference to the judgments mentioned in the case stated, the plaintiff, who is the grantee of the sheriff, in his deed acknowledged on the 28th December, 1829, is not only entitled to recover as against the defendant, his heirs and assigns, but has a title to the premises preferable to that of the purchaser at the sale, made by virtue of the judgments and executions stated in the case submitted to the court.

Let judgment, therefore, be entered for the plaintiffs.

This case having been removed to the Supreme Court by writ of error, was affirmed by their decree of the 20th of November, 1832. See 1 Watts 300.

#### Common Pleas of Lancaster County. IN EQUITY.

DITTMAN'S USE vs. BUCKWALTER ET AL.  
(Eq. Doc., No. 2, p. 180.)

Where a wife gives money to a husband, which he applies towards the payment of real estate, and it does not appear how she gave it to him, whether as a gift or loan or otherwise, and afterwards she prays that the court in equity may ascertain her interest in said real estate, the court will dismiss her bill.

Bill, answer and testimony taken before master.

B. F. Davis for plaintiff.

D. G. Eshleman and Z. Swope for defendants.

Opinion delivered January 19, 1878, by LIVINGSTON, P. J.

Dora S. Dittman, complainant, by her bill in equity filed, says that she is a married woman, wife of one Casper Dittman.

That early in the year 1866 she received from her father, Matthias Phamuller, of Werthim, Germany, a draft for the sum of \$200, which she had cashed at the banking house of Bair & Clarkson, in the city of Lancaster.

That in December, 1865, John W. Buckwalter sold to Casper Dittman a property containing five acres, more or less, in Upper Leacock township, Lancaster county, upon which property the said \$200 of her money was paid and invested in March, 1866, by her husband, Casper Dittman, who was her agent in the transaction.

That on March 26, 1866, the deed for this property passed from John W. Buckwalter to Peter Heller, and a deduction on account of money advanced by said Casper Dittman, both for himself and his wife, the complainant, was made in the consideration for said property; and that afterwards, on August 27, 1866, said Peter Heller transferred his interest in said property to David Beiler, when there was also an allowance made in the consideration for said property at the transfer of the original deed, on account of the money advanced by said Casper Dittman for himself and his wife, the complainant, as her agent, to which deed and transfer, recorded in the Recorder's Office of Lancaster county, in Record Book Q, vol. 9, at pages 31 and 32, she refers.

That there is no instrument in writing to show complainant's interest in this property.

That said property is about to be exposed to sale by the sheriff, on January 3, 1877, on an execution issued by Daniel Bard against Casper Dittman, her husband.

She therefore asks for relief:

1st. That her interest in said property be made secure.

2d. That the amount of her interest therein be declared by a decree of this court.

To this bill of complaint (Sec. 1), John W. Buckwalter, Peter Heller, David Beiler and Daniel Bard answer that they have been informed and believe that complainant is a married woman, and wife of Casper Dittman. This fact, therefore, may be taken as established.

To the 2d paragraph in the bill of complaint John W. Buckwalter and Peter Heller answer: "Whether or not complainant, early in 1866, or at any other time, received from her father in Germany, or from any other person, a draft for \$200, or any other sum, which was cashed as she states, they have no knowledge, information or belief." David Beiler to this paragraph answers: That he has no knowledge, information or belief as to the matters alleged therein, except that Casper Dittman once told him his wife got eighty dollars from Germany as a Christmas gift. And Daniel Bard, to the same, answers: That he has no knowledge, information or belief of the matters set forth therein; that he endorsed a note of Casper Dittman's for one hundred dollars, for the purpose, as he said, of raising money to enable Dora S. Dittman, the complainant, to go to Germany, and he had that note to pay.

To the 3d section John W. Buckwalter answers: That in December, 1865, he sold to Casper Dittman a property in Upper Leacock township, containing five acres, more or less, for the sum of \$1,490, at public sale, and Peter Heller became his surety for the payment of the purchase money; that on or about

March 26, 1866, when the purchase money was to be paid and the deed delivered, Casper Dittman not having the money with which to comply with his contract, Peter Heller, his surety, paid the purchase money, \$1,490, and he executed and delivered a deed to Peter Heller for the premises; that he has no knowledge, information or belief concerning the payment of \$200, or any money of Dora S. Dittman, by her husband, Casper Dittman, as her agent or otherwise; that Peter Heller paid him the purchase money, and he knows nothing about any such transaction between Heller and Dittman as stated in said section.

To the same section Peter Heller answers: That in December, 1865, he became surety for Casper Dittman for his payment of the purchase money of the lot of five acres of land he bought from J. W. Buckwalter for \$1,490, to be paid on the first of April following; that he paid all the purchase money to Buckwalter who made the deed to him; that between that time and the middle of April, 1866, Casper Dittman paid him different sums at different times amounting in all to \$390; where he obtained the money he cannot tell, and has no knowledge or belief on the subject. On the 27th day of August, 1866, he, at Casper Dittman's request, conveyed the lot, by a transfer of the deed, to David Beiler, who paid him \$1,100, being the amount of his interest therein, as balance of purchase money; and that he has no knowledge, information or belief concerning any money of Dora S. Dittman having been paid him or deducted in the transfer on account of money advanced by Casper Dittman for her.

To the same section and section four David Beiler answers: That he has no knowledge, information or belief as to the matters alleged therein, except that prior to August 27, 1866, Casper Dittman requested him to buy Peter Heller's interest in this lot, and he agreed to do so, and about that time paid Heller \$1,100 and had the deed transferred to him, and he now holds the property by virtue thereof, and under the arrangement he is to hold it until Dittman pays him the \$1,100, with interest, and then convey it to him. No part of the principal has been paid, and on the first of April then next the amount due would be \$1,195; and that he has no knowledge, information or belief of any money belonging to Dora S. Dittman being paid for said property, or being deducted by the said Casper Dittman for or on account of his wife, either in the original purchase or in the transfer, and has no knowledge of the matters alleged in the third section.

To the 5th section Peter Heller, David Beiler and John Buckwalter answer: That they have no knowledge whether Dora S. Dittman has any instrument of writing or not to show her interest in said property, or whether she has any interest therein. And Daniel Bard denies that Casper Dittman was agent for Dora S. Dittman in any manner or way in the purchase of said land—denies that Dora S. Dittman has any interest whatever in said lot—so far as he knows said Dora S. Dittman never claimed to own any interest in said lot until it was advertised for sale by the sheriff;

that Casper Dittman purchased the said premises for his own use and benefit, and that if Dora S. Dittman ever had any money of her own she gave it to her husband, Casper Dittman. He denies that Dora S. Dittman has any interest in said property, and admits that she has no instrument of writing to show any interest therein. And, after thus answering, the respondents all join in asking that the bill be dismissed.

The bill does not allege that Dora S. Dittman was the purchaser of the property in question, either by herself or through the agency of her husband; on the contrary, it alleges that Buckwalter sold the property to Casper Dittman. Dora S. Dittman had nothing to do with the purchase of the property, nor the payment of the purchase money thereof. Casper Dittman bought it. He gave bail for the purchase money, and when the time came for payment he had no money. His bail paid for the property and took a deed for it in his own name. After which Casper Dittman paid him on account \$390, and found a man, Mr. Beiler, who was willing to pay the bail the remaining \$1,100 of purchase money, and take a transfer of the title to himself and hold it until such time as Casper Dittman should pay him the \$1,100, with interest, and then convey the property to Casper Dittman.

The testimony of the complainant is that Casper Dittman bought the property from Buckwalter, and, after he bought it, she saw he couldn't keep the lot—he had to make up \$390 and could not do it—and rather than he should give up the lot she wrote home for money, and received a letter containing a draft for \$200, for which she obtained the money at bank; after which she gave her husband \$200 to pay on the lot; she gave him the money in the kitchen of their house and he went down to Peter Heller's right away; was away a short time, and did not have the money when he came back. Her husband says he paid Heller \$390 on account of the purchase money of this lot, and \$200 of this money he got from his wife. He does not state whether this \$200 was a gift or a loan from his wife. After the payment of the \$390 to Heller, he got Mr. Beiler to pay the remaining \$1,100 for him and take a transfer of the deed, which he was to hold until repaid the \$1,100, with interest, when he was to convey it to Casper Dittman, and not to Dora S. Dittman.

The testimony wholly fails to support the allegations in complainant's bill, which are fully denied by the answers of the respondents, and entirely fails to show that she has any interest whatever in said property, or that she is entitled to the relief claimed and asked for.

The bill must, therefore, be dismissed at the costs of complainants.

DECREE. And now, January 19, 1878, this cause came on to be heard at this term, and was argued by counsel; and, therefore, upon due consideration thereof, it was ordered, adjudged and decreed as follows, viz.: that complainant's bill of complaint be dismissed, and that the complainant pay the cost and expense of this whole proceeding in equity.



## Common Pleas of Luzerne County.

## IN RE AUDITOR'S REPORT OF THE PERSONAL PROPERTY OF W. H. BENNETT.

1. Under the act of 1872, the only notice required to be given to the sheriff by parties entitled to its benefits is a notice following the words of the statute.
2. If the notice claiming money arising from the sale of personal property is actually delivered to the sheriff before the sale of property levied on, and liable for wages, it is within time, and the claim, if an honest debt, must be allowed.

Opinion by HANDLEY, J. September 3, 1877.

The personal property of W. H. Bennett was sold by the sheriff on September 25th, 1876, for the sum of two hundred and five dollars and twenty-five cents. This sale was made by virtue of several executions then out and in the hands of the sheriff. Attached to one of the executions was a notice, dated September 25th, 1876, directed to the sheriff, and signed by Stine, who states therein that he has a claim for labor done for W. H. Bennett, and desires the sheriff to withhold from the proceeds of the sale of the property of Bennett twenty-eight dollars. C. W. Randall also gave notice on the same day that he claimed two hundred dollars for labor done for W. H. Bennett. Geo. W. Oakley also gave notice, but failed to appear before the auditor and make good his claim. Whereupon the Oakley claim was disallowed. The auditor found from the evidence, that Bennett was indebted to Randall in at least the sum of two hundred dollars, and to Stine the sum of twenty-eight dollars. While the auditor fails to say in his report that the respective claims of these parties were for work and labor done for Bennett, yet that, no doubt, was intended. The evidence of Mr. Bennett, certified with and attached to the report, shows that the claim of these parties is for labor. Bennett says that "up to the day of sale he was owing Randall three hundred and twenty-eight dollars and fifty-eight cents. To six months previous to the sale Randall worked for him nearly every day. \* \* He did wheelwrighting or wagon work. \* \* The property sold on the writ was used in and about the manufactory of wagons." Bennett then adds: "I am acquainted with Isaac Stine. He has been employed at my shop. \* \* I think the notice of Stine is correct. It was all earned within six months previous to the sale." The testimony of Randall and Stine establishes the same fact. The auditor disallowed the claim of Randall and Stine, and awarded the balance of the fund, eighty-nine dollars and twenty-seven cents, to the landlord for rent. To this report Randall and Stine filed exceptions:

1. Because the auditor did not appropriate the fund to the claim of said Randall and Stine.
2. Because the auditor appropriated the fund to the landlord's claim.
3. Because the auditor refused to take into consideration the amount paid by the plaintiff in the writ to the said landlord during the sheriff's sale.

The third exception we will not consider; the first and second we will consider together. The auditor based his finding in this case upon the ruling of the Supreme Court in the

case of *The Bank vs. McMillen*, 1 Weekly Notes, 55; but the facts in that case and in this are entirely dissimilar. In that case, as we find it reported, it seems that the only notice the sheriff received was a list containing names, with certain amounts set opposite them. The sheriff paid in full the execution on which the sale took place, and paid the balance of the proceeds into court. The auditor appointed to distribute the amount thus paid in allowed the claims for labor; but the court below, being of the opinion that the notice given to the sheriff was not sufficient, set aside the report, and awarded the whole amount to the bank. This ruling, upon appeal, was sustained. The court said that "the written notice served upon the sheriff in this case was but a memorandum of the names of certain persons and the sums opposite; it did not refer to the property, or claim any lien thereon." In the case in hand the notice is not as full as it ought to be, but the notice states very clearly that the claim is "for labor done for W. H. Bennett," and the Stine notice demands "the sheriff to withhold the amount of money claimed." The notice required by the act of 1872, 2 P. D. 1464, § 2, is that "in all cases \* \* it shall be lawful for such \* \* laborers \* \* to give notice in writing of their claim or claims, and the amount thereof, to the office, \* \* at any time before the actual sale of the property levied on." The act of 1872 is more of a fertilizing act, passed to promote the growth of statement, than a remedial act to protect the rights of the working masses. But whether it is a fertilizing or a remedial act, it is our duty to give it the most reasonable and liberal interpretation, so as to carry out the object named therein. What other notice, therefore, need be given by a laborer than a notice in writing, at any time before the actual sale of the property, stating therein the amount he claims, for what, and out of what estate? This is all that the law requires of him, and this may be done in the most simple manner possible. As an exposition of the weight to be attached to the notice, and the form thereof, we may look at the act of 1874, *Purd. Dig. sup.* 1966, § 2, which repeals the lien notice against real estate, and yet the act of 1872 expressly provided that "no such claim shall be a lien on real estate, unless the same be filed \* \* \* within three months after the same becomes due." Now, a laborer may have a lien on real estate, and yet no notice is required. He has, as we said in the case of *Teets vs. Teets*, 6 *Luz. Leg. Reg.* 20, a secret claim against any purchaser, or any creditor, who has not by mortgage, judgment or execution acquired a prior lien. In the case of *William Pieffer*, 6 *Luz. Leg. Reg.* 101, it was held that the notice must state the business in which the employer was engaged, the kind of services rendered by the claimant, whether as clerk, miner, mechanic or laborer, and the fact that a lien is claimed upon the property seized by the officer; also the particulars of the services, and the amount claimed. This, we are of the opinion, is altogether too specific. What does the poor laborer know about giving notice as here detailed? We take it that it is the duty

of the auditor to ascertain these details from the evidence before he makes his report. The statute says simply that he shall, before actual sale, give notice of his claim. If he gives notice before the actual sale of all the property levied upon and the money paid over, that he has a claim for wages against the defendant in the writ, that fulfills the full measure of the statute, and the laborer ought to be allowed his claim, if the evidence taken before the auditor establishes that his claim is within the statute, due and unpaid, and is an honest debt. But the Pieffer case has no bearing upon the important question in this case. In that case the debtor was engaged in mining and building houses at the mines, and he was also engaged in keeping a hotel, separate and distinct from his mining business. The fund for distribution was raised by the sale of the personal property in and about the hotel. The court adds, "the auditor, therefore, rightly decided that the execution creditor was entitled to the proceeds of the sale, and the persons employed at the mines had no lien upon the property, or claim upon the fund." The evidence in this case develops no such state of facts, and hence there cannot, under the evidence taken before the auditor, be any doubts about what property was sold and lienable for the wages of these men.

We are of opinion that the auditor erred in allowing the claim for rent and disallowing the claims of Randall and Stine for wages out of this fund. The first and second exceptions are sustained, the third not considered, and thereupon we remit the report to the same auditor to distribute the fund *pro rata* between Randall and Stine in proportion to their respective claims.—*Luz. Leg. Reg.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., FEB. 23, 1878.

### WEEKLY SUMMARY.

#### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since February 16, 1878:

AARON CREAMER, dec'd, late of Manor twp.; David Creamer, administrator.

HENRY GROSH, dec'd, late of Manor twp.; Barnherd Mann (farmer), administrator.

The following Wills have been admitted to probate since February 16, 1878:

ELIZA DUBREE, late of Salisbury twp.; James D. Reed, executor.

HIRAM G. WEST, late of Lancaster twp.; Benj. B. Bear, executor.

MICHAEL HECKERICK, late of Lancaster city; Magdalena Heckerick, executrix.

The accounts of the following persons are filed in the Register's office of Lancaster Co. for confirmation and allowance at an Or-

phans' Court, to be held in the city of Lancaster, on Monday, March 18th, 1878.

Mary C. Ripple, administratrix of Fredericka Ripple.

Alexander F. Donnelly, executor of Bridget Donnelly.

H. E. Slaymaker and Benj. Champneys, trustees of Anna B. Reigart.

Mary S. Torr and M. Haberbush, executors of Thomas R. Torr.

Samuel Gerhart and Augustus F. Gerhart, executors of Rev. L. Gerhart.

James Keemer, administrator of Amos Keemer.

John Shreiner, administrator of Isaac Shreiner.

Abraham Metzler, guardian of Anna, Levi H., Elizabeth and Joseph W. Brackbill.

Jonathan Gamber, administrator of Henry Wertz.

Charles Peters, administrator of Christian Laucomer.

Adolph N. Bash, guardian of Valentine Klinger.

John Lorentz, guardian of James B. Waitknecht.

Jacob L. and Levi L. Good, administrators of Barbara Good.

Samuel Eby, executor of Esther Lehn.

W. D. Sprecher, guardian of Charles Finninger, Mary Finninger and Anna Finninger.

Leonard Ziegler, administrator of Bridget Olaus.

Susanna F. Lied, Lydia Wilson and Henry Gockley, executors of Jacob Lied.

William G. Miller, administrator of Sarah Bowermaster.

Abraham E. Long, administrator of Valeptine E. Long, deceased.

Henry H. and Jacob H. Strickler, executors of John Strickler, sr.

Henry H. and Jacob H. Strickler, executors of John Strickler, sr., who was guardian of Samuel Strickler.

Jacob Schwander and Michael Snyder, executors of William Hemling.

William P. Haines, administrator of Thomas H. Moore.

William Patten, executor of Geo. W. Harris.

John Burkholder and Reuben Bucher, executors of Samuel Bucher.

Rebecca Morrison, administratrix of R. Clark Morrison.

Henry Hoffman, guardian of Susan A. Bear.

John Shenk, administrator of Thomas Costello.

Samuel H. Erb, guardian of Mary Bomberger.

Simon F. Albright, administrator *pendente lite* of Peter Albright.

Benjamin Hostetter, executor of John Hostetter.

Jacob Helm, administrator of Barbara Helm.

Michael White, trustee of Esther Baer.

Martin G. Landis, administrator of Eve Landis.

Edward D. Barkley, executor of Rebecca Gilgore.

W. Walker, administrator of Geo. W. Clendenin.

Abraham Hershey, guardian of Anna B. Hershey.

Isaac Baer, executor of Levi Eckert.

Jacob Mast, administrator of Henry Huston.

John W. and Martin Sheaffer, executors of Susanna Sheaffer.

Joseph L. Balance and Rachel A. Reynolds, executors of John Reynolds.

Benjamin L. Landis, guardian of Barbara Hershey.

Robert B. Patterson, administrator of Chandlee H. Rea.

Frank Stahl, administrator of Joseph Hart.

Eli Eshleman, guardian of Henry and Barbara Ann Good.

Eli Eshleman, guardian of Rachel Miller, formerly Weidlich.

Rebecca Eshleman, administratrix of John C. Eshleman, who was administrator of Joel Eshleman.

E. Sutton Hammond, administrator James Hammond.

Christian H. Killhefer, administrator of Elizabeth Nuding.

Frederick G. Weaver, acting executor of John Weber.

Jacob Rotharmel, administrator of Elizabeth Rotharmel.

Tobias Johnson, administrator John Johnson.

John Denlinger, administrator of Anna Denlinger.

A. W. Shober, executor of Conrad Brenelsen.

Samuel Wright, executor of Elizabeth Wright.

Dr. Jacob H. Musser, executor of Jacob Hoover.

John W. Jackson, executor of Stephen Karn.

John Banghman, trustee of Elizabeth Greff.

Abraham Kline, guardian of Morace B. Leber.

C. S. Hoffman, executor of Sarah Yundt.

Caasper Hiller, executor of Christian Good.

John B. Myers, guardian of Henry and Mary Ann Walker.

Jacob Brubaker, administrator of Rachel Brubaker.

Daniel Nolt, guardian of Elias Martin.

Samuel Myers, administrator of David S. Myers.

Samuel D. Baker, administrator of Mich'l Sheirich.

Daniel Nolt, guardian of Samuel E. Wanner.

John Shenk, guardian of Elmira, Jacob L. and Daniel B. Frey.

Samuel Ranck, guardian of Aaron Eby.

Cyrus McQuaid, administrator of Susanna Hunter.

Benjamin Ezra Herr, acting executor of Christian Herr, farmer.

John A. Hook, administrator *c. t. a.* of Robert Hamilton.

Christianna Barr, administratrix of Jacob R. Barr.

David B. Levente, administrator of Jacob Otto.

Jehn H. Nelson, administrator of John Nelson.

Jacob Hoak, administrator of Catharine Shaub.

DAYS OF APPEAL FOR 1878.

TO THE TAXABLE INHABITANTS OF LANCASTER COUNTY.

Pursuant to the provisions of the laws of the Commonwealth, the undersigned Commissioners of Lancaster County, hereby give notice to the taxable inhabitants, within the respective city, boroughs and townships of said county, that the days of appeal from the assessment of 1878, will be held in the Commissioners' Office, in the city of Lancaster, on the days following to wit:

Hempfield East, Hempfield West, Rapho, Strasburg, Lancaster, Tuesday, Feb. 26.

Lampeter East, Lampeter West, Leacock, Leacock Upper, Wednesday, Feb. 27.

Sallsbury, Manor, Thursday, Feb. 28.

No change in the valuation of Real Estate can be made except where new buildings are put up, or buildings destroyed by fire or otherwise. At the same time and place the appeal from the Military Rolls will be held.

S. F. EAGLE, SAMUEL M. MYERS, EM'L P. KELLER, Commissioners.

Jan 26 Papers in county copy.

CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., for a charter to incorporate the "Grütli Association of Lancaster, Pa." The object of which will be mutual aid in time of need, sickness or death of the members and the advancement of themselves in singing and literary accomplishments.

SIMON P. EBY, Atty for Applicants.

NOTICE.

Assigned Estate of JOHN STANTON and WIFE. In the Court of Common Pleas of Lancaster County.

February 20th, A. D., 1878, the petition of the assignees of John Stanton and Wife, presented, and on motion of Walter M. Franklin, esq., counsel for the assignees, the Court grant a rule to show cause why the property assigned to them should not be re-conveyed to said assignor, and the assignees and their sureties be discharged, returnable to said court the third MONDAY in MARCH next, when and where persons interested may attend.

LEWIS S. HARTMAN, Prothonotary.

feb 23

Auditors' Notices.

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JNO. M. MAST, Auditor.

feb 23

Estate of JOHN MCCALLY, late of Colerain twp., deceased.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of D. W. Patterson and Robert S. Melvain, executors of the will of said decedent, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MARCH 6th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

GEORGE M. KLINE, GEORGE NAUMAN, Auditors.

feb 16

Assigned estate of D. KINPORTS & SON, of Ephrata twp., Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. S. Royer, assignee of D. Kinports & Son, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MARCH 5, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

A. S. HERSHEY, Auditor.

feb 15

COMMONWEALTH vs. NELSON GLADFELTER. In the Court of Quarter Sessions of Lancaster Co. Aug. Sessions, 1877. No. 125. Forfeited Recognizance.

The undersigned Auditor, appointed by the court of Quarter Sessions of Lancaster County, Pa., to distribute the proceeds of the forfeited recognizance in the above case, will sit for that purpose on SATURDAY, MARCH 9th, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in City of Lancaster, where all persons interested in said distribution may attend.

A. F. SHENCK, Auditor.

feb 16

Assigned Estate of F. H. ARNDT and WIFE, of Mount Joy borough.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, MARCH 7th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

C. M. MARTIN, Auditor.

feb 9

SAMUEL MILLER vs. HAYES DICKINSON. In the Court of Common Pleas of Lancaster County. Lev. Fac. Jan'y Term, 1878. No. 5.

The undersigned Auditor, appointed by said Court to make distribution of the money made on the above suit and paid into court, will sit for that purpose on TUESDAY, MARCH 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ROBT B. RISK, Auditor.

feb 9

**Assigned Estate of HENRY DIETRICH and WIFE, of Manheim twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Emanuel P. Keller, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 28th day of FEBRUARY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
 jan26 A. C. ILLYUS, Auditor.

In the estate of JOHN BACHMAN, Lunatic. } In the Court of Common Pleas of Lancaster County, Trust Book, No. 6, page 272.

The undersigned Auditor, appointed by said court to distribute the balance in the hands of John M. Bachman, committee of John Bachman, (lunatic,) appearing upon the account of said committee, exhibited in the said court, Dec. 31, 1877, and confirmed nisi January 21, 1878, will sit for that purpose in the Library Room of the Court House, at Lancaster, on TUESDAY, the 5th day of MARCH, 1878, at 10 o'clock, a. m., when and where all persons interested in said distribution are requested to attend and present their claims.  
 feb9 AND. M. FRANTZ, Auditor.

HIRAM WILSON } In the Court of Common Pleas of Lancaster County, Jan'y Term, 1878. No. 37. Execution Docket.  
 vs. W. B. C. DENNIS. }

The undersigned Auditor, appointed by said Court to distribute the money ruled into Court, made under the above execution, will sit for that purpose in the Library Room of the Court House, in the city of Lancaster, on TUESDAY, FEBRUARY 26th, 1878, at 2 o'clock, p. m., when and where all persons interested are requested to attend and present in said distribution their claims.  
 feb2 AND. M. FRANTZ, Auditor.

JOHN H. COOPER and SAMUEL TRUSCOTT, executors of will of John Cooper, dec'd, } In the Court of Common Pleas of Lancaster County, Nov. Term, 1877. No. 135. Levari Facias.  
 vs. JOHN PRART. }

The undersigned Auditor, appointed by the Court of Common Pleas of Lancaster county, to make distribution of the money made on the above writ and paid into court, will sit for that purpose on THURSDAY, FEBRUARY 28th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend  
 feb2 W. LEAMAN, Auditor.

**Estate Notices.**

**Estate of ELIZA DUBREE, late of Sadsbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
 feb23 JAMES D. REED, Executor.  
 Geo. M. KLINE, Att'y.

**Estate of AARON CREAMER, late of Lancaster township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rawlinsville, Martic township, Lancaster county.  
 feb23 DAVID CREAMER, Administrator.  
 S. H. PRICE, Att'y.

**Assigned Estate of HORATIO S. KERNS and WIFE, of Sadsbury twp., Lancaster Co.**

Horatio S. Kerns and Wife, of Sadsbury township, having by deed of voluntary assignment, dated February 6, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Horatio S. Kerns, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 SAMUEL SLOKOM, Assignee, Residing in Christiansa.  
 feb23

**Assigned Estate of JESSE MESSNER and WIFE, of Brecknock twp., Lancaster Co.**

Jesse Messner and Wife, of Brecknock township, having by deed of voluntary assignment, dated February 11, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse Messner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 ABRAHAM LUTZ, Assignee, Residing in Adamstown.  
 feb16

**Estate of PETER MOYER, late of Mount Joy twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.  
 Geo. BRUBAKER, JACOB RISSER, feb9 Att'ys. Executor.

**Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.**

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 LEVI K. BROWN, Assignee, feb9 P. D. BAKER, Att'y. Residing at Goshen, Fulton twp.

**Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.**

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,  
 H. C. BRUBAKER, JACOB WEINHOLD, Wm. D. WEAVER, East Earl twp., Att'ys. CHRISTIAN ESHLEMAN, Brecknock twp., Administrators d. b. n. feb9

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.  
 feb2 C. M. GOOD, Administrator.  
 J. HAY BROWN, Att'y.

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 EZRA BURKHOLDER, Assignee, Residing in West Earl township.  
 jan26

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litz.  
 jan12\* JACOB A. BUCH, Executor.  
 D. G. ESHLEMAN, Att'y.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.  
 jan12 HARVEY S. BOWERS, Administrator.  
 PHILIP D. BAKER, Att'y.

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.  
 CHRISTIAN MYERS, Administrator.  
 jan12\*

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.  
 jan5 SIMON F. ALBRIGHT, Executor.  
 S H. REYNOLDS, Att'y.

**Estate of BENJ. D. DANNER, late of Manheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.  
 jan5\* HENRY S. DANNER, Executor.  
 P. D. BAKER, Att'y.

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
 dec29 ELIZABETH RUHL, Administratrix.  
 J. HAY BROWN, Att'y.

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 JOHN H. ZELLER, Assignee, feb29 J. HAY BROWN, Attorney. Residing in Mount Joy borough.

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.  
 dec22\* CATHERINE RINEER, Executrix.  
 B. F. ESHLEMAN, Att'y.

**Estate of JACOB HOLSINGER, late of Hinkle-town, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.  
 dec22 E. BURKHOLDER, Administrator.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
 MARGARET GRAVER, Warwick township; ADDISON GRAVER, Manheim township; HENRY B. ESHLEMAN, Manheim township, dec15 D. G. BAKER, } Att'ys. O, P. BRICKER, } Administrator.

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, MARCH 2, 1878.

No. 40.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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Particular attention paid to the binding of Law Books and Periodicals.

Old Books carefully rebound.

Every variety of Paper Ruling done to order.

WM. H. ROY,

No. 16 South Queen-st., Lancaster, Pa.

## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		PENNSYLVANIA RAILROAD.	
	LEAVE LANCASTER.	ARRIVE HARRISBURG.	
Pacific Express,*	3:40 a. m.	4:05 a. m.	
Way Passenger†	4:50 a. m.	7:50 a. m.	
Niagara Express,	9:35 a. m.	10:40 a. m.	
Hanover Accom.,	9:40 a. m.	COL. 10:10 a. m.	
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.	
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.	
Fast Line,*	2:10 p. m.	3:25 p. m.	
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.	
Harrisburg Accom.,	6:00 p. m.	8:10 p. m.	
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.	
Harrisburg Express,	7:25 p. m.	8:40 p. m.	
Pittsburg Express,	9:25 p. m.	10:50 p. m.	
Cincinnati Express,*	11:30 p. m.	12:45 a. m.	
FASTWARD.		PENNSYLVANIA RAILROAD.	
	LEAVE LANCASTER.	ARRIVE PHILADELPHIA.	
Atlantic Express,*	12:30 a. m.	3:00 a. m.	
Philadelphia Express,†	4:10 a. m.	7:00 a. m.	
Harrisburg Express,	7:35 a. m.	10:00 a. m.	
Columbia Accom.,	9:28 a. m.	12:30 p. m.	
Pacific Express,*	1:20 p. m.	3:45 p. m.	
Sunday Mail,	2:00 p. m.	5:00 p. m.	
Johnstown Express,	3:05 p. m.	6:00 p. m.	
Day Express,*	5:18 p. m.	7:20 p. m.	
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.	

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:35.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.			
	a. m.	p. m.	
Leave Columbia,	10:20	6:45	
Arrive at Port Deposit,	p. m.	8:45	
	1:20		
GOING NORTH.			
	a. m.	p. m.	
Leave Port Deposit,	6:30	2:00	
Arrive at Columbia,	8:30	5:00	

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,	6:50	8:00	2:30
Lancaster—West King Street,	8:00	9:30	3:35
Lancaster—Upper Depot,	8:10	9:40	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:46	4:30	8:10
Lancaster—West King Street,	9:55	4:40	8:20
Quarryville, (arrive)	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00		3:35
Lancaster—Upper Depot,	8:15	12:55	3:45
Lancaster Junction,	8:35	1:35	4:11
Reading, (arrive)	10:10	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:21	1:20	7:45
Lancaster—Upper Depot,	9:46	2:00	8:10
Lancaster—West King Street,	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

Appointed.  
*Chief Justice*—Morrison R. Waite, of Ohio, 1874  
*Justices*—Nathaniel Clifford, of Maine, 1858  
 Noah H. Swayne, of Ohio, 1862  
 Samuel F. Miller, of Iowa, 1862  
 Stephen J. Field, of California, 1863  
 William Strong, of Pennsylvania, 1870  
 Jos. P. Bradley, of New Jersey, 1870  
 Ward Hunt, of New York, 1872  
*Attorney General*—Charles E. Devens.

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.

**Prothonotaries:**

*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweitzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

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*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake  
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**COURT CALENDAR.--1878.**

FEBRUARY.

- 16. Last day for filing Accounts to March Court.
- 23. Calling Judgment Docket.

MARCH.

- 8. Last day for issuing Writs to March Term.
- 9. Last day for setting down causes for Argument Court.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 3. Argument for Rules of Affidavit of Defense.
- 5. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 2, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

DAVID MYERS and HENRY MYERS assignees of PETER MYERS, against WILLIAM WHITE, Sheriff of Lancaster County.

In an action of trespass *vi et armis* against the sheriff for selling grain in the ground belonging to the plaintiff, proof that the sale was made a mile from the premises, without any actual interference with or disturbance of the plaintiff's possession, or injury to the body of the property, will not sustain the action.

When trespass, and when an action on the case will be—considered.

This is an action of trespass *vi et armis* against the sheriff for certain acts by him done in execution of a writ of *levari facias*. On the 1st of April, 1822, Peter Myers mortgaged his real estate to Jacob Johns and Jacob Graybill. A *scire facias* upon that mortgage was issued on the 8th of January, 1825, in which there was an award, upon arbitration, in March. A *levari facias* was thereupon issued to the next August term, and the sheriff, by an indorsement, was directed to levy upon the mortgaged premises, together with the grain growing thereon. The return was "sold real estate for \$5,148.52; deduct costs \$64.63."

In 1825, January 15, Peter Myers and wife made a deed of assignment of all their estate, real and personal, to David and Henry Myers, which was recorded the same day. The grantees brought this action originally, as trespass *quare clausum fregit*; but subsequently amended by adding to their declaration a count for *de bonis asportatis*. The cause was tried in September, 1831. The jury found for the plaintiffs, assessing their damages at \$100. The defendant moved for a new trial for the following reasons, with others not necessary to be noted: because the verdict was against law and evidence; because it was directly against the general charge of the court, founded on the evidence, that to entitle the plaintiffs to recover there must be proof of a manual interference or intermeddling with the property, which, in the opinion of the court was not the case; and because the plaintiffs having counted in trespass *de bonis asportatis*—the true criterion of which being force directly applied, and not the unlawfulness of the original act on the part of the defendant—the plaintiffs were not entitled to recover on the evidence given *prout* the judge's notes who tried this cause and made part of this reason.

A rule to show cause being granted the same was argued on the 15th June, 1831—

Mr. William Hopkins for the rule.

Mr. Montgomery and Mr. Jenkins against it.

By the former it was urged that on the trial the court was of opinion that the plaintiffs had failed to support their action and so charged the jury. By the testimony of more than one witness it was proved beyond contradiction that the sale of the sheriff took place at Adam Bare's tavern, a mile from the premises, and that neither the sheriff nor his deputy was on the premises that day. It was on this fact the court charged that the action could not be sustained *de bonis asportatis*. As to this action of trespass *quare clausum fregit*, there must be an actual entry on the land, which was not pretended here: 1 Chitty's Pl. 179; 6 Bac. Abr. 580, Trespass F. To support the count *de bonis asportatis*, the plaintiffs seem to have thought the indorsement on the *levari facias* sufficient, at least in connection with the notice of the assignees on the day of sale, as to their claim of the grain growing on the ground.

The distinction between trespass and case is of great importance. The difference between the two classes of actions is well explained in 1 Chitty's Pl. 162. To support the former there must be an unlawful taking or an immediate injury: *Ibid.* 163, 168, 170. Trespasses not accompanied with force are called trespass on the case: 6 Bac. Abr. 554; *Ibid.* E, No. 2. It is manifest that there must always be an actual taking of the property to constitute trespass *vi et armis de bonis asportatis*. The criterion of trespass is force directly applied: 2 Sergt. & R. 360. The injury must be immediate on the act done—not a resulting or consequential injury: 6 Sergt. & R. 348, Cotterel vs. Cummings; 1 Browne's R. 331; 6 Binn. 33. For a further illustration of the distinction: 3 Wils. R. 403 is referred, and especially the learned opinion of Justice BLACKSTONE, *Ibid.* 409, by whom the importance of the distinction was ably enforced, as was likewise done by the Ch. Justice of New York, in 4 Johns. R. 457. Now there was no actual levy of this grain—no seizure—no abuse—no injury to it—no force applied. With respect to the reasons or grounds upon which new trials are usually granted the following cases may suffice to show that we are supported by precedents: 1 Yeates 14; 4 Yeates, 322, Swearingen vs. Birch; 2 Yeates 164, Smith vs. McCormick; 3 Binn. 26, Trimble vs. Arthurs, *Ibid.* 520; Commissioners of Berks vs. Ross et al.

Mr. Montgomery and Mr. Jenkins. There is no imputation against the jury. If the verdict be set aside it must be on account of some technical error into which the plaintiffs have fallen in seeking their remedy. It is no longer denied that the plaintiffs were entitled to the grain. We concede, that to sustain trespass *vi et armis*, there must be possession actual or constructive. With regard to lands, there must be a *possessio pedis*, with the single exception of wild lands. The plaintiffs owned the grain and were in possession. The selling was unlawful, the *levari facias* giving no right to sell. Was the conduct of the sheriff right or wrong? And if wrong was it not an immediate wrong? As to what acts constitutes trespass, Judge DUNCAN'S opinion, 6

Sergt. & R. 348, gives in few words the real distinction. We say we were injured by the immediate act of William White by his sale of our property. Suppose the sheriff had come near our stable and sold our horse as the property of another, without touching the horse, who can doubt that this would be trespass? He who undertakes to interfere with my goods or property or dispose of them, renders himself liable to an action of trespass or trover, at my election: 10 Mass. 125, Gibbs vs. Chase. So trespass *de bonis asportatis* lies against one who interferes with the personal property of another, although there was no manual interference. Every unlawful interference of a person with the property of another, is a trespass: 7 Cowen's R. 735, Widderingham vs. Lafry. There was a seizure in the present case in contemplation of law. The sale was an act immediately injurious: 5 Cowen's R. 323. Force, competent to support trespass, may be either actual or implied. There may be a moral force as powerful as actual physical force, and as adequate to sustain trespass, as force actually applied. There is no necessity for a manual interference. How is it in the familiar instance of a levy? No actual seizure or manucaption is necessary. The officer merely goes to the house, looks at the property and takes an invoice of it—this is a levy and seizure: 7 Johns. R. 254, Manuel vs. Burk; *Ibid.* 302, Shotwell vs. Few; 10 Johns. R. 272, Murray vs. Birling; *Ibid.* 287, Babcock vs. Hill; 18 Johns. R. 257, Percival vs. Hickey. There is no allegation by the defendant that the damages found by the verdict are excessive. The question is, has injustice been done? Though the judge differs from the jury in regard to the matter of fact, it is no ground for granting a new trial: 1 Yeates 327, Campbell vs. Sprout; 4 Yeates 468, Smith vs. Adlin; 2 Sergt. & R. 119, Ludlow vs. The Union Insurance Co.; *Ibid.* 360. No new trial will be granted for a technical exception, no matter how clear, where justice has been done by the verdict: 2 Yeates 436, Ralston vs. Cummings.

Mr. Wm. Hopkins in reply: My object in arguing upon the court for trespass *quare clausum fregit* was that in the other side they might as well contend for an implied entry as for implied force. There is no law for either. In 10 Mass. there was an actual seizure, a feature which runs through all the cases. In 7 Cowen 735 there was a levy and the facts amounted to a manual interference. The defendant was within touching distance, and levied the property in the usual mode, and declared he would carry away the property unless security were given, which was done. In 5 Cowen 323, there was an actual distress. In the other cases cited the taking was admitted or the conversion established by evidence; and the principle that runs through all the cases is that there can be no implied force when there is no actual taking. If there be an actual and wrongful taking, the law will imply force. With respect to the alleged justice of the verdict—there is no ground for the assertion. At the sheriff's sale the property sold for its outside value. That was the testimony. The purchaser has testified that the land and the grain sold very high, for he bid

off both. But the assignees got the grain and sold it for its full value, and they moreover pocketed one hundred and fifteen dollars, the overplus of the sale of the grain and real estate together. Now, suppose they had brought an action on the case and recovered the verdict they obtained in the present action, I undertake to say it would have been outrageously unjust. To the case of *Ralston vs. Cummings*, 2 Yeates 436, there are two answers: 1. It was a case of palpable and gross fraud on the part of him who moved for the new trial; but there is no fraud here. 2. There the objection was taken, not before the jury or at the trial, but before the court on the argument for a new trial; whereas we submitted the objection which we now urge on the new trial, and the objection was sustained by the court, though disregarded by the jury. The cases in 1 Yeates 327; 2 Sergt. & R. 119, 137, are cases of contradictory evidence and have no application.

HAYES, J. The fact clearly proved on the trial that the sale of the plaintiff's grain took place a mile from the place where it was growing at the time, and that neither the sheriff nor his deputy was on the premises that day. Upon this fact the question arises whether the act of the sheriff in thus selling constitutes a trespass *vi et armis*.

What was the injury really complained of? What, if any, was the damage really sustained? The assignees retained possession of the property; they sold it for its full value, and have recovered the price. Was the injury then the sheriff's previous sale of it on the 18th of May, 1825, and the subsequent notice to the assignees, or was it the inconvenience and embarrassment which were occasioned by that proceeding? All injuries to property must be either immediate and attended with some force, however small or consequential: 2 Saund. Pl. & Ev. 853, 854. To sustain trespass *vi et armis* the injury must be immediate and not consequential; it must be committed with force, though the degree of force will make no difference, and the force must be directly applied and operate immediately on the body of the property: 2 Sergt. & R. 360; 6 Binn. 33. Trespass *vi et armis* lies to recover damages for immediate wrongs accompanied by force to personal property by destroying, damaging, taking away, detaining or converting cattle or goods: 2 Saund. Pl. & Ev. 853. When the immediate act itself, occasions a prejudice or is an injury to the plaintiff's person, house, land, &c., trespass *vi et armis* will lie, but when the act itself is not an injury but a consequence from that act is prejudicial to the plaintiff's person, house, land, &c., trespass *vi et armis* will not lie; but the proper remedy is an action on the case: Bull. N. P. 26, 79.

When the original act occasioning the injury was forcible, the remedy is in some cases trespass; in others trespass on the case. If the forcible act is immediately injurious, trespass is the proper action; if, on the contrary, the injury for which redress is sought is the remote or consequent effect of the forcible act, the remedy is trespass on the case. As if A. throw a log across a highway and B. injure

himself by falling over it; here the injury to B. is consequential, and the remedy is trespass on the case. The difficulty, says Judge GOULD, of Connecticut, is in applying the last rule, and in distinguishing what is the immediate and what the consequential effect of any forcible act. The injury to be immediately within the rule need not be the instantaneous effect of some forcible act; when it is instantaneous there is no difficulty in the application. 1. When the immediate or proximate cause of the injury produced is but a continuation of the original force the effect is immediate. 2. On the other hand, when the original force ceases, before the injury or damage commences, such injury or damage is consequential, and the author of it is liable in trespass on the case only: M. S. Lectures of Judge GOULD, cited in 2 Stark. Evid. 357.

The grain sold by the sheriff in this case was not damaged, taken away detained or touched by him; there was in fact no immediate injury done to it, nor was there any injury immediate or remote, accompanied by force. The declaration complains, that the defendant took, seized and sold twenty acres of grain in the ground. No actual taking or seizing was proved, nothing but the sale, with the previous advertisement and subsequent notice. These were no actual forcible molestation, or disturbance of the possession of the assignees, nor constituted any injury "to the body of the property." It is therefore, manifest that no injury was committed which could sustain the action of trespass *vi et armis*. Had the sheriff's sale produced embarrassment and inconvenience to the assignees, had it injured their sale, the injury would clearly have been a consequence, not the direct and immediate effect of that proceeding, and therefore, aggrieved for trespass on the case; but not for trespass *vi et armis*.

The assignees have already received one hundred and fifteen dollars on account of the sheriff's sale, and I have heard of no injury which that sum may not have amply compensated.

I am of opinion that the verdict was contrary to the evidence, the law and the charge of the court; that it was unjust as well as illegal, and that it ought to be set aside.

Let the rule be made absolute.

#### Common Pleas of Lancaster County.

MISHLER vs. WISE.

(Aug. Term, 1877, No. 146.)

A transcript of a judgment of a justice of the peace, having been entered in the court of common pleas, will not allow an execution on said judgment to be issued from said court; but before an execution can issue out of said court, on such a transcript, there must be a certificate from the magistrate, of an execution having been issued by him on his docket, and a return of no goods.

Certiorari. Exceptions filed, &c.

*J. B. Amwake* for exceptions.

*Junius B. Kaufman* contra.

Opinion delivered November 17th, 1877, by LIVINGSTON P. J.

Daniel Mishler brought suit on a promissory note before Cyrus Ream, esq., a magistrate, against Levi Wise, and obtained a judgment

for the amount due, \$46.60, on July 16, 1872. On this judgment an execution was issued by the magistrate November 25, 1874, on which a levy was made by the constable.

On December 14, 1874, an *alias* execution issued, which was stayed by the parties. After this Mishler, the plaintiff, took a transcript of his judgment from the justice and entered it in the prothonotary's office as a judgment and lien, in the court of common pleas of Lancaster county to April term, 1876, No. 734; the entry being made July 21, 1876. On this judgment or transcript so entered plaintiff issued an execution out of the court of common pleas to August term, 1876, No. 157, for the debt, interest and costs.

This writ of *feri facias* having been issued by the prothonotary without the production of a certificate from the justice before whom the original judgment was entered, stating that an execution had been issued to the proper constable, as directed by the act of assembly, and a return thereon that no goods could be found sufficient to satisfy said demand, and the record and transcript failing to show that fact, the *fi. fa.* was stayed by his Honor Judge PATTERSON on August 10th, 1876.

On October 14, 1876, another execution was issued by Cyrus Ream, esq., the magistrate before whom the original judgment was obtained, on which the constable to whom it was directed, on October 16, 1876, returned "levied on defendant's personal property."

On October 30, 1876, a writ of *certiorari* was issued out of this court requiring the magistrate to send up his proceedings in said case to this court at November term, 1876, the cause being entered to November term, 1876, No. 63.

The proceedings were returned and filed, and the following exception was filed thereto: "The justice before whom the within cause was tried issued the last execution without having first issued a *sci. fa.* against the defendant to show cause why execution should not issue against him—the original judgment having been passed in 1872." When the cause came to be argued the exceptions were overruled.

After which, on July 21, 1877, Cyrus Ream, esq., before whom the original judgment was obtained and entered, issued another execution, on which the constable returned that on July 26, 1877, he had levied on certain of defendant's personal property, as stated in his return.

On August 7, 1877, the defendant issued another writ of *certiorari* out of this court, and we have now the proceedings in this cause again before us on that writ which is entered to August Term, 1877, No. 146.

And now the the exception filed and insisted on is as follows:

"The justice erred in issuing execution on the judgment as affirmed by the court of common pleas of Lancaster county, on the former *certiorari*. The execution ought to have issued out of the court of common pleas for the recovery of this judgment and costs."

It is observable that none of the exceptions filed on the return of either of these writs of

*certiorari* in any way or manner call in question the validity of the *original judgment before the justice*, its validity is admitted throughout the whole proceedings. The exceptions in both cases relate wholly to the issuing of the executions by the justice on said judgment. When the cause was heard on the first *certiorari*, we held that the execution was properly issued by the magistrate, and overruled the exceptions thereto—prior to our so deciding, the execution issued had become inoperative. And therefore, after we decided that it had been properly issued, there being as yet no certificate returned to the prothonotary that an execution had been issued by the magistrate and returned “no goods,” or “*nulla bona*,” the magistrate issued another execution, the exceptions above stated as taken, to which we are now to consider and pass upon.

The act of March 20, 1810, §10, found in Purdon's Digest, page 863, pl. 100, directs the prothonotaries of the respective counties to enter on their docket transcripts of judgments obtained before justices of the peace of their proper counties, which judgments from the time of such entries on the Prothonotary's docket shall bind the real estate of the defendants, but *no fieri facias* shall be issued by any prothonotary until a certificate shall be first produced to him from the justice before whom the original judgment was entered, stating therein that an execution had issued to the proper constable, as directed by this act, and a return thereon that no goods could be found sufficient to satisfy said demand.

The justice may so certify, if such execution has been issued before his return of the transcript to the prothonotary, in his original return, and his transcript, so certified, will show the fact. Or, if no execution has so issued before the filing of the transcript, he may issue the execution, and so certify to the prothonotary afterwards, and before a *fi. fa.* can be issued by the prothonotary. And no *fi. fa.* shall or can, under the provisions of the act of the general assembly, issue out of this court until such return has been certified by the magistrate to the prothonotary. It is true a *scire facias* may issue without such certificate, and on a judgment being obtained on such *scire facias*, an execution may issue from the court of common pleas. But in the case before us there has been no such return to the prothonotary from the magistrate. Nor has there been a *scire facias* issued out of this court and a judgment obtained thereon. Nor has there been any reason shown why the magistrate should not issue an execution for the amount appearing to be due on his docket, and that the constable should not make the money on such execution, or make return that no goods of defendant can be found to satisfy such execution.

The question raised on the first writ of *certiorari* did not in any way relate to the validity of the judgment, or require the court to pass upon or affirm it; and, there having been no certificate furnished the prothonotary by the justice that an execution had been issued by him and returned to him *nulla bona* by the constable, nor any proceeding before this

court which would entitle the prothonotary to issue a *fi. fa.* without such certificate, we are of opinion that there was no error in the magistrate issuing an execution for the debt, interest and costs which accrued before him in the cause. The costs accruing in court should, however, have been excluded, as the party issuing the writ is liable to the officers here for costs.

We therefore dismiss the exception and direct the party issuing the *certiorari* to pay the costs accruing thereon.

SUPREME COURT OF PENNSYLVANIA.

DEARDORFF vs. WEAVER.

1. A parol gift from a parent to a child, properly executed by possession and improvement, is valid, notwithstanding the statute of frauds and perjuries.

2. The evidence in this case of a parol gift held to be sufficient to submit the question to a jury.

Error to the Court of Common Pleas of York county.

Opinion by GORDON, J. October 1st, 1877.

That a parol gift, from a parent to a child, properly executed by possession and improvement, is valid, notwithstanding the statute of frauds and perjuries, will be found to be the settled law of this State, since the case of *Syler vs. Eckert*, 1 Binn. 378. The question is generally one of execution. As in parol sales where the performance has been carried so far, or is of such a character as to make compensation difficult or impossible, the contract is exempted from the operation of the statute. Such will also be the case with a gift where, in pursuance thereof, possession has been taken and valuable improvements have been made; this *a fortiori*, where this possession has been undisturbed for a great length of time, or where the improvements have added largely to the value of the property. This is always a powerful factor in questions of this kind. Equity is loth to undo a gift or contract at the instance of one who has neglected to move for its rescission until the passing years have grafted new equities upon the transaction, until the donee has grown old and has spent the vigor of his age and the prime of his manhood in the use and improvement of a property long regarded as his own. We pass to the consideration of the case before us. Was there sufficient evidence of a clear and distinct parol gift from George Sower to his son-in-law and daughter, and of its execution on their part, to submit to the jury? When the case was before us on a former occasion there was not such evidence. There was but the testimony of Weaver which was at all distinct and positive as to the character of the gift; it was but meagerly sustained by corroborative evidence, and it was positively contradicted by George Sower, the alleged donor. Under these circumstances, we held, that the defendant had not made out such a case as would relieve him from the operation of the statute. As, however, the case is now presented to us, we cannot say that the court did wrong in submitting it to the jury. It is true the testimony of Weaver and wife is exactly what it was before, but the corrobora-

tion is much stronger and more precise, and the contradiction of the evidence of George Sower is so positive and complete as to render it of little worth. What we have to consider is not whether the defendant has made out such a case as would entitle him to a decree of specific performance, for it seems to be pretty well settled, in this State at least, that equity will not enforce a contract, the consideration of which is only natural love and affection, but whether he has shown enough to prevent the disturbance of his possession by Sower's legal title. As we have seen, for this purpose a gift, accompanied by possession, is sufficient. Now turning to the evidence, we have, firstly, that of Weaver himself, which is the most distinct and positive. He says: “In the fall of the year 1845, before I went on this land, George Sower, sr., and I went to look at it. I went up with George Sower and my wife to look at the place to put the buildings. To George Sower I said, it was hard for me to build there unless I knew what I was to do it for. He said he did give it to me and my wife for our own; and with that understanding I went into possession. Then, in pursuance of that conversation I dug the cellar and took possession, and put up the barn and put up the garden fence and made fence to keep the cattle out, and did work, and had more than I could do.” It would seem also, from the evidence, that, in addition to the improvements above mentioned, he planted fruit and shade trees, and added considerably to the fertility of the soil by manuring and cultivation; that from, and including the year 1845, the property has been assessed in his name, and during all this time, now some thirty odd years, he has paid the taxes, and further, he has had the buildings insured in his own name. That the above statement of facts, if admitted, makes out a complete defense ought not to be doubted, for it contains every element necessary to constitute a valid parol gift. What remains, then, is to ascertain if these statements of Weaver are so corroborated, by such other facts and circumstances, as taken together, are equivalent to another credible witness. We have then, in addition to the defendant's long and undisturbed possession, a powerful circumstance in itself, the testimony of George Slyder, who says, that in the year 1845, Genzler, the assessor, in the presence of the defendant, inquired of Sower, to whom he should assess this land now in suit, and that he, Sower, answered that it should not be assessed to himself, but to Weaver, that he had given it to “Hen and his wife;” they could do with it what they pleased. This declaration, made as it was, when the parties were face to face, accompanied by the act of the assessment of the land to the defendant, by the direction of the one, and the assent of the other, was not merely corroborative, but direct, independent, primary evidence of the gift. Moreover there are the repeated declarations of Sower, from time to time, after Weaver was in possession, that he had given the land to him and his wife. He so said to David Myers, the assessor for 1846, he, Sowers, being assistant assessor for that



year; also to Solomon Gross, another assessor, directing in each instance, the assessment to be made to the defendant. To Peter Benedict, after that he had given the land to Henry Weaver and his wife, he said he had brought the ejection only at the urgent solicitation of his children, John and Barbara, and this because of the increase in the value of the land by reason of the discovery of iron ore upon it. Like declarations were made to John Brougner, George F. Harbolt, Daniel Baker, Jacob Lighty, James Marshal and Elizabeth Huntz. It is true a few of these witnesses speak of the gift as to Elizabeth, the wife, alone; nevertheless it is all corroborative of the testimony of Weaver, and consistent with it, for it all goes to show a continued recognition of the donation made in 1845, and, as it was intended principally for the benefit of Mrs. Weaver, it is not remarkable that he should sometimes omit her husband's name when speaking of it. From all this we do not see how the court could have refused to submit this case to the jury. So great is the array of testimony in support and corroboration of the defense, that, if a parcel of land can be made out at all, it would seem to have been so done in this instance. The assertion of ownership by Sower in 1853, by the sale of one-fourth of an acre of this land to the school directors of Washington township, was undoubtedly significant and important, but we cannot say that it was conclusive, and we think it was properly left, under the explanation of the defendant and his wife, to the jury.

Judgment affirmed.

SHARSWOOD, J. dissents.—*Pitts. Leg. Journal.*

#### MULLEN vs. COMMISSIONERS OF ERIE COUNTY.

Property on which a cathedral is being erected, but which never has been used for religious worship, is not exempt from taxation.

Error to the Court of Common Pleas of Erie county.

Case stated:

1. It is agreed that a cathedral is now being constructed by the catholics of the diocese of Erie, on their city lots in Erie, on the corner of Sassafras and Tenth streets, to be known as St. Peter's Cathedral.

2. That said referred to building is not yet completed, and that work on the same has been carried on during the last three years from time to time during each of said years.

3. That under and by virtue of the act of May 14, 1874, said commissioners have caused said referred to three lots and the unfinished cathedral thereon to be assessed as other property in the city of Erie, and have refused to exempt said property from taxation, because religious services are not held on said premises—said cathedral not being completed—and because it is claimed by them said property is not such property as should be exempt from taxation.

4. That no religious services have been held on said premises, except the ordinary service when the corner-stone of the said cathedral was laid.

5. From the decision of said commissioners this appeal has been taken.

6. From the decision of the court of common pleas of Erie county both parties reserve the right to a writ of error or to appeal, as may be deemed proper.

For the opinion of the court below, GALBRAITH, P. J., see 34 Legal Intelligencer, page 356.

Opinion by AGNEW, C. J. November 7th, 1877.

If anything be plain in the constitution and the law passed to carry out the second clause of the first section of the 8th article, relating to exemptions of churches from taxation, it is that a place of actual religious worship only can be exempted. A marked feature of this clause, which controls its interpretation, is, that no such words were used as churches, meeting houses or others, to designate the buildings themselves; but to prevent all doubt the convention used these words: "Actual places of religious worship." In so doing that body confined the scope of legislative power to the very use itself, thus taking away all excuse for loose interpretation, as to the character of the building. It must be a *place of religious worship*. What more definite to describe the use made of the place; a place, be it church, chapel, meeting house or cathedral. The word place expresses simply *locality* not *kind*, and hence qualifying words were necessary to denote the kind of place. Therefore the convention said "of religious worship." And not content with a single qualifying expression it prefixed the word *actual*—"an actual place of religious worship." Without religious worship held in it, the place has no character. The convention did not mean to exempt a place *merely*, for this would be unmeaning without something to characterise the place. But when that body said "an actual place of religious worship," it expressed a general thought, which would embrace all kinds of buildings, by simply defining the *use*, which was to be the ground of exemption. The debates in the convention clearly indicate this meaning, and hence it was said, this language would not include buildings put up for church purposes, as for Sunday schools, lectures and parsonages.

When we reach the act of 14th of May, 1874, passed to carry out the exemption clause in the constitution, we discover from its title and its text the legislature intended to hold to the definition in the constitution. Thus the title says, "places of religious worship," and the text says, "all churches, meeting houses, or other regular places of stated worship." They must be places of stated worship. The word stated means fixed, established, occurring at regular times, as stated hours of business. So statedly means at certain times, not occasionally. But the legislature was not content with the word "stated," and the word "regular" was prefixed, and the sentence became "regular places of stated worship." It would be hard to find language that more clearly defines the use which is the ground of exemption.

It is thus clear from both the constitution and the law it is the use not the exemption which defines the exemption. But the use which is made of a place is a present fact, not something ideal or in contempla-

tion merely. If religious or public worship have not been held in the place, indeed statedly held in it, the place itself has not a character. At some day, distant or near, it may be intended to be used for stated public worship, but the fact that it is not now so used strips it of its only title to exemption.

This cathedral, a misnomer indeed, for it is only an unfinished structure intended to become a cathedral, has been in the course of construction several years, and when it will be finished and used for religious worship we know not. The great cathedral on 18th street, in the city of Philadelphia, was many years in progress before it was finished, probably twenty. A building intended for a church may never be finished, or its use may be changed. On what principle under the new constitution should the property be exempted from taxation before it can be used, when it is the use only which gives it a title to exemption.

An argument is founded on the instance of unfinished court houses, jails, school houses, &c. It is inapplicable, however, for these buildings belong to a different branch of the exemption clause. It reads, "exempt from taxation public property used for public purposes, actual places of religious worship, places of burial," &c. The first and second branches are wholly dissimilar. In the former the words "public property" have a wider meaning, and possibly might cover an unfinished building upon it. It might be argued that the property is used for a public purpose when a commencement to build is made upon it. But this cannot be attributed to the expressions "actual place of religious worship," or a regular place of stated worship," as we have seen it is the use which defines the place or locality used, in order to give ground for the exemption.

It is therefore clear that this unfinished structure, misnamed a cathedral, is not an actual place of religious worship as defined in the constitution, nor a regular place of stated worship as described in the law, and is therefore not entitled to exemption from payment of taxes.

The judgment should be affirmed.

#### Supreme Court Rule.

##### RULE V. Concerning Bail in Error.

The existing Rule V. relating to BAIL IN ERROR is rescinded, and the following adopted as Rule V. in lieu thereof:—

Rule V. The defendant in error or appellee may, within twenty days after notice of the taking of bail in error, except to the sufficiency thereof, when the plaintiff in error or appellant must either put in new bail, or the old bail must justify within ten days after exception taken; in default whereof the writ of error shall not be a supersedeas of the execution. New bail may be put in or the old justified, within the ten days, before the prothonotary of the court in the proper district, or before the prothonotary of the court of common pleas of the county to which the writ of error shall have been issued, or from which the appeal shall have come; and in the latter case the new recognizance, or the affidavit of justification, shall be returned to the prothonotary of this court within the ten days allowed, not counting the day when the exception to bail was taken. Of the time and place of giving new bail or justifying the old, at least three days' written notice shall be given to the opposite party or his attorney of record. For the purpose of this rule the prothonotaries of the several courts of common pleas are appointed commissioners of bail.

Adopted by the Supreme Court at Philadelphia, the 18th day of February, A. D. 1878.

PER CURIAM. AGNEW, C. J.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 2, 1878.

## WEEKLY SUMMARY.

### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since February 23, 1878:

- WILLIAM TINSLEY, dec'd, late of Marrietta bor.; Willford M. Tinsley, administrator.
- JOHN GELSINGER, dec'd, late of West Cocalico twp.; Peter Gelsinger, administrator.
- CHARLOTTE POWER, dec'd, late of Columbia bor.; C. W. Hollingsworth, administrator.
- BENJ. LEISEY, dec'd, late of Cocalico twp.; J. G. Garman, esq., administrator.
- SAMUEL HALLACHER, dec'd, late of Warwick twp.; Jacob S. Hallacher, administrator.
- THOMAS HUSSON, dec'd, late of Lancaster city; Ellen C. Husson, administratrix *c. t. a.*
- LUTHER C. SIMCOX, dec'd, late of Lancaster city; Emma G. Simcox, administratrix.
- HENRY S. MYLIN, dec'd, late of West Lampeter twp.; John B. Mylin, administrator.

The following Wills have been admitted to probate since February 23, 1878:

- BARBARA MILLER, late of Upper Leacock twp.; Christian Miller, executor.
- GEORGE SIREINER, late of Marrietta bor.; Alexander Sargent, executor.
- CHRISTOPHER DURST, late of Paradise twp.; George May, executor.
- MARIA SHARP, late of Leacock twp.; Christian K. Sharp, executor.
- JOHN GABLE, late of Colerain twp.; George Irwin, executor.
- ANNA MARIA MYERS, late of Lancaster city; Anthony Fr. Kaul, executor.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since February 16, 1878:

- JOHN B. KERN and WIFE, of East Hempfield twp.; M. N. Brubaker, assignee.
- HORATIO S. KERNS and WIFE, of Sadsbury twp.; Samuel Slokom, assignee.
- SAMUEL ISENBERGER and WIFE, of West Hempfield twp.; John Obrelter, assignee.
- PHILIP ROYER and WIFE, of Ephrata twp.; Levi Shirk, assignee.
- MARTIN O. STIRK and WIFE, of Earl twp.; George Levan and Isaac Stirk, assignees.
- CONRAD SPATZ and WIFE, of Brecknock twp.; William W. Fetter, assignee.
- SWARTZWELDER & MORROW, of Lancaster city; Geo. Spurrier and E. C. Diehl, assignees.
- J. B. SWARTZWELDER and WIFE, of Lancaster city; Geo. Spurrier and E. C. Diehl, assignees.
- ROBERT M. MORROW and WIFE, of Lancaster city; Geo. Spurrier and E. C. Diehl, assignees.

### PROTHONOTARY'S OFFICE.

The accounts of the following named estates will be presented for confirmation on Monday, March 18th, 1878:

- Jonas Wanner and wife's assigned estate; Jacob Shirk, assignee.

- Abram Huber and wife's assigned estate; Levi K. Huber, assignee.
- McKeown, Miley & Co.; Daniel A. Altick, receiver.
- J. H. Long's trust estate; Martha Spickler, administratrix of Martin Spickler, committee, deceased.
- Edward Powell's trust estate; Walter G. Evans, committee.

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## WILLIAM B. WILEY,

ALDERMAN,

OFFICE - No. 32 NORTH DUKE STREET,

LANCASTER, PENNA.

### NOTICE.

Assigned Estate of JOHN STANTON and WIFE, of Lancaster County.

February 20th, A. D., 1878, the petition of the assignees of John Stanton and Wife, presented, and on motion of Walter M. Franklin, esq., counsel for the assignees, the Court grant a rule to show cause why the property assigned to them should not be re-conveyed to said assignor, and the assignees and their sureties be discharged, returnable to said court the third MONDAY in MARCH next, when and where persons interested may attend.

LEWIS S. HARTMAN,  
Prothonotary.

feb23

### CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., for a charter to incorporate the "Grütli Association of Lancaster, Pa." The object of which will be mutual aid in time of need, sickness or death of the members and the advancement of themselves in singing and literary accomplishments.

SIMON P. EBY,  
Att'y for Applicants.

feb23

## Auditors' Notices.

Estate of HENRY BURKHOLDER, late of West Lampeter twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Burkholder and J. J. Byers, executors of the will of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, APRIL 4th, 1878, at 2 o'clock, p. m., in one of the Jury Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

mar2

I. CARPENTER,  
Auditor.

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

feb23

JNO. M. MAST,  
Auditor.

Estate of JOHN MCCALLY, late of Colerain twp., deceased.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of D. W. Patterson and Robert S. McIlvain, executors of the will of said decedent, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MARCH 6th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

feb16

GEORGE M. KLINE,  
GEORGE NAUMAN,  
Auditors.

Assigned estate of D. KINPORTS & SON, of Ephrata twp., Lancaster co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of E. S. Royer, assignee of D. Kinports & Son, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MARCH 5, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the city of Lancaster, where all persons interested in said distribution may attend.

feb15

A. S. HERSHEY,  
Auditor.

COMMONWEALTH vs. NELSON GLADFELTER } In the Court of Quarter Sessions of Lancaster Co. Aug. Sessions, 1877. No. 125. Forfeited Recognizance.

The undersigned Auditor, appointed by the court of Quarter Sessions of Lancaster County, Pa., to distribute the proceeds of the forfeited recognizance in the above case, will sit for that purpose on SATURDAY, MARCH 9th, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in City of Lancaster, where all persons interested in said distribution may attend.

feb16

A. F. SHENCK,  
Auditor.

Assigned Estate of F. H. ARNDT and WIFE, of Mount Joy borough.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Zeller, esq., assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, MARCH 7th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

feb9

C. M. MARTIN,  
Auditor.

SAMUEL MILLER vs. HAYES DICKINSON. } In the Court of Common Pleas of Lancaster County. Lev. Fac. Jan'y Term, 1878. No. 5.

The undersigned Auditor, appointed by said Court to make distribution of the money made on the above suit and paid into court, will sit for that purpose on TUESDAY, MARCH 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

feb9

ROBT B. RISK, Auditor.

In the estate of JOHN BACHMAN, Lunatic. } In the Court of Common Pleas of Lancaster County. Trust Book, No. 6, page 273.

The undersigned Auditor, appointed by said court to distribute the balance in the hands of John M. Bachman, committee of John Bachman, (lunatic,) appearing upon the account of said committee, exhibited in the said court, Dec. 31, 1877, and confirmed nisi January 21, 1878, will sit for that purpose in the Library Room of the Court House, at Lancaster, on TUESDAY, the 5th day of MARCH, 1878, at 10 o'clock, a. m., when and where all persons interested in said distribution are requested to attend and present their claims.

AND. M. FRANTZ, Auditor.

**E. H. BURKHOLDER,**

JUSTICE OF THE PEACE,

FARMERSVILLE, LAN. CO., PA.

SPECIAL ATTENTION PAID TO COLLECTIONS.

**Estate Notices.**

**Estate of CATHARINE GRUBE, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

mar2 JONATHAN ROYER, Administrator.  
B. F. ESHLEMAN, Att'y.

**Estate of JOHN GABLE, late of Colerain twp., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to the undersigned without delay, residing in Lower Oxford township, Chester Co., Pa.

GEORGE IRWIN, Hugh R. FULTON, Att'ys. Executor.  
mar2 Oxford P. O., Chester Co., Pa.

**Assigned Estate of CONRAD SPATZ and WIFE, of Brecknock twp., Lancaster Co.**

Having by deed of voluntary assignment, dated February 21, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Spatz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

mar2 W. W. FETTER, Assignee, M. BROSIUS, Att'y. Residing in Adamstown.

**Estate of ELIZA DUBREE, late of Sadsbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

feb23 JAMES D. REED, Executor.  
Geo. M. KLINE, Att'y.

**Estate of AARON CREAMER, late of Lancaster township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rawlinsville, Martic township, Lancaster county.

feb23 DAVID CREAMER, Administrator.  
S. H. PRICE, Att'y.

**Assigned Estate of HORATIO S. KERNS and WIFE, of Sadsbury twp., Lancaster Co.**

Horatio S. Kerns and Wife, of Sadsbury township, having by deed of voluntary assignment, dated February 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Horatio S. Kerns, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

feb23 SAMUEL SLOKOM, Assignee, Residing in Christiana.

**Assigned Estate of JESSE MESSNER and WIFE, of Brecknock twp., Lancaster Co.**

Jesse Messner and Wife, of Brecknock township, having by deed of voluntary assignment, dated February 11, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse Messner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

feb16 ABRAHAM LUTZ, Assignee, Residing in Adamstown.

**Estate of PETER MOYER, late of Mount Joy twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

feb9 GEO. BRUBAKER, Att'y. JACOB RISSER, Executor.

**Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.**

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

feb9 P. D. BAKER, Att'y. LEVI K. BROWN, Assignee, Residing at Goshen, Fulton twp.

**Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.**

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,

feb9 H. C. BRUBAKER, JACOB WEINHOLD, Wm. D. WEAVER, East Earl twp., Att'ys. CHRISTIAN ESHLEMAN, Brecknock twp., Administrators d. b. n.

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.

feb2 C. M. GOOD, Administrator.  
J. HAY BROWN, Att'y.

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

jan26 EZRA BURKHOLDER, Assignee, Residing in West Earl township.

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litz.

jan12\* JACOB A. BUCH, Executor.  
D. G. ESHLEMAN, Att'y.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.

jan12 HARVEY S. BOWERS, Administrator.  
PHILIP D. BAKER, Att'y.

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.

jan12\* CHRISTIAN MYERS, Administrator.

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.

jan5 SIMON F. ALBRIGHT, Executor.  
S. H. REYNOLDS, Att'y.

**Estate of BENJ. D. DANNER, late of Mannheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

jan5\* HENRY S. DANNER, Executor.  
P. D. BAKER, Att'y.

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec29 ELIZABETH RUHL, Administratrix.  
J. HAY BROWN, Att'y.

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 25th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

dec29 JOHN H. ZELLER, Assignee, Residing in Mount Joy borough.  
J. HAY BROWN, Attorney.

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

dec23 CATHERINE RINEER, Executrix.  
B. F. ESHLEMAN, Att'y.

**Estate of JACOB HOLSINGER, late of Hinkle-town, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

dec23 E. BURKHOLDER, Administrator.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

dec15 MARGARET GRAVER, Warwick township; ADDISON GRAVER, Maubelm township; HENRY B. ESHLEMAN, Manheim township, Att'ys. Administrators.  
D. G. BAKER, O. P. BRICKER, } Att'ys.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, MARCH 9, 1878.

No. 41.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE		ARRIVE
	LANCASTER.	HARRISBURG.	
Pacific Express,*	2:40 a. m.	4:05 a. m.	
Way Passenger†	4:50 a. m.	7:50 a. m.	
Niagara Express,...	9:35 a. m.	10:40 a. m.	
Hanover Accom.,...	9:40 a. m.	COL. 10:10 a. m.	
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.	
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.	
Fast Line,*	2:10 p. m.	3:25 p. m.	
Frederick Accom.,...	2:15 p. m.	COL. 2:45 p. m.	
Harrisburg Accom.,...	6:00 p. m.	8:10 p. m.	
Columbia Accom.,...	7:20 p. m.	COL. 8:00 p. m.	
Harrisburg Express,...	7:25 p. m.	8:40 p. m.	
Pittsburg Express,...	9:25 p. m.	10:50 p. m.	
Cincinnati Express,*	11:30 p. m.	12:45 a. m.	

  

EASTWARD.	LEAVE		ARRIVE
	LANCASTER.	PHILADELPHIA.	
Atlantic Express,*	12:30 a. m.	3:00 a. m.	
Philadelphia Express,†	4:10 a. m.	7:00 a. m.	
Harrisburg Express,...	7:35 a. m.	10:00 a. m.	
Columbia Accom.,...	9:28 a. m.	12:30 p. m.	
Pacific Express,*	1:20 p. m.	3:45 p. m.	
Sunday Mail,...	2:00 p. m.	5:00 p. m.	
Johnstown Express,...	3:05 p. m.	6:00 p. m.	
Day Express,*	5:18 p. m.	7:20 p. m.	
Harrisburg Accom.,...	5:50 p. m.	9:00 p. m.	

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.			
	a. m.	p. m.	
Leave Columbia,.....	10:20	6:45	
		P. m.	
Arrive at Port Deposit,.....	1:20	8:45	

  

GOING NORTH.			
	a. m.	p. m.	
Leave Port Deposit,.....	6:30	2:00	
Arrive at Columbia,.....	8:30	5:00	

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:00	2:30
Lancaster—West King Street,...	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30	8:10
Lancaster—West King Street,...	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading, .....	7:35	11:40	6:05
		P. m.	
Lancaster Junction,.....	9:21	1:20	7:45
Lancaster—Upper Depot,.....	9:46	:00	8:10
Lancaster—West King Street,...	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<small>Appointed.</small>	
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874	
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858	
Noah H. Swayne, of Ohio,	1863	
Samuel F. Miller, of Iowa,	1862	
Stephen J. Field, of California,	1863	
William Strong, of Pennsylvania,	1870	
Jos. P. Bradley, of New Jersey,	1870	
Ward Hunt, of New York,	1872	
<i>Attorney General</i> —Charles E. Deveus.		

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

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*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors* N. N. Hense], A. Konigmacher and H. S. Kerns.

**City Officers.**

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*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
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*Treasurer*—Edw. Welchans.  
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**COURT CALENDAR.--1878.**

16. Last day for filing Accounts for April Court.  
 22. Last day for setting down causes for April Court.  
 23. Calling Judgment Docket.

APRIL.

5. Last day for issuing Writs to April Term.  
 3. Argument for Rules of Affidavit of Defense.  
 5. Last day for issuing Executions to April Term.  
 20. Last day for setting down causes for trial for May 20 and 27.  
 20. Calling Judgment Docket.

MAY.

4. Argument for Rules of Affidavit of Defense.  
 10. Last day for issuing Writs to May Term.  
 18. Last day for filing Accounts for June Court.  
 25. Calling Judgment Docket.

JUNE.

7. Last day for issuing Writs to June Term.  
 8. Last day for setting down causes for Argument Court.  
 15. Argument for Rules of Affidavit of Defense.  
 23. Calling Judgment Docket.

JULY.

20. Last day for filing Accounts to August Court.  
 27. Last day for setting down causes for trial for August Court.

AUGUST.

9. Last day for issuing Writs to August Term.  
 17. Last day for filing Accounts to September Court.  
 19. Last day for issuing Executions to August Term.  
 24. Calling Judgment Docket.  
 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

6. Last day for issuing Writs to September Term.  
 7. Last day for setting down causes for Argument Court.  
 7. Last day for setting down causes for trial for October 7 and 14.  
 7. Argument for Rules of Affidavit of Defense.  
 21. Calling Judgment Docket.

OCTOBER.

5. Argument for Rules of Affidavit of Defense.  
 11. Last day for issuing Writs to October Term.  
 19. Last day for filing Accounts to November Court.  
 26. Last day for setting down causes for trial for November Court.  
 26. Calling Judgment Docket.

NOVEMBER.

8. Last day for issuing Writs to November Term.  
 9. Argument for Rules of Affidavit of Defense.  
 16. Last day for filing Accounts to December Court.  
 18. Last day for issuing Executions to November Term.  
 23. Calling Judgment Docket.

DECEMBER.

6. Last day for issuing Writs to December Term.  
 7. Last day for setting down causes for Argument Court.  
 7. Argument for Rules of Affidavit of Defense.  
 21. Last day for filing Accounts to January Court, 1879.  
 21. Calling Judgment Docket.  
 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 9, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—ED.]

## HAYES' OPINIONS.

BENJAMIN LONG and JACOB KURTZ, executors of CHRISTINA LONG, deceased, against HENRY LANDIS, surviving executor of ISAAC LONG, deceased.

I. L. having in his will directed the sum of £200 to be paid or applied to such person or persons, for such uses and purposes, and in such sort or manner as his wife in her lifetime, by her last will and testament, or other instrument in writing under hand and seal, should direct and appoint; and in default, or in case of the incapacity or inability of his said wife to make any disposition thereof, the said sum of £200 to be equally divided to and amongst his four children.

C. L., the wife referred to afterwards as I. L.'s widow, made her last will and testament in writing, under hand and seal, and devised as follows: "ITEM. The rest, residue and remainder of my whole real and personal estate, not herein particularly given, devised and bequeathed, I do give and bequeath to my sister, Ann Erb, to hold to her, her heirs and assigns forever—meaning all moneys and goods left after payment of the legacies thereinbefore mentioned, and all rights and titles to land and real estate to which I am lawfully entitled, shall be for her, my said sister Ann Erb, her heirs and assigns forever, as aforesaid." Held, that this was not an execution of the power given by the testator, I. L., to C. L. to dispose of the £200.

A donee of a power to dispose by will, who has no interest in the subject matter, making no mention in his will of the gift or of the power, nor referring to the instrument by which it was created, has failed to execute the power.

This was a case stated in the following words, viz.: Isaac Long, of Manheim township, Lancaster county, the defendant's testator, by his will, dated the 29th of September, 1878, duly proved on the 8th of January, 1803, bequeathed to his wife Christina, the plaintiff's testatrix, "yearly and every year during the term of her natural life, if she remained a widow, the sum of £12 out of the rents and profits of his moiety, part or share of and in a certain plantation or tract of land, situated on Fishing Creek, in Upper Paxton township, Dauphin county," which "he ordered directed and empowered his executors, or the survivor of them, to sell, let and demise, and after payment of the said sum of £12 yearly to his wife, together with the taxes, repairs and incidental expenses, to pay and distribute the residue or remainder of the rents, issues and profits arising thereout into and between his four children."

The executors of Isaac Long, deceased, paid to his widow, during her life, and to her representatives since her death, the whole amount to which she was entitled out of these rents and profits.

