of plaintiffs, was not by name a party to the suit. There has been no authoritative construction of this statute, but I think the term "not a party to the action" extends only to parties named in the proceedings, and not to a party in interest whose name does not appear. The objection at least should have been made before judgment was entered.

## ABSTRACTS OF RECENT AMERICAN DECISIONS

SUPREME COURT OF THE UNITED STATES.[1]
COURT OF CHANCERY OF DELAWARE.[2]
SUPREME COURT OF PENNSYLVANIA.[3]
SUPREME COURT OF WISCONSIN.[4]

### ADMIRALTY.

*Maritime Lien—Remedies in rem and in personam.*—Wherever a maritime lien arises the libellant or plaintiff may waive the lien in the admiralty, and pursue his remedy by a suit *in personam*, or he may institute an action at law, if the common law is competent to give him a remedy. Such a party may, if he sees fit, proceed *in rem* in the admiralty, and if he elects to enforce the maritime lien which arises in the case, he cannot proceed in any other mode or forum, as the jurisdiction of the admiralty courts to enforce a maritime lien is exclusive and cannot be exercised in any other mode than by a proceeding *in rem*: *Norton* v. *Switzer*, S. C. U. S., Oct. Term 1876.

### AGENT. See *Corporation.*

*Ratification—Telegraph Company is Agent of Sender.*—Where a person assumes in good faith, but without authority in fact, to act as agent for another, the latter on being fully informed of the act, must disaffirm it within a reasonable time (at least where his silence would prejudice innocent parties), or he will be held to have ratified it: *Saveland* v. *Green*, 40 Wis.

Thus, where plaintiff received from B., a vessel broker in defendant's place of residence, an order to charter at certain rates a vessel belonging to defendant, and did charter the vessel accordingly, and telegraphed the fact to B., who communicated it to defendant, and the latter did not disaffirm the contract either to B. or to plaintiff, the jury might find that he had ratified it: *Id.*

The party who sends an order by telegraph makes the telegraph company his agent for its transmission and delivery, and is bound by the

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1876. The cases will probably be reported in 3 or 4 Otto.

[2] From Hon. D. M. Bates, Reporter; to appear in 2 Delaware Chan. Reports.

[3] From P. F. Smith, Esq., Reporter; to appear in 80 Penna. St. Reports.

[4] From Hon. O. M. Conover, Reporter; to appear in 40 Wisconsin Reports.

message *as delivered;* and where legal rights of the receiver, founded upon such order, are in question, he is entitled to put in evidence the message actually received, as the original: *Id.*

Defendant employed C. to charter his vessel to carry wheat from Milwaukee to Buffalo, on condition that a cargo of coal for Milwaukee could be procured for her at Buffalo. C. employed B., a vessel broker at Buffalo, to aid him, and the latter telegraphed to plaintiff at Milwaukee, to charter the vessel to carry wheat at the specified rate, without condition. *Held*, that B. became defendant's lawful agent to charter the vessel, and his order to plaintiff, being within the general scope of his authority as such agent, was binding on defendant: *Id.*

If defendant, with knowledge of B.'s telegram to plaintiff, ratified the plaintiff's act, he must also be held to have ratified B.'s act in sending such order, and he thereby became bound by the order as delivered: *Id.*

*Liability of Principal of Public Agent.*—Although a private agent, acting in violation of specific instructions, yet within the scope of his general authority, may bind his principal, the rule as to the effect of the like act of a public agent is otherwise, for the reason that it is better that an individual should occasionally suffer from the mistakes of public officers or agents than to adopt a rule which through improper combinations or collusion might be turned to the detriment or injury of the public: *Whiteside et al.* v. *The United States*, S. C. U. S., Oct. Term 1876.

Individuals as well as courts must take notice of the extent of authority conferred by law upon a person acting in an official capacity, and the rule applies in such case that ignorance of the law furnishes no excuse for any mistake or wrongful act: *Id.*

Torts committed by an officer in the service of the United States do not render the government liable in an implied assumpsit even though the acts done were apparently for the public benefit: *Id.*

## BAILMENT.

*Rights of second Pledgee.*—In the case of a strict pledge, if the pledgee transfers the same to his own creditor, the latter may hold the pledge until the debt of the original owner is discharged: *Talty* v. *Freedman's S. & T. Co.*, S. C. U. S., Oct. Term 1876.

A tender to the second pledgee of the amount due from the first pledger to the first pledgee, extinguishes *ipso facto* the title of the second pledgee, but there can be no recovery against him without tender of payment: *Id.*

## BANKRUPTCY.

*Right of Creditor to prosecute pending Action to Judgment.*—Actions pending in favor of a creditor, at the time the debtor is adjudged bankrupt under the present Bankrupt Act, if no objection is made by the assignee or the Bankrupt Court, may, due notice being first given to the assignee, be prosecuted to final judgment to ascertain the amount due to the creditor, but the judgment recovered will be effectual and operative *only* to establish the validity and amount of the claim: *Norton* v. *Switzer*, S. C. U. S., Oct. Term 1876.

