c, c. Chesnut tree bearers.
P, P. Posts.
s. Protecting pavement with water cement.

Fig. 2. R. Rail-way.
C. Carriage in profile, showing the *under frames* to give obliquity to the axles when travelling streets.
p. Pavement.

Fig. 3. W. Main wheels.
S, W. Secondary wheels.
P. Pavement on to which the secondary wheel takes when the carriage leaves the rail-road.
I. The eye-bolt to receive the pin of the lever auxiliary wheels which bear the fore part, while the hind part is borne by the hind secondary wheels when on streets or roads.

A novel and interesting case, explanatory of the law of Master and Apprentice; reported for the Journal of the Franklin Institute.

THE commonwealth of Pennsylvania, at the relation of Henry Taylor, an infant, who sued by Gasway Oram, his guardian, *vs.* Gurdon Leeds.

Habeas corpus ad subjiciendum, awarded by the Hon. J. Huston, returnable before himself and the rest of the judges of the SUPREME COURT OF PENNSYLVANIA. Gurdon Leeds returned, that he held the relator by virtue of a certain indenture of apprenticeship, by which it appeared that the said Henry Taylor, aged 15 years on the 4th day of July, 1825, *with the consent of his sister, Margaret Leeds*, [who was the wife of Gurdon Leeds,] acting as his next friend, [his parents being dead,] had put himself apprentice to the said Gurdon, to learn the trade of a cabinet maker: to serve 5 years 6 months and 24 days; during which time the master was to find him in boarding, lodging, and washing, and give him *one quarter night schooling*, and when free, one new suit of clothes.

P. A. Browne, who volunteered his services for the relator on account of his being an orphan and poor, contended that he was entitled to his discharge. At common law, said Mr. Browne, the deed of an infant was absolutely void. Even an indenture of apprenticeship, entered into for his instruction and benefit, was not binding. 2nd Inst. 379. 3 Leon. 637, Mod. 15.; but the act of assembly of the 29th of September, 1770, declares, that "all and every person and persons that shall be bound by indenture to serve as an apprentice in any art, mystery, occupation, or labour, with the *assent* of his or her parent, guardian, or *next friend*, or with the assent of the overseers of the poor and approbation of any two justices, although such persons, or any of them, were or shall be within the age of 21 years at the time of making their several indentures, shall be bound to serve," &c., and the first question then was,

whether it had been competent for the sister, *being the wife of the master*, to *assent* as *next friend* of the infant. He did not object to her on account of her relationship of *sister;* on the contrary, he admitted that where the parents were deceased, a sister might act as next friend. Nor, upon this view of the case, did he found his objection to the assent merely upon the ground of her being a married woman, for, according to the case of Commonwealth *v.* Eglee, 6 Sergt. and Rawle, 350, a *feme covert* may, in some cases, act in that capacity; but he contended that Mrs. Leeds could not, as next friend to her brother, assent to a binding *to her husband.* It furnished, he said, one of those glaring cases of conflicting interests, where the policy of the law obeyed the precept of religion, "lead us not into temptation." The obvious duty of a next friend in binding an apprentice, is, to procure the best terms for the infant; but how could the wife be expected to execute the office with fidelity, under the powerful attractions of not only her *duty* to her husband, but of her own interest. And he considered it not unworthy of observation, that in this indenture, binding Henry Taylor to serve for a very long period, he was to receive only *one quarter's night schooling.*

As a further proof that the situations were incompatible, he urged that the duty of a next friend was to watch over the master, and even over the mistress, [for much of the apprentice's comfort or suffering depends upon the female part of the family,] and see that they performed their covenants to the apprentice during his servitude. But, said Mr. Browne, how can this lady be called upon to watch over her husband? How can she be called upon to watch over herself? Mr. Browne contended that this indenture was void, not only upon principle, but upon authority. In the case of Commonwealth *v.* Kending, 1 Sergeant and Rawle, 366, an attempt was made to support an indenture upon the assent of one of these nominal next friends, but the court rejected it. There, Cyrus Pearce, who held the infant under an indenture, acted as next friend in binding her by a second one to J. H. Baker; and C. J. Tilghman, in delivering the opinion of the court, observed, that "he thought it would be of dangerous consequence to admit, that a man who was about to sell his apprentice, should take the place of *next friend*, because he must be supposed to be acting *for his own interest*, which is incompatible with the idea of guardian." So here, Mrs. Leeds was acting for her *own interest* in making unfavourable terms for the infant; for the interest of her husband was, by the laws of God and man, identified with her own.

