RECENT CASES

ACTION—WHEN COMMENCED—A, an attorney, gave B, his clerk, on July 2, a summons and complaint and a notice of *lis pendens,* both dated June 30, with express instructions to file the notice of *lis pendens* before giving the summons and complaint to the sheriff. *Held,* that an action is not commenced when the attorney draws and seals the summons with the intent not to give it to the sheriff until some condition precedent has been fulfilled. *Mutual Savings Fund Harmonia v. Gunne,* 110 N.J.L. 41 (E. & A. 1932).

Section 47 of the Practice act of 1903 provides that the date of every process shall be *prima facie* evidence of the date of issuance. *C. S. p.* 4065. This has long been held to be only *prima facie* evidence and not conclusive. *Robb v. Shore Bus Transportation Co.,* 10 N.J. Misc. 458, 159 Atl. 527 (Sup. Ct. 1932). The first case on the question of when an action at law is commenced, held that an action is commenced as soon as the writ is sealed and issued out of the office, *bona fide,* for the purpose of being served, and that purpose is not afterwards abandoned. *Whitaker v. Turnbull,* 18 N.J.L. 172 (Sup. Ct. 1840). In *Updike v. Ten Broeck,* 32 N.J.L. 105 (Sup. Ct. 1866), it was held that signing and sealing the writ in good faith for the purpose of having it served, was the commencement of the suit, whether the intention was to make service immediately or upon the happening of a condition. The next case on this point cites both the previous cases without distinguishing them, and follows the *Updike* case. *McCracken v. Richardson,* 46 N.J.L. 50 (Sup. Ct. 1884). Some years later the *Updike* case, without being overruled, but distinguished upon its facts, was criticized. *Lynch v. N. Y., Lake Erie & Western R. R. Co.,* 57 N.J.L. 4, 30 Atl. 187 (Sup. Ct. 1894). The next case on this question held that a suit is begun when process, duly tested and issued, has been put in motion to be served. *County v. Pacific Coast Borax Co.,* 67 N.J.L. 48, 50 Atl. 906 (Sup. Ct. 1901); *aff'd.* 68 N.J.L. 273, 53 Atl. 386 (E. & A. 1902). The question whether the intent was conditional or unconditional was entirely disregarded. Thereafter, the only other case in point was decided, holding that an action is commnced as soon as the summons is signed and sealed, in good faith, for the purpose of immediate service, and that purpose is not afterwards abandoned. *Wilson v. Clear,* 85 N.J.L. 474, 89 Atl. 1031 (Sup. Ct. 1914). The principal case has deduced from the cases the now positive rule, that an action at law is commenced when the summons is duly tested with an unconditional intent to deliver it forthwith for service.

BANKRUPTCY—EFFECT OF PROMISE MADE AFTER ADJUDICATION BUT BEFORE DISCHARGE, TO PAY PROVABLE DEBT—Defendant, after his adjudication in bankruptcy but before discharge, made a renewal note of one given to the plaintiff before the filing of the bankruptcy petition and adjudication thereon. *Held,* that the renewal note cannot

operate to revive the original debt. *Singac Trust Co. v. Soschin,* 11 N. J. Misc. 37, 164 Atl. 869 (Sup. Ct. 1933).

