bidders, and he would get some one to bid it off; that would be better than for her to bid it off. The defendant and Aden agreed to this proposition. Relying upon it they did not interfere nor bid at the sale; nor did she get any other person to bid for her. Simpson bid it off for $110. The plaintiff bought of him with full knowledge of this arrangement.

Under these facts the court below held that a trust *ex maleficio* arose in favor of the defendant as to the homestead.

All the errors assigned are substantially to this conclusion.

Where a parol contract for the purchase of land has been carried on *mala fide*, there is a resulting trust implied by law, and equity will decree a conveyance according to the terms of the contract: *McCulloch* v. *Courter*, 5 W. & S. 427. Equity will not permit one to hold a benefit which he has derived through the fraud even of another, and much less will it do so if he has acquired it by means of his own fraud: *Sheriff* v. *Neal*, 6 Watts, 540. In *Morey* v. *Herrick*, 6 Harris, 128, Justice Bell said, "it is equally well settled that if one be induced to confide in the promise of another, that he will hold in trust, or that he will so purchase for one or both, and is thus led to do what otherwise he would have forborne, or to forbear what he contemplated to do, in the acquisition of an estate, whereby the promissor becomes the holder of the legal title; an attempted denial of the confidence is such a fraud as will operate to convert the purchaser into a trustee *ex maleficio*." Where one holding an article of agreement for one hundred and sixteen acres of land, upon which he had paid five dollars only, and was liable to be turned off, surrendered his title under a parol contract that ten acres thereof should be conveyed to him so soon as the person for whose benefit he gave up his title acquired a deed for the legal title, it was held to create a trust *ex maleficio* in his favor as to the ten acres: *Plumer & Crary* v. *Reed*, 2 Wright, 46. Nor does it make any difference that the title was acquired by Simpson through the judicial sale: *Beegle* v. *Wentz*, 5 P. F. Smith, 369, and cases there cited. This case of *Beegle* v. *Wentz* was one in which a debtor was induced to relinquish his claim to the $300 exemption, and consented that the whole of his land be sold, under an agreement that the plaintiff was to take a sheriff's deed for the same and make to the debtor a deed for the part agreed upon. It was held that if the debtor was induced to surrender his right on the false assurance that the part should be left to him, the plaintiff refusing, was a trustee *ex maleficio*. This was since the Act of April 22, 1856, and was held to be such a trust or confidence as was not affected by that Act. The same principle is affirmed in *Seichrist's Appeal*, 16 P. F. Smith, 237.

It was contended, however, that inasmuch as the agreement between the defendant and Simpson was that she and her agents and friends should not bid at the sale, it was contrary to public policy, and therefore void. In support of this principle the case of *Slingluff* v. *Eckel*, 12 Harris, 472, is cited. We assent to the correctness of the law there declared, as applied to the facts in that case. That was an agreement between two persons, neither of whom has any possession of or interest in the land. The court there said: "What we do agree is, that one bidder cannot legally buy off another with money or the promise of money."

The distinction in this case is, that the defendant had an interest in the land in reference to which the contract was made, and she was to retain a portion of that land. This is a distinction clearly taken and recognized in *Beegle* v. *Wentz*, and in *Seichrist's Appeal*, *supra*.

Judgment affirmed.

—*Legal Intelligencer.*

The Pennsylvania Railroad Co. v. Beale.

It is evidence of contributory negligence if a person does not stop and look out for a locomotive before driving across a railroad track.

[July 2nd, 1873.]

Error to the Court of Common Pleas of Juniata county.

Sharswood, J. The evidence showed a clear case of contributory negligence in the deceased. The crossing at which he met with the injury which resulted in his death, was a dangerous one, and as he was well acquainted with it, there was the greater reason that he should exercise the utmost care and caution, by stopping at the railroad before undertaking to pass over. It is very clear that if he had done so, but for a few minutes, the accident would not have happened. "The evidence," said the learned judge in his charge, "is uncontradicted, that there was a level piece of ground about ten feet wide, between the hill or bluff, and the first track or siding on the approach to the track from the valley upon which the deceased was travelling." It was his plain duty to have stopped at that place, and so the learned judge instructed the jury, but he qualified the instruction by adding, "if you find from the evidence that the approach of the train might have been