What then was the contract in this case. It was a hiring at $100 per month. It was therefore a contract containing several stipulations—each stipulation giving a right of action on its breach. There is no doubt the plaintiff could have maintained a separate action for each instalment as it became due, had he not been discharged, but continued to serve. Having been discharged *without cause*, his rights were not lessened; he was not bound to treat the contract as at an end. He *could* have done so, and brought his action for damages on the breach: or he could have waited for the expiration of the whole time, and brought his action for all the monthly instalments—but he was not bound to do either. *He had the right to treat the contract as still subsisting, and could maintain an action for each instalment as it fell due.* I therefore hold, that the action before the justice was no bar to this, and direct judgment for plaintiff on the verdict.

SUPREME COURT OF PENNSYLVANIA.

Flanagan v. Mechanics' Bank.

Bills and notes—Garnishee.

1. Evidence of failure of consideration between the original parties is inadmissible to affect the claim of an indorsee for value of negotiable paper acquired before maturity, and without notice.
2. Where by proceedings in foreign attachment, and on the *sci. fa.*, by a creditor of the payee, judgment is had against the drawer of such note, without any notice to the indorsee, the latter is not bound thereby.
3. To protect himself from a double liability the garnishee should notify the holder of the note, and call on him to interplead: or, if he cannot ascertain the holder he may show the nature of the paper, and its actual transfer as an answer to the attaching creditor.

Error to District Court of Philadelphia county.

The opinion of the court was delivered at Alltsburgh, October 31st, 1867, by

Thompson, J.—The bill of exceptions contains no exception to the charge; consequently we are confined in this review to those exceptions relating to the two items of rejected testimony.

The first of these was an offer, in substance, to show failure of consideration for the notes in question, long after their date and negotiation, but before maturity. To be more specific: the notes were dated respectively in December 1860 and January 1861, and drawn payable to the Insurance Company of Virginia. They passed into the hands of the Bank of the Commonwealth, of Richmond, and by it were transferred to the Mechanics' Bank, the plaintiff, on the 29th or 30th of April, 1861, in payment of a balance due by the former to the latter bank. The proposi was to prove that in June following the policies, for which the notes were given, were cancelled by the company with the drawer's assent. The plaintiff's title had accrued before this; and even if it had not this would have been no defence without notice of the failure of consideration, the notes being negotiable, and not due when received, and credited on account to the Commonwealth Bank. All this is too plain to require elucidation. The court below properly rejected the testimony.

2. The other exception is to the rejection of the record in foreign attachment, and the judgment in the *Sci. Fa.* against the defendant. The plaintiff below had no notice of that suit, was no party to it, and was not bound by the judgment. If it be supposed that because the process of Foreign Attachment is sometimes said to be in the nature of a proceeding *in rem*, the judgment against the garnishees, like proceedings in bankruptcy, decrees of distribution and in admiralty, and other like cases, is conclusive on everybody, it is a great mistake. It is said to be in the nature of a proceeding *in rem* because it is a process against the thing belonging to the debtor in the first place, and the judgment against the garnishee has relation to its value: 9 W. 488. But the controversy with, and as to the liability of the garnishee, is *in personam*, and concludes only the parties legally actors in it: 12 S. & R. 287; 9 W. *sup.* The learned judge very properly held the attachment and proceedings on the *sci. fa.* as *res inter alios acta*, and not evidence. The complaint of error in this particular is not sustained.

I think it was competent for the garnishee to have protected himself against a double liability by satisfying the holder of the notes of the attachment, and calling upon him to interplead. Or if he could not ascertain the holder he might have shown the nature of the paper, and its actual transfer. This would have been an answer, one would suppose, to the attaching creditor. We cannot well say, as a rule, that a debt due by a negotiable instrument is not liable to be attached for a debt due by the payee. There is no reason for saying it would not be simply because of its form. It is only when actually negotiated that there is a reason against it, and it seems to me the garnishee might and ought to protect himself in one or other of the modes suggested above. But we need not definitely determine this point in order to decide this case.

The other questions argued in the paper books, and not above noticed, are not before us; and any opinion upon them would be extra judicial and should not be given. The charge of the court is not before us according to any mode of proceeding for bringing it up: Vol. 1, p 570, Fish's Tr. & H Had the counsel for the defendant in error examined the bill of exceptions carefully they would have saved themselves and us some trouble.

Judgment affirmed.

GENERAL CORRESPONDENCE.

The Law of Evidence.

To the Editors of the Law Journal.

Gentlemen,—A bill was lately before the Legislature of Ontario to change the law of evidence in this Province. It proposed to allow plaintiff or defendant to testify in his own behalf in all courts. Happily, for the present, the Legislature has thrown it out; but it may not be amiss to give here a few reasons why it should never become law, especially as