He would also remark, that the chief justice considered the acting of next friend tantamount to taking upon herself the *guardianship*, and according to Osborne's case, Plowden 293, when a woman, guardian, marries, the husband partakes in the prerogative, so that the assent here given was, in law, that of Gurdon Leeds to a binding to himself, which was clearly illegal and void.

Secondly, this indenture not only purported to be made with the assent of his sister as next friend, but she had entered into a covenant for the faithful performance of the infant's covenants. It cor-

responds, in substance, with the instrument recited in the case of Meade *v.* Billings, decided in 10th Johnson, 99, where the guardian was held to be liable upon the covenant. But how can a married woman enter into a covenant? Especially if that covenant is to her husband? In Commonwealth *v.* Eglee, there were no covenants on behalf of the *feme covert*, but only an assent to the binding. In this case, she acted in *company* with her husband, and the presumption of law is, that she acted under his coercion. A felonious taking of goods under such circumstances, would not subject her to an indictment for larceny. A transfer of her estate under such circumstances, would be void.

F. W. Hubbell argued on behalf of the defendant,

1st. That Mrs. Leeds answered the description in the act of assembly, viz. "next friend;" the father and mother being dead, and the apprentice having no brother who had attained twenty-one, the duties of guardianship and maternity devolved on the eldest sister, and she was emphatically the "next friend." The act mentions no such exception as coverture.

2nd. That according to the strict technical rule of law, the disability of coverture extends to acts in favour of third persons, as well as to those in favour of the husband; in the latter, they are void upon the same *principle* as in the former; they only differ in *degree;* and that, therefore, when it was decided in Commonwealth *v.* Eglee, 6 S. and R. 340, that a *feme covert* may give her assent as next friend, under this act of assembly, the present case was ruled in principle.

In the same case, Commonwealth *v.* Eglee, the nature of this *assent* is thus defined: "it is a personal confidence reposed in her by act of assembly; she parts with no property, divests herself of no interest." A power or confidence reposed in a married woman unaccompanied with any *interest*, may be well exercised by her in favour of her husband, although the exercise of it require discretion, as a power of sale, &c. Coke Lit. 112, and 4th Cruise, 181. Tysee *v.* Williams, 3 Bibb's Rep. 368.

3d. The cases of purchases by executors, trustees, &c. at their own sales, have no analogy to the present case, although we should admit such an identity between husband and wife, as to render the exercise of a power in favour of her husband, in effect an exercise in favour of herself; for at law, such a purchase by an executor or trustee, when made in the name of a third person, is good. Equity interferes on grounds of policy. Such a case as *this* has never been agitated in courts of equity, and *technical* rules of equity, which preclude inquiry into the *real* equity, are not to be extended beyond their letter. Equity avoids such a sale, by putting the purchaser in *statu quo*, returning him the purchase money with interest, &c. Sugden's Venders, 433, and a tender of this is essential to the *cestui a que trust's* claim of relief. But here no offer is made of compensation to the master, for the instruction and sustenance of the apprentice, during the time he has been with the master—as yet he has

been only onerous; his services, after he acquired the trade, were to be the requital.

4th. That heretofore it has only been contended, that the fact that the next friend in the indenture was the wife of the master, does not *per se* vitiate the indenture. If there were *actually* an undue influence, it is otherwise. Nay, we are willing to admit that the law regards such a transaction with jealousy. If this indenture be subjected to scrutiny, even with such a disposition, it must be sustained; for there is no extraneous proof of undue influence, and on the face of the indenture we find all the usual covenants. It has been objected that the schooling covenanted for, is not sufficient; but it may be answered, that the boy was considerably beyond the usual age of binding, and so advanced in education, (as appears from his signature to the indenture,) that he did not need that more schooling should be stipulated for.