In most states, including New Jersey and in the Federal Courts, a new promise made after discharge in bankruptcy, to pay a provable debt is enforceable. *Fraley v. Kelly,* 67 N. C. 78; *Otis v. Gaslin,* 31 Me. 569; *Lanagin v. Nowland,* 44 Ark. 84; *Hill v. Trainer,* 49 Wis. 537; *Knapp v. Hoyt,* 57 Iowa 591; *Wiggin v. Hodgdon,* 63 N. H. 39; *Gruel v. Solomon,* 82 Ala. 85; *Zavelo v. Reeves,* 227 U. S. 625, 57 L. Ed. 676, 33 Sup. Ct. 365 (1912); *Jersey City Ins. Co. v. Archer,* 122 N. Y. 376 (1932). In virtually all jurisdictions, with the exception of New Jersey, a new promise made after adjudication but before discharge is also given effect, the theory being that the discharge in bankruptcy relates back to the date of adjucation. *In re Neff,* 157 Fed. 57, (C. C. A. 6th, 1907); *Old Town Natl. Bank of Baltimore v. Parker,* 121 Md. 61, 87 Atl. 1105 (1913); *British & Am. Mfg. Co. v. Stuart,* 210 Fed. 425 (C. C. A. 5th, 1914); *Zavelo v. Reeves, supra.* Although this principle of relation has been recognized in New Jersey (*Morella v. Garassale,* 8 N. J. Misc. 433, 150 Atl. 925 [Sup. Ct. 1930]) the Court of Errors and Appeals, in *Holt v. Akarman* (84 N. J. L. 371, 86 Atl. 408 [1913]), refused to enforce such a promise, relying upon Sec. 8 of the Statute of Frauds, (2 C. S. 2616), which provides that, "No action can be maintained against a discharged bankrupt, upon any promise, made after discharge, unless such promise be put in writing." From the requirement that promises made *after* discharge must be in writing, the Court in the *Holt* case concluded that promises made *before* discharge are ineffective, whether oral or written. The Court also indicated the possible danger of collusion between the bankrupt and creditors contesting the discharge, if such promises should be recognized. However justifiable as a matter of policy, the decision in the *Holt* case seems open to question in regard to its construction of Sec. 8. Since the statute expressly applies only to promises made after discharge, those made between adjudication and discharge would seem to remain valid as at common law. Although in several jurisdictions a statutory provision analogous to Sec. 8 of the Statute of Frauds prevails, it is significant that the courts in these jurisdictions have nevertheless enforced promises made between adjudication and discharge. *Allen v. Ferguson,* 19 Wall 1 (1873); *Greenberg v. Treanor,* 40 N. Y. Misc. 232 (1903). In the instant case, the court felt itself bound by the *Holt* case, although indicating its reluctance to follow it and expressing a preference for the sounder Federal rule.

DEATH ACT—EFFECT ON CAUSE OF ACTION BARRED BY STATUTE OF LIMITATIONS—Decedent's right of action in negligence was barred by the statute of limitations at the time of his death. His personal representative brought this action under the Death Act as administrator *ad prosequendum* for the benefit of the next of kin. *Held,* that the

action cannot be maintained. *Coulter v. New Jersey Pulverizing Co.,* 11 N.J. Misc. 5, 163 Atl. 661 (Sup. Ct. 1932).

At common law a cause of action for injuries sustained during the deceased's lifetime did not survive to his personal representative *Grosso v. Del., L. & W. R. R. Co.,* 50 N.J.L. 558, 44 Atl. 633 (E&A 1899). *Cooper v. Shore Electric Co.,* 63 N.J.L. 558, 44 Atl. 633 (E&A 1899). Nor was there any action for wrongful death. New Jersey statutes provide for the survival of actions to the deceased's personal representative and for the maintenance of actions for wrongful death by administrators *ad prosequendum.* It is well settled in this state that where a wrongful injury results in death the deceased's personal representatives may maintain an action for the damages suffered by the deceased prior to his death while the administrator *ad prosequendum* may maintain an independent action for wrongful death. *Cooper v. Shore Electric Co., supra; Soden v. Trenton & Mercer Traction Co.,* 101 N.J.L. 393, 127 Atl. 558 (E&A 1925). The English courts have held that if during the lifetime of the deceased his cause of action for injuries sustained have been barred by the statute of limitations no action may be maintained for his death resulting therefrom. *Williams v. Mersey Docks & Harbor Board,* 1 K.B.D. 804 (1905); and the minority view in the United States is to the same effect. *Kelliher v. N. Y. Central & H. R. R. Co.,* 212 N.Y. 207, 105 N.E. 824 (1914); *Howard v. Bell Telephone Co.,* 306 Pa. 518, 160 Atl. 613 (1932); *Flynn v. N. Y., N. H. & H. R. R. Co.,* 283 U.S. 53, 51 Sup. Ct. 30 (1931). The majority view, however, is to the contrary upon the theory that since the action for wrongful death is a distinct cause of action and does not come into being until death, it can not be barred prior thereto. *Wilson v. Jackson Hill Coal & Coke Co.,* 48 Ind. App. 150, 95 N.E. 589 (1911); *Donnelly v. Chicago City R. R. Co.,* 163 Ill. App. 7 (1907); *Hoover's Administrator v. Chesapeake & O. R. R. Co.,* 46 W.Va. 268, 33 S.E. 224 (1899). In *Altzheimer v. Central R. R. Co.,* 75 N.J.L. 424 (Sup. Ct. 1907), the court held that where the deceased had instituted an action within time, the subsequent actions for wrongful death could not be considered barred even though instituted more than two years (the statutory limitation) after the injury was sustained. The question considered by the foregoing cases was raised but not determined. In the instant case, the court in a poorly reasoned opinion, adopted the English view. The court's conclusion may be justified upon a literal reading of the statute although it is difficult to reconcile with the doctrine of the *Cooper* and *Soden cases,* that the administrator *ad prosequendum* acquires a new cause of action distinct from any which may have been vested in the deceased or his personal representative.