In regard to this plantation or tract of land, the said Isaac Long further ordered and directed as follows, viz.: "Item. From and after the decease or marriage of my said wife, I do hereby authorize, direct and empower my executors, hereinafter named, or the survivor of them, either by public or private sale, as to them or him shall seem proper, to sell or dispose of my equal undivided moiety or half part and all my estate, right, title and interest of, in and to the said plantation or tract of land, situate on Fishing Creek, in Upper Paxton township, in the county of Dauphin, containing five hundred and fifty acres, be the same more or less, held by me and my brother Benjamin in fee, as tenants in common, with the appurtenances, hereby empowering them or the survivor of them to sign, seal, and as their act and deed to deliver any lawful or reasonable deed or deeds of conveyances whatsoever for the conveying and assuring the fee simple inheritance of the premises hereby ordered to be sold, unto and to the use and behoof of the purchaser or purchasers thereof, his, her or their heirs and assigns forever, and the moneys arising out of the sale thereof I do hereby order to be paid and distributed in manner following, to wit: the sum of £200, part thereof, to be paid, distributed, appropriated or applied to such person or persons, for such uses or purposes, and in such sort and manner as my said wife, in her lifetime, by her last will and testament, or other instrument in writing under her hand and seal, shall direct and appoint; and in default or in case of the incapacity or inability of my said wife to make any disposition thereof, the said sum of £200 shall be equally divided to and amongst my said four children: *prout* the said will here referred to and made part of this case stated.

Christina Long, the plaintiff's testatrix, who never married after the death of the said Isaac Long, by her will in writing, made under her hand and seal, dated 25th June, 1825, and proved 24th April, 1828, devised *inter alia* as follows, to wit: "Item. The rest, residue and remainder of my whole real and personal estate, not hereinbefore particularly given, devised or bequeathed, I do give, devise and bequeath unto my sister, Ann Erb, to hold to her, her heirs and assigns forever—meaning all moneys and goods left after the payment of the legacies hereinbefore mentioned, and all rights and titles to land and real estate to which I am lawfully entitled, shall be for her, my said sister Ann Erb, her heirs and assigns forever, as aforesaid:" *prout* the said will here referred to and made part of this case stated.

Henry Landis, the surviving executor of Isaac Long, deceased, after the death of the said Christina, his widow, viz.: on the 19th day of June, 1829, in pursuance of the instruction contained in the will of the said Isaac, sold the place on Fishing Creek for \$1,542.48½.

If, upon this statement of facts, the court shall be of opinion that by the will of the said Christina Long, deceased, the sum of £200, mentioned in the clause of the will of Isaac Long, deceased, inserted in this case stated, were disposed of by her as authorized by the

will of Isaac Long, deceased, then judgment to be entered in favor of the plaintiffs for the sum of £200; but if of a contrary opinion, then judgment to be rendered in favor of defendant.

Mr. Montgomery, for the plaintiff, contended that the simple question was, whether Christina Long's will executed the power created in that of Isaac Long, deceased. He would inquire: 1. What is the power given? 2. With what intent? 3. Whether in the will of Christina Long there is an execution substantially of the testator, Isaac Long's intention?

1. It is not requisite that the instrument creating the power should be recited or referred to in that by which it is executed. And the same rule obtains when the power is to be revoked. It is sufficient if the estate on which the execution is to operate be included in the general estate referred to, though it be not particularized. In a court of equity it is enough if the intent appears: Powell on Powers 111, 112, 116, 119. Hence if from the instrument the intent of the party to execute the power can be inferred, the execution will be good, though the instrument creating it be not referred to: Powell on Powers 384. Nor does an excess of the execution defeat it, the excess alone is void: 3 C. C. R. 12. With these principles let us look at the will of Isaac Long. His wife was the principal object of his bounty. The £200 were bequeathed by him as a legacy out of his estate in Dauphin county, directed by him to be sold: and these £200 are comprehended in the general bequests in the close of Christina Long's will, though without special reference to Isaac Long's will. The words "rest of my whole real and personal estate" are of the widest signification. Estate is a most comprehensive legal term, being *genus generalissimum*. It will carry everything unless restrained by particular words: 3 Yeates 187. Turbot vs. Turbot. A mortgage has been held to be a good execution of a power although there is no reference in the mortgage to the instrument creating the power: 1 Rawle 231.

2. The rule is that the general, substantial intention of the party is to be carried into effect, and the particular must sometimes yield to the general intent; 11 Johns. R. 189. What was the general intention of Isaac Long? Was it not to give his widow complete control over these £200 that she might bequeath it as she pleased? If not, why did he add the clause "in default," &c.? The purpose of the testator in giving the power must be ascertained from all the provisions of his will: 3 Cowen R. 660. And judging from his whole will of Isaac Long's object it appears to have been to give Christina, his widow, a vested right in these £200, for the purpose of securing the respect and attention of her children.

3. Then as to the declared intention of the widow—can there be a doubt of her purpose to execute by her will the power which he had given her? The clause in her will is not a general residuary bequest. It annexes a particular explanation—"meaning all moneys, goods," &c., "and all rights and titles to all

land, real estate," &c. Now was not the execution of this power in her mind, and did not the intention to execute it suggest the peculiar language of this clause. It is impossible to avoid the conclusion. Her will was one of the appointed means of executing the power vested in her by her deceased husband's directions, and here we have her will, duly executed under her hand and seal in the presence of two witnesses, containing a general disposition, which comprehends an appointment or appropriation of this fund.

*Mr. Wash. Hopkins*, for the defendant, insisted that there had been a failure of the due execution of the power in this case. It was in vain, he contended to resort to strained inferences for doubtful circumstances. The words were too plain for misconstruction, and it is a universal principle that when words and phrases are significant, clear and precise no resort can be had to circumstantial evidence to give a different construction from what they naturally import: *Powell on Powers* 13. Powers are either with interest or without, and those who have concern with them are the donor, the appointor and the appointee: 4 *Kent's Comm.* 310. The intent to execute the power must be so clear that no other reasonable intent can be inferred, which is so far from being the case here that it is beyond the strength of ingenuity, by the use of any plausible inference, to render the intention of Christina Long to execute the power in question even probable. The rule is laid down in *Powell* to be that although a man may execute a power of appointment or revocation, without citing the power or referring to it, yet the instrument executing the power must refer to the instrument by which it is created: *Powell on Powers* 118. This rule must be decisive if the present case for the power is not recited in Christina Long's will, nor is Isaac Long's will therein referred to. With respect to the right execution of powers the case of *Molton vs. Hutchinson* was cited from 2 *Eq. C. Abr.* 659; s. case in 1 *Atk.* 559; 4 *Kent's Comm.* 322, 328. Now the clause of Christina Long's will, so much insisted on, is far from sustaining the argument deduced from it. What is it she gives? "My estate," and how? "I devise and bequeath," and not I direct and appoint. In fine, it conveys no intimation of her purpose to appoint or appropriate the £200 mentioned in Isaac Long's will; but a simple and ordinary bequest of her own property: 4 *Kent's Comm.* 329, note c.

*Mr. Ellmaker* for the defendant: Is this clause in Christina Long's will an execution of a power? There are two rules: 1. In the execution of a power it is necessary to refer to or recite the power, if the act be of such a nature that it can have no operation without the execution of the power: *Powell on Powers* 111; 4 *Kent's Comm.* 322. If Christina Long had no property on earth, there might then be some plausibility of argument on the other side. But she had property independently of these £200, which was the appropriate subject of the bequest contained in the clause quoted from her will. 2. The second rule is, the power need not be recited, but the instrument reciting it must refer to the estate or

property subjected to the power in terms sufficient to include it. But the will of Isaac Long is not referred to in the bequest of Christina Long—the estate is not described—and the residuary clause does not, either in terms or by reasonable construction, embrace it, and may have full and complete operation without it. As to the intent, is it not plain that neither the scrivener nor Mrs. Long thought of Isaac Long's will? The power to sell is distinct from that clause in regard to the renting of the estate and the payment to her of £12 a year. And the power to appoint is here a mere naked collateral power, not coupled with a particle of interest.

*Mr. Montgomery* in reply: A power coupled with an interest is the enjoyment of a present estate with the power to dispose of it in future. A power to an executor to sell is a naked power, he being a mere trustee; but a power to sell and dispose of the proceeds is a power coupled with an interest. In the case from 11 *Johns. R.* 189, where the widow was empowered to appoint to one of the children who should treat her best—this was held to be a power coupled with an interest. So here, Christina Long's power to appoint and direct the use to which the £200 should pass is a power coupled with an interest. There was, therefore, a right in these £200—a right of disposition; and the question being, as I admit, whether there be not such an intent upon the face of Christina Long's will to execute the power, I apprehend the court will feel themselves bound to declare that this power is executed; for the intent is necessarily inferrible, especially as without it the residuary clause of her will must fail. Only one hundred and eighty-three dollars remain after the specific legacies which are to be satisfied out of the money to be paid in by the husband of her sister, Ann Erb; and thus, according to the construction on the other side, this her favorite sister gets nothing.

*BRADFORD, P. J.* I have examined attentively, the provisions of the will of Christina Long. Without calling in aid any authorities or precedents, I have arrived at a conclusion, which, to my mind is clear and satisfactory. I prefer, in all cases where it is practicable, forming an opinion from the very words of a will, for if the letter presents no ambiguity, and none is created by the events which have occurred and ascertained *dehors* the instrument, the intention of the testator, which must implicitly govern, is to be collected from the terms in which it is contained. None but those acquainted with the technical doctrine of authority and power, and the distinction between naked powers and powers coupled with an interest, would have discovered any ground for debate as to the true construction of Christina Long's will. A power may be executed without taking any notice of its existence, yet something should appear on the will, containing the alleged appointment, to show that the testator took notice of the thing he had the power to dispose of. What is not to be found on the face of the will is quite as plain as what is written and intended by the testatrix, and if she has made no mention of the £200, which she

had authority to dispose of under her husband's will, if no intention to meddle with it in any way can be collected from the whole or any part of the testament, her residuary legatee cannot entitle herself to it. The terms of Christina Long's will, which are alleged to be an appointment under the power contained in Isaac Long's will, are as follows: "The rest residue and remainder of my whole real and personal estate, not hereinbefore given, devised and bequeathed, I give and devise to my sister, Ann Erb, to hold to her, her heirs and assigns forever—meaning all moneys and goods left after the payment of legacies, and all rights and titles to land and real estate to which I am lawfully entitled to, shall be for her, my said sister Ann Erb, her heirs and assigns forever, as aforesaid."

On the first part of the clause of the will, I remark that the £200 was not the real or personal estate of Christina, the deviser. She had no property in it whatever; it had not been devised to her even in trust. Isaac Long devised it to such person or persons, and such uses and purposes, and in such sort and manner as she (Christina) should appoint, and if she omitted to appoint and died, all pretence of a devisable interest in Christina, as her own property, was unavailing. On her default to appoint Isaac Long's will disposed of the money. The gratification derived from wielding this power to appoint was not an interest of the nature of property or estate, and the silence of Christina's will regarding it shows she had no pleasure and felt no interest in exercising this power. If she had appointed, the appointee would have derived his right to the money under the power and from the bounty of Isaac Long. He was the giver. The person who had the power of naming the recipient of the gift had not a spark of definable interest in it, either as "real or personal estate."

Neither do I think that the latter clause of this part of Christina's will induces a construction more favorable to Ann Erb. It is thus meaning all moneys and goods left after the payment of the legacies hereinafter mentioned. The sources from which her legacies were to be paid, could only be that property of her own, which she had acquired a right to enjoy and dispose of. It was on that remnant of her effects remaining after the particular pecuniary legacies had been deducted, she intended the bequest to her sister, Ann Erb, should operate. What was left of such moneys and goods after the payment of such legacies she gives to Ann Erb. The preceding and succeeding parts of the will speaks of moneys and goods, the remainder of which the testator must have contemplated with other things as a fund from which her bequests could be supplied and satisfied. In the preceding sections of the will are devises to her niece of \$100; to her brother Sheffer's children of \$1,000; to two of her step-brothers, \$500 each, and in a subsequent clause speaks of a plantation she had conveyed to Peter Erb, and of \$2,000 due from him. But she does not allude to, or pretend to claim these £200 as hers, or disposable by her as her moneys and goods, which leads to a deci-

sive inference that this fund is not to be considered "what was left," and given or intended to be given to Ann Erb.

In examining the cases produced by the learned counsel, I do not find one case or principle which can be applied to that under consideration, which impugns this construction of the will of Christina Long. To my understanding it seems clear that the testatrix had only a naked power to appoint, and that she omitted to exercise it. There appearing to have been no interest in this £200, vested in Christina Long, it was not devised to her by her will as part of her estate, real or personal, or as her goods or moneys. No mention being made of her power to appoint, and no allusion thereto, and no appointment appearing on the face of her will, the money is to be considered as disposed of by the will of Isaac Long.

This being our opinion, agreeably to the provisions of the case stated, judgment is for the defendant.

Common Pleas of Lancaster County.

HENRY LORAH AND WIFE'S ASSIGNED ESTATE.

(Trust Book, No. 7, p. 44.)

Rents accrued after the execution of a deed of assignment for the benefit of creditors, under a lease made with the assignee, cannot be allowed to go to the assignor to make up his \$300 exemption, under the act of April 9, 1849.

Where an accountant neglects in his account to credit himself with his proper commissions, the same can be corrected on distribution.

Exceptions to report of auditor.

D. G. Baker for exceptants.

A. O. Newpher contra.

Opinion delivered January 19, 1878, by PATTERSON, A. L. J.

The court cannot disturb the finding of the auditor as to the amount of rent obtained for the real estate by the assignees—there being conflicting testimony. Neither can we reverse the auditor's finding in reference to the ownership of the personal property, sold by the assignor shortly before he executed the deed of assignment. The parties contesting that point have chosen their *forum*, and there has been a decision, and the auditor's finding being, doubtless, based on the facts submitted, has all the force and efficacy of a verdict of a jury. We must, therefore, dismiss the 1st and 2d exceptions filed by counsel for Holman.

The 3d exception filed by the same counsel, reason and law will induce us to sustain. The assignor, it is true, reserved, in his deed of assignment, such amount of property, real and personal, as is exempted by the act of April 9, 1849. Under the proviso of the 3d section of that act, the three hundred dollars could not be allowed out of the proceeds of the real estate, there being an existing and unpaid lien for *purchase money* resting on it, and the auditor very properly declined to allow the claim for exemption out of such proceeds.

Yet while the whole amount of personal property, owned by the assignor, and actually assigned under his deed of assignment,

amounted to but \$39.00 the auditor awards to the insolvent, under his claim of exemption, including that sum, the sum of \$289.00. That sum he made up by appropriating the sum of \$250.00 *rent*, which the assignees obtained for the use of real estate after they had assumed the trust, and obtained possession and control of the real property. In that we think the learned auditor erred.

It is plain that by the assignment the property, real and personal, passed to the assignees for the purposes of the trust, to be administered as directed by the deed creating it.

The right to the exemption was reserved in the deed, and if in this case, there had been three hundred dollars of personal property actually assigned, it could have been justly and legally claimed by the insolvent, and it would have been proper to allow it to the claimant. The auditor allowed the two hundred and fifty dollars, not upon or out of the fund assigned and for distribution, but upon rent contracted for by the assignees and accruing after the assignment. The two hundred and fifty dollars rent was not, and could not be property or money set apart under the assignment, and passing into the fund or property assigned. It was, therefore, error to allow the assignor to take his three hundred dollars, or any part of it, out of the *rent* so obtained.

If the assignor has no property out of which to claim or have appraised to him three hundred dollars, the amount exempted from levy and execution, surely none can be so appraised to him. The legitimate proceeding can be pursued only in the legitimate way. The insolvent can, in this case, only have the thirty-nine dollars of personality awarded to him.

The said 3d exception is therefore sustained, and the amount of the personal property actually assigned and no more, to wit, the sum of \$39.00 is due to and to be paid the assignor.

The 4th exception, under the disposition and views above expressed as to the rent, we think cannot be sustained; the proportion of the costs of audit, as between the real and personal property, being about as correct as possibly can be, and under our rulings as to distribution is not applicable. The 4th exception is consequently dismissed.

As to the exceptions filed by the counsel for the accountants, we have no doubt of the authority and propriety of sustaining the 1st exception. It was entirely competent for the auditor, being the representative of the court, to do justice to all concerned. Benson's appeal, 12 Wr., does not rule this case. The cases are not homogeneous. If, by an oversight, the accountants did not take credit for their commissions on the amount of personal property appearing on the face of the record and made out of the assigned estate, we can see no legal obstacle in the way of allowing the same. Is it not only equitable, fair and just to do?

One of the principal obligations of assignees is to render a just and true account of the trust. As such they are entitled to certain

rights and at the same time liable to contain obligations. One of those rights in the absence of fraud, gross negligence or wilful departure from their duty, none of which obliquities appear here, nor are they even alleged, is the right to have the usual percentage of commissions on the personal property included in their account. That exception is sustained. The 2d exception filed by the accountants, it is apparent from what we have already said on the subject matter, must also be dismissed.

The account, according to the views and disposition made of the exceptions, will, corrected, be as follows, viz:

Balance in account, ..... \$115.04  
Add surcharge by auditor, ..... 300.00  
\$415.04

Deduct amount of personal property assigned and due the assignor, under his reserved right of exemption, ..... \$39.00  
Deduct 5 per cent. commissions on amount of rent, and due the accountants, viz: on \$250, .... 12.50  
Deduct costs of audit, ..... 97.04  
\$148.54

Bal. real est. fund and personal fund, \$266.50  
And which is awarded towards the payment of Jno. A. Holman's judgment, there having been no other claims except the first mortgage presented to the auditor.

With the corrections herein set forth the auditor's report is now confirmed.

Common Pleas of Chester County.

GRAHAM vs. THE McLEAN & BENNOR MACHINE CO.

1. The costs of recovering a judgment not reached in distribution are not entitled to be paid out of the fund in court.
2. Nor are the costs of executing such a judgment.
3. The sheriff is not entitled to charge for the services of a watchman employed to take charge of loose tools under levy, nor for coal used in heating the building occupied by them.
4. A claim for "labor performed or furnished" is not sufficiently described to sustain a mechanic's lien.
5. *Dubitatur*, whether a mechanic's claim, in which the date when the work was performed is not given, but it is stated in the body of the claim to have been performed "within six months last past," is sufficient: *Lehrman vs. Thomas*, 5 W. & S. 262, doubted.
6. Services rendered subsequent to levy are not entitled to a preference under the (Wages) act of 9th of April, 1873.
7. The written notice required by this statute must be as full and particular as the claim, exhibiting every fact necessary to sustain a lien.
8. This written notice can not be helped out by verbal additions.

This was the distribution of a fund, the proceeds of the sale of personalty and real estate, paid by the sheriff into court. R. Jones Monaghan, esq., was appointed auditor to make distribution, and in the course of a lengthy report considered the following questions: The defendant was a corporation organized for the manufacture of sewing machines, had purchased the building and lot comprising the real estate sold by the sheriff, and was engaged in fitting it up with machinery and appliances when levy was made.



They were carrying on their business at this time in Philadelphia, but did no manufacturing in Chester county, except finishing a few parts of machines brought there in the rough. The personalty comprised a large lot of tools, many of them very small and alleged to be of great value. They were under levy from September 12, 1876, till January 24, 1877, when the sale occurred. At the time of sale, there were in the sheriff's hands five executions under which he advertised and sold. But three of them were reached in the distribution. Before the auditor, the sheriff claimed the costs, both of original process and execution, on all these writs; the auditor refused costs of any kind to judgments not reached in the distribution, relying on *Knickerbocker vs. Shipherd*, 3 Con. 383, and distinguishing *Shelly's appeal*, 2 Wr. 210, and *Fry's appeal*, 26 P. F. S. 82.

The sheriff also claimed \$30 for services of a watchman, who was employed night and day, from the time of levy to day of sale, to guard the tools levied. The goods were in an unoccupied building seven miles from the sheriff's office, were represented to the sheriff as very valuable, and liable to be stolen, and he was requested by direction of the defendant to put a watchman in charge. The sheriff also claimed \$18 for coal used in warming the office of the building, in which the watchman stayed. A controversy arose among the several execution creditors as to what of the articles levied were personalty and what realty, and several sales were advertised and adjourned between the time of levy and day of sale. The auditor found that the services of a watchman were necessary, and that the charge here made was reasonable, but that the sheriff was not entitled to demand its payment, citing *Bussier vs. Pray*, 7 S. & R. 449; *Borie vs. Leeds*, 28 Legal Intelligencer, 340 (October 27th, 1871); *S. C. 8 Phila. 357*, and cases there cited; *Miles vs. Huber*, 1 Penna. L. J. Rep. 154; *Fitch's appeal*, 10 Barr, 461, and act of 28th of March, 1814, sec. 26; *Purd. Dig. 690*, pl. 70. These claims were accordingly refused.

Adam Weber also presented a mechanic's lien "for labor performed and furnished," which was defective in that it did not, either in the body of the claim or in the bill annexed, state any date whereby to verify the general statement in the body of the claim that the labor was performed "within six months prior to filing this claim." The claim was not under a contract, but for twenty weeks' work, at \$20 per week. The auditor, relying on *Lehrman vs. Thomas*, 5 W. & S. 262, and *The Church vs. Traut et al.* 4 Cas. 155, refused the claim.

There was also presented several claims for a preference for wages under the act of 9th of April, 1872. One for services held to be within the act, was refused because the services were rendered after the levy, following *PERSHING, P. J.*, in *Kindig vs. Atkinson*, 34 Legal Intelligencer, 197, June 1, 1877.

Luther L. Cheyney's claim was for wages as a machinist, and his services were held by the auditor to fall within the contemplation

of the act of assembly. His notice, sent by mail to the sheriff, was in the following terms

PHILADELPHIA, October 1, 1876.  
McLean & Bennor Machine Co. to L. L. Cheyney.  
Dr. To wages from May 1st to Aug. 31st  
at \$5 per day.....\$552  
Credit..... 265  
Balance.....\$287

Mr. MM. MORRISON, Sheriff,  
Dear Sir:—I notify you that the above bill is due me from the company.  
Very respectfully,  
L. L. CHEYNEY.

Subsequently Mr. Cheyney met the sheriff, who acknowledged the receipt of the notice, told him it was all right, and that he considered it a preferred claim.

The auditor held the notice insufficient and refused the claim, saying *inter alia*: What then are the essentials of the act of 1872, which must appear in the written notice to the sheriff? It must show, we think, at least: 1. The amount claimed to be due as a preference. 2. That the character of the services for which claim is made falls within the statute; that is, that they were rendered by one of the class of employees named in the act of assembly, and that they were rendered in or about a business, subject of the statute, carried on by the defendant. 3. That the services were rendered within six months preceding the sheriff's sale. 4. That the wages due are claimed to be a lien on the property levied; and 5. Reference must be made to the process in the sheriff's hands under which the property is seized by him.

Tried by these tests, the notice here given wholly fails. The character of services is not stated, nor is it claimed in the notice that they were rendered in or about the business of the defendant subject to the statute. Nor is claim made of lien or preference, nor is there any reference to process in the sheriff's hands. It is urged, however, that the sheriff has helped out the written notice. The sheriff was not the only party needing notice, is indeed the one least interested in it. And the statute expressly requires the notice of claim to be in writing. It cannot be said to be in writing if but a part of it is written. The statute certainly contemplated no such thing as written notice being helped out by oral testimony.

Exceptions were filed to the auditor's report, on argument of which, besides cases cited by the auditor, there were cited by counsel on the question of mechanics' lien raised, *Shaw vs. Barnes*, 5 Barr, 19; *Hahn's appeal*, 3 Wr. 410; *McCay's appeal*, 1 Wr. 129; *Driesboch vs. Keller*, 2 Barr, 79; *Hilary vs. Pollock*, 1 Har. 186; *McClintock vs. Rush*, 13 P. F. S. 205; *Summerville vs. Wann*, 1 Wr. 183.

Opinion by BUTLER, P. J. January 26th, 1878.

The exceptions filed by Luther L. Cheyney must be dismissed. Notice to the sheriff under the act of April, 1872, relating to laborers and others, is intended to serve the same purpose as filing a claim with the pro-

thonotary; that is, to inform parties interested of the lien. The notice must therefore be as full and particular as the claim, exhibiting every fact necessary to sustain a lien. It is sufficient, of course, that it be certain to a "common intent;" but certain to this degree it must be, presenting a *prima facie* case. As before stated, the object is to inform others of the existence of the lien, that they may know how to protect themselves. It is not sufficient to put them on *inquiry*, as was argued. Such inquiry would be troublesome, and uncertain in its results. Claiming a preference, the laborer must comply with the conditions on which it is allowed. The notice can not be helped out by verbal additions. The statute requires that it be in writing, that uncertainty may be avoided. Mr. Cheyney's notice was clearly insufficient: *McMillin vs. Bank*, 1 Weekly Notes, 55; *Kendig vs. Atkinson*, Legal Intelligencer, vol. 34, page 196.

The only objection made to the mechanic's lien of Adam Weber before the auditor, was that the claim filed does not specify the date at which the work was performed. If the case rested on this objection it is not certain that we would agree with the auditor in rejecting the lien. His position finds support in *Lehrman vs. Thomas* 5 W. & S. 562, where the question was invoked, and in the observations of judges in other cases where it was not. But it is by no means clear that the more recent cases can be reconciled with this view. In several, it is held sufficient to specify dates between which the work was done. If this rule is applicable to all cases, (and it may seem difficult to find reason for distinction, while the requisites of every claim are prescribed by the same section of the statute, and in the same language), it would follow that the averment here is sufficient. But it must be conceded that the question is involved in much confusion. Probably no subject has been more fruitful of conflicting authority than the statutes conferring mechanic's liens; and no question arising under them has resulted in greater uncertainty than that on which the auditor has passed. We are relieved from deciding it here. Before us another question has been raised, about which there is less room for doubt. The claim states that it is "for labor performed or furnished" without further description. The statute requires the "nature or kind of work" to be set forth. The term labor is not sufficiently descriptive; indeed is not descriptive at all. Work and labor are synonymous terms. Webster defines labor to be "physical toil, or bodily exertion, hard muscular effort, directed to some useful end, as agricultural, manufacturers and the like; intellectual exertion, mental effort, *work, toil, &c.*," and work to be "the exertion, effort of ones self for a purpose to put forth effort to *labor, &c.*" While the term labor may to some extent be regarded as descriptive of servile toil, it has no such confined meaning. Its signification is as broad as that of work. It will not serve therefore to describe the nature or kind of work, as required by the statute, for which a lien is claimed. The object of description is, as the courts say, to individuate the work, that the owner may know what it is he charged for. And it must be sufficiently particular to serve this purpose.

Respecting the other matters excepted to, we agree with the auditor in the results reached.

All exceptions must be dismissed.—*Legal Intelligencer.*

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 9, 1878.

## WEEKLY SUMMARY.

### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since March 2, 1878:

CATHARINE GRUBB, dec'd, late of Warwick twp.; Jonathan Royer, administrator.

ISAAC SANDOE, dec'd, late of Earl twp.; George D. Sandoe, administrator.

JOHN GERRETT, sr., dec'd, late of East Hempfield twp.; Jacob L. Brubaker, administrator.

CATHARINE KEMPER, dec'd, late of Earl twp.; Franklin Kemper, administrator.

ANN ELIZA BACHMAN, dec'd, late of Bart twp.; William Pheneger, administrator.

JAMES A. HUBLEY, dec'd, late of Lancaster city; Sarah Hubley, administratrix.

The following Wills have been admitted to probate since March 2, 1878:

BARBARA METZGER, late of Strasburg bor.; H. G. Book, esq., executor.

JOHN WELLER, late of Cœrnarvon twp.; E. D. White, executor.

ELIZABETH HARTMAN, late of Lancaster city; Geo. H. Hartman and John I. Hartman, executors.

ANNA MARIA STRINE, late of Columbia bor.; Jacob S. Strine, John A. Strine and Emma Wein, executors.

JAMES NOLEN, late of Columbia bor.; John P. Frank, esq., executor.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since March 2, 1878:

EDWARD T. REED and WIFE, of Little Britain twp.; Howard Coates, assignee.

WILLIAM GOOD and WIFE, of Conestoga twp.; George Shoff, assignee.

PETER DETLING, of East Hempfield twp.; Emanuel E. Miller, assignee.

### ORPHANS' COURT OFFICE.

Appraisements of \$300 allowed by law to widows of decedents, have been filed in the office of the clerk of the Orphans' Court for approval nisi at the City of Lancaster on the third Monday in March, A. D. 1878.

For Susan Alexander, widow of John Alexander, late of Martic twp.

For Jane Enterline, widow of George Enterline, late of Mount Joy twp.

For Susan Myers, widow of Jacob Myers, late of Eden twp.

For Mary Ann Wissler, widow of Jacob H. Wissler, late of Manor twp.

For Anna March, widow of John March, late of Cœrnarvon twp.

For Florence R. B. Breneman, widow of A. R. Breneman, late of Columbia bor.

For Maranda Gockley, widow of Benjamin R. Gockley, late of West Cocalico twp.

For Kate Baxtressor, widow of John C. Baxtressor, late of Elizabethtown bor.

For Rebecca Eshleman, widow of John C. Eshleman, late of Brecknock twp.

For Elizabeth Dennison, widow of Levi Dennison, late of Conoy twp.

For Hester Cooper, widow of Joseph Cooper, late of East Lampeter twp.

For Ann Maria Powers, widow of A. J. Bowers, late of Earl twp.

For Barbara Rosenfelt, widow of Henry Rosenfelt, late of Lancaster city.

For widow of Abraham Snively, late of Drumore twp.

**New Music.**—We have received a beautiful song and chorus entitled "Silver Grey," composed by S. Turney. It is said to be one of the prettiest songs now published. Any music dealer will mail it to your address on receipt of price, 30 cents. Published by W. L. THOMPSON & Co., East Liverpool, O.

## DIPHTHERIA!

Johnson's Anodyne Liniment will positively prevent this terrible disease, and will positively cure nine cases in ten. Information that will save many lives sent free by mail. Don't delay a moment. Prevention is better than cure. I. S. JOHNSON & CO., Bangor, Maine. [mar9-4t]

### CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., for a charter to incorporate the "Grütill Association of Lancaster, Pa." The object of which will be mutual aid in time of need, sickness or death of the members and the advancement of themselves in singing and literary accomplishments. SIMON P. EBY, Att'y for Applicants. feb23

## ENVELOPES AND LETTER HEADINGS

Neatly printed at the

LANCASTER BAR PRINTING OFFICE

No. 13 NORTH DUKE STREET,

LANCASTER, PENNA.

## Auditors' Notices.

The undersigned, appointed by the Orphans' Court of Lancaster county Auditor, to pass upon the exceptions filed to the account of Robert Maxwell, guardian of Rachel J. Wilson, minor grandchild of John D. Wilson, late of Salisbury township, deceased, will attend for that purpose on WEDNESDAY, the 3d day of APRIL, 1878, at the Library Room of the Court House, at Lancaster, at 2 o'clock, p. m., when and where all persons interested may attend. EMLÉN FRANKLIN, Auditor. mar9

Estate of HENRY BURKHOLDER, late of West Lampeter twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Burkholder and J. J. Byers, executors of the will of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, APRIL 4th, 1878, at 2 o'clock, p. m., in one of the Jury Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. I. CARPENTER, Auditor. mar2

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. JNO. M. MAST, Auditor. feb23

### NOTICE.

In the Court of Common Pleas of Lancaster County. CHRISTIAN ZOOK, } Proceeding in Domestic Attachment. vs. JACOB TROYER. } April Term, 1876. No. 8.

The undersigned trustees, appointed by said court in the above case, will meet at the office of Jacob Kemper, in the village of Akron, Ephrata township, Lancaster county, on TUESDAY, the 9th day of April, 1878, at 1 o'clock, p. m., for the purpose of receiving the proofs of the several creditors of the said defendant of their respective claims or demands against the same, when and where all persons interested in the estate of said defendant may attend if they think proper. JACOB KEMPER, JOSEPH HESS, A. G. KILLIAN, Trustees.

mar9

### NOTICE.

Assigned Estate of JOHN STANTON and WIFE, } In the Court of Common Pleas of Lancaster County.

February 20th, A. D., 1878, the petition of the assignees of John Stanton and Wife, presented, and on motion of Walter M. Franklin, esq., counsel for the assignees, the Court grant a rule to show cause why the property assigned to them should not be reconveyed to said assignor, and the assignees and their sureties be discharged, returnable to said court the third MONDAY in MARCH next, when and where persons interested may attend. LEWIS S. HARTMAN, Prothonotary.

feb23

## Estate Notices.

Estate of HENRY S. MYLIN, late of West Lampeter twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township. JOHN B. MYLIN, Administrator. Willow Street P. O.

mar9\*

Estate of ELIZABETH HARTMAN, late of Lancaster City, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. GEO. H. HARTMAN, J. I. HARTMAN, Executors. PHILIP D. BAKER, Att'y. mar9

Estate of ANNA MARIA MYERS, late of Lancaster City, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city. A. F. KAUL, Executor. D. P. ROSEN MILLER, JR., Att'y. mar9

Estate of ANN ELIZA BACHMAN, late of Bart twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart, Lancaster Co., Pa. WILLIAM PHENEGER, Administrator. M. BROSIUS, Att'y. mar9

Assigned Estate of J. B. SWARTZWELDER and WIFE, of Lancaster City.

J. B. Swartzwelder and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said J. B. Swartzwelder, they therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to GEO. SPURRIER, E. C. DIEHL, Assignees, Residing in Lancaster, Pa. SAM'L H. REYNOLDS, Att'y. mar9

**Assigned Estate of ROBERT M. MORROW and WIFE, of Lancaster City.**

Robert M. Morrow and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Robert M. Morrow, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. SPURRIER,  
E. C. DIEHL,

S. H. REYNOLDS, Att'y. Assignees,  
mar9 Residing in Lancaster, Pa.

**Assigned Estate of SWARTZWELDER & MORROW, of Lancaster City.**

Swartzwelder & Morrow, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Swartzwelder & Morrow, they therefore give notice to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to

GEO. SPURRIER,  
E. C. DIEHL,

S. H. REYNOLDS, Att'y. Assignee,  
mar9 Residing in Lancaster, Pa.

**Estate of CATHARINE GRUBE, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

mar2 JONATHAN ROYER,  
B. F. ESHLEMAN, Att'y. Administrator.

**Estate of JOHN GABLE, late of Colerain twp., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to the undersigned without delay, residing in Lower Oxford township, Chester Co., Pa.

HUGH R. FULTON, Att'y. Executor,  
mar2 Oxford P. O., Chester Co., Pa.

**Assigned Estate of CONRAD SPATZ and WIFE, of Brecknock twp., Lancaster Co.**

Having by deed of voluntary assignment, dated February 21, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Spatz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

mar2 W. W. FETTER, Assignee,  
M. BROSIUS, Att'y. Residing in Adamstown.

**Estate of ELIZA DUBKEE, late of Sadsbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

feb23 JAMES D. REED,  
GEO. M. KLINE, Att'y. Executor.

**Estate of AARON CREAMER, late of Lancaster township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rawlinsville, Martic township, Lancaster county.

feb28 DAVID CREAMER,  
S. H. PRICE, Att'y. Administrator.

**Assigned Estate of HORATIO S. KERNS and WIFE, of Sadsbury twp., Lancaster Co.**

Horatio S. Kerns and Wife, of Sadsbury township, having by deed of voluntary assignment, dated February 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Horatio S. Kerns, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

feb23 SAMUEL SLOKOM, Assignee,  
Residing in Christiana.

**Assigned Estate of JESSE MESSNER and WIFE, of Brecknock twp., Lancaster Co.**

Jesse Messner and Wife, of Brecknock township, having by deed of voluntary assignment, dated February 11, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse Messner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

feb16 ABRAHAM LUTZ, Assignee,  
Residing in Adamstown.

**Estate of PETER MOYER, late of Mount Joy twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

feb9 GEO. BRUBAKER, Att'y. JACOB RISSER, Executor.

**Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.**

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

feb9 P. D. BAKER, Att'y. Assignee,  
Residing at Goshen, Fulton twp.

**Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.**

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,

H. C. BRUBAKER, JACOB WEINHOLD,  
WM. D. WEAVER, East Earl twp.,  
Att'ys. CHRISTIAN ESHLEMAN,  
Brecknock twp.,

feb9 Administrators d. b. n.

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.

feb2 C. M. GOOD,  
J. HAY BROWN, Att'y. Administrator.

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

jan26 EZRA BURKHOLDER, Assignee,  
Residing in West Earl township.

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litiz.

jan12\* JACOB A. BUCH,  
D. G. ESHLEMAN, Att'y. Executor.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.

jan12 HARVEY S. BOWERS,  
PHILIP D. BAKER, Att'y. Administrator.

**Estate of JACOB MYERS, late of Eden twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Eden township, Camargo P. O.

jan12\* CHRISTIAN MYERS,  
Administrator.

**Estate of PETER ALBRIGHT, late of East Donegal twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Maytown.

jan5 SIMON F. ALBRIGHT,  
S. H. REYNOLDS, Att'y. Executor.

**Estate of BENJ. D. DANNER, late of Manheim borough, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

jan5\* HENRY S. DANNER,  
P. D. BAKER, Att'y. Executor.

**Estate of CATHARINE BRANDT, late of Rapho township, Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

dec29 ELIZABETH RUHL,  
J. HAY BROWN, Att'y. Administratrix.

**Assigned estate of JOSEPH H. BRANDT and WIFE, of West Donegal twp., Lanc. co.**

Joseph H. Brandt and Wife, of West Donegal twp., having by deed of voluntary assignment, dated December 28th, 1877, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jos. H. Brandt, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN H. ZELLER,  
J. HAY BROWN, Attorney. Assignee,  
dec29 Residing in Mount Joy borough.

**Estate of GEORGE RINEER, late of Paradise township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Paradise township.

dec22\* CATHERINE RINEER,  
B. F. ESHLEMAN, Att'y. Executrix.

**Estate of JACOB HOLSINGER, late of Hinkle-town, Earl township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing at Farmersville.

dec22 E. BURKHOLDER,  
Administrator.

**Estate of JACOB GRAVER, late of Warwick township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

MARGARET GRAVER,  
Warwick township;  
ADDISON GRAVER,  
Manheim township;

dec15 HENRY B. ESHLEMAN,  
D. G. BAKER, } Att'ys. Manheim township,  
O. P. BRICKER, } Administrators.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, MARCH 16, 1878.

No. 42.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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No. 16 South Queen-st., Lancaster, Pa.

## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE	ARRIVE
	LANCASTER.	HARRISBURG.
Pacific Express,*	3:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:00 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:50 p. m.	12:45 a. m.

  

EASTWARD.	LEAVE	ARRIVE
	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	2:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.—Columbia and Port Deposit Branch.

GOING SOUTH.		
Leave Columbia,	a. m.	p. m.
.....	10:20	6:45
Arrive at Port Deposit,	p. m.	8:45
.....	1:20	8:45

  

GOING NORTH.		
Leave Port Deposit,	a. m.	p. m.
.....	6:30	2:00
Arrive at Columbia,	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	a. m.	p. m.
Quarryville,	6:50	8:00	2:30
Lancaster—West King Street,	8:00	9:30	3:35
Lancaster—Upper Depot,	8:10	9:40	3:45

  

LEAVE.	GOING SOUTH.		
	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:46	4:30	8:10
Lancaster—West King Street,	9:55	4:40	8:20
Quarryville, (arrive)	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	GOING NORTH.		
	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00	12:55	3:35
Lancaster—Upper Depot,	8:15	1:35	3:45
Lancaster Junction,	8:35	1:35	4:11
Reading, (arrive)	10:10	3:20	5:50

  

LEAVE.	GOING SOUTH.		
	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:21	1:20	7:45
Lancaster—Upper Depot,	9:46	:00	8:10
Lancaster—West King Street,	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1873
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayer*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**COURT CALENDAR--1878.**

- 16. Last day for filing Accounts for April Court.
- 23. Last day for setting down causes for April Court.
- 23. Calling Judgment Docket.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 6. Argument for Rules of Affidavit of Defense.
- 15. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 23. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

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[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—ED.]

## HAYES' OPINIONS.

GEORGE KELLER, administrator of his wife MARY, deceased, formerly Mary Long, daughter of Isaac Long, deceased, *against* HENRY LANDIS, surviving executor of ISAAC LONG, deceased.

A testator having bequeathed the residue of certain rents, issues and profits to be distributed among his four children, and directed the land out of which the rents issued to be sold after the death of his wife, and the proceeds in case she did not otherwise appoint, to be distributed in like manner. One of those children, a daughter, was married and died before the testator's widow, who afterwards died without making any appointment; *held* that the bequest as to this daughter was a vested legacy and that her husband, administering upon her estate, was entitled to receive such legacy.

The direction of the testator to sell the land and distribute the proceeds was a pecuniary legacy to those among whom they were to be distributed.

This was a case stated in the following words: Isaac Long, of Manheim township, Lancaster county, had three children with his first wife, viz: Isaac, Ann and Susanna, and afterwards married Christina, the widow of Michael Gerber, deceased, with whom he had one child, viz: Mary, the wife of George Keller, the plaintiff. Isaac Long, sr., made his last will and testament, dated September 29th, 1798, which was proved January 8th, 1803, *prout* the same; wherein he appointed Henry Landis, the defendant, and Daniel Rudy executors thereof. Daniel Rudy died in 1823. The widow of Isaac Long, sr., the said Christina, made her last will and testament, dated June 25th, 1825, which was proved April 22d, 1828, *prout* the same. Henry Landis, the surviving executor of Isaac Long, filed his administration account on the estate of the said Isaac Long, which was approved by the said orphans' court September 26th, 1829, exhibiting a balance in his hands of \$1,798.11½, of which \$1,542.48½ are the proceeds of the undivided half of a plantation on Fishing Creek, in Dauphin county, which was sold by said Henry Landis in pursuance of the will of Isaac Long, on the 10th of January, 1829; *prout* the said administration account. George Keller, the plaintiff, was married to the said Mary, daughter of Isaac Long, with whom he had a child born in October or November, 1820; but whether said child was born alive or dead is unknown; if born alive it died soon after its birth. The said Mary afterwards died, before the death of her mother, the said Christina; and her husband, the said George Keller, administered on her estate; *prout* the said letters of administration. Isaac Long, jr., the son of Isaac Long, sr., died very shortly

after the death of his father, and before that of his mother, intestate, unmarried, and without issue.

1. Geo. Keller, the plaintiff, claims the third part of the nett proceeds of the testator's (Isaac Long, sr.) said land in Dauphin county, sold as aforesaid, which, after deducting its proportion of the expense, was \$1,404.33, the third part of which is \$468.11.

2. He also claims the one-fifth part of the balance and remainder of the estate in the hands of the surviving executor, the defendant, exclusive of said proceeds of said land in Dauphin county; and also the one-third of the one-fifth of said balance; said balance after deducting its proportion of expenses was \$393.78; the one-fifth of which is \$78.75, which, added to the one-third of one-fifth of said balance, viz: to \$26.25, makes \$105, the claim of plaintiff.

3. If the case stated of the executors of Christina Long vs. The Surviving Executor of Isaac Long, sr., be decided in favor of the plaintiff in that case stated, then the claim of the plaintiff in this case stated, out of the proceeds of the sale of the land in Dauphin county, will be as follows, viz.: deducting \$200 for plaintiff in the first mentioned case stated from said proceeds of sale, the claim of the plaintiff in this case stated is the one-third of the balance of said proceeds; that is deducting \$533.33 (£200) from \$1,404.33 and leaving a balance of \$871. The claim of plaintiff in this case stated out of said proceeds is \$290.33.

It is agreed that if the plaintiff be entitled recover at all the above are the sums to which he is entitled.

*Mr. Washington Hopkins* for the plaintiff: The first position I take is that from the death of Isaac Long, the testator, the land directed to be sold is to be considered and treated personal property. *Yarrell vs. Hubley's administrators, M. S.*, decided by Judge FRANKLIN, 6th June 1825, and affirmed in the Supreme Court in November following: 13 Sergt. & R. 330, Allison, executor of Henderson vs. Wilson's executor, 2 Rawle 185, Morrow vs. Breneiser. From the decease of Isaac Long this land directed to be sold and turned into money must be considered as money: 1 Dall. 8, Price vs. Watkins; 11 Sergt. & R. 224. Act of the 31st of March, 1792; 3d Smith 67.

2. Considering the proceeds of the land as personal property, the question is whether George Keller is entitled to receive it as administrator of his wife Mary. I contend that he is. By the act of the 4th of April, 1797, sect. 5, 1 Smith 390, the husband is entitled to the administration of the wife's property, and he is entitled to her personalty, even when it depends upon a contingency: Co. Litt. 351, note 1; 2 Kent's Comm. 110, 114; Reeves' Domestic Relations, 19.

*Mr. Montgomery* for the defendant: The question now presented is whether the legacy to Mary Keller or Long be a vested or contingent legacy? And the true construction of the bequest is that the legacy vested or rather would have vested only at the death of the person upon whose death it was to take effect. Where time is annexed to the legacy

and not to the payment, and the legatee dies the legacy is lapsed: 2 Salk. 415. And it is from the words of the will that we must ascertain whether the time is annexed to the legacy or the payment. This legacy is created after the death of the testator's widow and not before; then the fund is raised; then it vests, and not until then. Mary having died before her mother, the widow, after whose decease the property was to be sold, her legacy lapsed, and went to her surviving brothers: 17 Sergt. & R. 118. This differs from the case of Mr. Hubley's will, in *Yarrell vs. Hubley's administrators*, in which the legacy was given presently and was a vested legacy. 1 Atk. 502. There was no postponement of the sale of the land. So in 12 Sergt. & R. 112, *Patterson vs. Hawthorn*, the land was to be sold immediately, I hold that the court cannot construe this legacy in any other light than that of a legacy given at a future time not payable *in factus*. Who would answer the description of the person entitled to take at Christina Long's decease? Certainly not George Keller. Could he assign before the death of Mrs. Long? No. 3 Bac. Ab. 278; 4 Bac. Ab. 393, &c., 401; Dyer 59; 2 Ventr. 346, 366; 2 Ch. C.; 155 Skinn. 148; 1 Page 631. *Addams vs. Beekman*.

*Mr. Porter* on the same side: We concede that this is personal property and that the husband is entitled to the administration of the wife's personal property. And the question is, as has been stated by my colleague, is this legacy vested or contingent? We say the fund was disposed of until the death of the widow Christina, and at the time of her decease the wife of George Keller was dead. The property was devised to the executors to be sold by them after the widow's death or marriage.

*Mr. Ellmaker* in reply: There are two questions involved in this case: 1. Whether real estate devised to be sold is to be considered as money. 2. Whether the legacy in question be vested or lapsed. With respect to the first it is conceded that the land directed to be sold and converted into money is to be considered as money. If, therefore, the legacy be vested the plaintiff is entitled to judgment. It is an element of the definition of vested legacies, that if the time *must* come, the legacy is a vested legacy: Eq. C. ab. 539, in the notes. But I despise the captious, quibbling distinctions which have so often been insisted on by writers on this subject. It will be found on a consideration of the cases, that there is a broad, reasonable distinction, between the different classes of legacies, and it should have been designated by other terms. "Lapsed" legacies are conditional; nothing more or less. It is unfortunate that any other term was ever applied to them. It has led to confusion. Every lapsed legacy is a conditional legacy; the terms are synonymous: 2 Chris'. Blackstone's Comm. 513; 2 Salk. 425, *Snell vs. Dea*; 2 Bl. Comm. 513; 17 Sergt. & R. 118. But where is the condition in the present case? There is none. The case of *Price vs. Watkins*, 1 Dall. 8, decides both points for us. In that case the legacies were to be paid when the children

arrived at or attained the age of 21 years. In our case the legacy was to be paid at the death of the widow. The case of *Yarrell vs. Hubley's administrators* also sustains our position. 2 Foubl. Eq. 373, B. 4, sect. 4; 12 Sergt. & R. 112; *Patterson vs. Hathorne*. It is an undoubted principle, &c., cited by the opposite counsel, that where a legacy is so given as to make it a lapsed legacy, yet if the intermediate interest be given to the legatee it makes it a vested legacy. Isaac Long gave the rents and profits of the Fishing Creek lands (except £12) to his four children. Now apply the principle to this state of facts, will it not follow that the legacy became vested by this intermediate disposition of these profits, though without this it had been a contingent and lapsed legacy. The intention of the testator, to be collected from the various provisions of his will, is altogether favorable to our construction, which would give to this child of his old age the same beneficial bequest as was bestowed on his other children.

BRADFORD, P. J. Having decided in the prior case that judgment should be entered for the defendant on the ground that no appointment under the power contained in Isaac Long's will had been made by Christina Long of the sum of £250 mentioned in the will of the said Isaac Long, we now proceed to inquire if George Keller, the plaintiff in this case, as representative and administrator of his wife Mary, late Mary Long, who was a daughter of Isaac Long, is entitled to judgment in his favor. Isaac Long died having made his last will which was proved in 1803, leaving a widow and four children him surviving, to wit: Isaac, Ann, Susanna and Mary. Isaac died soon after his father, unmarried, intestate and without issue. Geo. Keller, the plaintiff, married the testator's daughter Mary, who died before her mother, Christina Long, Isaac Long's widow. The testator devised £12 out of the rents, issues and profits of a certain farm held as tenant in common with his brother to his wife Christina, to be paid yearly, and the residue of rents, issues and profits of the same plantation he directed to be distributed to his four children, of whom Mary, the deceased wife of the plaintiff, was one. He directed the plantation to be sold by his executors after the decease of his wife Christina. And the moneys arising out of the sale thereof he ordered to be paid to such person or persons as his wife Christina should appoint; and if his wife made no appointment (which which we have just decided was the fact) the sum of £200 should be divided equally to and among his four children, Isaac, Ann, Susanna and Mary. The widow having died, the executors of Isaac Long's will, on the 19th of January, 1829, sold a moiety of the said plantation, held with the testator's brother, for the sum of \$1,542.48, and received the money. George Keller, the husband of Mary, claims what by law he is entitled to in his wife's right and as her representative.

The material question is if Mary Long took under her father's will a vested and transmissible interest in this £200, or if this legacy lapsed by the death of Mary before her

mother's decease, at which time the moiety of the plantation was to be sold and the proceeds thereof divided. Since the case of *Henderson's executors vs. Wilson's executors*, in 13 Sergt. & R. 330, it is clear this moiety of the plantation directed to be sold is to be taken as money and passing to the devisees as such; and it would be a useless application of time to refer particularly to other cases on the subject.

A legacy is lapsed if before the condition on which it is given by the will be performed the legatee die, or if he die before it is vested in interest. Toller's Law of Executors, 305. If a legacy be devised to one generally to be paid at any particular age and the legatee die before that age, yet this is such an interest vested in the legatee that it shall go to his executors or administrators: 4 *Wilson's Bac. Ab.* 393. The criterion by which to ascertain if a legacy is vested or lapsed is whether time is annexed to the legacy or the payment of it. In illustration of this rule there are a multitude of cases, but I will mention but two or three of the most apposite. If a bequest be to A. for life, and after the death of A. to B., the bequest to B. is vested on the death of the testator, and will not lapse on the death of B. in the lifetime of A. 1 *Peere Wms.* 342; *Amb.* 167. I. C. bequeathed his personal estate to his wife for life, and gave several particular legacies after her death, and then declared that the residue at her decease should be divided between his relations, A. B. C. and D. A. and B. died in the lifetime of the wife. After her decease the administrators of A. and B. had a decree for their shares, the chancellor saying the time of payment was future, but the right of legacies vested: *Corbet vs. Palmer*, 2 Eq. Ca. Arb. Legacies, A. pl. 27, 2 *Atk. R.* 62. A man devised £100 to A. at the age of 21 years, and if A. died under age then to B. B. died in the lifetime of A., and afterwards A. died under age, yet it was decreed that the executors of B. should have this £100.

2 *Vent.* 247, quoted in *Pinbury vs. Elkins*, 1 *Peere Wms.* 564. To those may be added *Price vs. Watkins*, 1 *Dall.* 8; *Patterson vs. Hawthorne*, 12 *Sergt. & R.* 112, and other cases cited by the counsel. These authorities show conclusively that the interest of Mary under her father's will was vested at the death of Isaac Long, the brother; and notwithstanding her death before her mother, at whose decease the moiety of the plantation was to be sold, such interest was transmissive to her representatives. The distribution was deferred to the death of the wife; but that did not prevent the interest from vesting at the death of the testator: 8 *Sergt. & R.* 47.

The legacy to Mary being a vested interest at the death of the testator, was liable to be divested or defeated by the execution of the power of appointment to Christina Long. No appointment having been made, the will is to be understood as though it had never been created. This view of the case removes the difficulties in the way of the plaintiff, and he takes as representative of his wife Mary, under the will of Isaac Long, on which we have decided already. Another matter demands attention. The testator, Isaac Long, sen., gave the residue and remainder of his estate, after the bequest of legacies to his wife and four children, share and share alike, one-fifth part to his daughter Mary, her heirs, executors, administrators and assigns. This one-fifth of Mary's share is conceded by the case stated to amount to \$78.75. The plaintiff also claims one-third of one-fifth, which was Isaac's share, and agreed to amount to \$26.25, which added to the last preceding amount is \$105. Total \$573.11, for which sum, according to the provisions of the case stated, judgment is given.

## SUPREME COURT OF PENNSYLVANIA.

PENNA. R. R. CO. vs. THE BOROUGH OF IRWIN.

The occupancy of a public street or highway by a corporation, carries with it the obligation to keep it in good repair.

Error to the Court of Common Pleas of Westmoreland county.

Opinion by GORDON, J. Filed November 5th, 1877.

The Railroad Co., by making use of the former permanent road bed, not only made a bridge a necessity, but also rendered its perpetual maintenance a necessity, for by no other means could the highway be made to subservise the purpose of its creation. Such being the case, and the company having refused to rebuild, it was the duty of the borough of Irwin so to do, for upon it, as to the public, devolved the duty of keeping the roads and streets within its limits in proper order. *Newlin vs. Davis*, 27 P. F. S. 317. If, however, this rebuilding was a duty, which, by law, rested upon the company, and which it ought to have performed, then is the borough entitled to recover the cost of such rebuilding from the company. *Pottsville borough vs. Norwega township*, 2 *Har.* 543; *Penna. R. R. Co. vs. Duquesne borough*, 10 *Wr.* 223. The remaining question is, did such a duty devolve upon the company? Where the owner of the land, over which a public road runs, cuts a ditch across such road for his own purposes, he is not bound to build a bridge but to maintain it perpetually thereafter. *Woodring vs. Forks township*, 4 *Ca.* 355. But there is no reason why a corporation in a similar case should be exempt from an obligation to which a natural person would be liable; besides this, it is not reasonable that the company, having for its own purposes and profit created the necessity for the bridge in question, should throw the burden of its maintenance over upon the public; for not only did it give rise to this necessity, but it continued for its own benefit; if the company occupied the old road in the first place, it still continues the occupancy thereof. It was necessary for it to build the bridge, it is just as necessary for it to rebuild when delapidation and decay make rebuilding proper. The duty of the company, then, is obvious, unless it is released therefrom by some act of assembly. But the act of 1843, so far from relieving it of this obligation, recognizes and enforces it, for it requires the corporation, when it conceives it to be necessary to use a public road, "to cause the same to be reconstructed forthwith, at its own proper expense, on the most favorable location and in as perfect a manner as the original road." The intention here manifestly is that no additional or unwonted burthen should be cast upon the public by the company's use of the old road; but the maintenance of a bridge is such a burthen, often a very heavy one, and such as the company and not the municipality should support. This duty of bridge maintenance was recognized in the case of the *Penna. R. R. Co. vs. Duquesne borough*, above cited, as against the vendee of the State canals, though the necessity for the bridge in controversy had been created by the Commonwealth, by which it had originally been built, and against which such a duty as maintenance could not have been enforced.

Judgment affirmed.—*Pitts. Leg. Journal.*

**COMMON PLEAS ARGUMENT LIST.**  
Commencing Monday, March 18th, 1878.

<i>Frueauff.</i> 1	WM. BAKER <i>vs.</i> Davis.	Nov. Term, 1876. No. 83. Rule for a new trial.
<i>Puffer.</i> 2	D. A. ALTICK & SON <i>vs.</i> North.	Sept. Term, 1874. No. 79. Rule to show cause, &c.
<i>Same.</i> 3	WM. SWEIGART <i>vs.</i> <i>Same.</i>	Trust Book No. 7, p. 306. Rule to have viewers appointed
<i>Franklin, Ellmaker, Nauman.</i> 4	JACOB E. SHIRK <i>vs.</i> North.	Trust Book No. 7, p. 339, 341, 344. Exceptions to reports of viewers and rules to strike off exceptions.
<i>Frueauff.</i> 5	WM. EVANS <i>vs.</i> P. D. Baker.	Aug. Term, 1876. No. 158. Rule to open judgment.
<i>North.</i> 6	MARIETTA BUILDING AND LOAN ASSOCIATION. <i>vs.</i> <i>Reynolds, Davis.</i>	Equity Doc. No. 2, p. 146. Rule to have receiver appointed.
<i>North.</i> 7	E. F. AND J. HOOVER <i>vs.</i> <i>Ellmaker.</i>	Jan'y Term, 1872. No. 67, 68. Ex. Doc. Exceptions to costs.
<i>Same.</i> 8	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Aug. Term, 1877. No. 108, 117. Exceptions to costs.
<i>Same.</i> 9	MARIETTA B. AND L. ASSO- CIATION <i>vs.</i> <i>Davis.</i>	Jan'y Term, 1878. No. 68. Ex. Doc. Rule to open judgment.
<i>Same.</i> 10	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Jan'y Term, 1878. No. 69. Ex. Doc. Rule ut supra.
<i>Same.</i> 11	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Jan'y Term, 1878. No. 72. Ex. Doc. Rule ut supra.
<i>Same.</i> 12	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Jan'y Term, 1878. No. 73. Ex. Doc. Rule ut supra.
<i>Same.</i> 13	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Jan'y Term, 1878. No. 75. Ex. Doc. Rule ut supra.
<i>Same.</i> 14	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Jan'y Term, 1878. No. 112. Ex. Doc. Rule ut supra.
<i>Same.</i> 15	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Jan'y Term, 1878. No. 113. Ex. Doc. Rule ut supra.
<i>Same.</i> 16	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Jan'y Term, 1878. No. 114. Ex. Doc. Rule ut supra.
<i>Steinman, Swift.</i> 17	REBECCA S. FOLTZ, ex'or <i>vs.</i> <i>Long, Rosenmiller.</i>	Aug. Term, 1877. No. 107. Rule to show cause, &c.
<i>Steinmets.</i> 18	COMMONWEALTH <i>vs.</i> <i>Yundt, Rosenmiller.</i>	Jan'y Term, 1878. No. 76. Certiorari. Exceptions filed.
<i>Franklin, P. D. Baker.</i> 19	ADAM RANCK <i>vs.</i> <i>Ellmaker.</i>	Equity Doc. No. 2, p. 110. Exceptions to masters' report.

<i>N. &amp; L. Ellmaker.</i> 20	JOHN D. EVANS use <i>vs.</i> North.	Aug. Term, 1877. No. 68. Rules for judg't against garnishee, and rules to strike off Evans as pl'ff.
<i>Same.</i> 21	SAME PLAINTIFF <i>vs.</i> <i>Same.</i>	Aug. Term, 1877. No. 69. Rule for judg't against garnishee and rule to strike off Evans as pl'ff.
<i>Champneys, Brewster.</i> 22	JACOB EVANS, dec'd, ex'or. <i>vs.</i> <i>Baker, Kline.</i>	Nov. Term, 1869. No. 38. Rule to strike off non suit.
<i>Eberly.</i> 23	THE BOARD OF DIRECTORS OF COMMON SCHOOLS OF LANCASTER CITY <i>vs.</i> <i>Atlee.</i>	Equity Doc. No. 2, p. 134. Exceptions to masters' report.
<i>Eberly.</i> 24	REBECCA HERNLY'S use <i>vs.</i> <i>Amwake.</i>	April Term, 1877. No. 2. Case stated filed.
<i>North.</i> 25	CRESSWELL, SLACK & GEMMILL <i>vs.</i> <i>Frueauff, A. J. Kaufman.</i>	May Term, 1874. No. 56. Rule for a new trial.
<i>Reynolds, Leaman.</i> 26	C. HILLER, ex'or <i>vs.</i> <i>Ellmaker, Eshleman.</i>	April Term, 1876. No. 28. Rule for a new trial.
<i>Smith.</i> 27	FIRST NAT. BANK OF MANHEIM. <i>vs.</i> <i>Price.</i>	Nov. Term, 1877. No. 98, 99. Ex. Doc. Rule to pay money into Court, and rule to open judgment.
<i>Brown, Price, H. C. Brubaker.</i> 28	S. H. PRICE et al. <i>vs.</i> <i>Wilson, B. F. Davis.</i>	Aug. Term, 1876. No. 54. Rule for a new trial.
<i>A. J. Kaufman.</i> 29	GIDEON H. SMITH et al <i>vs.</i> <i>Frueauff.</i>	March Term, 1877. No. 3. Rule for a new trial.
<i>D. G. &amp; B. F. Eshleman.</i> 30	AMOS BUSHONG <i>vs.</i> <i>North.</i>	Equity Doc. No. 2, p. 154. Rule on bill taken pro confesso.
<i>Eby.</i> 31	HIRAM MICHAEL <i>vs.</i> <i>Eby.</i>	Feb'y Term, 1878. No. 32. Rule to strike off appeal.
<i>Steinmets, Reynolds.</i> 32	REV. W. J. CUTTER et al <i>vs.</i> <i>Eshleman, Eby.</i>	Equity Doc. No. 2, p. 103. Exceptions to masters' report.
<i>W. A. Wilson.</i> 33	WM. FLESH <i>vs.</i> <i>Rosenmiller, Eby.</i>	Dec. Term, 1877. No. 49. Rule to show cause, &c.
<i>Wilson.</i> 34	G. B. SHOBERG, dec'd, ex'ors. <i>vs.</i> <i>Amwake, Eberly.</i>	May Term, 1876. No. 57. Rule for a new trial.
<i>Amwake.</i> 35	BRENNER & WARFEL <i>vs.</i> <i>Davis.</i>	April Term, 1876. No. 52. Rule for a new trial.
<i>Baker.</i> 36	HENRY LORAH'S Assigned Estate. <i>vs.</i> <i>Davis.</i>	Trust Book No. 7, p. 44. Rule to show cause, &c.
<i>Reynolds, P. D. Baker.</i> 37	JOHN M. AMWEG <i>vs.</i> <i>Franklin, Price.</i>	June Term, 1876. No. 124. Exceptions to narr and rule to show cause, &c.



<i>Sams.</i> 38	SAME PLAINTIFF <i>vs.</i>	} June Term, 1876. No. 124.
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<i>P. D. Baker.</i> 43	CATHARINE HERR'S use <i>vs.</i>	} Aug. Term, 1877. No. 4.
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<i>McMullen.</i> 44	JOHN S. GIVEN <i>vs.</i>	} Jan'y Term, 1878. No. 13.
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<i>Reynolds, W. S.</i> <i>Amweg.</i> 45	COMM. ex rel. LORENZO NOLDE et al <i>vs.</i>	} Trust Book No. 7, p. —
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*Estate of John Rhoads, dec'd.* Rule to show cause why attachment should not issue against Michael R. Shenk, guardian of Rebecca A. Rhoads, for payment over to his successor of moneys due said minor. C. Denues for rule. A. O. Newpher contra.

*Estate of Barbara Greiner, dec'd.* Exceptions to report of auditor. D. G. Baker for exceptants. H. M. North contra.

*Estate of Henry Young, dec'd.* Exceptions to report of auditor. J. F. Frueauff for exceptants. Philip D. Baker contra.

*Estate of Benjamin Groff, dec'd.* Exceptions to auditor's report. Geo. Brubaker for exceptants. A. C. Reinohl contra.

*Estate of John H. Hunchberger, dec'd.* Exceptions to report of auditor. Benj. F. Davis for exceptants. T. J. Davis contra.

*Estate of Thomas Bryan, dec'd.* Exceptions to report of auditor. A. O. Newpher for exceptants. S. H. Price contra.

*Estate of Jonas Rumble, dec'd.* Citation to Geo. H. Rumble and S. S. Detweiler to answer matters contained in bill of Elizabeth Rumble, widow, for payment, &c., of legacy charged on land. T. E. and W. M. Franklin for citation. H. M. North contra.

*Estate of Martin Gross, dec'd.* Petition of administrator for decree of specific performance of contract against Henry Steffy and Louisa Foltz, &c. M. Brosious for petition. A. J. Eberly and J. B. Amwake contra.

*Estate of Francis Brubaker, dec'd.* Citation to Simon Brubaker, administrator, to file an account. S. H. Reynolds for citation. D. G. Eshleman, T. J. Davis and E. Franklin contra.

*Estate of Mary Ann Witmer, dec'd.* Exceptions to report of auditor. D. G. Eshleman for exceptants.

*Estate of E. Y. Cunyngham, dec'd.* Exceptions to report of auditor. D. G. Eshleman for exceptants.

*Estate of Margaret Lindemuth, dec'd.* Exceptions to report of auditor. D. G. Eshleman, H. M. and E. D. North for exceptants. D. G. Baker contra.

*Estate of Catharine Lindemuth, dec'd.* Exceptions to report of auditor. D. G. Baker, H. M. and E. D. North for exceptants.

*Estate of Jacob Ranck, dec'd.* Rule to show cause why execution should not issue against executors to amount awarded to Amos Diller, trustee by report of auditor. E. H. Yundt for rule. N. Ellmaker contra.

*Estate of Martin Greenleaf, dec'd.* Exceptions to report of auditor. N. Ellmaker for exceptants.

QUARTER SESSIONS ARGUMENT LIST.

*Manheim Borough Road.* Exceptions to report of viewers. S. P. Eby for exceptants. Wm. A. Wilson and Walter M. Franklin contra.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 16, 1878.

## WEEKLY SUMMARY.

### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since March 9, 1878:

ABRAHAM MYLIN, dec'd, late of Pequea twp.; Lizzie Mylin and Martin H. Miller, administrators.

ANN MARGARET SCHUM, dec'd, late of Lancaster city; Philip Schum, administrator.

WM. MURPHY, dec'd, late of Conoy twp.; Elizabeth Murphy, administratrix.

The following Wills have been admitted to probate since March 9, 1878:

WILLIAM BRINTON, late of Sadsbury twp.; Joseph Brinton and Susanna Brinton, executors.

JONATHAN B. BOWMAN, late of Brecknock twp.; Moses Horting, executor.

ELIZABETH BUCHER, late of Columbia ber.; Henry Rodenhouser and Elizabeth Rodenhouser, executors.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since March 9, 1878:

DILLER BAKER and WIFE, of Salisbury twp.; Daniel Denlinger, assignee.

JOHN LOWRY and WIFE, of Warwick twp.; John B. Erb, assignee.

SAMUEL K. SLABACH and WIFE, of West Cocalico twp.; Adam K. Slabach and J. G. Garman, esq., assignees.

REUBEN F. SWARR and WIFE, of East Hempfield twp.; M. N. Brubaker, assignee.

## NOTICE.

Assigned Estate of JOHN STANTON and WIFE, In the Court of Common Pleas of Lancaster County.

February 20th, A. D., 1878, the petition of the assignees of John Stanton and Wife, presented, and on motion of Walter M. Franklin, esq., counsel for the assignees, the Court grant a rule to show cause why the property assigned to them should not be re-conveyed to said assignor, and the assignees and their sureties be discharged, returnable to said court the third MONDAY in MARCH next, when and where persons interested may attend.

LEWIS S. HARTMAN,  
Prothonotary.  
feb23

WILLIAM B. WILEY,

ALDERMAN,

OFFICE — No. 33 NORTH DUKE STREET,

LANCASTER, PENNA.

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## NOTICE.

In the Court of Common Pleas of Lancaster County. CHRISTIAN ZOOK, } Proceeding in Domestic Attachment.  
vs. JACOB TROYER. } April Term, 1876. No. 8.

The undersigned trustees, appointed by said court in the above case, will meet at the office of Jacob Kemper, in the village of Akron, Ephrata township, Lancaster county, on TUESDAY, the 9th day of April, 1878, at 1 o'clock, p. m., for the purpose of receiving the proofs of the several creditors of the said defendant of their respective claims or demands against the same, when and where all persons interested in the estate of said defendant may attend if they think proper.

JACOB KEMPER,  
JOSEPH HESS,  
A. G. KILLIAN,  
Trustees.  
mar9

## CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., for a charter to incorporate the "Grütli Association of Lancaster, Pa." The object of which will be mutual aid in time of need, sickness or death of the members and the advancement of themselves in singing and literary accomplishments.

SIMON P. EBY,  
Att'y for Applicants.  
feb23

## ENVELOPES AND LETTER HEADINGS

Neatly printed at the

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LANCASTER, PENNA.

## Auditors' Notices.

Assigned Estate of PHILIP STERN and WIFE, of Mount Joy twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William F. Hamilton, assignee of Philip Stern and Wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, APRIL 13, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JACOB SOUDERS, Auditor.  
mar16

The undersigned, appointed by the Orphans' Court of Lancaster county Auditor, to pass upon the exceptions filed to the account of Robert Maxwell, guardian of Rachel J. Wilson, minor grandchild of John D. Wilson, late of Salisbury township, deceased, will attend for that purpose on WEDNESDAY, the 3d day of APRIL, 1878, at the Library Room of the Court House, at Lancaster, at 2 o'clock, p. m., when and where all persons interested may attend.

EMLEN FRANKLIN,  
Auditor.  
mar9

Estate of HENRY BURKHOLDER, late of West Lampeter twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Burkholder and J. J. Byers, executors of the will of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, APRIL 4th, 1878, at 2 o'clock, p. m., in one of the Jury Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

I. CARPENTER,  
Auditor.  
mar2

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

JNO. M. MAST,  
Auditor.  
feb23

LEGAL PRINTING of all kinds neatly and promptly done at The Lancaster Bar printing office, No. 13 North Duke-st., Lancaster, Pa.

## Estate Notices.

Assigned Estate of SAMUEL K. SLABACH and WIFE, of West Cocalico twp., Lan. Co.

Samuel K. Slabach and Wife, of West Cocalico township, Lancaster county, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel K. Slabach, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JACOB G. GARMAN, } Assignees,  
ADAM K. SLABACH }  
mar16 Union Station, Lancaster Co., Pa.  
A. J. EBERLY, Att'y, 49 Grant st., Lancaster, Pa.

Assigned Estate of SAMUEL McCLENAGHAN and WIFE, of Fulton twp., Lancaster Co.

Samuel McClenaghan and Wife, of Fulton township, having by deed of voluntary assignment, dated March 14th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel McClenaghan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL BOYD,  
J. HAY BROWN, Att'y. Assignee,  
mar16 Residing in Fairfield, Green P. O., Lan. Co.

Estate of ISAAC SANDOE, late of Earl twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

GEO. SAMDOE,  
Administrator.  
mar16  
GEO. BRUBAKER, Att'y.

Estate of ANNA M. SCHUM, late of Lancaster City, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

PHILIP SCHUM,  
Administrator.  
mar16  
M. BROSIUS, Att'y.

Estate of BENJ. LEISEY, late of Cocalico twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

JACOB G. GARMAN,  
Administrator,  
mar16 Union Station, Lan. Co., Pa.  
A. J. EBERLY, Att'y.

Assigned Estate of DILLER BAKER and WIFE, of Salisbury twp., Lancaster Co.

Diller Baker and Wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Diller Baker, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

DAN'L DENLINGER, Assignee,  
Residing in Salisbury twp.  
mar16\*  
WM. S. AMWEG, } Att'ys.  
PHILIP D. BAKER, }

Assigned Estate of REUBEN F. SWARR and WIFE, of East Hempfield twp., Lan. Co.

Reuben F. Swarr and Wife, of East Hempfield township, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Reuben F. Swarr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

M. N. BRUBAKER,  
Assignee,  
mar16 Residing in Landisville.  
S. P. EBY, Att'y.

**Estate of WILLIAM MURPHY, late of Conoy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Bainbridge, said township.  
 mar16 ELIZABETH MURPHY, Administrator.  
 GEO. BRUBAKER, Att'y.

**Assigned Estate of AMOS REESE and WIFE, of Providence twp., Lancaster Co.**

Amos Reese and Wife, of Providence township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Reese and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 JOHN HILDEBRAND, Assignee,  
 mar16\* At his store in New Providence.

**Assigned Estate of PHILIP ROYER and WIFE, of Ephrata twp., Lancaster Co.**

Philip Royer and Wife, of Ephrata township, having by deed of voluntary assignment, dated February 25th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Philip Royer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 mar16 LEVI SHIRK, Assignee,  
 A. J. EBERLY, Att'y. Lincoln, Lan. Co., Pa.

**Estate of HENRY S. MYLIN, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
 JOHN B. MYLIN, Administrator.  
 mar9\* Willow Street P. O.

**Estate of ELIZABETH HARTMAN, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
 GEO. H. HARTMAN,  
 mar9 J. I. HARTMAN,  
 PHILIP D. BAKER, Att'y. Executors.

**Estate of ANNA MARIA MYERS, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.  
 mar9 A. F. KAUL,  
 D. P. ROSEN MILLER, JR., Att'y. Executor.

**Estate of ANN ELIZA BACHMAN, late of Bart twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart, Lancaster Co., Pa.  
 mar9 WILLIAM PHENEGER,  
 M. BROSIUS, Att'y. Administrator.

**Assigned Estate of J. B. SWARTZWELDER and WIFE, of Lancaster City.**

J. B. Swartzwelder and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said J. B. Swartzwelder, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 GEO. SPURRIER,  
 E. C. DIEHL,  
 SAM'L H. REYNOLDS, Att'y. Assignees,  
 mar9 Residing in Lancaster, Pa.

**Assigned Estate of ROBERT M. MORROW and WIFE, of Lancaster City.**

Robert M. Morrow and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Robert M. Morrow, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 GEO. SPURRIER,  
 E. C. DIEHL,  
 S. H. REYNOLDS, Att'y. Assignees,  
 mar9 Residing in Lancaster, Pa.

**Assigned Estate of SWARTZWELDER & MORROW, of Lancaster City.**

Swartzwelder & Morrow, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Swartzwelder & Morrow, they therefore give notice to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to  
 GEO. SPURRIER,  
 E. C. DIEHL,  
 S. H. REYNOLDS, Att'y. Assignee,  
 mar9 Residing in Lancaster, Pa.

**Estate of CATHARINE GRUBE, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
 mar2 JONATHAN ROYER,  
 B. F. ESHLEMAN, Att'y. Administrator.

**Estate of JOHN GABLE, late of Colerain twp., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to the undersigned without delay, residing in Lower Oxford township, Chester Co., Pa.  
 GEORGE IRWIN,  
 HUGH R. FULTON, Att'y. Executor,  
 mar2 Oxford P. O., Chester Co., Pa.

**Assigned Estate of CONRAD SPATZ and WIFE, of Brecknock twp., Lancaster Co.**

Having by deed of voluntary assignment, dated February 21, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Spatz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 mar2 W. W. FETTER, Assignee,  
 M. BROSIUS, Att'y. Residing in Adamstown.

**Estate of ELIZA DUBREE, late of Sadsbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
 feb23 JAMES D. REED,  
 GEO. M. KLINE, Att'y. Executor.

**Estate of AARON CREAMER, late of Lancaster township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rawlinsville, Martic township, Lancaster county.  
 feb28 DAVID CREAMER,  
 S. H. PRICE, Att'y. Administrator.

**Assigned Estate of HORATIO S. KERNS and WIFE, of Sadsbury twp., Lancaster Co.**

Horatio S. Kerns and Wife, of Sadsbury township, having by deed of voluntary assignment, dated February 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Horatio S. Kerns, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 SAMUEL SLOKOM, Assignee,  
 feb28 Residing in Christiansa.

**Assigned Estate of JESSE MESSNER and WIFE, of Brecknock twp., Lancaster Co.**

Jesse Messner and Wife, of Brecknock township, having by deed of voluntary assignment, dated February 11, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse Messner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 feb16 ABRAHAM LUTZ, Assignee,  
 Residing in Adamstown.

**Estate of PETER MOYER, late of Mount Joy twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.  
 GEO. BRUBAKER, JACOB RISSER,  
 feb9 Att'y. Executor.

**Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.**

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 LEVI K. BROWN,  
 P. D. BAKER, Att'y. Assignee,  
 feb9 Residing at Goshen, Fulton twp.

**Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.**

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,  
 H. C. BRUBAKER, JACOB WEINHOLD,  
 WM. D. WEAVER, East Earl twp.,  
 Att'ys. CHRISTIAN ESHLEMAN, Brecknock twp.,  
 Administrators d. & n.  
 feb9

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.  
 feb2 C. M. GOOD,  
 J. HAY BROWN, Att'y. Administrator.

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 jan26 EZRA BURKHOLDER, Assignee,  
 Residing in West Earl township.

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litz.  
 jan12\* JACOB A. BUCH,  
 D. G. ESHLEMAN, Att'y. Executor.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.  
 jan12 HARVEY S. BOWERS,  
 PHILIP D. BAKER, Att'y. Administrator.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, MARCH 23, 1878.

No. 43.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES.

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed, for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,..	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,..	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	6:00 p. m.	8:10 p. m.
Columbia Accom.,.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*...	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	2:00 p. m.	5:00 p. m.
Johnstown Express,...	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.—Columbia and Port Deposit Branch.

GOING SOUTH.	a. m.	p. m.
Leave Columbia,.....	10:20	6:45
Arrive at Port Deposit,.....	p. m.	1:20
8:45		

  

GOING NORTH.	a. m.	p. m.
Leave Port Deposit,.....	6:30	2:00
Arrive at Columbia,.....	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.	a. m.	p. m.
Quarryville,.....	6:50	8:00
Lancaster—West King Street,..	8:00	9:30
Lancaster—Upper Depot,.....	8:10	9:40
3:45		

  

GOING SOUTH.	a. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30
Lancaster—West King Street,..	9:55	4:40
Quarryville, (arrive).....	11:00	6:00
9:25		

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.	a. m.	p. m.
Lancaster—West King Street,..	8:00	3:35
Lancaster—Upper Depot,.....	8:15	12:55
Lancaster Junction,.....	8:35	1:35
Reading, (arrive).....	10:10	3:20
5:50		

  

GOING SOUTH.	a. m.	p. m.
Reading,.....	7:35	11:40
Lancaster Junction,.....	9:21	1:20
Lancaster—Upper Depot,.....	9:46	:00
Lancaster—West King Street,..	9:55	8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

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*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkay.  
*Attorney General*—George Lear.