## Bills and Notes.

*Indorser—Credits to Maker—Corporation—Transfer of Stock by Stockholder who is indebted to the Corporation—Witness.*—A bank, being the holder of a promissory note protested for non-payment, has not the right to credit it with deposits made by the debtor to his account as a justice of the peace; and its omission to do so does not discharge the indorser: *McDowell* v. *Bank of Wilmington and Brandywine*, 2 Del. Ch.

An agreement by the bank to credit the note with such fees as the debtor might earn as a notary public in protesting bills and notes for the bank does not discharge the indorser, though made without his privity: *Id.*

An agreement between the creditor and the principal debtor, in order to discharge the surety, must be such as gives time to the debtor; and it must be for a consideration: *Id.*

Under articles of association which had been adopted as part of the charter of the bank it was provided that so long as a stockholder might remain indebted to the bank his stock should not be transferable. *Held*, that the defendant was not liable in damages for refusing to permit the indorser, while still remaining liable on his indorsement, to transfer his stock on the books of the bank: *Id.*

The maker of a promissory note, after a judgment recovered against the indorser, not a competent witness for the indorser in a suit in equity to restrain the collection of the judgment: *Id.*

## Common Carrier.

*Liability—Special Contract*—The duty of a common carrier is to transport and deliver safely. He is made by law an insurer against all failure to perform this duty, except such failure as may be caused by the public enemy or by what is denominated the act of God. By special contract with his employers, he may, it is true, to some extent, be excused, if the limitations to his responsibility stipulated for are, in the judgment of the law, reasonable, not inconsistent with sound public policy. He cannot, however, by any contract with his customers relieve himself from responsibility for his own negligence or that of his servants, and this because such a contract is unreasonable and contrary to legal policy: *Bank of Kentucky* v. *Adams Express Co.; Planters' National Bank* v. *Same*, S. C. U. S., Oct. Term 1876.

Nor can a common carrier, by a contract made with those who intrust property to him for carriage and delivery, secure to himself exemption from responsibility for consequences of the negligence of a railroad company or its agents not owned or controlled by him, but which he employs in the transportation: *Id.*

Control of the conduct of an agency is not in all cases essential to liability for the consequences of that conduct: *Id.*

## Constitutional Law.

*Foreign Insurance Co.—License by the State—Condition not to remove Suits to Federal Courts—Action against State Officer—How far a proceeding against the State itself.*—Save by the voluntary license of the state, a foreign insurance company has no right to carry on its busi-

ness within this state; and the state has power to make such license subject to the company's forbearance of a right, and revocable upon the exercise of such right: *State ex rel. Drake* v. *Doyle*, 40 Wis.

Those provisions of the statutes (ch. 56 of 1870 and ch. 64 of 1872) which authorize the issue of licenses to foreign insurance companies only upon condition of their filing a written agreement not to remove to the federal courts causes commenced against them in the courts of this state, and require the secretary of state to revoke such licenses upon a violation of that agreement, are valid. *Ins. Co.* v. *Morse*, 20 Wall. 445, distinguished, and certain *obiter dicta* therein criticised: *Id.*

So much of the statute as requires such agreement as a condition of license being designed as a compensation for the provisions authorizing licenses, if the former were held invalid, the latter would fall with it; the secretary of state in issuing the license here in question would have acted without authority; and the court would compel him to revoke it: *Id.*

Where a suit is prosecuted in a federal court by a private party against a state officer who has no personal interest or liability in the action, but is sued in his official capacity only, to affect a right of the state only, the state is the real defendant, within the prohibition of the 11th amendment of the Federal Constitution: *Id.*

A circuit court of the United States has therefore no jurisdiction of a suit by a foreign corporation to restrain a state officer from revoking (as required by the law of the state) a license granted the plaintiff corporation to do business in the state: *Id.*

Even if the federal court had authority to bind the officer in such a case it could not bind the state in the exercise of its authority: *Id.*

A valid injunction restraining a state officer from revoking a license previously issued by state authority would be spent with the life of such license, and would not apply to a new license subsequently issued under color of the same authority: *Id.*

*Conformity of Laws to requirements of the Constitution—Estoppel*—When a contest arises as to whether an act of the legislature has been constitutionally passed the journal of either house may be appealed to to settle it: *Town of South Ottawa* v. *Perkins*, S. C. U. S., Oct. Term 1876.