DIVIDENDS—RIGHT TO DIVIDENDS AS BETWEEN PLEDGOR AND PLEDGEE—The receiver of a corporation which had hypothecated certain

stock as collateral security, applied to compel the pledgee's representative to turn over dividends received on the stock. At the time of the pledge the certificates had been endorsed in blank. There was no agreement made between the pledgor and pledgee as to who should receive the dividends, nor had there been a transfer to the pledgee on the books of the corporation. *Held,* that the pledgor was entitled to the dividends, even though the pledgor were insolvent. *Mandel v. North Hudson Investment Co.,* 112 N.J. Eq. 144 (Ch. 1933).

The New Jersey courts have declared that a pledge is in the nature of a bailment and that transfer of possession is needed to make it effective (*Paramount B. & L. v. Sacks,* 107 N.J. Eq. 328, 152 Atl. 457, (Ch. 1930) and that, "as between pledgor and pledgee, the pledgor is still the general owner. The pledgee has a special property only, and upon payment of the debt this is extinguished." *Security Trust Company v. Edwards,* 90 N.J.L. 559, 101 Atl. 383, (E. & A. 1917). In the instant case the Vice-Chancellor distinguishes *McCrea v. Yule,* 68 N.J.L. 465, 53 Atl. 210 (Sup. Ct. 1902), which did not involve an hypothecation of stock but a pledge of income from a vested equitable interest, and the transfer by way of security expressly mentioned the income. In the *McCrea* case, however, the Court said: "a pledgee of personal property, assigned as collateral security, has the right to collect the interest, dividends and income accruing on the collateral assigned, accounting to the pledgor upon the redemption of the pledge." *Crowson v. Cody,* 209 Ala. 674, 96 S.W. 875; *Eldred v. Colvin,* 206 Ill. App. 2; *In re Gilbert,* 104 N.Y. 200, 10 N.E. 148. The weight of authority seems to be in accord with the dictum in the *McCrea* case even when dealing with corporate stock. *St. Louis N. B. of Commerce v. N. Y. Equitable Trust Co.* 227 Fed. 526; *Fairbank v. Merchants N. B.* 132 Ill. 120, 22 N.E. 524; *Union Trust v. Hasseltine,* 200 Mass. 414, 86 N.E. 777; *Brightson v. Claflin,* 225 N.Y. 469, 122 N. E. 458. Some cases have gone so far as to hold the corporation liable to the pledgee, although the pledge has not been entered on the books, so long as it has notice of the pledge. *Central Neb. N. B. v. Wilder,* 32 Neb. 454, 49 N. W. 369; *Gemmel v. Davis,* 23 Atl. 1032. The view of the weight of authority seems more desirable than that adopted in the principal case, especially where the pledgor is insolvent.