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*Western District*—J. B. Swetzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Snabury, commencing 3d Monday in September.

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*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

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*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
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*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
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*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
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*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Greff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

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*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
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APRIL.

- 5. Last day for issuing Writs to April Term.
- 8. Argument for Rules of Affidavit of Defense.
- 15. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 23, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

THE COMMONWEALTH, to the use of JOHN GETZ, against GEO. WEAVER, MICHAEL OBER and PHILIP HESS. An action on promissory notes.

THE COMMONWEALTH, to the use of HUSTON, CHILDS & STERRETT, against the SAME DEFENDANTS. An action on book account.

THE COMMONWEALTH, to the use of ANN HESS, against the SAME DEFENDANTS. An action on a single bill.

Arbitrators, appointed in several actions in which the Commonwealth is nominal plaintiff, to the use of various persons, the plaintiffs in interest, against the same defendants, are entitled to their *per diem* fees in each case, the causes of action being distinct.

These three cases were referred to the same arbitrators, who made their report in favor of the plaintiffs, and charged their fees for one day in each case.

The costs were paid into the hands of the prothonotary, with directions to retain three dollars in each of two of the cases—the amount of the arbitrators' fees in those cases, until the court should decide upon their right to receive them under the following rule, viz.: September 5, 1831, on motion of Mr. Long, the court grant a rule on the prothonotary to show cause why he should not refund three dollars in each case (Nos. 26 and 27, June Term, 1831,) the amount paid to him for the arbitrators.

Mr. Long, for the rule, cited Act 20 March, 1810, sect. 25; 4 Sergt. & R. 81, Girard vs. Hutchinson; 15 Sergt. & R. 21, Curtis vs. Buzard; 17 Sergt. & R. 75.

Mr. Jenkins contra.

HAYES, J. The arbitrators in these cases were engaged one day, and they have charged for one day in each; but the defendants' counsel contends that they were entitled to but *one fee*, because the parties are the same in the three suits.

The act of assembly "regulating arbitrations," passed the 20th of March, 1810, in the 25th section refers to the investigation of any cause, and allows arbitrators so much per day for every day they shall be engaged in such investigation. The court cannot be expected to enter into the consideration of the fractions of a day; as, for instance, to ascertain whether arbitrators were actually engaged for a whole day, or half a day, or one or two hours only, so as to pair down the fee accordingly *de minimis non curat lex*.

And the law has not authorized this species of scrutiny. If the arbitrators have met and reported they are entitled to their *per diem* fees although they may not have been occu-

ried ten minutes in the investigation. So if they have met and reported on twenty cases the same day, they are equally entitled to their fees in each case. But if the twenty cases were between the same parties—if the matter of the causes were intermixed, so as to make the investigations separate and distinct, but one and the same—if it appeared that they met more frequently and on a greater number of days than was necessary to the determination of the causes, then the court would not permit them to receive their fees in each case for the whole number of days, for that would be to abuse the act of assembly by urging its sanction of a manifest imposition. This was the decision in Girard vs. Hutchinson, 4 Sergt. & R. 81, in which the court curtailed the claim of the arbitrators of one-half of the number of days in each case.

But here there were three distinct actions, that is to say, the real plaintiffs in interest were different and resided in different parts of the county. Their claims were different—being founded, in the first case, on promissory notes; in the second on a book account, and in the third on a single bill. There was nothing, in short, to identify the causes except that the defendants in one were also defendants in the others. What may have been the extent or trouble of the separate investigations we are not informed, nor is it material. The investigations, it is presumable, were unconnected, for no connection or intermixture was shown or asserted on the argument, nor is it alleged that the arbitrators could have decided in any less time than they actually did. The case then in 4 Sergt. & R. does not sustain this rule; neither can it derive any support from the case of witness fees in 15 Sergt. & R. 21. There the witnesses, though summoned in a number of cases, were actually examined in but one, the parties having agreed that the decision of *that* should determine the rest. There was, of course, but a single examination—but one investigation.

I am of opinion, therefore, that the arbitrators are entitled to their fees in each of the cases to which this rule refers, and that the present application ought not to prevail.

Let the rule be discharged.

NOTE.—In the case of Girard vs. Hutchinson it is to be observed that the arbitrators were allowed fees in *each* case, though the parties were the same, and there was an intermixture of the matter of each suit. The deduction was in the *number of days*—it appearing to the court that the investigation might have been made *in each case separately* in much less than forty-two days, the time for which they charged. That case well considered is, therefore, an authority in support of the arbitrators upon the present question.

## SUPREME COURT OF PENNSYLVANIA.

### APPEAL OF SARAH GILBERT ET AL.

1. In order to make legacies a charge upon land it must be found that such was the testator's intention, but it is not necessary that its ascertainment should rest on direct expressions.
2. A devise of land "to my son son, James, at thirty-three dollars per acre, and the proceeds thereof to be divided into eight equal shares, including his own,

and distributed equally among my sons and daughters." Held to create a charge upon the land.

In re distribution of proceeds of sale of the real estate of James R. Tarr.

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

Opinion by WOODWARD, J. January 7 1878.

James R. Tarr, sr., by his will, dated the 13th day of December, 1864, devised to his son, James R. Tarr, jr., a tract of land described in the proceedings for the sheriff's sale, as containing seventy-four acres, more or less. The following were the terms of the gift: "I give and bequeath the same to my son, James R. Tarr, at thirty-three dollars per acre, and the proceeds thereof to be divided into eight equal shares, including his own, and distributed equally among my sons and daughters," seven of whom, in addition to the devisee, the testator then mentioned. Two other pieces of land were then given to his daughter, Rose Husband, and another son, Melker Tarr, both at a valuation of thirty dollars per acre. The executors were required to rent the real estate until the debts of the testator should be paid, and possession by the devisees was postponed until such payment should be made. Some lots of land in and adjoining the village of Bethany, and his household furniture, cows, hogs and sheep, "just as it now is," in the language of the will, were given to the widow, Mary Tarr, during her life, and at her death a sale was ordered of all that property, the proceeds to be distributed amongst the children of the testator. Irwin W. Tarr, a son, was to receive twenty-five dollars; a daughter, Ann Eliza Tarr, one hundred dollars; and another daughter, Mary Ann Buttermore, twenty-five dollars. The residue was to be divided amongst his eight other children. The concluding clause of the will gave "the remainder" of the testator's estate to nine of his children, eight of them being those designated to receive the proceeds of the real estate, and the ninth being Mrs. Mary Ann Buttermore.

It is apparent that the devisees and bequests preceding the concluding gift of "the remainder," had embraced the entire estate of Mr. Tarr. Directions for sale and distribution had been given of the real and personal property which Mrs. Tarr was to take for life. That there was no other personal fund is clear from the provision for the payment of debts from rents afterwards to accrue. The residuary clause could have application, therefore, to nothing except the lands devised to James R. and Melker Tarr, and Mrs. Husband, in the event that either of them should refuse to accept the devise in his or her favor at the valuation fixed. It is true that Mrs. Buttermore was brought in to share in the property in such an event, but it is obvious, nevertheless, that the clause must have been designed to have the operation attributed to it, or it could have no operation at all.

It was the plain purpose of this will to furnish to the legatees for the amount of the valuation of the land devised to James R. Tarr, jr., the security of the land itself. He was to take it "at thirty-three dollars per acre," and

"the proceeds" were to be divided and distributed. A specified sum of money was not to be paid to each legatee—each was to have a share of the purchase money, which was to be "the proceeds" of the land. While the order, amounts and periods of payments after the devisee should obtain possession were defined, yet the language of the will makes this a different case from those where a gift of land to a child has been accompanied or followed by a direction that he should pay certain specified and enumerated legacies. Such a devise, without more, if accepted by the devisee, would make him personally liable, but a charge upon the land would not be created. But where from the entire body of a will, an intention is shown on the part of the testator to make the property the security of the legatees, it will remain subject to the charge.

While, in order to make legacies a charge on land, it must be found that such was the testator's intention, still it is not necessary that its ascertainment should rest on direct expression. It is enough if the intention appears by natural and obvious implication from the provisions of the will. No form of words is necessary to produce the effect, and where the intent is manifest, courts are bound to carry it into execution. GIBSON, C. J., in *Ripple vs. Ripple*, 1 Rawle 386. There a testator had devised three-fourths of a tract of land to his son, followed by this direction: "My son Philip is to keep and provide for my beloved wife, and my eldest daughters, Catharine and Elizabeth, during their natural lives." It was held that although land devised is not expressly charged with the maintenance of infirm children of the testator, yet if such an intention can be clearly collected from all the parts of the will, considered in reference to the testator's circumstances, the charge will attach upon the land and follow it into the hands of subsequent purchasers. In *Hoover vs. Hoover*, 5 Barr 351, a devise by John Hoover to his son David, "yielding and paying out of the same \$7,250, in instalments of \$700," was held to charge the land; and BELL, J., said that "in a will no precise form of words is necessary to create a condition. Any expression denoting such an intention will have that effect." Thus a devise "to A, he paying," or "he to pay £500 within one month after my decease," would be a condition for breach of which the heir might enter: 2 Powell on Devises 251. Where, as here, the devisee was to take the land "at thirty-three dollars per acre," and the legacies were to consist of "the proceeds" derivable out of it, for the distribution of which provision was made, the condition that the land should be made subject to the amount of the valuation, would seem to be a natural and necessary implication.

At the argument the counsel for the appellees relied on the authority of *Hackadorn's Appeal*, 1 Jones 86, and *Wright's Appeal*, 2 Jones 256. In the first of these cases the testator, after devising different parcels of land to his sons, directed the selection of appraisers, the valuation of the lands, and payments out of the valuation to his daughters in order to equalize the shares of his sons and daughters with the qualification that the shares of

each son should be twenty-five dollars more than that of either of the daughters. The will contained this exceptional provision:

"The divide that my daughters may have received out of the proceeds of my personal estate to be counted to them out of their share." The payments, besides, were to be made by the sons whose lots should be most valuable. Of course no land could be charged for no land could be designated. The properties, the devisees of which were to become liable, could only be ascertained by the appraisal to be made after the testator's death. In *Wright's Appeal* all that is shown in regard to the will was the statement by the reporter, that Carson had devised land to his son Thomas; that if he chose to accept he was to pay \$1,700 to different persons; and that he accepted. In a contest between his alienee and one of the legatees it was held that the land was not charged. In the later case of *Hart vs. Homiller*, 8 Harris 248, after giving his son Samuel the use of certain real estate during the life or widowhood of his wife, at a yearly rent of fifty dollars, to be paid to the wife, the testator directed that upon her death or marriage, a division of the property should be made, and thereupon devised to Samuel, and his heirs and assigns, the store he then occupied and the lot of ground back as far as the slaughter-house, at a valuation to be made by six respectable bricklayers and carpenters. This valuation was included in the residue of the estate, which was given to the testator's six children, of whom Samuel was one. The interest of Samuel was sold at sheriff's sale, and afterwards sold to Hart under a judgment against the first purchaser. It was held that the terms of the will made the amount of the valuation a charge on the land, and that the purchaser at the sheriff's sale held it subject to the charge. *Hackadorn's Appeal* and *Wright's Appeal* are precedents to govern cases presenting precisely identical facts, but for the settlement of this litigation *Hart vs. Hamilton* furnishes a better and safer rule.

The decree is reversed at the costs of the appellees, and it is now ordered and decreed that the fund remaining in court be applied in payment of the shares of Sarah Gilbert and Matilda Bovard in the valuation of the land of Jas. R. Tarr, jr., as established by the devise to him in James R. Tarr, sr.'s, will.—*Legal Intelligencer*.

#### RUTHERFORD vs. BOYER.

*Usury—Usurious interest—Whether recoverable back when paid into Court under process of law on a revived judgment—Act of May 28, 1858.*

Where usurious interest is paid, and afterwards the original judgment is revived, without allowing credit for such payment, and the disputed portion of the proceeds of an execution thereon is paid into court, the defendant cannot avail himself of the defence of usury. He should have applied to the court to open the revived judgment.

Error to the Common Pleas of Dauphin county.

Case stated. The facts were substantially as follows: Dr. W. W. Rutherford purchased of Rudolph F. Kelker two judgments held by

the latter against Theodore F. Boyer, amounting together to \$3,754.45. There was nothing usurious in said judgments as originally given, nor in the purchase thereof by Rutherford. On December 14, 1872, Boyer paid Rutherford \$120, upon an agreement, which was fulfilled, that execution on the judgments should be withheld for six months. On December 17, 1872, these judgments were amicably revived for \$3,991.56, with interest from December 16, 1872, and without allowing any credit for the said \$120. On July 31st, 1875, Eleanor R. Rutherford having become acting executrix of Dr. W. W. Rutherford, a writ of *vend. ex.* was issued, upon which the money was made and paid over by the sheriff to plaintiff, except \$120 and interest thereon, amounting at that time, August 23, 1875, to \$139.40, which was paid by the sheriff into court, upon an order procured by defendant, on the allegation that the transaction in regard to the \$120 was usurious. This amicable action was then brought, to determine whether the plaintiff or defendant was entitled to the \$139.40. The court below (PEARSON, P. J.) entered judgment for the defendant. The plaintiff took this writ assigning for error the entry of such judgment.

*Francis Jordan* for plaintiff in error.

The parol contract for \$120 was independent of that of record in shape of the judgment, and no attempt was made to recover back, within six months, this *voluntary* payment.

A contract, legal in its inception, is not vitiated by a subsequent agreement to pay usurious interest: *Kelly on Usury*, pp. 83, 84; *Phillips vs. Cockayne*, 3 Camp. 119; *Gray vs. Fowler*, 1 H. Black. 462; *Tyler on Usury*, 111, 402.

If the money here sought to be recovered back was not a *voluntary* payment, but collected on execution by the sheriff, it cannot be recovered back: *Federal Insurance Company vs. Robinson*, 3 Weekly Notes 173.

The only remedy of the defendant, if any, was an application to the court below to open the judgment: *Hopkins et al. vs. West*, 3 W. Notes 343.

*F. K. Boas*, for defendant in error, relied upon the act of May 28, 1858, (P. L. 622) and the exposition of that act, and the principles laid down in *Heath vs. Page* (13 Sm. 108.)

June 11, 1877. THE COURT. The learned judge below was undoubtedly right in holding that where there is a payment of usurious interest for the forbearance of a loan or debt, the right to retain and deduct such excess continues until the whole is paid. It is only when the whole amount and illegal interest has been voluntarily paid, that no suit to recover it back will lie after six months; and we agree, also, that in this case there was not a voluntary payment within the meaning of the act of May 28, 1858 (Pamph L. 622). Nor do we think that the decision of the court in *Federal Insurance Co. vs. Robinson* (3 Weekly Notes 173) will avail the plaintiff in error. Here the debt, although collected on execution, was not paid to the plaintiff, but the excess above legal interest was paid into court, and claimed by the defendant as a payment on account. Had the money been raised by

an execution on the original judgment, the defendant would have been entitled to it. But it seems to have been overlooked in the court below that the original judgment was revived after the payment of the usury for debt and interest, without allowing credit for such payment. It is clear that in order to avail himself of this defence, the defendant should have applied to the court to open the judgment. Standing unopened, it was conclusive, and the defendant could not go behind it to show that there was any defence to it in whole or in part. (*Hopkins vs. West*, 3 Weekly Notes 343.)

Judgment reversed, and judgment for the plaintiff for one hundred and thirty-nine dollars and forty cents, and costs on the case stated.

- Opinion by SHARSWOOD, J.—*W. Notes.*

ANDREW JACKMAN ET AL. vs. M. L. DELA-FIELD ET AL.

An administrator with the will annexed has the same power to execute a sale and make a deed that an executor has. This is the settled law of this State.

Error to the Court of Common Pleas No. 2 of Allegheny county.

Opinion by STERRET, J.

The plaintiffs in error based their defense, in the court below, on the deed of H. Brady Wilkins, esq., administrator *de bonis non cum testamento annexo* of James Ross, sr., deceased. They contended that the power of sale, given by the testator to his executors, was rightly exercised by the administrator with the will annexed, and that by his deed a good title became vested in Andrew Jackman, the vendee; and the court was accordingly requested to charge the jury that their verdict should be for the defendants. This instruction was refused by the learned judge, and a verdict was directed *pro forma*, in favor of the plaintiffs, subject to the opinion of the court *in banc*, on the question of law raised by their second point, viz: whether the deed in evidence did or did not convey title to the lot in controversy. This question was decided adversely to the defendants, and judgment was entered on the verdict against them. This action of the court forms the subject of complaint in the several assignments of error. The only question presented is the authority of the administrator *de bonis non* to execute the power of sale given by the testator to his executors. If the power of the executors, in respect to the sale of the real estate in question, was intended to be exercised by them as executors, by virtue of their office as such, it follows that the duty of executing the power of sale devolved on the administrator with the will annexed.

After devising portions of his real estate, and making sundry bequests, the testator devised and bequeathed to his executors, all the rest and residue of his estate, real and personal, with full power and authority to take possession thereof; to institute suits for the recovery of the same; to compound and compromise all disputes; "to sell and convey the said real estate in such manner as they shall think proper, either at public or private sale," and "to receive purchase money, and give acquittances for the same." He then directed

his executors to pay or transfer the one equal half part of the same rest and residue of his real and personal estate to his son James absolutely, and directed the remaining one-half part to be equally divided among his three granddaughters.

It is very clear that full power was thus given by the testator to his executors, to sell the residue of his real estate, for the purpose of distributing the proceeds thereof, in connection with the residue of his personal estate, among the objects of his bounty; nor is this power restricted, or in any manner affected by the creation of the trusts in favor of his granddaughters. It has been definitely settled by this court, that where such power of sale is given by will to the executors therein named, it belongs to them *virtute officii* and may be exercised by administrators with the will annexed, under the provisions of the act of February 24th, 1834; *Evans vs. Chew*, 21 P. F. Smith 21; *Lantz vs. Boyer*, 31 P. F. Smith 325. The question before us has been distinctly ruled by these cases, and it is unnecessary to repeat what is there so well said by our brother Sharswood.

The judgment is reversed, and judgment is now entered in favor of the defendants below, on the question of law reserved *non obstante verdicto*.—*Pitts. Leg. Journal.*

HEATON vs. HORNER.

Where a defendant fails to make out a defense for himself in his affidavit, he can do no better on an issue before a jury.

Error to the Court of Common Pleas of Greene county:

Opinion by GORDON, J. Filed January 7, 1878.

We take it for granted that where a defendant fails to make out a defense for himself in his affidavit, he can do no better on an issue before a jury. The defendant alleges that the note in suit was given for one share of stock of a company intended to be incorporated for the purpose of doing business at a place called Rice's Landing. Whether this design of incorporation was ever consummated or not we are not informed; we must suppose it was, otherwise the contrary would have been stated. But if this be so, then the agreement of the 7th of April, 1875, with its covenants inured to the company, and its breach cannot be set up by the defendant in this suit on his individual note. Had the organization of the company been prevented by the default of Alfree & Co., there would have been a failure of consideration which Heaton might well have set up as a defense, but the company having been organized, it is clear that the damages, if any, resulting from a failure of the vendors to remove encumbrances on the land sold, affect the company and not the defendant. Suppose then, that the defendant were permitted to recover by way of set-off to the note in suit, this would not bar the company's right to an action for the same breach of covenant, and so the vendors would be subjected to double damages on the same covenant; a result not sanctionable on any principles of fair dealing. If, however, the defendant be not permitted to set up a breach

of the agreement which affects the corporation only, what remains of his defense? He does not allege that the value of his stock was damaged by the neglect of Alfree & Co. to remove the liens complained of, or that the profits of the concern were lessened thereby, and, hence, it does not appear that he has suffered any personal loss whatever. The alleged representations by Alfree, as to the solvency of the persons who had signed, or would sign, the agreement, amounts to nothing, as it does not appear that any damage resulted therefrom to either the company or the defendant. As to the other representation, that the stock would pay *fifty per cent per annum*, this was so obviously a mere expression of opinion that no one ought to have been deceived thereby.

Judgment affirmed.—*Pitts. Leg. Journal.*

UNITED STATES SUPREME COURT.

THE WEST ST. LOUIS SAVINGS BANK, Appellant, vs. GEORGE F. PARMELEE AND THE SHAWNEE COUNTY BANK.

*When the Indorsement of a Bank Cashier of a Promissory Note will not bind the Bank—Power of Cashier.*

Appeal from the Circuit Court of the United States for the District of Kansas.

WAITE, C. J., delivered the opinion of the court.

The testimony in this case satisfies us beyond all doubt that the liability of the Shawnee County Bank, if any liability exists, is that of an accommodation indorser or surety for Parmelee, its cashier, and that this was known to the St. Louis Bank when it made the discount. The note itself bears upon its face the most unmistakable evidence of this fact. It is made payable directly to the St. Louis Bank, and the Shawnee Bank appears only as an indorser in blank of a promissory note before indorsement by the payee, and while the note is in the hands of the maker. Such an indorsement by a bank is, to say the least, unusual, and sufficient to put a discounting bank upon inquiry as to the authority for making it.

But we are not left in this case to inquiry or presumption. Both the correspondence and the testimony of the cashier of the St. Louis Bank show conclusively that this was the understanding of the parties. Parmelee in transmitting the note for discount wrote for himself, and not as cashier. He spoke of his own note and authorized a draft upon himself personally for the interest. He pledged his own stock for the payment of the note. Wernse, the St. Louis cashier, says the negotiations opened with an application by Parmelee for a loan to enable him to pay for his stock in the Shawnee Bank, upon the pledge of the stock as collateral. There is not a single circumstance tending in any manner to prove that the transaction was looked upon as a re-discount for the Shawnee Bank, except the entries in the books of the St. Louis bank, and these are far from sufficient to overcome the positive testimony as to what the agreement actually was.

This being the case, the question is directly



presented as to the liability of the Shawnee County Bank upon such an indorsement. It is certain from the testimony that no indorsement of the kind was ever expressly authorized by the bank. None of the officers, except Parmelee, and Hayward, the vice-president, ever knew that it had been made until long after the last discount had been obtained. The books of the Shawnee Bank contained no evidence of such a transaction, and the accounts of the St. Louis Bank, as rendered, gave no indication of the actual character of the paper discounted.

Ordinarily the cashier, being the ostensible executive officer of a bank, is presumed to have, in the absence of positive restrictions, all the power necessary for such an officer in the transaction of the legitimate business of banking. Thus, he is generally understood to have authority to indorse the commercial paper of his bank and bind the bank by the indorsement. So, too, in the absence of restrictions, if he has procured a *bona fide* re-discount of the paper of the bank, his acts will be binding, because of his implied power to transact such business. But certainly he is not presumed to have power, by reason of his official position, to bind his bank as an accommodation indorser of his own promissory note. Such a transaction would not be within the scope of his general powers, and one who accepts an indorsement of that character, if a contest arises, must prove actual authority before he can recover. There are no presumptions in favor of such a delegation of power. The very form of the paper itself carries notice to a purchaser of a possible want of power to make he indorsement and is sufficient to put him on his guard. If he fails to avail himself of the notice and obtain the information which is thus suggested to him, it is his own fault, and as against an innocent party he must bear the loss.

The decree of the Circuit Court affirmed.—  
*Chicago Legal News.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 23, 1878.

### LISTS OF JURORS.

Names of 24 Grand Jurors to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, April 15, 1878:

Christian Coble, farmer, Mount Joy twp.  
Thomas Edwards, sr., farmer, Cærnarvon.  
Henry L. Eckert, gentleman, Leacock.  
Jefferson Flory, farmer, East Cocalico.  
Menno M. Fry, dealer, Warwick.  
Henry M. Fisher, printer, 7th Ward, city.  
William Hippey, bricklayer, Columbia.  
Jacob R. Hershey, miller, Manor.  
Michael S. Kreider, farmer, Pequea.  
John E. Kline, farmer, West Cocalico.  
I. W. Leidig, farmer, Paradise.  
Charles E. Long, druggist, 2d Ward, city.  
Isaac W. Martin, miller, Conoy.  
John M. Martin, collector, Providence.

William B. Mellinger, farmer, Ephrata.  
Christlan E. Nissley, farmer, West Hempfield.  
Jacob Pontz, brickmaker, 9th Ward, city.  
Alexander Patterson, gentleman, Mount Joy bor.  
John B. Reinhold, farmer, West Cocalico.  
Aaron H. Summy, farmer, Manheim twp.  
Edward N. Smith, civil engineer, Columbia.  
Jacob S. Sharp, gentleman, Ephrata.  
John B. Wenger, farmer, Rapho.  
John B. Weiler, farmer, East Earl.

Names of 48 Petit Jurors, to serve in a Court of Quarter Sessions of the Peace, commencing on Monday, April 15, 1878:

Thomas J. Bitzer, farmer, Salisbury.  
William Blackson, jr., plasterer, Columbia.  
Alfred M. Brown, farmer, Fulton.  
A. M. Bruckart, farmer, Warwick.  
Jacob Bard, farmer, West Earl.  
Charles C. Brinton, farmer, Salisbury.  
R. H. Brubaker, banker, 6th Ward, city.  
Elias Barr, book dealer, 6th Ward, city.  
G. C. Crawford, farmer, Drumore.  
Jacob C. Clair, carpenter, Columbia.  
William L. Diffenbach, farmer, Mount Joy twp.  
Simon J. Eaby, clerk, Mount Joy bor.  
George B. Eagle, clerk, East Donegal.  
Lawrance Falck, tailor, 4th Ward, city.  
D. L. Graeff, machinist, Columbia.  
Charles Green, saddler, 6th Ward, city.  
Sam'l R. Gelsinger, farmer, West Cocalico.  
Wm. N. Galbraith, justice of peace, Colerain.  
Sam'l K. Hestetter, farmer, Manheim twp.  
Daniel R. Hilton, farmer, Little Britain.  
Daniel Hiestand, miller, Mount Joy twp.  
Amos Hershey, merchant, Leacock.  
George Hunter, auctioneer, Bart.  
John Harnish, farmer, West Cocalico.  
Samuel Hasson, innkeeper, Manheim twp.  
Edward Knox, farmer, Salisbury.  
Samuel Long, laborer, West Lampeter.  
E. E. Lehman, carrier, Columbia.  
John E. Landis, farmer, Conoy.  
William O. Marshall, shoe dealer, 8d Ward, city.  
Samuel B. Musselman, carpenter, 8th Ward, city.  
John Comly Maul, farmer, Colerain.  
A. T. McClellan, farmer, Sadsbury.  
Frederick Metzger, shoemaker, Penn.  
Jacob K. Nissley, merchant, Mount Joy twp.  
Adam Oblender, tobacconist, 3d Ward, City.  
Martin Oberholtzer, farmer, Salisbury.  
R. B. Patterson, farmer, Colerain.  
Andrew A. Pegan, innkeeper, Conestoga.  
William Roberts, shoemaker, West Hempfield.  
Samuel Reifsnyder, farmer, Brecknock.  
Adam K. Schlabach, farmer, West Cocalico.  
David D. Smith, plowmaker, Mount Joy bor.  
Henry S. Shenck, gentleman, 2d Ward, city.  
Pierce Sample, blacksmith, Cærnarvon.  
Christian Shank, laborer, Conoy.  
Peter Sides, shoemaker, Conoy.  
Hiram Witmer, farmer, Paradise.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas, commencing on Monday, April 22, 1878:

John Buckwalter, farmer, Upper Leacock.  
Frederick Bates, farmer, West Lampeter.  
Franklin Brubaker, farmer, Warwick.  
P. M. Brunner, merchant, Conestoga.  
Harvey Brush, farmer, Washington bor.  
Elias Becker, gentleman, Warwick.  
W. P. Brinton, farmer, Colerain.  
Charles Diehm, cooper, Penn.  
George W. Drumm, farmer, Martic.  
Henry L. Diffenbaugh, gentleman, Mt. Joy twp.  
John E. Eberly, farmer, Clay.  
Frank Elliott, clerk, Rapho.  
Michael H. Engle, farmer, Rapho.

Jason K. Eaby, merchant, Leacock.  
Walter Freyberger, liquor dealer, Marietta.  
Abraham Frantz, justice of the peace, Manor.  
P. M. Fasnacht, carpenter, 8th Ward, city.  
Isaac Graff, farmer, Strasburg twp.  
Elam Girvin, machinist, Strasburg twp.  
Robert Girvin, merchant, Paradise.  
E. G. Groff, scrivener, Earl.  
Henry Herchelroth, innkeeper, 2d Ward, city.  
Samuel Huber, laborer, 8th Ward, city.  
John A. Houseal, bricklayer, East Donegal.  
Samuel J. Henderson, farmer, Salisbury.  
Elias Hambleton, farmer, Drumore.  
Albert Huber, butcher, 9th Ward, city.  
John L. Hayes, carpenter, East Donegal.  
Benj. H. Huber, merchant, Drumore.  
Jacob H. Hestetter, farmer, Manheim twp.  
H. C. Kurtz, farmer, Earl.  
Hiram L. Lockard, farmer, West Hempfield.  
Abraham K. Miller, merchant, Manor.  
Robert S. McClure, farmer, Bart.  
Christian H. Nissley, farmer, East Donegal.  
Samuel Nissley, justice of the peace, Clay.  
Joseph Overholzer, miller, East Earl.  
A. W. Russel, hardwa 1c, 6th Ward, city.  
Peter A. Sieber, cigarmaker, Strasburg twp.  
John B. Shand, laborer, Washington bor.  
John Stober, farmer, West Cocalico.  
Thomas Supplee, machinist, Columbia.  
Joseph C. Stubbs, farmer, Fulton.  
Charles Schwable, farmer, 7th Ward, city.  
Alfred Wood, farmer, Little Britain.  
Samuel W. Wanner, collector, West Earl.  
John L. Wright, machinist, Columbia.  
Stephen Wiggins, farmer, Providence.  
George Yelsley, carpenter, 4th Ward, city.  
Benjamin Young, carpenter, Manor.

### WEEKLY SUMMARY.

#### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since March 16, 1878:

BARBARA OBER, dec'd, late of Rapho twp.; Michael R. Ober, administrator.

The following Wills have been admitted to probate since March 16, 1878:

JANE B. ROGERS, late of Drumore twp.; L. K. Brown, executor.

CHRISTIAN HERTZLER, late of Cærnarvon twp.; Joseph Hertzler, Henry M. Hertzler and Chn. Zook, executors.

JOHN HAGELGANTZ, late of Lancaster city; Louisa Hagelgantz, executrix.

CATHARINE CARPENTER, late of Earl twp.; Amos Diller, executor.

#### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since March 16, 1878:

SAMUEL McCLENEGHAN and WIFE, of Fulton twp.; Samuel Boyd, assignee.

JOHN B. MEASHEY and WIFE, of Mount Joy twp.; Jacob Souder, assignee.

JACOB L. LANDIS (Manor) and WIFE, of Manor twp.; E. McMellen, assignee.

#### PROTHONOTARY'S OFFICE.

The accounts of the following named estates will be presented for confirmation on Monday, April 15th, 1878:

Nancy Royer's trust estate; Emanuel Graver, committee.

Davis Hagan's assigned estate; George Campbell, assignee.

Joseph Miller's assigned estate; Jacob R. Musser, assignee.

John Steffy's assigned estate; Elias Zeigler, assignee.

John Weber and wife's assigned estate; Frank Pfeiffer, assignee.

David M. Souder's assigned estate; Henry M. Souder, assignee.

Jeremiah Brown's assigned estate; Levi K. Brown, assignee.

COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN APRIL, (15:h) 1878.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of March, 1878. mar23 H. N. BRENNEMAN, Sheriff.

NOTICE.

In the Court of Common Pleas of Lancaster County. CHRISTIAN ZOOK, } Proceeding in Domestic Attachment. JACOB TROYER. } April Term, 1876. No. 8.

The undersigned trustees, appointed by said court in the above case, will meet at the office of Jacob Kemper, in the village of Akron, Ephrata township, Lancaster county, on TUESDAY, the 9th day of April, 1878, at 1 o'clock, p. m., for the purpose of receiving the proofs of the several creditors of the said defendant of their respective claims or demands against the same, when and where all persons interested in the estate of said defendant may attend if they think proper.

JACOB KEMPER, JOSEPH HESS, A. G. KILLIAN, Trustees. mar9

INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed MONDAY, APRIL 15th, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.

mar23 ABRAHAM D. HALL.

WILLIAM B. WILEY, ALDERMAN,

OFFICE — No. 32 NORTH DUKE STREET, LANCASTER, PENNA.

DIPHTHERIA!

Johnson's Anodyne Liniment will positively prevent this terrible disease, and will positively cure nine cases in ten. Information that will save many lives sent free by mail. Don't delay a moment. Prevention is better than cure. I. S. JOHNSON & CO., Bangor, Maine. [mar9-4t

Auditors' Notices.

Estate of SUSANNA SHEAFFER, late of Rapho twp., Lancaster Co., Pa., dec'd.

The undersigned Auditor, appointed to pass on exceptions filed to the account on said estate, and to distribute the balance remaining in the hands of John W. Sheaffer and Martin Sheaffer, executors of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, APRIL 19th, 1878, at 10 1/2 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

J. W. DENLINGER, Auditor. mar23

Assigned Estate of PHILIP STERN and WIFE, of Mount Joy twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William F. Hamilton, assignee of Philip Stern and Wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, APRIL 13, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

mar16 JACOB SOUDERS, Auditor.

The undersigned, appointed by the Orphans' Court of Lancaster county Auditor, to pass upon the exceptions filed to the account of Robert Maxwell, guardian of Rachel J. Wilson, minor grandchild of John D. Wilson, late of Salisbury township, deceased, will attend for that purpose on WEDNESDAY, the 3d day of APRIL, 1878, at the Library Room of the Court House, at Lancaster, at 2 o'clock, p. m., when and where all persons interested may attend.

mar9 EMLIN FRANKLIN, Auditor.

Estate of HENRY BURKHOLDER, late of West Lampeter twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Burkholder and J. J. Byers, executors of the will of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, APRIL 4th, 1878, at 2 o'clock, p. m., in one of the Jury Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

mar2 I. CARPENTER, Auditor.

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, the 21st day of MARCH, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

feb23 JNO. M. MAST, Auditor.

\$66 a week in your own town. \$5 Outfit free. No risk. Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALL & Co., Portland, Maine.

Estate Notices.

Assigned Estate of JACOB L. LANDIS (Manor) and WIFE, of Manor township, Lan. Co.

Jacob L. Landis (Manor) and Wife, of Manor twp., Lancaster Co., having by deed of voluntary assignment, dated March 20th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob L. Landis (Manor), he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. MCMELLEN, Assignee. mar23 Residing in Lancaster city.

Assigned Estate of GEORGE COONLEY and WIFE, of Lancaster City.

George Coonley and Wife, of Lancaster city, having by deed of voluntary assignment, dated March 23, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Coonley, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

FRED. W. COONLEY, Assignee. mar23 S. H. REYNOLDS, Att'y. Residing in Lancaster city.

Assigned Estate of SAMUEL K. SLABACH and WIFE, of West Cocalico twp., Lan. Co.

Samuel K. Slabach and Wife, of West Cocalico township, Lancaster county, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel K. Slabach, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JACOB G. GARMAN, } Assignees, ADAM K. SLABACH, } mar16 Union Station, Lancaster Co., Pa. A. J. EBERLY, Att'y, 49 Grant st., Lancaster, Pa.

Estate of CHRISTIAN HERTZLER, late of Cærnarvon twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

JOSEPH HERTZLER, HENRY HERTZLER, of Cærnarvon twp., CHRISTIAN ZOOK, of East Earl twp., Executors.

mar23 GEO. BRUBAKER, } Att'ys. JNO. M. MAST, }

Estate of JANE B. ROGERS, late of Drumore township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Fulton township.

L. K. BROWN, Executor.

mar23\*

Assigned Estate of SAMUEL MCCLENAGHAN and WIFE, of Fulton twp., Lancaster Co.

Samuel McClenaghan and Wife, of Fulton township, having by deed of voluntary assignment, dated March 14th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel McClenaghan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

J. HAY BROWN, Att'y. Assignee, mar16 Residing in Fairfield, Green P. O., Lan. Co. SAMUEL BOYD,

Estate of ISAAC SANDOE, late of Earl twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

mar16 GEO. BRUBAKER, Att'y. GEO. SANDOE, Administrator.

Estate of ANNA M. SCHUM, late of Lancaster City, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

mar16 PHILIP SCHUM, Administrator. M. BROSIUS, Att'y.

Estate of BENJ. LEISEY, late of Cocalico twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

JACOB G. GARMAN, Administrator, A. J. EBERLY, Att'y. mar16 Union Station, Lan. Co., Pa.

Assigned Estate of DILLER BAKER and WIFE, of Salisbury twp., Lancaster Co.

Diller Baker and Wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Diller Baker, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

DAN'L DENLINGER, Assignee, mar16\* Residing in Salisbury twp.

WM. S. AMWEG, } Att'ys. PHILIP D. BAKER, }

Assigned Estate of REUBEN F. SWARR and WIFE, of East Hempfield twp., Lan. Co.

Reuben F. Swarr and Wife, of East Hempfield township, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Reuben F. Swarr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

M. N. BRUBAKER, Assignee, mar16 S. P. EBY, Att'y. Residing in Landisville.

**Estate of WILLIAM MURPHY, late of Conoy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Bainbridge, said township.  
mar 6  
ELIZABETH MURPHY, Administratrix.  
GEO. BRUBAKER, Att'y.

**Assigned Estate of AMOS REESE and WIFE, of Providence twp., Lancaster Co.**

Amos Reese and Wife, of Providence township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Reese and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JOHN HILDEBRAND, Assignee,  
mar 16\* At his store in New Providence.

**Assigned Estate of PHILIP ROYER and WIFE, of Ephrata twp., Lancaster Co.**

Phillip Royer and Wife, of Ephrata township, having by deed of voluntary assignment, dated February 25th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Philip Royer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
mar 16 LEVI SHIRK, Assignee,  
A. J. EBERLY, Att'y. Lincoln, Lan. Co., Pa.

**Estate of HENRY S. MYLIN, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
JOHN B. MYLIN, Administrator.  
mar 9\* Willow Street P. O.

**Estate of ELIZABETH HARTMAN, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
GEO. H. HARTMAN,  
mar 9 J. I. HARTMAN,  
PHILIP D. BAKER, Att'y. Executors.

**Estate of ANNA MARIA MYERS, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.  
mar 9 A. F. KAUL,  
D. P. ROSENMILLER, JR., Att'y. Executor.

**Estate of ANN ELIZA BACHMAN, late of Bart twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart, Lancaster Co., Pa.  
mar 9 WILLIAM PHENEGER,  
M. BROSIUS, Att'y. Administrator.

**Assigned Estate of J. B. SWARTZWELDER and WIFE, of Lancaster City.**

J. B. Swartzwelder and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said J. B. Swartzwelder, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
GEO. SPURRIER,  
E. C. DIEHL,  
SAM'L H. REYNOLDS, Att'y. Assignees,  
mar 9 Residing in Lancaster, Pa.

**Assigned Estate of ROBERT M. MORROW and WIFE, of Lancaster City.**

Robert M. Morrow and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Robert M. Morrow, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
GEO. SPURRIER,  
E. C. DIEHL,  
S. H. REYNOLDS, Att'y. Assignees,  
mar 9 Residing in Lancaster, Pa.

**Assigned Estate of SWARTZWELDER & MORROW, of Lancaster City.**

Swartzwelder & Morrow, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Swartzwelder & Morrow, they therefore give notice to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to  
GEO. SPURRIER,  
E. C. DIEHL,  
S. H. REYNOLDS, Att'y. Assignee,  
mar 9 Residing in Lancaster, Pa.

**Estate of CATHARINE GRUBE, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
mar 2 JONATHAN ROYER,  
B. F. ESHLEMAN, Att'y. Administrator.

**Estate of JOHN GABLE, late of Colerain twp., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to the undersigned without delay, residing in Lower Oxford township, Chester Co., Pa.  
GEORGE IRWIN,  
HUOH R. FULTON, Att'y. Executor,  
mar 2 Oxford P. O., Chester Co., Pa.

**Assigned Estate of CONRAD SPATZ and WIFE, of Brecknock twp., Lancaster Co.**

Having by deed of voluntary assignment, dated February 21, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Spatz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
mar 2 W. W. FETTER, Assignee,  
M. BROSIUS, Att'y. Residing in Adamstown.

**Estate of ELIZA DUBREE, late of Sadsbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.  
feb 23 JAMES D. REED,  
GEO. M. KLINE, Att'y. Executor.

**Estate of AARON CREAMER, late of Lancaster township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rawlinsville, Martic township, Lancaster county.  
feb 23 DAVID CREAMER,  
S. H. PRICE, Att'y. Administrator.

**Assigned Estate of HORATIO S. KERNS and WIFE, of Sadsbury twp., Lancaster Co.**

Horatio S. Kerns and Wife, of Sadsbury township, having by deed of voluntary assignment, dated February 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Horatio S. Kerns, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
SAMUEL SLOKOM, Assignee,  
feb 28 Residing in Christiana.

**Assigned Estate of JESSE MESSNER and WIFE, of Brecknock twp., Lancaster Co.**

Jesse Messner and Wife, of Brecknock township, having by deed of voluntary assignment, dated February 11, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse Messner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
ABRAHAM LUTZ, Assignee,  
feb 16 Residing in Adamstown.

**Estate of PETER MOYER, late of Mount Joy twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.  
GEO. BRUBAKER, JACOB RISSER,  
feb 9 Att'y. Executor.

**Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.**

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
LEVI K. BROWN,  
P. D. BAKER, Att'y. Assignee,  
feb 9 Residing at Goshen, Fulton twp.

**Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.**

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,  
H. C. BRUBAKER, JACOB WEINHOLD,  
Wm. D. WEAVER, East Earl twp.,  
Att'ys. CHRISTIAN ESHLEMAN, Brecknock twp.,  
feb 9 Administrators d. b. n.

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.  
feb 2 C. M. GOOD,  
J. HAY BROWN, Att'y. Administrator.

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
EZRA BURKHOLDER, Assignee,  
jan 26 Residing in West Earl township.

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litz.  
jan 13\* JACOB A. BUCH,  
D. G. ESHLEMAN, Att'y. Executor.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.  
jan 12 HARVEY S. BOWERS,  
PHILIP D. BAKER, Att'y. Administrator.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, MARCH 30, 1878.

No. 44.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed, for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE		ARRIVE		
	LANCASTER.	HARRISBURG.	LANCASTER.	HARRISBURG.	
Pacific Express,*	2:40 a. m.	4:05 a. m.			
Way Passenger†	4:50 a. m.	7:50 a. m.			
Niagara Express,...	9:35 a. m.	10:40 a. m.			
Hanover Accom.,...	9:40 a. m.	10:10 a. m.	COL.		
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.			
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.			
Fast Line,*	2:10 p. m.	3:25 p. m.			
Frederick Accom.,...	3:15 p. m.	3:45 p. m.	COL.		
Harrisburg Accom.,...	6:00 p. m.	8:10 p. m.			
Columbia Accom.,...	7:20 p. m.	8:00 p. m.	COL.		
Harrisburg Express,...	7:25 p. m.	8:40 p. m.			
Pittsburg Express,...	9:25 p. m.	10:50 p. m.			
Cincinnati Express,*	11:30 p. m.	12:45 a. m.			
EASTWARD.		LANCASTER.		PHILADELPHIA.	
Atlantic Express,*	12:30 a. m.		3:00 a. m.		
Philadelphia Express,†	4:10 a. m.		7:00 a. m.		
Harrisburg Express,...	7:35 a. m.		10:00 a. m.		
Columbia Accom.,...	9:28 a. m.		12:30 p. m.		
Pacific Express,*	1:20 p. m.		3:45 p. m.		
Sunday Mail,...	2:00 p. m.		5:00 p. m.		
Johnstown Express,...	3:05 p. m.		6:00 p. m.		
Day Express,*	5:18 p. m.		7:20 p. m.		
Harrisburg Accom.,...	5:50 p. m.		9:00 p. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 3:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.—Columbia and Port Deposit Branch.

GOING SOUTH.			
	a. m.	p. m.	
Leave Columbia,.....	10:20	6:45	
Arrive at Port Deposit,.....	1:20	8:45	
GOING NORTH.			
	a. m.	p. m.	
Leave Port Deposit,.....	6:30	2:00	
Arrive at Columbia,.....	8:30	5:00	

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:00	2:30
Lancaster—West King Street,..	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45
GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30	8:10
Lancaster—West King Street,..	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,..	8:00		3:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	3:20	5:50
GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading, .....	7:35	11:40	6:05
Lancaster Junction,.....	9:21	1:20	7:45
Lancaster—Upper Depot,.....	9:46	:00	8:10
Lancaster—West King Street,..	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.

*Attorney General*—George Lear.

*Prothonotaries:*

Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.

*Places and time for holding Court:*

At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Greff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

**City Officers.**

*Mayer*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

THE LANCASTER BAR

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COURT CALENDAR--1878.

APRIL.

- 5. Last day for issuing Writs to April Term.
- 3. Argument for Rules of Affidavit of Defense.
- 5. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.
- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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FARMERSVILLE, LAN. CO., PA.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 30, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

PETER BURK *against* HENRY BEAR and CHRISTIAN MYERS, administrators of JOHN HUBER, deceased.

A departure in pleading is a defect of substance. When the declaration in covenant alleged an agreement by the plaintiff to give the defendant a good title on a day mentioned, and averred performance, and the replication stated certain acts of the defendant by reason of which the plaintiff did not give such title at the time mentioned, this was held to be a departure.

So where the agreement was to give a good title free from incumbrances, and the declaration averred performance, and the replication stated the failure of the defendant to pay the money on the day, alleging that as the reason why the incumbrances were not discharged—this is a departure.

A *protestando* is of no avail in the cause in which it is taken.

A defective *protestando* does not vitiate the plea to which it is attached, though it be shown for cause of demurrer.

A declaration in covenant for not paying the purchase money of land which the plaintiff had covenanted and averred that he tendered himself ready to convey, is fatally defective in not averring a title in the plaintiff to the premises.

After a party has once already been permitted to amend on demurrer, the court will not allow him to amend on a second demurrer, especially after argument and judgment entered thereon.

To amend the declaration by inserting an averment of title in the plaintiff is an amendment of substance; and a motion for such an amendment, after judgment in demurrer, is warranted neither by the common law, the English statutes of amendment and joinders, nor the act of the 21st March, 1806.

The act of the 21st March, 1806, alters the law on the subject of amendments in no respect except as to time and authorizing them on the trial as well as before, and being mandatory to the court with regard to their allowance.

This was an action of covenant for violation of a contract under seal, contained in articles of agreement between Peter Burk and John Huber, in which the former covenanted, in consideration of \$5,500, to give to John Huber, his heirs, &c., on the 1st day of April next ensuing, a good title with peaceable possession for ten acres of land in the town of Millersburg, whereon are a tavern and other buildings, &c., and the said John Huber covenanted to pay him therefor on that day \$3,500, and \$2,000 in one year thereafter; and the parties bound themselves to perform all their respective covenants in these articles in the penal sum of \$11,000. The declaration, after setting forth the articles above mentioned, and averring that Peter Burk had always performed the agreements on his part, said that

the said John Huber had not paid the said sums of \$3,500 and \$2,000 at the respective times mentioned in the said articles of agreement, although he, the said Peter, did on the 1st day of April then next ensuing the date of the said articles, tender to him, the said John Huber, a good title to the said ten acres of land, &c. The defendant, Huber, pleaded payment with leave, &c., and performance with leave, &c., to which the plaintiff replied *non solvit*, and that the defendant had not performed his covenants. The defendants afterwards, by leave of the court, filed an additional special plea setting forth liens and incumbrances upon the premises, which were subsisting incumbrances on the 1st day of April, 1817, the time of the alleged tender, and for a long time afterwards. To this plea the plaintiff replied specially, averring that he intended to apply the purchase money to the payment of those liens, and sold the land to the defendant for that purpose. The defendant thereupon demurred and rejoined. "Issues" and joinder in demurrer were added and the usual rule for trial.

On the 14th December, 1831, a jury being called and sworn in the cause, the counsel were directed to proceed with the demurrer.

Mr. Frazer and Mr. Hopkins for the plaintiff.

Mr. Rogers and Mr. Norris for the defendant.

Mr. Rogers, after adverting to the case of Huber vs. Burk, 11 Serg. & R. 238, between these same parties and founded upon the same transaction, read the narr. in the present case—the special plea, the replication and the demurrer. The first point to be considered relates to this replication. Peter Burk contracted to convey a good title on the 1st of April, 1817. Our plea sets out liens and incumbrances at the time by which he was disabled from performing the covenant—that is the making of a *good* title to us. This is our defense. How does the plaintiff treat it? Does he confess and avoid, or does he deny the facts of the plea? Neither. A covenant to convey the title means the legal estate in fee, free from all valid claims, liens and incumbrances whatever: 10 Johns. R. 266; Jones vs. Gardner. The covenant was to convey us a *good* title. We plead that he did not and could not offer to convey such a title by reason of subsisting liens. To enable the vendor to obtain a decree of specific performance the title must be free from all suspicion: Sugden's Vendors, &c., 210, 211. According to these authorities John Huber was not obliged to accept a deed on the 1st of April, 1817, whilst the estate was incumbered. The replication is beside the narr. in saying security was to be given for the \$2,000, and in saying that the \$3,500 were to have been appropriated to the extinguishment of Peter Burk's judgments which were liens upon the property. The rules of pleading require that the replication must answer the plea, or so much of it as it professes to answer, and that it must not depart from the count: 1 Chitty's Pl. 633, 634, 635. This replication is a clear departure from the narr. In an action on an arbitration bond, (3 Johns. R. 369, Barlow vs.

Todd,) defendant pleaded no award; plaintiff replied setting forth the award; defendant rejoined that the award was not final: *held* to be a departure: 10 Johns. R. 259. Departure in pleading is bad in substance: 20 Johns. R. 163, *Andross vs. Waring*; 6 Mass. 57, *Larned vs. Bruce*; 5 Bac. Ab. 449, 450, 451. In the declaration P. Burke alleges the tender of a deed and in the replication an excuse for not tendering it: 14 Mass. 103, *Darling vs. Chapman* and others.

Mr. Hopkins now moved for leave to amend by withdrawing the replication to the plea of judgments pleaded at large, and replying and taking issue to the country thereupon.

Mr. Norris, contra, objected to this motion. It is the vested right of every suitor defending in this court to plead the general issue, or one or more special pleas, or he may do both; and I hold that when a defendant exercises his right to plead specially, a correlative duty arises on the part of the plaintiff to *reply specially*. Here we plead existing liens. What is the replication? *Nul tiel record* or some matter excusing or justifying the existence of the judgments. The plaintiff asks now, what? to withdraw his special replication—to take this matter from the decision of the court and refer it to the jury. The court must already have perceived that the question in this cause is purely a question of law to be decided by the court. Peter Burk had contracted to convey us a good title on the 1st of April, 1817, and if he could not, as upon the facts stated and admitted upon the pleadings he could not, then in point of law he was not entitled to recover the purchase money, nor damages from the defendant. (Here *Hopkins* cited 2 Caines' R. 232, *Pollock vs. Robinson*, and 18 Johns. R. 28, *Hallett vs. Horne*.) I admit that at common law a party may amend his pleadings after demurrer, and I admit that in Pennsylvania a party may amend, that is, alter the plea or defense on the trial. But do these principles apply to the case before the court? I contend that we have a vested right to a replication at large—a special replication to our plea. The court perceive that in the replication sought to be withdrawn, the existence of the judgments set forth in our plea is admitted, and shall the plaintiff be now allowed to retract his admission, and submit the question of record or no record to the jury? No, this is a question of law, and we have a right to a decision of the court upon it.

Mr. Frazer: We are asking no favors but an abstract right. What is said on the other side is correct in some cases—in an action for a specific execution of a contract, but not in a case like this, which is an action sounding in damages for the loss of our contract. I say the defendant's plea in bar is not conclusive, and, according to the facts, Huber not objecting to the tender on account of the liens, not saying one word about them, and Burk perfectly able to discharge them, had anything been objected to them at the time, we are entitled to recover damages on account of Huber's refusing to accept the deed and pay the purchase money. Let this case go to the jury. That is the destination we desire; and

It was also at one time the wish of the defendant: 9 Serg. & R. 212, *Hampton vs. Specknagle*.

*Mr. Hopkins* in reply: This is an application of course—one which often has passed in *rem judicatam*. It is admissible at common law, and is expressly warranted by the act of assembly of 1806. I insist that the issue on the pleadings is well formed for the consideration of the jury. The circumstance of the jury being sworn can have no effect. It is objected that the matter of the special plea is fit matter for the court and cannot be decided by the jury, but that is begging the question. Would there be any difficulty in a court of common law admitting this amendment? In 2 Caines' Reports 232, the amendment was permitted after a decision of the demurrer; the judgment was for the demurrant with leave to amend. From the first settlement of this province every effort of the legislature has been to remove all technical difficulty from the attainment of justice; and by the act of 1806 all informalities are remedied by the party's amending.

The plaintiff was directed to draw up his proposed replication at length, and the court said they would consider the motion for leave to amend as a motion to amend. The new replication being accordingly drawn and presented, the defendant's counsel declared they would demur to it, which they did, and the plaintiff joined in demurrer. The motion to amend was granted and the former replication withdrawn.

*Mr. Hopkins* now proposed that the case be submitted to the jury, so far as the issues of fact are involved, in order that they may find a conditional verdict; but it was objected to on the other side and not allowed.

*Mr. Rogers* for the demurrer: The condition or covenant on the part of Peter Burk was to be first performed. His declaration states that he was to give a good title on the 1st of April, 1817. We answer this specifically in our plea by setting forth the existing liens. The replication must not be inconsistent with the narr. for they are our statement. A demurrer admits all such matters of fact as are sufficiently pleaded, or if informally pleaded, are not specially excepted to on that account: 1 Penna. Pr. 147. The performance of the covenant on the part of Peter Burk in the first instance was a condition precedent. In 10 Johns. 266, *Jones vs. Gardner*, which was the very case here, the covenants were held to be dependant, and the delivery of the deed and the payment of the purchase money concurrent acts: Sugden Vend. 312, 210. Vendor must discharge incumbrances though there be no covenant against incumbrances: 1 Saund. 320, n. 4; 11 Johns. R. 525; 12 Johns. R. 190. A general rule is that chancery will only decree a specific performance when damages might be recovered at law for a breach of contract. In this case it has been determined that chancery would not enforce a specific performance of this contract, and the plaintiff could not, therefore, recover the purchase money. If, then, he could not recover the purchase money, he cannot recover damages for the loss

of the contract. This replication, like the former one, departs from the declaration in alleging an excuse for not tendering the deed, which in the declaration the plaintiff avers he did tender. In addition to the cases before cited to this point I refer to 14 Mass. 103; 14 Johns. R. 132; 1 Cowen's R. 319. The question is whether these liens rendered it impossible for P. Burk to comply with his contract or not; whether he was not bound to remove these incumbrances prior to the 1st of April, 1817, before he could hold the defendant answerable for a breach of the covenant by him? This covers the whole case: 2 Phill. Ev. 64, 82.

*Mr. Hopkins* against the demurrer: In the same page of the last book cited, 2 Phill. Ev. 82, it is said if the defendant refuse an abstract of title, it will be sufficient if the plaintiff vendor show a good title at the time of the trial, though it were not complete at the time of the tender. An observation applicable to all the New York cases is that they are decisions in courts of common law, and the rule in common law courts and courts of equity is different, as is clear from Sugden on Vendors 246, in reference to a tender of an abstract of title. The whole fallacy on the other side is in assuming that this court is sitting simply as a court of law; but this is not so. By the plea and by the record the defendant was to have paid \$3,500 on the 1st of April, 1817; and could the \$610, the amount of the liens, have formed any difficulty. The plaintiff could immediately by that means have paid off the judgments, and would have been quite willing that the defendant should have retained to that amount: Sugden on Vend. 318. Suppose on the 1st April, 1817, J. Huber had said here are incumbrances, you must remove them; would not Mr. Burk be justified in answering—I have in your hands \$3,500, and you can pay the \$610 in discharge of the liens and may give me the balance—what would a chancellor do? Can there be a difficulty or doubt respecting that? The declaration states the delivery of the deed and the payment of the purchase money as simultaneous acts. In deciding this demurrer the court will look at the entirety of the record. We aver that the reason why the agreement was not carried into effect was that the defendant refused beforehand to perform his part. Peter Burk was ready and willing and able; but John Huber refused to accept. Is not, then, the sole cause of the breach imputable to him? Who was first in fault? Who broke the bargain? Why John Huber and nobody else. In order to show how a court of chancery treats a matter of this sort, I will read from 2 P. Wms. 630, *Sangford vs. Pitt*. This is an action for breaking the covenant. It is not a suit for the fulfilment of this contract by a specific performance; but through the instrumentality of a court and jury to obtain damages for a breach of the contract by the wilful misconduct of the defendant. The former case was erroneously decided in the court below by a distinction taken, much against our wish, by the court between an action of debt on covenant and an action of covenant for damages. We deprecated this but in vain. What, then, is the state of this case in its en-

tirety and upon the pleadings? In the first place the declaration sets forth the case fully—the contract in its precise terms. Then you have the pleas: 1. The plea of payment with leave, &c., with special notice of all matters set forth in the special plea. 2. Performance with leave, &c. 3. The special plea. Now I undertake to say that the demurrer is good for nothing on that account. There can be no principle in pleading more undeniably established than that you cannot plead specially those matters which are included in the general issue. Here under the first plea with notice the very matters pleaded in the second plea are included. If the court concur in this view of the pleadings must not the special plea fall? In support of this doctrine I refer to 18 Johns. R. 28, *Hallett vs. Horne*, before cited. The result is, that as the court will revert to the first faulty pleading, the demurrer must be decided against the defendant. Payment with leave and performance with leave have both been decided to be general issues: 4 Dall. 439, *Bender vs. Fromberger*. (Here *Norris* cited: 1 Chitty's Pl. 480. As to general issue—what it is: 13 Serg. & R. 443, *Sharpe vs. Sharpe*; 1 Yeates 79, *McSherry vs. Askew & Kauffman*; 5 Bac. Ab. 370; 5 Com. D. 397, *Pleaser F. 13*; *Ibid* 401, 402, *F. 18*; 1 Tidd 293, 599; 2 Chitty's Pl. 473.)

The jury were at this stage of the argument dismissed, and the discussion was continued by—

*Mr. Hopkins*: Any matter which, standing alone, constitutes a defense *per se* is a general issue: 1 Dall. 258. The plea of payment is by the law of this State made the general issue. This plea (1.) covers everything embraced by our act of defalcation; (2.) operates as a most expansive equitable defense. In *Root vs. Brubaker*, 1 Rawle 304, it is treated as the general issue in the opinion of Mr. Justice HUSTON.

As to the distinction between matter of law and matter of fact. If matter of law is to be pleaded specially, may it not be pleaded under payment and giving notice of special matters, and as they have pleaded under that form their matter of law, why should they be permitted to double upon us and plead specially what they have already pleaded under the general issue? But, they say, here is matter of record—that is the judgments mentioned and liens—and this is always for the court. That I deny; for (1.) if the record be involved with matters of fact the issue upon it is to the country; (2.) a record is not evidence *per se* and to be judged upon inspection, unless it be between the same parties. Well, these judgments are between different parties from those now before the court. The law of Pennsylvania is expressly settled that the defendant could have paid off these judgments out of the purchase money, and have maintained himself against a suit for the amount thus paid: 16 Serg. & R. 261. In *Wharton's Dig.* 141, upon plea of covenants performed, with leave to give the special matters in evidence, the defendant may give in evidence whatever he might have specially pleaded. *Ibid* 467, § 4, the Supreme Court say that under the plea of payment the defendant may

give in evidence whatever, either in the whole or in part, has extinguished the demand. In 15 Serg. & Rawle 106, the doctrine as to the plea of performance of covenants as a general issue, and equally operative with that of payment with leave, is laid down. I may, therefore, with confidence conclude that these pleas are general issues.

[CONTINUED NEXT WEEK.]

SUPREME COURT OF PENNSYLVANIA.

GARDNER AND WIFE vs. McLALLEN.

A deed was executed to A. and his heirs, for a tract of land, and delivered, but not recorded. A few days afterwards, by consent of all parties, a new deed was executed and delivered by the same grantors, to A. and B. (husband and wife) and their heirs, for the same premises, and the first deed was then destroyed by burning. Subsequently the second deed which was not recorded, was destroyed by an accidental fire. A., died intestate. In ejectment brought by his heirs against B., his widow.

*Held*, that the second deed was the only valid one, and conveyed an estate by entirety to A. and his wife, with right of survivorship.

*Held further*, that, there being no real controversy as to the evidence relating to the execution, destruction, and contents of the deeds, it was not error to withdraw the case from the jury and direct a verdict for the defendant.

Error to the Common Pleas of Erie county.

Ejectment by S. P. Gardner and Olivia, his wife, in her right, against Catharine McLallen, for an undivided interest of a tract of land in Washington township. Plea, the general issue.

The plaintiff claimed title as one of the heirs of Henry McLallen, who died intestate, seized, as plaintiff alleged, of said tract.

The defendant, who was the widow of the said Henry McLallen, claimed title by survivorship, alleging that the title was vested in her husband and herself by entirety.

The testimony was as follows: In 1862, Stephen D. Buckley and Henry McLallen owned adjoining tracts. One Valentine negotiated a sale of the Buckley tract to McLallen, the consideration, or part of it, to be paid by his wife (the defendant). At Valentine's request, a deed was drawn by the justice of the peace, from Buckley and wife to Henry McLallen, duly executed, acknowledged, read, and delivered to the grantee. Upon the deed being read to Mrs. McLallen, she objected to it, and refused to pay her balance of the consideration, because her name was not included in the deed as a grantee; and with the consent of all parties, another deed was drawn from the same grantors, in which her husband and herself were named as grantees, duly executed, acknowledged and delivered. The first deed was then intentionally destroyed by burning. Neither of these deeds were recorded, and subsequently the second deed was consumed in an accidental fire, which destroyed McLallen's house, McLallen himself losing his life in the flames.

The secondary evidence admitted as to the contents of the second deed was as follows: Squire Sherwood testified he drew the first deed to Henry McLallen; in a few days he

was requested "to make out a new deed, as the first deed did not give satisfaction; I saw McLallen; he said to me he wanted his wife's name in the deed, he said he wanted it deeded to them both, in joint deed, so they could share alike; I then wrote the deed; a joint deed from Buckley and wife, to Henry McLallen and Catharine McLallen, his wife, parties of the second part; I made the deed in presence of all parties; they were satisfied; it was executed, and I handed it to Buckley, and he delivered it to H. McLallen. Buckley then burned the old deed. *Cross examined.* McLallen wanted a joint deed that they should share alike; don't remember that he said he wished a half to each; am not positive that he said 'share and share alike;' he said he wanted a joint deed to him and his wife, he said he wanted a joint deed and so they would share alike—share and share alike."

Mrs. Buckley, one of the grantors, testified that she, with her husband, "made deeds twelve or thirteen years ago; first deed was made to Henry McLallen and his heirs; second deed was made to Henry McLallen and his heirs and Mrs. McLallen and her heirs.

The plaintiffs requested the court to charge, in substance (1, 2,) that if the jury believed from the evidence that the arrangement to give Catharine McLallen, wife of Henry McLallen, an interest in the land, was not entered into previous to the delivery of the first deed, then the title in fee simple to the whole tract, vested in Henry McLallen and his heirs, by the first deed, and could not be divested except by deed executed by him; and, as none such was executed by him, he died seized thereof, and the estate descended to his heirs, under the intestate law. *Refused.* (3) That, if the jury find from the evidence, that the deed conveyed to Henry McLallen and Catharine McLallen, severally, an undivided half interest in the land, then they would be tenants in common, and plaintiff would be entitled to recover her undivided interest in Henry McLallen's moiety. *Refused.*

The Court (GALBREATH, P. J.) charged, *inter alia*: "The new deed was executed and accepted by consent of all parties. No interest of third parties being prejudiced by the transaction, the parties had a right to make it, and the new deed vested a good title in Henry McLallen and Catharine McLallen, the grantees. The evidence, if believed, establishes the fact that the deed was made jointly to Henry McLallen and Catharine. The law in Pennsylvania, in case of the death of the husband or wife owning lands jointly, gives them to the survivor. Henry McLallen having died, the entirety became vested in his widow, Catharine McLallen. This being our view of the law, your verdict must be for the defendant."

Verdict, accordingly, for defendant, and judgment thereon.

The plaintiff took this writ, assigning for error, the refusal of the above points, the withdrawal of the evidence from the jury, and the direction of a verdict for defendant.

The case should have been submitted to the

jury to find from the evidence the facts: (1) whether the first deed was cancelled, and the second deed made and delivered with the consent of all parties; (2) whether the second deed contained words conveying to each in severalty, an undivided moiety, or words conveying to them jointly, as husband and wife.

There was no evidence that Catharine McLallen's name was mentioned in the negotiations for the purchase, and the first deed having been executed and delivered in accordance with the agreement of sale—so far as the evidence shows—passed the title out of Buckley, and vested it in Henry McLallen in fee. A private understanding between McLallen and his wife, even if such existed could not divest the legal title. Nor could the burning of the deed divest his vested estate, and re-vest in the grantors, who had no title in them which they could convey by a second deed: 4 Kent. Comm. 452; Wiley vs. Christ, 4 W. 199; Botsford vs. Morehouse, 4 Conn. 550; Holbrook vs. Tirrell, 9 Pick. 105.

When this case was before the court on a former writ of error, 29 Smith 398, it was held that "the delivery of the first deed did not prevent the parties to it from substituting the second for it." Parties to a deed may cancel it and make another in lieu of it, if it is honestly done, and does not prejudice intervening rights: Bancord vs. Kuhn, 12 Cas. 383; Myers vs. Myers, 1 Cas. 100.

In Wiley vs. Christ, 4 Watts. 199, cited by the plaintiff in error, this principle was admitted, but the jury found that the deed in that case was not cancelled. Such being the law, it is immaterial whether title vested by the first deed or not. Upon this cancellation by consent of all parties, and the substitution of the second, the title became finally vested in accordance with the intention of the parties.

There was no conflicting testimony as to the facts requiring the submission of the case to the jury.

October 29th, 1877. THE COURT. The facts in this case were clear, and not liable to any real controversy. It is evident from them that the only valid deed in the case was that made to Henry McLallen, and Catharine, his wife. This deed conveyed a joint estate, *per my et per tout* to the husband and wife, which at his death survived to the wife, according to settled law.

Judgment affirmed.—*Pitts. Leg. Journal.*

Common Pleas No. 3 of Philadelphia.

PRATT vs. THE BANK.

Commissioners on sale of real estate where the broker, though employed by the vendor, was not the efficient cause of the sale.

Evidence necessary to establish a custom in reference thereto must be clear and such as will establish a custom reasonable and ancient, uncontradicted, notorious to all and distinct.

Motion for a new trial.

Opinion by LUDLOW, P. J. January 12th, 1878.

The plaintiff, a real estate broker, sued in



this case to recover commissions upon a sale of real estate; he obtained a verdict, and this is a motion for a new trial. Upon a review of all the evidence produced, it must be confessed, that if the plaintiff depends upon the rules of law ordinarily applicable to these cases, he must fail in his suit, for while he was employed by the vendors, and was therefore an agent, his services as such were not the efficient cause of the sale as made. The evidence was so slight upon this point that a court could not sustain a verdict for plaintiff, even under the liberal principles adopted by the Supreme Court in *Earp vs. Cummings*, 4 P. F. S. 397.

Evidently feeling the strain of the case, the learned counsel for plaintiff offered to prove the existence of a general custom in Philadelphia by which, "when property is placed in the hands of a real estate broker for sale, and no special terms are agreed upon, he is entitled to a commission of one per cent. during the continuance of his agency, whether the property is sold directly by him or otherwise." The court under an objection, admitted this evidence, and we must now decide how far the ruling thus made was legal, and to what extent the proof submitted sustains the offer thus made.

We have no doubt that such a custom may be established by proper testimony.

In *McMasters vs. Penna. R.R.*, 19 P. F. S. 377, the court say: "I regard it as a matter not debateable at this day, that a custom so long persisted in as to be known and practiced by a community, shall not become the law of the particular business in which it exists in the community, from which the presumption will arise that it is in the view of the parties who contract about the subject-matter of it, and depend that it will be the interpreter of their contracts whenever they leave room for a resort to it."

The same doctrine was again stated in *Adams vs. Pittsburgh Ins. Co.*, 26 P. F. S. 413. "It is possible," says GORDON, J. "that a usage such as this, though derogatory of the rights of such owners, and not required for the advancement of commerce and trade, might be established by proper proof."

These principles have not been modified, and justified the court in sustaining the offer to prove the custom.

Was the custom thus said to exist established by competent evidence? This is the serious question of this case, and one which has challenged our special examination.

As a custom departs from the settled rules of law applicable to a particular case, and is, in many instances, in one sense, in conflict with them, the courts have always declared, that it shall not exist for any legal purpose, unless it clearly appears that the custom is reasonable, "so long established and so well known as to acquire the force of law, uncontradictory and distinct."

A reference to the authorities already cited will abundantly sustain the principles stated.

Unfortunately for the plaintiff, the evidence submitted does not sustain the offer, and was flatly contradicted by testimony for the defendant.

The three witnesses for the plaintiff upon this point do speak of an open and public custom; but one of them, a witness of the highest character, declares: "The compensation while the agency continues, even if the owner sells, is one per cent. *unless the amount is exceedingly large, and then it is a matter of arrangement.*"

In this instance the sale amounted to \$150,000.

This same witness, when speaking of the rights of one broker when another sells a property, declares: "I don't believe there is any custom." While the last witness says, not only is the custom contended for universal, but it is also universal where another broker, not employed, sells, to pay the first broker employed one per cent. commission.

In this condition of the testimony of plaintiff upon this point, the defendant produced at least three witnesses, each of whom declared that they had never heard of any such custom. One of these gentlemen, though not a broker, was a large purchaser of real estate, and he declares: "I have bought and sold a great deal of real estate, and I never heard of such a custom."

Another witness a conveyancer and real estate broker, swears that he knows the customs of the business, and "I have never been aware of such a custom." The last witness, who was not an expert, corroborated the other two, and added that he "knew a responsible broker who would charge nothing, if sold by another, though sometimes special arrangements were made."

In looking at the weight of this testimony, we would incline to think the plaintiff's witnesses the heaviest; but even giving to them all the credit their knowledge and business character demands, we are clear that the case falls short of the standard fixed by the law; while when contrasted with and weighed against the evidence for the defendant, ought any jury, upon the whole testimony, to have sustained an alleged custom, or should a court permit the verdict to stand when the law requires the proof not only to be clear but also that it shall be such as will establish a custom reasonable and ancient, uncontradicted, notorious to all and distinct?

We think not, and we say so with some reluctance, because it was apparent from the evidence that the plaintiff had labored for the defendant, and was, in equity, entitled to some compensation, for which, according to law and the evidence in this case, he did not show a legal title, either by law, or a custom peculiar to Philadelphia.

We have said nothing of the reason filed, which declares it to have been the duty of the judge, and not the jury, to decide the question involved. We have reached a conclusion which renders it unnecessary to settle that point. We may, however, add, that had the case turned upon this point, we should have paused long before we decided that a mixed question of law and of fact should ever be taken from a jury.

For the fourth reason assigned for a new trial, this rule is made absolute.—*Legal Intelligencer.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAR. 30, 1878.

### WEEKLY SUMMARY.

#### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since March 23, 1878:

JOSEPH CHARLES, dec'd, late of Pequea twp.; Joseph K. Charles, administrator.

ELIZABETH CHARLES, dec'd, late of Pequea twp.; Joseph K. Charles, administrator.

MICHAEL STOLL, dec'd, late of Conestoga twp.; H. H. Miller, administrator c. t. a.

CHARLES J. RAKESTRAW, dec'd, late of Paradise twp.; Catharine Rakestraw, administratrix.

CATHARINE BECK, dec'd, late of Warwick twp.; Sarah Heiser, administratrix.

JOHN G. WETTIG, dec'd, late of Lancaster city; Christian Wettig, administrator d. b. n. c. t. a.

LIZZIE CURLEY, dec'd, late of Lancaster city; Isaac L. Curley, administrator.

HETTIE BOYS, dec'd, late of West Hempfield twp.; Henry L. Collin, administrator.

JACOB WISE, dec'd, late of Wayne co., Ohio; Charles Denues, administrator.

AMANDA FRICK, dec'd, late of West Lampeter twp.; Benj. M. Frick, administrator.

The following Wills have been admitted to probate since March 23, 1878:

JONATHAN FISHER, late of East Lampeter twp.; John P. Fisher and Benj. L. Fisher, executors.

#### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since March 23, 1878:

GEORGE COONLEY and WIFE, of Lancaster city; Fred'k W. Coonley, assignee.

THOMAS TRAGO and WIFE, of Drumore twp.; Levi K. Brown, assignee.

PETER SELLERS and WIFE, of Penn twp.; Abraham Kline, assignee.

ADAM S. GAMBER and WIFE, of East Hempfield twp.; Michael S. Hauck, assignee.

JESSE P. RONK and WIFE, of East Lampeter twp.; Joel L. Lightner, assignee.

ELI BATTEN and WIFE, of Upper Leacock twp.; Daniel B. Eshleman, assignee.

DAVID SHEAFFER and WIFE, of Brecknock twp.; Franklin G. Musser, assignee.

#### NOTICE.

In the Court of Common Pleas of Lancaster County. CHRISTIAN ZOOK, } Proceeding in Domestic Attachment.  
vs. JACOB TROYER. } April Term, 1878. No. 8.

The undersigned trustees, appointed by said court in the above case, will meet at the office of Jacob Kemper, in the village of Akron, Ephrata township, Lancaster county, on TUESDAY, the 9th day of April, 1878, at 1 o'clock, p. m., for the purpose of receiving the proofs of the several creditors of the said defendant of their respective claims or demands against the same, when and where all persons interested in the estate of said defendant may attend if they think proper.

JACOB KEMPER,  
JOSEPH HESS,  
A. G. KILLIAN,  
Trustees.

mar9

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

**COURT PROCLAMATION.**

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN APRIL, (15th) 1878.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of March, 1878.  
mar23 H. N. BRENNEMAN, Sheriff.

**INSOLVENT NOTICE.**

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed MONDAY, APRIL 15th, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.

mar23 ABRAHAM D. HALL.

**Auditors' Notices.**

**Estate of JOSEPH HART, late of Lancaster City, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frank Stahl, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose TUESDAY, APRIL 23d, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. JOHN H. FRY, Auditor.

mar30

**Estate of SUSANNA SHEAFFER, late of Rapho twp., Lancaster Co., Pa., dec'd.**

The undersigned Auditor, appointed to pass on exceptions filed to the account on said estate, and to distribute the balance remaining in the hands of John W. Sheaffer and Martin Sheaffer, executors of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, APRIL 19th, 1878, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. J. W. DENLINGER, Auditor.

mar23

**Assigned Estate of PHILIP STERN and WIFE, of Mount Joy twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William F. Hamilton, assignee of Philip Stern and Wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, APRIL 13, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. JACOB SOUDERS, Auditor.

mar16

The undersigned, appointed by the Orphans' Court of Lancaster county Auditor, to pass upon the exceptions filed to the account of Robert Maxwell, guardian of Rachel J. Wilson, minor grandchild of John D. Wilson, late of Salisbury township, deceased, will attend for that purpose on WEDNESDAY, the 3d day of APRIL, 1878, at the Library Room of the Court House, at Lancaster, at 2 o'clock, p. m., when and where all persons interested may attend. EMLEN FRANKLIN, Auditor.

mar9

**Estate of HENRY BURKHOLDER, late of West Lampeter twp., dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Burkholder and J. J. Byers, executors of the will of said deceased, to and among those legally entitled to the same, will sit for that purpose on THURSDAY, APRIL 4th, 1878, at 2 o'clock, p. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. I. CARPENTER, Auditor.

mar2

\$66 a week in your own town. \$5 Outfit free. No risk. Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALLET & Co., Portland, Maine.

**Estate Notices.**

**Assigned estate of THOMAS TRAGO and WIFE of Drumore twp., Lancaster co.**

Thomas Trago and Wife, of Drumore township, having by deed of voluntary assignment, dated March 22d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the Thomas Trago, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to P. D. BAKER, Att'y. LEVI K. BROWN, Assignee.

mar23\*

Residing in Fulton twp.

**Estate of JOHN GOTTFRIED WETTIG, late of Lancaster city, deceased.**

Letters of administration d. b. n. c. t. a on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lancaster, Pa. CHRISTIAN WETTIG, Administrator. HUGH R. FULTON, Att'y.

mar23\*

**Estate of CHAS. J. RAKESTRAW, late of Paradise twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned residing in Paradise, Lan. co. M. BROSIUS, CATMARINE RAKESTRAW, Administratrix.

mar23

**Assigned Estate of JACOB L. LANDIS (Manor) and WIFE, of Manor township, Lan. Co.**

Jacob L. Landis (Manor) and Wife, of Manor twp., Lancaster Co., having by deed of voluntary assignment, dated March 20th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob L. Landis (Manor), he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to E. McMELLEN, Assignee.

mar23

Residing in Lancaster city.

