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 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

making of this law, at the charge of each county, to be paid out of the county levies, standards of brass, for weights and measures, according to the King's standards for the exchequer; which standards shall remain with such officer in the counties aforesaid, as shall be from time to time appointed by the Governor, with the advice of the Council: And every weight, according to its scantling, and every measure, as bushels, half-bushels, pecks, gallons, pottles, quarts and pints, shall be made just weights and measures, and marked by him that shall keep the standards. And that no person within this province and territories shall presume to buy or sell by any weights or measures, not sealed or marked in form aforesaid, and made just according to the standards aforesaid, by the officers in whose possession the standards remain, on penalty of forfeiting five shillings to the prosecutor, being convicted by one Justice of the Peace of the unjustness of his weights or measures. And that once a year at least, the said officer, with the Grand Jury, or the major part of them, and for want of the Grand Jury, with such as shall be allowed and appointed by the respective County Courts aforesaid for assistants, shall try the weights and measures in the counties aforesaid; and those weights and measures as are defective to be seized by the said officer and assistants: Which said officer, for his fees, for making each bushel, half-bushel and peck just measure, and marking the same that is large enough when brought to his hands, shall have ten-pence; and for every lesser measure, three-pence; for every yard, three-pence; for every hundred and half-hundred weight, being made just and marked, three-pence; for every lesser weight, one penny. And if the weights and measures be made just before they be brought to him, then to have but half the fees aforesaid for marking the same. And if the said officer shall refuse to do any thing that is enjoined by this law, for the fees appointed, and be duly convicted thereof, [he] shall forfeit five pounds, to the use of the Proprietary and Governor.*

1700.

to be kept in each county.

All weights and measures to be sealed, and tried once a year.

The officer's fees.

The penalty on misbehaviour.

II. *Provided always, and it is hereby enacted,* That the brass half-bushel, now in the town of Philadelphia, and a bushel and peck proportionable, and all lesser measures and weights coming from England, being duly sealed in London, or other measures agreeable

bakers were required to bring their weights and measures, once in three years, to the standard kept in each county, according to the direction of the law in the text: [but that act was repealed on the 5th April, 1781, (post. chap. 925.)]

It appears by the records of the executive department, that the late Supreme Executive Council, proposed two questions on this act for the opinion of the Attorney-General (Mr. *Bradford.*) "1st. In whom the appointment of the officer therein mentioned is now vested? and 2d, Whether the Mayor or Corporation of Philadelphia have a right to appoint such an officer for the city, in exclusion of that appointed by the county?" The opinion of the Attorney-General, dated the 14th of October, 1790, in answer to the first question, states, "that previously to the revolution the power of appointment was clearly in the Governor; and, by the laws and constitution of the state, may now be exercised by *the President and Council:*" And, in answer to the second question, it states, "that the Mayor and Corporation have not any such power of appointment." However, as it seemed doubtful whether there is now in existence any such standards as are directed by the act to be procured, and as the original standard is now kept in a foreign kingdom, a revision of the act was suggested by the Governor to the Legislature, in his address of the 28th day of December, 1790, unless there should

* *The word [he] is not contained in the original roll, though inserted in the former edition.* (Note to former edition.)

1700. therewith, shall be accounted and allowed to be good by the aforesaid officer, until the said standards shall be had and obtained.

III. *And be it further enacted*, That no person shall sell beer or ale by retail, but by beer measure, according to the standard of England. (*l*)

Passed in 1700.—Recorded A. vol. I. page 65.

speedily be made by the Federal Government some general and permanent provision, which would supersede the necessity of any state regulations. As the constitution of the United States, (art I. sect. 8,) vests in Congress the power of fixing the standard of weights and measures, and as a general regulation is contemplated by that body, the Legislature of Pennsylvania has not hitherto interposed on the subject. (*Note to former edition.*)

(*l*) By an act passed in 1705, (post. chap. 138) any person licensed to keep any tavern, inn, alehouse, or victualling house, shall sell beer and ale by wine measure, to all persons who drink it in their houses, and by beer measure to all such persons as carry the same out of their houses, under the penalty of ten shillings, &c. and this act is confirmed, except the third section.

## CHAPTER LXXV.

*An* ACT *for keeping a registry in religious societies.*

Registries of religious societies to be evidence.

*BE it enacted*, That the registry now kept, or which shall hereafter be kept by any religious society, in their respective meeting-book or books, of any marriage, birth or burial, within this province, or territories thereof, shall be held good and authentic, and shall be allowed of upon all occasions whatsoever.

Passed in 1700.—Recorded A. vol. I. page 67. (*m*)

(*m*) Copy of the register of births and deaths of the people called Quakers, in England, proved to be a true one before the Lord Mayor of London, allowed to be given in evidence to prove the death of a person. *Lessee of Hyam et al.* v. *Edwards*. 1 Dallas, 2.

*Ex parte affidavit* made in *England*, is evidence of pedigree. So, a leaf extracted from a family bible, containing entries of births and deaths of children, sworn to by some of the children, is good evidence. 2 Dallas, 116.

An *ex parte affidavit* is good evidence to prove the identity of a person, so far as it respects his marriage or pedigree. MSS. Reports, Sup. Court.

Recitals in a conveyance from divers persons said to be the children of *C. Sparks*, (who had entered an application) to the lessor of the plaintiff, for the lands in question, held to be evidence of the pedigree. *Lessee of Paxton* v. *Price*. Bedford, April 1795. MSS. *Nisi Prius Reports.*

## CHAPTER LXXXI.

*An* ACT *about cutting timber-trees.*

Penalty on cutting or felling trees.

*BE it enacted*, That if any person or persons, within this province or territories, shall be convicted of cutting or felling any black walnut-trees upon another person's land, without leave, he shall forfeit, to the owner thereof, five pounds for every tree so felled and cut; and for other timber fifty shillings each tree; and for fire or under-wood, double the value thereof, to the use aforesaid.

Passed in 1700.—Recorded A. vol. I. page 71. (*n*)

(*n*) See the acts of March 1st, 1799, and March 20th, 1810, and the first part of the note to chap. 11, ante pa. 1, and the act against removing land-marks, chap. 15, ante pa. 4, and the act to prevent the damages which may happen by firing of woods, passed April 18th, 1794, (post. chap. 1732.)

Note. *The foregoing laws were passed at* New Castle, *at a Session, begun October 14th, and ended November 27th, 1700.*