DIVORCE—RECOGNITION OF FOREIGN DECREES—The defendant's answer for maintenance set up a Nevada divorce based on residence in Nevada and service upon wife in New Jersey. The defendant had bought a railroad ticket to California with a stopover privilege which he utilized by staying at Reno for three months, securing a divorce, and then continuing to California. Shortly thereafter he returned to New Jersey where he was made a defendant to the instant suit. *Held,* that the Nevada divorce was a bar to the bill for maintenance. *Ballentine v. Ballentine,* 112 N.J. Eq. 222, 164 Atl. 5. (E&A 1933).

The judicial attitude on the recognition of foreign divorce based upon newly acquired domicil and appearance of one party, and service out of the state on the other, is in sharp conflict. See 39 A.L.R. 603. Such a decree is generally not entitled to recognition under the full faith and credit clause of the constitution. *Haddock v. Haddock,* 201 U.S. 562, 50 L.ED. 867 (1906); 39 HARV. L. REV. 417 (1926). A number of states follow this view and refuse to modify it on any grounds of comity. *Williams v. Williams,* 130 N.Y. 193, 29 N.E. 96 (1891); *Kaiser v. Kaiser,* 192 App. Div. 400, 182 N.Y. Supp. 709 (1920); *Davis v. Davis,* 70 Colo. 37, 197 Pac. 241 (1921); *Perkins v. Perkins,* 225 Mass. 82, 113 N.E. 841 (1912). New Jersey, on the other hand, is in the vanguard of those courts which recognize such divorce decrees on the theory of comity providing, however, the factum of residence and the *animus manendi* has not been disproved. *Schneider v. Schneider,* 103 N.J. Eq. 149, 142 Atl. 417 (Ch. 1928); *Felt v. Felt,* 59 N.J. Eq. 606, 45 Atl. 105 (E.&A 1899). Fraud in acquiring a residence is never presumed but must be strictly proved. *Feickert v. Feickert,* 98 N.J. Eq. 444, 131 Atl. 576 (Ch. 1926); *Cole v. Cole,* 96 N.J. Eq. 206, 124 Atl. 359 (Ch. 1924). The manifest acts of establishing a business in Reno and joining civic organizations do not constitute a *bona fide* residence when done with the express purpose of obtaining a divorce. *Perlman v. Perlman,* 113 N.J. Eq. 3, 165 Atl. 646 (Ch. 1933). Likewise entering Mexico on a "tourist card," traveling from place to place, and returning to New Jersey after securing a decree does not indicate an *animus manendi. Reik v. Reik,* 112 N.J. Eq. 234, 163 Atl. 907 (E&A 1933). The courts which follow *Haddock v. Haddock, supra* are in most instances in the anomalous position of refusing to recognize foreign decrees based on precisely the same jurisdictional grounds on which they themselves grant divorces. *Davis v. Davis,* 2 Misc. 549, 22 N.Y. Supp. 191 (1893); *Ransom v. Ransom,* 125 App. Div. 915, 109 N.Y. Supp. 1143 (1908). The New Jersey view, however, has been criticized as promoting a race between states for divorce jurisdiction. *Haddock v. Haddock, supra.* The safeguard against that is an insistence on strict compliance with the requirements for a domicil particularly the *animus manendi.* 37 YALE L. J. 649 (1928). When the party leaves the jurisdiction soon after receiving the decree, as was the fact in the instant case, there should arise a presumption that the *animus manendi* was lacking. *Tracy v. Tracy,* 62 N.J. Eq. 807, 48 Atl. 533 (E&A 1901). With this modification, the New Jersey view is preferable to that maintained by the adherents of *Haddock v. Haddock.*