**Assigned Estate of GEORGE COONLEY and WIFE, of Lancaster City.**

George Coonley and Wife, of Lancaster city, having by deed of voluntary assignment, dated March 22, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Coonley, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to FRED. W. COONLEY, Assignee, S. H. REYNOLDS, Att'y. Residing in Lancaster city.

mar23

**Assigned Estate of SAMUEL K. SLABACH and WIFE, of West Cocalico twp., Lan. Co.**

Samuel K. Slabach and Wife, of West Cocalico township, Lancaster county, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel K. Slabach, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JACOB G. GARMAN, ADAM K. SLABACH } Assignees, Union Station, Lancaster Co., Pa.

mar16

A. J. EBERLY, Att'y, 49 Grant st., Lancaster, Pa.

**Estate of CHRISTIAN HERTZLER, late of Cœrnarvon twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. JOSEPH HERTZLER, HENRY HERTZLER, of Cœrnarvon twp., CHRISTIAN ZOOK, of East Earl twp., Executors.

mar23

GEO. BRUBAKER, } Att'ys. JNO. M. MAST, }

**Estate of JANE B. ROGERS, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Fulton township. L. K. BROWN, Executor.

mar23\*

**Assigned Estate of SAMUEL MCCLENAGHAN and WIFE, of Fulton twp., Lancaster Co.**

Samuel McClenaghan and Wife, of Fulton township, having by deed of voluntary assignment, dated March 14th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel McClenaghan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to J. HAY BROWN, Att'y. SAMUEL BOYD, Assignee, Residing in Fairfield, Green P. O., Lan. Co.

mar16

**Estate of ISAAC SANDOE, late of Earl twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. GEO. SAMDOE, Administrator. GEO. BRUBAKER, Att'y.

mar16

**Estate of ANNA M. SCHUM, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city. PHILIP SCHUM, Administrator. M. BROSIUS, Att'y.

mar16

**Estate of BENJ. LEISEY, late of Cocalico twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. JACOB G. GARMAN, Administrator, A. J. EBERLY, Att'y. Union Station, Lan. Co., Pa.

mar16

**Assigned Estate of DILLER BAKER and WIFE, of Salisbury twp., Lancaster Co.**

Diller Baker and Wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Diller Baker, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to DAN'L DENLINGER, Assignee, Residing in Salisbury twp.

mar16\*

WM. S. AMWEG, } Att'ys. PHILIP D. BAKER, }

**Assigned Estate of REUBEN F. SWARR and WIFE, of East Hempfield twp., Lan. Co.**

Reuben F. Swarr and Wife, of East Hempfield township, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Reuben F. Swarr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to M. N. BRUBAKER, Assignee, Residing in Landisville. S. P. EBY, Att'y.

mar16

**Estate of WILLIAM MURPHY, late of Conoy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Bainbridge, said township.

mar16  
ELIZABETH MURPHY, Administratrix.  
GEO. BRUBAKER, Att'y.

**Assigned Estate of AMOS REESE and WIFE, of Providence twp., Lancaster Co.**

Amos Reese and Wife, of Providence township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Reese and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

mar16\* JOHN HILDEBRAND, Assignee,  
At his store in New Providence.

**Assigned Estate of PHILIP ROYER and WIFE, of Ephrata twp., Lancaster Co.**

Philip Royer and Wife, of Ephrata township, having by deed of voluntary assignment, dated February 25th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Philip Royer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

mar16 LEVI SHIRK, Assignee,  
A. J. EBERLY, Att'y. Lincoln, Lan. Co., Pa.

**Estate of HENRY S. MYLIN, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

mar9\* JOHN B. MYLIN, Administrator.  
Willow Street P. O.

**Estate of ELIZABETH HARTMAN, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

mar9 GEO. H. HARTMAN,  
J. I. HARTMAN,  
PHILIP D. BAKER, Att'y. Executors.

**Estate of ANNA MARIA MYERS, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.

mar9 A. F. KAUL,  
D. P. ROSEN MILLER, JR., Att'y. Executor.

**Estate of ANN ELIZA BACHMAN, late of Bart twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart, Lancaster Co., Pa.

mar9 WILLIAM PHENEGER,  
M. BROSIUS, Att'y. Administrator.

**Assigned Estate of J. B. SWARTZWELDER and WIFE, of Lancaster City.**

J. B. Swartzwelder and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said J. B. Swartzwelder, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. SPURRIER,  
E. C. DIEHL,  
SAM'L H. REYNOLDS, Att'y. Assignees,  
mar9 Residing in Lancaster, Pa.

**Assigned Estate of ROBERT M. MORROW and WIFE, of Lancaster City.**

Robert M. Morrow and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Robert M. Morrow, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. SPURRIER,  
E. C. DIEHL,  
S. H. REYNOLDS, Att'y. Assignees,  
mar9 Residing in Lancaster, Pa.

**Assigned Estate of SWARTZWELDER & MORROW, of Lancaster City.**

Swartzwelder & Morrow, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Swartzwelder & Morrow, they therefore give notice to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to

GEO. SPURRIER,  
E. C. DIEHL,  
S. H. REYNOLDS, Att'y. Assignee,  
mar9 Residing in Lancaster, Pa.

**Estate of CATHARINE GRUBE, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

mar2 JONATHAN ROYER,  
B. F. ESHLEMAN, Att'y. Administrator.

**Estate of JOHN GABLE, late of Colerain twp., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to the undersigned without delay, residing in Lower Oxford township, Chester Co., Pa.

GEORGE IRWIN,  
HUGH R. FULTON, Att'y. Executor,  
mar2 Oxford P. O., Chester Co., Pa.

**Assigned Estate of CONRAD SPATZ and WIFE, of Brecknock twp., Lancaster Co.**

Having by deed of voluntary assignment, dated February 21, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Spatz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

mar2 W. W. FETTER, Assignee,  
M. BROSIUS, Att'y. Residing in Adamstown.

**Estate of ELIZA DUBREE, late of Sadsbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

feb23 JAMES D. REED,  
Geo. M. KLINE, Att'y. Executor.

**Estate of AARON CREAMER, late of Lancaster township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rawlinsville, Martic township, Lancaster county.

feb28 DAVID CREAMER,  
S. H. PRICE, Att'y. Administrator.

**Assigned Estate of HORATIO S. KERNS and WIFE, of Sadsbury twp., Lancaster Co.**

Horatio S. Kerns and Wife, of Sadsbury township, having by deed of voluntary assignment, dated February 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Horatio S. Kerns, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL SLOKOM, Assignee,  
feb28 Residing in Christiana.

**Assigned Estate of JESSE MESSNER and WIFE, of Brecknock twp., Lancaster Co.**

Jesse Messner and Wife, of Brecknock township, having by deed of voluntary assignment, dated February 11, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse Messner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

ABRAHAM LUTZ, Assignee,  
feb16 Residing in Adamstown.

**Estate of PETER MOYER, late of Mount Joy twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent, will make the same known without delay to the undersigned, residing in said township.

GEO. BRUBAKER, JACOB RISSER,  
feb9 Att'y. Executor.

**Assigned Estate of LEWIS BROWN, of Fulton twp., Lancaster county.**

Lewis Brown, of Fulton township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said Lewis Brown, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI K. BROWN,  
P. D. BAKER, Att'y. Assignee,  
feb9 Residing at Goshen, Fulton twp.

**Estate of JOEL ESHLEMAN, late of Brecknock twp., deceased.**

Letters of administration de bonis non on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned,

H. C. BRUBAKER, JACOB WEINHOLD,  
Wm. D. WEAVER, East Earl twp.,  
Att'ys. CHRISTIAN ESHLEMAN, Brecknock twp.,  
feb9 Administrators d. b. n.

**Estate of SAMUEL S. GOOD, late of Mt. Joy borough, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in the borough of Mount Joy.

feb2 C. M. GOOD,  
J. HAY BROWN, Att'y. Administrator.

**Assigned Estate of JACOB B. POKE and WIFE, of West Earl twp., Lancaster Co.**

Jacob B. Poke and Wife, of West Earl twp., having by deed of voluntary assignment, dated January 18, 1878, assigned and transferred all the estate and effects of Jacob B. Poke, to the undersigned, for the benefit of the creditors of the said Jacob B. Poke, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

jan26 EZRA BURKHOLDER, Assignee,  
Residing in West Earl township.

**Estate of JACOB BUCH, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Litis.

jan13\* JACOB A. BUCH,  
D. G. ESHLEMAN, Att'y. Executor.

**Estate of A. J. BOWERS, late of Earl twp., Lancaster co., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Earl twp.

jan13 HARVEY S. BOWERS,  
PHILIP D. BAKER, Att'y. Administrator.

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, APRIL 6, 1878.

No. 45.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES.

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed; for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE		ARRIVE		
	LANCASTER.	HARRISBURG.	LANCASTER.	HARRISBURG.	
Pacific Express,*	2:40 a. m.		4:05 a. m.		
Way Passenger†	4:50 a. m.		7:50 a. m.		
Niagara Express,...	9:35 a. m.		10:40 a. m.		
Hanover Accom.,...	9:40 a. m.		COL. 10.10 a. m.		
Mail Train via Mt. Joy*	11:20 a. m.		1:00 p. m.		
No. 2, via Columbia,...	11:20 a. m.		1:25 p. m.		
Fast Line,*	2:10 p. m.		8:25 p. m.		
Frederick Accom.,...	2:15 p. m.		COL. 2:45 p. m.		
Harrisburg Accom.,...	6:00 p. m.		8:10 p. m.		
Columbia Accom.,...	7:20 p. m.		COL. 8:00 p. m.		
Harrisburg Express,...	7:35 p. m.		8:40 p. m.		
Pittsburg Express,...	9:25 p. m.		10:50 p. m.		
Cincinnati Express,*	11:30 p. m.		12:45 a. m.		
EASTWARD.		LANCASTER.		PHILADELPHIA.	
Atlantic Express,*	12:30 a. m.		3:00 a. m.		
Philadelphia Express,†	4:10 a. m.		7:00 a. m.		
Harrisburg Express,...	7:35 a. m.		10:00 a. m.		
Columbia Accom.,...	9:28 a. m.		12:30 p. m.		
Pacific Express,*	1:20 p. m.		3:45 p. m.		
Sunday Mail,...	2:00 p. m.		5:00 p. m.		
Johnstown Express,...	3:05 p. m.		6:00 p. m.		
Day Express,*	5:18 p. m.		7:20 p. m.		
Harrisburg Accom.,...	5:50 p. m.		9:00 p. m.		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.		a. m.	p. m.
Leave Columbia	10:20		6:45
Arrive at Port Deposit,	1:20		8:45
GOING NORTH.		a. m.	p. m.
Leave Port Deposit,	6:30		3:00
Arrive at Columbia,	8:30		5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.		GOING NORTH.		GOING SOUTH.	
	a. m.	a. m.	p. m.	a. m.	p. m.
Quarryville,	6:50	8:00	2:30		
Lancaster—West King Street,...	8:00	9:30	3:35		
Lancaster—Upper Depot,...	8:10	9:40	3:45		
Lancaster—Upper Depot,...	9:46	4:30	8:10		
Lancaster—West King Street,...	9:55	4:40	8:20		
Quarryville, (arrive)	11:00	6:00	9:25		

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.		GOING NORTH.			GOING SOUTH.		
	a. m.	a. m.	p. m.	a. m.	p. m.	p. m.	
Lancaster—West King Street,...	8:00			8:00		3:35	
Lancaster—Upper Depot,...	8:15	13:55		3:45			
Lancaster Junction,...	8:35	1:35		4:11			
Reading, (arrive)	10:10	3:20		5:50			
LEAVE.		GOING SOUTH.			GOING NORTH.		
	a. m.	a. m.	p. m.	a. m.	p. m.	p. m.	
Reading,	7:35	11:40		6:05			
Lancaster Junction,...	9:21	1:20		7:45			
Lancaster—Upper Depot,...	9:46	:00		3:10			
Lancaster—West King Street,...	9:55			8:20			

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

Official Directory.

Supreme Court of the United States.

Appointed. Chief Justice—Morrison R. Waite, of Ohio, 1874. Justices—Nathaniel Clifford, of Maine, 1858. Noah H. Swayne, of Ohio, 1863. Samuel F. Miller, of Iowa, 1863. Stephen J. Field, of California, 1863. William Strong, of Pennsylvania, 1870. Jos. P. Bradley, of New Jersey, 1870. Ward Hunt, of New York, 1872. Attorney General—Charles E. Devens.

Supreme Court of Pennsylvania.

Chief Justice—Daniel Agnew. Associate Justices—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.

Attorney General—George Lear.

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Reporter—A. Wilson Norris.

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At Philadelphia, commencing 1st Monday in January. At Harrisburg, commencing 1st Monday in May. At Pittsburgh, commencing 1st Monday in October. At Sunbury, commencing 3d Monday in September.

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COURT CALENDAR--1878.

APRIL.

- 8. Argument for Rules of Affidavit of Defense. 5. Last day for issuing Executions to April Term. 20. Last day for setting down causes for trial for May 20 and 27. 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense. 10. Last day for issuing Writs to May Term. 18. Last day for filing Accounts for June Court. 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term. 8. Last day for setting down causes for Argument Court. 15. Argument for Rules of Affidavit of Defense. 22. Calling Judgment Docket.

JULY.

- 20. Last day for filing Accounts to August Court. 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term. 17. Last day for filing Accounts to September Court. 19. Last day for issuing Executions to August Term. 24. Calling Judgment Docket. 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term. 7. Last day for setting down causes for Argument Court. 7. Last day for setting down causes for trial for October 7 and 14. 7. Argument for Rules of Affidavit of Defense. 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense. 11. Last day for issuing Writs to October Term. 19. Last day for filing Accounts to November Court. 26. Last day for setting down causes for trial for November Court. 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term. 9. Argument for Rules of Affidavit of Defense. 16. Last day for filing Accounts to December Court. 18. Last day for issuing Executions to November Term. 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term. 7. Last day for setting down causes for Argument Court. 7. Argument for Rules of Affidavit of Defense. 21. Last day for filing Accounts to January Court, 1879. 21. Calling Judgment Docket. 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 6, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

PETER BURK *against* HENRY BEAR and CHRISTIAN MYERS, administrators of JOHN HUBER, deceased.

(Continued from last week.)

But again, these pleas with the notice of special matter give the express assent and consent of our opponents to try these issues before a jury: 1. They are general issues referring the facts to the country; and 2. They convey the assent of the defendant to try the matter by jury. As I understand the defendant's counsel, however, they mean to contend that the decision of this demurrer covers the whole case, and if it should be against us, the issues not touched by the demurrer, are not to go to a jury at all. This would be strange indeed. Suppose this matter was presented to a chancellor, and he were asked to cut down this contract because there were incumbrances to the amount of \$610, what would he say? He would unquestionably say—pay the residue of the purchase money to the vendor, and this amount to the lien creditors. But the counsel for the defendant say, that in a court of law, if the vendor does not present an unincumbered estate at the day, he cannot enforce the payment of the purchase money. I am not satisfied that this would be so: Sugd. on Vend. 218. It is the duty of the purchaser to ask for the abstract, and if he does not call for it before the time agreed upon for delivery, the chancellor said he would consider the time as waived: Ibid. 244. If the principle, decided in 16 Serg't & R. 261 be correct, that the purchase money is a security in the hands of the purchaser, then the contract on the part of P. Burk was complete when the defendant discharged the scrivener. It is an ordinary thing for a jury to deduct the amount from the purchase money, where suit is brought to recover it: 1 Penn'a R. 373; 13 Serg't. & R. 166. Now, the simple point is whether there be a right in the vendee to retain the amount of incumbrances out of the purchase money, in order to enable the court to administer the equity of the contract?

But we have still stronger ground—the absolute and express refusal of the defendant to proceed—his discharging the scrivener from drawing the deed. This absolved the vendor from the obligation of removing the incumbrances, for to what purpose or effect? Not to meet the defendant with a disincumbered title, for he had declared he would not go on with the contract. Hence P. Burk did not

exert himself to discharge the liens, as is admitted upon the replication and demurrer. In 9 Serg't. & R. 212, Hampton vs. Sprekenagle, it is decided that if, before the day the title was to have been made, the purchaser denies the contract, the existence of incumbrances or failure of the plaintiff to tender a deed, are not defences in an action for damages. Here Burk was able and willing to discharge the liens if Huber had not by his conduct released him from it. He would have done it but for Huber's declarations. The tender of the deed was, therefore, unnecessary; it was supererogation. Now what would be the consequence of the court's deciding the whole matter against us. The case of Hampton vs. Sprekenagle says: "The circumstances of denial of the contract and of ability on the part of the plaintiff, and his willingness to remove incumbrances are to be left to the jury; but by the course suggested the court is required to decide upon it. (Norris here cites 1 Chitty's Pl. 309, 317, to show that the whole cause of excuse must be placed on the record; 3 Serg't. & R. 564, Jordan vs. Cooper, that where the contract is varied it must so be set forth in the pleading. Also 1 Madd. Ch. 430, &c.) But even if the court consider themselves bound or entitled to consider the case without a jury, the facts admitted are such as to entitle the plaintiff to all the benefit of the law, as laid down in Hampton vs. Sprekenagle, and the court will consider the facts as alleged in the replication to be undeniably true. With respect to the authority cited from 1 Maddox, so far as it applies to the defense the antidote follows immediately upon the poison. As to what is said with regard to the purchaser not being obliged to take an equitable title, it has no application because Peter Burk had a complete legal title notwithstanding the incumbrances; and as to the rest, the effect is invalidated by the fact that the purchaser here had the security in his own hands, holding \$3,500 of our money.

I come now to the other matter in this case, the alleged defects of this replication. The first objection is that the replication is double. This we deny. The replication is precisely adapted to the plea. There is no duplicity. It is also concurrent with the narr. and fortifies it. The narr. states the agreement, the plaintiff's performance and the defendant's breach of his covenants. The plea avers and alleges new circumstances, confessing and avoiding the allegations of the plaintiff. It avers the existence of liens, by which it is said that the plaintiff did not make or tender a good title. Our reply then is that it was of no consequence that these incumbrances existed at the tender, (1 April, 1817,) because you, the defendant, before that day, namely, on the 25th March, discharged the scrivener, mutually employed to draw the deeds, declaring that you would not take the title, but without specifying any objection. If these matters had gone to the jury upon the pleadings, would they not have constituted a good defense? It is no objection to a replication that new matter is introduced, if it sustains and fortifies the declaration, and is pertinent to the case: 2 Wils. 8, Long vs. Jack; 11 Johns. R. 56, same point. (Norris

here cites 3 Bl. Comm. 305; 2 Selw. N. P. 473 457, 493; 3 Johns. R. 363.) The criterion of a general issue is not that the plaintiff is only to reply with a *similiter* generally, but is where the plea meets the whole declaration.

As to the objection on account of the protestation, it is but necessary to observe that a *protestando* is merely the exclusion of a conclusion, as Lord COKE defines it, and that is the end of protestation here.

In regard to the third objection—it is general without specification of the points objected to.

With respect to the fourth, we say the case of Hampton vs. Sprekenagle answers and demolishes it.

And the fifth objection is deficient for want of specification of the act of Ann, requiring the special causes of demurrer to be expressly set forth.

Now in reference to this whole case, the court will not regard themselves merely as a common law forum, but as judges and chancellor at the same time. They will look at the conduct of the parties and see if there was nothing to remove the objection of the defendant on the subject of incumbrances. Suppose we had filed a bill in chancery, and the defendant in answer, had stated the matters in his special plea, what would the plaintiff have done? He would have replied what we have replied this case, and then would a chancellor have doubted that such facts as are admitted he reconstitute a perfect answer to this plea, and the matters therein averred? To insist upon the court deciding this cause upon legal and technical rights, is to cut up our rights by the roots; though even at law, if a party himself is the cause why a condition precedent has not been performed, he shall not take advantage of it: 8 Serg't. & R. 268, Cook vs. Cassel. I therefore conclude my argument in this way, that every matter of authority is legal merely and cannot have a binding influence with a court who hold themselves obliged to administer equity as well as law.

Mr. Norris in reply: This cause is before the court for decision, and upon legal principles alone. We are in a court of law, arguing a question of law. I protest against all that has been said in regard to the judge now sitting as a chancellor. It is a doctrine dangerous and heretical. This is not a bill in chancery. The court is not sitting to decree a specific performance of this contract. This is simply an action for damages. In every cause at law the defendant may, if he has a legal defence, demurr to the plaintiff's declaration. It is a fixed, vested right—as much so as a trial *per pais*. The court, in deciding this case will determine this issue with a reference to all the facts admitted by the demurrer. I I concede that the contract recited in the declaration is admitted *in hæc verba*. 2 It is admitted that on the 1st of April, 1817, Peter Burk tendered to us a title, which he considered good and which was *prima facie* good. Now, suppose we had demurred to this declaration, the court must have decided upon its allegations, and would have decided that we were delinquent. But we have interposed a special plea in bar of the plaintiff's action, and on the validity of that plea must

this cause be decided. I consider then the legal state of the record, and contend that all the facts in the declaration and plea and no other are admitted by our demurrer. The pleadings present the general question whether under the facts disclosed, the plaintiff can recover in this action? And, to decide this, we must inquire: 1. Whether the facts alleged in the plea are sufficient bar to the action if unanswered, and if they are, 2. Whether the conclusion from those facts is avoided by the plaintiff's replication.

1. The facts disclosed and admitted by the demurrer are those contained in the declaration and plea, namely, the sale and tender, and the liens existing on the 1st of April, 1817. The fact of liens is not denied by the plaintiff; then comes the demurrer, by which the defendant rests, and abides upon the liens as a legitimate bar to the plaintiff's action, and his excuse for not accepting the title from the plaintiff. I lay down the position that this record presents an issue in law involving simply this question: Do these liens form a bar to the plaintiff's recovery and excuse the defendant for not accepting the title on the 1st of April, 1817? There are two preliminary objections to be disposed of: 1. They say our special plea is misconceived and erroneous. 2. That by our demurrer to the replication, we have admitted all the matters it contains. First, as to our special plea; in deciding on this demurrer the court will look at the whole record and decide against the party who has committed the first fault. Have we pleaded the general issue? I deny that we have. I deny that payment with leave is the general issue. The system of English pleading is the system of Pennsylvania; a general issue in England is a general issue here. What is the general issue in England: 3 Blackstone's C. 305, 306. In 1 Tidd. 593, in covenant, strictly, there is no general issue. The defendant must therefore plead specially. Our pleas here were special; they could not be otherwise. The authority referred to—1 Dall. 258 says: "payment in Pennsylvania is made the general issue by a law of this State." But this was an extrajudicial opinion, and not well founded. The plea of payment has three aspects: 1. At common law; 2. By statute of Ann; 3. Under our defalcation act, admitting evidence of set-offs, discount; to which may be added our Pennsylvania plea of payment with notice of special matters. But in every case, whether here or in England, it is merely a plea in bar and not the general issue: 1 Chitty, s Pl. 459, 462. The general issues of *non assumpsit*, *non est factum* require no replication, and the defendant is not obliged to draw them out at length. If our plea had not been a special plea, why did the plaintiff present a special replication, and why did the court coerce him to draw it out? Next, does our demurrer admit the facts of the plaintiff's replication? A demurrer admits facts sufficiently pleaded; nothing more: 5 Com. Dig. 487, Pleader 2, 4 and 5. A general demurrer confesses all the facts well pleaded. In p. 488, Q, 6, if a count, plea or replication be vicious, the demurrer is no confession of the

matter contained in it: 5 Bac. Ab. 460. As to what facts are admitted. Then let us inquire if the facts contained in this replication be well pleaded. I contend they are not. (*Hopkins* here cites 3 Bl. Comm. 309, 310.) A tender of this title was a *sine qua non* to Peter Burk's recovery. In a court of law, the averment of the fact of tender was indispensable, he did aver the fact in his narr., but the replication is silent as to this fact, and alleges an excuse for not tendering which is a manifest departure. This replication contains matter *res nova* entirely, and what legitimately belonged to the declaration if relied on. Suppose the matter of tender had been omitted, and a demurrer to the declaration, would the plaintiff have been able to stand up against such an objection? 1 Chitty's Pl. 618. Settled rule that the replication should not depart from the narr. in any material matter. The matter set out in the replication is a new fact, and an essential fact. Where time or place or any other circumstance is material, the replication cannot vary from the declaration, or the rejoinder from the plea: 1 Chitty 630. This is a clear case of departure: 3 Johns. R. 367; 5 Bac. Ab. 449, 451; 5 Comyn's Dig. 433, F. 7. The cases cited from 2 Wils. 8, and 11 Johns. 56, are consistent with the authorities we have read—that matter sustaining and fortifying the previous pleading, is no departure. But the plaintiff cannot, in his replication, offer new, substantive and distinct matters. On a trial, could any matter of excuse be offered under this declaration without amendment? What is this in fact but an attempt to amend the declaration by the replication? The great question remains simple and distinct—can the plaintiff recover upon this record; and I shall consider this question as arising out of the declaration and the plea. I regard the matters contained in the replication as out of the case. Do these liens then form a legitimate defense for not accepting the title on the 1st of April, 1817? I contend they do. What was the duty of Peter Purk, and what was the duty of John Huber? 1. The duty of P. Burk was to convey to the defendant on the 1st of April, 1817, a good title. On that day he had not a good title. Time here was of the essence of the contract as to the quality of the estate: 1 Madd. Ch. 430. In England every contract for the sale of real estate gives the vendor the election of two tribunals. He may go into chancery, and pray, by his bill, a specific execution. In equity time is not of the essence of the contract, and if the title be made good before the report of the master it is sufficient. But if he chooses the other tribunal the position is different. He must then have performed the dependent covenant before he can call upon the vendee to perform the covenant on his part: Sugd. on Vend. 9. Now this contract was *in fieri* wholly so; nothing was performed by him; no possession was taken by us; nothing was accepted. Had the defendant taken possession, then indeed he might have had security in the purchase money by retaining the amount of the liens. But such was not the fact. 2. Still they say John Huber ought to have paid off these

liens out of the purchase money. This I deny. I say there is no such stipulation. It is not in the contract, nor can the court decide it was his duty without thereby making a new contract for the parties. Who was to do the first act? Was not the tender of the title and conveyance to be made first, before Huber parted with his money? The acts may be considered simultaneous, but the order is as I have suggested. Will any one say it was Huber's duty to go to the several judgment creditors, collect them together, pay their debts and get them to enter satisfaction? Let us suppose, two persons, say, in Philadelphia, bargain for lands in the county of Allegheny. The vendee discovers before the contract is to be completed that there are incumbrances to half its value, must he be compelled to take the estate thus incumbered, when his contract was for an estate free of incumbrances. But the great matter here is that the contract was wholly *in fieri*. Let this fact be constantly remembered. In the former action the decision of the Supreme Court was—these liens were a bar to the recovery of the purchase money, and I shall show that there cannot be a difference in principle between an action for damages for not complying with the contract, and an action for the purchase money. There was no intimation after the full and elaborate discussion of the cause on that occasion, that it was the duty of Mr. Huber to pay off these incumbrances out of the purchase money. It is conceded that P. Burk, before he can sustain his suit, must aver and show performance (*negatur* by *Hopkins*,) without this he cannot be *rectus in curia*. P. Burk was bound to show a contract before he could claim damages for the breach of it. Here the contract, though continuing in force, ceased on the 1st of April, 1817, to exist in law and *de jure* by reason of P. Burk's not being able at that time to perform his covenant. The contract was conditional and was *ipso facto* void on the failure of Mr. Burk to perform on that day. This cause presents divers aspects which all result in this that John Huber is discharged.

[CONTINUED NEXT WEEK.]

#### SUPREME COURT OF PENNSYLVANIA.

##### JOHNSON vs. JOHNSON.

Where the evidence establishes the habitual intemperance of the husband, and acts of violence towards the wife, the Supreme Court will not interfere with a decree of divorce.

William Johnson's appeal from decree of Court of Common Pleas No. 2 of Allegheny county.

PER CURIAM. October 27, 1877.

In a case of such gross conduct on the part of the husband, whose intemperance is a standing barrier to the happiness of his wife, as well as his own, we ought not to be astute to find a technical reason for reversing the decree. The court below evidently thought the evidence which established more than one battery on the wife was reliable, and that the husband's denial was not. The testimony is contradictory, and the defendant's habits tend to confirm the probability of his wife's statement, for a drunken man is not a very accurate witness. Upon the whole we are led to conclude that there is no apparent error in the decree. If it be severe, it is but another instance of the terrible effect of a habit which destroys soul and body.

Decree affirmed, with costs to be paid by appellant, and appeal dismissed.—*Leg. Int.*

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 6, 1878.

## Applications for License, April Sessions, 1878.

### TAVERN.

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 Brecknock—George Murr, Daniel S. Brendle.  
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 Columbia bor.—Jacob Wall, J. H. Black, August Helas, S. H. Lockard, F. E. Krause, J. N. Hummel, C. Mishlich, F. Abendshine, Henry Sholl, John Wagner, J. B. Schlegelmilch, G. Kramer, James Gaglin, Jacob Fisher, John Housner.  
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 Fulton—W. J. Morris, G. W. Whitaker, Martin Rohrer.  
 Eden—J. K. Alexander.  
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 Lampeter West—Frank Ditlich, D. M. Landis.  
 Lampeter East—M. S. Metzger, L. R. Rhoades, J. F. Echternacht, John Buffenmoyer.  
 Leacock—M. K. Mylin, Jacob R. Rutter, George S. Beck.  
 Leacock Upper—D. H. Grube, M. B. Weidler, H. Reidenbach, M. L. Sheaffer.  
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 Manor—Caroline Breneman, Daniel Hoffman, E. B. Miller, John Steigleman, Elizabeth Stoner, Benj. Markley, Jacob Lehr.  
 Marietta bor.—S. G. Miller, Christian Hauer, Adam Reynolds, Eva Fochlinger, Catharine Proesh-er, Theo. Scott, J. N. Campbell, William Bowers.  
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 Salisbury—John Mason, William Leamon, Jacob Ammons, I. H. Brubaker.  
 Strasburg twp.—B. B. Myers, A. D. Gyger.  
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MARIA LOUISA CLARK and HUSBAND, of Lancaster twp.; Benjamin Snavely, assignee.

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MECK & BRO., of West Lampeter twp.; Henry H. Dietrich, assignee.

DANIEL BRENNER and WIFE, of East Hempfield twp.; John Brenner, assignee.

CATHARINE MYERS, of Little Britain twp.; Wm. W. Hensel, assignee.

SAMUEL VANDERSAAL and WIFE, of Lancaster city; Abraham S. Bard, assignee.

JACOB M. SCHEETS and WIFE, of Warwick twp.; E. L. Kryder, assignee.

GEO. B. MECK and WIFE, and JONAS R. MECK and WIFE, of West Lampeter twp.; Henry W. Deitrich, assignee.

JOHN SHREINER, FR., and WIFE, of Warwick twp.; George Shreiner, assignee.

JOHN KREIDER and WIFE, of Pequea twp.; H. H. Stehman and Christian F. Binkley, assignees.

CHARLES MECKLEY and WIFE, of East Cocalico twp.; Cyrus Ream, assignee.

### NOTICE.

In the Court of Common Pleas of Lancaster County.  
 CHRISTIAN ZOOK, } Proceeding in Domestic Attachment.  
 vs. }  
 JACOB TROYER. } April Term, 1878. No. 8.

The undersigned trustees, appointed by said court in the above case, will meet at the office of Jacob Kemper, in the village of Akron, Ephrata township, Lancaster county, on TUESDAY, the 9th day of April, 1878, at 1 o'clock, p. m., for the purpose of receiving the proofs of the several creditors of the said defendant of their respective claims or demands against the same, when and where all persons interested in the estate of said defendant may attend if they think proper.

JACOB KEMPER,  
 JOSEPH HESS,  
 A. G. KILLIAN,  
 Trustees.

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### INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed MONDAY, APRIL 15th, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.

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ABRAHAM D. HALL.

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this cause be decided. I consider then the legal state of the record, and contend that all the facts in the declaration and plea and no other are admitted by our demurrer. The pleadings present the general question whether under the facts disclosed, the plaintiff can recover in this action? And, to decide this, we must inquire: 1. Whether the facts alleged in the plea are sufficient bar to the action if unanswered, and if they are, 2. Whether the conclusion from those facts is avoided by the plaintiff's replication.

1. The facts disclosed and admitted by the demurrer are those contained in the declaration and plea, namely, the sale and tender, and the liens existing on the 1st of April, 1817. The fact of liens is not denied by the plaintiff; then comes the demurrer, by which the defendant rests, and abides upon the liens as a legitimate bar to the plaintiff's action, and his excuse for not accepting the title from the plaintiff. I lay down the position that this record presents an issue in law involving simply this question: Do these liens form a bar to the plaintiff's recovery and excuse the defendant for not accepting the title on the 1st of April, 1817? There are two preliminary objections to be disposed of: 1. They say our special plea is misconceived and erroneous. 2. That by our demurrer to the replication, we have admitted all the matters it contains. First, as to our special plea; in deciding on this demurrer the court will look at the whole record and decide against the party who has committed the first fault. Have we pleaded the general issue? I deny that we have. I deny that payment with leave is the general issue. The system of English pleading is the system of Pennsylvania; a general issue in England is a general issue here. What is the general issue in England: 3 Blackstone's C. 305, 306. In 1 Tidd. 593, in covenant, strictly, there is no general issue. The defendant must therefore plead specially. Our pleas here were special; they could not be otherwise. The authority referred to—1 Dall. 258 says: "payment in Pennsylvania is made the general issue by a law of this State." But this was an extrajudicial opinion, and not well founded. The plea of payment has three aspects: 1. At common law; 2. By statute of Ann; 3. Under our defalcation act, admitting evidence of set-offs, discount; to which may be added our Pennsylvania plea of payment with notice of special matters. But in every case, whether here or in England, it is merely a plea in bar and not the general issue: 1 Chitty, s Pl. 459, 462. The general issues of *non assumpsit*, *non est factum* require no replication, and the defendant is not obliged to draw them out at length. If our plea had not been a special plea, why did the plaintiff present a special replication, and why did the court coerce him to draw it out? Next, does our demurrer admit the facts of the plaintiff's replication? A demurrer admits facts sufficiently pleaded; nothing more: 5 Com. Dig. 487, Pleader 2, 4 and 5. A general demurrer confesses all the facts well pleaded. In p. 488, Q, 6, if a count, plea or replication be vicious, the demurrer is no confession of the

matter contained in it: 5 Bac. Ab. 460. As to what facts are admitted. Then let us inquire if the facts contained in this replication be well pleaded. I contend they are not. (*Hopkins* here cites 3 Bl. Comm. 309, 310.) A tender of this title was a *sine qua non* to Peter Burk's recovery. In a court of law, the averment of the fact of tender was indispensable, he did aver the fact in his narr., but the replication is silent as to this fact, and alleges an excuse for not tendering which is a manifest departure. This replication contains matter *res nova* entirely, and what legitimately belonged to the declaration if relied on. Suppose the matter of tender had been omitted, and a demurrer to the declaration, would the plaintiff have been able to stand up against such an objection? 1 Chitty's Pl. 618. Settled rule that the replication should not depart from the narr. in any material matter. The matter set out in the replication is a new fact, and an essential fact. Where time or place or any other circumstance is material, the replication cannot vary from the declaration, or the rejoinder from the plea: 1 Chitty 630. This is a clear case of departure: 3 Johns. R. 367; 5 Bac. Ab. 449, 451; 5 Comyn's Dig. 433, F. 7. The cases cited from 2 Wils. 8, and 11 Johns. 56, are consistent with the authorities we have read—that matter sustaining and fortifying the previous pleading, is no departure. But the plaintiff cannot, in his replication, offer new, substantive and distinct matters. On a trial, could any matter of excuse be offered under this declaration without amendment? What is this in fact but an attempt to amend the declaration by the replication? The great question remains simple and distinct—can the plaintiff recover upon this record; and I shall consider this question as arising out of the declaration and the plea. I regard the matters contained in the replication as out of the case. Do these liens then form a legitimate defense for not accepting the title on the 1st of April, 1817? I contend they do. What was the duty of Peter Burk, and what was the duty of John Huber? 1. The duty of P. Burk was to convey to the defendant on the 1st of April, 1817, a good title. On that day he had not a good title. Time here was of the essence of the contract as to the quality of the estate: 1 Madd. Ch. 430. In England every contract for the sale of real estate gives the vendor the election of two tribunals. He may go into chancery, and pray, by his bill, a specific execution. In equity time is not of the essence of the contract, and if the title be made good before the report of the master it is sufficient. But if he chooses the other tribunal the position is different. He must then have performed the dependent covenant before he can call upon the vendee to perform the covenant on his part: Sugd. on Vend. 9. Now this contract was *in fieri* wholly so; nothing was performed by him; no possession was taken by us; nothing was accepted. Had the defendant taken possession, then indeed he might have had security in the purchase money by retaining the amount of the liens. But such was not the fact. 2. Still they say John Huber ought to have paid off these

liens out of the purchase money. This I deny. I say there is no such stipulation. It is not in the contract, nor can the court decide it was his duty without thereby making a new contract for the parties. Who was to do the first act? Was not the tender of the title and conveyance to be made first, before Huber parted with his money? The acts may be considered simultaneous, but the order is as I have suggested. Will any one say it was Huber's duty to go to the several judgment creditors, collect them together, pay their debts and get them to enter satisfaction? Let us suppose, two persons, say, in Philadelphia, bargain for lands in the county of Allegheny. The vendee discovers before the contract is to be completed that there are incumbrances to half its value, must he be compelled to take the estate thus incumbered, when his contract was for an estate free of incumbrances. But the great matter here is that the contract was wholly *in fieri*. Let this fact be constantly remembered. In the former action the decision of the Supreme Court was—these liens were a bar to the recovery of the purchase money, and I shall show that there cannot be a difference in principle between an action for damages for not complying with the contract, and an action for the purchase money. There was no intimation after the full and elaborate discussion of the cause on that occasion, that it was the duty of Mr. Huber to pay off these incumbrances out of the purchase money. It is conceded that P. Burk, before he can sustain his suit, must aver and show performance (*negatur* by *Hopkins*), without this he cannot be *rectus in curia*. P. Burk was bound to show a contract before he could claim damages for the breach of it. Here the contract, though continuing in force, ceased on the 1st of April, 1817, to exist in law and *de jure* by reason of P. Burk's not being able at that time to perform his covenant. The contract was conditional and was *ipso facto* void on the failure of Mr. Burk to perform on that day. This cause presents divers aspects which all result in this that John Huber is discharged.

[CONTINUED NEXT WEEK.]

#### SUPREME COURT OF PENNSYLVANIA.

JOHNSON vs. JOHNSON.

Where the evidence establishes the habitual intemperance of the husband, and acts of violence towards the wife, the Supreme Court will not interfere with a decree of divorce.

William Johnson's appeal from decree of Court of Common Pleas No. 2 of Allegheny county.

PER CURIAM. October 27, 1877.

In a case of such gross conduct on the part of the husband, whose intemperance is a standing barrier to the happiness of his wife, as well as his own, we ought not to be astute to find a technical reason for reversing the decree. The court below evidently thought the evidence which established more than one battery on the wife was reliable, and that the husband's denial was not. The testimony is contradictory, and the defendant's habits tend to confirm the probability of his wife's statement, for a drunken man is not a very accurate witness. Upon the whole we are led to conclude that there is no apparent error in the decree. If it be severe, it is but another instance of the terrible effect of a habit which destroys soul and body.

Decree affirmed, with costs to be paid by appellant, and appeal dismissed.—*Leg. Int.*

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 6, 1878.

## Applications for License, April Sessions, 1878.

### TAVERN.

Adamstown bor.—M. H. C. Clark, S. Miller.  
 Brecknock—George Murr, Daniel S. Brendle.  
 Bart—A. J. McComsey, Benjamin Fritz, John Barkley, J. J. McCreary.  
 Columbia bor.—Jacob Wall, J. H. Black, August Heiss, S. H. Lockard, F. E. Krause, J. N. Hummel, C. Mishlich, F. Abendshine, Henry Sholl, John Wagner, J. B. Schlegelmilch, G. Kramer, James Gaglin, Jacob Fisher, John Housner.  
 Cocalico East—James Hain, S. Fritz, Henry Rhoads.  
 Cocalico West—Joseph K. Lutz, K. Hartman, C. K. Lutz, E. R. Brown, Jacob E. Lutz.  
 Colerain—Joseph Roop.  
 Conestoga—John Kendig, W. E. Ramsey, A. M. Sourbeer, Jacob Waller, D. B. Herr.  
 Cornarvon—B. F. Kramer, George Ax, John Cox.  
 Conoy—James S. Grimes, F. Lœnig, Frank Mc-Niel, Henry Bricker, B. Doyle.  
 Donegal East—Martin Dissinger, Jacob Helstand.  
 Donegal West—Joseph Greenawalt.  
 Drumore—C. B. Bostick, Henry Lee, Mary E. Eckman, George H. Miller, Samuel Althouse.  
 Ephrata—D. K. Widmyer, J. G. Wenger, D. R. Brackbill, Aaron Eitner, A. B. Shiffer, B. N. Withers, Jacob Ruth, W. Horting.  
 Earl—A. M. Martin, Isaac Vogan, Abraham Shiffer, A. B. Patterson, Abraham Setley, Margaret Hell, George Bear.  
 Earl East—M. H. Grube, E. G. Buckhart, Laz. Wolf, William Hartz.  
 Earl West—Daniel Roether, Samuel Styer, G. W. Kaffroth, Jacob L. Erb.  
 Elizabeth—S. G. Hacker, Thomas Sands, Elias Sheetz.  
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 Fulton—W. J. Morris, G. W. Whitaker, Martin Rohrer.  
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### INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the In- solvent Laws, and that the said Court has fixed MONDAY, APRIL 15th, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may at- tend if you think proper.

mar28

ABRAHAM D. HALL.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st., Lancaster, Pa.

COMMON PLEAS TRIAL LIST.

Commencing Monday, April 22d, 1878.

<i>B. F. Davis.</i> 1	JAMES MCALEER <i>vs.</i>	Dec Term, 1877: No. 12. Sum's case, (Man's labor.)	<i>B. F. Eshleman.</i> 16	DAVID B. ESHLEMAN <i>vs.</i>	Feb. Term, 1876. No. 141. App'l by def't from justice, etc.
<i>B. F. Eshleman.</i> 2	ROSANNA MORAN, adm'x. <i>vs.</i>	Plea, non assumpsit.	<i>Reynolds.</i>	LEVI L. BUSH.	Plea, non assumpsit, etc.
<i>D. G. &amp; B. F. Eshleman.</i> 3	JOSEPH TOWSON <i>vs.</i>	May Term, 1871. No. 50. Sci. fa. to revive judgm't. Plea, pay't, payment with leave.	<i>Brocius, Strimets, North.</i> 17	DANIEL FIESTER <i>vs.</i>	Mar. Term, 1876. No. 85. Sum's case.
<i>Smith, Brown.</i> 4	JOHN THOMAS et al. <i>vs.</i>		<i>Frucauff.</i>	FREDERICK S. BLETZ.	Plea, non assumpsit.
<i>North, Amoshey, Given.</i> 5	SAMUEL WILL <i>vs.</i>	Jan'y Term, 1874. No. 7. Sum's in ejectment.	<i>W. A. Wilson, Good, Shenk, Leaman.</i> 18	ADOLPH N. BASCH <i>vs.</i>	April Term, 1876. No. 29. Issue do try by jury, etc.
<i>Reynolds.</i> 6	JACOB SHULTZ. <i>vs.</i>	Plea, not guilty.	<i>Yundt, B. F. Eshleman.</i>	ESHLEMAN & RATHVON.	Plea filed.
<i>E. Franklin, H. C. Brubaker.</i> 7	MILTON S. BRADY <i>vs.</i>	Feb'y Term, 1874. No. 18. Sum's in trespass.	<i>A. J. Kauffman.</i> 19	JOHN BEST <i>vs.</i>	April Term, 1876. No. 88. Sum's in assumpsit.
<i>J. Hay, Brown.</i> 8	JOHN G. BRENNER. <i>vs.</i>	Plea, not guilty.	<i>Elimaker.</i>	SUPPLEE & BRO.	Plea, non assumpsit, etc.
<i>E. Franklin.</i> 9	W. SCOTT BRADY <i>vs.</i>	Feb'y Term, 1874: No. 194. App'l by pl'ff from justice.	<i>B. F. Eshleman.</i> 20	J. A. HOMAN <i>vs.</i>	May Term, 1876. No. 92. Sum's case.
<i>J. Hay Brown.</i> 10	SAME DEFENDANT. <i>vs.</i>	Plea not guilty.	<i>Priece.</i>	PETER J. DELZEIT AND PETER DELZEIT.	Plea, non assumpsit, pay't, etc.
<i>Baker, Frucauff.</i> 11	DANIEL HANAUER <i>vs.</i>	March Term, 1874. No. 6. Attachment ad lev deb., etc.	<i>Davis.</i> 21	J. W. MATTERN <i>vs.</i>	May Term, 1876. No. 102. Sum's in ejectment.
<i>North.</i> 12	J. B. REYNOLDS, def't, AND PENNA. R. R. CO., at al. gar.	Garn'ees plead nulla bona.	<i>Wilson, W. S. Amweg.</i>	MARY NOEL et al.	Plea, not guilty.
<i>Long.</i> 13	H. SHAFFNER et al. <i>vs.</i>	Aug. Term, 1874. No. 24. Issue to try by jury, etc.	<i>P. D. Baker, Snader.</i> 22	ISAAC BEAR <i>vs.</i>	June Term, 1876. No. 7. Sum's in debt.
<i>E. Franklin, Steinman.</i> 14	GEO. M. STEINMAN & CO. <i>vs.</i>	Plea filed.	<i>Amoshey.</i>	JACOB A. BEAR.	Plea, non assumpsit.
<i>Eshleman.</i> 15	ISABELLA CLARK'S nec <i>vs.</i>	Jan'y Term, 1875. No. 55. Sum's in trespass.	<i>Holahan, Martin.</i> 23	JOHN MUNDELL & CO. <i>vs.</i>	Aug. Term, 1876. No. 81. Sum's in assumpsit.
<i>Davis.</i> 16	AMOS GROFF. <i>vs.</i>	Plea, not guilty.	<i>Reynolds.</i>	H. L. SULTZBACH.	Plea, non assumpsit.
<i>Long, Eby.</i> 17	C. E. BOMBERGER, adm'r <i>vs.</i>	Aug. Term, 1875. No. 96. Sum's case.	<i>Reynolds, P. D. Baker,</i> 24	URIAH BITZER <i>vs.</i>	Aug. Term, 1876. No. 117. Sum's case.
<i>Wilson, J. Hay Brown.</i> 18	JACOB W. HERSHEY. <i>vs.</i>	Plea, non assumpsit, etc.	<i>Agnew.</i>	THE CITY OF LANCASTER.	Plea, not guilty.
<i>North.</i> 19	WEISER, SON & CARL <i>vs.</i>	Sept. Term, 1875. No. 11. Sum's case.	<i>Heneel.</i> 25	ISAAC B. MYERS <i>vs.</i>	Aug. Term, 1876. No. 149. Sum's in assumpsit.
<i>Reynolds.</i> 20	JAMES B. REYNOLDS. <i>vs.</i>	Plea, non assumpsit.	<i>Hostetter.</i>	CHRISTIAN HOSTETTER.	Plea, non assumpsit, etc.
<i>Same.</i> 21	PERROTTEY & HOFF <i>vs.</i>	Sept. Term, 1875. No. 12. Sum's case.	<i>E. Franklin.</i> 26	SAMUEL MILLER <i>vs.</i>	Aug. Term, 1876. No. 168. App'l by def't from justice.
<i>Same.</i> 22	SAME DEFENDANT. <i>vs.</i>	Plea, non assumpsit.	<i>Eberly.</i>	H. C. GEMPELING.	Plea, non assumpsit.
<i>P. D. Baker, Bricker.</i> 23	S. & H. GROSH <i>vs.</i>	Nov. Term, 1875. No. 64. Foreign attachment.	<i>Davis.</i> 27	MECHANICS NAT. BANK OF PHILADELPHIA <i>vs.</i>	Sept. Term, 1876. No. 82. Sum's in assumpsit.
<i>Reynolds.</i> 24	JOHN BUTLER et al. <i>vs.</i>	Plea, nil debet, payment.	<i>L. Elimaker.</i>	N. ELLMAKER, Jr.	Plea, non assumpsit, etc.
<i>Ellis, P. D. Baker.</i> 25	LEVI SENSENIG <i>vs.</i>	Jan'y Term, 1876. No. 115. Sum's in assumpsit.	<i>Brown.</i> 28	DAVIS A. BROWN <i>vs.</i>	Sept. Term, 1876. No. 85. App'l by pl'ff from justice, etc.
<i>Yundt.</i> 26	JEHU BROOMALL. <i>vs.</i>	Plea, non assumpsit, pay't, etc.	<i>Johnson.</i>	EUGENE M. HAINES.	Plea, non assumpsit.
<i>E. Franklin.</i> 27	DAVID KING <i>vs.</i>	Jan'y Term, 1876. No. 140. Sum's in assumpsit.	<i>Brocius, Strimets.</i> 29	JOSEPH WALLACE <i>vs.</i>	Oct. Term, 1876. No. 8. Sum's in ejectment.
<i>W. S. Amweg.</i> 28	MARTIN STANTON. <i>vs.</i>	Plea, non assumpsit.	<i>Davis.</i>	ROBERT KANE.	Plea, not guilty.
<i>Long, W. A. Wilson.</i> 29	JOSEPH O. BRINSER. <i>vs.</i>	Feb'y Term, 1876. No. 20. Sum's in assumpsit.	<i>Martin.</i> 30	E. H. MYERS & CO. <i>vs.</i>	Nov. Term, 1876. No. 85. App'l by def't from justice.
<i>Brocius.</i> 30	WILLIAM BANNEY. <i>vs.</i>	Plea, non assumpsit.	<i>H. C. Brubaker.</i>	RABER & SON.	Plea, non assumpsit.

**COURT PROCLAMATION.**

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania; on the

THIRD MONDAY IN APRIL, (15th) 1878.

In pursuance of which precept public notice is hereby given to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do these things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of March, 1878.  
mar23 H. N. BRENEMAN, Sheriff.

**Auditors' Notices.**

**Estate of JOSEPH HART, late of Lancaster City, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frank Stahl, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose **TUESDAY, APRIL 23d, 1878, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. JOHN H. FRY, Auditor.  
mar30

**Estate of SUSANNA SHEAFFER, late of Rapho twp., Lancaster Co., Pa., dec'd.**

The undersigned Auditor, appointed to pass on exceptions filed to the account on said estate; and to distribute the balance remaining in the hands of John W. Sheaffer and Martin Sheaffer, executors of said deceased, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, APRIL 19th, 1878, at 10½ o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. J. W. DENLINGER, Auditor.  
mar23

**Assigned Estate of PHILIP STERN and WIFE, of Mount Joy twp., Lancaster Co.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William F. Hamilton, assignee of Philip Stern and Wife, to and among those legally entitled to the same, will sit for that purpose on **SATURDAY, APRIL 13, 1878, at 10 o'clock, a. m.,** in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. mar16 JACOB SOUDERS, Auditor.

**\$66 a week in your own town. \$5 Outfit free. No risk.** Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALLET & Co., Portland, Maine.

**Estate Notices.**

**Assigned Estate of JOHN KREIDER and WIFE, of Pequea twp., Lancaster Co.**

John Kreider and Wife, of Pequea township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Kreider, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
CHRISTIAN F. BINKLEY,  
H. H. STEHMAN, Assignees.  
ap6 J. W. DENLINGER, Att'y.

**Estate of JOHN WELLER, late of Cernarvon township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Churchtown, Lancaster Co.  
ap6 E. D. WHITE, Executor.  
A. W. SNADER, Att'y.

**Assigned Estate of JESSE P. RONK and WIFE, of East Lampeter twp., Lan. Co.**

Jesse P. Ronk and Wife, of East Lampeter township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse P. Ronk, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JOEL L. LIGHTNER, Assignee,  
Residing in East Lampeter twp.  
ap6

**Estate of BENJAMIN VAN LEW, late of Columbia bor., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to them without delay. WILLIAM W. COLLIER, Residing in Saxton, Bedford Co., Pa.; GEORGE ELTZ, Residing in Reading, Pa.  
ap6 E. D. NORTH, Att'y, Lancaster, Pa.

**Estate of WILLIAM BEAR, late of Leacock township, dec'd.**

Letters of administration *pendente lite* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Christiansburg, Pa.  
SAMUEL SLOKOM, Administrator.  
ap6

**Assigned Estate of CATHARINE MYERS, of Little Britain twp., Lancaster Co.**

Catharine Myers, of Little Britain township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Catharine Myers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
W. W. HENSEL, Assignee,  
Residing in Little Britain twp.  
ap6

**Assigned Estate of JACOB M. SCHEETZ and WIFE, of Warwick twp., Lancaster Co.**

Jacob M. Sheetz and Wife, of Warwick township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob M. Sheetz, he therefore gives notice to all persons indebted to assignor, to make payment to the undersigned without delay, and those having claims to present them to  
E. L. KRYDER, Assignee,  
D. McMULLEN, Att'y. Residing in Warwick twp.  
ap6

**Assigned Estate of BENJAMIN OBER and WIFE, of Penn twp., Lancaster Co.**

Benjamin Ober and Wife, of Penn township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Benjamin Ober, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
LEVI WHITE, Assignee,  
D. McMULLEN, Att'y. Residing in Penn twp.  
ap6

**Estate of CHAS. J. RAKESTRAW, late of Paradise twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned residing in Paradise, Lan. co.  
M. BOSIUS, GATHARINE RAKESTRAW, Administratrix.  
mar23 Att'y.

**Assigned Estate of DAVID BRENNER and WIFE, of East Hempfield twp., Lan. Co.**

David Brenner and Wife, of East Hempfield township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David Brenner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JOHN BRENNER, Assignee,  
J. W. B. BAUSMAN, Att'y. Residing in Manor township.  
ap6

**Assigned Estate of MARTIN ROHRER and WIFE, of Fulton twp., Lancaster Co.**

Martin Rohrer and Wife, of Fulton township, having by deed of voluntary assignment, dated March 29th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Martin Rohrer, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
ISAAC BRADLEY, AMOS K. BRADLEY, Assignees,  
D. McMULLEN, Att'y. Residing in Wakefield, Lancaster Co., Pa.  
ap6

**Assigned estate of THOMAS TRAGO and WIFE of Drumore twp., Lancaster co.**

Thomas Trago and Wife, of Drumore township, having by deed of voluntary assignment, dated March 22d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the Thomas Trago, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
LEVI K. BROWN, Assignee.  
P. D. BAKER, Att'y. Residing in Fulton twp.  
mar23\*

**Estate of JOHN GOTTFRIED WETTIG, late of Lancaster city, deceased.**

Letters of administration *d. b. n. c. t. s.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lancaster, Pa.  
CHRISTIAN WETTIG, Administrator.  
mar23\* HUGH R. FULTON, Att'y.

**Assigned Estate of JACOB L. LANDIS (Manor) and WIFE, of Manor township, Lan. Co.**

Jacob L. Landis (Manor) and Wife, of Manor twp., Lancaster Co., having by deed of voluntary assignment, dated March 20th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob L. Landis (Manor), he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
E. McMULLEN, Assignee.  
mar23 Residing in Lancaster city.

**Assigned Estate of GEORGE COONLEY and WIFE, of Lancaster City.**

George Coonley and Wife, of Lancaster city, having by deed of voluntary assignment, dated March 23, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Coonley, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
mar23 FRED. W. COONLEY, Assignee,  
S. H. REYNOLDS, Att'y. Residing in Lancaster city.

**Assigned Estate of SAMUEL K. SLABACH and WIFE, of West Cocalico twp., Lan. Co.**

Samuel K. Slabach and Wife, of West Cocalico township, Lancaster county, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel K. Slabach, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JACOB G. GARMAN, } Assignees,  
ADAM K. SLABACH }  
mar16 Union Station, Lancaster Co., Pa.  
A. J. BERRY, Att'y, 49 Grant st., Lancaster, Pa.

**Estate of CHRISTIAN HERTZLER, late of Cærnarvon twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

JOSEPH HERZLER,  
HENRY HERZLER,  
of Cærnarvon twp.,  
CHRISTIAN ZOOK,  
of East Earl twp.,  
GEO. BRUBAKER, } Att'ys.  
JNO. M. MAST, } Executors.

**Estate of JANE B. ROGERS, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Fulton township.

L. K. BROWN,  
Executor.

**Assigned Estate of SAMUEL McCLENAGHAN and WIFE, of Fulton twp., Lancaster Co.**

Samuel McClenaghan and Wife, of Fulton township, having by deed of voluntary assignment, dated March 14th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel McClenaghan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

J. HAY BROWN, Att'y. Assignee,  
SAMUEL BOYD, Administrator.  
mar16 Residing in Fairfield, Green P. O., Lan. Co.

**Estate of ISAAC SANDOE, late of Earl twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

GEO. SAMDOE,  
Administrator.  
GEO. BRUBAKER, Att'y.  
mar16

**Estate of ANNA M. SCHUM, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

PHILIP SCHUM,  
Administrator.  
M. BROSIUS, Att'y.  
mar16

**Estate of BENJ. LEISEY, late of Cocalico twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

JACOB G. GARMAN,  
Administrator,  
A. J. EBERLY, Att'y.  
mar16 Union Station, Lan. Co., Pa.

**Assigned Estate of DILLER BAKER and WIFE, of Salisbury twp., Lancaster Co.**

Diller Baker and Wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Diller Baker, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

DAN'L DENLINGER, Assignee,  
Residing in Salisbury twp.  
Wm. S. AMWEG,  
PHILIP D. BAKER, } Att'ys.  
mar16\*

**Assigned Estate of REUBEN F. SWARR and WIFE, of East Hempfield twp., Lan. Co.**

Reuben F. Swarr and Wife, of East Hempfield township, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Reuben F. Swarr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

M. N. BRUBAKER,  
Assignee,  
S. P. EBY, Att'y. Residing in Landisville.  
mar16

**Estate of WILLIAM MURPHY, late of Conoy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Bainbridge, said township.

ELIZABETH MURPHY,  
Administratrix.  
mar 6  
GEO. BRUBAKER, Att'y.

**Assigned Estate of AMOS REESE and WIFE, of Providence twp., Lancaster Co.**

Amos Reese and Wife, of Providence township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Reese and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN HILDEBRAND, Assignee,  
At his store in New Providence.  
mar16\*

**Assigned Estate of PHILIP ROYER and WIFE, of Ephrata twp., Lancaster Co.**

Phillip Royer and Wife, of Ephrata township, having by deed of voluntary assignment, dated February 25th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Phillip Royer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI SHIRK, Assignee,  
A. J. EBERLY, Att'y. Lincoln, Lan. Co., Pa.  
mar16

**Estate of HENRY S. MYLIN, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

JOHN B. MYLIN, Administrator.  
Willow Street P. O.  
mar9\*

**Estate of ELIZABETH HARTMAN, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.

GEO. H. HARTMAN,  
J. I. HARTMAN,  
PHILIP D. BAKER, Att'y. Executors.  
mar9

**Estate of ANNA MARIA MYERS, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lancaster city.

A. F. KAUL,  
D. P. ROSENMILLER, Jr., Att'y. Executor.  
mar9

**Estate of ANN ELIZA BACHMAN, late of Bart twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart, Lancaster Co., Pa.

WILLIAM PHENEGER,  
Administrator.  
M. BROSIUS, Att'y.  
mar9

**Assigned Estate of J. B. SWARTZWELDER and WIFE, of Lancaster City.**

J. B. Swartzwelder and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said J. B. Swartzwelder, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. SPURRIER,  
E. C. DIEHL,  
SAM'L H. REYNOLDS, Att'y. Assignees,  
Residing in Lancaster, Pa.  
ma

**Assigned Estate of ROBERT M. MORROW and WIFE, of Lancaster City.**

Robert M. Morrow and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Robert M. Morrow, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

GEO. SPURRIER,  
E. C. DIEHL, Assignees,  
S. H. REYNOLDS, Att'y. Residing in Lancaster, Pa.  
mar9

**Assigned Estate of SWARTZWELDER & MORROW, of Lancaster City.**

Swartzwelder & Morrow, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Swartzwelder & Morrow, they therefore give notice to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to

GEO. SPURRIER,  
E. C. DIEHL, Assignees,  
S. H. REYNOLDS, Att'y. Residing in Lancaster, Pa.  
mar9

**Estate of CATHARINE GRUBE, late of Warwick township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

JONATHAN ROYER,  
Administrator.  
B. F. ESHLEMAN, Att'y.  
mar2

**Estate of JOHN GABLE, late of Colerain twp., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the estate of the decedent will make the same known to the undersigned without delay, residing in Lower Oxford township, Chester Co., Pa.

GEORGE IRWIN,  
HUGH R. FULTON, Att'y. Executor,  
mar2 Oxford P. O., Chester Co., Pa.

**Assigned Estate of CONRAD SPATZ and WIFE, of Brecknock twp., Lancaster Co.**

Having by deed of voluntary assignment, dated February 21, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Spatz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

W. W. FETTER, Assignee,  
M. BROSIUS, Att'y. Residing in Adamstown.  
mar2

**Estate of ELIZA DUBREE, late of Sadsbury township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said township.

JAMES D. REED,  
GEO. M. KLINE, Att'y. Executor.  
feb23

**Estate of AARON CREAMER, late of Lancaster township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Rawlinsville, Martic township, Lancaster county.

DAVID CREAMER,  
Administrator.  
S. H. PRICE, Att'y.  
feb23

**Assigned Estate of HORATIO S. KERNS and WIFE, of Sadsbury twp., Lancaster Co.**

Horatio S. Kerns and Wife, of Sadsbury township, having by deed of voluntary assignment, dated February 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Horatio S. Kerns, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL SLOKOM, Assignee,  
Residing in Christiansa.  
mar16

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, APRIL 13, 1878.

No. 46.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed, for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,...	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,...	6:00 p. m.	8:10 p. m.
Columbia Accom.,...	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,...	7:25 p. m.	8:40 p. m.
Pittsburg Express,...	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,...	7:35 a. m.	10:00 a. m.
Columbia Accom.,...	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,...	2:00 p. m.	5:00 p. m.
Johnstown Express,...	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,...	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.	a. m.	p. m.
Leave Columbia,.....	10:20	6:45
Arrive at Port Deposit,.....	1:20	8:45

  

GOING NORTH.	a. m.	p. m.
Leave Port Deposit,.....	6:30	2:00
Arrive at Columbia,.....	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:00	2:30
Lancaster—West King Street,...	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30	8:10
Lancaster—West King Street,...	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	8:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading, .....	7:35	11:40	6:05
Lancaster Junction,.....			p. m.
Lancaster—Upper Depot,.....	9:21	1:20	7:45
Lancaster—West King Street,...	9:46	:00	8:10
Lancaster—West King Street,...	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<small>Appointed.</small>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Snabury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors* N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwabel.

THE LANCASTER BAR

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COURT CALENDAR.--1878.

APRIL.

- 15. Last day for issuing Executions to April Term.
- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.

COURT PROCLAMATION.

Whereas, the Honorable JOHN B. LIVINGSTON, President, and Honorable DAVID W. PATTERSON and JOHN J. LIBHART, Associate Judges of the Court of Common Pleas in and for the County of Lancaster, and Assistant Justices of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, in and for the County of Lancaster, have issued their Precept, to me directed, requiring me, among other things, to make public Proclamation throughout my bailiwick, that a Court of Oyer and Terminer and a general Jail Delivery, also a Court of general Quarter Sessions of the Peace and Jail Delivery, will commence in the Court House, in the City of Lancaster, in the Commonwealth of Pennsylvania, on the

THIRD MONDAY IN APRIL, (15th) 1878.

In pursuance of which precept *public notice is hereby given* to the Mayor and Alderman of the City of Lancaster, in the said county, and all the Justices of the Peace, the Coroner and Constables, of the said city and county of Lancaster, that they be then and there in their own proper persons, with their rolls, records and examinations, and inquisitions, and their other remembrances, to do those things which to their offices appertain in their behalf to be done; and also all those who will prosecute against the prisoners who are, or then shall be in the jail of said county of Lancaster, are to be then and there to prosecute against them as shall be just.

Dated at Lancaster, the — day of March, 1878.  
 mar28 H. N. BRENNEMAN, Sheriff.

Auditors' Notices.

Estate of JOSEPH HART, late of Lancaster City, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frank Stahl, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose TUESDAY, APRIL 23d, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. JOHN H. FRY, Auditor.  
 mar30

Estate of SUSANNA SHEAFFER, late of Rapho twp., Lancaster Co., Pa., dec'd.

The undersigned Auditor, appointed to pass on exceptions filed to the account on said estate, and to distribute the balance remaining in the hands of John W. Sheaffer and Martin Sheaffer, executors of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, APRIL 19th, 1878, at 10½ o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. J. W. DENLINGER, Auditor.  
 mar28

Assigned Estate of PHILIP STERN and WIFE, of Mount Joy twp., Lancaster Co.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of William F. Hamilton, assignee of Philip Stern and Wife, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, APRIL 13, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. JACOB SOUDERS, Auditor.  
 mar16

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 13, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

PETER BURK *against* HENRY BEAR and CHRISTIAN MYERS, administrators of JOHN HUBER, deceased.

(Continued from last week.)

Again, to enable P. Burk to recover, he must show that he did all he was bound to do. He must have performed his duty to the letter of his contract. If he was guilty of the first wrong, the first violation of his contract, how can he expect damages to be awarded in his favor against John Huber. On what principle of law or reason is the distinction founded of a suit for the purchase money from one for damages? If P. Burk could not recover the purchase money how can he recover damages? If there was a subsisting contract why was it not executed in the suit for the purchase money? And if, there be no contract, can they insist upon damages in this suit for its violation without absurdity? I will consider the case of Hampton vs. Spreckenagle in connection with that of Huber vs. Burk. Hampton vs. Spreckenagle was before the court in error, after a verdict. Every defect was absorbed in the verdict, which had found an ability in the vendor to pay off the liens. Had the present cause gone to the jury and a verdict been rendered in favor of P. Burk, that case might have been an authority for the plaintiff; but not on this demurrer. That was a sale by parol at auction. Hampton denied that he had purchased for himself, but said he bought as agent for Spreckenagle. And the court there say expressly that in a suit, either for the specific execution of the contract or for damages, performance was necessary. In the case of Huber vs. Burk, the discharge of the scrivener, as well as the tender, was before the Supreme Court, and yet the plaintiff could not recover the purchase money on account of these liens.

But, in answer to everything we have urged or can urge, they meet us with the remark that we are now in chancery, not in a court of law. Do they not by this abandon the cause—admitting that on this issue in law they cannot stand? We are, however, in a court of law where time is of the essence of a contract. This is purely a case of executory contract, without a single act on the part of the vendor or vendee. It differs from the case of Spreckenagle and Hampton, and the New York cases. Is not Huber vs. Burk decisive? "Where," says GIBSON, J., "the contract has been in part executed by delivery

of the premises, the case is different." We bargained for a title in fee simple, free from all incumbrances, to be executed on a particular day. In 2 Phill. Ev. 65, it is laid down that the vendor must make a good title, and must be prepared to give it on the day named. See also 9 Johns. R. 126, Greenly vs. Cheevers; 1 Selw. N. P. 159. In Sugd. on Vendors 244, (Ch. 8,) this doctrine is found: In sales by private agreement, a time is usually fixed for completing the contract, which is at law of the essence of the contract: p. 246. I take the result to be this: where a contract for the sale of land is to be executed on a day prefixed, there the vendor is the actor, and must be prepared to make a title on that day, and the vendee is not obliged to do any act. The exceptions are where no day is fixed; there the vendee must move to have a day appointed, or where a new contract, enlarging the time: this, at law. But in chancery the vendee must apply to the vendor for the abstract of title: 2 Com. on Contr. 52; 1 Madd. 430. Burk has been in chancery. He sought, in the former action, his remedy for the specific performance of his contract, and failed. Therefore, he could not recover his deposit, had he made one according to the English practice. What was done in that action? The whole case went before the Supreme Court—all the equity of the case was there, and all the law of the case was decided. I hold then that the case of Huber vs. Burk is a bar to this suit—a bar to any recovery here; for the principles of the two claims are the same, and, in truth, the plaintiff is now claiming the same rights that were denied him in that case.

HAYES, J. The plaintiff in this case has brought an action of covenant against the defendant for the breach of a contract contained in certain articles of agreement, between them made on the 26th of February, 1817, by which, in consideration of the sum of \$5,500, he sold, and was to give the defendant, his heirs, &c., a good title on the 1st day of April next ensuing, with peaceable possession, for ten acres of land in Millersburg, whereon are a tavern and other buildings, &c., and the defendant was to pay therefor \$3,500 on that day and \$2,000 in one year thereafter; and the parties bound themselves to perform and fulfill all the covenants in the said articles in the penal sum of \$11,000.

The declaration averring that the said Peter Burk hath always on his part kept and performed his agreement aforesaid, proceeds to assign the breach in the following manner: "Yet protesting that the said John Huber hath not performed, fulfilled or kept anything in the said articles of agreement contained, on his part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof, the said Peter Burk saith that the sum of three thousand five hundred dollars and the sum of two thousand dollars were not, (and are not yet paid to him) at the respective times mentioned in the said articles of agreement, by the said John Huber, according to the tenor and effect of the said agreement on his part, although he, the said Peter did, on the 1st day of April

then next ensuing the date of the said articles, tender unto the said John Huber, a good title for and possession of the said ten acres of land and tavern house, with the stove in the bar room and premises thereunto belonging. And so the said Peter Burk in fact saith, that the said John Huber (although often requested so to do,) hath not kept his said covenant, so by him made as aforesaid, but hath broken the same, and to keep the same with the said Peter Burk, hath hitherto wholly neglected and refused and still doth neglect and refuse, to the damage of the said Peter Burk, eleven thousand dollars; and he therefore brings suit," &c.

To this declaration, the defendant, on the 17th June, 1825, pleaded payment with leave, &c., and performance with leave, &c., and the plaintiff replied *non solvit*, and that the defendant had not performed his covenants.

On the 14th of June, 1830, the defendant also filed, by leave of the court, the following additional plea: "And said John Huber comes and defends the wrong and injury when, &c., and says that the said Peter Burk ought not to have and maintain his aforesaid action thereof against him, because he says that the Pennsylvania Bank indorsee of Abraham Hershey, payee of Peter Burk, on the twelfth day of September, one thousand eight hundred and sixteen, at the county aforesaid, recovered judgment in the court of common pleas for the said county of Lancaster, by the award of arbitrators, under the provisions of the act regulating arbitrations, passed the 20th March, 1810, against the said Peter Burk, for a certain debt of four hundred and sixty-three dollars and thirty-five cents, as also eighteen dollars and seventy-nine cents for the costs of the said Pennsylvania Bank in the said suit, whereof the said Peter Burk was convicted, as by the record and proceedings thereof now remaining in the said court of common pleas, of August Term, 1816, No. 607, more fully appears. And the said John Huber further avers, that a certain Christian Kauffman, for the use of Henry Carpenter, in the said court of common pleas by the consideration and judgment of the said court, on the 24th day of April, one thousand eight hundred and fifteen, at the county aforesaid, recovered as well a certain debt of one hundred dollars, with lawful interest thereon from the first day of March, one thousand eight hundred and thirteen, amounting to one hundred and twelve dollars and ninety cents, as also seven dollars and ninety-six and one-half cents, for the costs of the said Christian Kauffman, for the use of the said Henry Carpenter, in the said suit, whereof the said Peter Burk was convicted, as by the record and proceedings thereof now remaining in the said court of common pleas, January Term, 1815, No. 173, more fully appears; and the said John Huber further avers that The United States of America, in the said court of common pleas by the consideration and judgment of the said court, on the 25th day of November, one thousand eight hundred and sixteen, at the county aforesaid, recovered as well a certain debt of one hundred and fifty dollars, as also the sum



of eleven dollars and forty-five cents for the costs of the United States in the said suit against Michael Flinn, said Peter Burk and Jacob Bletz; whereof the said Michael Flinn, Peter Burk and Jacob Bletz were convicted, as by the record and proceedings thereof now remaining in the said court of common pleas of November Term, 1816, No. 329, more fully appears. And the said John Huber further avers that the said three judgments were liens against the real estate and premises in the plaintiff's declaration mentioned from the entry and recovery of the same, and continued to be liens against the said premises until long after the alleged tender of the deed, by the said Peter Burk to the said John Huber, in the plaintiff's declaration mentioned to have been made on the first day of April, one thousand eight hundred and seventeen, and the said judgments until long after the said tender remained open and unsatisfied. And this the defendant is ready to verify: wherefore he prays judgment if the said Peter Burk ought to have or maintain his aforesaid action thereof against him."

On the 16th June, 1830, the plaintiff replied specially to this plea, and his replication was demurred to by the defendant, whose demurrer was filed on the 8th of July following. On the 9th of July the plaintiff joined in demurrer. The argument upon this demurrer was commenced on the 14th of December, 1873, and continued until the next day, when the plaintiff's counsel moved the court for leave to amend their special replication by substituting in lieu of the same the following:

"And the said Peter Burk, as to the said plea of the defendant thirdly above pleaded, and by him drawn up at large, of pretended existing judgments and liens, says that he, the said Peter, by reason of anything by the said John Huber in that plea alleged, ought not to be barred from having and maintaining his said action thereof against him, the said John Huber, for his damages, &c.; (after protesting that the whole matters set forth in the said plea are one and the same with the matters contained in the plea of payment with leave to give the special matters in evidence, and the notice to be given of the special matters to be given in evidence in the cause) because the said John, on the 25th day of March, 1817, called on the scrivener mutually employed by the said Peter and the said John to prepare the title deed for the conveyance of the said house and lot of ten acres of land, with the appurtenances, by the said Peter to the said John and his heirs in fee simple, clear and free, and discharged from all liens and incumbrances, and discharged the said scrivener from proceeding to prepare the said deed of conveyance to him, as he, the said John, would not accept of the same, nor take the said lot of ground with its appurtenances so as aforesaid purchased by him of the said Peter Burk, and then and there made no objection to the title of said Peter Burk of any kind, as to incumbrance or lien by judgment or otherwise being on and incumbering the said premises, from which declarations and conduct the said Peter Burk did not cause and procure the satisfaction to be entered on

the said judgments for whatever sums of money might be justly due thereon, which he was able and willing to do and perform and would have done and performed on the 1st of April, 1817, if the said John Huber had not refused so as aforesaid to comply with his aforesaid purchase, without assigning any cause for his refusal beyond his intention to violate and withdraw from his said contract; and this the said Peter is ready to verify, wherefore," &c.

This motion, after argument thereon, was allowed, and the amended replication being filed, the defendant's counsel demurred to it, as follows:

"And the said John Huber saith that the said replication of the said Peter Burk, last above pleaded, to the third plea of him, the said John Huber, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said Peter Burk to have or maintain his aforesaid action thereof against him, the said John Huber; and that he, the said John Huber, is not bound by the law of the land to answer the same, and this the said John Huber is ready to verify; wherefore, for want of sufficient replication in this behalf he, the said John Huber, prays judgment if the said Peter Burk ought to have or maintain his aforesaid action thereof against him, &c. And he, the said John Huber, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer in law to the said replication—that is to say: 1. The replication varies and departs from the said declaration above pleaded, in averring that because the said John, on the 25th day of March, 1817, called on the scrivener, mutually employed by the said Peter and the said John to prepare the title deed for the conveyance of the said house and lot of ten acres of land, with the appurtenances, by the said Peter to the said John and his heirs in fee simple, clear and free, and discharged from all liens and incumbrances, and discharged the said scrivener from proceeding to prepare the said deed of conveyance to him, as he, the said John, would not accept of the same, nor take the said lot of ground, with its appurtenances, so as aforesaid, purchased by him of the said Peter Burk, and then and there made no objection to the title of the said Peter Burk of any kind as to incumbrances or lien by judgments or otherwise being on and incumbering the said premises, from which declaration and conduct the said Peter Burk did not cause and procure satisfaction to be entered on the said judgments for whatever sum of money might be justly due thereon, which he was able and willing to do and perform, and would have done and performed on the 1st day of April, 1817, if the said John Huber had not refused so as aforesaid, to comply with his aforesaid purchase, without assigning any cause for his refusal beyond his intention to violate and withdraw from his contract. 2. That the *protestando* embraced in the parenthesis in the said replication of the said Peter, is a departure and a variance from

the declaration above pleaded by the said Peter. 3. That the said replication of the said Peter is not certain, direct and positive. 4. That the said replication pleaded last aforesaid by the said Peter, is neither in substance or form any answer in law to the special plea, so as aforesaid, pleaded by the said John, wherein the said John asserts and affirms, that on the first day of April, 1817, certain judgments were of record, and liens upon the said land. 5. That the said replication of the said Peter is double and uncertain. And also for that the said replication is in other respects uncertain, informal and insufficient."

The plaintiff having joined in this demurrer, the counsel immediately proceeded with the argument. On one side the court were admonished that they were sitting in this cause as chancellors as well as judges; whereas, on the other side it was contended that the questions on the demurrer are necessarily sheer questions of law, with which equity has nothing to do. As no inconsiderable portion of the discussion was employed upon these topics, the court will probably be expected to advert to them in their opinion. Many pleas, it is true, have, under our blended jurisdiction of law and equity been expanded so as to enable the parties to present to the consideration of the court and jury the facts which constitute an equitable claim or defense, and by this liberal accommodation, the Pennsylvania judicature is conceived to have attained most of the advantages of a court of chancery, without its cumbrous forms and its enormous delay: 1 Dall. 210; 1 Binn. 123; 3 Sergt. & R. 578. The pleas of payment with leave, &c., and performance with leave, &c., both of which are pleaded in this case, enable the defendant to lay before the jury every fact which would, in a court of equity, excuse the want of payment and performance respectively, and discharge him from his engagement. The case of *Jordan vs. Cooper*, 3 Sergt. & R. 578, established this doctrine, that as the defendant may plead on principles of equity, the same indulgence ought to be extended to the plaintiff, and that the declaration might be adapted to the exhibition of a claim founded on equity merely, so as to obtain a recovery of an equitable right. It has been emphatically declared and often repeated, that equity is part of the law of this State: 1 Dall. 210. And as it can only be administered in our courts of common law and through the medium of legal proceedings, the necessity of expanding or relaxing the common law pleadings of the parties is exceedingly obvious, since by the strict precedents of special pleading, neither an equitable demand could be detailed in the appropriate averments of a declaration or an equitable defense in those of a plea. But this relaxation consists in modifying, I conceive, rather than essentially changing the forms of the declaration, pleas, &c., and so modifying them as to allow the party, preserving the beginning, conclusion and distinctive characteristics of the pleading, to set out the real equity and truth of his case. Had there been in the present action any circumstances in addition to the breach of covenant by the defendant constituting an

equitable right in the plaintiff to recover damages of him, I have no doubt they might have been well stated in this declaration in covenant. Such was, in fact, the point decided in *Jordan vs. Cooper*. But the necessity to which I have adverted does not require that the boundaries of action, or the essential rules of pleading should be infringed. Even in England, where the court of chancery exerts so commanding a power, it is held that equity does not interfere with the rules of pleading; that a court of equity will not relieve either mispleading or a neglect or want of a plea, regarding it as the fault of the party; for in cases proper for the decisions of courts of law, it leaves every man to defend himself by legal pleadings: 1 Fonbl. Eq. 158. And it is much less to be expected that our courts, though bound to administer equity, will break down the rules of pleading to protect a party, in a similar predicament, from the consequences of his own fault.

