ACTS

OF THE

General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1714, and ended May 28th, 1715.

1715. CHARLES GOOKIN, LIEUTENANT-GOVERNOR.

CHAPTER CCVII.

An ACT *for the assigning of bonds, specialties, and promissory notes.*

WHEREAS it hath been held, that bonds and specialties, under hand and seal, and notes in writing, signed by the party who makes the same, whereby such party is obliged, or promises, to pay unto any other person, or his order or assigns, any sum of money therein mentioned, are not, by law, assignable or indorsable over to any person, so as that the person to whom the said bonds, specialties, note or notes, is or are assigned or indorsed, may in their own names, by action at law, or otherwise, recover the same: Therefore to the intent to encourage trade, commerce and credit, *Be it enacted*,

Bonds, &c. may be assigned.

That all bonds, specialties, and notes, in writing made or to be made, and signed by any person or persons, whereby such person or persons is or are obliged, or doth or shall promise to pay to any other person or persons, his, her, or their order or assigns, any sum or sums of money, mentioned in such bonds, specialties, note or notes, may, by the person or persons to whom the same is or are made payable, be assigned, indorsed and made over to such person or persons as shall think fit to accept thereof.

Such assignee may assign again.

II. And that the person or persons, to whom such bonds, specialties or notes, are or shall be assigned, indorsed or made over, their factors, agents, executors or assigns, may, at his, her or their pleasure, again assign, indorse and make over the same, and so *toties quoties*.

Sue in their own names.

III. And that it shall and may be lawful for the person or persons, to whom the said bonds, specialties or notes are assigned, indorsed or made over as aforesaid, in his, her or their own name or

names, to commence and prosecute his, her or their actions at law, for recovery of the money mentioned in such bonds, specialties or notes, or so much thereof as shall appear to be due at the time of such assignment, in like manner as the person or persons to whom the same was or were made payable might or could have done. 1715.

IV. And in every such action, the plaintiff or plaintiffs shall recover his, her or their damages, and costs of suit; and if such plaintiff or plaintiffs shall be non-suited, or a verdict be given against him, her or them, the defendant or defendants shall recover his, her or their costs, against the plaintiff or plaintiffs. Recover damages with costs;

V. And every such plaintiff or plaintiffs, defendant or defendants, respectively, recovering, may sue out execution for such damages and costs, in the like manner as is usual for damages and costs in other cases. and sue out execution,

VI. *And be it further enacted*, That all and every such actions on such promissory notes shall be commenced, sued and brought, within such time as is appointed for commencing or suing actions upon the case, by an act of this province, passed in the eleventh and twelfth years of the late Queen Anne, entitled *An act for limitation of actions.* Limitation of actions on promissory notes, ante. chap. 196, pa 76.

VII. *Provided always*, That no person or persons shall have power, by virtue of this act, to make, issue, or give out, any bonds, specialties or notes, by themselves or servants, than such as they might have made, issued, and given out, if this act had never been made.

VIII. And that all assignments made, of bonds and specialties, shall be under hand and seal, before two or more credible witnesses. Assignments to be under hand, seal, &c.

IX. *Provided also*, That it shall not be in the power of the assignors, after assignment made as aforesaid, to release any of the debts or sums of money really due by the said bonds, specialties or notes. After assignment, the assignee not to release.

Passed 28th May, 1715.—Recorded A. vol. II. page 101. *(n)*

(n) By the act for incorporating the bank of Pennsylvania, (chap. 1656,) sect. 13,) all notes or bills discounted by that bank are placed on the same footing as foreign bills of exchange, so that the like remedy may be had against the drawers and indorsers, except so far as relates to damages.

The assignee of a bond takes it at his own peril, standing in the same place as the obligee, so as to let in every defalcation which the *obligor* had against the obligee, at the time of the assignment, or notice of it. The only intent of the act is to enable an assignee of a bond, &c. to sue in his own name, and to prevent the obligee from releasing after assignment. 1 Dallas, 23. So, in the case of a promissory note, the indorsee takes it subject to all equitable considerations, to which it was subject in the hands of the indorser, the original payee. *Ibid.* 441. 4 Dallas, 62. See 3 Binney, 168.