GIFTS—RIGHT TO ACCEPT OR REJECT TESTAMENTARY GIFT—Husband and wife made reciprocal wills, each leaving the entire estate to the other. Both were killed in an accident, leaving a single infant child. The hubsand died instantly; the wife after three days of con-

tinuous unconsciousness. Four months later the wife's administrator served and filed a refusal to accept under the husband's will, obviously for the purpose of accomplishing an intestate transfer of the husband's estate to the child and thus avoiding a double transfer inheritance tax; first from husband to wife, and then from wife to child. *Held,* that there had been no acceptance by the wife, since she had no opportunity to elect; that the wife's administrator had the right to elect on behalf of the wife's estate; that the administrator had failed to reject within a reasonable time, and had thereby accepted; that the subsequent attempted rejection was invalid, being intended, not for the best interest of the decedent donee's estate, but in the interest of the decedent donee's testamentary beneficiary. *In re Howe,* 112 N.J. Eq. 17 (Pre. 1932).

In New Jersey it has long been established that a beneficiary has the right to accept or reject a testamentary gift. *Yawger's Ex'r. v. Yawger,* 37 N.J. Eq. 216 (Ch. 1883). However, a testamentary gift to an individual is presumed to have been accepted unless positively declined. SCHOULER ON WILLS, (5th Ed.) p. 1571. This presumption is founded on the well established principle that the law favors a complete testacy. *Yawger's Ex'r. v. Yawger, supra; Douglas v. Bd. Foreign Missions,* 110 N.J. Eq. 331, 160 Atl. 37 (Ch. 1932); and is recognized almost universally. *Townson v. Tickell,* 3 Barn. & Ald. 31 (K.B. 1819); *Albany Hospital v. Hanson,* 214 N.Y. 435, 108 N.E. 812, Ann. Cas. 1916D (N.Y. 1915); *Bradford v. Leake,* 124 Tenn. 312, 137 S.W. 96, Ann. Cas. 1912D, 1140 (Tenn. 1911); *In re Wells' Estate,* 142 Ia. 255, 120 N.W. 713 (Iowa 1909). While the result reached in the principal case may be sustained it is submitted that its reasoning was erroneous. The right of election has never been held to be anything more than a personal privilege. A man cannot be forced to take a gift. *Albany Hospital v. Hanson, supra; Townson v. Tickell, supra;* and it is for him alone to decide. It is true that the wife in the principal case had no opportunity to reject. Nevertheless, it is presumed that she accepted the gift, until the contrary be shown. *Yawger's Ex'r. v. Yawger, supra.* This presumption can only be overcome by positive evidence. SCHOULER ON WILLS, *supra.* In the principal case, there was no evidence whatsoever to overcome it. It is submitted therefore, that this election was personal; and that, the gift was, consequently, subject to a double transfer inheritance tax.

HABEAS CORPUS—RIGHT OF VICE CHANCELLOR TO GRANT WRIT WHEN EXCESSIVE BAIL HAS BEEN DEMANDED.—The petitioners for a writ of *habeas corpus* had been indicted and pleaded not guilty to a charge of a conspiracy to steal ballots stored in the Newark City Hall. The Court of Quarter Sessions set bail at a figure called excessive by the Vice Chancellor who allowed the writ and released the petitioners in bail. *Held,* that the Court of Chancery will grant a writ of *Habeas Corpus* and admit petitioners to bail when the Court of Quarter Ses-

sions has refused to set reasonable bail or has unlawfully delegated to the prosecutor of the pleas its power to approve bail offered by the petitioners. *In re Stegman,* 112 N.J. Eq. 72 (Ch. 1932).

