

legal rats. *Lebanon Nat. Bank v. Karmany, supra*; *Columbia Nat. Bank v. Bletz, supra*.

Eo Die. THE COURT. The Snyder notes should have been deducted before the discount was doubled. That would not be an offset to a penalty. When the bank credited the plaintiffs with the proceeds of these notes, there was no appropriation of their amount by either party, and as the plaintiffs made no direct payment to the bank of the discount on the accommodation paper, it would now be equitable to make such deduction; for to the extent of such notes the discount had not been paid by the plaintiffs.

The deduction should have been made of the amount of the notes less the sum paid by plaintiffs' assignee thereon. As the penalty bears no interest, neither should there be any interest allowed on the Snyder notes.

Rule absolute, unless plaintiffs within 10 days remit from the verdict all above \$2,150.34.

Oral opinion by McKENNAN, J.; ACHESON, J., concurring.

SHERMAN v. LANDON and others.

(Circuit Court, S. D. New York. January 23, 1883.)

SHIPMAN, J. The motion of the defendant for a new trial in the above-entitled cause is denied.

CAREY v. CUNARD STEAM-SHIP Co.*

(Circuit Court, S. D. New York. January 26, 1883.)

SHIPMAN, J. The motion of the defendant in the above-entitled cause for a new trial is denied, and the stage of proceedings is vacated.

*Affirmed. See 7 Sup. Ct. Rep. 1360.
v.15, no.4—22

DODD and others v. MARTIN and another.

(*Circuit Court, E. D. Arkansas. October Term, 1882.*)

1. ASSIGNMENT FOR BENEFIT OF CREDITORS — DEED OF ASSIGNMENT — FAILURE TO ATTACH SCHEDULE.

The failure to attach the schedule of property described in a deed of assignment, renders the deed inoperative and void as to all property intended to be embraced in the schedule, and not otherwise described than by reference to it.

2. SAME—STIPULATIONS.

A deed of assignment containing a stipulation that no creditor shall participate in the proceeds of the property assigned unless he accepts the same in full satisfaction of his debt, is valid in Arkansas; but a deed containing such a stipulation, to be valid, must convey all the debtor's property.

On the twenty-sixth of December, 1882, the defendant executed and delivered to Allison, as assignee, a deed of assignment for the benefit of creditors. Two days afterwards the plaintiffs sued out an attachment against Martin, which was levied on a stock of goods in the possession of Allison, the assignee, and which had belonged to Martin. Martin traversed the plaintiff's affidavit, upon which the attachment was sued out, and Allison filed an interplea claiming the goods attached as assignee under the deed of assignment. Both issues were tried before the court. That part of the deed of assignment material to the case reads as follows:

"I, John A. Martin, do hereby grant, bargain, and sell to T. J. Allison, assignee in trust, for the benefit of all my creditors, the goods, wares, merchandise, and property hereto attached in Schedule A, made a part of this conveyance, to have and to hold to him in trust as aforesaid forever; I conveying also to the said T. J. Allison, assignee, for the use aforesaid, all notes, books, accounts, and every class and character of evidence of debt to me belonging, or relating to my business in any manner whatever, with full authority in said T. J. Allison, assignee, to collect the same and apply them to the uses of this trust in manner and form as is by law prescribed in that behalf. The said T. J. Allison, assignee, shall proceed to collect and dispose of goods, wares, merchandise, and property, and choses in action, and apply the same to the payment of my creditors, share and share alike: provided, that no creditor herein provided for shall participate in the assets herein assigned, unless he accepts the same in full of his claim. This assignment to be closed up under the direction of creditors assenting to the same.

"December 26, 1882.

[Signed]

"J. A. MARTIN."

The deed was acknowledged and delivered, and the keys of the store, house, and possession of the stock of goods delivered to Allison as assignee under the deed at its date; but the assignee did not file