A bill of exchange, without the words "or order," or other words of negotiability, is not indorseable over, so as to enable the indorsee to bring an action on it, against the acceptor, in his own name. 1 Dallas, 194. And the sale and delivery of a promissory note, by a payee, without any indorsement or assignment, is not of itself a legal ground of *assumpsit*, to enable the purchaser in his own name to sue the drawer. *Ibid.* 371. *(Note to former edition.)*

See the notes to the "act for defalcation," ante. pa. 51, (or ap. 150.) And *Rousset* v. *Insurance Company* of N. A. 1 Binney, 429, and *Gourdon* v. *the same*, *ibid.* 433, (in the note,) full abstracts of which cases are given in the note to chap. 150.

What constitutes a legal assignment under this act, see 1 Dallas, 444. In which case it is said by the Court, that the covenant implied by the word *as*

1715. *signed*, extends only to this, that the assignee should receive the money from the obligor for his own use: and if the obligee received it, that then the assignor would be answerable over for it.

In *M'Cullough*, assignee, v. *Houston*, 1 Dallas, 443. The Chief Justice, in delivering the opinion of the Court, among other points, states, "that before this act was passed, it appears that actions by the *payee* of a promissory note, were not maintained, nor *can they since be maintained*, otherwise than by extending the English statute of 3 and 4 Ann. chap. 9, sect. 1. Actions upon promissory notes were probably brought here, soon after the passing of the statute, by attornies who came from England, and were accustomed to the forms of practice in that kingdom, but did not, perhaps, nicely attend to the discrimination with regard to the extension, or adoption of statutes. I have no doubt, indeed, that many acts of parliament, passed, not only before, but subsequent to the union of *England* and *Scotland*, have, by the same means, been introduced and practised upon in *Pennsylvania*: and as experience has proved such proceedings to be *beneficial, so constant and uninterrupted usage has given them a legal existence, that cannot now be shaken or destroyed*. But the indorsees of promissory notes, according to the best information which we can obtain, have never grounded their actions against the *drawer*, upon any other basis than the act of assembly now under consideration. Though I think the action by an *indorsee* against the *indorser, must be founded on the statute of Anne, and the usage under it*, as no such action is given by the act" (in the text.)

The force of this opinion will be seen by attending to the language of the act in the text. In it, there is no provision enabling the promissee, or drawee to bring an action on the note itself: and such action did not lie at common law. Nor does the act extend further than to enable the assignee, or indorsee, to bring an action in his own name against the drawer: but there is no provision that an indorsee shall sue the indorser, *according to the custom of merchants*, although it is evident that the makers of the act had the statute of *Anne* in view, from their having, in other respects followed the very words of it. Probably the usage that had obtained of bringing actions on such notes, was considered as rendering an express provision unnecessary.

The statute of *Anne*, having thus been adopted, and practised under for more than a century, is reported by the Judges to the Legislature, as being in force here, and part of the law of the land. It gives the remedy by action on promissory notes, according to the custom of merchants, as upon any inland bills of exchange, not only against persons signing such note, but against any of the persons that *indorsed* the same, &c

Only the 1st, 3d, 4th, and 8th sections of this statute are in force here: the second section is supplied by the 6th section of the act in the text.

If the obligee of a bond assigns it, notice ought to be given to the obligor, in order to prevent his paying the money to the person who has thus parted with his interest. By *Shippen*, President. 2 Dallas, 49, 50. See 4 Dallas, 62.

In *Humphries* v. *Blight's assignees*, 4 Dallas, 371, the Judges of the Circuit Court of the United States, said, "In the case of negotiable paper, or *in the case of an assignable bond*, we have always thought, that the assignee takes it discharged of all the equity, (as between the original parties,) of which he had no notice. But whenever the assignee has notice of such equity, either positively, or constructively, he takes the assignment at his peril. *Quære*, and see the cases before cited, and to what extent this case is to be understood; and *Ludwick* v. *Croll*, (infra.)

A simple contract debt, not founded on any note in writing, cannot be assigned so as to enable the assignee to sue *in his own name*. 1 Dallas, 268.

But after a *bona fide* assignment of a simple contract debt, the Court will not allow the nominal plaintiff to discontinue an action brought to recover it for the use of the assignee. *M'Cullum* v. *Coxe*. 1 Dallas, 139.

