1700. By a supplement to the act in the text, passed March 20th, 1810, it is enacted, that any three of the fence viewers appointed by the different Courts of Common Pleas, in the several counties of this Commonwealth, shall be a *quorum* for doing business; and any view or order which they may make in pursuance of, or in discharge of the duties enjoined on them in the original act, shall be as firm and valid in law, as if the whole number appointed in any of the counties aforesaid, had viewed or adjudged the same, according to the true intent and meaning of the said act. And each viewer shall receive one dollar for every day on which he shall be engaged in any view, which cost or expense shall be borne by both, or either parties, as the said viewers shall direct, according to the provisions of the original act.

CHAPTER LXX.

An ACT *concerning bills of exchange.* (*i*)

Twenty [per cent. on protested bills of exchange.

BE it enacted, That if any person or persons, within this province and territories, shall draw or indorse any bill or bills of exchange, upon any person or persons in England, or other parts of Europe, and the same be returned back unpaid, with a legal protest, the drawer thereof, and all others concerned, shall pay and discharge the contents of the said bill or bills, together with twenty pounds per cent. advance, for the damage thereof; and so proportionable for greater or less sums, in the same specie as the said bill or bills were drawn, or current money of this province, equivalent to that was first paid to the drawer or indorser.

Passed in 1700.—Recorded A. vol. I. page 64.

(*i*) A bill of exchange protested for *non-acceptance*, on which the drawer pays principal *and damages*, he cannot afterwards recover back the damages, because there was not, likewise, a protest for *non-payment*. *Morris* v. *Tarin*: 1 Dallas, 147. *Query*, whether a protest for non-acceptance only, is sufficient to recover the money from the drawer? *Ibid.*

The court will allow the plaintiff in an action upon a bill of exchange to strike out a special, as well as a general, indorsement on the bill. *Morris* v. *Foreman*: 1 Dallas, 193. A protest for non-payment must appear under a notarial seal; but it is not necessary that the non-acceptance should be certified in the protest; for, that may be sufficiently established by other evidence. *Ibid.* The possession of a bill of exchange is evidence of an authority to demand payment of its contents. *Ibid.* Unless a bill of exchange is in its origin expressly made payable to *order*, an indorsement, subsequent to the acceptance, cannot vary or enlarge the engagement of the acceptor, so as to subject him, by the law merchant, to an action at the suit of the *indorsee*. *Gerard* v. *La Coste, et al.* 1 Dallas, 194.

Where a bill is neither paid nor received, in satisfaction of a precedent debt, but upon the condition of its being honoured, if the bill is not honoured, but protested, the parties are in the same situation, as if it had never been drawn; and the plaintiff cannot be entitled to recover damages. *Chapman* v. *Steinmetz*. 1 Dallas, 261.

Reasonable notice of protest is to be given in the case of a bill of exchange. *Steinmetz et al.* v. *Currie*: 1 Dallas, 234, 270. And, also, in the case of a promissory note. *Robertson et al.* v. *Vogle*: *ibid.* (*Note to former edition.*)

See, Bank of *North America* v. *Vardon*, 2 Dallas, 78. And in a suit against an indorser of a promissory note, the Chief Justice said, before the revolution, it was not usual to give notice to the indorser, or even to call on the drawer, as soon as a note became due; it would have been considered as harsh and unreasonable. But since the establishment of a bank, a rule has been introduced; and as these notes, lodged in the bank, were often accommodation notes, it was highly reasonable notice should be given in a *short* time. What that time ought to be, has not been determined. Two or three months would certainly be too long, and a day may be too short. It was therefore left to the jury, with a direction to take into consideration the usual practice of that