Laws, however, certified by the secretary of state and published by the authority of the state must be received as having passed the legislature in the manner required by the constitution, unless the contrary clearly appears: *Id.*

A municipal corporation that has issued its bonds and put them on the market as commercial paper upon the faith of a law authorizing them to do so, cannot be permitted to show, as against a bona fide holder of the bonds that the law has never in fact been passed. BRADLEY, MILLER, DAVIS and FIELD. JJ., dissenting on the ground that the Supreme Court of the state (Illinois) having decided the supposed statute not to be a valid law, the United States courts were bound to conform to that decision, and a public law could not exist merely by estoppel as between parties: *Id.*

## CONTRACT.

*Consideration, sufficiency of.*—Any damage or suspension of a right, or possibility of a loss occasioned to the plaintiff by the promise of an-

other, is a sufficient consideration for such promise, and will make it binding although no actual benefit accrues to the party promising: *Hendrick* v. *Lindsay et al.*, S. C. U. S., Oct. Term 1876.

H. engaged with L. to indemnify the sureties furnished by him, and on the faith of this promise L. and M. executed a supersedeas bond; *Held*, that if L. and M suffered loss by reason of a breach of this contract they were entitled to maintain a suit against H.: *Id.*

CORPORATION. See *Bills and Notes; Equity.*

*Acts of Agents in excess of Authority—Estoppel—Acts ultra vires—Waiver of Formalities.*—An act by one not *sui juris*, which amounts only to a recognition of a liability already imposed, will be sustained: *Rector, &c., of the Church of St. Bartholomew*, v. *Wood*, 80 Penna. St.

Although no fresh contract liability may be created, and any waiver of a party's right in original process may be absolutely prohibited, yet any step may be taken to facilitate the execution of *mesne process* to which a final judgment has declared the party to be subject: *Id.*

The charter of a church prohibited the corporation from disposing or encumbering their real estate without the assent of the convention or standing committee of the Episcopal Church of Pennsylvania; judgment was recovered against the corporation. *Held*, that if duly authorized, legal formalities in the execution might be waived: *Id.*

The acknowledgment of a sheriff's deed raises the presumption that the statutory requisites for notice to the parties have been complied with and the presumption must prevail until rebutted by satisfactory proof: *Id.*

Judgment was recovered against a church, inquisition and condemnation were waived, the waiver being signed by officers of the church with the corporate seal, without authority; the real estate was sold under the fi. fa.; the purchaser afterwards conveyed to Wood, who had no knowledge of the defects in the waiver, and the rector and officers of the church had notice of the sheriff's sale before the conveyance to Wood. The church continued in possession after the sheriff's sale, the rector delivered the key to Wood after his purchase and obtained his permission to occupy it for one Sunday and then delivered possession. Wood expended large sums of money in repairing the building. *Held*, that notwithstanding the invalidity of the waiver, the corporation was estopped from recovering the property from Wood: *Id.*

*Foreign.*—The courts of Pennsylvania are bound by the decisions of the courts of a sister state in relation to the organization of a corporation under the statutes of that state: *Grant* v. *Henry Clay Coal Co.*, 80 Penna. St.

A corporation of a sister state owning mining leases in Pennsylvania sold coal to the defendants in this state, through an agent here, known to them to be such agent: *Held*, in a suit by the corporation for the price of the coal, the defendants could not raise the question of the plaintiff's right to hold such leases: *Id.*

The inquiry into such right could be made only by the Commonwealth: *Id.*

*Subscriptions to Stock before Charter.*—A subscription to the stock of a public corporation prior to the procurement of its charter is absolute

and a condition attached is void: *Caley* v. *Philadelphia and Chester County Railroad Co.*, 80 Penna. St.

Commissioners to receive subscriptions are not the agents of the corporation but of the public, under limited and definite powers which every subscriber is bound to know: *Id.*

After a corporation is organized it may receive subscriptions for stock on conditions which it is bound to perform: *Id.*

After organization, one subscribing without condition cannot set up an unlawful act of the directors to avoid his subscription: *Id.*

Whenever a power which the subscriber cannot control, intervenes to alter a material point in his contract without his assent, it works his release: *Id.*

A subscription paper set out the termini of a railroad and the route over which it would be constructed. *Held*, that this was an agreement that the termini and the route should be as stated; and if the company materially changed them, a subscriber would be released: *Id.*

CRIMINAL LAW. See *Errors and Appeals.*

DEBTOR AND CREDITOR.

*Setting aside Conveyance for Fraud— What priorities Equity recognises.*—The *oldest* judgment creditor at law, having obtained a decree in equity setting aside a fraudulent conveyance to the debtor's children of land purchased by him prior to the recovery of the judgment, is not entitled to a preference in equity in the distribution of the proceeds of the land sold under a decree. In such case the equitable doctrine of distributing assets among creditors *pari passu* applies: *Newell* v. *Morgan*, 2 Del. Ch.