[CONTINUED NEXT WEEK.]

**Orphans' Court of Lancaster County.**

IN THE MATTER OF THE PETITION OF JULIA A. BAIR, (formerly SELDOMRIDGE,) a legatee under the will of DAVID BRISBEN, deceased.

Where a legacy is bequeathed, the interest of which is to be paid to the legatee during life, with the principal sum over—and the executors, by profitable investment, make an increase over and above the interest, such increase belongs to the legatee and not to the remainderman.

Opinion delivered March 30, 1878. By LIV-  
INGSTON, P. J.

David Brisben, now deceased, by his will, dated March 7, 1856, among other bequests, gave and bequeathed to the petitioner three thousand dollars—she being then a minor, directing that said legacy should be kept at interest until she arrived at twenty-one years of age, in the hands of the executor or any other man that he may appoint. Then she was to draw the interest of her legacy during her life, and at her decease it is to be divided equally among her children; and, if she leave no children or lawful heirs, her legacy to be for the use of the Presbyterian Church in Salisbury township, Lancaster county, Penna., &c. &c.

The petition alleges that the executor retained the sum of \$3,000, to meet said legacy, and invested the same in United States bonds; that by the conversion of said bonds by their redemption, there is in the hands of the executor of said decedent the sum of \$284.78, over and above the sum of \$3,000—the same being the increase by change of securities in the value of the principal sum invested. This sum she claims belongs to her, and asks the court to order and direct that the executors shall pay to her said increase, or income, &c.

Upon this, her petition being read, the court granted a rule on the executors to come into court and show cause why they should not pay to the petitioner said sum or income as prayed for. And in answer to this rule the executors, respondents, admit the facts set forth in the petition, and abide the judg-

ment or decree of the court in the premises, &c.

Is the petitioner entitled to demand and receive this increase or income?

In *Brown vs. Curry's adm'rs*, 19 Alab. 805, the court held that where money is given to one person for life, with remainder to another, the remainderman cannot claim the benefit of contracts made by the tenant for life with the money.

In *Russel vs. Loring*, 3 Allen. 121, it was said that the general rule was that "the tenant for life is entitled to increase and profit."

In *Meyer vs. Simonson*, 5 De Gex & Sm. 726, the principles which govern the court of chancery on this subject are thus stated by PARKER, V. Ch.: "The personal estate of a testator may be considered as divided into three classes. 1st. Property which is found at the testator's death invested in such securities as the court can adopt, as money in the funds, or on real securities. The tenant for life is entitled to the whole increase of this. 2d. Property which can be converted into money without sacrificing anything by a forced sale, and as to this the rule is clear—it must be converted and the produce must be invested in securities which the court allows, and the tenant for life is entitled to the income of such investment. 3d. Property which, according to a reasonable administration, is not capable of an immediate conversion, and which cannot be sold immediately, without involving a sacrifice of both principal and interest. In this case the rule is to take the value of the testator's interest and to give the tenant for life the income of that present value.

In *Wiltbank's Appeal*, 14 P. F. Sm. 256, the principle involved in this case was discussed, and it was held by the Supreme Court, that "earnings or profits of stock of a decedent made after his death are income, though in the form of capital, by the issue of new stock, and was ordered to be distributed as income under the will of Mrs. Carleton. Equity, seeking the substance of things, found that the new stock was but a *product* and was therefore income.

So also in *Earp's Appeal*, 4 Cas. 368, it was held that where the stock itself was not bequeathed to the legatees, but only the *income of it*, that the accumulations on the stock after the death of the testator were as much a part of the income of the principal as the current dividends, and as such belong to the legatee of the incomes or profits for life. That the value of the stock held by the testator at the time of his death, represented by an equal amount in value of the new stock issued, is the principal, and remains subject to the trusts in the will; and the remainder, although in the form of certificates of stock, is to be regarded as *income* since his death, and is to be distributed accordingly.

And in *Moss's Appeal—Lazarus's Appeal*, *Lazarus's estate*, *Weekly Notes of Cases*, vol. 3, p. 428, although the facts differ widely from *Earp's Appeal* and *Wiltbank's Appeal*, above cited, and from the present case, the same principle is maintained. "The capital remaining unimpaired for the re-

maindermen, the actual interest or income realized or profit belongs to the life tenant.

In the case now before us the executors admit that they have in their hands for the benefit of the parties interested in remainder, the whole sum of \$3,000, directed by the testator to be held by them intact, without loss or diminution; and it is shown that by their tact, careful management, and judicious investment thereof, greatly to their commendation, they have made an increase, profit or income of \$284.78, over and above the interest paid to the petitioner.

We are of opinion that, as the sum bequeathed was in money—specie, and the executors have in their hands the whole sum bequeathed, over and above the income or increase stated in the petition, and admitted by the answer, the petitioner, under the decisions above stated, is entitled to this increase or income. And we therefore make the rule absolute, and order and direct the executors aforesaid to pay over to the petitioner, Julia A. Bair, the amount of said increase or income—\$284.78.

Rule made absolute.

**Orphans' Court of Allegheny County.**

*In Re Estate of WILLIAM BEATTY, deceased.*  
Where family relation exists between the parties, and in the absence of express contract, wages cannot be recovered.

In the Orphans' Court for the county of Allegheny.

Opinion by HAWKINS, J. March 2, 1878.

1. By proceedings in partition at No. 73, June term, 1856, in this court, one of the two purparts into which the real estate of Robert Beatty, deceased, was divided, and on which the homestead was erected, was allotted to William Beatty, subject, *inter alia*, to the payment of \$537 owelty to Mary Beatty. There is no evidence of record in this case to show that any part of this amount has ever been paid. But the evidence here shows that in the proceedings for partition of the estate of Mrs. Rebecca Beatty, deceased, at No. 74, June term, 1856, the real estate therein described was taken by William Beatty for, and afterward conveyed to, Mary Beatty; and that he paid several of the heirs their shares of owelty, respectively. Mary Beatty by her counsel consents that these payment and the share of William Beatty on the owelty shall be credited on the owelty of the partition to which she was entitled in the estate of Robert Beatty, deceased. This balance is entitled in the estate of Robert Beatty, deceased. This balance is payable out of the fund here for distribution.

2. In 1865 Mary Beatty sold the land which she had derived from her mother, Rebecca Beatty, deceased, and invested the proceeds in United States bonds. These bonds were placed in the custody of William Beatty, are supposed to have been lost or mislaid, and their value is now claimed by Mary Beatty out of the estate. No sufficient reason has been shown why this claim should not be allowed, and distribution thereto is made accordingly.

3. After the death of Rebecca Beatty, widow of Robert Beatty, deceased, William and Mary Beatty, who were both unmarried, continued to occupy the homestead. Mary became housekeeper and the two lived together as constituting the family. Subsequently Robert C. and Rebecca Martin, nephew and niece, aged respectively about 10 and 12 years, children of a widowed sister, were received into and became members of the family; and the family as thus constituted continued until the death of William Beatty. They all ate at the same table. Robert was clothed by and received spending money from William Beatty, and his sister was clothed in part by Mary and in part by William Beatty. For some years Mary Beatty appears to have done the greater part of the housework, but of late she merely superintended and her niece did the work. Robert has for several years done all the farm work. There was no contract that any of these parties should be paid for their services, nor were any inducements of testamentary benefits held out by William Beatty. No wages were claimed during the latter's lifetime. The relation of the parties seemed to be purely family. Robert C. Martin in now about 24 years of age, and his sister about 27. Compensation is now claimed by sister, nephew and niece, for services; and evidence was offered at the audit to show the supposed value of these services.

The claim must be rejected for the reason that the relation of the parties was such as to repel any implication of contract. In the leading case of *Lantz vs. Frey and wife*, 2 Harris 201, BELL, J., said on this subject: "Now nothing is better settled than that a child is not entitled to demand wages from a parent for services rendered after attaining full age, in absence of express contract, or something equivalent to it: *Walker's Est.* 3 R. 243; *Candor vs. Candor*, 5 W. & S. 513. A principle which embraces also the liabilities of persons whom he regards as standing in that relation, although connected by no ties of blood. It was upon this ground that *De-france vs. Austin*, 9 Barr 389, was decided, and a kindred principle ruled the cases of *Little vs. Dawson*, 4 Dal. 100, and *Swires vs. Parsons*, 5 W. & S. 357. In the first of these cases a minor nephew was not permitted to recover for services rendered to an uncle who had received him as one of his own family; in the second there was a similar denial, where the services were rendered in expectation of a legacy. \* \* \* Each of these determinations is based on the irresistible presumption springing from the relation of the parties, that neither of them contemplated remuneration by the payment of wages, and in the impolicy of sanctioning claims not demanded at the time of the transaction."

There was no compulsion on any of these parties claiming here to remain in the household of William Beatty. They were legally free to sever the family ties and to assume new relations at any time during the period for which they claim wages. But they seem to have preferred the old relation, and wisely. Mary Beatty had a comfortable home and a

protector in her old age. It is not to be presumed that Mrs. Martin would have given up her children, nor have presented a bill for nursing her brother for a few weeks in his last illness unless she had been in indigent circumstances, and therefore desirous of securing a comfortable home for these children. Having obtained such a home with William Beatty those children owed him a debt for which their services were not an equivalent.

4. The claim of Mrs. Martin for compensation as nurse stands on a different footing. She was under no legal obligation to perform those services without compensation. It must therefore be allowed.—*Pitts. Leg. Journal.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 13, 1878.

### TRIAL LIST.

APRIL COURT OF QUARTER SESSIONS, 1878.

#### MONDAY, APRIL 15th.

1. Henry Nixdorf, assault and battery. Jan. 25.
2. Benjamin Kuhlman, assault and battery. Jan. 50.
3. Benjamin Owens, assault and battery. Jan. 36.
4. Phillip Haas, Bryson Painter et al., riot. Jan. 32.
5. John H. Shroad, felonious assault and battery. Jan. 27.
6. Bryson Painter, assault and battery. Jan. 51.
7. Henry Breiter, false pretense. Jan. 68.
8. Aaron Wissler, embezzlement. Jan. 18.
9. Benjamin Rayn, assault and battery. Jan. 79.
10. Henry Smoker, malicious mischief and disturbing meeting. Jan. 69.
11. Henrietta Krug, assault and battery. Jan. 70.
12. Martin S. Herr, burglary. Jan. 65.
13. Hannah Haines, assault and battery. Jan. 31.
14. George Fryberger, violation of liquor laws. April 2, 3.
15. James Alpheus Turner, assault and battery. April 1.
16. Thomas Anderson, burglary. April 10.
17. John Proctor, burglary. April 10.
18. Jacob Finefrock, felonious assault and battery. April 12.
19. George Woods, receiving stolen goods. April 13.
20. Amos C. Gast, violation of election laws. April 3.
21. George Dorwart, violation of election laws. April 4.
22. Jerry Elder, larceny. April 14.

#### TUESDAY, APRIL 16th.

23. Daniel P. Meisey, fornication and bastardy. Jan. 29.
24. Sam'l B. Fahnestock, fornication and bastardy. Jan. 53.
25. John M. Erb and Andrew Gerber, forgery. Nov. 48.
26. Albert Reinhold, fornication and bastardy. Jan. 10.
27. James Clark, attempt to bribe. Nov. 135.
28. Winfield S. McCrary, fornication and bastardy. Jan. 6.
29. Bernard Short, perjury. Jan. 78.
30. Joseph Grawley, fornication and bastardy. Nov. 33.

31. Dennis Sullivan, burglary. April 15.
32. George White, burglary. April 15.
33. Albert King, rape. April 7.
34. Daniel Devan, assault and battery. April 27, 26.
35. Charles Turner, assault and battery. April 28, 30.
36. William Dorsey, false pretense. April 24.
37. Jacob L. Landis, assault and battery. April 29.
38. Joseph Eves, larceny. April 23.
39. Christian Eckman, fornication and bastardy. April 58.

#### WEDNESDAY, APRIL 17.

40. John Eshbach, larceny. April 5.
41. George Hill, larceny. April 16.
42. Nathaniel Johnson, larceny. April 17.
43. Jacob Henry, assault and battery. April 32.
44. Joseph L. Bard, fornication and bastardy. April 32.
45. Joseph Grubb, larceny. April 18.
46. William Dawson, larceny. April 19.
47. Martin Dorwart, false pretense. April 25, 37, 46.
48. Margaret Trost, keeping bawdy house. April 38.
49. William Turner, larceny. April 31.
50. Augustus Reaser, larceny. April 20.
51. William Rhoads, false pretense. April 45.
52. Randall Allison, larceny. April 22.
53. John Barr, fornication and bastardy. April 57.
54. Henry Leaman, attempt to rape. April 79.
- Mary Shaub, assault and battery. April 88.
- William Richardson, assault and battery. April 89.
- James McClune, larceny. April 85.
- James McClune, larceny. April 84.

#### THURSDAY, APRIL 18.

55. Frank Reidlinger, larceny. April 34.
56. Henry McAleer, entering house to commit a felony. April 39.
57. Henry Stackhouse, entering house to commit a felony. April 40.
58. Louis Reidenbach, entering house to commit a felony. April 41.
59. Michael Gorman, entering house to commit a felony. April 42.
60. Adam Bender alias Edward Bender, entering house to commit a felony. April 43.
61. Christian Shaub, entering house to commit a felony. April 44.
62. Wm. L. Plummer, false pretense. April 47.
63. Wm. L. Plummer, embezzlement. April 48.
64. Herman Koch, false pretense. April 50.
65. Daniel E. Eaby, assault and battery. April 51, 52, 53.
66. Susan Jones, adultery. April 55.
67. John Hill, adultery. April 56.
68. Henry McAleer, malicious mischief. April 76, 77.
69. James Foley, larceny. April 78.
70. Jacob Troop, seduction. April 80.
71. Jacob Troop, fornication and bastardy. April 81.

#### FRIDAY, APRIL 19th.

72. Thomas Tammany, assault and battery. April 61.
73. James McClune, larceny. April 63.
74. Jacob Weaver, larceny. April 65, 64, 66.
75. Amy Archey, assault and battery. April 62.
76. Enos O. Diller, fraudulent concealing of goods. April 68.
77. Christian Smith, larceny. April 67.
78. Daniel Shaub, larceny. April 69, 70.
79. Joseph Hinder, larceny. April 71.
80. James Toogood, carrying concealed deadly weapons. April 72.
81. James Toogood, assault and battery. April 74.
82. Andrew Hauch, horse stealing. April 83.
83. Andrew Hauch, larceny. April 83.

#### SATURDAY, APRIL 20th.

84. John Eshbach, surety of the peace. April 6.
85. Jacob Henry, surety of the peace. April 33.
86. Daniel E. Eaby, surety of the peace. April 54.
87. Amos Stauffer, surety of the peace. April 59.
88. Washington C. Pyle, surety of the peace. April 60.
89. James Toogood, surety of the peace. April 73, 75.
90. John E. Ellworth, desertion. April 36.
91. John Brill, surety of the peace. April 86.
92. Mary Shaub, surety of the peace. April 87.

WEEKLY SUMMARY.

REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since April 6, 1878:

- JACOB S. BAKER, dec'd, late of East Hempfield twp.; Valentine Baker, administrator.
PETER STAUFFER, dec'd, late of Providence twp.; John A. Stauffer and A. Groff, administrators.
CATHARINE WITWER, dec'd, late of East Earl twp.; Henry Witwer, administrator.
LEVI STEINER, dec'd, late of Elizabeth twp.; John H. Steiner, administrator.

The following Wills have been admitted to probate since April 6, 1878:

- WILLIAM SPRECHER, late of Earl twp.; George Sprecher, Wm. Sprecher and Benj. Sprecher, executors.

RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since April 6, 1878:

- LEVI KUPP, JR. and WIFE, of Mount Joy twp.; Wm. K. Bernhard, assignee.
JOHN KENDIG, M. D., and WIFE, of Conestog twp.; Ell Eshleman and Alfred Kendig, assignees.
FREDERICK G. WEAVER and WIFE, of Manheim bor.; John Graybill, assignee.
JACOB A. WISNER and WIFE, of Marietta bor.; A. F. Shenck, esq., assignee.
ADAM HUNBERGER and WIFE, of Brecknock twp.; F. G. Musser, assignee.
JOHN J. MILLER and WIFE, of Lancaster city; Francis Pfeiffer, assignee.
SAMUEL W. LEWIS and WIFE, of Ephrata twp.; Martin H. Bitzer, assignee.
PHILIP JACOB BORICK and WIFE, of Lancaster city; Peter Allabach, assignee.
JOSEPH BOWMAN and WIFE, of Eden twp.; Jacob Bachman, assignee.
SAMUEL K. SNYDER and WIFE, of Rapho twp.; George Ruhl, assignee.
SAMUEL P. KING and WIFE, of Warwick twp.; A. C. Nyus, esq., assignee.
GEORGE STONER and WIFE, of East Donegal twp.; Martin Miller, jr., assignee.
JOHN C. BRYAN, of Conoy twp.; Frederick Smith and George Byrod, assignees.
ABRAHAM W. WRIGHT and WIFE, of Conestoga twp.; Henry H. Miller assignee.
COOPER STUBBS and WIFE, of Fulton twp.; N. Davis Scott, assignee.

INSOLVENT NOTICE.

Notice is hereby given to all my creditors that I have presented my petition to the Court of Common Pleas of Lancaster County, for the benefit of the Insolvent Laws, and that the said Court has fixed MONDAY, APRIL 15th, 1878, at 10 o'clock, a. m., in the Court House, in the City of Lancaster, for the hearing thereof, when and where you may attend if you think proper.
mar23 ABRAHAM D. HALL.

Estate Notices.

Assigned Estate of COOPER STUBBS and WIFE, of Fulton twp., Lancaster Co.

Cooper Stubbs and Wife, of Fulton township, having by deed of voluntary assignment, dated March 19, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cooper Stubbs, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
ap13] N. D. SCOTT, Assignee,
M. BROSIUS, Att'y. Residing in Lyle, Lan. co.

Assigned Estate of LEVI KUPP and WIFE, of Mount Joy twp., Lancaster Co.

Levi Kupp and Wife, of Mount Joy township, having by deed of voluntary assignment, dated April 5, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Levi Kupp, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
WM. K. BERNHARD, Assignee,
Residing in Milten Grove, Lan. Co.
ap13\*

Assigned Estate of JOHN J. MILLER and WIFE, of Lancaster City.

John J. Miller and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John J. Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
ap13 FRANCIS PFEIFFER, Assignee,
B. C. KREADY, Att'y.] Residing in Lancaster city.

Assigned Estate of SAMUEL W. LEWIS and WIFE, of Ephrata twp., Lancaster Co.

Samuel W. Lewis and Wife, of Ephrata township, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel W. Lewis, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
MARTIN H. BITZER, Assignee,
A. J. EBERY, Att'y. Residing in Hinkletown Lancaster Co., Pa.
ap13

Assigned Estate of EMANUEL HINKLE and WIFE, of East Cocalico twp., Lan. Co.

Emanuel Hinkle and Wife, of East Cocalico twp.; having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Emanuel Hinkle, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
CYRUS REAM, Assignee,
Wm. R. WILSON, Att'y. Residing in Reamstown, East Cocalico twp.
ap13

Assigned Estate of JOHN KREIDER and WIFE, of Pequea twp., Lancaster Co.

John Kreider and Wife, of Pequea township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Kreider, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
CHRISTIAN F. BINKLEY,
H. H. STEHMAN, Assignees.
ap6 J. W. DENLINGER, Att'y. Residing in East Lampeter twp.

Assigned Estate of JESSE P. RONK and WIFE, of East Lampeter twp., Lan. Co.

Jesse P. Ronk and Wife, of East Lampeter township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse P. Ronk, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
JOEL L. LIGHTNER, Assignee,
Residing in East Lampeter twp.
ap6

Estate of BENJAMIN VAN LEW, late of Columbia bor., Lancaster county, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to them without delay.
WILLIAM W. COLLIER,
Residing in Saxton, Bedford Co., Pa.;
GEORGE ELTZ,
Residing in Reading, Pa.
ap6 E. D. NORTH, Att'y. Lancaster, Pa.

\$66 a week in your own town. \$5 Outfit free. No risk. Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALL & Co., Portland, Maine.

Estate of JOHN WELLER, late of Cœrnarvon township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Churchtown, Lancaster Co.
ap6 A. W. SNADER, Att'y.
E. D. WHITE,
Executor.

Estate of WILLIAM BEAR, late of Leacock township, dec'd.

Letters of administration pendente lite on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Christiana.
SAMUEL SLOKOM,
Administrator.
ap6

Assigned Estate of CATHARINE MYERS, of Little Britain twp., Lancaster Co.

Catharine Myers, of Little Britain township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Catharine Myers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
W. W. HENSEL, Assignee,
Residing in Little Britain twp.
ap6

Assigned Estate of JACOB M. SCHEETZ and WIFE, of Warwick twp., Lancaster Co.

Jacob M. Sheetz and Wife, of Warwick township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob M. Sheetz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
E. L. KRYDER, Assignee,
D. McMULLEN, Att'y. Residing in Warwick twp.
ap6

Assigned Estate of BENJAMIN OBER and WIFE, of Penn twp., Lancaster Co.

Benjamin Ober and Wife, of Penn township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Benjamin Ober, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
LEVI WHITE, Assignee,
D. McMULLEN, Att'y. Residing in Penn twp.
ap6

Estate of CHAS. J. RAKESTRAW, late of Paradise twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned residing in Paradise, Lan. Co.
M. BROSIUS,
CATHARINE RAKESTRAW,
mar23 Att'y. Administratrix.

Assigned Estate of DAVID BRENNER and WIFE, of East Hempfield twp., Lan. Co.

David Brenner and Wife, of East Hempfield township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David Brenner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
JOHN BRENNER,
J. W. B. BAUSMAN, Att'y. Assignee,
ap6 Residing in Manor township.

Assigned Estate of MARTIN ROHRER and WIFE, of Fulton twp., Lancaster Co.

Martin Rohrer and Wife, of Fulton township, having by deed of voluntary assignment, dated March 29th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Martin Rohrer, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to
ISAAC BRADLEY,
AMOS K. BRADLEY,
D. McMULLEN, Att'y. Assignees,
ap6 Residing in Wakefield, Lancaster Co., Pa.

Estate of JOHN GOTTFRIED WETTIG, late of Lancaster city, deceased.

Letters of administration d. b. n. c. t. a on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lancaster, Pa. CHRISTIAN WETTIG, Administrator. mar23\* HUGH R. FULTON, Att'y.

Assigned estate of THOMAS TRAGO and WIFE of Drumore twp., Lancaster co.

Thomas Trago and Wife, of Drumore township, having by deed of voluntary assignment, dated March 22d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the Thomas Trago, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to P. D. BAKER, Att'y. LEVI K. BROWN, Assignee. Residing in Fulton twp. mar23\*

Assigned Estate of JACOB L. LANDIS (Manor) and WIFE, of Manor township, Lan. Co.

Jacob L. Landis (Manor) and Wife, of Manor twp., Lancaster Co., having by deed of voluntary assignment, dated March 20th, 1878, assigned and transferred all their estate and affects to the undersigned, for the benefit of the creditors of the said Jacob L. Landis (Manor), he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to E. McMELLEN, Assignee. Residing in Lancaster city. mar23

Assigned Estate of GEORGE COONLEY and WIFE, of Lancaster City.

George Coonley and Wife, of Lancaster city, having by deed of voluntary assignment, dated March 22, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Coonley, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to FRED. W. COONLEY, Assignee. S. H. REYNOLDS, Att'y. Residing in Lancaster city. mar23

Assigned Estate of SAMUEL K. SLABACH and WIFE, of West Cocalico twp., Lan. Co.

Samuel K. Slabach and Wife, of West Cocalico township, Lancaster county, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel K. Slabach, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JACOB G. GARMAN, } Assignees, ADAM K. SLABACH } Union Station, Lancaster Co., Pa. mar16 A. J. EBERLY, Att'y, 49 Grant st., Lancaster, Pa.

Estate of CHRISTIAN HERTZLER, late of Cernarvon twp., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. JOSEPH HERTZLER, HENRY HERTZLER, of Cernarvon twp., CHRISTIAN ZOOK, of East Earl twp., mar23 GEO. BRUBAKER, } Att'ys. JNO. M. MAST, } Executors.

Assigned Estate of SAMUEL McCLENAGHAN and WIFE, of Fulton twp., Lancaster Co.

Samuel McClenaghan and Wife, of Fulton township, having by deed of voluntary assignment, dated March 14th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel McClenaghan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to SAMUEL BOYD, Assignee. J. HAY BROWN, Att'y. Residing in Fairfield, Green P. O., Lan. Co. mar16

Estate of JANE B. ROGERS, late of Drumore township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Fulton township. L. K. BROWN, Executor. mar23\*

Estate of ISAAC SANDOE, late of Earl twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. mar16 GEO. BRUBAKER, Att'y. GEO. SANDOE, Administrator.

Estate of ANNA M. SCHUM, late of Lancaster City, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city. mar16 M. BROSIUS, Att'y. PHILIP SCHUM, Administrator.

Estate of BENJ. LEISEY, late of Cocalico twp., Lancaster Co., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned. JACOB G. GARMAN, Administrator. A. J. EBERLY, Att'y. Union Station, Lan. Co., Pa. mar16

Assigned Estate of DILLER BAKER and WIFE, of Salisbury twp., Lancaster Co.

Diller Baker and Wife, having by deed of voluntary assignment, assigned and transferred, all their estate and effects to the undersigned, for the benefit of the creditors of the said Diller Baker, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to DAN'L DENLINGER, Assignee. Residing in Salisbury twp. mar16\* Wm. S. AMWEG, } PHILIP D. BAKER, } Att'ys.

Assigned Estate of REUBEN F. SWARR and WIFE, of East Hempfield twp., Lan. Co.

Reuben F. Swarr and Wife, of East Hempfield township, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Reuben F. Swarr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to M. N. BRUBAKER, Assignee. S. P. EBY, Att'y. Residing in Landisville. mar16

Assigned Estate of AMOS REESE and WIFE, of Providence twp., Lancaster Co.

Amos Reese and Wife, of Providence township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Reese and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JOHN HILDEBRAND, Assignee. At his store in New Providence. mar16\*

Assigned Estate of PHILIP ROYER and WIFE, of Ephrata twp., Lancaster Co.

Phillip Royer and Wife, of Ephrata township, having by deed of voluntary assignment, dated February 25th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Phillip Royer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to LEVI SHIRK, Assignee. A. J. EBERLY, Att'y. Lincoln, Lan. Co., Pa. mar16

Estate of WILLIAM MURPHY, late of Conoy township, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Bainbridge, said township. mar16 ELIZABETH MURPHY, Administrator. GEO. BRUBAKER, Att'y.

Estate of HENRY S. MYLIN, late of West Lampeter twp., dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township. JOHN B. MYLIN, Administrator. Willow Street P. O. mar9\*

Estate of ELIZABETH HARTMAN, late of Lancaster City, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. GEO. H. HARTMAN, J. I. HARTMAN, PHILIP D. BAKER, Att'y. Executors. mar9

Estate of ANNA MARIA MYERS, late of Lancaster City, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city. mar9 A. F. KAUL, D. P. ROSENMILLER, JR., Att'y. Executor.

Estate of ANN ELIZA BACHMAN, late of Bart twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart, Lancaster Co., Pa. mar9 WILLIAM PHENEGER, Administrator. M. BROSIUS, Att'y.

Assigned Estate of J. B. SWARTZWELDER and WIFE, of Lancaster City.

J. B. Swartzwelder and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said J. B. Swartzwelder, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to GEO. SPURRIER, E. C. DIEHL, SAM'L H. REYNOLDS, Att'y. Assignees, Residing in Lancaster, Pa. ma.

Assigned Estate of ROBERT M. MORROW and WIFE, of Lancaster City.

Robert M. Morrow and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Robert M. Morrow, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to GEO. SPURRIER, E. C. DIEHL, S. H. REYNOLDS, Att'y. Assignees, Residing in Lancaster, Pa. mar9

Assigned Estate of SWARTZWELDER & MORROW, of Lancaster City.

Swartzwelder & Morrow, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Swartzwelder & Morrow, they therefore give notice to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to GEO. SPURRIER, E. C. DIEHL, S. H. REYNOLDS, Att'y. Assignee, Residing in Lancaster, Pa. mar9

# The Lancaster Bar.

VOL. IX.

LANCASTER, PA., SATURDAY, APRIL 20, 1878.

No. 47.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

## LEGAL BLANKS.

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE	ARRIVE
	LANCASTER.	HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	8:25 p. m.
Frederick Accom.,...	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,...	6:00 p. m.	8:10 p. m.
Columbia Accom.,...	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,...	7:25 p. m.	8:40 p. m.
Pittsburg Express,...	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LEAVE	ARRIVE
	LANCASTER.	PHILADELPHIA.
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,...	7:35 a. m.	10:00 a. m.
Columbia Accom.,...	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,...	3:00 p. m.	5:00 p. m.
Johnstown Express,...	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,...	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.		
	a. m.	p. m.
Leave Columbia,.....	10:20	6:45
	p. m.	
Arrive at Port Deposit,.....	1:20	8:45

  

GOING NORTH.		
	a. m.	p. m.
Leave Port Deposit,.....	6:30	2:00
Arrive at Columbia,.....	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:00	2:30
Lancaster—West King Street,...	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30	8:10
Lancaster—West King Street,...	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading, .....	7:35	11:40	6:05
		p. m.	
Lancaster Junction,.....	9:21	1:20	7:45
Lancaster—Upper Depot,.....	9:46	:00	8:10
Lancaster—West King Street,...	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

### Official Directory.

#### Supreme Court of the United States.

	<i>Appointed.</i>	
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874	
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858	
Noah H. Swayne, of Ohio.	1862	
Samuel F. Miller, of Iowa,	1862	
Stephen J. Field, of California,	1863	
William Strong, of Pennsylvania,	1870	
Jos. P. Bradley, of New Jersey,	1870	
Ward Hunt, of New York,	1872	
<i>Attorney General</i> —Charles E. Devens.		

#### Supreme Court of Pennsylvania.

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweltzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

#### Second Judicial District.

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

#### County Officers.

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigsmacher and H. S. Kerns.

#### City Officers.

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrows.  
*Street Commissioner*—Charles Schwabel.

### THE LANCASTER BAR

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### COURT CALENDAR.--1878.

#### APRIL.

- 20. Last day for setting down causes for trial for May 20 and 27.
- 20. Calling Judgment Docket.

#### MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

#### JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.

#### JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

#### AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

#### SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 31. Calling Judgment Docket.

#### OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

#### NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

#### DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

E. H. BURKHOLDER,

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- 15. Argument for Rules of Affidavit of Defense.
- 22. Calling Judgment Docket.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 20, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

PETER BURK *against* HENRY BEAR and CHRISTIAN MYERS, administrators of JOHN HUBER, deceased.

(Continued from last week.)

Two things, says Lord HOBART, are required in pleading: 1. That is to be in matter sufficient. 2. That it be deduced and expressed according to the form of law, and if either be wanting, it is cause of demurrer: *Commendam* case, Hobart 140, Colt & Grove vs. The Bishop of Coventry and Litchfield. The omission of such material things as are necessary to show a right in the plaintiff, or are material for the defendant in his plea may be taken advantage of on a general demurrer, but matters of form must be specially alleged and assigned as causes of demurrer. In considering the objections to this replication under the demurrer, which is in its form both general and special, we will, in pursuance of the division just quoted, first inquire into the sufficiency of the matter demurred to, and then into the manner in which it is deduced. 1. The replication avers that the plaintiff was able and willing to satisfy the several judgments set forth in the plea, and would have satisfied them on the 1st day of April, 1817, if the defendant had not, on the 25th day of March, preceding, discharged the scrivener who had been mutually employed by the parties to prepare the title deed for the conveyance of the premises, he, the defendant, making no objection to the title, but merely declaring he would not accept the deed nor take the premises. It is to be remembered that this is not an action for the recovery of the purchase money; if it were, the case of *Huber vs. Burk*, 11 Sergt. & R. would be, as it is contended it is, conclusive of the controversy. The Supreme Court, in that case, after considering several other objections to the judgment, which was rendered in the court below in favor of the present plaintiff, proceed to remark "that there is another objection which would be decisive: The vendee, after the time when he was to have made the title, mortgaged the premises for a sum of money. By thus treating the property as his own, he acquiesced in the determination of the vendee to rescind the contract so far as to preclude him from demanding the specific execution of it, and elected to rest the covenant on the penalty for damages." Notwithstanding their decision, however, they expressly recognized his contingent right to recover damages. "Whether he may not still be able,"

say the court, "to recover damages in this suit for the loss of the bargain, will depend on the case he may be able to lay before a jury." But that suit was abandoned. It was an action of debt for the penalty, and according to the English authorities, where such an action is brought, the plaintiff is not entitled to recover, unless he has punctually and literally fulfilled his part of the contract: *Sugd. on Vend.* 163. It was probably for this reason that Peter Burk instituted the action of covenant, which is essentially, says the present Chief Justice, "an action to recover damages for having disaffirmed the contract:" 11 Sergt. & R. 244. If, then, the sole question here, were whether the matter of the replication is sufficient answer to the plea of incumbrances, I should decide it in favor of the plaintiff, for it would be clearly unreasonable that the defendant should be screened from paying a compensation in damages for the injury sustained by the plaintiff in the loss of this bargain, on the ground that the latter had not discharged the liens, when the defendant himself was the sole cause of that omission, and when to have done it would have been an idle ceremony in relation to the defendant's performance. The case of *Hampton vs. Spreckenagle*, 9 Sergt. & R. 212, is an authority to this point; and there are several cases to the same purpose in the English reports. See particularly *Jones, &c. vs. Barkley*, Douglass 684; *Martin vs. Smith*, 6 East's R. 555. See also 1 Term R. 643, *Hotham vs. The E. I. Company*; *Roll's Abr.* 445, *Heard vs. Wadham*; 1 East 619. This view of the case assumes the facts stated in the replication to be well pleaded—in other words, that the matter is deduced and expressed according to law; the effect of which would be, that by the demurrer all the facts stated therein would stand confessed. But if the replication is virtuous, if it is in substance, or even in form insufficient, then the demurrer does not admit any of the facts which it alleges. In considering further the objections assigned to this replication, the third, fifth and last may be disposed of at once. All authorities agree that the causes assigned must not be involved in general expressions, such as "uncertain," "want of form," "insufficient," &c., but the party demurring must show specially how the pleading is uncertain, informal or insufficient, the statute intending to oblige him to lay his finger on the very point: *Hob.* 232; 5 Com. D. 489, (29); 5 Bac. Ab. 464. These three causes of demurrer must, therefore, for want of due specification, be overruled.

The first cause assigned as an objection to the replication is that it varies and departs from the declaration, which has been held by the best authorities to be a defect of substance: 2 Saund. 84 (N. 1); 20 Johns. R. 153, *Andress vs. Waring*. Departure in pleading is when the second plea contains matter not pursuant to the former, and which does not fortify it, and occurs, when in any pleading, the party deserts the ground he took in his last antecedent pleading and resorts to another: 5 Com. D. 433; *Pleader (F. 7)*; 5 Bac. Ab. 449; *Steph. on Pl.* 405; 2 Wils. 96. It is quite evident that if this were allowable, there would be no end to the pleadings; as

the attainment of an issue would often be a legal impossibility. To restrain the parties from abandoning the grounds which they have once respectively assumed is, therefore, essential to the very purpose and aim of pleading, which is to develop the question in dispute. By taking a new and distinct ground in any part of the series, a new state of facts is introduced, and the result is consequently postponed; besides, upon the same principle, the parties might shift their ground as often as they pleased, producing the consequence already mentioned of an indefinite length of altercation. The declaration here alleges an agreement on the part of the plaintiff to give to the defendant, his heirs, &c., for the consideration therein mentioned, a good title on the first day of April, 1817, for ten acres of land in the town of Millersburg, whereon is a public tavern, &c., and then avers: first, that he always kept and performed his agreement; secondly, that he, on the first day of April, 1817, tendered to the defendant a good title for the premises. The first averment is equivalent to saying that the plaintiff did give the defendant a good title, on the 1st of April, 1817, for that was the agreement on his part; the second, that he offered to give him a good title on that day. Passing over the inconsistency of these averments, let us compare them distinctly with the replication, premising that a covenant to convey a good title means the legal estate in fee, free from all valid claims, liens or incumbrances whatever: 10 Johns. R. 266. The ground taken by the plaintiff in his declaration, according to the first averment, is that he gave, on the 1st day of April, 1817, to John Huber, his heirs, executors, administrators and assigns, a good title, *i. e.* a conveyance of the legal estate in fee, free from all valid claims, liens or incumbrances whatever, in the ten acres of land in the town of Millersburg, &c., with peaceable possession, &c. Whereas, in his replication, he admits that he did not make such a title, and that the estate which he had on the day mentioned to convey in the premises was not free from valid liens and incumbrances; and, admitting this, he assumes a new ground, that is to say, the defendant discharged the scrivener who was employed by the parties to prepare the title deed, without objecting to the title on account of the incumbrances, or specifying any other ground of objection; and the plaintiff for that reason did not, on the 1st day of April, 1817, cause and procure satisfaction to be entered on the judgments with which the premises were encumbered, which is tantamount to the allegation that, for a good and sufficient cause, he did not give the defendant, his heirs, &c., a good title in the premises, with peaceable possession, &c., as in his first averment above mentioned he alleged that he had done. Therefore the replication is neither pursuant to the narr. nor fortifies it, but being repugnant thereto falls precisely within the definition of a departure.

Again, take the averment of the declaration to be that the plaintiff tendered a good title on the 1st day of April, 1817, to the defendant, his heirs, &c., in the premises, *i. e.* a conveyance of the legal estate in fee, free from all



valid claims, liens and incumbrances whatever, the replication is no less variant from this; for the replication admitting, as before mentioned, that the plaintiff's estate was not, on the first day of April, 1817, free from valid liens and incumbrances, avers that he would have rendered it free from such liens and incumbrances on that day if the defendant had not discharged the scrivener mutually employed to prepare the title deed, without objecting to the incumbrances, or making any other specific objection to the title—which is equivalent to an allegation that the plaintiff did not, on the 1st day of April, 1817, tender a good title to the defendant, his heirs, &c., for and possession of the ten acres of land, &c., as by the second averment referred to he declared he did.

The result, therefore, is the same, whether we consider the ground taken in the declaration to be performance or tender, or both, if both were compatible and consistent.\* The replication takes new and different ground; it departs from the declaration, and the first cause assigned in the demurrer is sustained: 5 Com. D. 433, Pleader (F. 7.)

The second is that the *protestando* in the replication is a departure and variance from the declaration. The *protestando* regularly is an allegation collateral or incidental to the main pleading, importing that some traversable fact alleged on the other side is untrue; and it has the effect of enabling the party to dispute in another action the fact so passed over, which otherwise he would not be able to do, because the pleading having passed over the fact, would be taken to have admitted it in such subsequent action; the rule being that every pleading is taken to confess such traversable matters alleged on the other side, as it does not traverse. But an answer in fact is no admission of the sufficiency in point of law of the matter answered, and it follows that it is not necessary in passing over an insufficient pleading without demurrer and answering, in point of fact, to make any protestation. In practice, however, it is not unusual (says Stephen on Pleading,) to make a protestation of insufficiency in law, the form having apparently been adopted by analogy to the proper kind of protestation, viz: That against the truth of the fact. The protestation here objected to is not against any fact alleged in the plea, but against the sufficiency of the plea itself, because the matters contained therein were identical with those of which notice had been given by the defendant under his plea of payment, with leave to give special matters in evidence. But if the plea were bad on this or any other legal ground, the plaintiff, without a *protestando* would have the benefit of the objection on the demurrer, which brings the whole record before the court, and on which the court must look to the first defective pleading and decide accordingly. The protestation is, therefore, with reference to the legality of the

\*If the defendant in covenant pleads performance generally, and the plaintiff assigns a breach in the not doing of such an act, and the defendant rejoins that he offered to do it, this is a departure; for offer and refusal is not the same as performance: Co. Litt. 304 a.; Cro. Car. 76, 77.

plea, entirely superfluous. Moreover, every protestation, however regular, is without avail in the suit in which it occurs; every traversable fact not traversed is, notwithstanding the protestation, to be considered as admitted in the existing suit. For this reason it has been held that an idle or vitious protestation does not vitiate the plea, though it be shown for cause of demurrer: 5 Com. D. 471, Protestation N. The second cause for demurrer is consequently overruled.

It is an established rule, that when demurrer is joined, the court shall adjudge upon the whole record, and not upon the point alone which is referred to them by the demurrer, and judgment will therefore be given against the party whose pleading was first defective in substance: 5 Bac. Ab. 460; Hob. 56; 6 Com. D. 487, 484, Pleader (Q. 5); 1 Chitty's P. 647; 1 Saund. 285 (N. 5). So that notwithstanding the defect of the replication in the present instance, the judgment would still be for the plaintiff if it appeared that the defendant's plea was bad, unless, indeed, the declaration were substantially defective; and this it is apprehended is the case: Steph. Pl. 162, 164, 165. But before I proceed to point out the circumstance in which this defect is considered to exist, it will be proper to say that I think the special plea of the defendant is unobjectionable. It is not shown or averred in this declaration that the plaintiff, P. Burk, was seized in fee or was the owner of the premises which he covenanted to convey—or had a good title to convey: Sugd. on Vendors 166, 167. There is no averment of title in the plaintiff. In 5 Com. Dig. 486, Pleader 3 M. 9, it is laid down that if a declaration does not show a sufficient right or title in the plaintiff, it will be bad on a general demurrer, for a right which does not appear is as none. See also 5 Com. D. 344, (C. 34,) 345, (C. 35,) 405 (E. 22,); 6 East 555; 3 East 410; 2 H. Bl. 123; 1 H. Bl. 270; 2 Went. 91. Chitty in his 2d volume of Pleadings, 129, after citing several authorities for precedents of declarations, by a vendor against a vendee, for not completing his purchase, adds "that from these it appears that the plaintiff must show that he had a good title to convey." See 1 Chitty Pl. 347; 2 Phill. Ev. 64. I have examined all the precedent referred to, and I find that in every one the declaration contains an averment of title except the case of Phillips vs. Fielding, 2 H. Bl. 123, in which the declaration was held to be clearly bad for the omission. It is an essential principle in pleading any right or authority as set up in respect to property—personal or real, that some title to that property must be alleged in the party or some other person from whom he derives his authority: Steph. on Pl. 321; 1 Chitty Pl. 347; Douglass 620, Luxton vs. Robinson; Saund. Pl. and Ev. 901. In Beaumont vs. Dean, 2 Leonard 10, where, in dower, the defendant pleaded that before the writ brought, he assigned a rent of £10 per annum, to the demandant in recompense of her dower, the demandant thereupon demurred, because the tenant had not shown what estate he had in lands at the time of the rent granted, as to say that he was seized in fee and granted the

said rents, so that it might appear to the court upon the plea that the tenant had a lawful power to grant such rent, which was granted by the whole court and the demurrer allowed. This case is important, as it indicates with great clearness the foundation of the rule requiring the party to show in his pleading his title or authority, namely, that it may appear to the court that he has a good title or lawful authority. Hobart 233, is equally explicit and strong to this effect. It is not enough, says he, that the party hath right, but such right must be disclosed to the judges, upon the record, to enable them to pronounce upon it. Until recently, indeed, the vendor, in order to sustain an action for breach of contract, was obliged to display his whole title on the record, it not being sufficient to aver that he has always been ready and willing, and frequently offered to make a title to the estate; but in a case decided in 1805, (Martin vs. Smith, 6 East 555,) where the vendor averred that "he was seized in fee," and was ready and willing, and offered to convey to the defendant; this was held sufficient.

The contract in the present case was to give the defendant a good title to the premises—an estate in fee simple, and it is manifest that unless the vendor was seized in fee of the premises he could not maintain an action against the vendee for the non-payment of the purchase money: Sugden on Vend. 178, 179. It was, therefore, essential to aver in this declaration that the plaintiff was seized of an estate in fee, without which his right of action does not and cannot appear to the court. I have felt bound to notice this substantial defect in the declaration (though without this the judgment must be for the defendant on the first objection to the replication) because it is unavoidably presented by the record to the consideration of the court; and, being the first defective pleading, the objection arising from it is, therefore, paramount.

Judgment on the demurrer for the defendant.

The foregoing judgment was entered by order of the court on the 6th of February, 1832. Two days afterwards the plaintiff's counsel moved to amend his declaration in certain particulars set forth in their written application. This motion was placed on the argument list and was argued by the same counsel who argued the demurrer, at the following June term. The court, after advisement, disallowed the motion, for the reasons contained in the following opinion by—

HAYES, J. This is a motion on behalf of the plaintiff to amend his declaration. The action was commenced in 1824, the suit being No. 10 of the September Term. On the 18th of December, in the same year the declaration was filed. In 1825, June 17, the defendant pleaded payment with leave, &c., and performance with leave, &c. The plaintiff replied *non solvit* and that the defendant had not performed his covenants. 1830, June 14, the defendant filed, by leave of the court, an additional special plea, to which, June 16th, the plaintiff replied specially. The defendant,

on the 8th of July, demurred to this special replication, and on the 9th of July the plaintiff joined in the demurrer. 1831, December 14, this demurrer was called up for argument, and the counsel proceeded to argue the same; but whilst the argument was in progress the plaintiff, by leave of the court, amended his replication—the defendant opposing his motion for that purpose. To the amended replication the defendant demurred; and the plaintiff having joined in the demurrer, the counsel proceeded with the argument which was concluded on the 19th of December. The court held the matter under advisement until the 6th of February, 1832, when they delivered their opinion and directed judgment to be entered on this demurrer for the defendant, who was the demurrant.

[CONTINUED NEXT WEEK.]

### Common Pleas of Lancaster County.

ALTICK & SON vs. PENN'A R. R. CO.

[Sept. T., 1874, No. 79.]

Common carriers for hire cannot, even by special contract, exempt themselves from liability for negligence of themselves or their servants.

Such contracts, being against public policy, are void.

Rule to show cause why judgment should not be entered for \$1.00.

H. M. North for rule.

F. S. Pyfer contra.

Opinion delivered April 13, 1878, by LIVINGSTON, P. J.

This is an action of trespass on the case, in which, as appears by the narr., the plaintiffs seek to recover from the defendant damages for injury to property placed by them in the care and custody of defendant, and to be by defendant carried, for hire, to a certain point of destination at which it was again to be delivered to plaintiffs, or for them—which property, as is alleged, was so negligently and carelessly carried that it was greatly injured, to their great damage, &c. It is an action to recover from defendant damages for injuries caused by the carelessness and negligence of the defendant.

The defendant comes into court and obtains a rule to show cause why it should not be permitted to enter judgment in this action in favor of plaintiffs for one dollar, and produces a paper signed by D. A. Altick & Son, in which *inter alia* it is agreed that the railroad company were to receive buggies, carriages and vehicles from D. A. Altick & Son, from time to time during the year 1874, for transportation, upon the express agreement and condition that D. A. Altick & Son assume all risk of loss and injury to said articles while in transit or at stations, and exempt the carriers therefrom; and "The said Dan'l A. Altick & Son, shipper or owner of the said articles, hereby releases the Pennsylvania Railroad Company, and all other companies or persons engaged in transporting the same, from all liability for loss, damage or delay thereto as aforesaid, and expressly assumes all risks, of whatever nature, of transportation and delays in delivery; and in any suit or action against the said Pennsylvania Railroad Company, or other carrier or agent

aforesaid, for loss of or damage to any of the said articles, while in transit or at stations, or for delay in delivering the same, this agreement may be pleaded in bar thereto; or, at the option of the said Pennsylvania Railroad Company, or other carrier or agent, at any time, a confession of judgment for the sum of one dollar, and payment or tender of the same, shall be a full satisfaction and discharge of any and every claim or claims for damages in such suit or suits."

In connection with this defendant also presents a confession of judgment under its corporate seal, signed by its vice-president and attested by its secretary, confessing judgment to the plaintiffs for the sum of one dollar, and files the same, offering to pay plaintiffs on the entry of the judgment the sum of one dollar.

The defendant is a carrier for hire, a common carrier, carrying the goods, wares and merchandise of persons from place to place along its route; and the question under the narr. and plea is has defendant been guilty of such negligence as to entitle plaintiffs to recover damages for injuries sustained by reason thereof?

It is contended by defendant that the paper here presented as a contract releasing all damages, however the same may arise, except the sum of one dollar; and that, as the damages, if any, are fixed and liquidated at the stipulated sum of one dollar, the judgment must be entered for that sum according to the terms of the agreement and release.

On the part of plaintiffs it is contended that this being an action the gist of which is negligence, the paper relied on by defendant is inoperative and of none effect, because, they say, the defendant cannot limit his liability, or by contract be exempt from liability for negligence; and, therefore, they should not be prevented from prosecuting their claim by the entry of judgment for one dollar.

In Doct. & Stud't 224, it is said that "no limitation of responsibility can excuse gross negligence."

In 4 Harr. 68, Baldauf's case, it is said that "carriers cannot, even by special agreement with the owner, discharge themselves from the ordinary care incumbent on a bailee for hire."

In same case, page 77, ROGERS, J., says: "The proprietors say they bind themselves to no charge or care of the same whatever, either express or implied. There is a plain endeavor to shirk all responsibility whatever, even to the misconduct of their own agents, and to avoid the duty which the law casts upon them, to provide places for the safe custody of the goods, and persons whose business it is to take charge of such articles as are committed to their care. They undertake to carry for hire, and, by the very nature of their employment, to bestow, for the preservation of the goods, at least the ordinary care of a bailee for hire. From this duty I have no hesitancy in saying they cannot discharge themselves, even by a special agreement with the owner. Such a stipulation would be void being against the policy of the law. There is no principle in the law better settled than that whatever has an obvious tendency to

encourage guilty negligence, fraud or crime is contrary to public policy. Such, in the very nature of things, would be the consequence of allowing the common carrier to throw off the obligation which the law imposes upon him of taking at least ordinary care of the baggage or other goods of a passenger."

In 11 Har. 532, LOWRIE, Justice, says: "Assuming that a public company of carriers may contract for other exemptions from liability than those allowed by law, still such a contract will not exempt from liability for gross negligence."

In Goldey's case, 6 Cas. 212 and Powell's case, 8 Cas. 414, it was held that a release signed by plaintiff was no excuse for negligence.

In the case of Farnham *et al.*, 5 P. F. S. 53, it was held that "a common carrier may, by a special contract, and perhaps by notice, limit his liability as to every cause of injury, *excepting* that arising from his own or his servants' negligence."

In Butler's case, 7 Sm. 335, it is said: "A stipulation by a common carrier that he will not be liable for damages does not relieve him from responsibility for actual negligence by himself or servants."

In the case of Sands *et al.*, 5 Sm. 140, it was held that "common carriers may limit their liability by a special contract, or a special acceptance of goods, and thus become subject to the laws of bailment for reward; but there can be no limitation of liability for negligence of the carrier or his servants."

In Wolf's case, 12 Sm. 83, it is said that "carriers may limit their responsibility by express contract when it does not cover their own negligence."

In the American Express Co. vs. The Second National Bank of Titusville, 19 Sm. 394, 401, it was held that "common carriers cannot so limit their liability, by special notice or contract, as to relieve themselves from the consequence of their own or their servants' negligence."

Other cases might be cited to the same point—among them McCloskey's case, 23 Pa. State Rep. 526; Colton's case, 67 Pa. State Rep. 211, Patterson's case, *Ibid* 500; Empire Transportation Co.'s case, 63 P. S. R. 14. It is unnecessary to review these; they, with the other cases referred to, we think show clearly that the settled law of Pennsylvania is that common carriers cannot, even by contract, exempt themselves from liability for negligence of themselves or their servants; and this being our view of the law, after a careful examination of the decisions on this point, without at present expressing our opinion as to what effect such contract or agreement may have as to the *onus probandi*, or burden of proof in the cause before the court, we deem it our duty, under the decisions cited above, to discharge the rule, and to decline to permit the entry of judgment for one dollar in favor of plaintiff, as requested by defendant.

Rule discharged.

— Saturday, May 18th, last day for filing accounts to June Term, 1878.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 20, 1878.

## LISTS OF JURORS.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas, commencing on Monday, May 20, 1878:

Henry Behmer, farmer, Warwick.  
 Samuel L. Bowman, collector, Ephrata.  
 William U. Barr, clerk, Columbia.  
 George Beimesderfer, tailor, Rapho.  
 Absalom Bard, farmer, West Cocalico.  
 John Charles, farmer, Manor.  
 George Diller, innkeeper, Paradise.  
 Samuel Donovan, clerk, Mount Joy bor.  
 John H. Doerstler, miller, Manor.  
 James Dennis, jeweler, Ephrata.  
 E. J. Erisman, merchant, 5th Ward, city.  
 John Evans, jr., carpenter, 9th Ward, city.  
 John J. Evans, gentleman, West Lampeter.  
 John Elmer, farmer, Salisbury.  
 Daniel W. Erb, farmer, Penn.  
 Jacob Getz, drover, East Cocalico.  
 John P. Good, farmer, Conestoga.  
 Henry Gast, potter, 8th Ward, city.  
 A. G. Gules, merchant, Columbia.  
 Christian Gerber, farmer, East Donegal.  
 Abraham Hoffer, farmer, West Donegal.  
 Lewis Harpel, tobaccoist, 8th Ward, city.  
 A. B. Haverstick, farmer, Manheim twp.  
 E. S. Hammond, farmer, Earl.  
 H. S. Hershey, coachmaker, Columbia.  
 F. W. Helm, merchant, Providence.  
 Abraham H. Kauffman, innkeeper, Drumore.  
 Pierce L. Leshar, farmer, East Cocalico.  
 Christian Longenecker, farmer, Penn.  
 Michael H. Moore, miller, West Hempfield.  
 Henry E. Minich, merchant, East Hempfield.  
 Henry M. Mayer, farmer, East Hempfield.  
 John B. Mylin, farmer, West Lampeter.  
 Frederick Oldwiler, farmer, Mount Joy twp.  
 C. W. Pusey, justice of the peace, Drumore.  
 Adam Ranck, jr., farmer, Upper Leacock.  
 Peter Risser, merchant, Rapho.  
 Amos L. Ritz, plasterer, Pequea.  
 David W. Ranck, farmer, West Earl.  
 Moses Shirk, farmer, West Cocalico.  
 Josiah Snavelly, shoemaker, Warwick.  
 Isaac Shue, farmer, Rapho.  
 R. K. Schnader, tobaccoist, 5th Ward, city.  
 Frederick Stein, dyer, Columbia.  
 Martin Sensenig, innkeeper, Cernarvon.  
 John C. Vancamp, farmer, 9th Ward, city.  
 Henry Vonelda, miller, Brecknock.  
 A. R. Wimer, esq., farmer, Manor.  
 George Whitson, farmer, Bart.  
 Silas Winters, farmer, Providence.

Names of 50 Petit Jurors, to serve in a Court of Common Pleas, commencing on Monday, May 27, 1878:

Amos Bushong, miller, East Lampeter.  
 Solomon D. Brown, farmer, West Earl.  
 George L. Buckwalter, farmer, East Lampeter.  
 John M. Bahill, farmer, Manheim twp.  
 William W. Bussar, teacher, Leacock.  
 C. Line Baer, editor, 6th Ward, city.  
 Collin Cameron, superintendent, Elizabeth twp.  
 James Collins, farmer, Colerain.  
 B. F. Diffenderfer, merchant, Rapho.  
 Edward Dunn, furaceman, Columbia.  
 Nathan Dyer, tailor, Marietta.  
 Henry S. Erb, farmer, Penn.  
 Hiram Erb, merchant, Clay.  
 John A. Erban, merchant, 2d Ward, city.  
 Christ. Erb, farmer, East Lampeter.  
 Jacob Greenawalt, cigar maker, 8th Ward, city.  
 Isaac R. Garman, printer, East Cocalico.

John Geist, blacksmith, Earl.  
 William Grimley, plasterer, Earl.  
 Moses Gerber, carpenter, Rapho.  
 H. H. Heise, merchant, Columbia.  
 J. H. Herr, miller, West Hempfield.  
 John Hessler, farmer, Rapho.  
 Samuel G. Keller, farmer, Penn.  
 B. Frank Leaman, locksmith, 3d Ward, city.  
 George Long, tailor, Mount Joy twp.  
 John M. Martin, farmer, Fulton.  
 David Miller, farmer, Earl.  
 J. M. Mellinger, farmer, Upper Leacock.  
 Jacob Missimer, justice of the peace, Mt. Joy twp.  
 James A. Nimlow, combmaker, 4th Ward, city.  
 Moses Ober, farmer, Rapho.  
 J. H. Rathvon, printer, 1st Ward, city.  
 Theophilus Rudy, farmer, West Earl.  
 Samuel Rice, coachmaker, Manheim bor.  
 George Steinmetz, merchant, Clay.  
 Joseph Schmid, printer, 8th Ward, city.  
 R. A. Smith, coal agent, 4th Ward, city.  
 Jacob G. Singer, carpenter, Elizabeth twp.  
 Gilpin Stubbs, farmer, Fulton.  
 Henry K. Stork, hatter, Adamstown.  
 Jacob Seitz, sr., farmer, West Hempfield.  
 George W. Simpson, wagonmaker, Cernarvon.  
 Franklin Thomas, coal dealer, East Lampeter.  
 William Wilson, carpenter, 7th Ward, city.  
 Marshall Wright, farmer, Little Britain.  
 William Wright, gentleman, 4th Ward, city.  
 Joseph Wimer, wheelwright, Eden.  
 Jacob R. Yentzer, tobaccoist, Conestoga.  
 Emanuel R. Zug, laborer, Rapho.

## WEEKLY SUMMARY.

### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since April 13, 1878:

PETER WHITE, dec'd, late of Rapho twp.; Christian Shoemaker, administrator.  
 JONAS MUMMA, dec'd, late of East Donegal twp.; Jacob K. Nissley and J. S. Mumma, administrators.  
 ANN MELLINGER, dec'd, late of Lancaster city; H. Fitzcharles, administrator.  
 MARY HEIDLEBAUGH, dec'd, late of Pequea twp.; Adam Lefever, administrator.  
 MAGDALENA PANKAKE, dec'd, late of Rapho twp.; Catharine Pankake, administratrix c. t. a.  
 HENRY SAUDER, dec'd, late of Salisbury twp.; Anna Sauder, Elias K. Sauder and Ephraim Reeser, administrators.

The following Wills have been admitted to probate since April 13, 1878:

GEORGE BERTHEISEL, late of West Hempfield twp.; Joseph Berntheisel and Wm. Berntheisel, executors.  
 GEORGE PEPPER, late of Rapho twp.; Edw. R. McCauley, executor.

Ⓢ Saturday, May 18th, last day for filing accounts to June Term, 1878.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since April 13, 1878:

EMANUEL HINKLE and WIFE, of East Cocalico twp.; Cyrus Ream, assignee.  
 CONRAD REHM and WIFE, of Lancaster city; William E. Miller, assignee.  
 MICHAEL HEINTZEN and WIFE, of Lancaster city; Christian F. Binkley, assignee.  
 AARON FULLMER and WIFE, of Lancaster city; Benjamin F. Hookey, assignee.  
 JOHN HOAK, of Conestoga twp.; Amos Warfel, assignee.  
 FREDERICK QUADE and WIFE, of Lancaster city; William Mohlsen, assignee.

### CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on MONDAY, the 30th day of MAY, 1878, at 10 o'clock, a. m., for a charter to incorporate "The Shawnee Steam Fire Engine and Hose Company," of Columbia, Pa.

A. J. KAUFFMAN,  
 Attorney for Applicants.

## Auditors' Notices.

Estate of CHRISTIAN LOUCOMER, late of Lancaster City, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Chas. Peters, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on MONDAY, MAY 6th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ap20 ROBT. J. EVANS,  
 Auditor.

Estate of EVE LANDIS, late of East Lampeter township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin G. Landis, administrator, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MAY 21st, 1878, at 2 o'clock, 2. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ap20 I. CARPENTER, Auditor.

Assigned Estate of JONAS WANNER and WIFE, of Cernarvon twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Shirk, assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, MAY 13, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ap20 E. D. WHITE,  
 Auditor.

Estate of JOHN GEHMAN, late of Brecknock township, deceased.

The undersigned Auditor, appointed to distribute the acceptance money of the real estate of said dec'd, ruled into court, to and among those legally entitled to the same will sit for that purpose on THURSDAY, MAY 16, 1878, at 10 o'clock a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ap20 SIMON P. EBY,  
 Auditor.

Estate of JACOB R. BARR, late of Manor twp., Lancaster Co., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christiana Barr, administratrix, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 10th day of MAY, 1878, in the Library Room of the Court House, at Lancaster, at 10½ o'clock, a. m., when and where all persons interested may attend.

ap20 A. C. REINCEHL,  
 Auditor.

Assigned Estate of ELIAS BARR & Co., of Lancaster City.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Pearsol, assignee, on second and final account, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, MAY 11th, 1878, at 2½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ap20 A. C. REINCEHL,  
 Auditor.

Estate of HENRY HUSTON, late of Salisbury township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Mast, administrator, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 15th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ap20 A. H. FRITCHEY,  
 Auditor.

Estate of HENRY WERTZ, late of Providence township, deceased.

The undersigned Auditor, appointed to pass on the exceptions and to make distribution of the balance remaining in the hands of Jonathan Gamber, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 17th day of MAY, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ap20 J. B. GOOD, Auditor.

*In the Court of Common Pleas of Lancaster Co., Pa.*  
**JULIAN MOSES ET AL.,** } August Term, 1877, No. 31.  
*vs.* } Breve de partitione faci-  
**AMOS H. NEFF ET AL.** } canda.

The undersigned Auditor, appointed by the Court to report distribution of the net proceeds of sale of the real estate embraced in the above partition, suit ruled into court for distribution, to and among those legally entitled thereto, will sit for that purpose on **TUESDAY, MAY 14th, 1878,** at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, when and where all persons interested in said distribution may attend if they think proper.  
**E. D. NORTH,**  
 Auditor.  
 ap20

**JACOB NORBECK,** } *In the Court of Common Pleas*  
*vs.* } of Lancaster County.  
**JACOB MILEY and** } Equity Docket, No 2,  
**Wm. McKEOWN.** } page 127.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Daniel A. Altick, receiver in the above case, to and among those legally entitled to the same, will sit for that purpose on **FRIDAY, MAY 17, 1878,** at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
**ROBT. J. EVANS,**  
**S. W. SHADLE,**  
 Auditors.  
 ap20

**Estate of JOSEPH HART,** late of Lancaster City, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frank Stahl, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose **TUESDAY, APRIL 23d, 1878,** at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. **JOHN H. FRY,**  
 Auditor.  
 mar30

**Estate Notices.**

**Estate of JAMES MCGINLEY,** late of Lancaster city, deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.  
**D. P. ROSENMILLER, JR.,** **PHILIP D. BAKER,**  
 ap20 Att'y. Administrator.

**Assigned Estate of JACOB A. WISNER and WIFE,** of Marietta bor., Lancaster Co.

Jacob A. Wisner and Wife, of Marietta borough, having by deed of voluntary assignment, dated April 8th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob A. Wisner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**A. F. SHENCK,** Assignee,  
 Residing in Lancaster Pa.  
 ap20

**Assigned Estate of AARON FULLMER and WIFE,** of Lancaster City.

Aaron Fullmer and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Aaron Fullmer, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**BENJ. F. HOOKEY,** Assignee,  
**Thos. J. DAVIS,** Att'y. Residing in Conestoga twp.  
 ap20

**Assigned Estate of COOPER STUBBS and WIFE,** of Fulton twp., Lancaster Co.

Cooper Stubbs and Wife, of Fulton township, having by deed of voluntary assignment, dated March 19, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cooper Stubbs, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**N. D. SCOTT,** Assignee,  
**M. BUOSIUS,** Att'y. Residing in Lyle, Lan. co.  
 ap13

**Assigned Estate of LEVI KUPP and WIFE,** of Mount Joy twp., Lancaster Co.

Levi Kupp and Wife, of Mount Joy township, having by deed of voluntary assignment, dated April 5, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Levi Kupp, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**WM. K. BERNHARD,** Assignee,  
 Residing in Milton Grove, Lan. Co.  
 ap13\*

**Assigned Estate of JOHN J. MILLER and WIFE,** of Lancaster City.

John J. Miller and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John J. Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**FRANCIS PFEIFFER,** Assignee,  
**B. C. KREADY,** Att'y. Residing in Lancaster city.  
 ap13

**Assigned Estate of SAMUEL W. LEWIS and WIFE,** of Ephrata twp., Lancaster Co.

Samuel W. Lewis and Wife, of Ephrata township, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel W. Lewis, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**MARTIN H. BITZER,** Assignee,  
**A. J. EBERT,** Att'y. Residing in Hinkletown Lancaster Co., Pa.  
 ap13

**Assigned Estate of EMANUEL HINKLE and WIFE,** of East Cocalico twp., Lan. Co.

Emanuel Hinkle and Wife, of East Cocalico twp.; having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Emanuel Hinkle, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**CYRUS REAM,** Assignee,  
**Wm. R. WILSON,** Att'y. Residing in Reamstown, East Cocalico twp.  
 ap13

**Assigned Estate of JOHN KREIDER and WIFE,** of Pequea twp., Lancaster Co.

John Kreider and Wife, of Pequea township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Kreider, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**CHRISTIAN F. BINKLEY,** Assignee,  
**H. H. STEHMAN,** Assignee,  
**J. W. DENLINGER,** Att'y. Residing in Pequea twp.  
 ap6

**Assigned Estate of JESSE P. RONK and WIFE,** of East Lampeter twp., Lan. Co.

Jesse P. Ronk and Wife, of East Lampeter township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse P. Ronk, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JOEL L. LIGHTNER,** Assignee,  
 Residing in East Lampeter twp.  
 ap6

**Estate of BENJAMIN VAN LEW,** late of Columbia bor., Lancaster county, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to them without delay.  
**WILLIAM W. COLLER,** Assignee,  
 Residing in Saxton, Bedford Co., Pa.;  
**GEORGE ELTZ,** Assignee,  
 Residing in Reading, Pa.  
**E. D. NORTH,** Att'y, Lancaster, Pa.  
 ap6

**\$66** a week in your own town. \$5 outfit free. No risk. Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALLET & Co., Portland, Maine.

**Estate of JOHN WELLER,** late of Cœrnarvon township, dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Churchtown, Lancaster Co.  
**E. D. WHITE,** Executor.  
**A. W. SNADER,** Att'y.  
 ap6

**Estate of WILLIAM BEAR,** late of Leacock township, dec'd.

Letters of administration *pendente lite* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Christiana.  
**SAMUEL SLOKOM,** Administrator.  
 ap6

**Assigned Estate of CATHARINE MYERS,** of Little Britain twp., Lancaster Co.

Catharine Myers, of Little Britain township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Catharine Myers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**W. W. HENSEL,** Assignee,  
 Residing in Little Britain twp.  
 ap6

**Assigned Estate of JACOB M. SCHEETZ and WIFE,** of Warwick twp., Lancaster Co.

Jacob M. Sheetz and Wife, of Warwick township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob M. Sheetz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**E. L. KRYDER,** Assignee,  
**D. McMULLEN,** Att'y. Residing in Warwick twp.  
 ap6

**Assigned Estate of BENJAMIN OBER and WIFE,** of Penn twp., Lancaster Co.

Benjamin Ober and Wife, of Penn township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Benjamin Ober, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**LEVI WHITE,** Assignee,  
**D. McMULLEN,** Att'y. Residing in Penn twp.  
 ap6

**Estate of CHAS. J. RAKESTRAW,** late of Paradise twp., deceased.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned residing in Paradise, Lan. co.  
**M. BROSIUS,** **CATHARINE RAKESTRAW,**  
 mar23 Att'y. Administratrix.

**Assigned Estate of DAVID BRENNER and WIFE,** of East Hempfield twp., Lan. Co.

David Brenner and Wife, of East Hempfield township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David Brenner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JOHN BRENNER,** Assignee,  
**J. W. B. BAUSMAN,** Att'y. Residing in Manor township.  
 ap6

**Assigned Estate of MARTIN ROHRER and WIFE,** of Fulton twp., Lancaster Co.

Martin Rohrer and Wife, of Fulton township, having by deed of voluntary assignment, dated March 29th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Martin Rohrer, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**ISAAC BRADLEY,** Assignee,  
**AMOS K. BRADLEY,** Assignee,  
**D. McMULLEN,** Att'y. Residing in Wakefield, Lancaster Co., Pa.  
 ap6

**Estate of JOHN GOTTFRIED WETTIG, late of Lancaster city, deceased.**

Letters of administration *d. b. n. c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lancaster, Pa.  
**CHRISTIAN WETTIG,**  
 Administrator.  
 mar23\*  
**HUGH R. FULTON, Att'y.**

**Assigned estate of THOMAS TRAGO and WIFE of Drumore twp., Lancaster co.**

Thomas Trago and Wife, of Drumore township, having by deed of voluntary assignment, dated March 23d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the Thomas Trago, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**P. D. BAKER, Att'y.** **LEVI K. BROWN,**  
 Assignee.  
 mar23\* **Residing in Fulton twp.**

**Assigned Estate of JACOB L. LANDIS (Manor) and WIFE, of Manor township, Lan. Co.**

Jacob L. Landis (Manor) and Wife, of Manor twp., Lancaster Co., having by deed of voluntary assignment, dated March 20th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob L. Landis (Manor), he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**E. McELLEN,**  
 Assignee.  
 mar23 **Residing in Lancaster city.**

**Assigned Estate of GEORGE COONLEY and WIFE, of Lancaster City.**

George Coonley and Wife, of Lancaster city, having by deed of voluntary assignment, dated March 22, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Coonley, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 mar23 **FRED. W. COONLEY, Assignee,**  
**S. H. REYNOLDS, Att'y.** **Residing in Lancaster city.**

**Assigned Estate of SAMUEL K. SLABACH and WIFE, of West Cocalico twp., Lan. Co.**

Samuel K. Slabach and Wife, of West Cocalico township, Lancaster county, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel K. Slabach, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JACOB G. GARMAN, } Assignees,**  
**ADAM K. SLABACH } Assignees,**  
 mar16 **Union Station, Lancaster Co., Pa.**  
**A. J. EBERLY, Att'y, 49 Grant st., Lancaster, Pa.**

**Estate of CHRISTIAN HERTZLER, late of Cœrnarvon twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
**JOSEPH HERTZLER,**  
**HENRY HERTZLER,**  
 of Cœrnarvon twp.,  
**CHRISTIAN ZOOK,**  
 of East Earl twp.,  
 mar23 **Executors.**  
**GEO. BRUBAKER, } Att'ys.**  
**JNO. M. MAST, } Att'ys.**

**Assigned Estate of SAMUEL McCLENAGHAN and WIFE, of Fulton twp., Lancaster Co.**

Samuel McClenaghan and Wife, of Fulton township, having by deed of voluntary assignment, dated March 14th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel McClenaghan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**SAMUEL BOYD,**  
 Assignee.  
**J. HAY BROWN, Att'y.**  
 mar16 **Residing in Fairfield, Green P. O., Lan. Co.**

**Estate of JANE B. ROGERS, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Fulton township.  
**L. K. BROWN,**  
 Executor.  
 mar23\*

**Estate of ISAAC SANDOE, late of Earl twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
 mar16 **GEO. SAMDOE,**  
**GEO. BRUBAKER, Att'y.** **Administrator.**

**Estate of ANNA M. SCHUM, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.  
 mar16 **PHILIP SCHUM,**  
**M. BROSIUS, Att'y.** **Administrator.**

**Estate of BENJ. LEISEY, late of Cocalico twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.  
**JACOB G. GARMAN,**  
**A. J. EBERLY, Att'y.** **Administrator,**  
 mar16 **Union Station, Lan. Co., Pa.**

**Assigned Estate of DILLER BAKER and WIFE, of Salisbury twp., Lancaster Co.**

Diller Baker and Wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Diller Baker, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**DAN'L DENLINGER, Assignee,**  
 mar16\* **Residing in Salisbury twp.**  
**WM. S. AMWEG, } Att'ys.**  
**PHILIP D. BAKER, } Att'ys.**

**Assigned Estate of REUBEN F. SWARR and WIFE, of East Hempfield twp., Lan. Co.**

Reuben F. Swarr and Wife, of East Hempfield township, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Reuben F. Swarr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**M. N. BRUBAKER,**  
 Assignee.  
 mar16 **S. P. EBY, Att'y.** **Residing in Landisville.**

**Assigned Estate of AMOS REESE and WIFE, of Providence twp., Lancaster Co.**

Amos Reese and Wife, of Providence township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Reese and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JOHN HILDEBRAND, Assignee,**  
 mar16\* **At his store in New Providence.**

**Assigned Estate of PHILIP ROYER and WIFE, of Ephrata twp., Lancaster Co.**

Philip Royer and Wife, of Ephrata township, having by deed of voluntary assignment, dated February 25th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Philip Royer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 mar16 **LEVI SHIRK, Assignee,**  
**A. J. EBERLY, Att'y.** **Lincoln, Lan. Co., Pa.**

**Estate of WILLIAM MURPHY, late of Conoy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Bainbridge, said township.  
 mar16 **ELIZABETH MURPHY,**  
**GEO. BRUBAKER, Att'y.** **Administratrix.**

**Estate of HENRY S. MYLIN, late of West Lampeter twp., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
**JOHN B. MYLIN, Administrator.**  
 mar9\* **Willow Street F. O.**

**Estate of ELIZABETH HARTMAN, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned.  
**GEO. H. HARTMAN,**  
**J. I. HARTMAN,**  
 mar9 **Executors.**  
**PHILIP D. BAKER, Att'y.**

**Estate of ANNA MARIA MYERS, late of Lancaster City, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster city.  
**A. F. KAUL,**  
 mar9 **Executor.**  
**D. P. ROSENMILLER, JR., Att'y.**

**Estate of ANN ELIZA BACHMAN, late of Bart twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Bart, Lancaster Co., Pa.  
 mar9 **WILLIAM PHENEGER,**  
**M. BROSIUS, Att'y.** **Administrator.**

**Assigned Estate of J. B. SWARTZWELDER and WIFE, of Lancaster City.**

J. B. Swartzwelder and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said J. B. Swartzwelder, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**GEO. SPURRIER,**  
**E. C. DIEHL,**  
**SAM'L H. REYNOLDS, Att'y.** **Assignees,**  
 mar9 **Residing in Lancaster, Pa.**

**Assigned Estate of ROBERT M. MORROW and WIFE, of Lancaster City.**

Robert M. Morrow and Wife, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Robert M. Morrow, notice is hereby given to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**GEO. SPURRIER,**  
**E. C. DIEHL,**  
**S. H. REYNOLDS, Att'y.** **Assignees,**  
 mar9 **Residing in Lancaster, Pa.**

**Assigned Estate of SWARTZWELDER & MORROW, of Lancaster City.**

Swartzwelder & Morrow, of Lancaster city, having by deed of voluntary assignment, dated February 28, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Swartzwelder & Morrow, they therefore give notice to all persons indebted to said assignor, to make immediate payment to the undersigned without delay, and those having claims to present them to  
**GEO. SPURRIER,**  
**E. C. DIEHL,**  
**S. H. REYNOLDS, Att'y.** **Assignee,**  
 mar9 **Residing in Lancaster, Pa.**

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, APRIL 27, 1878.

No. 48.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.		ARRIVE HARRISBURG.	
Pacific Express,*	.....	2:40 a. m.		4:05 a. m.	
Way Passenger†	.....	4:50 a. m.		7:50 a. m.	
Niagara Express,..	.....	9:35 a. m.		10:40 a. m.	
Hanover Accom.,...	.....	9:40 a. m.		COL. 10:10 a. m.	
Mail Train via Mt. Joy*	.....	11:20 a. m.		1:00 p. m.	
No. 2, via Columbia,...	.....	11:20 a. m.		1:25 p. m.	
Fast Line,*	.....	2:10 p. m.		3:25 p. m.	
Frederick Accom.,.....	.....	2:15 p. m.		COL. 2:45 p. m.	
Harrisburg Accom.,.....	.....	6:00 p. m.		8:10 p. m.	
Columbia Accom.,.....	.....	7:20 p. m.		COL. 8:00 p. m.	
Harrisburg Express,....	.....	7:25 p. m.		8:40 p. m.	
Pittsburg Express,.....	.....	9:25 p. m.		10:50 p. m.	
Cincinnati Express,*	.....	11:30 p. m.		12:45 a. m.	
EASTWARD.		LANCASTER.		PHILADELPHIA.	
Atlantic Express,*	.....	12:30 a. m.		3:00 a. m.	
Philadelphia Express,†	.....	4:10 a. m.		7:00 a. m.	
Harrisburg Express,....	.....	7:35 a. m.		10:00 a. m.	
Columbia Accom.,.....	.....	9:28 a. m.		12:30 p. m.	
Pacific Express,*	.....	1:20 p. m.		3:45 p. m.	
Sunday Mail,.....	.....	3:00 p. m.		5:00 p. m.	
Johnstown Express,...	.....	3:05 p. m.		6:00 p. m.	
Day Express,*	.....	5:18 p. m.		7:30 p. m.	
Harrisburg Accom.,.....	.....	5:50 p. m.		9:00 p. m.	

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.			
Leave Columbia,.....	a. m.	p. m.	
	10:20	6:45	
Arrive at Port Deposit,.....		1:20	8:45
GOING NORTH.			
Leave Port Deposit,.....	a. m.	p. m.	
	6:30	2:00	
Arrive at Columbia,.....		8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.			
Quarryville,.....	a. m.	a. m.	p. m.
	6:50	8:00	3:30
Lancaster—West King Street,..	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45
GOING SOUTH.			
LEAVE.			
Lancaster—Upper Depot,.....	a. m.	p. m.	p. m.
	9:46	4:30	8:10
Lancaster—West King Street,..	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.			
Lancaster—West King Street,..	a. m.	p. m.	p. m.
	8:00		3:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading; (arrive).....	10:10	3:20	5:50
GOING SOUTH.			
LEAVE.			
Reading,.....	a. m.	a. m.	p. m.
	7:35	11:40	6:05
Lancaster Junction,.....	9:21	1:20	7:45
Lancaster—Upper Depot,.....	9:46	:00	8:10
Lancaster—West King Street,..	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<i>Appointed.</i>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1862
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkay.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District—J. B. Sweitzer, Pittsburgh.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburgh, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Greff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrer, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
*Chief of Police*—John Pontz.  
*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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**COURT CALENDAR.--1878.**

MAY.