A writing under seal cannot be given in evidence, in an action of *assumpsit* on a promissory note. *January assignee* v. *Goodman*, 1 Dallas, 203.

On general principles of law, stock contracts cannot be regarded as negotiable; but a contractor may make himself liable as if they were so. The contract was expressed in these words: "On the 18th of April, 1792, I promise to receive from *Joseph Boggs, or order*, $10,000 six per cents. and pay him for the same, at the rate of 23*s.* 7½*d.* per pound.

(Signed,) *Francis Ingraham.*"

The assignment was indorsed in these words: "I do hereby authorize *William Reed*, or *his order*, to tender or deliver the stock within mentioned, and the said *William Reed*, or his order, to receive for the same, the sums of money due and payable therefor, at the rates within expressed. April 7th, 1792.

(Signed,) *Joseph Boggs.*"

The plaintiff gave notice of the assignment to the defendant, a short time before the day fixed for the execution of the contract: and the stock was tendered in due form.

The assignee brought this suit in his own name, to recover the amount of the difference due on the contract.

By the Court. The action is well brought, as it is founded on a contract, in which the defendant expressly stipulates, that he will receive the stock from, and pay the price to *Joseph Boggs, or his order.* The maxim, *modus et conventio vincunt leges*, applies forcibly to the case. *Reed* v. *Ingraham*, 3 Dallas, 505, and confirmed, on motion for a new trial, upon mature deliberation. 4 Dallas, 169. *Note*—The other part of the contract, which does not appear in the printed case, is as follows: "*Boggs* promises to transfer to *Ingraham* or *his order*, the same amount *of six per cents.* upon his paying *to him, or order*, the same rate." S. C. MSS. Reports, Supreme Court.

In debt, the facts were, as follow.

B. an inhabitant of N. Carolina, an adventurer, claimed a right to a very large body of land in *Kentucky*, under a survey, pretended to have been made on the 18th June, 1795. This survey bore the marks of fraud on the face of it, and was admitted to be fraudulent by the plaintiff's counsel. On the 8th June, 1796, B. conveyed these lands to the defendant and four others, in consideration of one *cent* per acre. The defendant paid him £.200, and gave him two bonds conditioned for the payment of £.275 each, by instalments. One of these bonds had been assigned to one K. whom defendant had satisfied. The other, on which this suit was brought, had been assigned to plaintiff on the 24th June following. No part of the consideration appeared to have been paid by the other purchasers, for their proportion of the lands; and B. disappeared shortly after the conveyance. While the defendant believed he had a good title to the land, and within two or three months after the contract, having heard that the plaintiff had got one of the bonds by assignment, he acknowledged, in the presence of two witnesses, that he must pay it off. On this circumstance the plaintiff's counsel relied for the recovery.

By the Court. (*Yeates* and *Smith*, Justices.) If the plaintiff, ignorant of the unfairness of the original transaction, had been induced to obtain the assignment by the defendant's promising to pay it, (1 *Washington's* reports, 392,) the latter ought to be bound by his engagement, notwithstanding the great hardship of the case; for he would be the cause of the deception, and his admissions would operate as a new contract between himself and the plaintiff. But the ackowledgments in the present instance, could not have influenced the plaintiff's conduct, having been made several months after the assignment. 1715.

Equity will relieve against a plain mistake, or against ignorance of title, though not under all given circumstances. To make a receipt in full of all demands, a conclusive bar, it must be given with full knowledge of all the facts; and one may avoid a promise, by shewing that there was no consideration for it.

As between the obligor and obligee, who had swindled him already out of £.475, no possible doubt could exist. The assignee of a bond takes it at his own peril, subject to every defence which might be set up against the obligee; and the admissions of the defendant, after the assignment, while his delusion continued, as the fancied proprietor of a large tract of country, cannot conclude him on any principle of law, equity, or good conscience.

The plaintiff thereupon suffered a non suit. *John Ludwick*, assignee of *Jacob Bollinger*, v. *Michael Croll*, *Nisi Prius*, *Berks county*, September, 1799. MSS. Reports. See 2 Binney, 168.