time. In this case notice had been given to the drawer, on the day the note became due, and to the indorser four or five days after. The jury found a verdict for the plaintiff. Bank of *North America* v. *M'Knight*, 2 Dallas, 158, and see 4 Dallas, 109, what circumstances will be considered a waiver of notice. And in the Bank of *North America* v. *Pettit*, *ibid.* 129, the Court said, that the punctuality and other beneficial consequences, flowing from the rules adopted by the Bank, seem to have given them a more general operation and force; so as to constitute a general usage, and not merely a usage of the Bank. But notwithstanding the necessity of giving notice exists, on general principles, as well as upon the usage, its reasonableness still depends, here, on the verdict of a jury. As soon as we can, consistently with the state of the country, its roads, and its posts, it will be wise to adopt the *English* law upon the subject, for the sake of certainty and uniformity in the administration of justice; and, perhaps, (such is the rapid progress of population and public improvement.) the Court may, in future, incline to adopt it. And in the same book, pa. 165, it is still said, that what constitutes due notice, is a point to be settled. It has hitherto been regarded as a matter of fact, to be decided by a jury, under all the circumstances of each case, as it arises. The jury will, however, always be governed by a sound and reasonable discretion. They will allow but a short time for giving notice, where the parties reside in the same town; six weeks, in such a case, would be too long; and for giving notice in different parts of the country, they will bring into the calculation of a reasonable time, the facility of the post, the state of the roads, and the dispersion of the inhabitants, in relation to the post towns.

Where bills of exchange shall be deemed payment, and where not, see 2 Dallas, 100, 101, 135, 136.

Though only one satisfaction can be recovered, execution may issue for costs in all the actions brought against the several parties to a promissory note. 2 Dallas, 117.

The acceptor of a bill of exchange is *only* liable to the last indorsee; for all the prior indorsers have parted with their interest in it, are presumed to have received a valuable consideration for it, and can therefore have no right to the money a second time. But if the last indorsee protests the bill for non-payment, and afterwards receives back the money from a prior indorser, such indorser acquires a *new title*, to receive the money from the acceptor, by such payment. Therefore in an action by the first indorser (the payee) against the acceptor of a bill of exchange, which had been several times indorsed, the mere possession of the bill and protest, is not sufficient evidence that the plaintiff had paid the subsequent indorsee, which must be proved, to entitle him to recover: for he may have come into possession of the bill, by finding, bailment for a special purpose, or by fraud. *Gorgerat et al.* v. *M'Carty*. 2 Dallas, 144. 1700.

And in the same case it was held, that among bills payable to order, there is a distinction between those which are specially indorsed, and those which are indorsed in blank. Possession of the latter is evidence of title; but bills specially indorsed do not pass by delivery, and therefore possession does not prove property in them. And the case of *Morris* v. *Foreman*, 1 Dallas, 193, (cited in the note to the former edition) is more fully reported and explained. This latter point has also been decided in the Circuit Court of the United States, for the *Pennsylvania* district; in *Wilkinson et al.* v. *Nicklin et al.* 2 Dallas, 397, in which it is said by the Court, that there is no rule more perfectly established, none which ought to be held more sacred in commercial transactions, than that the blank indorsement of a bill of exchange passes all the interest in the bill, to every indorsee, in succession, discharged from every obligation, which might subsist between the original parties, but which does not appear upon the face of the instrument itself. See 4 Dallas, 61.

An action cannot be maintained in the name of an indorsee, upon a promissory note not payable to order; and judgment was arrested, after interlocutory judgment, which had been signed, for want of a plea, and a writ of inquiry issued and returned. *Barriere* v. *Nairac*, 2 Dallas, 249. See 1 Dallas, 194.

Promissory notes are not entitled to the same priority of payment as bills of exchange, in a course of administration, under the provision in the 13th section of the act incorporating the Bank of *Pennsylvania*; the act only applies to the case of defalcation. 2 Dallas, 263.

If a man accepts a forged bill, or draft, he is not only conscientiously, but legally bound to pay it. *United States* v. *the Bank of the United States*. Circuit Court U. S. October 1800. *Philadelphia*. 4 Dallas, 235, (note.)

Not on the principle that his acceptance has given a credit to the bill, but because it is his duty to know the drawer's hand writing, which he is precluded

1700. from disputing by his acceptance. *Levy* v. *Bank of United States.* 1 Binney, 36. S. C. 4 Dallas, 234.