- 4. Argument for Rules of Affidavit of Defense.
- 10. Last day for issuing Writs to May Term.
- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

**ENVELOPES AND LETTER HEADINGS**

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 27, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

PETER BURK *against* HENRY BEAR and CHRISTIAN MYERS, administrators of JOHN HUBER, deceased.

(Continued from last week.)

On the 8th of February the plaintiff's counsel presented the following motion, viz.: Peter Burk vs. John Huber's administrators. In the District Court for the City and County of Lancaster. February 6, 1832, the court having given their decision on the demurrer joined in this case in favor of the defendant, motion on behalf of the plaintiff for leave, on payment of costs, to add another count to his declaration, stating the *seisin* in fee of the plaintiff in the premises contained in the articles of sale declared on with averments adapted to place on the said declaration an offer and tender to the defendant, before and on the first of April next ensuing the date of said articles, of a deed in fee simple, and an offer to the said defendant to retain in his own hands, or apply so much of the purchase money, payable on that day by the defendant, to the discharge of any and all the incumbrances and liens whatsoever that incumbered the said house and lot with the appurtenances contained in the articles, except such as the said articles stipulated should remain on the premises by the term of the articles, and with an averment that the said sale was made by the plaintiff to enable him to pay off and discharge the said incumbrances, and to estate and insure the lands and tenements to the said defendant in absolute fee simple; and also to include an averment that after the said sale and before the first day of April last mentioned, plaintiff and defendant appointed a scrivener to prepare a title to be executed by the plaintiff to the defendant, and that afterwards the defendant ordered the said scrivener not to proceed to prepare the said deed—that he would not take the said deed, or take the said house and lot, with leave to the defendant to plead anew; and that all the pleadings and proceedings be reformed accordingly. This motion was objected to by the defendant, and being reduced to writing and filed, was set down for argument. It was argued on the 11th of June.

The decision depends upon the following questions: 1. Is the amendment warranted by the common law, or by the English statutes of amendment and jeofails? 2. Is it authorized by the act of 21st March, 1806?

I. The proposed amendment is one of substance and not of form. Matters of substance

are such as may be taken advantage of on a general demurrer, as the omission of such material things as are necessary to show a right in the plaintiff. And every thing shall be said to be *form* without which the right of action appears to the court: 10 Co. 88; 5 Bac. Abr. 463; Hob. 301.

The first part of the proposed amendment is an allegation of *seisin* in fee in the plaintiff, which it has already been decided was essential to the maintenance of his action, and without which his right of action did not and could not appear to the court. By the common law courts will allow of amendments while the proceedings remain in paper or *in fieri*, which by the liberality of modern practice is understood to be at any time while the suit is depending, notwithstanding the record is made up; for they at present consider the proceedings as *in fieri* till judgment is given, and therefore that till then they have the power to permit amendments by the common law, whether in matter of form or substance. This is the general rule. With respect to demurrers it is stated to be usual after demurrer, general or special, to give the other party leave to amend, and it has been given even after demurrer argued, *but before judgment*, when the justice of the case required it and there was anything to amend by, upon payment of costs; and Lord MANSFIELD is reported, in *Steele vs. Sowerly*, to have said that he recollected the case of the Duchess of Portland in which the court gave leave to amend after three solemn arguments on demurrer: 3 Bl. Comm. 401; 2 Burr. 756; 1 Tidd. 656; 1 Burr. 316, 321; 2 Sell. 454; 6 D. & E. 173. There are several cases, too, in which leave has been given, not only after demurrer argued, but after the court has expressed their opinion in favor of the demurrer: 2 Saund. 402, *Pearce vs. Bridges*; Dougl. 328, *Pollybank vs. Hawkins*; Dougl. 620; 2 Caines 233. But in some late English cases (1 East. 391; 2 Bosang & Puller 482; 3 Bosang & Puller 11, 12) an amendment was denied after the court had given their opinion on the argument; and in 3 Bosang & Puller, where the plaintiff had sued an executor and declared against him on a debt due by the testator, and also on a debt due by the executor himself; demurrer, argument and opinion of four judges *seriatim* for the defendant on the demurrer. Shepherd, for the plaintiff, then applied for leave to amend. But, by the court: this is not a case in which we ought to depart from the general rule that after argument amendments are not allowed. These authorities may, perhaps, leave the point doubtful, whether an amendment is allowable after argument in demurrer, and the opinion of the court announced thereon; but I am strongly inclined to the affirmative.

The application, however, in the case before the court is not only after argument on demurrer, but it is after one amendment already made by the plaintiff under leave of the court on a former demurrer. Now the rule is laid down with great distinctness that after a party has once amended on a demurrer the court will not permit him to amend again on a second demurrer. The rule is so stated in

<sup>1</sup> Penna. Pr. 149, and I find that the authorities cited sustain the position. The *first* is the case of *Kinder vs. Paris*, 1 Henry Bl. 561, which was an action by the assignees of an insolvent debtor who was indorser of a bill of exchange against the drawer. The first count states the facts of drawing, acceptance, indorsing, refusal of payment, protest, and notice with liability to the insolvent, his discharge and appointment of assignees, promise to them and breach; second and third counts for money paid by the insolvent to the use of the defendant, and for money had and received by him to the use of the insolvent, with promises to the assignees, and breach for non-payment of them. The plea, as it originally stood, was non-assumpsit within six years. Replication: defendant was in the West Indies until 1st of June, 1792, when he returned to England and original writ sued out against him within six years of his return. Rejoinder: that the several causes of action accrued to the insolvent before the plaintiffs became assignees, and six years did elapse from the time they so accrued before the day of suing out the original writ. To this the plaintiffs demurred specially, that the rejoinder was a departure from the plea; which it was clearly holden to be, and the defendant had *leave to amend*. In his amended plea the defendant set forth anew (having withdrawn his first plea) the matters stated in the rejoinder, to which there was a general demurrer; and this was argued. On the conclusion of the argument Lord Chief Justice EYRE suggested that the defendant might have pleaded that the debt was first due to the insolvent, more than six years before the action was brought, and that he had made no express promise to the plaintiffs within six years. BULLER, J., seemed to think the plaintiffs must prove an express promise at the trial: Le Blanc, for the defendant, then moved to amend; which, *as the defendant had amended once already*, was refused, and judgment was given for the plaintiffs.

In 2 Archbold's Practice of the Court of King's Bench it is said—after a party has once amended on demurrer (referring to 2 Henry Bl. 561, the case just detailed,) the Court of Common Pleas will not allow him to amend again on a second demurrer; and it is added *the rule is the same in this court*. No case which was cited on the argument, or which I have been able to find in my researches since, is opposed to this rule.

In the case of *Hallock vs. Robinson*, cited from 2 Caines 232, there was but *one* demurrer, and but *one* amendment allowed on a demurrer. The plaintiff had declared generally for breaking and entering his close in Brookhaven. Plea: *liberum tenementum*, setting out the defendant's freehold by metes and bounds. The plaintiff, without new assigning, replied his own freehold traversing the freehold of the defendant, concluding with a *hoc peratus* and praying damages. The defendant demurred specially, among other causes, for want of a new assignment, and the not concluding to the country; joinder in demurrer. KENT, C. J.: The replication is evidently no answer, &c. Woods, for plaintiff then applied



for leave to amend on costs. Sandford, for the defendant, resisted, as there had been one amendment without costs, and hoped, if it were granted, it would be on payment of those formerly incurred. KENT, C. J.: Amend on payment of costs of the demurrer. Judgment for demurrant with leave to amend.

In *Haller vs. Holmes*, 11 Johns 28, there was a demurrer which was sustained, and SPENCER, C. J., after stating that the objection to the plea, namely, that it commenced as an answer to the whole declaration but answered only a part was fatal, proceeds to say that if the plea was good in substance in other respects, and a meritorious plea, the court would ordinarily give the party leave to amend; but it appears that contingent damages have been assessed on the general issue, upon an inquest at the last Rensselaer Circuit, and, quoting the case of *Robinson vs. Rayley*, 1 Burr. 321, he cites the opinions of Lord MANSFIELD and Mr. Justice DENISON that where a demurrer is first argued the court will give leave to amend, but there never was an instance of amending an issue at law after a verdict had been found upon issues in fact, contingent damages assessed on the demurrers. In this case of *Hallet vs. Holmes* it does not appear that there was any amendment before the argument, and what makes the part of Ch. J. SPENCER'S opinion which I have quoted purely *gratis dictum*, is that there was at that time no application before the court to amend the faulty plea. The case decides nothing except the demurrer; but even the *dictum* and English authority on which it rests, do not conflict with the rule that after a party has once amended on a demurrer the court will not permit him to amend again on a second demurrer—a rule which is founded on the necessity of bringing causes to an end; for it is obvious this never could be done if the parties might go on demurring and amending without restriction.

The present application is liable to the further and stronger objection, that it not only asks leave to amend after demurrer, (having once amended before on a former demurrer,) but the motion is made after second demurrer was argued, held under consideration and judgment entered upon it. This goes beyond all the precedents. I cannot find an instance of such an application in the books. This judgment is *nil capiat per breve*, and is as conclusive and binding as if it had been after a verdict: 5 Bac. Ab. 560; 2 Archb. 37; 1 Saund. 80; 2 Burr. 753. If the defendant plead several pleas to the same or several counts of a declaration, and the plaintiff demurr to some of the pleas and take issue upon others—if the defendant succeed upon any of the pleas demurred to, and that plea be an answer to the whole action, the plaintiff shall not have judgment upon the issues of fact, should they be found for him, but the only judgment that shall be entered, is *nil capiat per breve*: 1 Saund. 80, n. 1, *Lowe vs. King*; 2 Saund. 300, n. 3. The proceedings since the judgment was entered, are no longer *in fieri*, and authority to amend by the common law has ceased.

The syllabus of the case already quoted

from 2 Caines is "amendment allowed on payment of costs after demurrer argued and the judgment of the court pronounced, though an amendment had once before been granted." It has been seen that this is not a true statement. The application for leave to amend was after argument, and after the chief justice had announced his opinion on the argument upon the demurrer, but it was *before judgment*, which was, moreover, given with express allowance of the amendments. In the report this sentence immediately follows the discussion of the motion for leave to amend. "KENT, C. J.: Amend on payment of costs." After which is added, "judgment for the demurrant with leave to amend."

The statutes of amendments and jeofails were passed to prevent judgments from being arrested or reversed, on account of certain omissions or defects of form, or misprisons of clerks in the process or proceedings in a cause. The amendments authorized by statute were after the record is completed, and are confined to mere mistakes of the clerk or mistakes of the parties where there is something to amend by; and it is under the authority of these statutes that all amendments are made of any record, at least after the term to which the record appertains: 2 Sellon 456. But if the plaintiff in his declaration either state a defective title, or totally omit to state any title or cause of action whatever, in no case is such a declaration aided by these statutes: 2 Archbold 237-8.

The statutes of jeofails were intended to remedy all defects of *form*. No substance, said BULLER, J. (*Douglass* 63), is within any of these statutes.

As the amendment proposed in this case is matter of substance, as the declaration altogether omitted to set out or allege any title, no aid, it is clear, can be derived from the English statutes.

II. But is it not authorized by the act of 21 March, 1806? By the sixth section it is provided that in all cases where any suit has been brought, &c., the same shall not be set aside for informality, if it appear that the process has been issued in the name of the Commonwealth against the defendant, for moneys owing or due, &c., nor any plaintiff nonsuited for "informality," in any statement or declaration filed, &c.; but when, in the opinion of the court, such informality will affect the merits of the case in controversy, the plaintiff shall be permitted to amend his declaration or statement, &c., on or before the trial of the cause, &c. This act was only intended to correct matters of form, standing in the way of the merits of the case: *Ebersole vs. Krug*, 5 Binn. 53.

In *Grasser vs. Eckert*, 1 Binn. 587, the defendants—man and wife, were jointly charged upon an assumption made by them to plaintiffs. This defect, it was contended, was cured by the act in question. But, says TILGHMAN, C. J., the great object of this law was to prevent the merits of the cause from being sacrificed to form. The court are authorized to go great lengths in amendments previous to and even during the trial. But the defect in the present instance is a

matter of substance, and judgment was therefore arrested. The act of 1806, in short, changes or varies the law on the subject of amendments in no respect, except as to the time, permitting them to be made on the trial as well as before, and being mandatory to the court with regard to their allowance; but it provides merely like all the statutes of jeofails, for the amendment of form. The matter of the proposed amendment under consideration is beyond all doubt matter of substance, and consequently does not fall within the act of the 21st March, 1806.

This amendment, then, is warranted neither by the common law, the English statutes, nor our own act of Assembly. It is unsupported by the precedents, and is in opposition to the policy of the maxim, *interest republicae ut finis sit litium*. The motion is, therefore, denied.

[The judgment in this case was affirmed in the Supreme Court, by their decree of June 2, 1834. See 2 Watts 306.]

#### Common Pleas of Lancaster County.

##### IN EQUITY.

URIAH BITZER, Committee of MARTHA ECKERT vs. H. N. BRENEMAN, sheriff, and MILTON B. ESHLEMAN.

[Eq. Doc. No. 2, p. —.]

The jurisdiction of a court of equity cannot be invoked to prevent the execution of a statute—especially where the requirements of the statute have been complied with in every particular.

Where the complainant's bill sets up only a legal right a court of equity will not grant an injunction until the right in controversy is either admitted or established at law.

*S. H. Reynolds, J. Hay Brown and A. F. Shenck* for plaintiff.

*B. F. Eshleman and W. W. Brown* for defendants.

Opinion delivered April 13, 1878, by PATTERSON, A. L. J.

Bill in Equity filed 11th March, 1878, and same day court grant a preliminary injunction.

March, 1878, court on motion granted a rule to show cause why the preliminary injunction should not be dissolved.

The plaintiff's bill sets forth the following:

1st. That on the 13th day of October, 1876, the real estate of the said Martha Eckert, consisting of three tracts, situated in Leacock township, Lancaster county, (No. 1—consisting of eighteen acres, more or less, adjoining lands of Cyrus Bair, Jacob Ream, and heirs of David Ranck, deceased; No. 2—consisting of a lot of ground containing one and a half acres, more or less, adjoining lands of Christian L. Glick, N. C. Lynch and others; No. 3—a lot of ground, situated in the village of Intercourse, containing three-fourths of an acre;) was sold by the sheriff of Lancaster county, to Milton B. Eshleman, one of the defendants.

2d. That the execution upon which the said real estate was sold was issued on a judgment entered against the said Martha Eckert on July 5th, 1873, to April Term, 1873, No. 655.

3d. That on December, 1877, the said Martha Eckert was declared a lunatic, under

certain proceedings had in this court, the inquest finding that she had been a *lunatic without lucid intervals for fifteen years* prior to their finding.

4th. That on the 19th of January, 1878, your orator was appointed by this court committee of the said Martha Eckart.

5th. That on the 11th of March, 1878, under certain proceedings had before aldermen Wm. B. Wiley and John M. Amweg, of the city of Lancaster, the said aldermen issued their warrant to H. N. Breneman, the sheriff of Lancaster county, commanding him to deliver possession of the said real estate to the said Milton B. Eshleman as the purchaser of the same at the said sheriff's sale.

6th. That at the time the said judgment was given by the said Martha Eckert, upon which execution was issued, and upon which execution her said real estate was sold, she the said Martha Eckert was a lunatic, incompetent to give a judgment, and your petitioner believes and will be able to prove, that no consideration passed to the said Martha Eckert, when she signed the said judgment, but the same was obtained by fraud and misrepresentation.

7th. That irreparable injury will be done by the ejection of the said Martha Eckert from the said premises, for which there will be no adequate remedy at law. And then prays the court to:

1st. For an injunction, enjoining H. N. Breneman, sheriff of Lancaster county, from delivering possession of the said real estate.

2d. That the said Milton B. Eshleman may be restrained from any attempt to get possession of the said real estate.

3d. That such other relief may be granted in the premises as to the court may seem just and proper.

There was no demurrer filed to this bill, and the rule to dissolve the preliminary injunction must be taken in the nature of a demurrer, and so considered. The bill charges that one of the defendants is the sheriff of the county, who as such officer and by virtue of an execution issued on a certain judgment to April Term 1873, No. 655, against the said Martha Eckert, sold the real estate of said Martha Eckert on the 13th day of October, 1876, and that the other defendant, Milton B. Eshleman, became the purchaser of the same at such sheriff's sale. That on December 3d, 1877, the said Martha Eckert was declared a lunatic—the inquest finding that she had been a lunatic without lucid intervals for fifteen years prior. That as purchaser at sheriff's sale, M. B. Eshleman entered proceedings before two aldermen of the city of Lancaster, on the 11th day of March, 1878, under the provisions of the act of assembly of 16th of June, 1836, to obtain possession of the real estate so as aforesaid purchased as the sheriff's vendee. That under the provisions of said act the said aldermen, upon finding the facts required by the law, duly awarded the possession of said real estate to the petitioner, the said Milton B. Eshleman, and thereupon issued their warrant directed to the sheriff, the said H. N. Breneman, commanding him forthwith to deliver to the said

petitioner, his heirs and assigns, full possession of such lands and tenements, to wit, the real estate so as aforesaid purchased by the said Eshleman.

Now the prayer of the plaintiff is to enjoin the sheriff and restrain him from the execution of the warrant of possession so obtained, and also to restrain Milton B. Eshleman from any attempt to get possession of the real estate he had been awarded the possession of by due course of law.

Is the act of 16th of June, 1836, by force of which both defendants are acting, and whose acts, in strict accordance therewith, are not questioned in the bill of complainants, of such a charter and in such terms that this court must utterly disregard it? Is it so extraordinary in its provisions, arbitrary in its character, and of such doubtful constitutional validity, that it cannot—must not be enforced by the judiciary? It is only, we think, when the court is able to answer those questions in the affirmative that the bill of complainants can be sustained, and the preliminary injunction stand. If that act is not of the character stated it is not invalid and we cannot be justified in disregarding it.

But we have no hesitation in saying that, in our opinion, it is not of doubtful constitutionality, nor do we think it unwise or arbitrary in its provisions; but on the contrary, a statute which on account of its *inherent justice* and facility of execution is commended by the courts of the Commonwealth, and exceedingly popular with most if not all its citizens. The act certainly, has rendered good public service and is not open to the charge of inequality. Can equity jurisdiction intervene to prevent the execution of that statute? Can equity intervene as a means of preventing official duty in this case. We seriously deny that that jurisdiction can be employed for that purpose when the compliance with the law complained of in every particular is not questioned or disputed. The rights claimed on the one side in this controversy, and those claimed on the other side, are not equitable, but legal rights, and must be decided by the common law courts.

In *Tillmes vs. Marsh*, 17 Smith 507, it was held "that an act of assembly transferring any part of the jurisdiction of the common law courts to a court of chancery, would be unconstitutional."

The bill in this case sets up only a legal right to possession of the real estate, at least in contravention of the legal forms of the common law for the invasion of which the action of ejection would afford an adequate and complete remedy.

In *Réa vs. Forsyth*, 1 Wr. 503, it was ruled "that courts will not usually exercise jurisdiction: in case of private nuisance or disturbance of easement, where the right of the complainant is disputed, until he has established his claim in an action at law." In that case Justice WOODWARD says the American cases are very numerous to the effect that the right of complaint ought to be admitted or established at law before granting an injunction.

And again, in *Van Beyen vs. Van Beyen*,

3 John. Ch. Reports 286: "it must be a strong and mischievous case of pressing necessity, or the right must have been previously established at law, to entitle a party to call to his aid the jurisdiction of a court of equity." Also 2 John. Ch. Rep. 164, Gardner vs. The Village of Newbury. The case of Norris' Appeal, 14 Smith 275, could also be cited in support of the same doctrine.

What is law, and what is equity, is a judicial question, Justice SHARSWOOD says in the case last quoted, and hence it devolves on this court to announce what it conceives to be the law in the premises. To the court, therefore, in the present case, it does not appear proper or necessary that the preventive remedy in equity should be applied. The facts necessary to give it equity jurisdiction do not appear in the bill of the plaintiff. There is no equity jurisdiction shown to exist in this proceeding; and it is a well settled principle that a judgment manifestly rendered without jurisdiction will be void.

Admitting every fact contained in the plaintiff's bill—admitting that it was conclusively shown that Martha Eckert was a lunatic for fifteen years prior to the finding of the inquest on the 3d of December, 1877, she nevertheless has ample and complete remedy at law. Yet in regard to the alleged fact of the lunacy—that is made only to appear *prima facie* as the finding of the inquest in the present instance—is denied and traversed by the party, saying they are aggrieved thereby.

"When the foundation fails all fails" is a common maxim in law; and if the pleadings admitted of it we could justly, in this case, dismiss the bill; but they do not, and our order must be confined to the rule obtained and argued before the court. Was, then, the jurisdiction here claimed by the plaintiff not adverse to the settled law, or was it doubtful. On the principle of "*vigilantibus et non dormientibus leges subserviunt*" the bill could scarcely be sustained. The preliminary injunction must be dissolved.

It is ordered that the rule be made absolute.

#### Common Pleas No. 2 of Philadelphia.

##### WALLING vs. THE RAILWAY.

It is not negligence in a passenger on a railway car to occupy a dangerous place on the car, if it is the only one he can find, and his so doing is assented to by the company's agent.

Rule for a new trial.

The point made by the defendant, which is referred to in the opinion, is as follows: "The fact that drivers and conductors on defendant's cars, on this occasion or at other times, against positive orders, and in disregard of notices posted on the cars, did permit passengers to get on, off, and ride upon the front platform, and collected fares from them, cannot relieve plaintiff from the effect of the contributory negligence of Barnard Walling, in standing in a place of actual and manifest danger."

Opinion by HARE, P. J. March 30, 1878.

There can be no doubt that the deceased, Bernard Walling, was on the front platform of the car at the time of the accident which

caused his death, with the knowledge and consent of the driver and conductor, and it is equally clear that their suffering him to remain there was in conformity with the instructions which they had received from their principals. When the car was stopped to enable him to get on there was no room inside or behind, and the conductor must have anticipated that he would go where he did. Although Walling was not shown to have paid his fare, the front platform was crowded with persons who could not well have been there without paying, and he might well infer that the company intended that the front of the car should be open to every one who chose to use it as a means of conveyance. If further proof was requisite, it was afforded by the evidence of the conductor, who testified that he was in the habit of collecting fares from passengers who rode front, and handing them over to his employers. We regard this as an answer to the allegation that the deceased was chargeable with legal negligence. It is the bounden duty of a railway company to provide safe and proper means of transportation, and as the passenger is entitled to suppose that this obligation has been fulfilled, so he cannot justly be charged with laches for standing or sitting in any place which the company designates as that which he is to occupy or fill. One who voluntarily stands on the platform of a car is not within the principle, and it does not necessarily vary the case that the conductor collects his fare without requiring him to take a less exposed position; but receiving a passenger when there is no sitting or standing room within the car, is a tacit assurance that he will be reasonably safe outside, which the company should not be permitted to retract. Such a case is eminently fitted for the application of the doctrine of equitable estoppel, because the public interest is concerned as well as that of the individual passenger.

It results, from what has been said, that the defendant's fifth point might have been declined, as withdrawing the question of negligence from the jury, and our difficulty in sustaining the verdict arises from the answer given by the court, which is ambiguous, and may be construed as authorizing the jury to find a verdict for the plaintiff, in view of the crowded condition of the car, whether Walling was or was not guilty of actual negligence in standing where he did. This was not the question which the framer of the point meant to raise, nor that to which I intended to reply, nor could what I said have been so understood by the jury in view of the rest of the charge and the arguments of counsel; but the court above is obliged to scan the record without looking beyond what it discloses, and might well infer that a charge which, so far as I can discern, gave the defendants all that the law requires, did not do them full justice.

The rule for a new trial is made absolute. —*Leg. Intelligencer.*

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## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., APRIL 27, 1878.

ADMITTED TO THE BAR.—Yesterday, on motion of P. D. Baker, esq., Geo. A. Lane, of Paradise township, was admitted to the practice of the law in the several courts of Lancaster county.

### WEEKLY SUMMARY.

#### REGISTER' OFFICE.

Letters of administration have been granted by the Register on the following estates since April 20, 1878:

GEORGE PETER HARTMAN, dec'd, late of West Hempfield twp.; Daniel D. Forry, administrator c. t. a.

CATHARINE BARBARA HARTMAN, dec'd, late of West Hempfield twp.; Daniel D. Forry, administrator, c. t. a.

JOHN H. KLINE, dec'd, late of West Hempfield twp.; Catharine Kline, administratrix.

WILLIAM TWEED, dec'd, late of Strasburg twp.; H. N. Breneman, administrator.

FRANKLIN SPERA, dec'd, late of Ephrata twp.; Mary Spera, administratrix.

ELIZABETH SHEETS, dec'd, late of Strasburg twp.; H. H. Sherts, administrator.

The following Wills have been admitted to probate since April 20, 1878:

DANIEL MELLINGER, late of Manor twp.; John S Mellinger and Henry S. Mellinger, executors.

MARY ROHRER, late of Mount Joy bor.; Catharine Rohrer, executrix.

DANIEL M. ENGLE, late of Conoy twp.; Monroe M. Engle, Simon H. Engle and John Musser, executors.

REUBEN CARUTHERS, late of Lancaster city; Ann Caruthers, executrix.

☞ Saturday, May 18th, last day for filing accounts to June Term, 1878.

#### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since April 20, 1878:

NATHANIEL KEMPER and WIFE, of Rapho twp.; B. Frank Diffenderfer, assignee.

## WILLIAM B. WILEY,

ALDERMAN,

OFFICE — No. 33 NORTH DUKE STREET,  
LANCASTER, PENNA.

### COMMISSIONER OF DEEDS

FOR THE STATES OF

New York, Iowa, Minnesota, Illinois,  
Indiana, Missouri, Ohio, Michigan,  
Kansas, Wisconsin, West Virginia.

#### CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on MONDAY, the 20th day of MAY, 1878, at 10 o'clock, a. m., for a charter to incorporate "The Shawnee Steam Fire Engine and Hose Company," of Columbia, Pa.

ap27

A. J. KAUFFMAN,  
Attorney for Applicants.

## Auditors' Notices.

Estate of JACOB OTTO, late of Manor township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of David B. Levenite, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 29th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
CHAS. I. LANDIS,  
Auditor.  
ap27

Estate of CHRISTIAN LOUCOMER, late of Lancaster City, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Chas. Peters, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on MONDAY, MAY 6th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
ROBT. J. EVANS,  
Auditor.  
ap20

Estate of EVE LANDIS, late of East Lampeter township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin G. Landis, administrator, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MAY 21st, 1878, at 2 o'clock, p. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
I. CARPENTER, Auditor.  
ap20

Assigned Estate of JONAS WANNER and WIFE, of Cœrnarvon twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Shirk, assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, MAY 13, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. D. WHITE,  
Auditor.  
ap20

Estate of JOHN GEHMAN, late of Brecknock township, deceased.

The undersigned Auditor, appointed to distribute the acceptance money of the real estate of said dec'd, ruled into court, to and among those legally entitled to the same will sit for that purpose on THURSDAY, MAY 16, 1878, at 10 o'clock a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
SIMON P. EBY,  
Auditor.  
ap20

Estate of JACOB R. BARR, late of Manor twp., Lancaster Co., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christiana Barr, administratrix, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 10th day of MAY, 1878, in the Library Room of the Court House, at Lancaster, at 10½ o'clock, a. m., when and where all persons interested may attend.  
A. C. REINCEHL,  
Auditor.  
ap20

Assigned Estate of ELIAS BARR & Co., of Lancaster City.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Pearsol, assignee, on second and final account, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, MAY 11th, 1878, at 2½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. C. REINCEHL,  
Auditor.  
ap20

Estate of HENRY HUSTON, late of Salisbury township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Mast, administrator, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 15th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. M. FRITCHEY,  
Auditor.  
ap20

**Estate of HENRY WERTZ, late of Providence township, deceased.**

The undersigned Auditor, appointed to pass on the exceptions and to make distribution of the balance remaining in the hands of Jonathan Gamber, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 17th day of MAY, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
ap20 J. B. GOOD, Auditor.

**In the Court of Common Pleas of Lancaster Co., Pa. JULIAN MOSES ET AL., August Term, 1877, No. 31. vs. Breve de partitione faci- endas. AMOS H. NEFF ET AL.**

The undersigned Auditor, appointed by the Court to report distribution of the net proceeds of sale of the real estate embraced in the above partition, suit ruled into court for distribution, to and among those legally entitled thereto, will sit for that purpose on TUESDAY, MAY 14th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, when and where all persons interested in said distribution may attend if they think proper.  
E. D. NORTH, Auditor.  
ap20

**JACOB NORBECK, vs. JACOB MILEY and Wm. MCKEOWN. In the Court of Common Pleas of Lancaster County. Equity Docket, No 2, page 127.**

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Daniel A. Altick, receiver in the above case, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, MAY 17, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
ROBT. J. EVANS, S. W. SHADLE, Auditors.  
ap20

**E. H. BURKHOLDER,**

**JUSTICE OF THE PEACE,**

**FARMERSVILLE, LAN. CO., PA.**

**SPECIAL ATTENTION PAID TO COLLECTIONS.**

**Estate Notices.**

**Assigned Estate of JOHN SHREINER, SR., and WIFE, of Warwick twp., Lan. Co.**

John Shreiner, sr., and Wife, of Warwick township, having by deed of voluntary assignment, dated April 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Shreiner, sr., he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
ap27 GEO. SHREINER, Assignee, Residing in Manheim twp.  
WALTER M. FRANKLIN, Att'y. J. W. B. BAUSMAN,

**Assigned Estate of PETER SELLERS and WIFE, of Penn twp., Lancaster Co.**

Peter Sellers and Wife, of Penn township, having by deed of voluntary assignment, dated March 26th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Peter Sellers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
ABRAHAM KLINE, Assignee, W. M. FRANKLIN, Att'y. Residing in Manheim Borough.  
ap27

**Assigned Estate of JOHN C. BYRAN, of Conoy township, Lancaster Co.**

Having by deed of voluntary assignment, dated April 10th, 1878, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said John C. Bryan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay and those having claims to present them to  
ap27 FREDERICK SMITH, Bainbridge, GEORGE BYROD, Elizabethtown. H. C. BRUBAKER, Att'y. Assignees.

**Assigned Estate of JOHN B. MEASHY and WIFE, of Mount Joy twp., Lan. Co.**

Having by deed of voluntary assignment, dated March 16, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John B. Meashy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JACOB SOUDERS, Assignee, GBO. BRUBAKER, Att'y. Residing in said township.  
ap27

**Assigned Estate of JOSEPH BOWMAN and WIFE, of Eden twp., Lancaster Co.**

Joseph Bowman and Wife, of Eden township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Joseph Bowman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JACOB BACHMAN, Assignee, Residing in Strasburg borough.  
ap27\*

**Estate of WILLIAM TWEED, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
H. N. BRENNEMAN, Administrator.  
ap27

**Estate of JAMES MCGINLEY, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.  
D. P. ROSENMILLER, JR., PHILIP D. BAKER, Att'y. Administrator.  
ap20

**Assigned Estate of JACOB A. WISNER and WIFE, of Marietta bor., Lancaster Co.**

Jacob A. Wisner and Wife, of Marietta borough, having by deed of voluntary assignment, dated April 8th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob A. Wisner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
A. F. SHENCK, Assignee, Residing in Lancaster Pa.  
ap20

**Assigned Estate of AARON FULLMER and WIFE, of Lancaster City.**

Aaron Fullmer and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Aaron Fullmer, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
BENJ. F. HOOKEY, Assignee, THOS. J. DAVIS, Att'y. Residing in Conestoga twp.  
ap20

**Assigned Estate of COOPER STUBBS and WIFE, of Fulton twp., Lancaster Co.**

Cooper Stubbs and Wife, of Fulton township, having by deed of voluntary assignment, dated March 19, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cooper Stubbs, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
ap13] N. D. SCOTT, Assignee, M. BROSIUS, Att'y. Residing in Lyle, Lan. co.

**Assigned Estate of LEVI KUPP and WIFE, of Mount Joy twp., Lancaster Co.**

Levi Kupp and Wife, of Mount Joy township, having by deed of voluntary assignment, dated April 5, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Levi Kupp, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
WM. K. BERNHARD, Assignee, Residing in Milton Grove, Lan. Co.  
ap13\*

**Assigned Estate of JOHN J. MILLER and WIFE, of Lancaster City.**

John J. Miller and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John J. Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
ap13 FRANCIS PFEIFFER, Assignee, B. C. KREADY, Att'y.] Residing in Lancaster city.

**Assigned Estate of SAMUEL W. LEWIS and WIFE, of Ephrata twp., Lancaster Co.**

Samuel W. Lewis and Wife, of Ephrata township, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel W. Lewis, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
MARTIN H. BITZER, Assignee. A. J. EBERY, Att'y. Hinkletown Lancaster Co., Pa.  
ap13

**Assigned Estate of EMANUEL HINKLE and WIFE, of East Cocalico twp., Lan. Co.**

Emanuel Hinkle and Wife, of East Cocalico twp.; having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Emanuel Hinkle, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
CYRUS REAM, Assignee, Wm. R. WILSON, Att'y. Residing in Reamstown, East Cocalico twp.  
ap13

**Assigned Estate of JOHN KREIDER and WIFE, of Pequea twp., Lancaster Co.**

John Kreider and Wife, of Pequea township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Kreider, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
CHRISTIAN F. BINKLEY, H. H. STEHMAN, Assignees. J. W. DENLINGER, Att'y.  
ap6

**Assigned Estate of JESSE P. RONK and WIFE, of East Lampeter twp., Lan. Co.**

Jesse P. Ronk and Wife, of East Lampeter township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse P. Ronk, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JOEL L. LIGHTNER, Assignee, Residing in East Lampeter twp.  
ap6

**Estate of BENJAMIN VAN LEW, late of Columbia bor., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to them without delay.  
WILLIAM W. COLLIER, Residing in Saxton, Bedford Co., Pa.; GEORGE ELTZ, Residing in Reading, Pa.  
ap6 E. D. NORTH, Att'y, Lancaster, Pa.

**Estate of JOHN WELLER, late of Cærnarvon township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Churchtown, Lancaster Co.  
E. D. WHITE, Executor. ap6 A. W. SNADER, Att'y.

**\$66** a week in your own town. \$5 Outfit free. No risk. Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALL & Co., Portland, Maine.

**Estate of WILLIAM BEAR, late of Leacock township, dec'd.**

Letters of administration *pendente lite* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Christiana.

SAMUEL SLOKOM,  
Administrator.  
ap6

**Assigned Estate of CATHARINE MYERS, of Little Britain twp., Lancaster Co.**

Catharine Myers, of Little Britain township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Catharine Myers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

W. W. HENSEL, Assignee,  
Residing in Little Britain twp.  
ap6

**Assigned Estate of JACOB M. SCHEETZ and WIFE, of Warwick twp., Lancaster Co.**

Jacob M. Sheetz and Wife, of Warwick township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob M. Sheetz, he therefore gives notice to all persons indebted to assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. L. KRYDER, Assignee,  
D. McMULLEN, Att'y. Residing in Warwick twp.  
ap6

**Assigned Estate of BENJAMIN OBER and WIFE, of Penn twp., Lancaster Co.**

Benjamin Ober and Wife, of Penn township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Benjamin Ober, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI WHITE, Assignee,  
D. McMULLEN, Att'y. Residing in Penn twp.  
ap6

**Estate of CHAS. J. RAKESTRAW, late of Paradise twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned residing in Paradise, Lan. Co.

M. BROSIUS, CATMARINE RAKESTRAW,  
mar23 Att'y. Administratrix.

**Assigned Estate of DAVID BRENNER and WIFE, of East Hempfield twp., Lan. Co.**

David Brenner and Wife, of East Hempfield township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David Brenner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN BRENNER,  
J. W. B. BAUSMAN, Att'y. Assignee,  
ap6 Residing in Manor township.

**Assigned Estate of MARTIN ROHRER and WIFE, of Fulton twp., Lancaster Co.**

Martin Rohrer and Wife, of Fulton township, having by deed of voluntary assignment, dated March 29th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Martin Rohrer, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

ISAAC BRADLEY,  
AMOS K. BRADLEY, Assignees,  
D. McMULLEN, Att'y. Residing in Wakefield, Lancaster Co., Pa.  
ap6

**Estate of JOHN GOTTFRIED WETTIG, late of Lancaster city, deceased.**

Letters of administration *d. b. n. c. l. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lancaster, Pa.

CHRISTIAN WETTIG,  
mar28\* Administrator.  
HUGH R. FULTON, Att'y.

**Assigned estate of THOMAS TRAGO and WIFE of Drumore twp., Lancaster co.**

Thomas Trago and Wife, of Drumore township, having by deed of voluntary assignment, dated March 22d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the Thomas Trago, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

P. D. BAKER, Att'y. LEVI K. BROWN,  
Assignee.  
mar23\* Residing in Fulton twp.

**Assigned Estate of JACOB L. LANDIS (Manor) and WIFE, of Manor township, Lan. Co.**

Jacob L. Landis (Manor) and Wife, of Manor twp., Lancaster Co., having by deed of voluntary assignment, dated March 20th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob L. Landis (Manor), he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. McMULLEN, Assignee,  
mar23 Residing in Lancaster city.

**Assigned Estate of GEORGE COONLEY and WIFE, of Lancaster City.**

George Coonley and Wife, of Lancaster city, having by deed of voluntary assignment, dated March 22, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Coonley, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

FRED. W. COONLEY, Assignee,  
S. H. REYNOLDS, Att'y. Residing in Lancaster city.  
mar23

**Assigned Estate of SAMUEL K. SLABACH and WIFE, of West Cocalico twp., Lan. Co.**

Samuel K. Slabach and Wife, of West Cocalico township, Lancaster county, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel K. Slabach, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JACOB G. GARMAN, } Assignees,  
ADAM K. SLABACH }  
mar16 Union Station, Lancaster Co., Pa.  
A. J. EBERLY, Att'y, 49 Grant st., Lancaster, Pa.

**Estate of CHRISTIAN HERTZLER, late of Cærnarvon twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

JOSEPH HERTZLER,  
HENRY HERTZLER, of Cærnarvon twp.,  
CHRISTIAN ZOOK, of East Earl twp.,  
mar23 GEO. BRUBAKER, } Att'ys. Executors.  
Jno. M. Mast,

**Assigned Estate of SAMUEL McCLENAGHAN and WIFE, of Fulton twp., Lancaster Co.**

Samuel McClenaghan and Wife, of Fulton township, having by deed of voluntary assignment, dated March 14th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel McClenaghan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

SAMUEL BOYD, Assignee,  
J. HAY BROWN, Att'y. Residing in Fairfield, Green P. O., Lan. Co.  
mar16

**Estate of JANE B. ROGERS, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Fulton township.

L. K. BROWN,  
mar23\* Executor.

**Estate of ISAAC SANDOE, late of Earl twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

GEO. SANDOE,  
mar16 Administrator.  
GEO. BRUBAKER, Att'y.

**Estate of ANNA M. SCHUM, late of Lancaster City, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said city.

PHILIP SCHUM,  
mar16 Administrator.  
M. BROSIUS, Att'y.

**Estate of BENJ. LEISEY, late of Cocalico twp., Lancaster Co., dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

JACOB G. GARMAN,  
mar16 Administrator,  
A. J. EBERLY, Att'y. Union Station, Lan. Co., Pa.

**Assigned Estate of DILLER BAKER and WIFE, of Salisbury twp., Lancaster Co.**

Diller Baker and Wife, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Diller Baker, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

DAN'L DENLINGER, Assignee,  
mar16\* Residing in Salisbury twp.  
WM. S. AMWEG, } Att'ys.  
PHILIP D. BAKER, }

**Assigned Estate of REUBEN F. SWARR and WIFE, of East Hempfield twp., Lan. Co.**

Reuben F. Swarr and Wife, of East Hempfield township, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Reuben F. Swarr, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

M. N. BRUBAKER,  
mar16 Assignee.  
S. P. EBY, Att'y. Residing in Landisville.

**Assigned Estate of AMOS REESE and WIFE, of Providence twp., Lancaster Co.**

Amos Reese and Wife, of Providence township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Amos Reese and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN HILDEBRAND, Assignee,  
mar16\* At his store in New Providence.

**Assigned Estate of PHILIP ROYER and WIFE, of Ephrata twp., Lancaster Co.**

Phillip Royer and Wife, of Ephrata township, having by deed of voluntary assignment, dated February 25th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Phillip Royer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI SHIRK, Assignee,  
mar16 A. J. EBERLY, Att'y. Lincoln, Lan. Co., Pa.

**Estate of WILLIAM MURPHY, late of Conoy township, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Bainbridge, said township.

ELIZABETH MURPHY,  
mar16 Administrator.  
GEO. BRUBAKER, Att'y.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, MAY 4, 1878.

No. 49.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

TERMS: \$2.00 PER ANNUM, IN ADVANCE.  
SINGLE COPIES 5 CENTS.

Subscriptions not designated as to time will be continued until forbidden.

Subscribers failing to receive THE LANCASTER BAR regularly, are requested to give immediate notice, in order that the matter may be promptly investigated and remedied. Missing numbers to complete subscribers' files will be supplied free.

Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,...	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	8:25 p. m.
Frederick Accom.,...	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,...	6:00 p. m.	8:10 p. m.
Columbia Accom.,...	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,...	7:25 p. m.	8:40 p. m.
Pittsburg Express,...	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,...	7:35 a. m.	10:00 a. m.
Columbia Accom.,...	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	8:45 p. m.
Sunday Mail,...	2:00 p. m.	5:00 p. m.
Johnstown Express,...	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,...	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.	a. m.	p. m.
Leave Columbia,.....	10:20	6:45
Arrive at Port Deposit,.....	1:20	8:45

  

GOING NORTH.	a. m.	p. m.
Leave Port Deposit,.....	6:30	2:00
Arrive at Columbia,.....	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.		a. m.	p. m.
Quarryville,.....	6:50	8:00	3:30
Lancaster—West King Street,...	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45

  

GOING SOUTH.		a. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30	8:10
Lancaster—West King Street,...	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Reading,.....	7:35	11:40	6:05
Lancaster Junction,.....		1:20	7:45
Lancaster—Upper Depot,.....	9:21		8:10
Lancaster—West King Street,...	9:46		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

Official Directory.

Supreme Court of the United States.

Appointed. Chief Justice—Morrison R. Waite, of Ohio, 1874 Justices—Nathaniel Clifford, of Maine, 1858 Noah H. Swayne, of Ohio, 1862 Samuel F. Miller, of Iowa, 1862 Stephen J. Field, of California, 1863 William Strong, of Pennsylvania, 1870 Jos. P. Bradley, of New Jersey, 1870 Ward Hunt, of New York, 1872 Attorney General—Charles E. Devens.

Supreme Court of Pennsylvania.

Chief Justice—Daniel Agnew. Associate Justices—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey. Attorney General—George Lear. Prothonotaries: Eastern District—Benj. E. Fletcher, Philadelphia. Western District,—J. B. Sweitzer, Pittsburgh. Middle District—Robert Snodgraes, Harrisburg. Northern District—J. A. J. Cummings, Montandon, Northumberland county. Reporter—A. Wilson Norris. Places and time for holding Court: At Philadelphia, commencing 1st Monday in January. At Harrisburg, commencing 1st Monday in May. At Pittsburgh, commencing 1st Monday in October. At Sunbury, commencing 3d Monday in September.

Second Judicial District.

President Judge—John B. Livingston. Additional Law Judge—David W. Patterson. Associate Judge—John J. Libhart. District Attorney—B. F. Eshleman.

County Officers.

Prothonotary—Lewis S. Hartman. Deputy—Wm. E. Kreider. Clerks—P. E. Slaymaker and Thos. B. Hartman. Register—Harrison Ross. Deputies—W. M. Slaymaker and C. H. Fasnacht. Recorder—Samuel S. Martin. Deputy—Benj. Bauman. Clerks—Geo. R. Sensenig and M. O. Sensenig. Sheriff—Henry N. Breneman. Deputies—Jno. D. Wilson and G. W. Benedict. Clerk of Orphans' Court—Samuel L. Kauffman. Clerk of Quarter Sessions—Stephen S. Clair. Deputy—B. F. W. Urban. Commissioners—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller. Clerk—John M. Grider. County Solicitor—J. Hay Brown. County Treasurer—Henry S. Eberly. Clerk—Amaziah C. Barr. Coroner—Amos Groff. County Surveyor—A. W. Snader. County Auditors N. N. Hensel, A. Konigmacher and H. S. Kerns.

City Officers.

Mayer—John T. Macgonigle. Solicitor—Robert M. Agnew. Recorder—Walter G. Evans. Aldermen—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake. Chief of Police—John Pontz. Treasurer—Edw. Welchans. Civil Engineer—Francis S. Burrowes. Street Commissioner—Charles Schwebel.

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COURT CALENDAR.--1878.

MAY.

- 4. Argument for Rules of Affidavit of Defense. 10. Last day for issuing Writs to May Term. 18. Last day for filing Accounts for June Court. 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term. 8. Last day for setting down causes for Argument Court.

JULY.

- 20. Last day for filing Accounts to August Court. 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term. 17. Last day for filing Accounts to September Court. 19. Last day for issuing Executions to August Term. 24. Calling Judgment Docket. 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term. 7. Last day for setting down causes for Argument Court. 7. Last day for setting down causes for trial for October 7 and 14. 7. Argument for Rules of Affidavit of Defense. 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense. 11. Last day for issuing Writs to October Term. 19. Last day for filing Accounts to November Court. 26. Last day for setting down causes for trial for November Court. 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term. 9. Argument for Rules of Affidavit of Defense. 16. Last day for filing Accounts to December Court. 18. Last day for issuing Executions to November Term. 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term. 7. Last day for setting down causes for Argument Court. 7. Argument for Rules of Affidavit of Defense. 21. Last day for filing Accounts to January Court, 1879. 21. Calling Judgment Docket. 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAY 4, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

### JACOB BEAM *against* JOHN WARFEL.

A *feri facias* issued by the defendant against a plaintiff for costs in a writ wherein an award in favor of the plaintiff was reversed on error for want of a jurisdiction was set aside, there being no judgment to support it.

Where an action is dismissed as out of the court's jurisdiction, there can be no judgment for costs.

There are no costs by common law in a writ of error, nor is there any statute giving them to a defendant below on a reversal of judgment obtained by the plaintiff and there is no act of assembly relative to costs on writs of error.

Costs in an action at law are not a matter of discretion, or within the equitable power of the court.

This was an action brought in the District court for trespass *quare clausum fregit*. No declaration was filed. 26 December, 1827, the defendant entered an application for arbitrators, who were accordingly chosen. On the 2d of February, 1829, the arbitrators report in favor of the plaintiff for \$30. On the 26th February, rule to show cause why the report should not be set aside for reasons filed. June 10, 1829, argument and rule discharged. May Term, 1832, the report or award reversed by the Supreme Court, because this court had no jurisdiction. Decree of the Supreme Court, 29th May, 1832. The defendant thereupon issued a *feri facias*, which was executed against the plaintiff, Jacob Beam, for costs.

September 4, 1832, on motion of Mr. Norris, the court granted a rule to show cause why the execution issued in this case should not be set aside and the money be refunded to the plaintiff. This rule was argued on the 12th of the same month, by

Mr. Norris for the plaintiff and Mr. R. Frazer for the defendant.

For the plaintiff it was said: 1. That there was no judgment to warrant this execution; 2. That no judgment can be given, this court having no jurisdiction.

When an action is dismissed as being out of the jurisdiction of the court, no judgment for costs can be given, for this would be in some sort assuming jurisdiction: 2 Mass. 216, Williams *vs.* Blunt; 15 Mass. 221, Clark *vs.* Rockwell. In this case there is no power in the court to award a judgment, and if there were, there is no judgment awarded: consequently the *feri facias* must be set aside with costs. On reversal, each party pays his own costs.

Mr. R. Frazer *contra*, asked that a rule be entered to show cause why Jacob Beam shall not pay the costs in this court, and it was agreed that such a motion should be entered

with Mr. Norris' objection to the jurisdiction of the court to entertain the motion that this motion be now discussed, and that the court now decide the same, together with the rule of the 4th of September, 1832.

It was contended for the defendant that this was like a plea in abatement, determined in favor of the defendant on objections taken by the plaintiff. Could not the court award costs in that case? The determination that the court had no jurisdiction, was a judgment: 1 Penn'a Practice, 279; 3 Sm. L. 33; 4 Sergt. & R. 199; 13 Sergt. & R. 100, 101, 102, Moore *vs.* Porter; Roberts' Dig. 138.

HAYES, J. The court could not, for a moment, doubt that this execution was wholly untenable—there being no judgment to support it. The reversal of the award, by the decree of the Supreme Court, swept away the foundation for an execution. But as the defendant's counsel insisted that his client had been injured by being drawn into this court to contest a claim over which it had no jurisdiction, and that it was reasonable and just that the plaintiff who had inflicted this injury should pay the costs to which the defendant had been subjected by this act, it was, on the the argument agreed, that a motion should be entered to show cause why Jacob Beam should not pay the costs in this court, with Mr. Norris' objection to the power of the court to entertain such motion for want of jurisdiction. It was also agreed that this rule should then be discussed, and it was accordingly argued with the principal motion. If the court should be of opinion that it could grant relief to the defendant in the premises, and that he was justly entitled to relief, the execution was to be set aside without an order to refund the costs levied.

The means of recovering costs by a party from his adversary, are by execution or action upon a judgment obtained for them; or secondly, by attachment upon a rule of court: 2 Tidd. 905.

We think an execution or action for costs in this case is out of the question. As to the execution, which was the occasion of the rule of the 4th of September, that must necessarily fall, because there is no judgment to support it. There is no judgment for costs, and there can be none. Where an action is dismissed as out of the court's jurisdiction, a judgment for costs cannot be given, for that, says Judge SEWALL, in Williams *vs.* Blunt, 2 Mass. 216, would be in some measure to assume jurisdiction. Costs, in general, are incident to judgments. In this case the award or judgment was annulled by the decree of reversal. The incident of costs must follow the same fate, and therefore, the plaintiff's claim to costs sank with the report of the arbitrators in his favor. As to the defendant, upon what can his claim rest? Not upon the judgment or award, for that was against him, and *prima facie* subjected him to costs, rather than entitled him to them. Nor did the decree of reversal entitle him to costs; for the rule is perfectly well settled that if a judgment of an inferior court be reversed, the costs are not recovered by the party who obtains the reversal; and this rule is declared, in Wyvill *vs.* Stapleton, 1 Str. 617, to be

founded in good reason, for why should any man, it is observed, in case of reversal pay costs for the error of the court below. No action can be sustained where the plaintiff has not a legal right to the thing sued for, and the defendant is not liable in law to pay or deliver the same to him. An action will not lie for John Warfel to recover these costs from Jacob Beam, because the law has given the defendant in the court below, on a reversal of the judgment by a superior court no right to demand his costs from the adversary party, nor subjected the latter to the liability of paying those costs. No man, either in courts of equity or the common law courts, subjects himself to an action by merely suing, whether in a criminal or civil form, however unfounded the suit may be: 2 Mad. 414. John Warfel having then no right to an execution, or even an action for his costs, is he entitled to an attachment or order of court against Jacob Beam to compel him to pay them?

The law looks upon costs as a penal infliction, either for the false clamor of the plaintiff or the resistance of the defendant against a just demand. The right of one party to receive them from another is not a common law right, for costs are exclusively of statutory creation, and all statutes allowing them are in consonance with the character of the subject, to be construed strictly: 6 Bac. Ab. 390; Cases Temp. Hardw. 357; 1 Penn'a R. 461. The first inquiry, therefore, under this head would be, is there any act of assembly or statute by which the defendant is entitled to costs in the present case? Or, in other words, is there any such act or statute imposing them on the plaintiff?

There is no act of assembly relative to costs on writs of error. At common law, there were no costs in a writ of error, and there is no statute by which they are given to the defendant below on the reversal of a judgment, obtained by the plaintiff in the inferior court. In the cases cited on the argument as analogous, in which costs are allowed, it will be found that they are allowed by express statutory provisions. Thus, on a discontinuance or non-suit, they are allowed by statutes: 4 James 1, and 8 Eliz.; 2 Sell. 439. So judgment on demurrer carries costs by 8 and 9 Wms. 3, c. 11. The same statute gives costs to the defendants in error where the writ of error is discontinued, or the plaintiff is non-suited therein; and by 4th and 5th Ann, c. 16, on quashing any writ of error for variance from the record or other defect, the defendant shall recover against the plaintiff issuing such writ his costs, as he should have had, if judgment had been affirmed: 2 Sell. 446. But as was before remarked, there is no statute giving costs to the successful party on the reversal of a judgment by writ of error.

It was however contended that in the present case the court had the whole subject within its power, and might give costs like a chancellor—not from any authority, but from conscience and *arbitrio boni viri*, according to a "sound discretion." The answer to this is: 1. That costs in an action at law are not a matter of equity jurisdiction, and with respect to



them, this court has no equitable powers. 2. It is not very apparent if the court possessed such powers that the defendant is entitled in good conscience, to his costs from the plaintiff. He reversed the plaintiff's judgment, not upon the merits, but on a ground which did not affect the justice of the demand. Had the report of the arbitrators been unjust, he might have taken an appeal and submitted the cause to a jury. He chose, however, to stand upon his legal exceptions. Again, he might have demanded a specification of the plaintiff's cause of action, and pleaded to the jurisdiction, instead of which he thought proper to compel the plaintiff to go before arbitrators. These arbitrators awarded in favor of the plaintiff, after a hearing of the allegations and proofs of the parties, and not until their report did the defendant suggest his objection to the jurisdiction. It was the plaintiff's fault to bring action before a tribunal that has no legal authority to determine it, it was a fault in which the defendant largely participated by keeping the ball in motion which the other started; and having thus joined in playing the game, it would seem to be equitable that he should sustain the charges incurred by his voluntary act—that is, the costs which he made for himself. The plaintiff, it would appear, was entitled to something; his mistake was merely in the forum to which he resorted; and we have seen that a plaintiff never makes himself liable to an action by merely suing, though his suit may be entirely unfounded.

Upon the whole, we are of opinion that the defendant is in no shape or way entitled to recover his costs from the plaintiff in this case. We therefore discharge his rule, and make that of the plaintiff, obtained on the 4th of September, absolute.

#### Common Pleas of Lancaster County.

##### IN EQUITY.

#### RANCK vs. RUTT.

(Eq. Doc. No. 2, p. 110.)

The duties of a master in equity are both ministerial and judicial; to find facts from the evidence, and to report the law arising from the facts thus found. The master should not recite the evidence *in toto*, but merely give his opinion and conclusions from the evidence in the case.

The master, in making up his report, should observe the rules of practice in regard to the *form* of his report.

Exceptions to master's report.

*Thos. E. Franklin and Philip D. Baker for exceptions.*

*N. Ellmaker contra.*

Opinion delivered April 23, 1878, by PATTERSON, A. L. J.

In this case it appears that, after bill and answer filed, a master was appointed, who acted and has returned to the court some ninety-five pages of testimony and his report, also consisting of over twenty-nine pages.

That officer—a "master"—is an officer of the court, who acts in a court of equity or chancery as assistant to the court. His office is both ministerial and judicial. His duty is

first to find the facts, as according to his conscientious judgment may have been established by the evidence, and then, secondly, to decide and announce the questions of law arising out of the facts so found.

He may be required often to find and report the facts from testimony previously taken before a commissioner, or may be authorized to examine witnesses; and, after having heard the proofs and allegations of the parties, to make his report of both the facts proven and the law.

Such report is his certificate to the court, how or what the facts are, and also his conclusions as to what the law is upon the facts found.

He must respond to the questions of law involved, or what in his judgment, the law is. To find rightly the facts of a case from a mass of testimony requires from the master nice preception and sound judgment, and is of great consequence to the proper and correct adjudication of the sub-matter.

That *finding* the universal law of practice requires, to be presented in the report, in a certain *manner* or *form*. That particular form has not been observed by the learned master in this case, and it is proper the court should refer to it, and announce to future masters that the *form* or *manner* of their report, in this particular, is all important and will be insisted upon. A fact is a *thing done*; a fact is an *actual event* or *thing* opposed to a mere supposition or speculation; a fact, therefore, required to be found and reported by a master, is a *thing done* or an actual event arising from the proof—a thing made manifestly to appear clear to the mind by the evidence submitted.

The evidence upon which the master finds the facts of the case need not appear—need not be recited. He is to give or recite his conclusions upon the evidence—not the evidence itself. It is an incorrect practice for a master to set out in his report the testimony submitted to him.

When a matter is in controversy he should merely say, in regard to the question, "the master finds the following facts;" or, "from a careful consideration of all the evidence, facts found by the master are as follows." Then the facts as established by the evidence should be fully set forth.

After a statement of the facts thus found and set forth should follow the master's opinion of the law arising out of the facts. His office is then mainly judicial in its character. The importance of these rules in chancery proceedings is well understood by the profession, and should be strictly observed on all occasions when appointed to assist the court as master.

But as to the report of the master under consideration. Upon the whole, we are of opinion that the master in his conclusions of the essential facts was right. And, further, in this case we see no such clear mistake in the law, as applied by the master, to justify a reversing of his judgment.

We, therefore, dismiss all the exceptions filed and confirm the master's report.

Report confirmed absolutely.

#### SUPREME COURT OF PENNSYLVANIA.

##### SANDS ET AL. vs. ARTHUR.

A vendor on a parol agreement, though ready and willing to perform his contract, cannot recover the purchase money, for equity will not decree specific performance where the remedy is not mutual. He may recover damages, but that would be only compensation for expenses and other incidental damages, but not the price or purchase money.

Error to the Court of Common Pleas of Lycoming county.

PER CURIAM. June 18th, 1878.

This case is easily stated in a few words. Arthur was employed by Sands, Herdic & Co. to do certain work in a saw-mill. Herdic agreed by parol to sell a lot of ground to Arthur; and Arthur agreed, Herdic and the other members of the firm consented thereto, that one-third of the price of the lot should be applied in payment of the work done at the saw-mill. No possession was taken of the lot, no actual application of the one-third of the price was made upon the work done. When the work was completed Herdic tendered a deed, and demanded a bond and mortgage for the two-thirds of the purchase money, leaving one-third to stand as a credit on the work. Arthur refused to accept the deed on the ground that the bargain was for a lot of one hundred and twenty-five feet in width, while the deed was for one hundred and seventy-five feet in width. The question is, can this parol contract be enforced in the face of the statute of frauds and perjuries? Clearly it cannot, unless we overturn the authorities which declare that a vendor, though ready and willing to perform his contract, cannot recover the purchase money—on the ground that equity will not decree specific performance where the remedy is not mutual; and it is clear the vendee cannot compel specific performance because of the statute of frauds: *Wilson vs. Clark* 1 W. & S. 554, *Ellet vs. Parson*, 2 W. & S. 418; *Meason vs. Kaine*, 13 P. F. S. 335; *Same vs. Same*, 17 P. F. S. 126. This principle was fully settled when this court overruled the doctrine of *Park vs. McKee*, 9 Barr 240, and kindred cases, in *Hertzog vs. Hertzog*, and *Dumars vs. Miller*, and *Graham vs. Graham*, 10 Casey, 418, 320 and 475, and there held that the measure of damages for the breach of a parol contract is not the value of the land, but compensation only for the damages caused by the breach of the contract. In the last case of *Meason vs. Kaine*, p. 131, it was said that actions to enforce a parol trust forbidden by the act of 1856 rest on the same grounds as actions to enforce a parol sale of land, the mischief being the same, to wit, the encouragement given to fraud and perjury. Hence it was said to sustain the recovery of the purchase money is to enforce the trust itself; for the payment of it draws the title to the *cestui que trust*, on the ground that equity will not permit him to hold both the title and the money. Nor would the remedy be mutual, for if the holder of the title deny the trust, resting on the statute, the *cestui que trust* could not by a tender enforce the trust. Now the case before us presents the very danger:

which the statute is intended to avoid. Arthur claims title by the parol bargain to a lot of one hundred and twenty-five feet in width, while Herdic denies any such bargain. The consequence is, the true bargain must be established by the testimony, and here comes in the danger of fraud or perjury.

It is argued the bargain is not void. This is true and so the cases referred to hold, but it is not the measure of damages which is the subject of decision, and this is held to be only compensation for expenses and other incidental damages, and not the price or purchase money; and as the vendee cannot enforce the contract for the land, mutually, which is the rule of the remedy in equity, forbids the recovery of the price. Hence the \$1,000 cannot be set up as a payment in this action.

Judgment affirmed.

MERCUR, J., dissents, as Arthur having performed his part of the contract, cannot prevent the opposite party from performing their part.—*Pitts. Leg. Journal.*

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAY 4, 1878.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since April 27, 1878:

HENRY N. ROHRER, dec'd, late of West Hempfield twp.; Dr. A. K. Rehner, administrator.

DAVID G. HULL, dec'd, late of Strasburg bor.; A. E. Hull, administrator.

The following Wills have been admitted to probate since April 27, 1878:

JOHN HERSHEY, late of East Donegal twp.; Henry E. Hershey, John Stauffer and Henry Brandt, executors.

DANIEL BOBBY, late of Penn twp.; Emanuel Keener, executor.

LYDIA PRIEFER, late of Brecknock twp.; Fred'k Peiffer, executor.

MARY ROLAND, late of Marietta bor.; John W. Rich, executor.

EVA ANNA RAUB, late of Lancaster city; Eilm G. Snyder, executor.

CATHARINE FLICK, late of Lancaster city; John Fordney, executor.

ELIZABETH FORDNEY, late of Lancaster city; John Fordney, executor.

⚡ Saturday, May 18th, last day for filing accounts to June Term, 1878.

#### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since April 27, 1878:

JACOB SMITH, sr., of Lebanon bor., Lebanon co.; Henry T. Hoffman, assignee.

HENRY GLESSNER and WIFE, of Harrisburg; B. F. W. Urban, assignee.

HENRY BEMBLERMAN and WIFE, of Strasburg twp.; Jacob Hildebrand, assignee.

### WILLIAM B. WILEY,

ALDERMAN,

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LANCASTER, PENNA.

COMMISSIONER OF DEEDS

FOR THE STATES OF

New York, Iowa, Minnesota, Illinois,  
Indiana, Missouri, Ohio, Michigan,  
Kansas, Wisconsin, West Virginia.

#### CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on MONDAY, the 20th day of MAY, 1878, at 10 o'clock, a. m., for a charter to incorporate "The Shawnee Steam Fire Engine and Hose Company," of Columbia, Pa.

A. J. KAUFFMAN,  
Attorney for Applicants.

ap2

### Auditors' Notices.

JULIUS COHN } In the Court of Common Pleas  
vs. } of Lancaster County.  
ALBERT YOST. } Execution Dec. of April Term,  
1878, No. 41.

The undersigned Auditor, appointed to distribute the money made on the above *fi. fa.*, and ruled into court, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, MAY 31, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
J. W. F. SWIFT, Auditor.

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, JUNE 3d, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. C. DIEHL,  
Auditor.

Estate of HENRY WERTZ, late of Providence township, deceased.

The undersigned Auditor, appointed to pass on the exceptions and to make distribution of the balance remaining in the hands of Jonathan Gamber, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 17th day of MAY, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
J. B. GOOD, Auditor.

In the Court of Common Pleas of Lancaster Co., Pa.

JULIAN MOBES ET AL., } August Term, 1877, No. 31.  
vs. } Breve de partitione faci-  
AMOS H. NEFF ET AL. } enda.

The undersigned Auditor, appointed by the Court to report distribution of the net proceeds of sale of the real estate embraced in the above partition, suit ruled into court for distribution, to and among those legally entitled thereto, will sit for that purpose on TUESDAY, MAY 14th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, when and where all persons interested in said distribution may attend if they think proper.  
E. D. NORTH,  
Auditor.

ap20

JACOB NORBECK, } In the Court of Common Pleas  
vs. } of Lancaster County.  
JACOB MILBY and } Equity Docket, No 2,  
WM. MCKBOWN. } page 127.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Daniel A. Altick, receiver in the above case, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, MAY 17, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ROBT. J. EVANS,  
S. W. SHADLE,  
Auditors.

ap20

Estate of JACOB OTTO, late of Manor township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of David B. Levenite, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 29th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
CHAS. I. LANDIS,  
Auditor.

ap27

Estate of CHRISTIAN LOUCOMER, late of Lancaster City, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Chas. Peters, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on MONDAY, MAY 6th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

ROBT. J. EVANS,  
Auditor.

ap20

Estate of EVE LANDIS, late of East Lampeter township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin G. Landis, administrator, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MAY 21st, 1878, at 2 o'clock, p. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

I. CARPENTER, Auditor.

ap20

Assigned Estate of JONAS WANNER and WIFE, of Cærnarvon twp.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Shirk, assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, MAY 13, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

E. D. WHITE,  
Auditor.

ap20

Estate of JOHN GEHMAN, late of Brecknock township, deceased.

The undersigned Auditor, appointed to distribute the acceptance money of the real estate of said dec'd, ruled into court, to and among those legally entitled to the same will sit for that purpose on THURSDAY, MAY 16, 1878, at 10 o'clock a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

SIMON P. EBY,  
Auditor.

ap20

Estate of JACOB R. BARR, late of Manor twp., Lancaster Co., deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Christiana Barr, administratrix, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 10th day of MAY, 1878, in the Library Room of the Court House, at Lancaster, at 10½ o'clock, a. m., when and where all persons interested may attend.

A. C. REINCEHL,  
Auditor.

ap20

Assigned Estate of ELIAS BARR & Co., of Lancaster City.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Pearson, assignee, on second and final account, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, MAY 11th, 1878, at 2½ o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. C. REINCEHL,  
Auditor.

ap20

Estate of HENRY HUSTON, late of Salisbury township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Maet, administrator, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 15th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

A. H. FRITCHEY,  
Auditor.

ap20

COMMON PLEAS TRIAL LIST--First Week.

Commencing Monday, May 20th, 1878.

<i>Rosenmiller.</i> 1 <i>Price, Given.</i>	H. AND J. MYERS vs. SAMUEL EVANS, adm'or.	} Mar. Term, 1871. No. 50. Sum's in assumpsit. Plea, non assumpsit.
<i>Reynolds.</i> 2 <i>Ellmaker.</i>	HOUSTON & DILLER vs. JACOB MARTIN, JR., et al., adm'ors.	} June Term, 1872. No. 12. Sum's case. Plea, non assumpsit, pay't, etc.
<i>Black, Good.</i> 3 <i>Kline, Nauman.</i>	GEO. W. McPHERSON, adm'or vs. WM. McPHERSON.	} Oct. Term, 1873. No. 2. Sum's in trover and con- version. Plea, not guilty.
<i>Shenk, Leaman.</i> <i>Reynolds.</i> 4 <i>P. D. Baker,</i> <i>Newpher.</i>	CASPER HILELR, ex'ors, use vs. MICHAEL KREIDER.	} Feb'y Term, 1874. No. 54. Sum's case. Plea, non assumpsit.
<i>Same.</i> 5 <i>Same.</i>	SAME PLAINTIFF vs. LEVI GOOD.	} Feb'y Term, 1874. No. 55. Sum's case. Plea, non assumpsit.
<i>Same.</i> 6 <i>Same.</i>	SAME PLAINTIFF vs. JOHN STROHM, JR.	} Feb'y Term, 1874. No. 56. Sum's case. Plea, non assumpsit.
<i>Reynolds.</i> 7 <i>North.</i>	J. P. KNIGHT vs. THE PENNA. R. R. CO.	} May Term, 1875. No. 8. Sum's case. Plea, non assumpsit.
<i>J. Hay Brown.</i> 8 <i>Reynolds, P. D.</i> <i>Baker.</i>	HENRY C. HOSTETTER vs. GROFF & CO.	} Feb'y Term, 1876. No. 19. Sum's in assumpsit. Plea, pay't, payment with leave.
<i>Long.</i> 9 <i>A. J. Kauffman.</i>	B. M. GREIDER & CO. vs. MILTON WIKE et al.	} April Term, 1876. No. 49. App'l by def't from justice. Plea, non assumpsit, etc.
<i>Frantz.</i> 10 <i>J. Hay Brown.</i>	JOHN K. HUTTON vs. S. JAMES BOYD.	} May Term, 1876. No. 86. Sum's in covenant. Plea, covenants performed absque hoc.
<i>North.</i> 11 <i>H. C. Brubaker.</i>	CYRUS SHARTZER vs. WILLIAM SHARTZER.	} Aug. Term, 1876. No. 18. Sum's case. Plea, non assumpsit, pay't, etc.
<i>Brown,</i> <i>H. C. Brubaker.</i> 12 <i>Wilson, B.F. Davis.</i>	SAMUEL H. PRICE et al. vs. H. L. MISHLER et al.	} Aug. Term, 1876. No. 54. Issue to try validity of will. Plea filed.
<i>H. C. Brubaker.</i> 13 <i>Ellmaker, Eby,</i> <i>Hershey.</i>	BENJ. BRACKBILL vs. JOSEPH BRACKBILL ex'or.	} Aug. Term, 1876. No. 96. Sum's in assumpsit. Plea, non assumpsit, pay't.
<i>Slaymaker.</i> 14 <i>P. D. Baker.</i>	SAMUEL C. SLAYMAKER vs. SOLOMON LINVILLE.	} Sept. Term, 1876. No. 1. Sum's case. Plea, not guilty.

<i>Brosius, Steinmetz,</i> 15 <i>Davis.</i>	JOSEPH WALLACE vs. ROBERT KANE.	} Oct. Term, 1876. No. 8. Sum's in ejectment. Plea, not guilty.
<i>Ehleman.</i> 16 <i>Reynolds.</i>	JOHN WENGER vs. THE FARMERS' MUT'L INS. CO.	} Oct. Term, 1876. No. 11. Sums in covenant. Plea, non est factum, cov- enants performed absque hoc.
<i>Martin.</i> 17 <i>H. C. Brubaker.</i>	E. H. MYERS & CO. vs. RABER & SON.	} Nov. Term, 1876. No. 35. App'l by def't from justice. Plea, non assumpsit.
<i>McMullen.</i> 18 <i>Denucs.</i>	ANN R. SMITH, adm'ix vs. JOSEPH FURNISS.	} Nov. Term, 1876. No. 78. App'l by def't from justice. Plea, non assumpsit, pay't.
<i>J. Hay Brown.</i> 19 <i>Kline.</i>	S. W. P. BOYD'S adm'or, vs. CHARLES YARD.	} Dec. Term, 1876. No. 19. Sum's in assumpsit. Plea, non assumpsit.
<i>Reynolds.</i> 20 <i>North.</i>	FRED'K S. BLETZ vs. NEWCOMER & SENNER.	} Dec. Term, 1876. No. 66. Sum's case. Plea, non assumpsit.
<i>Kaufman.</i> 21 <i>Eby.</i>	EDWIN BOOKMYER vs. HENRY S. SHREINER.	} Jan'y Term, 1877. No. 26. Sci. fa. sur mech. lien, &c. Plea, non assumpsit, pay't.
<i>North.</i> 22 <i>H. C. Brubaker.</i>	WASHINGTON BOROUGH SCHOOL DISTRICT vs. CYRUS SHARTZER et al.	} Jan'y Term, 1877. No. 46. Sum's in debt. Plea, pay't, payment with leave, etc.
<i>Eberly, Kline.</i> 23 <i>H.M. &amp; E.D. North.</i>	A. J. EBERLY, assignee, &c. vs. LAN. & READING N. G. R. R. CO.	} Feb'y Term, 1877. No. 43. Issue trespass quare claus- um fregit. Plea, not guilty.
<i>Kline, Eberly,</i> <i>E. G. Smith.</i> 24 <i>Same.</i>	A. A. MYERS, trustee, vs. SAME DEFENDANT.	} Feb'y Term, 1877. No. 44. Issue trespass quare claus- um fregit. Plea, not guilty.
<i>Nauman, Given.</i> 25 <i>J. Hay Brown.</i>	HAN. J. & S. R. R. CO. vs. HENRY KAUFFELT.	} March Term, 1877. No. 53. Sum's case. Plea, non assumpsit, pay't.
<i>Same.</i> 26 <i>Same.</i>	SAME PLAINTIFF vs. H. WILTON.	} Mar. Term, 1877. No. 54. Sum's case. Plea, non assumpsit, pay't.
<i>Same.</i> 27 <i>North.</i>	SAME PLAINTIFF vs. FRANK J. MAGEE.	} Mar. Term, 1877. No. 56. Sum's case. Plea, non assumpsit, pay't.
<i>Same.</i> 28 <i>J. Hay Brown.</i>	SAME PLAINTIFF vs. ELI KENDIG.	} Mar. Term, 1877. No. 58. Sum's case. Plea, non assumpsit, pay't.
<i>Same.</i> 29 <i>North.</i>	SAME PLAINTIFF vs. E. J. BEARD.	} Mar. Term, 1877. No. 61. Sum's case. Plea, non assumpsit, pay't.
<i>Ellmaker, Reynolds.</i> 30 <i>B. F. Ehleman.</i>	MARY R. CASSEL vs. ELI H. ENGLE.	} May Term, 1877. No. 13. Sum's sur breach of prom- ise of marriage. Plea, not guilty.

**NOTICE.**

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster county, on **MONDAY**, the 17th day of **JUNE**, A. D., 1878, at 10 o'clock, a. m., for a charter to incorporate "The German" "and English Evangelical Lutheran" "Jerusalem Congregation of Rothsville," Lancaster county.

The object of which will be the support of public worship, and to hold and manage in connection therewith certain real estate, grave yard, and other property in Warwick township, conveyed in trust for said congregation, under the name of "Jerusalem's Kirche."  
**SIMON P. EBY,**  
may4 Att'y for Applicants.

LEGAL PRINTING of all kinds neatly and promptly done at *The Lancaster Bar* printing office, No. 13 North Duke-st.. Lancaster, Pa.

**Estate Notices.**

**Assigned Estate of JOHN LUTZ and WIFE, of East Cocalico twp., Lancaster Co.**

John Lutz and Wife, of East Cocalico township, having by deed of voluntary assignment, dated May 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Lutz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**ADAM S LUTZ,** Assignee,  
**A. J. EBERLY, Att'y.** Union Station, Lan. Co., Pa.  
may4

**Estate of DAVID HULL, late of Strasburg borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

**AMOS E. HULL,** Administrator.  
may4\*

**Assigned Estate of JOHN HOAK, of Conestoga twp., Lancaster Co.**

John Hoak, of Conestoga township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said John Hoak, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**AMOS WARFEL,** Assignee,  
**H. C. BRUBAKER, Att'y.** Slackwater P. O., Lancaster Co., Pa.  
may4\*

**Assigned Estate of ABRAHAM M. WRIGHT and WIFE, of Conestoga twp., Lan. Co.**

Abraham M. Wright and Wife, of Conestoga township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham M. Wright, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**H. H. MILLER,** Assignee,  
**H. C. BRUBAKER, Att'y.** Slackwater P. O., Lancaster Co., Pa.  
may4

**Assigned Estate of FREDERICK QUADE and WIFE, of Lancaster City.**

Frederick Quade and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 18, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Frederick Quade and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**WM. WOHLSEN,** Assignee,  
**B. F. DAVIS, Att'y.**

**Estate of MARY ROLAND, late of Marietta borough, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.

**JOHN W. RICH,** Executor.  
**D. G. BAKER, Att'y.**

**Assigned Estate of PHILIP JACOB BOIRCK and WIFE, of Lancaster City.**

Philip Jacob Boirek and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Philip Jacob Boirek and Wife, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to

**PETER ALLABACH,** Assignee,  
**B. F. DAVIS, Att'y.** Residing in Lancaster.

**Assigned Estate of ELI BATTON and WIFE, of Upper Leacock twp., Lancaster Co.**

Eli Batton and Wife, of Upper Leacock township, having by deed of voluntary assignment, dated March 27th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Eli Batton and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**D. B. ESHLEMAN,** Assignee,  
**B. F. DAVIS, Att'y.** Residing in Earl township.  
may4

**Assigned Estate of CONRAD REHM and WIFE, of Lancaster City.**

Conrad Rehm and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 12, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Rehm, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**WM. E. MILLER,** Assignee,  
**J. W. F. SWIFT, Att'y.** Residing in Lancaster.  
may4

**Assigned Estate of MARIA LOUISA CLARK and HUSBAND, of Lancaster twp., Lan. Co.**

Maria Louisa Clark and Husband, of Lancaster township, having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Maria Louisa Clark, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**BENJ. SNAVELY,** Assignee,  
**J. W. F. SWIFT, Att'y.** Residing in Lancaster.  
may4

**Assigned Estate of HENRY ESHLEMAN, and WIFE, of Strasburg twp., Lancaster Co.**

Having by deed of voluntary assignment, dated April 18, 1878 assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Eshleman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**JACOB HILDEBRAND,** Assignee,  
Residing in Strasburg.  
may4

**Assigned Estate of JOHN SHREINER, SR., and WIFE, of Warwick twp., Lan. Co.**

John Shreiner, sr., and Wife, of Warwick township, having by deed of voluntary assignment, dated April 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Shreiner, sr., he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**GEO. SHREINER,** Assignee,  
Residing in Manheim twp.  
**WALTER M. FRANKLIN,** Att'y's.  
**J. W. B. BAUSMAN,**

**Assigned Estate of PETER SELLERS and WIFE, of Penn twp., Lancaster Co.**

Peter Sellers and Wife, of Penn township, having by deed of voluntary assignment, dated March 26th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Peter Sellers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**ABRAHAM KLINE,** Assignee,  
**W. M. FRANKLIN, Att'y.** Residing in Manheim Borough.  
ap27

**Assigned Estate of JOHN C. BYRAN, of Conoy township, Lancaster Co.**

Having by deed of voluntary assignment, dated April 10th, 1878, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said John C. Bryan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay and those having claims to present them to

**FREDERICK SMITH,** Bainbridge,  
**GEORGE BYROD,** Elizabethtown.  
**H. C. BRUBAKER, Att'y.** Assignees.  
ap27

**Assigned Estate of JOHN B. MEASHY and WIFE, of Mount Joy twp., Lan. Co.**

Having by deed of voluntary assignment, dated March 16, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John B. Meashy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**JACOB SOUDERS,** Assignee,  
**GEO. BRUBAKER, Att'y.** Residing in said township.  
ap27

**Assigned Estate of JOSEPH BOWMAN and WIFE, of Eden twp., Lancaster Co.**

Joseph Bowman and Wife, of Eden township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Joseph Bowman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**JACOB BACHMAN,** Assignee,  
Residing in Strasburg borough.  
ap27\*

**Estate of WILLIAM TWEED, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.

**H. N. BRENNEMAN,** Administrator.  
ap27

**Estate of JAMES MCGINLEY, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted there-to are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.