The inherent power of the Court of Chancery of New Jersey to issue writs of *Habeas Corpus* is derived from the common law of England where the writ was obtainable from the Court of Chancery, Kings' Bench, Common Pleas and Exchequer. In New Jersey, the Habeas Corpus Acts of March 11, 1795, (Patersons Laws, page 168) and April 5, 1878 (2 Comp. St. 1910, page 2640) and the New Jersey Constitution of 1844, (Article 1, Section 11), confirm the practice of the Chancellor in issuing such writs out of the Court of Chancery. The Act of May 9, 1889, (P. L. page 426), provides that Vice Chancellors shall have the same power to grant all writs of Habeas Corpus as the Chancellor has. *Crowleys Case,* 2 Swans 3, 36 Eng. Rep. 541; *In re Thompson,* 85 N.J. Eq. 225 (Ch. 1915); *In re Regg,* 95 N.J. Eq. 341; 123 Atl. 243, (Ch. 1924); *In re Hague,* 104 N.J. Eq. 31, 144 Atl. 546, (Ch. 1929). Article 1, Section 15 of the New Jersey Constitution provides that "excessive bail shall not be required." In the instant cast the Court of Quarter Sessions delegated the approval of excessive bail to the prosecutor who imposed such stringent conditions upon the bonding companies that no bond offered could meet with his approval. This procedure was unwarranted and inimicable to the rights of the petitioners. *Edelman v. Dunn,* 107 N.J.L. 353. 153 Atl. 524, (E. & A. 1930). After the right to bail has been determined by the Court and the amount of bail fixed the determination of the sufficiency of the sureties is a ministerial and not a judicial function. The action of the Court in accepting bail must be governed by a sound discretion. "It must be governed by rule; it must not be arbitrary, vague and fanciful, but legal and regular." *Rex v. Wilkes,* 4 Burr 253, 98 Eng. Rep. 334; *Rose v. Brown,* 11 W. Va. 142. In the case at bar one of the conditions placed by the prosecutor upon sureties was that the real property offered must be unencumbered by tax liens. This condition seems arbitrary since the equity in the property despite the lien may be ample to satisfy the obligation. *West Virginia v. Charnock,* 141 S.E. 403 (W. Va.) Where the bail demanded is excessive or is denied the imprisonment becomes illegal and the remedy is by *Habeas Corpus. Johnson v. Hoy,* 227 U.S. 245, 57 L. Ed. 497; *Ex. P. Ruef,* 7 Cal. A. 750, 96 Pac. 24; *Ex. P. Rogers,* 83 Tex. Cr. 152, 201 S.W. 1157; *Ex. P. Garvin,* 192 P. (Okl.) 363; *In re Quigg,* 34 R.I. 504, 84 Atl. 859.

INSURANCE—RIGHT OF TRUSTEE IN BANKRUPTCY TO SURRENDER VALUE WHEN SON OF BANKRUPT IS BENEFICIARY—When adjudicated, the bankrupt had a life insurance policy on his own life in which his son was named beneficiary. The right to change the beneficiary had been reserved. The trustee demanded the surrender value of the policy and the insurance company refused payment. *Held,* the trustee was

entitled to the surrender value. *In re Tolin,* A.B. Rev. p. 92 Nov. 1932 (U.S.D.C.—Dist. of N.J.)

In determining exemptions in bankruptcy, by express provision of the Bankruptcy Act, the State law governs. Bankruptcy Act Sections 6 and 7A; *Smith v. Metropolitan Life,* 43 F. (2d) 74, 16 A.B.R. (N.S.) 590. Under section 38 of the New Jersey Insurance Act, all insurance policies with the exception of policies in which the assured or his legal representatives are the beneficiaries are exempt as against creditors. Section 39 of the same Act exempts policies of life insurance made payable to or for the benefit of a married woman. It has been held under the latter section that the Trustee in bankruptcy does not take the cash surrender value of an insurance policy on the life of the bankrupt made payable in favor of his wife. *In re Pinals,* 38 F. (2d) 117, 15 A.B.R. (N.S.) 645, Affd. *sub nom. Smith v. Metropolitan Life, supra.* The specific provision in section 39 was intended not to limit the broad general provision in Section 38 but to abrogate in part the old common law rule against the validity of gifts from husband to wife. *Farmer Coal and Supply Co. v. Albright,* 90 N.J. Eq. 132, 106 Atl. 545 (Ch. 1919). And since under the construction placed upon the above section of the Insurance Act by the State Courts the power to change the beneficiary is personal to the assured, it has been held that such a power cannot be exercised by the trustee nor can he compel the assured to do so for the benefit of the estate. *Anderson v. Broad Street National Bank,* 90 N.J. Eq. 78, 82, 105 Atl. 599 (Ch. 1918); *In re Pinals, supra,* aff'd. *sub nom. Smith v. Metropolitan Life, supra.* It would seem that the Referee in the principal case has so construed section 39 as to nullify section 38 of the New Jersey Insurance Act. This result seems clearly erroneous in view of the policy and language of the statute. *Lanning v. Parker,* 84 N.J. Eq. 429, 94 Atl. 64 (Ch. 1915).