An alteration of the date of a promissory note by payee, whereby the time of payment is *retarded*, which is afterwards discounted with innocent persons by the payee, on indorsing it, avoids the note. MSS. Reports, Sup. Court.

In an action on a bill of exchange protested for non-payment, the plaintiff need not aver, nor produce, a protest for non-acceptance. *Brown* v. *Barry.* Sup. Court U. S. 3 Dallas, 368. And *Clarke* v. *Russel.* Ibid. 424.

And a suit may be brought against the drawer of a bill of exchange for non-acceptance, before it becomes payable. But 20 per cent. damages are not recoverable in *Pennsylvania*, on bills of exchange protested for non-acceptance—but interest only from notice of the protest. MSS. Reports, Sup. Court. *Semb.* 2 Dallas, 135. The current rate of exchange at the time of trial must determine the sum to be recovered. If there is no such rate it must be fixed at *par*, MSS. ibid.

If a foreign bill of exchange is remitted at the risk of the debtor here, he is entitled to the 20 per cent. damages, and not the foreign creditor. In point of justice it is but fair to allow every incidental, or casual, profit and emolument, to the party who is exposed to all the hazard and inconvenience of remittance. 4 Dallas, 157.

A bill of exchange lost, and an indorsement forged thereon, and the money paid by the acceptors (who were of the same house with the drawers) the real payee shall recover the money. And there may be a recovery against the acceptor, on a bill of exchange lost, or mislaid. MSS. Reports, Sup. Court.

If a bill of exchange be drawn in favour of a fictitious payee, and that circumstance be known, as well to the acceptor as the drawer, and the name of such payee be indorsed on the bill; an innocent indorsee, for a valuable consideration, may recover on it against the acceptor, as on a bill payable to *bearer*. MSS. Reports, Sup. Court.

It is a settled principle, that judgment cannot be rendered for a plaintiff, unless a cause of action appears on the face of his declaration. If it appears in substance, the Court, after verdict, will support it, though defectively set forth; because it will be presumed the deficient matters were proved on the trial; but a verdict will not mend the matter, where the *gist* of the case is not laid in the declaration, though it will cure ambiguity. The want of an *express* promise might be dispensed with, provided enough was stated to raise a promise by implication of law. But the drawer of a bill of exchange is not liable, unless he receives notice of the non-payment of the acceptor, and such notice must be alleged in the declaration; an allegation in the declaration, that the drawer became liable by the *custom of merchants*, is not sufficient; because the law merchant is not a matter of *fact*, but of *law*. *Miles*, in error, v. *O'Hara*. High Court of Errors and Appeals. July 1807. MSS. Reports.

What is reasonable time of notice to be given to the indorser of a note, of its being dishonoured, is now settled to be matter of law. In cases of the Banks, they must give notice in 6 or 7 days.

Where a promissory note has been indorsed, after it became due, it amounts to an original undertaking, as a note merely drawn by the indorser. MSS. Reports, Sup. Court.

The indorser, the original payee, who had become a bankrupt, is not a witness to prove the want of consideration, in an action by the indorsee against the drawer. 2 Dallas, 194.

See the act to devise a particular form of promissory note, not liable to any plea of defalcation or sett-off, passed Feb'y 27th, 1797, (post. chap. 1909.)

This act extends only to the city and county of Philadelphia.

Bills of exchange and promissory notes, payable to order in the city of *Philadelphia*, are properly negotiable paper, after such notes have been indorsed *bona fide* in the course of trade. The effect is, that the holder may sue in his own name, and may recover the money from the drawer, without any embarrassment whatever on account of any counter demands, or want of consideration as between the drawer or maker, and the payee. 1 Binney, 433, (in the note.)

CHAPTER LXXIII.

An ACT *for regulating weights and measures.* (*k*)

Standards of weights and measures to be had in each county.

BE it enacted, That in each county of this province and territories there shall be had and obtained, within two years after the

(*k*) This act, except the last section, is confirmed post. chap. 138; and by an act passed on the 19th of January, 1733-34, (post. chap. 332,) millers, bolters and