Lastly, that the act of assembly does not require the next friend to enter into any covenants, but merely to give *assent*. Therefore, the covenants by the next friend in this indenture, were merely surplusage, and could not vitiate it, *utile per inutile non vetiatur*. That the covenants by the next friend being entirely in favour of the master, it was he alone who could object it, if they were void.

Per Curiam Gibson, chief justice.

There must undoubtedly be an actual, and not merely a formal next friend. His office, however, is not to bind the apprentice, but to allow the apprentice to bind himself. The covenants of the apprentice, although executed under the supervision of those whom the law has set over him, are exclusively his own. Such are the provisions of the act of assembly, and such was the construction of it in the Commonwealth *v.* Eglee. The practice has, for the most part, been for the *prochein amy* to express his assent by sealing the indenture, but no one ever thought of having recourse to him on the contract, at least no instance of the sort has fallen under my notice. The reason is, that the legislature has not said that he shall become a party. The assent is sometimes expressed by subscribing as a witness, but neither in the one case nor the other has the *prochein amy* considered that he was binding himself for the apprentice. His covenant, if any existed, would be joint. But that would be inconsistent with his power, which is not to subject, by any act of his, the person of the apprentice to the dominion of the master; that can be done only by the apprentice himself. The *prochein amy* can join in the act only so far as the law gives him authority; and by the terms of the act of assembly, his agency is not to be active, but passive. The point was expressly ruled in the Commonwealth *v.* Eglee, where the coverture of the *prochein amy* would have afforded a decisive objection, if she had been considered a party to the deed. That case establishes also, that the subjection of a *feme covert prochein amy* to her husband's will, is not, in contemplation of law, inconsistent with the free exercise of her will in the execution of her trust; and this, in analogy even to the common law, which permits a wife to act in a representative capacity, and independent of her husband, wher-

ever the subject matter is unconnected with his interest or marital rights. The pinch of the case here, is, that the binding was to the husband. But in equity, and even in some instances at the common law, wherever a *feme covert* has power to act as if she were sole, she may treat directly with the husband. As, however, the matter depends on construction, it is urged that expediency requires that the act of assembly be so interpreted as to avoid the tendency to abuse of power, which must necessarily exist in every case like the present. That would be a grave consideration, were abuses of the sort not subject to redress. But an effectual corrective may be found in the supervising powers of the judges, who are bound to discharge wherever the contract is shown to be tainted with actual fraud or collusion, and in a case like the present, the transaction would be more strictly scanned than if the binding were to a stranger. We will not, however, discharge, of course, where, as in this case, the covenants appear to be reasonable and proper on the face of the indenture, especially where the application is not made till the apprentice has ceased to be a burthen. It is objected that the quantum of schooling is unreasonably small. It appears, however, from the apprentice's signature to the indenture, that he wrote a fair hand; and the great object of the binding being to learn the art and mystery of the master, I would hold an indenture valid, without any covenant for schooling at all, if it should appear that the education of the apprentice had been sufficiently attended to before. It, therefore, appears to a majority of the court, that no reason had yet been shown why the apprentice should not be remanded.

Tod, justice, dissented.

FOR THE JOURNAL OF THE FRANKLIN INSTITUTE.

Description of a Machine for Grinding Painters' Colours, Printing Ink, &c. Invented by W. J. Stone, *Engraver, Washington, D. C.*

Various machines have been invented for the purpose of grinding colours, which, however, are applicable only in the large way. In my own business I have felt the want of one which would answer well as a substitute for the ordinary stone and mullar, and have constructed an apparatus for this purpose, which I have found to fulfil my expectations. The annexed drawing will serve to explain its structure. The principal frame is made of wood, properly braced together, and need not be described. A, is a round table, or slab of cast-iron, turned, and ground flat on its upper surface. This is supported by a shaft B, running upon a pivot below, and supported by a collar above, so that it may turn freely. To the cog wheel C, fixed upon this shaft, motion is given in any suitable way, as by another cog wheel geared into it, and turned by a crank, or a whorl upon the shaft, acted upon by a drum and strap. This cog wheel takes into a pinion, on the second shaft D, which has an arm E,