NOTARY PUBLIC—AGREEMENT TO ACCEPT SALARY LESS THAN LEGAL COMPENSATION—P, attorney-at-law, was employed by D bank as notary public at a salary of $75 a month, the bank receiving and retaining the notarial fees. P accepted monthly compensation in full payment of his services, making no claim or demand for the whole or part of the notarial fees until he resigned from his employment. P sued to recover notarial fees fixed by statute less his monthly salary. *Held,* for plaintiff on the ground that the contract was contrary to public policy and void. *Kip v. People's Bank & Trust Co.,* 110 N.J.L. 178, 164 Atl. 253 (E. & A. 1933).

It has been uniformly recognized that a notary public is a public officer. *Geddis v. Westside Nat. Bank,* 106 N.J.L. 238, 145 Atl. 731 (E. & A. 1930); *Opinion of Justices,* 150 Mass. 586, 23 N.E. Rep. 850. (1890); *Britton v. Niccolls,* 104 U.S. 757, 26 L. Ed. 917 (1882). The assignment of unearned salary or fees by a public officer is void since

public policy demands that efficiency of public service be insured. *Schwenk v. Wyckoff,* 46 N.J. Eq. 560, 20 Atl. 259 (E. & A. 1890); *Township of Wayne v. Cahill,* 49 N.J.L. 144, 6 Atl. 621 (Sup. Ct. 1886); *Bliss v. Lawerence,* 58 N.Y. 442, 17 Am. Rep. 273 (Sup. Ct. 1874). Likewise, a contract whereby a public officer whose compensation is fixed by statute agrees to accept for his official services an amount less than the legal compensation is contrary to public policy and void, (*Geddis v. Westside Nat. Bank, supra*) such agreement, in effect, amounting to an assignment of a portion of the fees to be earned in the future and not an assignment of fees then actually earned and due. *Ohio Nat. Bank v. Hopkins,* 8 App. D.C. 146 (1896). Earned fees may be assigned. *Carnegie Trust Co. v. Baltimore Place Realty Co.,* 67 Misc. 452, 122 N.Y.S. 697 (Sup. Ct. 1910); *Stewart v. Sample,* 168 Ala. 270, 53 So. 182. But an assignment of earned fees bimonthly in consideration of continued employment under agreement to protest for a percentage of the statutory fees is void since the consideration is illegal. *Pitsch v. Continental & C. Bank,* 305 Ill. 265, 137 N.E. Rep. 198, 25 A.L.R. 164 (Sup. Ct. 1922). However, the acceptance of a lump sum covering the official fees and personal services when employed as a bookkeeper by a bank contravenes no public policy when the sum so accepted is greater than the fees. *Second Nat. Bank v. Ferguson,* 114 Ky. 516, 71 S.W. 429 (1903). It is common practice by banks to employ notaries under similar contracts. A recovery of fees extending possibly over a period of six years may cause serious financial loss to the banks with resulting injury to the public. The notary is rendering his services in a ministerial rather than a public capacity. It would therefore seem extremely politic to bar him from suit under such circumstances. But when a doctrine is so deeply embedded in our jurisprudence that it cannot be judicially disturbed, even though ill adapted and repugnant to modern conditions, the remedy must be sought in the legislative branch of the government. *Engel v. Siderides,* 112 N.J. Eq. 431, 164 Atl. 397 (E. & A. 1933). A bill has been introduced which, if enacted, will in large part remove the dangers inherent in the decision in the principal case. Senate Bill, No. 183, Supp. to 3 C. S. p. 3757.