**D. P. ROSSMILLER, JR., PHILIP D. BAKER,** Att'y. Administrator.  
ap20

**Assigned Estate of JACOB A. WISNER and WIFE, of Marietta bor., Lancaster Co.**

Jacob A. Wisner and Wife, of Marietta borough, having by deed of voluntary assignment, dated April 8th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob A. Wisner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**A. F. SHENCK,** Assignee,  
Residing in Lancaster Pa.  
ap20

**Assigned Estate of COOPER STUBBS and WIFE, of Fulton twp., Lancaster Co.**

Cooper Stubbs and Wife, of Fulton township, having by deed of voluntary assignment, dated March 19, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cooper Stubbs, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**N. D. SCOTT,** Assignee,  
**M. BRUBAKER, Att'y.** Residing in Lyle, Lan. co.  
ap13

**Assigned Estate of LEVI KUPP and WIFE, of Mount Joy twp., Lancaster Co.**

Levi Kupp and Wife, of Mount Joy township, having by deed of voluntary assignment, dated April 5, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Levi Kupp, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

**WM. K. BERNHARD,** Assignee,  
Residing in Milton Grove, Lan. Co.  
ap13\*

**Assigned Estate of AARON FULLMER and WIFE, of Lancaster City.**

Aaron Fullmer and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Aaron Fullmer, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

BENJ. F. HOOKEY, Assignee.  
THOS. J. DAVIS, Att'y. Residing in Conestoga twp.  
ap20

**Assigned Estate of JOHN J. MILLER and WIFE, of Lancaster City.**

John J. Miller and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John J. Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

FRANCIS PFEIFFER, Assignee.  
B. C. KREADY, Att'y.] Residing in Lancaster city.  
ap13

**Assigned Estate of SAMUEL W. LEWIS and WIFE, of Ephrata twp., Lancaster Co.**

Samuel W. Lewis and Wife, of Ephrata township, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel W. Lewis, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

MARTIN H. BITZER, Assignee.  
A. J. EBBRY, Att'y. Residing in Lancaster Co., Pa.  
ap13

**Assigned Estate of EMANUEL HINKLE and WIFE, of East Cocalico twp., Lan. Co.**

Emanuel Hinkle and Wife, of East Cocalico twp.; having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Emanuel Hinkle, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

CYRUS REAM, Assignee.  
WM. R. WILSON, Att'y. Residing in Reamstown, East Cocalico twp.  
ap13

**Assigned Estate of JOHN KREIDER and WIFE, of Pequea twp., Lancaster Co.**

John Kreider and Wife, of Pequea township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Kreider, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

CHRISTIAN F. BINKLEY, Assignees.  
H. H. STEHMAN, Assignees.  
ap6 J. W. DENLINGER, Att'y.

**Assigned Estate of JESSE P. RONK and WIFE, of East Lampeter twp., Lan. Co.**

Jesse P. Ronk and Wife, of East Lampeter township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse P. Ronk, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOEL L. LIGHTNER, Assignee.  
ap6 Residing in East Lampeter twp.

**Estate of BENJAMIN VAN LEW, late of Columbia bor., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to them without delay.

WILLIAM W. COLLIER, Assignees.  
Residing in Saxton, Bedford Co., Pa.;  
GEORGE ELTZ, Assignees.  
Residing in Reading, Pa.  
ap6 E. D. NORTH, Att'y, Lancaster, Pa.

**Estate of JOHN WELLER, late of Cœrnarvon township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Churchtown, Lancaster Co.

E. D. WHITE, Executor.  
ap6 A. W. SNADER, Att'y.

**Estate of WILLIAM BEAR, late of Leacock township, dec'd.**

Letters of administration *pendente lite* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Christiana.

SAMUEL SLOKOM, Administrator.  
ap6

**Assigned Estate of CATHARINE MYERS, of Little Britain twp., Lancaster Co.**

Catharine Myers, of Little Britain township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Catharine Myers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

W. W. HENSEL, Assignee.  
Residing in Little Britain twp.  
ap6

**Assigned Estate of JACOB M. SHEETZ and WIFE, of Warwick twp., Lancaster Co.**

Jacob M. Sheetz and Wife, of Warwick township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob M. Sheetz, he therefore gives notice to all persons indebted to assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. L. KRYDER, Assignee.  
D. McMULLEN, Att'y. Residing in Warwick twp.  
ap6

**Assigned Estate of BENJAMIN OBER and WIFE, of Penn twp., Lancaster Co.**

Benjamin Ober and Wife, of Penn township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Benjamin Ober, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

LEVI WHITE, Assignee.  
D. McMULLEN, Att'y. Residing in Penn twp.  
ap6

**Estate of CHAS. J. RAKESTRAW, late of Paradise twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned residing in Paradise, Lan. Co.

M. BROSIUS, CATHARINE RAKESTRAW, Administratrix.  
mar23 Att'y.

**Assigned Estate of DAVID BRENNER and WIFE, of East Hempfield twp., Lan. Co.**

David Brenner and Wife, of East Hempfield township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David Brenner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JOHN BRENNER, Assignee.  
J. W. B. BAUSMAN, Att'y. Residing in Manor township.  
ap6

**Assigned Estate of MARTIN ROHRER and WIFE, of Fulton twp., Lancaster Co.**

Martin Rohrer and Wife, of Fulton township, having by deed of voluntary assignment, dated March 29th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Martin Rohrer, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

ISAAC BRADLEY, AMOS K. BRADLEY, Assignees.  
D. McMULLEN, Att'y. Residing in Wakefield, Lancaster Co., Pa.  
ap6

**Estate of JOHN GOTTFRIED WETTIG, late of Lancaster city, deceased.**

Letters of administration *d. b. n. c. t. a.* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Lancaster, Pa.

CHRISTIAN WETTIG, Administrator.  
mar23\* HUGH R. FULTON, Att'y.

**Assigned estate of THOMAS TRAGO and WIFE of Drumore twp., Lancaster co.**

Thomas Trago and Wife, of Drumore township, having by deed of voluntary assignment, dated March 22d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the Thomas Trago, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

P. D. BAKER, Att'y. LEVI K. BROWN, Assignee.  
Residing in Fulton twp.  
mar23\*

**Assigned Estate of JACOB L. LANDIS (Manor) and WIFE, of Manor township, Lan. Co.**

Jacob L. Landis (Manor) and Wife, of Manor twp., Lancaster Co., having by deed of voluntary assignment, dated March 20th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob L. Landis (Manor), he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

E. McMELLEN, Assignee.  
Residing in Lancaster city.  
mar23

**Assigned Estate of GEORGE COONLEY and WIFE, of Lancaster City.**

George Coonley and Wife, of Lancaster city, having by deed of voluntary assignment, dated March 22, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George Coonley, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

FRED. W. COONLEY, Assignee.  
S. H. REYNOLDS, Att'y. Residing in Lancaster city.  
mar23

**Assigned Estate of SAMUEL K. SLABACH and WIFE, of West Cocalico twp., Lan. Co.**

Samuel K. Slabach and Wife, of West Cocalico township, Lancaster county, having by deed of voluntary assignment, dated March 13th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel K. Slabach, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to

JACOB G. GARMAN, ADAM K. SLABACH, Assignees.  
mar16 Union Station, Lancaster Co., Pa.  
A. J. EBERLY, Att'y, 49 Grant st., Lancaster, Pa.

**Estate of CHRISTIAN HERTZLER, late of Cœrnarvon twp., dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned.

JOSEPH HERZLER, HENRY HERZLER, of Cœrnarvon twp., CHRISTIAN ZOOK, of East Earl twp., Executors.  
mar23 GEO. BRUBAKER, } Att'ys.  
JNO. M. MAST, }

**Estate of JANE B. ROGERS, late of Drumore township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Fulton township.

L. K. BROWN, Executor.  
mar23\*

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# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, MAY 11, 1878.

No. 50.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY  
JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.		LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	.....	2:40 a. m.	4:05 a. m.
Way Passenger†	.....	4:50 a. m.	7:50 a. m.
Niagara Express,...	.....	9:35 a. m.	10:40 a. m.
Hanover Accom.,...	.....	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	.....	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,...	.....	11:20 a. m.	1:25 p. m.
Fast Line,*	.....	2:10 p. m.	3:25 p. m.
Frederick Accom.,.....	.....	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,.....	.....	6:00 p. m.	8:10 p. m.
Columbia Accom.,.....	.....	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,.....	.....	7:25 p. m.	8:40 p. m.
Pittsburg Express,.....	.....	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	.....	11:30 p. m.	12:45 a. m.

  

EASTWARD.		LANCASTER.	PHILADELPHIA
Atlantic Express,*	.....	12:30 a. m.	8:00 a. m.
Philadelphia Express,†	.....	4:10 a. m.	7:00 a. m.
Harrisburg Express,.....	.....	7:35 a. m.	10:00 a. m.
Columbia Accom.,.....	.....	9:28 a. m.	12:30 p. m.
Pacific Express,*	.....	1:20 p. m.	3:45 p. m.
Sunday Mail,.....	.....	3:00 p. m.	5:00 p. m.
Johnstown Express,...	.....	3:05 p. m.	6:00 p. m.
Day Express,*	.....	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,.....	.....	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.—Columbia and Port Deposit Branch.

GOING SOUTH.			
Leave Columbia,.....	a. m.	p. m.	
	10:20	6:45	
		p. m.	
Arrive at Port Deposit,.....		1:20	8:45

  

GOING NORTH.			
Leave Port Deposit,.....	a. m.	p. m.	
	6:30	2:00	
Arrive at Columbia,.....		8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	a. m.	p. m.
Quarryville,.....	6:50	8:00	3:30
Lancaster—West King Street,...	8:00	9:30	3:35
Lancaster—Upper Depot,.....	8:10	9:40	3:45

  

GOING SOUTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30	8:10
Lancaster—West King Street,...	9:55	4:40	8:20
Quarryville, (arrive).....	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

GOING NORTH.			
LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,...	8:00		3:35
Lancaster—Upper Depot,.....	8:15	12:55	3:45
Lancaster Junction,.....	8:35	1:35	4:11
Reading, (arrive).....	10:10	3:20	5:50

  

GOING SOUTH.			
LEAVE.	a. m.	a. m.	p. m.
Reading,.....	7:35	11:40	6:05
		p. m.	
Lancaster Junction,.....	9:21	1:20	7:45
Lancaster—Upper Depot,.....	9:46	:00	8:10
Lancaster—West King Street,...	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<small>Appointed.</small>
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874
<i>Justices</i> —Nathaniel Clifford, of Maine,	1858
Noah H. Swayne, of Ohio,	1863
Samuel F. Miller, of Iowa,	1862
Stephen J. Field, of California,	1863
William Strong, of Pennsylvania,	1870
Jos. P. Bradley, of New Jersey,	1870
Ward Hunt, of New York,	1872
<i>Attorney General</i> —Charles E. Devens.	

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.

*Attorney General*—George Lear.

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*Eastern District*—Benj. E. Fletcher, Philadelphia.  
*Western District*—J. B. Sweitzer, Pittsburgh.  
*Middle District*—Robert Snodgrass, Harrisburg.  
*Northern District*—J. A. J. Cummings, Montandon, Northumberland county.

*Reporter*—A. Wilson Norris.

**Places and time for holding Court:**

At Philadelphia, commencing 1st Monday in January.

At Harrisburg, commencing 1st Monday in May.

At Pittsburgh, commencing 1st Monday in October.

At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judges*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors*—N. N. Hensel, A. Konigmacher and H. S. Kerns.

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*Mayor*—John T. Macgonigle.  
*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
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*Treasurer*—Edw. Welchans.  
*Civil Engineer*—Francis S. Burrowes.  
*Street Commissioner*—Charles Schwebel.

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COURT CALENDAR.--1878.

MAY.

- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

ENVELOPES AND LETTER HEADINGS

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- 15. Argument for Rules of Affidavit of Defense.
- 23. Calling Judgment Docket.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAY 11, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

ISAAC SWEIGART, JESSE SWEIGART, JACOB SHIRK and POLLY, his wife, late POLLY SWEIGART; CURTIS KULLIAN and SARAH, his wife, late SARAH SWEIGART, and JOHN SWEIGART, JR., five of the six children of Sybilla Sweigart, dec'd, late Sybilla Bitzer, one of the daughters and legatees of John Bitzer, the elder, late of Earl twp., dec'd, against JOHN BITZER and NATHANIEL F. LIGHTNER, administrators *de bonis non c. t. a.* of JOHN BITZER, the elder, late of Earl twp., dec'd.

A legacy was bequeathed to the testator's sons, and if any of them should die in their minority and without issue, then such legacy to be divided to and amongst his six children to whom he had given the residue. One of these children was a daughter married. After the testator's decease this daughter died, leaving her husband and several children to survive her. Then one of the testator's sons died in his minority and without issue. *Held*, that this was a vested legacy in the daughter, and that her husband, as her administrator, was entitled to sue for and recover it.

This was a case stated as follows, viz.: 7th March, 1810, John Bitzer, the defendant's testator, died having first made his last will and testament in writing, dated 11 July, 1809, duly proven, &c., wherein and whereby, among other things, he did give and bequeath as follows, to wit: "I give and bequeath unto my two youngest sons, to each of them, the sum of four hundred pounds, lawful money of Pennsylvania, to be paid for their use out of the first money that comes into the hands of my executor out of my estate;" and also as follows: "Item. I give and bequeath unto each of the three children of my daughter Barbara the sum of two hundred and fifty pounds, lawful money of Pennsylvania, to be paid to them out of the money which may come into the hands of my executor of my estate after the legacies are paid to my two youngest sons; but it is my will and I do order that if any of my sons or grandchildren, to whom I have given the said legacies, should die in their minority and without issue, then such legacy shall be divided to and amongst my six children to whom I have given the residue and remainder of my estate;" and in a subsequent part of the said will he did order as follows, to wit: "Item. It is my will and I order that all the residue and remainder of my estate, of what kind or nature soever, not herein otherwise given or bequeathed, shall be equally divided to and amongst my following six children, that is to say: J. Bitzer, Ann Maria the wife of Abraham Sweigart, Catharine the wife of Martin Wentz, Sybilla the wife of John Sweigart, and my two youngest sons, equal

shares, so that one shall have as much thereof as the other. (*Prout* the said will.)

17 September, 1824, Sybilla the wife of John Sweigart died, leaving issue six children and her husband, John Sweigart, all of whom are yet in full life, and five of whom (the children) are plaintiffs in this cause.

18 June, 1825, verdict and judgment in a suit brought by Christian Schnader, guardian of said Solomon Bitzer, one of the two youngest sons of the testator, vs. John Bitzer, executor, &c., to December Term, 1823, No. 9, for \$2,500, plaintiff to give security that if his ward die under age and without issue to refund \$1,600 to be applied to the uses directed by the testator's will, if plaintiff should die under age and without issue. (*Prout* the record, &c.) October, 1825, Solomon Bitzer, the minor, died intestate, under age and without issue. 26 November, 1826, Christian Schnader, administrator of Solomon Bitzer, deceased, settled his administration account on said estate, leaving a balance in his hands of \$570.87½; *prout* the same.

And the question now submitted to the court, and upon which their opinion is respectfully requested, is whether the plaintiffs are entitled to recover the one-fifth part of the said sum of \$1,600, together with interest from the 18th June, 1825, as well as the one-fifth part of the sum of \$570.87½, or part of said sums, if any they are entitled to, and judgment to be entered accordingly.

The above case is to be considered as a special verdict, liable to be reviewed on a writ of error by either party.

E. C. REIGART, *Att'y for Plts.*

JAMES HOPKINS, *pro Def'ts.*

*E. C. Reigart*, attorney for the plaintiffs, cited 4 Bac. Ab. 393; 1 Bac. Ab. 480; 1 Dall. 8, Price vs. Watkins; 12 Sergt. & R. 112, Patterson vs. Henderson; 4 Bac. Ab. 494; Purd. D. 301.

*James Hopkins* for defendants cited Purd. D. 301; Fearne's Essay 439, 444, 315; Purd. D. 296.

HAYES, J. The questions submitted to the court in this case respect two distinct funds. One is a legacy given by the testator to his son, Solomon Bitzer, and if he should die in his minority and without issue, to be divided among six of the testator's children who are designated in the will. One of those six children was Sybilla, wife of John Sweigart, and and mother of the plaintiffs in this cause. The legacy amounts to \$1,600. Solomon Bitzer died in his minority and without issue. Had his sister Sybilla survived him no doubt could have arisen, because she would then have come within the express letter of the bequest, and her husband's title as her administrator, upon her subsequent decease, would have been indisputable. But she died before him; and the difficulty which has been made the subject of this discussion in regard to her interest in this legacy is, whether her children are entitled to recover her share of the legacy in this action, or is her husband in the capacity of her administrator entitled to sue for and recover the same.

The legacy to Solomon Bitzer was subject to a contingent event which has actually hap-

pened. The legacy over to Sybilla Sweigart and others was engrafted by way of executory bequest upon the bequest to Solomon Bitzer, and was to take effect on the defeat thereof. Her interest, though contingent, as it depended for its vesting in her, in possession on the event of Solomon Bitzer's dying in his minority and without issue, was, nevertheless, so far immediately vested in her in right as to be transmissible to her personal representatives, which is the criterion that distinguishes a vested from a lapsed legacy. The consequence is, that she having died while the event which has defeated the first bequest was in suspense, her personal representatives become entitled under the will to her share of this legacy; and her surviving husband, as her administrator, is entitled to sue for and recover it: 3 Vez., jr. 208, note; Barnes vs. Allen, 1 Bro. Ch. C. 181; 2 Eq. Cas. Ab. 584; Kemp vs. Davy, 1 Bro. Ch. C. 120, note; Pinbury vs. Elkin, 1 Peere. Wms. 563; Fearne 444 and Butler's notes, 1 "Amer." from the 6th Lond. Edition.

The other fund consists of \$570.87½ which belonged to Solomon Bitzer as residuary legatee under his father's will. He died intestate. This sum is, therefore, distributable as his personal estate under the laws directing the distribution of intestates' personal estates: 3 Sm. L. 143.

Judgment accordingly.

## Common Pleas of Lancaster County.

JOHN B. AUMENT'S ASSIGNED ESTATE.

[Trust Book, No. 6, p. 198.]

A judicial sale of real estate will not be set aside for mere inadequacy of price—especially where the applicant has been guilty of laches, and neglected to pursue his remedy in proper time and manner.

Exceptions to report of auditors. Also rule to strike off confirmation of sale of real estate by assignee.

*J. W. Johnson* for exceptions.

*Philip D. Baker* contra.

Opinion delivered April 13, 1878, by LIVINGSTON, P. J.

Exceptions to report, &c.

In our judgment the learned auditor could have made no other legal distribution of the funds in the hands of the assignee than that presented to the court by his able and carefully prepared report. We find no error therein and therefore overrule and dismiss the exceptions and confirm the report.

In addition to excepting to the report of the creditors, the administrator *c. t. a.* of II. Aument, deceased, asks the court to strike off and set aside the confirmation of the sale of one of the purparts of the real estate of John B. Aument, the assignor, by the assignee. This is a rather novel mode of proceeding—the usual way being to file exceptions before confirmation becomes absolute, and before the rights of third parties intervene and become vested.

In the case before us, Henry Aument, the creditor, accepted service of a notice informing him that on September 2, 1876, an application would be made to the court for an order to sell the assigned real estate, the



effect of which would be to discharge the lien of his judgment. (See notice filed.) The petition asking for the striking off the confirmation, among other things, states that Henry Aument died; that letters of administration with the will annexed were duly granted by the register of wills to the petitioner on October 24, 1876. The assignee, after obtaining the order, advertised the real estate assigned to him, and sold it by public sale on November 4, 1876. The sale was confirmed *nisi* November 20, 1876, and no exceptions having been filed the titles were made to the purchasers on March 17, 1877.

On May 17, 1877, the assignee filed his account, charging himself with the purchase money, rent, &c., and asking credit for the payment of the Kendig judgment, for loss on sale of purpart No. 1 and purpart No. 2 of the real estate, and showing a balance in his hands of \$896.40.

On Monday, June 18, 1877, this account was presented and confirmed *nisi*.

On June 19, 1877, exceptions were filed to the account, but in them there is no allegation that either purpart No. 1 or purpart No. 2 of the assigned real estate sold for less than their value.

On August 29th, 1877, an auditor was appointed to pass upon the exceptions and make distribution of the balance in the hands of the assignee. The petitioner was represented by counsel (if not present himself) at the audit, and there appears by the minutes what each tract of land sold for, who the purchasers were, and when the purchase money was paid. The report of the auditor was presented and confirmed *nisi* September 22, 1877.

On October 1, 1877, exceptions were filed to the report by the petitioner, but these exceptions relate merely to the manner in which the auditor distributed the funds in hand, and no reference is made in any of the proceedings up to this time of the sale being unfair, or the real estate having been sold below its value.

On October 3, 1877, finding that the auditor had allowed nothing on the claim of Henry Aument's estate, the present petition was filed by his administrator *c. t. a.*

There does not appear from the testimony anything to show that any person at the sale was willing to give, or bid more for either property than they sold for; that any one was deterred or prevented from bidding more if they had chosen to do so; that the property was improperly advertised; that it was sold in an improper and hurried manner. Nothing of that kind is alleged. Nothing but the inadequacy of the price for which one tract was sold. The price for which the property was sold was placed upon the record at the confirmation *nisi* of the sale by the court, and was then open to the inspection of all, and if creditors thought the price greatly inadequate they should have filed exceptions to the final confirmation of the sale and had the matter inquired of at the proper time. The petitioner resides within about two squares of the office in which the records are kept and by the slightest degree of vigilance

could in ten minutes, on any day after confirmation of the sale, have known to whom the real estate was sold, and the price paid. As courts do not set aside sheriffs' or judicial sales for mere inadequacy of price, even when application is promptly made, we think we should not strike off or rescind the confirmation of sale in the present case for mere inadequacy of price; especially where the applicant has shown so little vigilance and so great laches in making the application.

We therefore discharge the rule to strike off or rescind the confirmation of sale.

Rule discharged.

#### SUPREME COURT OF RHODE ISLAND.

CHAS. W. LANCH vs. JOHN FALLON.

A broker employed by A. to negotiate an exchange of properties between him and B. cannot recover commissions of B., although after the exchange was effected he expressly promised to pay.

Assumpsit heard by court, jury trial being waived.

Opinion by DUFFEE, C. J.

This is an action of assumpsit to recover \$2,500 for commissions for the plaintiff's services as a broker in negotiating an exchange of real estate. The two estates exchanged were a hotel estate, belonging to the defendant, situated in Worcester, and valued by the defendant at \$125,000, on one side, and a tract of land belonging to the West Elmwood Land Company, situated in Providence, on the other side. There was, subject to mortgages, an even exchange. The plaintiff claims that the defendant made him an express promise to pay him the regular commissions before the exchange, and after the exchange promised to pay him \$2,500. The defendant denies this. We think the agreement is proved. The defendant contends that, if proved, it is not binding upon him, the plaintiff having been previously employed by the West Elmwood Land Company to sell their land, and being in their employ throughout the transaction. We think this is proved. The plaintiff has, in fact, presented a bill to the company or its representatives for services in effecting the exchange.

The general rule is, that though a person may be entitled to pay from both parties to a sale or exchange where he acts merely as a middleman to bring them together (*Rupp vs. Sampson*, 16 Gray 398; *Siegel vs. Gould*, 7 Lans. 177), he can not be allowed to serve as an agent or broker for both, because in such case there is a necessary conflict between his interest and duty, and he is exposed to a temptation to sacrifice the interests of one or both his principals to secure his double commissions. As agent for the vendor, his duty is to sell at the highest price; as agent for the vendee, his duty is to buy for the lowest; and even if the parties bargain for themselves, they are entitled to the benefit of all the skill, knowledge and advice of the agent, and, at the same time, to communicate with him without the slightest fear of betrayal, so that it is hardly possible for him to be true to the one without being false to the other. The claim to charge commissions to both parties

is so unreasonable that it cannot be justified by any custom or usage: *Farnsworth vs. Hemmer*, 1 Allen 494; *Walker vs. Osgood*, 98 Mass. 348; *Pugsley vs. Murray*, 4 E. D. Smith 245; *Everhart vs. Searle*, 71 Penna. St. 256; *Raisin vs. Clark*, 41 Maryland 158; *Schwartz vs. Yearly*, 31 Md. 270; *Morison vs. Thompson*, Law Rep. 9 Q. B. 480.

It is intimated in *Pugsley vs. Murray*, 7 E. D. Smith 245, that the rule only applies where the broker conceals the double employment; but other cases rest the invalidity of the contract upon broad grounds of public policy, and hold that it cannot be enforced even against a party who, knowing that the broker is already employed, promises expressly to pay him for his services. Thus, in *Everhart vs. Searle*, *supra*, the defendant, knowing the plaintiff had the property for sale, agreed to pay him \$500 for assisting him to negotiate a purchase of it, and it was held that the plaintiff could not recover on the contract. "The transaction," say the court, "is to be regarded as against the policy of the law and not binding upon a party who has a right to object to it."

In *Raisin vs. Clark*, *supra*, it was held that the broker could not recover of the party who last employed him, even though the double employment was known to both parties, and the party who first employed him had paid his commission. The court say: "The rule forbids the court to entertain an action founded upon such a contract. \* \* \* It is perhaps possible for the same agent to serve both parties to such a transaction honestly and faithfully, but it is very difficult to do so, and the temptation to do otherwise is so strong that the law has wisely interposed a positive prohibition to any such attempt." And see *STORY* on Agency, §§ 210, 211.

In the case at bar we do not find that the West Elmwood Land Company was informed by the plaintiff of his employment by the defendant. The representatives of the company continued to confer freely with him, and raised the price of their land, which they held at \$50,000, and which they had previously offered through the plaintiff at fifteen to twenty-five cents a foot, so as to bring it up to or near the price which the defendant had put upon his estate. The plaintiff, for anything that appears, co-operated in this; he says he told the defendant it was a nice piece of land, good to build on; he does not say he ever told the defendant that the price was enormously inflated. The case shows how easy it is for an agent of both parties to become, either consciously or unconsciously, a mere instrument in the hands of the more adroit and sharp witted party in hoodwinking the other and decoying him into a disadvantageous bargain. It indicates what temptations and facilities such a double agency presents for unconscionable concealments and misrepresentations, and how dangerous it would be even if it were exercised with the consent of both parties; and certainly without such consent, freely and fully given, the law ought not to tolerate it for a moment.

We give the defendant judgment for his costs.

COMMON PLEAS TRIAL LIST--Second Week.

Commencing Monday, May 27th, 1878.

			<i>Johnson.</i> 15 <i>B. F. Eshleman.</i>	THOMAS FURNISS vs H. N. BRENEMAN.	} Oct. Term, 1876. No. 14. Sum's in assumpsit. Plea, non assumpsit, etc.
<i>North,</i> <i>Martin, Holahan.</i> 1	H. S. FICK vs.	} Sept. Term, 1876. No. 45. Sum's in covenant. Plea, covenants performed etc.	<i>Kline, North.</i> 16 <i>Reynolds, Eberly,</i> <i>Cottrell.</i>	ABRAHAM COLLINS vs BENJ. F. HIESTAND et al.	} Nov. Term, 1876. No. 67. Sum's vi et armis. Plea, not guilty.
<i>Elmker, W. A.</i> <i>Wilson.</i>	G. SENER & SONS.		<i>Eby.</i> 17 <i>W. A. Wilson.</i>	JACOB B. GOOD vs MICHAEL R. SHANK et al.	} Dec. Term, 1876. No. 2. Sum's in assumpsit. Plea, non assumpsit, etc.
<i>Reynolds.</i> 2 <i>J. Hay Brown.</i>	HENRY F. WITMER vs. ODELL & CO.	} April Term, 1878. No. 74. Sum's case. Plea, non assumpsit, etc.	<i>J. Hay Brown.</i> 18	A. H. SUMMY vs.	} Dec. Term, 1876. No. 44. Sum's in assumpsit. Plea, payment, pay't with leave.
<i>P. D. Baker, Am-</i> <i>wake, Nauman.</i> 3 <i>Frantz, Reynolds.</i>	MICHAEL BEILER vs. STEHMAN, CLARKSON & CO.	} Aug. Term, 1878. No. 4. Sum's case. Plea, non assumpsit.	<i>Eshleman, Baker.</i>	DAVID BAKER.	
<i>Swift, Newpher.</i> 4 <i>Reynolds, Leaman.</i>	MICHAEL KREIDER'S use vs. R. W. SHENK.	} May Term, 1874. No. 83. Sum's in assumpsit. Plea, non assumpsit, et.	<i>Holahan.</i> 19 <i>Eby.</i>	S. KERLER, ag't vs. ABRAHAM WENGER.	} Dec. Term, 1876. No. 89. App'l by def't from justice. Plea, non assumpsit, pay't.
<i>McMullen.</i> 5 <i>Frantz.</i>	JACOB MINNICH vs. JOHN S. HOSTETTER.	} Jan'y Term, 1875. No. 53. Sum's in debt. Plea, nil deb't non est fac- tum.	<i>North.</i> 20 <i>Nauman, Gleen.</i>	CHRISTIAN NOLT vs. HAN. JUN. & S. R. R. CO.	} Jan'y Term, 1877. No. 30. Issue quare clausum fregit. Plea, not guilty.
<i>P. D. Baker,</i> <i>Bricker.</i> 6 <i>Reynolds.</i>	S. & H. GROSH vs JOHN BUTLER et al.	} Nov. Term, 1875. No. 64. Foreign attachm't in debt. Plea, nil debit, pay't, etc.	<i>Eberly.</i> 21 <i>W. M. Franklin.</i>	AMOS HESS et al., adm'ors vs. JOHN M. MUSSER.	} Jan'y Term, 1877. No. 56. Sum's in assumpsit. Plea, non assumpsit.
<i>McMullen.</i> <i>Franklin, J. Hay</i> <i>Brown.</i>	S. H. REYNOLDS, assignee vs S. W. P. BOYD, dec'd, adm'ors.	} April Term, 1876. No. 38. Sum's case. Plea, non assumpsit.	<i>Same.</i> 22 <i>Same.</i>	SAME PLAINTIFF vs JOHN H. MARTIN.	} Jan'y Term, 1877. No. 57. Sum's in assumpsit. Plea, non assumpsit.
<i>Good.</i> 8 <i>Brosius.</i>	ABRAHAM TROSTEL vs. S. S. SWEIGART AND MAR- TIN H. FRY.	} May Term, 1876. No. 27. Sum's in debt. Plea, nil debit, pay't and set-off.	<i>Eshleman.</i> 23 <i>Eby.</i>	CHAS. J. WALSER vs ANTHONY ISKE.	} Feb'y Term, 1877. No. 74. Issue to try by jury, etc. Plea, pay't, payment with leave, etc.
<i>Reynolds, P. D.</i> <i>Baker,</i> <i>H. C. Brubaker.</i> 9 <i>Franklin, Price.</i>	JOHN M. AMWEG vs SAM'L J. DEMUTH.	} June Term, 1876. No. 124. Sum's case. Plea, not guilty.	<i>Atlee, Nauman.</i> 24 <i>J. Hay Brown.</i>	THE PEACHBOTTOM RAIL- WAY CO. vs JOSEPH PENROSE.	} Mar. Term, 1877. No. 7. Sum's in assumpsit. Plea, non assumpsit, pay't, etc.
<i>Holahan, Martin.</i> 10 <i>Reynolds.</i>	JOHN MUNDELL vs H. L. SULTZBACH.	} Aug. Term, 1876. No. 31. Sum's in assumpsit. Plea, non assumpsit.	<i>Long.</i> 25 <i>H. C. Brubaker.</i>	THE UNION NAT. MT. JOY BANK vs ABRAHAM U. GANTZ et al.	} Mar. Term, 1877. No. 30. Sum's case. Plea, not guilty.
<i>Reynolds.</i> 11 <i>W. A. Wilson.</i>	MARGARET R. MOORE vs ROBERT R. MOORE.	} Aug. Term, 1876. No. 56. Sum's in assumpsit. Plea, not guilty.	<i>Nauman, Beyer.</i> 26 <i>North.</i>	RACHEL FERGUSON vs THE PENNA. R. R. CO.	} Mar. Term, 1877. No. 92. Sum's case. Plea not guilty.
<i>Reynolds, P. D.</i> <i>Baker.</i> 12 <i>Agnew.</i>	URIAH BITZER vs THE CITY OF LANCASTER.	} Aug. Term, 1876. No. 117. Sum's case. Plea, not guilty.	<i>North.</i> 27 <i>Reynolds.</i>	JOHN P. BARD et al vs. FRED'K S. BLETZ.	} Mar. Term, 1877. No. 95. Sum's case. Plea, pay't, payment with leave, etc.
<i>Reynolds.</i> 13 <i>J. Hay Brown.</i>	DR. FRANCIS MUEHLBERG vs JAMES MCPHERSON.	} Sept. Term, 1876. No. 26. Sum's case. Plea, non assumpsit.	<i>Brown.</i> 28 <i>Eshleman.</i>	DAVIS A. BROWN vs. JOHN HILDEBRAND.	} April Term, 1877. No. 57. Sum's case. Plea, non assumpsit, pay't.
<i>Brown.</i> 14 <i>Johnson.</i>	DAVIS A. BROWN vs EUGENE M. HAINES.	} Sept. Term, 1876. No. 85. App'l by def't from justice. Plea, non assumpsit.	<i>Reynolds.</i> 29 <i>Nauman, Gleen.</i>	ROBERT T. RYON vs. HAN. JUN. & S. R. R. CO.	} April Term, 1877. No. 60. Sum's case. Plea, non assumpsit, pay't.
			<i>Rosenmiller.</i> 30 <i>P. D. Baker.</i>	CASPER WEAVER vs. ELIZABETH MICHAEL.	} May Term, 1877. No. 56. Sum's in assumpsit. Plea, non assumpsit, pay'

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAY 11, 1878.

MEMBERS of the Bar are requested to comply with the resolution of the Law Library Association and send copies of all paper books to D. G. ESHLEMAN, treasurer, for preservation in the library.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since April 27, 1878:

- JOSEPH EBERSOLE, dec'd, late of West Donegal twp.; John L. Ebersole, administrator.
- NANCY EBERSOLE, dec'd, late of West Donegal twp.; John L. Ebersole, administrator.
- BENJ. EBERSOLE, dec'd, late of East Donegal twp.; John L. Ebersole, administrator.
- LEVI B. LENHARD, dec'd, late of Providence twp.; Sarah Lenhard, administratrix.
- MARY ALICE DAISZ, dec'd, late of Lancaster city; Frank N. Daisz, administrator.

The following Wills have been admitted to probate since April 27, 1878:

- DANIEL BRUBAKER, late of Rapho twp.; Mary Brubaker, executrix.
  - ISAAC COLEMAN, late of Brecknock twp.; Aaron Coleman, executor.
  - HARRIET A. SWEIGART, late of Earl twp.; Roland S. Brubaker, executor.
  - THOMAS GROSH, late of Manheim twp.; John Eyans and Jefferson Grosh, executors.
- Saturday, May 18th, last day for filing accounts to June Term, 1878.

#### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since April 27, 1878:

- JOHN LUTZ and WIFE, of East Cocalico twp.; Adam S. Lutz, assignee.
- JOSEPH K. FERGUSON and WIFE, of Drumore twp. Joseph Penrose, assignee.
- GEORGE L. DEGG and WIFE, of Washington bor.; Jacob B. Shuman, assignee.

WILLIAM B. WILEY,

ALDERMAN,

OFFICE - No. 32 NORTH DUKE STREET, LANCASTER, PENNA.

COMMISSIONER OF DEEDS

FOR THE STATES OF

New York, Iowa, Minnesota, Illinois,  
Indiana, Missouri, Ohio, Michigan,  
Kansas, Wisconsin, West Virginia.

E. H. BURKHOLDER,

JUSTICE OF THE PEACE,

FARMERSVILLE, LAN. CO., PA.

SPECIAL ATTENTION PAID TO COLLECTIONS.

### TRUSTEE NOTICE.

In the Court of Common Pleas of Lancaster County.

JACOB E. STAUFFER } April Term, 1878, No. 55,  
vs. }  
JOHN M. MOHN. } Domestic Attachment.

The undersigned having by the Court of Common Pleas, been appointed trustees in above mentioned case, all persons indebted to said John M. Mohn, or holding property belonging to him, are hereby required to pay and deliver the same to said trustees, and all creditors of said John M. Mohn, are requested to present their respective accounts or demands to

M. N. BRUBAKER,  
Residing in Landisville;  
A. B. KREIDER,  
Residing in Salunga;  
T. H. HERSHEY,  
Residing on Springing Hill,  
or either of them, Trustees.

may11

### NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster county, on MONDAY, the 17th day of JUNE, A. D., 1878, at 10 o'clock, a. m., for a charter to incorporate "The German" "and English Evangelical Lutheran" "Jerusalem Congregation of Rothsville," Lancaster county.

The object of which will be the support of public worship, and to hold and manage in connection therewith certain real estate, grave yard, and other property in Warwick township, conveyed in trust for said congregation, under the name of "Jerusalem's Kirche."  
SIMON P. EBY,  
Att'y for Applicants.  
may4

PHILIP D. BAKER,

ATTORNEY-AT-LAW,

OFFICE - No. 25 NORTH DUKE STREET, LANCASTER, PA.

### Auditors' Notices.

Assigned Estate of JOHN WEBER and WIFE, of Lansaster City.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frank Pfeiffer, assignee of John Weber and Wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 7th day of JUNE, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
H. B. SWARR, Auditor.  
may11

Estate of DANIEL GOOD, late of Martic township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute among those entitled thereto, a principal sum of \$1887.96, which under proceedings in partition had in the Orphans' Court for said county, was charged upon a tract of 36 acres and 35 perches of land in Martic township aforesaid, late the property of said decedent, for the benefit of his widow Elizabeth Good during life, and at her death to be paid to the heirs of said decedent, will sit for that purpose on WEDNESDAY, MAY 29th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster.  
A. SLAYMAKER,  
Auditor.  
may11

Assigned Estate of JOSEPH MILLER.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Musser, assignee for the benefit of creditors of said estate, will sit for that purpose on TUESDAY, the 28th day of MAY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster.  
A. SLAYMAKER,  
Auditor.  
may11

In the Court of Common Pleas of Lancaster County.

THOMAS BAUMGARDNER } April Term, 1878, No. 176.  
vs. } Execution Docket.  
AARON FULMER. }

The undersigned Auditor, appointed to distribute the money made on the above *f. fa.*, and ruled into court, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JUNE 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
GEORGE NAUMAN,  
Auditor.  
may11

THE GERMAN B. AND S. } In the Court of Common  
ASS. OF LANCASTER. } Pleas of Lancaster Co.

J. A. SCHUB, ADAM GUT- } April Term, 1878, No 33,  
FLEISH, NICHOLAS SREID. } Ex. Doc.

The undersigned Auditor, appointed to distribute the money made on the above execution and ruled into court, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JUNE 4th, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
FRED. S. PYFER,  
Auditor.  
may11

Assigned Estate of DAVID M. SOUDER, of Hinkletown, Ephrata township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry M. Souder, assignee of David M. Souder, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, JUNE 7th, 1878, at 10 o'clock, a. m., in one of the Jury Rooms in the Court House, Lancaster; and on SATURDAY, JUNE 8th, 1878, at 1 o'clock, p. m., at the office of the undersigned, at Farmersville, West Earl township, where all persons interested in said distribution may attend.  
E. BURKHOLDER, Auditor.  
may11

JULIUS COHN } In the Court of Common Pleas  
vs. } of Lancaster County.

ALBERT YOST. } Execution Dec. of April Term,  
1878, No. 41.

The undersigned Auditor, appointed to distribute the money made on the above *f. fa.*, and ruled into court, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, MAY 31, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
J. W. F. SWIFT, Auditor.  
may4

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, JUNE 3d, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. C. DIEHL,  
Auditor.  
may4

Estate of HENRY WERTZ, late of Providence township, deceased.

The undersigned Auditor, appointed to pass on the exceptions and to make distribution of the balance remaining in the hands of Jonathan Gamber, administrator of said deceased, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 17th day of MAY, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
J. B. GOOD, Auditor.  
ap20

In the Court of Common Pleas of Lancaster Co., Pa.

JULIAN MOSES ET AL., } August Term, 1877, No. 31.  
vs. } Breve de partitione faci-  
AMOS H. NEFF ET AL. } enda.

The undersigned Auditor, appointed by the Court to report distribution of the net proceeds of sale of the real estate embraced in the above partition, suit ruled into court for distribution, to and among those legally entitled thereto, will sit for that purpose on TUESDAY, MAY 14th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, when and where all persons interested in said distribution may attend if they think proper.  
E. D. NORTH,  
Auditor.  
ap20

JACOB NORBECK, } In the Court of Common Pleas  
vs. } of Lancaster County.

JACOB MILBY and } Equity Docket, No 2,  
Wm. MCKEOWN. } page 127.

The undersigned Auditors, appointed to distribute the balance remaining in the hands of Daniel A. Altick, receiver in the above case, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, MAY 17, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
ROBT. J. EVANS,  
S. W. SHADLE,  
Auditors.  
ap20

\$66 a week in your own town. \$5 outfit free. No risk. Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALL & Co. Portland, Maine.

**Estate of JACOB OTTO, late of Manor township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of David B. Levenite, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 29th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
CHAS. I. LANDIS,  
ap27 Auditor.

**Estate of EVE LANDIS, late of East Lampeter township, dec'd.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin G. Landis, administrator, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MAY 21st, 1878, at 2 o'clock, 2. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
ap20 I. CARPENTER, Auditor.

**Assigned Estate of JONAS WANNER and WIFE, of Cernarvon twp.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Shirk, assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, MAY 13, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
E. D. WHITE,  
ap20 Auditor.

**Estate of JOHN GEHMAN, late of Brecknock township, deceased.**

The undersigned Auditor, appointed to distribute the acceptance money of the real estate of said dec'd, ruled into court, to and among those legally entitled to the same will sit for that purpose on THURSDAY, MAY 16, 1878, at 10 o'clock a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
SIMON P. EBY,  
ap20 Auditor.

**Assigned Estate of ELIAS BARR & Co., of Lancaster City.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of John H. Pearsel, assignee, on second and final account, to and among those legally entitled to the same, will sit for that purpose on SATURDAY, MAY 11th, 1878, at 2 1/2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. C. REINCEHL,  
ap20 Auditor.

**Estate of HENRY HUSTON, late of Salisbury township, deceased.**

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Mast, administrator, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 15th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
A. H. FRITCHEY,  
ap20 Auditor.

**CHARTER NOTICE.**

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on MONDAY, the 20th day of MAY, 1878, at 10 o'clock, a. m., for a charter to incorporate "The Shawnee Steam Fire Engine and Hose Company," of Columbia, Pa.

A. J. KAUFFMAN,  
ap2 Attorney for Applicants.

**Estate Notices.**

**Estate of MARY ROLAND, late of Marietta borough, deceased.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.  
may4 JOHN W. RICH,  
D. G. BAKER, Att'y. Executor.

**Assigned Estate of JOSEPH K. FERGUSON and WIFE, of Drumore twp., Lan. Co.**

Joseph K. Ferguson and Wife, of Drumore township, having by deed of voluntary assignment, dated May 1st, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Joseph K. Ferguson, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JOSEPH PENROSE,  
Assignee,  
J. W. F. SWIFT, Att'y. Chestnut Level P. O., Lan. Co.  
may11

**Assigned Estate of GEORGE L. DEEG and SARAH E. DEEG, his WIFE, of the borough of Washington, Lancaster county.**

George L. Deeg and Sarah E. Deeg, his Wife, of Washington borough, having by deed of voluntary assignment, dated May 9th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George L. Deeg and Sarah E. Deeg, his wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JACOB B. SIUMAN, Assignee,  
Residing in Manor twp., Lancaster county,  
Washington borough P. O.  
E. D. NORTH, Att'y. [may11]

**Assigned Estate of JOHN LUTZ and WIFE, of East Cocalico twp., Lancaster Co.**

John Lutz and Wife, of East Cocalico township, having by deed of voluntary assignment, dated May 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Lutz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
ADAM S LUTZ,  
Assignee,  
A. J. EBERLY, Att'y. Union Station, Lan. Co., Pa.  
may4

**Estate of DAVID HULL, late of Strasburg borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.  
AMOS E. HULL,  
Administrator.  
may4\*

**Assigned Estate of JOHN HOAK, of Conestoga twp., Lancaster Co.**

John Hoak, of Conestoga township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said John Hoak, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
AMOS WARFEL,  
Assignee,  
H. C. BRUBAKER, Att'y. Slackwater P. O., Lancaster Co., Pa.  
may4\*

**Assigned Estate of ABRAHAM M. WRIGHT and WIFE, of Conestoga twp., Lan. Co.**

Abraham M. Wright and Wife, of Conestoga township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham M. Wright, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
H. H. MILLER,  
Assignee,  
H. C. BRUBAKER, Att'y. Slackwater P. O., Lancaster Co., Pa.  
may4

**Assigned Estate of FREDERICK QUADE and WIFE, of Lancaster City.**

Frederick Quade and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 18, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Frederick Quade and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
may4 WM. WOHLSEN,  
B. F. DAVIS, Att'y. Assignee.

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**Assigned Estate of PHILIP JACOB BOIRCK and WIFE, of Lancaster City.**

Phillip Jacob Boirck and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Philip Jacob Boirck and Wife, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to  
PETER ALLBACH,  
Assignee,  
may4 B. F. DAVIS, Att'y. Residing in Lancaster.

**Assigned Estate of ELI BATTON and WIFE, of Upper Leacock twp., Lancaster Co.**

Eli Batton and Wife, of Upper Leacock township, having by deed of voluntary assignment, dated March 27th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Eli Batton and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
D. B. ESHLEMAN,  
Assignee,  
B. F. DAVIS, Att'y. Residing in Earl township.  
may4

**Assigned Estate of CONRAD REHM and WIFE, of Lancaster City.**

Conrad Rehm and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 12, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Rehm, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
WM. E. MILLER, Assignee,  
J. W. F. SWIFT, Att'y. Residing in Lancaster.  
may4

**Assigned Estate of MARIA LOUISA CLARK and HUSBAND, of Lancaster twp., Lan. Co.**

Maria Louisa Clark and Husband, of Lancaster township, having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Maria Louisa Clark, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
BENJ. SNAVELY,  
Assignee,  
J. W. F. SWIFT, Att'y. Residing in Lancaster.  
may4

**Assigned Estate of HENRY ESHLEMAN, and WIFE, of Strasburg twp., Lancaster Co.**

Having by deed of voluntary assignment, dated April 18, 1878 assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Eshleman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
JACOB HILDEBRAND, Assignee,  
Residing in Strasburg.  
may4

**Assigned Estate of JOHN SHREINER, SR., and WIFE, of Warwick twp., Lan. Co.**

John Shreiner, sr., and Wife, of Warwick township, having by deed of voluntary assignment, dated April 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Shreiner, sr., he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
GEO. SHREINER, Assignee,  
Residing in Manheim twp.  
ap27  
WALTER M. FRANKLIN, { Att'ys.  
J. W. B. BAUSMAN, }

**Assigned Estate of PETER SELLERS and WIFE, of Penn twp., Lancaster Co.**

Peter Sellers and Wife, of Penn township, having by deed of voluntary assignment, dated March 26th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Peter Sellers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
ABRAHAM KLINE,  
Assignee,  
W. M. FRANKLIN, Att'y. Residing in Manheim Borough,  
ap27

**Assigned Estate of JOHN C. BYRAN, of Conoy township, Lancaster Co.**

Having by deed of voluntary assignment, dated April 10th, 1878, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said John C. Bryan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay and those having claims to present them to  
**FREDERICK SMITH, Bainbridge, ap27**  
**GEORGE BYROD, Elizabethtown.**  
**H. C. BRUBAKER, Att'y. Assignees.**

**Assigned Estate of JOHN B. MEASHY and WIFE, of Mount Joy twp., Lan. Co.**

Having by deed of voluntary assignment, dated March 16, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John B. Meashy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JACOB SOUDERS, ap27**  
**GEO. BRUBAKER, Att'y. Assignee, Residing in said township.**

**Assigned Estate of JOSEPH BOWMAN and WIFE, of Eden twp., Lancaster Co.**

Joseph Bowman and Wife, of Eden township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Joseph Bowman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JACOB BACHMAN, Assignee, ap27\***  
**Residing in Strasburg borough.**

**Estate of WILLIAM TWEED, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
**H. N. BRENNEMAN, Administrator. ap27**

**Estate of JAMES MCGINLEY, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.  
**D. P. ROSEN MILLER, JR., PHILIP D. BAKER, ap20**  
**Att'y. Administrator.**

**Assigned Estate of JACOB A. WISNER and WIFE, of Marietta bor., Lancaster Co.**

Jacob A. Wisner and Wife, of Marietta borough, having by deed of voluntary assignment, dated April 8th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob A. Wisner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**A. F. SHENCK, Assignee, ap20**  
**Residing in Lancaster Pa.**

**Assigned Estate of COOPER STUBBS and WIFE, of Fulton twp., Lancaster Co.**

Cooper Stubbs and Wife, of Fulton township, having by deed of voluntary assignment, dated March 19, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cooper Stubbs, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**N. D. SCOTT, Assignee, ap13]**  
**M. BROSTUS, Att'y. Residing in Lyle, Lan. Co.**

**Assigned Estate of LEVI KUPP and WIFE, of Mount Joy twp., Lancaster Co.**

Levi Kupp and Wife, of Mount Joy township, having by deed of voluntary assignment, dated April 5, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Levi Kupp, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**WM. K. BERNHARD, Assignee, ap18\***  
**Residing in Milton Grove, Lan. Co.**

**Assigned Estate of AARON FULLMER and WIFE, of Lancaster City.**

Aaron Fullmer and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Aaron Fullmer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**BENJ. F. HOOKEY, Assignee, ap20**  
**THOS. J. DAVIS, Att'y. Residing in Conestoga twp.**

**Assigned Estate of JOHN J. MILLER and WIFE, of Lancaster City.**

John J. Miller and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John J. Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**FRANCIS PFEIFFER, Assignee, ap18**  
**B. C. KREADY, Att'y.] Residing in Lancaster city.**

**Assigned Estate of SAMUEL W. LEWIS and WIFE, of Ephrata twp., Lancaster Co.**

Samuel W. Lewis and Wife, of Ephrata township, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel W. Lewis, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**MARTIN H. BITZER, Assignee, ap13**  
**A. J. EBERT, Att'y. Hinkletown Lancaster Co., Pa.**

**Assigned Estate of EMANUEL HINKLE and WIFE, of East Cocalico twp., Lan. Co.**

Emanuel Hinkle and Wife, of East Cocalico twp.; having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Emanuel Hinkle, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**CYRUS REAM, Assignee, ap13**  
**WM. R. WILSON, Att'y. Residing in Reamstown, East Cocalico twp.**

**Assigned Estate of JOHN KREIDER and WIFE, of Pequea twp., Lancaster Co.**

John Kreider and Wife, of Pequea township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Kreider, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**CHRISTIAN F. BINKLEY, Assignee, ap6**  
**H. H. STEHMAN, J. W. DENLINGER, Att'y. Assignees.**

**Assigned Estate of JESSE P. RONK and WIFE, of East Lampeter twp., Lan. Co.**

Jesse P. Ronk and Wife, of East Lampeter township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse P. Ronk, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JOEL L. LIGHTNER, Assignee, ap6**  
**Residing in East Lampeter twp.**

**Estate of BENJAMIN VAN LEW, late of Columbia bor., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to them without delay.  
**WILLIAM W. COLLIER, Residing in Saxton, Bedford Co., Pa.; ap6**  
**GEORGE ELTZ, Residing in Reading, Pa.**  
**E. D. NORTH, Att'y, Lancaster, Pa.**

**Estate of JOHN WELLER, late of Cernarvon township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Churchtown, Lancaster Co.  
**E. D. WHITE, ap6**  
**A. W. SNADER, Att'y. Executor.**

**Estate of WILLIAM BEAR, late of Leacock township, dec'd.**

Letters of administration *pendente lite* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Christiansa.  
**SAMUEL SLOKOM, Administrator. ap6**

**Assigned Estate of CATHARINE MYERS, of Little Britain twp., Lancaster Co.**

Catharine Myers, of Little Britain township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Catharine Myers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**W. W. HENSEL, Assignee, ap6**  
**Residing in Little Britain twp.**

**Assigned Estate of JACOB M. SCHEETZ and WIFE, of Warwick twp., Lancaster Co.**

Jacob M. Scheetz and Wife, of Warwick township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob M. Scheetz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**E. L. KRYDER, Assignee, ap6**  
**D. McMULLEN, Att'y. Residing in Warwick twp.**

**Assigned Estate of BENJAMIN OBER and WIFE, of Penn twp., Lancaster Co.**

Benjamin Ober and Wife, of Penn township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Benjamin Ober, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**LEVI WHITE, Assignee, ap6**  
**D. McMULLEN, Att'y. Residing in Penn twp.**

**Estate of CHAS J. RAKESTRAW, late of Paradise twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned residing in Paradise, Lan. Co.  
**M. BROSTUS, CATHARINE RAKESTRAW, ap23**  
**Att'y. Administrator.**

**Assigned Estate of DAVID BRENNER and WIFE, of East Hempfield twp., Lan. Co.**

David Brenner and Wife, of East Hempfield township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David Brenner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JOHN BRENNER, Assignee, ap6**  
**J. W. B. BAUSMAN, Att'y. Residing in Manor township.**

**Assigned Estate of MARTIN ROHRER and WIFE, of Fulton twp., Lancaster Co.**

Martin Rohrer and Wife, of Fulton township, having by deed of voluntary assignment, dated March 29th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Martin Rohrer, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**ISAAC BRADLEY, ap6**  
**AMOS K. BRADLEY, Assignees,**  
**D. McMULLEN, Att'y. Residing in Wakefield, Lancaster Co., Pa.**

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, MAY 18, 1878.

No. 51.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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Advertisements, to insure insertion, must be left at the office, 13 North Duke-st., before 3 o'clock P. M. of Friday in each week.

All communications should be addressed to THE LANCASTER BAR, 13 North Duke-st., Lancaster, Penna.

### Rules of Court requiring publication of Legal Notices in The Lancaster Bar.

"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.	ARRIVE HARRISBURG.
Pacific Express,*	2:40 a. m.	4:05 a. m.
Way Passenger†	4:50 a. m.	7:50 a. m.
Niagara Express,	9:35 a. m.	10:40 a. m.
Hanover Accom.,	9:40 a. m.	COL. 10.10 a. m.
Mail Train via Mt. Joy*	11:20 a. m.	1:00 p. m.
No. 2, via Columbia,	11:20 a. m.	1:25 p. m.
Fast Line,*	2:10 p. m.	3:25 p. m.
Frederick Accom.,	2:15 p. m.	COL. 2:45 p. m.
Harrisburg Accom.,	6:00 p. m.	8:10 p. m.
Columbia Accom.,	7:20 p. m.	COL. 8:00 p. m.
Harrisburg Express,	7:25 p. m.	8:40 p. m.
Pittsburg Express,	9:25 p. m.	10:50 p. m.
Cincinnati Express,*	11:30 p. m.	12:45 a. m.

  

EASTWARD.	LANCASTER.	PHILADELPHIA
Atlantic Express,*	12:30 a. m.	3:00 a. m.
Philadelphia Express,†	4:10 a. m.	7:00 a. m.
Harrisburg Express,	7:35 a. m.	10:00 a. m.
Columbia Accom.,	9:28 a. m.	12:30 p. m.
Pacific Express,*	1:20 p. m.	3:45 p. m.
Sunday Mail,	3:00 p. m.	5:00 p. m.
Johnstown Express,	3:05 p. m.	6:00 p. m.
Day Express,*	5:18 p. m.	7:20 p. m.
Harrisburg Accom.,	5:50 p. m.	9:00 p. m.

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.--Columbia and Port Deposit Branch.

GOING SOUTH.	a. m.	p. m.
Leave Columbia	10:20	6:45
Arrive at Port Deposit,	1:20	8:45

  

GOING NORTH.	a. m.	p. m.
Leave Port Deposit,	6:50	2:00
Arrive at Columbia,	8:30	5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.	a. m.	a. m.	p. m.
Quarryville,	6:50	8:00	2:30
Lancaster—West King Street,	8:00	9:30	3:35
Lancaster—Upper Depot,	8:10	9:40	3:45

  

LEAVE.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,	9:46	4:30	8:10
Lancaster—West King Street,	9:55	4:40	8:20
Quarryville, (arrive)	11:00	6:00	9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.	a. m.	p. m.	p. m.
Lancaster—West King Street,	8:00	12:55	3:35
Lancaster—Upper Depot,	8:15	1:35	4:11
Lancaster Junction,	8:35	1:35	4:11
Reading, (arrive)	10:10	3:20	5:50

  

LEAVE.	a. m.	a. m.	p. m.
Reading,	7:35	11:40	6:05
Lancaster Junction,	9:21	1:20	7:45
Lancaster—Upper Depot,	9:46	:00	8:10
Lancaster—West King Street,	9:55		8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

**Official Directory.**

**Supreme Court of the United States.**

	<small>Appointed.</small>	
<i>Chief Justice</i> —Morrison R. Waite, of Ohio,	1874	
<i>Justices</i> —Nathaniel Clifford, of Maine,	1868	
Noah H. Swayne, of Ohio,	1862	
Samuel F. Miller, of Iowa,	1862	
Stephen J. Field, of California,	1863	
William Strong, of Pennsylvania,	1870	
Jos. P. Bradley, of New Jersey,	1870	
Ward Hunt, of New York,	1872	
<i>Attorney General</i> —Charles E. Devens.		

**Supreme Court of Pennsylvania.**

*Chief Justice*—Daniel Agnew.  
*Associate Justices*—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey.  
*Attorney General*—George Lear.  
*Prothonotaries:*  
 Eastern District—Benj. E. Fletcher, Philadelphia.  
 Western District,—J. B. Sweitzer, Pittsburg.  
 Middle District—Robert Snodgrass, Harrisburg.  
 Northern District—J. A. J. Cummings, Montandon, Northumberland county.  
*Reporter*—A. Wilson Norris.  
*Places and time for holding Court:*  
 At Philadelphia, commencing 1st Monday in January.  
 At Harrisburg, commencing 1st Monday in May.  
 At Pittsburg, commencing 1st Monday in October.  
 At Sunbury, commencing 3d Monday in September.

**Second Judicial District.**

*President Judge*—John B. Livingston.  
*Additional Law Judge*—David W. Patterson.  
*Associate Judge*—John J. Libhart.  
*District Attorney*—B. F. Eshleman.

**County Officers.**

*Prothonotary*—Lewis S. Hartman.  
*Deputy*—Wm. E. Kreider.  
*Clerks*—P. E. Slaymaker and Thos. B. Hartman.  
*Register*—Harrison Ross.  
*Deputies*—W. M. Slaymaker and C. H. Fasnacht.  
*Recorder*—Samuel S. Martin.  
*Deputy*—Benj. Bauman.  
*Clerks*—Geo. R. Sensenig and M. O. Sensenig.  
*Sheriff*—Henry N. Breneman.  
*Deputies*—Jno. D. Wilson and G. W. Benedict.  
*Clerk of Orphans' Court*—Samuel L. Kauffman.  
*Clerk of Quarter Sessions*—Stephen S. Clair.  
*Deputy*—B. F. W. Urban.  
*Commissioners*—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller.  
*Clerk*—John M. Grider.  
*County Solicitor*—J. Hay Brown.  
*County Treasurer*—Henry S. Eberly.  
*Clerk*—Amaziah C. Barr.  
*Coroner*—Amos Groff.  
*County Surveyor*—A. W. Snader.  
*County Auditors* N. N. Hensel, A. Konigmacher and H. S. Kerns.

**City Officers.**

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*Solicitor*—Robert M. Agnew.  
*Recorder*—Walter G. Evans  
*Aldermen*—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake.  
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MAY.

- 18. Last day for filing Accounts for June Court.
- 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term.
- 8. Last day for setting down causes for Argument Court.

JULY.

- 20. Last day for filing Accounts to August Court.
- 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term.
- 17. Last day for filing Accounts to September Court.
- 19. Last day for issuing Executions to August Term.
- 24. Calling Judgment Docket.
- 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Last day for setting down causes for trial for October 7 and 14.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense.
- 11. Last day for issuing Writs to October Term.
- 19. Last day for filing Accounts to November Court.
- 26. Last day for setting down causes for trial for November Court.
- 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term.
- 9. Argument for Rules of Affidavit of Defense.
- 16. Last day for filing Accounts to December Court.
- 18. Last day for issuing Executions to November Term.
- 28. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term.
- 7. Last day for setting down causes for Argument Court.
- 7. Argument for Rules of Affidavit of Defense.
- 21. Last day for filing Accounts to January Court, 1879.
- 21. Calling Judgment Docket.
- 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAY 18, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—ED.]

## HAYES' OPINIONS.

JAMES HOPKINS *against* JOHN GRAEFF.

The plaintiff having lost an opportunity to place his cause on the list for trial by the defendant's delay to enter special bail, the court will, on application of the plaintiff to strike off the special bail, order that the bail-bond shall remain as security.

This was a motion by the plaintiff to strike off the special bail in the cause.

*Mr. Hopkins*, the plaintiff, *arguendo*. This action was brought to the December Term, 1831, No. 30, and the bail-bond given for the appearance of the defendant was conditioned that John Graeff be and appear in the District Court on the first Monday in December then next. No special bail was entered, and the plaintiff, on the 28th March, 1832, took an assignment of the bail-bond. On the 7th of April this bail-bond was sued, and notice was given to the prothonotary that if application were made to enter bail he should refer the defendant to the court. These are the facts, and the plaintiff now applies to have the special bail, which was entered after this notice, *viz.*, on the 7th of May, 1832, stricken off.

The printed rule of the court is that special bail shall be entered within six weeks after the return of the writ. "Rule 11. A bail-bond shall not be put in suit until six weeks from the return day of the term to which the writ was returned." The defendant not complying with that requisition his bail-bond became forfeited. From that time the plaintiff was subjected to the inconvenience of not proceeding in the suit at all. At the February court he would have been entitled to judgment unless there had been an affidavit of defense. There was an adjourned court held the first and second week in April. The plaintiff also lost the opportunity of trial at that court. This entry of bail avails nothing if it ought not to have been entered. When a bail-bond is forfeited relief can only be had from the court; no man can redeem himself by his own act from this forfeiture. It was for that reason I gave notice to the prothonotary to refer the party to the court.

At the time this bond was sued the only terms on which the defendant would be allowed to redeem himself were the payment of the debt and costs: 1 Dall. R. 130, *Carey vs. Wil-ling*; 1 Browne's R. 250; *Ibid.* 239. 5 Sergt. & R. 50, *McFarland vs. Holmes*, was the same proceeding as in the present case, and the bail-bond was held as security. *Tidd's P.* 156, bail; *Barnes' notes* 96-112.

Christian Bachman, esq., prothonotary, be-

ing now called upon and examined, stated that the practice has been to enter special bail in the office at any time on or before the writ issued upon the bail-bond. I have been, he said, in the prothonotary's office since the beginning of the year 1817. I have never known any motion to strike off special bail before this, nor have I known the entry of special bail objected to before. By *Hopkins*: Did you ever look into the dockets previous to that time to know what the practice had been? I don't know that I have examined them particularly; at least I do not know what the practice was before that time. I do not know that a case similar to this has ever been brought before the court. It never has been objected to as I stated before. Is it not a common thing to take judgment on a bail-bond and issue execution on it—judgment, I mean, at the second term? *Mr. Ellmaker* had a case of that kind at the suit of the Philadelphia Bank. Do you know of any instance in which it was contested or objected to? No, not before this. *Mr. Hopkins* objected to the entry of special bail and gave me notice after the suit was entered on the bail-bond. I informed *Mr. Montgomery* of it and he directed special bail to be entered. I stated to him that *Mr. Hopkins* would object to special bail being entered unless by leave of the court. The practice, as I have stated it, is uniform so far as I know. I do not recollect the particulars of any case in which the matter was controverted. I do not know what the practice was when *Judge Yeates* or *Mr. Kittera* was at the bar. I can only speak of the practice since I came into the office. *Mr. Montgomery, sr.*, was in practice after I came into the office. His practice was not different from that of others. There have been several cases of defendants, after six weeks, coming in and entering special bail before the return of the writ on the bail-bond, paying costs and staying proceedings. *Mr. Reigart* had a case where special bail was entered two years after the original action brought. *Mr. Montgomery* also had a suit, *Reeside vs. Weeks*, in which *Haggarty* was bail, where, after bail-bond sued and before the return of the writ, the plaintiff entered special bail, paid costs and stayed the suit. *Mr. Graeff* has paid the costs on the bail-bond in this case.

*Mr. Montgomery*, for the defendant, referred to the following cases on the dockets of the Court of Common Pleas of Lancaster County, *viz.*: February Term, 1786, No. —, *cap. case*; C. C. and bail-bond. Bail-bond sued to May Term, 1786. 1st May, 1786, special bail entered and costs of the bail-bond paid off. *Huffnagle* and *Yeates* attorneys for plaintiff; *Hublely* for defendant. May Term, 1786, No. 63; C. C. and bail-bond. Bail-bond sued to August Term following. Special bail entered on the 20th July. *Kittern* attorney for plaintiff; *Huffnagle* for defendant. August Term, 1785, No. 52; C. C. and bail-bond. Bail-bond sued to November Term, 1785. Special bail entered 24th October. May Term, 1784, No. 14; C. C. and bail-bond. Bail-bond sued to August Term. Special bail on the 24th August, 1784. May Term, 1784, No. 19. Bail-bond sued to August Term. Special bail on

the 6th August, 1784. In all these cases it appeared that the proceedings on the bail-bonds were not pursued. It is on behalf of the special bail who are sought to be fixed by the recovery on the bail-bond that I oppose this motion. The bond was entered into on the faith of the practice which had prevailed from 1784. Now let us look at the rule of 1792 which has been cited. Instead of prohibiting the defendant from entering special bail at any time before the return of the writ on the bail-bond, it expressly prohibits the plaintiff from commencing suit on the bond within six weeks after the return of the writ. It was made, in fact, for the protection of the defendant. The uniform course of proceeding, of which the prothonotary has spoken, was not a revolution of the practice, but a continuance of the existing practice. If it had not been an ancient practice we should have had some rule of court making it what he has stated it uniformly to have been for sixteen years.

In all the cases, except *McFarland vs. Holmes*, judgment has been obtained on the bail-bond before the application was made for entering special bail, and the case in 4 Binn. 342 the bail-bond was sued more than a year after the original suit brought. Let a cautionary judgment, if the terms be thought right, be entered against *John Graeff*, defendant in the original suit. This I freely agree to and offered the gentleman in June last. In 2 *Yeates* 387-8, it was decided that the bail-bond forfeited should not stand as security where the plaintiff can be put into as good a situation as he originally was. In the case in 5 *Sergt. & R.* it does not appear that the plaintiff was offered a cautionary judgment on the original suit. But we do not conceive terms necessary, though we offer them. The practice justifies us at all points.

The first suit has never yet been put to issue. Had the plaintiff sued the bail-bond immediately after the six weeks he might have enforced us to plead and had a trial in February. He admits that if he had brought his suit on the bail-bond to the second term, the defendant might have come in, entered special bail, and stayed the proceedings. Now, can he delay bringing his suit until that term elapsed, and then turn to the bail and say—you are fixed; your position is essentially changed by my act, and you are now prevented from entering special bail in discharge of the bond.

*Mr. Hopkins*, in reply, referred to the suit on the docket to May Term, 1784, No. 285, in which the bail-bond, by consent, was ordered to stand as security; and to the cases to August Term, 1784, Nos. 173, 174, 175, 176, 177, 178, and to February Term, No. 39, in which the practice was carried out which has always prevailed, and by which the defendants, sued on a bail-bond, have a right to enter special bail, on payment of costs, at any time before the plaintiff is injured by his delay. This necessarily ends with the second term and never can transcend it. The rule is thus distinctly stated by the chief justice in the case in 5 *Sergt. & R.* The testimony of the prothonotary is exceedingly indistinct in not detailing the circumstances of each case referred



to. I admit, that if no injury had resulted, the court would allow the defendant, had he come in in time, to enter special bail. We have been injured, and that by the defendant's delay. Was the defendant not to enter special bail at his peril? Was it not completely in his power to do so within the six weeks? But he did not—and how then was it our fault that the bail-bond was not sued immediately after the six weeks? We could not accept or enter judgment in the original suit without discharging the bail by accepting the defendant's appearance. In all the cases cited by the gentleman from the dockets the writ on the bail-bond was returnable to the second term, and the defendant came in on the return of the writ, or before, and entered special bail. It is said that this is a matter of practice, and we must be governed by the statements of the prothonotary. There is nothing like practice ascertained by Mr. Bachman, while the law is settled by the Supreme Court and all the courts of common law for half a dozen centuries. What makes a practice? Does the act of one party and the acquiescence of the other make the practice? Certainly not. There cannot be such a thing as these localities. There are fifty-two counties, and if each county may establish a practice independently of the rest, we should see fifty-two different laws prevailing in the State.

HAYES, J. A *capias* was issued against the defendant returnable to the December Term, 1831, upon which he was arrested, and entered into a bail-bond for his appearance on the return of the writ. Special bail not being entered, the plaintiff, on the 28th of March, 1832, took an assignment of the bail-bond from the sheriff, and on the 7th of April brought suit thereon, at the same time requesting the prothonotary to give notice to the defendant, if he should apply to enter special bail, that the plaintiff now objects to his doing so without the leave of the court. Notwithstanding which objection and notice the defendant entered special bail on the 7th of May. Two days thereafter the plaintiff made the present motion.

It is contended, on behalf of the defendant, that the entry of special bail is according to the uniform and settled practice in this county, which has always been to put in special bail in discharge of the bail-bond, and at any time before the return of the writ issued thereon. The writ on this bail-bond was returnable to the second Monday in June. Several cases were cited from the dockets of 1784, 1785 and 1786 in support of that position. I have, since the argument, carefully examined the entries of nine successive terms, beginning with May, 1784, to which term there were no less than twenty-four suits brought on bail-bonds. In the course of the examination I found seven suits on bail-bonds discontinued on payment of costs and entering special bail in the original action long after the period prescribed within which the bail-bond is not allowed to be sued. The prothonotary was also called upon by the defendant and examined; and he stated that for fifteen years, during which he has been in the office, the prac-

tice has prevailed (without an exception until the present instance) of entering special bail at any time before the return of the writ on the bail-bond and staying the proceeding on the latter upon payment of costs. He recollected several cases of defendants coming in after the six weeks and entering special bail before the return of the writ on the bail-bond; and he mentioned one case wherein special bail was entered two years after the original action was commenced. He had no knowledge of any motion to strike off the special bail or of any objection made to special bail being entered previously to the return of the writ in the bail-bond suit before the present case.

The plaintiff, however, contends that if the practice alleged were satisfactorily proved it could not alter the rule of law, which requires that the bail-bond shall stand as security wherever a plaintiff has suffered injury by the delay of the defendant in entering special bail, which the plaintiff says he has suffered in this case; he denies that anything worthy the name of practice has been shown to exist; all, he says, the prothonotary's statement warrants us to infer is that, according to his recollection, no objection has been made in any case in which special bail was entered previously to the return of the writ on the bail-bond, whatever time may have elapsed since the commencement of the original action. The cases cited from the dockets show that where no injury is produced by the delay it is sufficient if bail be entered before the second term after the bringing of the first writ; and this, it is alleged, was the state of the fact in every case. This pretended practice, it is asserted, is at best but an usage prevailing in one county—whereas the law is of universal obligation.

It is true special bail in the seven cases already referred to was entered before the return of the writ on the bail-bond, except in one case, viz., No. 14 May Term, 1784. It is also true that there is nothing upon the record, either in that case or the others, indicating any opposition by the plaintiffs to the entry of special bail. The practice contended for is not alleged to prevail elsewhere, but is confined to this county. It has not been sanctioned by any judicial decision, but has passed *sub silentio* with the acquiescence of plaintiffs; and when we say that such a practice, unsupported by law, is worthy of but little regard in point of authority, we are sustained by the opinion of the late chief justice of the Supreme Court. See 2 Binn. 440, Fitzsimmons vs. Solomon.

In that court as well as in this six weeks' indulgence is given to the defendant for entering special bail, and in *McFarland vs. Holmes*, 5 Sergt. & R. 50, the plaintiff moved (as the plaintiff here has done,) to strike out the special bail entered by the defendant. The reason of that motion was because the original writ was returnable to July, 1817, and on the 5th of April, 1818, the defendant entered special bail without the consent of the plaintiff's attorney, who brought suit on the bail-bond to July, 1818. Upon looking into precedents, said Ch. J. TILGHMAN, I find the

rule of this court to be that where special bail has been delayed until the plaintiff has lost the opportunity of trying his cause as soon as he might have done, if the bail had been entered in six weeks after the return of the original writ, the bail-bond must stand as security for the debt to be recovered. The defendant there did not bring himself within the benefit of the rule granting relief in cases of bail entered after the usual time; because if bail had been entered regularly (*i. e.* within six weeks after the return day in July) the plaintiff might have had his trial at the *terminus* between December and March terms. The bail-bond was therefore ordered to stand as security for the debt. The chief justice refers to several authorities to show that the law is as he stated it, both in England and in Pennsylvania; to which authorities may be added 1 Tidd's Practice 249 and 1 Sellon's Pr. 181, where the whole subject is satisfactorily treated.

The settled condition of the bail-bond is for the appearance of the defendant on the return of the writ; and if it be not for his appearance on the very return day mentioned in the writ it is void: Saund. 21; 1 Sell. 134; 3 Bl. Comm. 390. In England, however, the defendant has, in London and Middlesex, four days, exclusive of the return day in the writ, in the King's Bench, to put in special bail, and in every other county six days: 4 Term. R. 377.

The rule of this court (established by the common pleas in 1792) extended the time to six weeks. It is in these words: "A bail-bond shall not be put in suit until after six weeks from the return day of the term to which the writ was returned." It cannot be disputed that the bail to the sheriff are completely protected if special bail be entered on the last day of these six weeks—as much so as if bail were entered on the return day of the writ.

The remedy of a suit on the bail-bond was provided by the statute 4 and 6 Ann, in case the defendant does not appear, that is to say, put in and perfect special bail in due time; for if he does, the condition of the bond to the sheriff is fulfilled, and the bail below are *ipso facto* discharged. The chief object is to enforce the defendant's appearance that the plaintiff may not be delayed or defeated in the prosecution of his suit. And in order that justice may be done to all parties, the statute authorizes the court in which the bail-bond is sued to give such relief to the plaintiff and defendant in the original action, and to the bail upon the bail-bond, or other security taken from such bail, as is agreeable to justice and reason. It may be taken as a general rule that proceedings on the bail-bond, notwithstanding they may be regular, will be stayed in all cases where the plaintiff can be put in as good a condition as he would have been in provided the defendant had been guilty of no laches. The plaintiff must be reimbursed his expenses and get to trial in the original action in as short a time as he otherwise would have done: 1 Sell. 179, 181.

The inconveniences resulting to the plaintiff from the defendant's not perfecting bail are the delay thereby occasioned in the original action and the costs attending the assign-

ment of the bail-bond and the proceedings thereon. In regard to the present plaintiff the latter of these inconveniences has been removed by the payment of the costs. Let us then examine into the point of delay as affecting the situation of the plaintiff.

The six weeks from the return day of the last December Term expired on the 15th January, 1832, from which to the first Monday in February, the commencement of the next term of the district court, there was an interval of but twenty-one days. By a rule adopted November 18, 1826, it was ordered by this court that "the causes should be put down for trial in the following manner: the prothonotary shall, thirty days before each court, whether the same be a regular term or an adjourned court, make out a list of twenty-five of the oldest causes at issue on the record for each week the court is to continue." Had this cause been put at issue on the 15th of January (and the defendant might even then have entered special bail *regularly*) still it could not have been placed on the trial list for the February Term in consequence of the limitation prescribed by the rule of court just recited. There was no *laches* on the part of the delendant in not putting in and perfecting bail until the six weeks had elapsed. Had bail been entered when it might have been regularly and duly entered by him, that is to say, within the six weeks, then by another rule the plaintiff, having filed his declaration, might, within the six weeks, have entered a rule to plead in two weeks after the six weeks, and these two weeks would have extended to the 29th of January, *i. e.* within six days of the February court. It is clear, therefore, that the cause could not have been put at issue *secundum regulam*, to give it a place on the trial list for that term, even if the defendant had been guilty of no *laches* whatever, and the plaintiff had enforced the strictest rules of pleading upon him.

There was an adjourned court beginning on the last day which was the fifth Monday of April, and continuing two weeks. The trial lists contained twenty-five causes—the complement for each week. I have particularly examined those lists. In the first, all the twenty-five causes are older than No. 30, of December Term, 1831, the number and term of the original action of James Hopkins *vs.* John Graeff; but in that of the *second* week, though the twenty-five causes first set down were older, yet it was found that three of them were not at issue, and three other causes were afterwards added, the last of which was younger than No. 30, December Term, 1831, being No. 41 of that term. Here then was an opportunity of trial which the plaintiff lost in consequence of the defendant's delaying to enter special bail, for had that been done in due time, the cause might have been put at issue long before the thirty days anterior to the adjourned court in April.

This brings the present case within the application of the decision in *McFarland vs. Holmes*, 5 Sergt. & R. 50, and we must order here as was done in that case, that the bail-bond stand as security for the debt to be recovered.

#### Common Pleas of Lancaster County.

COMMONWEALTH *vs.* SCHUMACHER and EBY, administrators *c. t. a.* of JACOB SCHUMACHER, deceased.

(Jan. T., 1878, No. 17.)

A husband, in whom the legacy bequeathed to his wife, in the will of her father, vests as her heir, is not such an heir as is exempt from the payment of collateral inheritance tax.