In debt on bond. The facts material to the present subject, were as follow:

Robert Johnson, the defendant's testator, had executed the bond to *Mary Goodwin*. *R. Johnson*, the obligor, made his will on the 26th of July, 1769, and thereby appointed *Caleb Johnson*, the now defendant, and S. I. since deceased, his executors, and soon afterwards died.

M. Goodwin, the obligee, made her will on the 27th November, 1782, and thereby appointed *Francis Goodwin*, and the aforesaid *Caleb Johnson*, her executors.

On the 14th of July, 1796, *Frances Goodwin*, assigned the obligation to the plaintiff.

It was objected that the present suit could not be supported by the plaintiff as assignee, *Caleb Johnson*, one of the executors of the obligee, not having joined in the assignment; that it was the folly of *Mrs. Goodwin* to nominate him her executor, who was one of the executors of her obligor, and known by her to be such.

By the Court. (*Shippen*, *C. J.* and *Yeates*, *J.*) The testatrix might not have known this fact; but, at any rate, if this technical nicety was intended to be insisted on, it should have been pleaded in abatement, like the case of part owners not sued. Perhaps it would be difficult, if not impracticable, to have given the plaintiff a better writ. *Caleb Johnson* was not compellable to join in the assignment, nor could he be reasonably expected to join in a suit against

1715. himself. Under such circumstances, a bill would certainly be supportable in chancery against the now defendant. Courts in this state adopt the rules of equity, which form a part of our law. We are not necessarily called upon to say in the present instance, how far we should feel ourselves obliged to follow the practice of a Court of Chancery, to prevent injustice, if even a plea in abatement had been put in to the form of the assignment. *David Chalfont*, assignee of *Frances Goodwin*, one of the executors of *Mary Goodwin* v. *Caleb Johnson*, surviving executor of *Robert Johnson*. *Circuit Court, Chester county*, May, 1800, MSS. Reports.

The assignor of a bond is a competent witness to prove that it was fraudulently obtained by him, or that it was given to raise money for the obligor, and that he used it to pay his own debt. Fraud, either in the execution, or the consideration of a bond, may be given in evidence under the plea of payment. 2 Binney, 154.

CHAPTER CCVIII.

An ACT *for acknowledging and recording of deeds.*

Offices for recording of deeds established.

BE it enacted, That there shall be an office of record in each county of this province, which shall be called and styled, The Office for recording of Deeds; and shall be kept in some convenient place in the said respective counties, and the recorder shall duly attend the service of the same, and, at his own proper costs and charges, shall provide parchment, or good large books, of royal or other large paper, well bound and covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances, which shall be brought to him for that purpose, according to the true intent and meaning of this act.

Deeds before recorded, to be acknowledged, &c.

II. *And be it further enacted*, That all bargains and sales, deeds and conveyances of lands, tenements and hereditaments, in this province, may be recorded in the said office; but before the same shall be so recorded, the parties concerned shall procure the grantor or bargainer named in every such deed, or else two or more of the witnesses (who were present at the execution thereof,) to come before one of the Justices of the Peace of the proper county or city where the lands lie, who is hereby empowered to take such acknowledgment of the grantor, if one, or of one of the grantors, if more.

or proved.

III. But in case the grantor be dead, or cannot appear, then the witnesses brought before such justice shall by him be examined upon oath or affirmation, to prove the execution of the deed then produced: Whereupon the same justice shall, under his hand and seal, certify such acknowledgment or proof upon the back of the deed, with the day and year when the same was made and by whom: And that after the recorder has recorded any of the said deeds, he shall certify on the back thereof, under his hand and seal of his office, the day he entered it, and the name or number of the book or roll, and page, where the same is entered.

The acknowledgment or proof to be certified.

Deeds made out of this province, how to be proved.

IV. *And be it further enacted*, That all deeds and conveyances made and granted out of this province, and brought hither and recorded in the county where the lands lie (the execution whereof being first proved by the oath or solemn affirmation of one or more of the witnesses thereunto, before one or more of the justices of the peace of this province, or before any mayor or chief magistrate or officer, of the cities, towns or places, where such deeds or conveyances are or shall be made or executed, and accordingly certified under the common or public seal of the cities, towns or places, where such deeds or conveyances are so proved respectively) shall