

Q. B., H. T., 1873.]

NOTES OF RECENT DECISIONS.

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assignment to the respective patentees by the original purchaser of the N. W. $\frac{1}{4}$ could not be resorted to to aid the interpretation of the patents.

ROCHE ET AL. V. KEMPT.

Promissory note—Accommodation maker—Principal and surety—Opening up account stated.

Action upon a promissory note made by defendant, payable to M., and endorsed by M. to plaintiffs. Plea: that the note was made for the accommodation of M., and, before action, was paid by M. to plaintiffs. At the trial it appeared that the defendant made the note for M.'s accommodation, of which the plaintiffs were aware, and that there was an agreement between plaintiffs and M., to which defendant was not a party, by which, if on a final settlement of accounts the plaintiffs were indebted to M., such balance should be applied first in liquidation of this and other notes, and in the event of a loss it was to be borne *pro rata* by the several indorsers. It also appeared that there had been a settlement between M. and the plaintiffs, signed by them, by which M. was found to be indebted in a large sum; but M., in his evidence, stated that he had not got credit for some timber of his taken by the plaintiffs. Defendant offered evidence to show that under the accounts between M. and plaintiffs, there was a balance due to M., which, under the agreement referred to, would show this note to be paid by M.

Per MORRISON, J.—Such evidence was properly rejected, and could not be given under the plea of payment by M., but the agreement and facts relied on should have been pleaded specially.

Per WILSON, J.—The evidence was admissible, and it was competent to defendant to open up the account between M. and plaintiffs.

BATEMAN V. CITY OF HAMILTON.

City corporation—Negligent construction and obstruction of culvert—Action for.

In an action for negligently constructing a culvert under a public street, and altering drains so that more water was directed through said culvert than it could carry off, and for allowing the culvert to become obstructed, whereby plaintiff's premises were overflowed, &c., it appeared that the culvert, &c., had existed for twenty years, under a public street in the city, but it was not shown by or for whom it was made, nor when the obstruction of the culvert by

mud and stones, &c., took place, nor that it had been brought to defendants' knowledge.

Held, that the plaintiff must fail.

GROVES (Assignee in insolvency of OWEN McMAHON) V. MCARDLE.

Insolvent act of 1869—Estoppel—Finality of proceedings in insolvency.

Declaration by plaintiff as assignee in insolvency of McM., on the common counts.

Plea: that McM. was not a trader within the meaning of the Insolvent Act of 1869.

Replication by way of estoppel, setting out in full the proceedings and adjudication in the insolvent court, showing that an attachment in insolvency issued against McM., that he petitioned the judge to set it aside, on the ground, among others, that he was not a trader within the act, that the judge decided that he was a trader, and that such decision was affirmed on appeal by one of the judges of the C. P.

Held, on demurrer, plea good; though the more formal plea would have been one denying that the plaintiff was assignee of McM. in manner and form, &c.

Held, also, replication bad, as such adjudication and proceedings were not conclusive, at all events, as against a debtor of McM., but were subject to question in this court.

HALPENNY V. PENNOCK.

Husband and wife—Purchase of goods, and chattel mortgage by wife—Agency implied—Leave and license—Evidence.

The plaintiff went to British Columbia nine years before this action, leaving his wife here, to whom he wrote and occasionally sent money. She procured the defendant to endorse a note made by her for the price of furniture to carry on a boarding house (which she subsequently carried on with the plaintiff's knowledge), and executed to defendant a chattel mortgage under seal in her own name on said furniture. The rent of the house being in arrear, and part of the mortgage money overdue, the landlord distrained, and the defendant enforced his mortgage; and the plaintiff's wife not dissenting, but rather assenting, the goods were sold, and the balance, after the payment of rent and mortgage, was handed over to her. The plaintiff thereupon sued the defendant in trespass and trover.

Held, that the wife was the agent of her husband, the plaintiff, in respect to purchasing the furniture, and to do all that was necessary to acquire it.