Case stated.

*Philip D. Baker* for plaintiff.

*Thos. E. Franklin* and *N. Ellmaker* for defendants.

Opinion delivered February 19th, 1878, by LIVINGSTON, P. J.

From the case stated and filed we are informed that Jacob Schumacher died *testate*, in 1836, leaving surviving him a widow, who died in 1838, and four children, one son and three daughters. Christian Schumacher was the name of the son. The names of the daughters were Esther, wife of Abm. Shelly, who died since testator, leaving issue; Elizabeth, who died in 1864, unmarried and without leaving issue; and Mary, who was single at the decease of the testator—who subsequently married John Gensemer, and died in 1875, leaving no issue, but leaving her husband surviving her.

That at his decease, the testator in and by his will, left to his widow, Esther, and daughters, Elizabeth and Mary, during the term of their natural lives, or the life of the survivor of them, certain real estate; providing that if any of his two daughters, Elizabeth and Mary, should get married they should be excluded from participating in the annual income of the said real estate, and such income should go to the widow and single daughter, &c. That by his will he directs that after the death of his wife and daughters, the whole of said real estate should be sold by his executors, as well as the personal property given by his will to his wife and daughters during life, and convert the same into money, and divide the same as follows: "My son Christian shall receive no part of the money raised out of my real estate;" "that is to be divided among my three daughters, Esther, wife of Abm. Shelly, and the heirs of Elizabeth and Mary, in equal shares," &c. That after the decease of Mary Gensemer, the survivor, the real estate of Jacob Schumacher, bequeathed as aforesaid, was sold, and the proceeds of sale accounted for by the administrators with the will annexed. That a distribution of the balance of the account of the administrators *c. t. a.*, which included the proceeds of said real estate, by an auditor appointed by this court, and that his report was confirmed by this court, as well as by the Supreme Court of the State. By that report the share of \$4,289.60 was awarded to John Gensemer, the husband of testator's daughter Mary.

The foregoing are the admitted facts in the cause. And we are now asked to say whether or not the Commonwealth of Pennsylvania is entitled to demand and receive, under the law, collateral inheritance tax on the above stated sum received or to be re-

ceived by John Gensemer, the husband of Mary Gensemer *nee* Schumacher, dec'd.

The fund distributed by the auditor, and that portion thereof awarded to John Gensemer is admitted to be personalty.

The act of general assembly of 7 April, 1826, § 1, Purdon 214, pl. 1, declares that "all estates, real, personal and mixed, of every kind whatsoever, passing from any person who may die seized or possessed of such estate, being within this Commonwealth, either by will or under the intestate laws thereof, or any part of such estate or estates or interest therein, transferred by deed, grant, bargain or sale, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to bodies politic or corporate, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal decendants, born in lawful wedlock, shall be and they are hereby made subject to a tax or duty of two dollars and fifty cents on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the Commonwealth; and all executors and administrators, and their sureties, shall only be discharged from liability for the amount of any and all such duties on estates, the settlement which they are charged with, by having paid the same over for the use aforesaid, as hereinafter directed; *provided*, that no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax."

Thus the law remained until the passage of the act of 22d April, 1846, which declares that all estates, real, personal and mixed, of any kind whatsoever, subject to collateral inheritance tax under the act of 7th April, 1826, should be subject to a duty or tax of five per cent. instead of two and a half per cent. as imposed by the act of 1826.

Under these several acts, and up to that time, it was held that an estate devised to the wife or widow of the son of a testator was liable to collateral inheritance tax, the same as other estates which did not descend or come to lineal descendants of testator. And under the foregoing acts a grand-mother was considered a collateral heir: 45 P. St. R. 430.

But by the act of 10th April, 1849, § 1, it was enacted that "The provisions of the several acts of assembly relative to collateral inheritance taxes shall not be held or taken to apply to any property or estate, real or personal, passing by will to or in trust for the wife or widow of a son of any person dying seized or possessed thereof." So that by virtue of this last act the widow of a son was not liable to have a collateral tax deducted from any portion or sum given or bequeathed to her by the father of the husband, whether during the life of her husband or during her widowhood.

But under the provisions of this act the Supreme Court, in *Commonwealth vs. Rowell*, 51 Penn. St. Rep. 438, held that a son's widow who has *married again* is not exempt from collateral inheritance tax.

Again, the act of assembly which enables

*adopted children to inherit* it is said does not relieve them from the payment of the collateral inheritance tax: 32 P. S. R. 389; 58 P. S. R. 500; 53 P. S. R. 132.

In the present case the Supreme Court say: "It follows that this matter must be governed by the ordinary rules applicable to the distribution of personal property. Such being the case, unless a contrary intent is indicated by the will, we must construe the word 'heirs' as found in that will, as equivalent to 'representatives' or 'distributees.' In such case, the husband must be taken to be an 'heir' of his wife as to her personal estate; and not only do our distribution acts in effect provide, but this idea is sustained by many decisions commencing with Patterson vs. Hawthorne, 32 S. & R. 113, and ending with McGill's appeal, 11 P. & S. 45." So that, although the legacy did not vest in Mrs. Gensemer, under the decision of the Supreme Court in Gibbons vs. Fairlamb, 2 Cas. 217, her husband, John Gensemer, was to be regarded as her "heir or representative," within the meaning of the will; and in the present case it was so held by the Supreme Court, though he could not take as her administrator.

He, therefore, takes under the will of Jacob Schumacher, the share or portion given therein to the heirs of Mary, his deceased wife, as the heir or representative of Mary Schumacher, late Gensemer.

He, however, does not appear to us to be a lineal heir or descendant, either within the letter or spirit of the laws relating to collateral inheritance tax in this Commonwealth. This legacy does not come to him, as one of the children of Jacob Shumacher, deceased, or one of his lineal descendents born in lawful wedlock. None of the blood of the ancestor courses his veins. He is not therefore a lineal descendant of Jacob Shumacher, under and by virtue of whose will he receives the portion bequeathed to the heirs of the testator's daughter Mary, who became his wife, and died without leaving issue or lineal descendants. Nor can he be a lineal heir of his wife. It has been said that the tie or relationship of marriage is closer than that of lineal relationship or ties of blood, but it is not so considered by the courts under our laws of descent. So that, viewed from any stand point from which it can be viewed, it appears to us that the sum received by John Gensemer out of the estate, and under the will of Jacob Shumacher, deceased, is liable to collateral inheritance tax under the laws of the Commonwealth governing the assessment and collection of collateral inheritance taxes.

We therefore direct judgment to be entered for plaintiff for one dollar in accordance with the provisions of the case stated and filed.

E. H. BURKHOLDER,

JUSTICE OF THE PEACE,

FARMERSVILLE, LAN. CO., PA.

SPECIAL ATTENTION PAID TO COLLECTIONS.

# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAY 18, 1878.

## WEEKLY SUMMARY.

### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since May 11, 1878:

JOHN HEBEL, dec'd, late of Marietta bor.; Elizabeth Hebel, administratrix.

CATHARINE M. KELLY, dec'd, late of Lancaster city; James Kelly and Catharine M. Kelly, administrators.

The following Wills have been admitted to probate since May 11, 1878:

JACOB METZLER, late of West Earl twp.; John Metzler and Jacob S. Metzler, executors.

BENJAMIN F. FEHL, late of Manor twp.; Charles Denues, esq., and Margaret Fehl, executors.

ELLWOOD LAMBORN, late of Drumore twp.; A. B. Lamborn and W. P. Bolton, executors.

HARRIET RALSTON, late of Marietta bor.; Samuel Hipple, executor.

JOSEPH GROFF, sr., late of Drumore twp.; John M. Groff and Levi Groff, executors.

BENNONI BURNS, late of Fulton twp.; John H. Hensel, executor.

### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since May 11, 1878:

NICHOLAS STAFF and WIFE, of Columbia bor.; Gerhardt Kramer, assignee.

JESSE MCCOMBEY and WIFE, of Lancaster city; Jacob Bair, assignee.

FREDERICK S. BLETZ and WIFE, of Columbia bor.; J. Haldeman Herr, assignee.

### TRUSTEE NOTICE.

In the Court of Common Pleas of Lancaster County.

JACOB E. STAUFFER } April Term, 1878, No. 55, vs. JOHN M. MOHN. } Domestic Attachment.

The undersigned having by the Court of Common Pleas, been appointed trustees in above mentioned case, all persons indebted to said John M. Mohn, or holding property belonging to him, are hereby required to pay and deliver the same to said trustees, and all creditors of said John M. Mohn, are requested to present their respective accounts or demands to

M. N. BRUBAKER, Residing in Landisville;  
A. B. KREIDER, Residing in Salunga;  
T. H. HERSHEY, Residing on Springing Hill, or either of them, Trustees.

may 11

### NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster county, on MONDAY, the 17th day of JUNE, A. D., 1878, at 10 o'clock, a. m., for a charter to incorporate "The German" "and English Evangelical Lutheran" "Jerusalem Congregation of Rothsville," Lancaster county.

The object of which will be the support of public worship, and to hold and manage in connection therewith certain real estate, grave yard, and other property in Warwick township, conveyed in trust for said congregation, under the name of "Jerusalem's Kirche."  
SIMON P. EBY, At'y for Applicants.

may 4

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## Auditors' Notices.

Assigned Estate of JOHN WEBER and WIFE, of Lancaster City.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frank Pfeiffer, assignee of John Weber and Wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 7th day of JUNE, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
may 11 H. B. SWARR, Auditor.

Estate of DANIEL GOOD, late of Martic township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute among those entitled thereto, a principal sum of \$1887.96, which under proceedings in partition had in the Orphans' Court for said county, was charged upon a tract of 36 acres and 35 perches of land in Martic township aforesaid, late the property of said decedent, for the benefit of his widow Elizabeth Good during life, and at her death to be paid to the heirs of said decedent, will sit for that purpose on WEDNESDAY, MAY 29th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster.  
may 11 A. SLAYMAKER, Auditor.

Estate of JACOB HOOVER, late of East Lampeter twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Dr. Jacob M. Musser, executor of the will of Jacob Hoover, late of East Lampeter twp., dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, the 11th day of JUNE, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
D. G. ESHLEMAN, Auditor.  
may 18

Assigned Estate of JOSEPH MILLER.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Musser, assignee for the benefit of creditors of said estate, will sit for that purpose on TUESDAY, the 28th day of MAY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster.  
A. SLAYMAKER, Auditor.  
may 11

In the Court of Common Pleas of Lancaster County.

THOMAS BAUMGARDNER } April Term, 1878, No. 175, vs. AARON FULMER. } Execution Docket.

The undersigned Auditor, appointed to distribute the money made on the above *fi. fa.*, and ruled into court, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JUNE 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
GEORGE NAUMAN, Auditor.  
may 11

THE GERMAN B. AND S. ASS. OF LANCASTER.

J. A. SCHUB, ADAM GUT-FLEISH, NICHOLAS SREID. } April Term, 1878, No 38, Ex. Dec.

The undersigned Auditor, appointed to distribute the money made on the above execution and ruled into court, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JUNE 4th, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.  
FRED. S. PYFER, Auditor.  
may 11

Assigned Estate of DAVID M. SOUDER, of Hinkletown, Ephrata township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry M. Souder, assignee of David M. Souder, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, JUNE 7th, 1878, at 10 o'clock, a. m., in one of the Jury Rooms in the Court House, Lancaster; and on SATURDAY, JUNE 8th, 1878, at 1 o'clock, p. m., at the office of the undersigned, at Farmersville, West Earl township, where all persons interested in said distribution may attend.  
may 11 E. BURKHOLDER, Auditor.

\$66 a week in your own town. \$5 outfit free. No risk. Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALL & Co. Portland, Maine.

Estate of JACOB OTTO, late of Manor township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of David B. Levente, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 29th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. CHAS. I. LANDIS, Auditor. ap27

Estate of EVE LANDIS, late of East Lampeter township, dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Martin G. Landis, administrator, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, MAY 21st, 1878, at 2 o'clock, 2. m., in one of the Jury Rooms of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. I. CARPENTER, Auditor. ap20

JULIUS COHN vs. ALBERT YOST. In the Court of Common Pleas of Lancaster County. Execution Dec. of April Term, 1878, No. 41.

The undersigned Auditor, appointed to distribute the money made on the above ft. fa., and ruled into court, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, MAY 31, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. J. W. F. SWIFT, Auditor. may4

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, JUNE 3d, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. E. C. DIEHL, Auditor. may4

CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on MONDAY, the 20th day of MAY, 1878, at 10 o'clock, a. m., for a charter to incorporate "The Shawnee Steam Fire Engine and Hose Company," of Columbia, Pa. A. J. KAUFFMAN, Attorney for Applicants. ap2

Estate Notices.

Estate of JOSEPH GROFF, (State Road,) late of Drumore twp., Lancaster co., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Drumore twp., (Quarryville P. O.) Lancaster co., Pa. JOHN M. GROFF, LEVI W. GROFF, W. U. HENSEL, Att'y. Executor. my18

Assigned estate of MICHAEL HEINTZEN and WIFE, of Lancaster City, Pa.

Michael Heintzen and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of said Michael Heintzen, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to CHRISTIAN F. BINKLEY, Assignee, A. J. EBERLY, Att'y. New Danville, Lancaster co., Pa. my18

Estate of MARY ROLAND, late of Marietta borough, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough. JOHN W. RICH, Executor. D. G. BAKER, Att'y. may4

Assigned Estate of JOSEPH K. FERGUSON and WIFE, of Drumore twp., Lan. Co.

Joseph K. Ferguson and Wife, of Drumore township, having by deed of voluntary assignment, dated May 1st, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Joseph K. Ferguson, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JOSEPH PENROSE, Assignee, J. W. F. SWIFT, Att'y. Chestnut Level P. O., Lan. Co. may11

Assigned Estate of GEORGE L. DEEG and SARAH E. DEEG, his WIFE, of the borough of Washington, Lancaster county.

George L. Deeg and Sarah E. Deeg, his Wife, of Washington borough, having by deed of voluntary assignment, dated May 9th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George L. Deeg and Sarah E. Deeg, his wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JACOB B. SHUMAN, Assignee, Residing in Manor twp., Lancaster county, Washington borough P. O. E. D. NORTH, Att'y. [may11]

Assigned Estate of JOHN LUTZ and WIFE, of East Cocalico twp., Lancaster Co.

John Lutz and Wife, of East Cocalico township, having by deed of voluntary assignment, dated May 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Lutz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to ADAM S LUTZ, Assignee, A. J. EBERLY, Att'y. Union Station, Lan. Co., Pa. may4

Estate of DAVID HULL, late of Strasburg borough, dec'd.

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough. AMOS E. HULL, Administrator. may4\*

Assigned Estate of JOHN HOAK, of Conestoga twp., Lancaster Co.

John Hoak, of Conestoga township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said John Hoak, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to AMOS WARFEL, Assignee, H. C. BRUBAKER, Att'y. Slackwater P. O., Lancaster Co., Pa. may4\*

Assigned Estate of ABRAHAM M. WRIGHT and WIFE, of Conestoga twp., Lan. Co.

Abraham M. Wright and Wife, of Conestoga township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham M. Wright, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to H. H. MILLER, Assignee, H. C. BRUBAKER, Att'y. Slackwater P. O., Lancaster Co., Pa. may4

Assigned Estate of FREDERICK QUADE and WIFE, of Lancaster City.

Frederick Quade and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 18, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Frederick Quade and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to WM. WOHLSEN, Assignee, B. F. DAVIS, Att'y. may4

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Assigned Estate of PHILIP JACOB BOIRCK and WIFE, of Lancaster City.

Phillip Jacob Boirck and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Philip Jacob Boirck and Wife, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to PETER ALLBACH, Assignee, B. F. DAVIS, Att'y. Residing in Lancaster. may4

Assigned Estate of ELI BATTON and WIFE, of Upper Leacock twp., Lancaster Co.

Eli Batton and Wife, of Upper Leacock township, having by deed of voluntary assignment, dated March 27th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Eli Batton and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to D. B. ESHLEMAN, Assignee, B. F. DAVIS, Att'y. Residing in Earl township. may4

Assigned Estate of CONRAD REHM and WIFE, of Lancaster City.

Conrad Rehm and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Rehm, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to WM. E. MILLER, Assignee, J. W. F. SWIFT, Att'y. Residing in Lancaster. may4

Assigned Estate of MARIA LOUISA CLARK and HUSBAND, of Lancaster twp., Lan. Co.

Maria Louisa Clark and Husband, of Lancaster township, having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Maria Louisa Clark, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to BENJ. SNAVELY, Assignee, J. W. F. SWIFT, Att'y. Residing in Lancaster. may4

Assigned Estate of HENRY ESHLEMAN, and WIFE, of Strasburg twp., Lancaster Co.

Having by deed of voluntary assignment, dated April 18, 1878 assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Eshleman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JACOB HILDEBRAND, Assignee, Residing in Strasburg. may4

Assigned Estate of JOHN SHREINER, SR., and WIFE, of Warwick twp., Lan. Co.

John Shreiner, sr., and Wife, of Warwick township, having by deed of voluntary assignment, dated April 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Shreiner, sr., he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to GEO. SHREINER, Assignee, Residing in Manheim twp. ap27 WALTER M. FRANKLIN, Att'y. J. W. B. BAUSMAN, Att'y.

Assigned Estate of PETER SELLERS and WIFE, of Penn twp., Lancaster Co.

Peter Sellers and Wife, of Penn township, having by deed of voluntary assignment, dated March 26th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Peter Sellers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to ABRAHAM KLINE, Assignee, W. M. FRANKLIN, Att'y. Residing in Manheim Borough. ap27

**Assigned Estate of JOHN C. BYRAN, of Conoy township, Lancaster Co.**

Having by deed of voluntary assignment, dated April 10th, 1878, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said John C. Bryan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay and those having claims to present them to  
**FREDERICK SMITH, Bainbridge,**  
**GEORGE BYROD, Elizabethtown.**  
 ap27 **H. C. BRUBAKER, Att'y.** Assignees.

**Assigned Estate of JOHN B. MEASHY and WIFE, of Mount Joy twp., Lan. Co.**

Having by deed of voluntary assignment, dated March 16, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John B. Meashy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JACOB SOUDERS,**  
**Geo. BRUBAKER, Att'y.** Assignee,  
 ap27 Residing in said township.

**Assigned Estate of JOSEPH BOWMAN and WIFE, of Eden twp., Lancaster Co.**

Joseph Bowman and Wife, of Eden township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Joseph Bowman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JACOB BACHMAN, Assignee,**  
 ap27\* Residing in Strasburg borough.

**Estate of WILLIAM TWEED, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
**H. N. BRENEMAN,**  
 ap27 Administrator.

**Estate of JAMES MCGINLEY, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.  
**D. P. ROSEN MILLER, JR., PHILIP D. BAKER,**  
 ap20 Att'y. Administrator.

**Assigned Estate of JACOB A. WISNER and WIFE, of Marietta bor., Lancaster Co.**

Jacob A. Wisner and Wife, of Marietta borough, having by deed of voluntary assignment, dated April 8th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob A. Wisner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**A. F. SHENCK, Assignee,**  
 ap20 Residing in Lancaster Pa.

**Assigned Estate of COOPER STUBBS and WIFE, of Fulton twp., Lancaster Co.**

Cooper Stubbs and Wife, of Fulton township, having by deed of voluntary assignment, dated March 19, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cooper Stubbs, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 ap13] **N. D. SCOTT, Assignee,**  
**M. BROSIUS, Att'y.** Residing in Lyle, Lan. Co.

**Assigned Estate of LEVI KUPP and WIFE, of Mount Joy twp., Lancaster Co.**

Levi Kupp and Wife, of Mount Joy township, having by deed of voluntary assignment, dated April 5, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Levi Kupp, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay and those having claims to present them to  
**WM. K. BERNHARD, Assignee,**  
 ap13\* Residing in Milton Grove, Lan. C

**Assigned Estate of AARON FULLMER and WIFE, of Lancaster City.**

Aaron Fullmer and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Aaron Fullmer, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**BENJ. F. HOOKEY,**  
**THOS. J. DAVIS, Att'y.** Assignee,  
 ap20 Residing in Conestoga twp.

**Assigned Estate of JOHN J. MILLER and WIFE, of Lancaster City.**

John J. Miller and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John J. Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 ap13 **FRANCIS PFEIFFER, Assignee,**  
**B. C. KREADY, Att'y.]** Residing in Lancaster city.

**Assigned Estate of SAMUEL W. LEWIS and WIFE, of Ephrata twp., Lancaster Co.**

Samuel W. Lewis and Wife, of Ephrata township, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel W. Lewis, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**MARTIN H. BITZER,**  
**A. J. EBERT, Att'y.** Assignee,  
 ap13 Hinkletown Lancaster Co., Pa.

**Assigned Estate of EMANUEL HINKLE and WIFE, of East Cocalico twp., Lan. Co.**

Emanuel Hinkle and Wife, of East Cocalico twp.; having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Emanuel Hinkle, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**CYRUS REAM,**  
**WM. R. WILSON, Att'y.** Assignee,  
 ap13 Residing in Reamstown, East Cocalico twp.

**Assigned Estate of JOHN KREIDER and WIFE, of Pequea twp., Lancaster Co.**

John Kreider and Wife, of Pequea township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Kreider, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**CHRISTIAN F. BINKLEY,**  
**H. H. STEHMAN,**  
 ap6 **J. W. DENLINGER, Att'y.** Assignees.

**Assigned Estate of JESSE P. RONK and WIFE, of East Lampeter twp., Lan. Co.**

Jesse P. Ronk and Wife, of East Lampeter township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jesse P. Ronk, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JOEL L. LIGHTNER, Assignee,**  
 ap6 Residing in East Lampeter twp.

**Estate of BENJAMIN VAN LEW, late of Columbia bor., Lancaster county, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the estate of the decedent will make the same known to them without delay.  
**WILLIAM W. COLLIER,**  
 Residing in Saxton, Bedford Co., Pa.;  
**GEORGE ELTZ,**  
 ap6 Residing in Reading, Pa.  
**E. D. NORTH, Att'y,** Lancaster, Pa.

**Estate of JOHN WELLER, late of Cœrnarvon township, dec'd.**

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Churchtown, Lancaster Co.  
 ap6 **E. D. WHITE,**  
**A. W. SNADER, Att'y.** Executor.

**Estate of WILLIAM BEAR, late of Leacock township, dec'd.**

Letters of administration *pendente lite* on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in Christiansa.  
**SAMUEL SLOKOM,**  
 ap6 Administrator.

**Assigned Estate of CATHARINE MYERS, of Little Britain twp., Lancaster Co.**

Catharine Myers, of Little Britain township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all her estate and effects to the undersigned, for the benefit of the creditors of the said Catharine Myers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**W. W. HENSEL, Assignee,**  
 ap6 Residing in Little Britain twp.

**Assigned Estate of JACOB M. SCHEETZ and WIFE, of Warwick twp., Lancaster Co.**

Jacob M. Scheetz and Wife, of Warwick township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob M. Scheetz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**E. L. KRYDER, Assignee,**  
**D. McMULLEN, Att'y.** Residing in Warwick twp.

**Assigned Estate of BENJAMIN OBER and WIFE, of Penn twp., Lancaster Co.**

Benjamin Ober and Wife, of Penn township, having by deed of voluntary assignment, dated April 1, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Benjamin Ober, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 ap6 **LEVI WHITE, Assignee,**  
**D. McMULLEN, Att'y.** Residing in Penn twp.

**Estate of CHAS. J. RAKESTRAW, late of Paradise twp., deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned residing in Paradise, Lan. Co.  
**M. BROSIUS, CATHARINE RAKESTRAW,**  
 mar23 Att'y. Administratrix.

**Assigned Estate of DAVID BRENNER and WIFE, of East Hempfield twp., Lan. Co.**

David Brenner and Wife, of East Hempfield township, having by deed of voluntary assignment, dated April 2, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said David Brenner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**JOHN BRENNER,**  
**J. W. B. BAUSMAN, Att'y.** Assignee,  
 ap6 Residing in Manor township

**Assigned Estate of MARTIN ROHRER and WIFE, of Fulton twp., Lancaster Co.**

Martin Rohrer and Wife, of Fulton township, having by deed of voluntary assignment, dated March 29th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Martin Rohrer, they therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
**ISAAC BRADLEY,**  
**AMOS K. BRADLEY,**  
**D. McMULLEN, Att'y.** Assignees,  
 ap6 Residing in Wakefield, Lancaster Co., Pa.

# The Lancaster Bar.

Vol. IX.

LANCASTER, PA., SATURDAY, MAY 25, 1878.

No. 52.

## The Lancaster Bar.

PUBLISHED EVERY SATURDAY, BY

JNO. H. BARNES,

—AT—

No. 13 NORTH DUKE STREET,  
LANCASTER, PA.

PHILIP D. BAKER, EDITOR.

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"Notice of the time and place of holding audits for the purpose of distribution shall be given by advertisement, once a week, in two newspapers published in the county of Lancaster, and in THE LANCASTER BAR, and by notice posted in the office of the clerk of the proper court, for three weeks preceding the holding of such audits."

"Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by rules of Court, except notices directed to be published by the Register of Wills, shall be published in THE LANCASTER BAR, during the time required by law, in addition to any other papers which may be selected by the parties; except advertisements of sales, and cases where the law requires that publication shall be in papers having the largest circulation, or directed otherwise for any prescribed reason. The rates to be charged not to exceed those charged by other papers for advertisements of same character."

"The prothonotary and clerks shall give notice by publication, in THE LANCASTER BAR and one newspaper published in the city of Lancaster, of the adoption, amendment or rescission of any rule in their respective courts, the expense of the publication to be paid by the county."

"In all applications for the benefit of the insolvent law, if no other time is fixed by the court for the hearing thereof, the hearing of the same shall be on the first day of the following regular argument court; and personal notice shall be given by the petitioner to the creditors, or by publication thereof in one German and two English newspapers, one of which latter shall be THE LANCASTER BAR, published in the city of Lancaster, once a week in each for three successive weeks, prior to the time fixed for the hearing."

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## Railroad Time Tables.

### Pennsylvania Railroad.

The passenger trains on this road leave the depot in this city as follows:

WESTWARD.	LEAVE LANCASTER.		ARRIVE HARRISBURG.		
	a. m.	p. m.	a. m.	p. m.	
Pacific Express,*	2:40		4:05		
Way Passenger†	4:50		7:50		
Niagara Express,...	9:35		10:40		
Hanover Accom.,...	9:40		COL. 10.10		
Mail Train via Mt. Joy*	11:20		1:00		
No. 2, via Columbia,...	11:20		1:25		
Fast Line,*	2:10		3:25		
Frederick Accom.,...	3:15		COL. 2:45		
Harrisburg Accom.,...	6:00		8:10		
Columbia Accom.,...	7:20		COL. 8:00		
Harrisburg Express,...	7:35		8:40		
Pittsburg Express,...	9:25		10:50		
Cincinnati Express,*	11:30		12:45		
EASTWARD.		LANCASTER.		PHILADELPHIA	
Atlantic Express,*	12:30		3:00		
Philadelphia Express,†	4:10		7:00		
Harrisburg Express,...	7:35		10:00		
Columbia Accom.,...	9:28		12:30		
Pacific Express,*	1:20		3:45		
Sunday Mail,...	3:00		5:00		
Johnstown Express,...	3:05		6:00		
Day Express,*	5:18		7:20		
Harrisburg Accom.,...	5:50		9:00		

The Hanover Accommodation, west, connects at Lancaster with the Niagara Express, west, at 9:35 a. m., and will run through to Hanover.

The Frederick Accommodation, west, connects at Lancaster with the Fast Line, west, at 2:10 p. m., and runs to Frederick.

The Marietta Accommodation leaves Columbia at 6:15 a. m. and arrives at Marietta at 6:25.

The Pacific Express, east, on Sunday, when flagged, will stop at Middletown, Elizabethtown, Mt. Joy and Landisville.

\*The only trains which run daily.

†Runs daily, except Monday.

### P. R. R.—Columbia and Port Deposit Branch.

GOING SOUTH.		a. m.	p. m.
Leave Columbia,.....	10:20		6:45
Arrive at Port Deposit,.....		1:20	8:45
GOING NORTH.		a. m.	p. m.
Leave Port Deposit,.....	6:30		2:00
Arrive at Columbia,.....	8:30		5:00

### Lancaster and Quarryville Railroad.

Passenger trains on this road run as follows:

LEAVE.		GOING NORTH.		
a. m.	p. m.	a. m.	p. m.	p. m.
Quarryville,.....	6:50	8:00		2:30
Lancaster—West King Street,..	8:00	9:30		3:35
Lancaster—Upper Depot,.....	8:10	9:40		3:45
LEAVE.		GOING SOUTH.		
a. m.	p. m.	a. m.	p. m.	p. m.
Lancaster—Upper Depot,.....	9:46	4:30		8:10
Lancaster—West King Street,..	9:55	4:40		8:20
Quarryville, (arrive).....	11:00	6:00		9:25

### Lancaster and Reading Railway.

Passenger trains on this road run as follows:

LEAVE.		GOING NORTH.			
a. m.	p. m.	a. m.	p. m.	p. m.	p. m.
Lancaster—West King Street,..	8:00				3:35
Lancaster—Upper Depot,.....	8:15	12:55			3:45
Lancaster Junction,.....	8:35	1:35			4:11
Reading, (arrive).....	10:10	3:20			5:50
LEAVE.		GOING SOUTH.			
a. m.	p. m.	a. m.	p. m.	p. m.	p. m.
Reading,.....	7:35	11:40			6:05
Lancaster Junction,.....	9:21	1:20			7:45
Lancaster—Upper Depot,.....	9:46	:00			8:10
Lancaster—West King Street,..	9:55				8:20

### Lancaster and Millersville Railroad.

STREET CARS leave Lancaster, P. R. R. Depot, at 7, 9, 11:30 a. m., and 2, 4, 6, 8:30 p. m.

On Saturday evening the 8:30 car will not leave until 9:30.

Leave Millersville at 6, 8, 10 a. m. and 1, 3, 5, 7 p. m.

Official Directory.

Supreme Court of the United States.

Appointed. Chief Justice—Morrison R. Waite, of Ohio, 1874 Justices—Nathaniel Clifford, of Maine, 1858 Noah H. Swayne, of Ohio, 1862 Samuel F. Miller, of Iowa, 1863 Stephen J. Field, of California, 1863 William Strong, of Pennsylvania, 1870 Jos. P. Bradley, of New Jersey, 1870 Ward Hunt, of New York, 1872 Attorney General—Charles E. Devens.

Supreme Court of Pennsylvania.

Chief Justice—Daniel Agnew. Associate Justices—George Sharswood, Ulysses Mercur, Isaac G. Gordon, Warren J. Woodward, Edward M. Paxson, John Trunkey. Attorney General—George Lear. Prothonotaries: Eastern District—Benj. E. Fletcher, Philadelphia. Western District,—J. B. Sweitzer, Pittsburgh. Middle District—Robert Snodgrass, Harrisburg. Northern District—J. A. J. Cummings, Montandon, Northumberland county. Reporter—A. Wilson Norris. Places and time for holding Court: At Philadelphia, commencing 1st Monday in January. At Harrisburg, commencing 1st Monday in May. At Pittsburgh, commencing 1st Monday in October. At Sunbury, commencing 3d Monday in September.

Second Judicial District.

President Judge—John B. Livingston. Additional Law Judge—David W. Patterson. Associate Judge—John J. Libhart. District Attorney—B. F. Eshleman.

County Officers.

Prothonotary—Lewis S. Hartman. Deputy—Wm. E. Kreider. Clerks—P. E. Slaymaker and Thos. B. Hartman. Register—Harrison Ross. Deputies—W. M. Slaymaker and C. H. Fasnacht. Recorder—Samuel S. Martin. Deputy—Benj. Bauman. Clerks—Geo. R. Sensenig and M. O. Sensenig. Sheriff—Henry N. Breneman. Deputies—Jno. D. Wilson and G. W. Benedict. Clerk of Orphans' Court—Samuel L. Kauffman. Clerk of Quarter Sessions—Stephen S. Clair. Deputy—B. F. W. Urban. Commissioners—S. F. Eagle, Sam'l M. Myers and Em'l P. Keller. Clerk—John M. Grider. County Solicitor—J. Hay Brown. County Treasurer—Henry S. Eberly. Clerk—Amaziah C. Barr. Coroner—Amos Greff. County Surveyor—A. W. Snader. County Auditors N. N. Hensel, A. Konigsmacher and H. S. Kerns.

City Officers.

Mayer—John T. Macgonigle. Solicitor—Robert M. Agnew. Recorder—Walter G. Evans. Aldermen—H. R. McConomy, Wm. B. Wiley, Jno. M. Amweg, A. K. Spurrier, John B. Good, Joshua W. Jack, John R. Smith, Patrick Donnelly, W. F. H. Amwake. Chief of Police—John Pontz. Treasurer—Edw. Welchans. Civil Engineer—Francis S. Burrowes. Fire Commissioner—Charles Schwebel.

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COURT CALENDAR.--1878.

MAY.

- 18. Last day for filing Accounts for June Court. 25. Calling Judgment Docket.

JUNE.

- 7. Last day for issuing Writs to June Term. 8. Last day for setting down causes for Argument Court.

JULY.

- 20. Last day for filing Accounts to August Court. 27. Last day for setting down causes for trial for August Court.

AUGUST.

- 9. Last day for issuing Writs to August Term. 17. Last day for filing Accounts to September Court. 19. Last day for issuing Executions to August Term. 24. Calling Judgment Docket. 31. Last day for setting down causes for Sept. 30.

SEPTEMBER.

- 6. Last day for issuing Writs to September Term. 7. Last day for setting down causes for Argument Court. 7. Last day for setting down causes for trial for October 7 and 14. 7. Argument for Rules of Affidavit of Defense. 21. Calling Judgment Docket.

OCTOBER.

- 5. Argument for Rules of Affidavit of Defense. 11. Last day for issuing Writs to October Term. 19. Last day for filing Accounts to November Court. 26. Last day for setting down causes for trial for November Court. 26. Calling Judgment Docket.

NOVEMBER.

- 8. Last day for issuing Writs to November Term. 9. Argument for Rules of Affidavit of Defense. 16. Last day for filing Accounts to December Court. 18. Last day for issuing Executions to November Term. 23. Calling Judgment Docket.

DECEMBER.

- 6. Last day for issuing Writs to December Term. 7. Last day for setting down causes for Argument Court. 7. Argument for Rules of Affidavit of Defense. 21. Last day for filing Accounts to January Court, 1879. 21. Calling Judgment Docket. 28. Last day for setting down causes for trial for January Court, 1879.

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# The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAY 25, 1878.

[The "Hayes Opinions" were delivered by the late Hon. A. L. HAYES, while President Judge of the District Court for the City and County of Lancaster. They are collated in a volume of about five hundred pages, in his own handwriting, which is the property of the Lancaster Law Library Association. THE BAR will contain one or more opinions each week until all have been published.—Ed.]

## HAYES' OPINIONS.

WALTER FRANKLIN, Esq., President Judge of the Orphans' Court of Lancaster County, for the use of ADAM GROSS and ELIZABETH, his wife, in right of said Elizabeth, against JAMES MACKKEY, joint and several recognizor with Adam Gross and Schocker, with notice to Robert R. Ross, purchaser and terretenant.

If there be a clear understanding between the sheriff and purchaser, that the land is sold subject to liens, the purchaser takes and holds subject to liens, though there be no formal or written agreement and no mention of it in the conditions of sale or deed.

If a verdict gave the plaintiff one year's interest too much, and he agree to remit the excess, the court will not set the verdict aside on that account, but direct that the amount be reduced.

It is no sufficient reason to disturb a verdict that the plaintiff neglected to reply specially to a special plea—the defendant having made no objection, on or before the trial, on account of the omission.

The real property of James Mackey, who died intestate, was appraised by an inquest summoned by order of the Orphans' Court of Lancaster county, in the three purparts: No. 1 at \$2400, No. 2 at \$850, and No. 3 at \$81. Number one was accepted by his son, James Mackey; number two by Adam Gross, in right of his wife, who was a daughter of the intestate; and number three by both jointly. Upon their acceptance, James Mackey, Adam Gross and George Schocker entered into one joint and several recognizance in the sum of \$10,000 for the use of the parties interested.

On a judgment obtained against James Mackey, purpart No. 1 was afterwards taken in execution and sold by the sheriff for \$425, to Robert M. Ross, who received a deed from the sheriff and took possession of the premises. The above action was brought on the recognizance to recover the share of Elizabeth, wife of Adam Gross, in the valuation of the land accepted by James Mackey. Upon the trial the principal question was whether the property was sold by the sheriff, subject to the recognizance or clear of it—the defendant having pleaded that the lien of the recognizance was divested by the sale. To this point there was the testimony of several witnesses, going to show that the property was in fact sold subject to the lien, and the acknowledgements of Ross, the purchaser, to that effect were proved. The plaintiff's claim was thus stated by his counsel to the jury, viz: The one-third of the valuation of No. 1 is \$800, from which James Mackey's one-third of No. 2 being deducted, *i. e.*, \$282.33, leaves \$516.67 to which add the interest from the

22d April, 1817, when the property was accepted, to the 2d September, 1830, being \$414.19 and the amount will be \$930.85; and that was the sum for which verdict was rendered under the charge of the court, that the plaintiff was entitled to recover upon the recognizance unless the lien had been divested by the sheriff's sale; that whether it was so or not would depend upon the result of the jury's deliberations upon the evidence given in the case, particularly the testimony of Woodruff, Gish, Ross' affidavit, and the deposition of Mathoit, and that if it appeared that Ross not only knew of the lien, but purchased with the understanding that the sheriff sold and he bought, subject to its legal operation, he holds the property subject to it, and the plaintiff had a right to recover. It was also given in charge as the settled doctrine of the Supreme Court that a sheriff's sale divests real estate of all liens, as well of recognizances as of judgments, and the principles to be extracted from the decided cases apply to the case and discharge this property unless it was the intention of the buyer and seller that the purchase should be subject thereto. On motion of the defendant, and reasons filed, the court granted a rule to show cause why a new trial should not be allowed. It was argued by Porter for the rule and Buchanan against it.

*Mr. Porter* cited: 1 Burr. 393; 2 Dall. 131, *Nichols vs. Postlethwaite*; 3 Binn. 358, *Bank N. A. vs. Fitzimmons*; 7 S. & R. 290, *Sample vs. Bird*; 13 S. & R. 227, *Lindal vs. Neville*; 14 S. & R. 257, *Gurney's executors vs. Alexander*; 16 S. & R. 410 *Barnet vs. Washbaugh*; 17 S. & R. 276, *Gilmore vs. The Commonwealth for the use of Glass*; 2 Rawle 166, *Fickes vs. Ersich*; 2 Rawle 56, *Willard vs. Norris*; 1 Penn'a R. 44, *McGrew vs. McLanahan*, 1 Penn'a R. 96, *McLenigan's executors vs. McLenigan's administrators*; 1 Penna. R. 240.

*Mr. Buchanan* cited Act 19 April, 1794, sect. 21; 3 Binn. 317, *Griffith vs. Willing*; 2 Binn. 108, *Cain vs. Henderson*; 2 Binn. 129, *Campbell vs. Spencer*; 1 Yeates 104, *Leach vs. Armitage*; 2 Yeates 164, *Lessee of Smith vs. McCormick*; 5 S. & R. 148, *Lee vs. Wilcox*; 2 Saund R. 7.

HAYES J. delivered the opinion of the court.

The first reason for a new trial comprehends all the objections to this verdict; that is to say, that the verdict is contrary to law, to the evidence, and to the charge of the court. In support of the motion, the defendant's counsel reviewed the decisions of the Supreme Court respecting judicial sales, as to their effect in discharging real estate of the liens upon it; and he contended that, according to those decisions, all liens, whether general or special, are divested by such sales unless there be an agreement that the land to be sold shall be subject to the lien in the hands of the purchaser. He therefore insisted that as no such agreement was proved in this case, the verdict ought to have been for the defendant. But it has not been decided that there must be a formal agreement. By the case of *Barnet vs. Washbaugh*, "a

clear understanding" of the vendor and vendee, is sufficient. This understanding may be proved, as other facts are proved in courts of justice; and although the conditions of sale or deed may be the best, in the sense of being the most satisfactory evidence, yet they are not the sole or exclusive evidence of that fact. No one could hesitate in admitting the acknowledgment of the purchaser as plenary proof of the understanding with which he bought the property. If, therefore, there was sufficient evidence of such an understanding in the present case, the verdict was not against law.

The evidence went to show that Robert M. Ross knew that the land was subject to the lien of Adam Gross and his wife's recognizance, and that he considered, understood, and admitted that he had purchased it with the lien remaining upon it. The jury were the sole judges of the degree of credit to be attached to the witnesses, and the verdict is consistent with their testimony. It cannot then be said to be against evidence in regard to the alleged understanding relative to the lien of the recognizance.

But there is one point in which the verdict is alleged to be against evidence, because it has allowed, contrary to the terms of the recognizance, one year's interest to which the plaintiff was not entitled, the interest being calculated from the 22d of April 1817, when no interest was chargeable until the 1st of April, 1818. This is clearly so. The plaintiff agrees to remit the excess of interest, and the court will direct the judgment to be entered for the amount found by the jury, reduced by the deduction of that excess. See 5 Serg't & R. 48.

As to the objection founded upon the state of the pleadings. If the alleged defect constitute an error in law amounting to a mistrial, the defendant will have his remedy on a writ of error. We do not see it in that light, and we will therefore only consider whether it presented any impediment to a full and free investigation of the merits upon the trial. I did not understand that any testimony was excluded in consequence of the state of the pleadings. It appears to me, that the only inconvenience to which the defendant could have been subjected for the want of a special replication to his special plea, (which is the defect complained of,) is that the plaintiff may have given in evidence as repellent of the matter of his special plea, circumstances of which the defendant had no notice. That, however, is not alleged to have been done. The reason sets forth generally that the pleadings were not in such a state as to authorize a trial of the case on the merits; but it does not allege that there was not a trial of the merits, nor was this asserted on the argument. In short, if the defendant was allowed to prove the averments of his pleas, and the plaintiff confined to such testimony only as was proper and relevant to maintain the issue on his part, the whole merits must have been submitted to the jury; and if the court erred upon any question of testimony, in overruling either the offers or the objections of the defendant, his bills of exceptions will give him



redress. No objection, I believe, was taken at the trial to proceeding in consequence of the state of the pleadings; and, in my opinion, this is an insufficient reason for a new trial when no injustice is shown to have been sustained.

Having thus ascertained, that the verdict is not contrary either to law or evidence, (except the objection to the amount of interest,) the last inquiry is, whether it was against the charge of the court. The jury were charged that the plaintiff was entitled to recover upon the recognizance, unless the lien had been divested by the sheriff's sale; and whether it was so or not, would depend upon the result of the jury's deliberations on the evidence given in the case, particularly the testimony of Woodruff, Gish, the affidavit of Ross and the depositions of Mathiot; and if it appeared that Ross not only knew of the lien, but purchased with an understanding that the sheriff sold the land subject to its legal operation, he holds the property subject to it, and the plaintiff had a right to recover. With these instructions, the jury found for the plaintiff; and if their verdict was consistent with the evidence, it was certainly not against the charge of the court.

Upon the whole I am of opinion that this rule should be discharged.

#### Common Pleas of Lancaster County.

##### JACOB S. SHIRK vs. PENNA. R. R. CO.

[Trust Book, No. 7, p. 339, 341, 344, &c.]

Where the last day of the days within which, under act of assembly or rule of court, an act can be performed, falls on Sunday, the act will be valid if performed on the day following.

Viewers, appointed to assess damages for land taken by a railroad, should balance the special advantages against the actual disadvantages; and, in doing so, may find the amount of each item, and the sum of the items thus found will represent the amount of damages.

Excess of damages, to be effectual in setting aside a verdict must be very exorbitant and unreasonable.

The mere fact of the petitioner furnishing a means of conveyance for some of the viewers is not good ground for setting aside the report.

Exceptions to reports of viewers and rule to strike off exceptions.

*H. M. North* for exceptions.

*Thos. E. Franklin, N. Ellmaker and Geo. Nauman* contra.

Opinion delivered April 13, 1878, by LIVINGSTON, P. J.

In this case viewers were appointed, upon the petitions of Jacob S. Shirk, to view and assess the damages done to him by the defendant in changing or straightening its track through his lands in East Lampeter township, Lancaster county, a portion of which he owned in fee, and of a portion of which he was the lessee from the owners for a term of years.

The petitions were presented and filed on November 3d, 1877, and on November 20, 1877, viewers were appointed who were directed to meet on the premises on Friday, the 14th of December, 1877.

On December 21, 1877, a report in each

case was presented, read and confirmed *nisi*, and it was ordered that if no exceptions were filed within thirty (30) days they should be confirmed absolutely. Thirty days passed, the thirtieth day being *Sunday*; on the thirty-first day, being Monday, January 21st, 1878, exceptions on behalf of the Penna. Railroad Company were filed. After which, on ———, 1878, plaintiff obtained a rule to show cause why the exceptions should not be stricken off—because more than thirty days elapsed between the time of the filing and confirmation *nisi* of the report.

The Supreme Court in *John Gosweiler's Estate*, 3 Penna. (P. & W.) 200 say: "Whenever, by a rule of court or an act of the legislature, a given number of days are allowed to do an act, or it is said an act may be done within a given number of days, the day on which the rule is taken or the decision made is excluded, and if one or more Sundays occur within the time they are counted, unless the last day falls on Sunday, in which case the act may be done on the next day." In that case, a decree under the act of April 16th, 1827, relative to the distribution of money arising from sheriff and coroner's sales was made on the 12th of April, and an appeal was entered on the 3d of May—*2d being Sunday the appeal was held to be in time*: 3 P. & W. 200, *Gosweiler's Estate* and cases therein cited; *Harker vs. Addis*, 4 Barr 516.

In *Marks' Executors vs. Russell*, 4 Wr. 372, (LOWRIE, C. J.) in counting the time to plead after notice, it was held that "the day on which notice is given is excluded, and if the final day falls on Sunday, it is also excluded, and a plea entered on Monday is in time. A judgment entered on that day for want of a plea is erroneous." Also 5 Cas. 522, *Brink's case*.

Under our Arbitration Act of 1836, *Purd.* 86, pl. 56, §4, which declares that the "appeal shall be entered, and the costs paid and recognizance filed, within twenty days after the entry of the award of the arbitrators on the docket." In 4 *Clark* 84, *Arms vs. Leaman*, it was held, that an appeal on the 21st day after the award was filed, the 20th having fallen on Sunday, is good. The same view seems to have been held by Judge YEATES, under the act of 1810, in *Sims & Hamilton*, 1 S. & R. 411. See also 2 *Leg. Chron.* 268, *McPhilips vs. Penna. Cattle Ins. Co.*

The general rule, from an examination of all cases on this point, appears to be that where the last day of the days within which such act is directed by the court or by the legislature to be done, happens to fall on Sunday, the act may be done on the day following, and if so done is in time and valid.

The rule to show cause why the exceptions filed should not be stricken off is, therefore, discharged.

In their report, with reference to the damage caused to tract No. 1, owned by Mr. Shirk, the viewers say—they have heard the testimony, viewed the premises, heard the argument of counsel, estimated the quantity, quality and value of the land taken—which they describe very fully; that having a due

regard to and making a just allowance for the advantages which seem likely to result to the said Jacob S. Shirk in consequence of the making and opening of said railroad, and the construction and running of the same, and after having made a fair and just comparison of said advantages and disadvantages, they estimate and determine that the said Jacob S. Shirk will sustain damages—for fencing rendered necessary, \$50; for value of land occupied and appropriated, \$1,500; for inconvenience and damage to the rest of said tract, \$1,000; and for buildings taken, \$300. And in their report as to No. 2, owned by said Shirk, being the coal and lumber yard property, they use about the same language, and estimate that he will sustain damage for fencing rendered necessary, \$38; for value of land occupied or appropriated, \$3,090; for inconvenience and damage to the balance of the tract, \$90; for buildings and other improvements taken, \$630.

To the first of these reports the Pennsylvania Railroad Co. filed exceptions:

1. The damages awarded are excessive.
2. The viewers did not observe and adopt the legal measure of damages—the difference between the market value of the property before and after the making of the improvement, or the difference between the market value of the property as unaffected and as affected by the taking.

3. The viewers duplicated the damages—they allowed the full value of the land taken and its improvements as the value of the property, and then made a further allowance to Jacob S. Shirk of the value of the improvements.

4. The viewers did not take into consideration and make allowance for the advantages resulting or likely to result to Jacob S. Shirk.

5. Jacob S. Shirk furnished entertainment and travelling accommodations to the viewers. And also request the court to appoint reviewers.

To the second the following additional exceptions were filed:

*Exception 2.* The land taken is not "part of a larger tract of about two acres and one hundred and eight perches," as stated in the report.

*Exception 7.* The said owner claimed damages for the value of materials, before the viewers alleged by him to have been taken by the Pennsylvania Railroad Co., which claim increased the damages awarded, and since the view has claimed said materials as his and not taken by said Pennsylvania Railroad Co.

*Exception 8.* The viewers, in arriving at the value of the land taken, estimated and allowed as part of its value a siding connection with the Penna. Railroad, in which "connection" the said Shirk had no property, and he was not entitled to damages for having his siding disconnected by the Penna. Railroad Co. from its tracks.

The answer of the Penna. Railroad Co. to the petition in each of these cases, admits the taking of the quantity of land stated in the petitions, as well as the correctness of

the drafts filed, but denies all the allegations in the petitions as to the damages and causes of damages outside of and apart from the land taken.

The viewers, in their report No. 3, of which premises Shirk is in possession as lessee, ascertain the quantity, &c., of the land taken and occupied; they find that upon the portion of the land so taken Jacob S. Shirk had erected a railroad siding — feet long, a brick building used as an office, and a frame building, and the said railroad siding, brick office and frame building belonged to the said Jacob S. Shirk, as such lessee; that the land so occupied by the said Jacob S. Shirk as such lessee was used as a lumber yard. And, after duly considering the advantages, disadvantages &c., they estimate and determine that Shirk, the lessee, has sustained damages by the taking of the said railroad siding, brick office and frame building to the sum of \$407, and by the taking of the land which he occupied as such lessee to the amount of \$1,180, which they direct to be paid to him.

To this report the company have filed the following exceptions, in addition to a portion of those filed to Nos. 1 and 2:

*Exception 2.* The interest of Jacob S. Shirk was an unexpired lease running to 1884, and the buildings and railroad siding were his. He sublet part of the land, the railroad siding, and some of the buildings, to Isaac O. Bruner by the year. The viewers allowed the full value of the of the buildings, without regard to the fact that Shirk would have to remove them or abandon them on the expiration of his lease; they should only have allowed such value as they would have in view of their removal in 1884; and they valued the railroad siding in the same improper way.

*Exception 3.* The only value or profits to Shirk in his lease, above the rent he was to pay to his lessor, the Friends, was by reason of his siding having a connection with the tracks of the Penna. Railroad. This connection the Penna. Railroad Co., had a legal right to break or destroy without liability for damages for so doing to Shirk or others. It was broken, disconnected and destroyed in 1876, and the said Penna. Railroad Co., did not enter upon or appropriate any of this leased property till the spring of 1877. The viewers allowed damages on the basis of rent Shirk was receiving when his siding was connected with the Penna. Railroad and rejected entirely, as a basis or measure of damages, the rent that could be had if the siding had been disconnected, which rent would have been very small, perhaps not a fourth of that allowed by the viewers.

*Exception 4.* Before the viewers said Shirk claimed damages for the rails, ties and other materials in his siding, and thereby increased and swelled his damages—the report stating that he was allowed for the taking of his railroad siding; and since the report of viewers was filed, he has claimed and taken said rails, ties and other materials of said siding.

The 1st exception is the same in all the cases.

It is the province and duty of the viewers, in cases of this character, to balance the advantages that are special against the disadvantages that are actual; and, with the aid of the testimony laid before them, as well as by personal observation and view, to find out, as well as they can, how much less the land would sell for, if any, in market by reason of the location and building of the road—which sum will represent what has really been taken from the owner, and what should be given him back in damages. But viewers are not bound to put it in that shape or use that exact language. They may do as the viewers in these cases did, after carefully weighing the advantages and disadvantages, as they say they did, find, estimate and determine the amount of fencing made necessary and its cost; the quantity of land occupied and its value; the amount for inconvenience and damage to the remainder of the petitioner's land, value of buildings taken or destroyed, item by item, and add the items together, and the sum total so found, if properly found, will represent the sum which in their judgment the property would be diminished in market value by reason of the location and building of the road, and which should be paid to the petitioner as damages. 11 Wr. 428.

The viewers go upon the ground and view it in presence of the parties and their counsel, examine it, hear all the testimony produced and comments upon it by learned counsel, and form their judgment, which is the united judgment of all the viewers when their report is signed.

The damages must be assessed by a jury; and seeing, as they do, the ground, hearing the allegations of the parties and their counsel, and the testimony, they are in law as well as fact, as competent judges of value and of damages as the court, and it is only under peculiar circumstances that the court will or can properly interfere with their finding. It is not a mere trifling excess in the finding which will justify or warrant the court in setting it aside. Cases differ as to the basis. In Knight's case it is said: "excess of damages, to form the basis of setting aside the verdict of a jury or an inquest assessing damages, must go *very much* beyond what the court might deem reasonable and proper." In these cases there has been no testimony taken since the view which, in our judgment, would warrant us in disturbing the finding of the inquest on this exception.

The testimony presented is not sufficient to sustain the second exception; there being nothing to cause us to suspect that the viewers did not observe the standard contended for therein, nor to show us what the property is worth less now than before the taking by the company.

The reports of the viewers, on fair examination, will show that there has been no duplication of damages. Every item is clearly and plainly set forth, leaving the third exception without foundation.

The 4th is like unto it. The report in each case showing it to be unfounded, and that the advantages as well as disadvantages were considered by the viewers.

As to the 5th. There appears to be no evidence that the petitioner furnished entertainment to the viewers; indeed, from his testimony, it does not appear that the entertainment of the jury has been paid yet; nor is there any evidence that Mr. Shirk ever spoke to the viewers in regard to paying for their entertainment at the public house where they were accommodated. It is true he sent to this city for one or more of the viewers and had them conveyed to the place of view; but it is also true that the viewers were from other counties, and all public facilities failed to furnish those he had conveyed an opportunity to get to the place of view in time to accomplish the object of their appointment on the day fixed, and that he had cautioned those who drove the conveyances not to speak to the viewers with reference to the object of their visit; and there being no allegation that any of them did so, we think the advantage to both parties, who were prevented from proceeding until the absent viewers arrived, taken in connection with the fact that this exception was not as earnestly pressed as some of the others, is sufficient to warrant us in saying that defendant has not been injured in this behalf, and therefore the exception is not sustained.

Exception 2 to second report we think is embraced within and answered by the decision in the case of ——— 1 Amer R. R. Reports, pge. 1, and is, therefore, not sustained.

The matters contained in exception 7 to report No. 2, if true, are matters for future arrangement between the petitioner and defendant—are matters for future consideration. If petitioner has been allowed for materials, which he after the view removed from the possession of defendant, defendant has his remedy hereafter. The exception cannot be sustained.

Exception No. 8 to second report is negated by the report and sustained by the testimony afterwards taken and presented to the court.

Exceptions No. 2 and 3 are negated by the report (No. 3 the leased property) and are not, in our judgment, sufficiently supported by the testimony subsequently taken to warrant the court in sustaining them. While exception No. 4 to report No. 3, as we stated in reference to exception 7, report No. 2, contains matters for future adjudication, rather than present exception.

A full and extended examination of the reports, exceptions filed, testimony presented and authorities cited, satisfies us that the exceptions to these several reports of viewers should be dismissed.

The exceptions are therefore overruled and dismissed and the respective reports of viewers absolutely confirmed.

COMMONWEALTH vs. SCHUMACHER and EB, administrators *c. t. a.* of JACOB SCHUMACHER, dec'd.

(March T., 1878, No. —)

Where a testator directs the income of real estate to be paid to certain of his heirs during life, and at their decease said real estate to be converted into money and distributed among said heirs, the share of an heir who dies unmarried, leaving collateral

heirs only, but lineal heirs of the testator, the same descends not through such deceased heir, but directly from the testator, and is therefore not subject to collateral inheritance tax.

**Amicable action in debt. Case stated.**

*Philip D. Baker* for plaintiff.

*Thos. E. Franklin* and *N. Ellmaker* for defendants.

Opinion delivered April 13, 1878, by **LIVINGSTON, P. J.**

After giving certain of his real estate to his wife, Esther, and two daughters, Elizabeth and Mary, for life, and the life of the survivor of them, for their yearly income and maintenance, and directing that in case any of them married (that is the daughters,) they should be excluded and debarred from the income out of the land, &c. Jacob Schumacher, the testator, directed that after the death of his wife and daughters the whole of his real estate, not specifically devised, should be sold by his executors, as well as the personal property left, and converted into money; and the same should be divided by said executors in manner following: "My son Christian shall have no part of the money raised out of my real estate; that is to be divided among my *three daughters*, Esther, the wife Abraham Shelly, and the heirs of Mary and Elizabeth in equal shares, including such sums received by them previous to such settlement."

The widow of Jacob Schumacher, the testator, died in the year 1838. His daughter Elizabeth died in 1864, unmarried and without issue. His daughter Mary married John Gensemer in 1845, and died in 1875, leaving her husband, but no issue, surviving her. After Mary Gensemer died, the administrators *de bonis non cum testamento annexo* sold the real estate and accounted for the proceeds, which were afterwards distributed by an auditor whose report was duly confirmed. In that distribution there was awarded to the heirs of said Elizabeth Schumacher, deceased (who was a daughter of the testator), to wit: to the children of her deceased brothers and grand-children of her deceased sister (who were also lineal descendants of Jacob Schumacher, the testator, under whose will the distribution was made), the sum of \$4,289.60.

On this sum the Commonwealth claims to be entitled to collateral inheritance tax. Is it so entitled?

The act of assembly of April 7th, 1826, § 1 (Purdon 214, pl. 1), declares that, "all estates, real personal and mixed, of every kind whatsoever, passing from any person who may die seized or possessed of such estate, being within this Commonwealth, either by will or under the intestate laws thereof, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain or sale, made or intended to take effect in possession or enjoyment, after the death of the grantor or bargainor, to any person or persons, or to bodies politic or corporate, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and *lineal descendants*, born in lawful wedlock, shall be, and they are hereby made subject to a tax or

duty of two dollars and fifty cents on every one hundred dollars of the clear value of such real estate or estates, and at and after the same rate for any less amount, (which amount was by act of April 22, 1846, changed to \$5.00 on every \$100) to be paid to the Commonwealth; and all executors and administrators and their sureties shall only be discharged from liability for the amount of any and all such duties on estates, the settlement of which they may be charged with by having paid the same over for the use aforesaid, as hereinafter directed; *provided*, that no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax."

This sum does not appear to come either within the letter or spirit of the laws of Pennsylvania regulating collateral inheritance taxes or collateral inheritances.

It never actually vested in Elizabeth. She never had possession of it; it was not distributed as her estate. The estate was that of Jacob Schumacher, deceased; as such it was distributed and under and by virtue of the provisions of his will it goes directly to his grand-children and great-grand-children, his own lineal descendants, and is, therefore, in our judgment, not liable to pay the collateral inheritance tax demanded by the Commonwealth; and therefore, under the provisions of the case stated, we enter judgment for the defendants.

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## The Lancaster Bar.

PUBLISHED EVERY SATURDAY.

PHILIP D. BAKER, EDITOR.

LANCASTER, PA., MAY 25, 1878.

### WEEKLY SUMMARY.

#### REGISTER'S OFFICE.

Letters of administration have been granted by the Register on the following estates since May 18, 1878:

**JOHN NAGLE**, dec'd, late of Providence twp.; John Strohm, jr., administrator.

**DANIEL BALMER**, dec'd, late of Penn twp.; Henry Hollinger, administrator.

**DAVID SHIRK**, sr., dec'd, late of West Earl twp.; David Shirk, jr., administrator.

**JOHN H. HERSHEY**, dec'd, late of Manor twp.; J. Harry Hershey and Ephraim H. Hershey, administrators.

**CHRISTIAN WANNER**, dec'd, late of Salisbury twp.; Jacob Wanner, jr., and John H. Hershey, administrators.

The following Wills have been admitted to probate since May 18, 1878:

**MAGDALENA BRADY**, late of Mount Joy bor.; Israel Brady, executor.

**MAGDALENA MILLER**, late of Lancaster city; M. Haberbusch, executor.

**SEBASTIAN ESSIG**, late of Lancaster city; Jacob K. Zook, M. Haberbusch and B. Yecker, executors.

**ALICE DAVIS**, late of Marietta bor.; Amos Bowman, executor.

#### RECORDER'S OFFICE.

The deeds have been recorded in the following assigned estates since May 18, 1878:

**WM. MITCHELL and WIFE**, of Columbia bor.; Wm. B. Given, assignee.

**GEORGE DEERBECK**, of Columbia bor.; Wm. Harn, assignee.

**JAMES HAIN and WIFE**, of East Cocalcotwp.; Cyrus Ream, esq., assignee.

**JOHN BUREX and WIFE**, of Lancaster city; Benj. R. Witmer, assignee.

#### NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on THURSDAY, the 20th day of JUNE, A. D., 1878, at 10 o'clock, a. m., for a charter to incorporate "The Central Manor Association." The object of which will be to locate and establish, regulate and control a Cemetery or Burial Ground in Manor township, Lancaster County, Pennsylvania.

**FRED. S. PYFFER**,  
Solicitor for applicants.

may25

#### NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on MONDAY, the 17th day of JUNE, A. D., 1878, at 10 o'clock, a. m., for a charter to incorporate "The German" and English Evangelical Lutheran "Jerusalem Congregation of Rothsville," Lancaster county.

The object of which will be the support of public worship, and to hold and manage in connection therewith certain real estate, grave yard, and other property in Warwick township, conveyed in trust for said congregation, under the name of "Jerusalem's Kirche."

**SIMON P. EBY**,  
Att'y for Applicants.

may4

### Auditors' Notices.

Estate of **CHRISTIAN GOOD**, late of Conestoga township, deceased.

The undersigned Auditors, appointed to pass on exceptions filed to said account, and to distribute the balance remaining in the hands of Casper Hiller, executor of said deceased, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, the 18th day of JUNE, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**C. DENUES**,  
**R. J. EVANS**,  
**R. B. RISK**,  
Auditors.

may25

Assigned Estate of **JOHN WEBER and WIFE**, of Lancaster City.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Frank Pfeiffer, assignee of John Weber and Wife, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, the 7th day of JUNE, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**H. B. SWARR**, Auditor.

may11

Assigned Estate of **JOSEPH MILLER**.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Jacob Mueser, assignee for the benefit of creditors of said estate, will sit for that purpose on TUESDAY, the 28th day of MAY, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster.

**A. SLAYMAKER**,  
Auditor.

may11

In the Court of Common Pleas of Lancaster County.

**THOMAS BAUMGARDNER** } April Term, 1878, No. 175.  
vs. } Execution Docket.  
**AARON FULMER.**

The undersigned Auditor, appointed to distribute the money made on the above *fi. fa.*, and ruled into court, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, JUNE 5th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend.

**GEORGE NAUMAN**,  
Auditor.

may11

Estate of DANIEL GOOD, late of Martic township, Lancaster Co., dec'd.

The undersigned Auditor, appointed to distribute among those entitled thereto, a principal sum of \$1887.96, which under proceedings in partition had in the Orphans' Court for said county, was charged upon a tract of 36 acres and 35 perches of land in Martic township aforesaid, late the property of said decedent, for the benefit of his widow Elizabeth Good during life, and at her death to be paid to the heirs of said decedent, will sit for that purpose on WEDNESDAY, MAY 29th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster. A. SLAYMAKER, Auditor. may11

Estate of JACOB HOOVER, late of East Lampeter twp., dec'd.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Dr. Jacob M. Musser, executor of the will of Jacob Hoover, late of East Lampeter twp., dec'd, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, the 11th day of JUNE, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. D. G. ESHLEMAN, Auditor. my18

THE GERMAN B. AND S. ASS. OF LANCASTER. In the Court of Common Pleas of Lancaster Co. vs. J. A. SCHUB, ADAM GUTFLISH, NICHOLAS SHEID. April Term, 1878, No 38, Ex. Doc.

The undersigned Auditor, appointed to distribute the money made on the above execution and ruled into court, to and among those legally entitled to the same, will sit for that purpose on TUESDAY, JUNE 4th, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. FRED. S. PYFER, Auditor. may11

Assigned Estate of DAVID M. SOUDER, of Hinkletown, Ephrata township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of Henry M. Souder, assignee of David M. Souder, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, JUNE 7th, 1878, at 10 o'clock, a. m., in one of the Jury Rooms in the Court House, Lancaster; and on SATURDAY, JUNE 8th, 1878, at 1 o'clock, p. m., at the office of the undersigned, at Farmersville, West Earl township, where all persons interested in said distribution may attend. E. BURKHOLDER, Auditor. may11

Estate of JACOB OTTO, late of Manor township, deceased.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of David B. Levenite, to and among those legally entitled to the same, will sit for that purpose on WEDNESDAY, MAY 29th, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. CHAS. I. LANDIS, Auditor. ap27

JULIUS COHN vs. ALBERT YOST. In the Court of Common Pleas of Lancaster County. Execution Dec. of April Term, 1878, No. 41.

The undersigned Auditor, appointed to distribute the money made on the above f. fa., and ruled into court, to and among those legally entitled to the same, will sit for that purpose on FRIDAY, MAY 31, 1878, at 2 o'clock, p. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. J. W. F. SWIFT, Auditor. may4

Assigned Estate of JOHN SHIFFNER and WIFE, of Strasburg township.

The undersigned Auditor, appointed to distribute the balance remaining in the hands of George Shiffner, assignee, to and among those legally entitled to the same, will sit for that purpose on MONDAY, JUNE 3d, 1878, at 10 o'clock, a. m., in the Library Room of the Court House, in the City of Lancaster, where all persons interested in said distribution may attend. E. C. DIEHL, Auditor. may4

\$66 a week in your own town. \$5 outfit free. No risk. Reader, if you want a business at which persons of either sex can make great pay all the time they work, write for particulars to H. HALLET & Co. Portland, Maine.

CHARTER NOTICE.

Notice is hereby given that application will be made to the Court of Common Pleas of Lancaster County, on MONDAY, the 20th day of MAY, 1878, at 10 o'clock, a. m., for a charter to incorporate "The Shawnee Steam Fire Engine and Hose Company," of Columbia, Pa.

A. J. KAUFFMAN, Attorney for Applicants. ap2

TRUSTEE NOTICE.

In the Court of Common Pleas of Lancaster County. JACOB E. STAUFFER vs. JOHN M. MOHN. April Term, 1878, No. 55, Domestic Attachment.

The undersigned having by the Court of Common Pleas, been appointed trustees in above mentioned case, all persons indebted to said John M. Mohn, or holding property belonging to him, are hereby required to pay and deliver the same to said trustees, and all creditors of said John M. Mohn, are requested to present their respective accounts or demands to M. N. BRUBAKER, Residing in Landisville; A. B. KREIDER, Residing in Salunga; T. H. HERSHEY, Residing on Springing Hill, or either of them, Trustees. may11

Estate Notices.

Assigned Estate of WILLIAM MITCHELL and WIFE, of Columbia, Lancaster Co.

William Mitchell and Wife, of Columbia borough, having by deed of voluntary assignment, dated May 16th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the William Mitchell, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to WM. B. GIVEN, Assignee. may25

Assigned Estate of JOHN BURGE and WIFE, of Lancaster City.

John Burge and Wife, of Lancaster city, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Burge, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to BEMJ. R. WITMER, Assignee, Residing in East Lampeter twp. P. D. BAKER, Att'y. may25\*

Estate of SEBASTIAN ESSIG, late of Lancaster City, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned. JACOB K. ZOOK, East Lampeter twp., M. HABERBSH, B. YECKER, Lancaster city, Executors. may25\* A. HERR SMITH, Att'y.

Estate of JOHN H. HERSHEY, late of Manor township, deceased.

Letters of administration, with the will annexed, on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township. J. HARRY HERSHEY, EPHRAIM H. HERSHEY, Administrators. may25

Estate of MAGDALENA BRADY, late of Mount Joy borough, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough. ISRAEL BRADY, J. HAY BROWN, Att'y. Executor. may25

Estate of JOSEPH GROFF, (State Road,) late of Drumore twp., Lancaster co., dec'd.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Drumore twp., (Quarryville P. O.) Lancaster co., Pa. JOHN M. GROFF, W. U. HEYSEL, Att'y. LEVI W. GROFF, Executor. my18

Assigned estate of MICHAEL HEINTZEN and WIFE, of Lancaster City, Pa.

Michael Heintzen and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of said Michael Heintzen, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to CHRISTIAN F. BINKLEY, Assignee, A. J. EBERLY, Att'y. New Danville, Lancaster co., Pa. my18

Estate of MARY ROLAND, late of Marietta borough, deceased.

Letters testamentary on said estate having been granted to the undersigned, all persons indebted thereto are requested to make immediate settlement, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough. JOHN W. RICH, Executor. D. G. BAKER, Att'y. may4

Assigned Estate of JOSEPH K. FERGUSON and WIFE, of Drumore twp., Lan. Co.

Joseph K. Ferguson and Wife, of Drumore township, having by deed of voluntary assignment, dated May 1st, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Joseph K. Ferguson, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JOSEPH PENROSE, Assignee, J. W. F. SWIFT, Att'y. Chestnut Level P. O., Lan. Co. may11

Assigned Estate of GEORGE L. DEEG and SARAH E. DEEG, his WIFE, of the borough of Washington, Lancaster county.

George L. Deeg and Sarah E. Deeg, his Wife, of Washington borough, having by deed of voluntary assignment, dated May 9th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said George L. Deeg and Sarah E. Deeg his wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to JACOB B. SHUMAN, Assignee, Residing in Manor twp., Lancaster county, Washington borough P. O. E. D. NORTH, Att'y. [may11]

Assigned Estate of JOHN LUTZ and WIFE, of East Cocalico twp., Lancaster Co.

John Lutz and Wife, of East Cocalico township, having by deed of voluntary assignment, dated May 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Lutz, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to ADAM S LUTZ, Assignee, A. J. EBERLY, Att'y. Union Station, Lan. Co., Pa. may4

Assigned Estate of FREDERICK QUADE and WIFE, of Lancaster City.

Frederick Quade and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Frederick Quade and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to WM. WOHLSEN, Assignee. B. F. DAVIS, Att'y. may4

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**Assigned Estate of PHILIP JACOB BOIRCK and WIFE, of Lancaster City.**

Philip Jacob Boirck and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Philip Jacob Boirck and Wife, he therefore gives notice to all persons indebted to said assignor to make payment to the undersigned without delay, and those having claims to present them to  
 PETER ALLBACH, Assignee,  
 may4  
 B. F. DAVIS, Att'y. Residing in Lancaster.

**Assigned Estate of ELI BATTON and WIFE, of Upper Leacock twp., Lancaster Co.**

Eli Batton and Wife, of Upper Leacock township, having by deed of voluntary assignment, dated March 27th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Eli Batton and Wife, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 D. B. ESHLEMAN, Assignee,  
 B. F. DAVIS, Att'y. Residing in Earl township.  
 may4

**Assigned Estate of CONRAD REHM and WIFE, of Lancaster City.**

Conrad Rehm and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Conrad Rehm, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 WM. E. MILLER, Assignee,  
 J. W. F. SWIFT, Att'y. Residing in Lancaster.  
 may4

**Assigned Estate of MARIA LOUISA CLARK and HUSBAND, of Lancaster twp., Lan. Co.**

Maria Louisa Clark and Husband, of Lancaster township, having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Maria Louisa Clark, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 BENJ. SNAVELY, Assignee,  
 J. W. F. SWIFT, Att'y. Residing in Lancaster.  
 may4

**Assigned Estate of HENRY ESHLEMAN, and WIFE, of Strasburg twp., Lancaster Co.**

Having by deed of voluntary assignment, dated April 18, 1878 assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Henry Eshleman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 JACOB HILDEBRAND, Assignee,  
 may4 Residing in Strasburg.

**Assigned Estate of JOHN SHREINER, SR., and WIFE, of Warwick twp., Lan. Co.**

John Shreiner, sr., and Wife, of Warwick township, having by deed of voluntary assignment, dated April 3d, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John Shreiner, sr., he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 GEO. SHREINER, Assignee,  
 ap27 Residing in Manheim twp.  
 WALTER M. FRANKLIN, Att'y.  
 J. W. B. BAUSMAN,

**Assigned Estate of ABRAHAM M. WRIGHT and WIFE, of Conestoga twp., Lan. Co.**

Abraham M. Wright and Wife, of Conestoga township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Abraham M. Wright, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 H. H. MILLER, Assignee,  
 H. C. BRUBAKER, Att'y. Residing in Conestoga twp., Pa.  
 may4

**Estate of DAVID HULL, late of Strasburg borough, dec'd.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate payment, and those having claims or demands against the same, will present them without delay for settlement to the undersigned, residing in said borough.  
 AMOS E. HULL, Administrator.  
 may4\*

**Assigned Estate of JOHN HOAK, of Conestoga twp., Lancaster Co.**

John Hoak, of Conestoga township, having by deed of voluntary assignment, assigned and transferred all his estate and effects to the undersigned for the benefit of the creditors of the said John Hoak, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 AMOS WARFEL, Assignee,  
 H. C. BRUBAKER, Att'y. Residing in Blackwater P. O., Lancaster Co., Pa.  
 may4\*

**Assigned Estate of PETER SELLERS and WIFE, of Penn twp., Lancaster Co.**

Peter Sellers and Wife, of Penn township, having by deed of voluntary assignment, dated March 26th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Peter Sellers, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 ABRAHAM KLINE, Assignee,  
 W. M. FRANKLIN, Att'y. Residing in Manheim Borough.  
 ap27

**Assigned Estate of JOHN C. BYRAN, of Conoy township, Lancaster Co.**

Having by deed of voluntary assignment, dated April 10th, 1878, assigned and transferred all his estate and effects to the undersigned, for the benefit of the creditors of the said John C. Bryan, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay and those having claims to present them to  
 FREDERICK SMITH, Bainbridge, Assignee,  
 ap27 GEORGE BYROD, Elizabethtown.  
 H. C. BRUBAKER, Att'y.

**Assigned Estate of JOHN B. MEASHY and WIFE, of Mount Joy twp., Lan. Co.**

Having by deed of voluntary assignment, dated March 16, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John B. Meashy, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 JACOB SOUDERS, Assignee,  
 GEO. BRUBAKER, Att'y. Residing in said township.  
 ap27

**Assigned Estate of JOSEPH BOWMAN and WIFE, of Eden twp., Lancaster Co.**

Joseph Bowman and Wife, of Eden township, having by deed of voluntary assignment, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Joseph Bowman, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 JACOB BACHMAN, Assignee,  
 ap27\* Residing in Strasburg borough.

**Estate of WILLIAM TWEED, late of Strasburg township, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted there-to are requested to make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in said township.  
 H. N. BRENNEMAN, Administrator.  
 ap27

**Estate of JAMES MCGINLEY, late of Lancaster city, deceased.**

Letters of administration on said estate having been granted to the undersigned, all persons indebted there-to are requested make immediate settlement, and those having claims or demands against the same will present them without delay for settlement to the undersigned, residing in Lancaster.  
 PHILIP D. BAKER, Administrator.  
 D. P. ROSENMILLER, Jr., Att'y.  
 ap20

**Assigned Estate of AARON FULLMER and WIFE, of Lancaster City.**

Aaron Fullmer and Wife, of Lancaster City, having by deed of voluntary assignment, dated April 13, 1878, assigned and transferred all their estate and effects to the undersigned for the benefit of the creditors of the said Aaron Fullmer, he therefore give notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 BENJ. F. HOOKEY, Assignee,  
 THOS. J. DAVIS, Att'y. Residing in Conestoga twp.  
 ap20

**Assigned Estate of JOHN J. MILLER and WIFE, of Lancaster City.**

John J. Miller and Wife, of Lancaster city, having by deed of voluntary assignment, dated April 6, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said John J. Miller, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 FRANGIS PFEIFFER, Assignee,  
 ap13 B. C. KREADY, Att'y.] Residing in Lancaster city.

**Assigned Estate of SAMUEL W. LEWIS and WIFE, of Ephrata twp., Lancaster Co.**

Samuel W. Lewis and Wife, of Ephrata township, having by deed of voluntary assignment, dated April 8, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Samuel W. Lewis, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 MARTIN H. BITZER, Assignee,  
 A. J. EBERT, Att'y. Residing in Hinkletown Lancaster Co., Pa.  
 ap13

**Assigned Estate of EMANUEL HINKLE and WIFE, of East Cocalico twp., Lan. Co.**

Emanuel Hinkle and Wife, of East Cocalico twp.; having by deed of voluntary assignment, dated March 30, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Emanuel Hinkle, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 CYRUS REAM, Assignee,  
 WM. R. WILSON, Att'y. Residing in Reamstown, East Cocalico twp.  
 ap13

**Assigned Estate of JACOB A. WISNER and WIFE, of Marietta bor., Lancaster Co.**

Jacob A. Wisner and Wife, of Marietta borough, having by deed of voluntary assignment, dated April 8th, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Jacob A. Wisner, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 A. F. SHENCK, Assignee,  
 ap20 Residing in Lancaster Pa.

**Assigned Estate of COOPER STUBBS and WIFE, of Fulton twp., Lancaster Co.**

Cooper Stubbs and Wife, of Fulton township, having by deed of voluntary assignment, dated March 19, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Cooper Stubbs, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay, and those having claims to present them to  
 N. D. SCOTT, Assignee,  
 ap13] M. BROBIUS, Att'y. Residing in Lyle, Lan. co.

**Assigned Estate of LEVI KUPP and WIFE, of Mount Joy twp., Lancaster Co.**

Levi Kupp and Wife, of Mount Joy township, having by deed of voluntary assignment, dated April 5, 1878, assigned and transferred all their estate and effects to the undersigned, for the benefit of the creditors of the said Levi Kupp, he therefore gives notice to all persons indebted to said assignor, to make payment to the undersigned without delay and those having claims to present them to  
 WM. K. BERNHARD, Assignee,  
 ap13\* Residing in Milton Grove, Lan. Co.

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