v. Reeside, 8 Wall. 302, 19 L. Ed. 391; *Etting v. U. S. Bank,* 11 Wheat. 59, 6 L. Ed. 419; and other cases cited *infra.* Such decree of affirmance by a divided court is as effectual as if all judges concurred; that is, an affirmance by an equally divided court is conclusive upon the rights of the parties in that case. *Washington Bridge Co. v. Stewart,* 3 How. 413, 11 L. Ed. 658; *Durant v. Essex Co.,* 7 Wall. 107, 19 L. Ed. 154, 101 U. S. 555, 25 L. Ed. 961. But according to the great weight of authority such an affirmance has no value as a precedent and is not to be regarded in the decision of future cases as in any way decisive of the legal questions involved. *Westhus v. Union Trust Co. of St. Louis,* 168 F. 617, 94 C. C. A. 95; *Kalamazoo v. Crawford,* 154 Mich. 58, 117 N. W. 572, 16 Ann. Cas. 110; *Hanifen v. Armitage,* 117 F. 845; *State v. McClung,* 47 Fla. 224, 37 So. 51; *Williams v. New York, P. & N. R. Co.,* 11 F. (2nd) 363, and many other cases. But see *contra, City of Florence v. Berry,* 62 S. C. 469, 40 S. E. 871, and *American Mortg. Co. v. Woodward,* 83 S. C. 521, 65 S. E. 739.

R. L. A., '28.

LIMITATION OF ACTIONS—WHAT LAW GOVERNS.—Where an action arising in Quebec on a notarial deed of sale and *hypothec* executed in Quebec was not barred by limitation there but was barred by limitation in New York, action thereon could not be brought against a resident of New York, under Civil Practice Act, secs. 13, 55. *Duggan v. Lubbin,* 226 N. Y. S. 238 (1927).

In an action in New York by an heir to recover a remainder in personalty alleged to have been wrongfully transferred by executors and testamentary trustees of New Jersey decedent, New Jersey law of limitations is controlling under Civil Practice Act, sec. 13, cause of action having apparently arisen in New Jersey, defendants residing in New York, and plaintiff's residence not being shown. *Squier v. Houghton,* 226 N. Y. S. 162 (1927).

Statutes of limitation are viewed in English and American law as pertaining to the remedy. *McElmoyle v. Cohen,* 13 Pet. 312; *Townsend v. Jemison,* 9 How. 407; *Bank of United States v. Donnally,* 8 Pet. 361. Since such statutes affect only the remedy, the law of the forum applies. *Townsend v. Jemison, supra.* Accordingly an action could be brought any time before the remedy would be barred by the statute of limitations of the forum even though the action was barred in the state where the cause of action arose. This is equally true in contract and tort actions. *Townsend v. Jemison, supra.* There is one notable exception to the *lex fori* rule, and that is that where the statute of the state where the cause of action arose extinguishes not only the remedy but the cause of action itself, the *lex loci* applies. *Hudson v. Bishop,* 35 Fed. 820; *Capps v. Atlantic Coast Line R. Co.,* 111 S. E. 533. The two instant cases do not come within this exception. If the common law rule were to be applied to the instant cases, then the statutes of limitations of New York would undoubtedly govern in both cases.

The common law rule has been modified to some extent by statutes in various states which make the law of the state where the cause of action arises apply if it is shorter than that provided by the law of the forum. New York has such a statute in Civil Practice Act, Sec. 13.

This section does not incorporate the foreign statute of limitations into the New York law, but merely enables the defendant to choose either the statute of the state where the cause of action arose or the New York statute. *Isenburg v. Rainer,* 145 App. Div. 256, 258, 13 N. Y. S. 27, 28. This is the leading New York case on the subject, and is followed in the instant case of *Duggan v. Lubbin. Dalrymple v. Schwartz,* 177 App. Div. 650, 164 N. Y. S. 496 is to the same effect. The statute does not extend the period of limitation. *Dodge v. Holbrook,* 107 Misc. Rep. 259, 176 N. Y. S. 562.

The facts in the two instant cases are very similar. The cause of action in *Duggan v. Lubbin* arose in Quebec, a foreign country, while the cause of action in *Squier v. Houghton* arose in New Jersey, a foreign state. The defendants in both cases are residents of New York. It seems that both cases would fall under Civil Practice Act Sec. 13, quoted above. In both cases the statutes of New York would bar the actions, being shorter than the foreign limitations. At least this is true in *Duggan v. Lubbin,* and we can assume it to be true in *Squier v. Houghton* for otherwise there would be no reason for wanting to apply the New Jersey statute. The court in *Duggan v. Lubbin* held that the action could not be maintained because it was barred by the New York statute. In this, it followed the course laid down by previous courts in applying the statute in question. The other case holds that the New Jersey law applies despite the fact that the New York statute bars the action. This latter decision would extend the period in which action may be brought and is contrary to all the authorities. R. B. S., '30.

MOTOR VEHICLES—FAMILY CAR DOCTRINE.—An action for injuries was brought by a pedestrian who was struck while crossing the street by an automobile driven by an unemancipated minor returning from school. The issue raised was whether the parent should be charged under the ruling known as the "family car doctrine." *Held,* that the owner of the automobile was liable under this doctrine for the negligence of his minor son on the theory that he was using the automobile to go to and from school under his father's direction. *Mebas v. Werkmeister,* 299 S. W. 601 (Mo. 1927).

The case is now before the Supreme Court on a writ of *certiorari* since it is in conflict with the opinon of the Supreme Court in *Hays v. Hogan,* 273 Mo. 1; 200 S. W. 286, which is considered the leading case on this subject in Missouri. The court discussed *Hays v. Hogan,* saying that "though the 'family purpose doctrine' is impliedly at least disapproved, yet the facts here do not come within that case and are not controlled by the principle therein announced." The court further distinguished the principal case from others by stating that here the son was using the automobile in going to and from school under the direction of the father.

The decision in the principal case is in accord with the laws of Illinois. Up to the present the trend of decision in Missouri seemed to be directly opposite to that in Illinois. During the many years that Illinois opposed the "family car doctrine" Missouri followed it; and when Missouri repudiated this doctrine we found Illinois taking it up.

In 1910, in the case of *Daily v. Maxwell,* 152 Mo. App. 415; 133 S. W. 351, the Kansas City Court of Appeals held a father liable for an injury caused by his minor son who was driving the family car. Two years later in *Marshall v. Taylor,* 168 Mo. App. 240, 153 S. W. 527, the same court apparently approved the doctrine of *Daily v. Maxwell.* This case which involved facts of a similar nature held that unless the parents could conclusively show that the son who was operating the car was operating it without his consent, the father's consent would be presumed.

Hays v. Hogan, supra, as decided in the appellate court followed *Daily v. Maxwell* and *Marshall v. Taylor,* but on appeal the Supreme Court reversed the case holding that "the mere ownership of an automobile purchased by a father for the use and pleasure of himself and family does not render him liable in damages to third persons for injuries sustained through the negligence of his minor son while operating the same on a public highway in furtherance of his own business or pleasure and the fact that he had his father's special or general