Equity will recognise and give effect to a judicial preference at law by judgment or execution; but such judicial preference arises, not out of the speed of the parties in pressing their claims at law, but out of their having obtained a *prior legal lien* upon the property in controversy: *Id.*

EQUITY. See *Debtor and Creditor; Municipal Corporation.*

*Remedy at Law.*—It is no ground for relief in equity that the debtor in a judgment is deceased and that there is no personal representative of his estate. The creditor has sufficient remedy at law by raising an administration: *Cochran* v. *Cochran et al.*, 2 Del. Ch.

*Corporation—Issue of new Stock—Remedy at Law.*—Where the board of directors of a corporation, in issuing new stock to the shareholders generally, refuse to issue to a particular stockholder his due proportion thereof, he may compel its issue to him by suit in equity against the corporation (at least as long as there is sufficient stock remaining undisposed of); though he might probably have maintained an action at law against it for damages: *Dousman* v. *Wis. & Lake Sup. M. & S. Co.*, 40 Wis.

If there are other shareholders in like condition with the plaintiff in such a case, their right and his are several, and he has no right to represent them: *Id.*

ERRORS AND APPEALS.

*Criminal case—Escape of Prisoner.*—It is clearly within the discretion of the court to refuse to hear a criminal case in error, unless the convicted party suing out the writ is where he can be made to respond to any judgment the court may render: *Smith* v. *United States*, S. C. U. S., Oct. Term 1876.

*Supersedeas—Requisites of.*—In the Supreme Court of the United States the service of a writ of error, or the perfection of an appeal within sixty days, Sundays exclusive, after the rendering of the judgment or the passing of the decree complained of, is an indispensable pre-requisite to a supersedeas, and it is not within the power of a justice or judge of the appellate court to grant a stay of process on the judgment if this has not been done: *Kitchen* v. *Randolph*, S. C. U. S., Oct. Term 1876.

*Surety—Sufficiency of—Change of Circumstances.*—On suing out a writ of error, if after the security has been accepted, the circumstances of the case, or of the parties, or of the sureties upon the bond, have changed, so that security which, at the time it was taken, was good and sufficient does not continue to be so, the court may upon a proper application, so adjudge and order as justice may require. But upon facts existing at the time the security was accepted, the action of the justice, within the statute and rules of practice adopted for his guidance, is final: *Martin* v. *Hazard Powder Co.*, S. C. U. S., Oct. Term 1876.

ESTOPPEL. See *Constitutional Law; Corporation.*

EVIDENCE.

*Foreign Statutes—Act of Congress.*—The copy of a statute of another state certified by the secretary of state under its seal is properly certified according to the Act of Congress of May 26th 1790, and is admissible in evidence: *Grant* v. *Henry Clay Coal Company*, 80 Penna. St.

One chapter of General Statutes of Massachusetts duly certified referred to another statute: *Held*, that it was admissible in evidence without including in the certificate the act referred to: *Id.*

To make an act containing different subjects admissible in evidence, it is not necessary the whole act should be certified; it is sufficient to produce those sections relating to the subject-matter: *Id.*

FOREIGN CORPORATION. See *Constitutional Law; Corporation.*

FORMER ADJUDICATION.

*Decree in Equity.*—A final decree, entered upon the record and signed by the Chancellor, dismissing the bill, and not directed to be without prejudice, is a bar to another bill filed between the same parties for the same subject-matter: *Cochran* v. *Couper, Adm.*, 2 Del. Ch.

The complainant, a married woman, had filed a previous bill in equity for arrearages of an annuity, claiming to recover *sui juris* on the ground of a divorce. The bill was dismissed for want of proof of the divorce. *Held*, that the decree, not being without prejudice, was a bar to the present bill filed against the same defendant for the same subject-matter: *Id.*

GOVERNMENT. See *Agent.*

HIGHWAY. See *Nuisance.*

*Boundary by Plan or Plat—Title of Adjoining Owner—Dedication to Public Use.*—The recorded plat of a block showed upon the east side lots 115 feet deep, with an alley 10 feet wide in the rear, and on the west side lots 97 feet deep with a space in the rear 20 feet wide, adjoining said alley, entitled "Darling Place." The certificate indorsed on the plat stated that the signers thereof, "owners in severalty of the lands embraced" in said block, had caused it to be "subdivided into lots, with a court or place and an alley as shown" thereon; and that "the alley in the rear of the front [eastern] lots, is for the accommodation of said lots, and the court shown as 'Darling Place' is given as a public promenade for foot people, but not to be opened for teams or cattle." *Held*, that both the alley and "Darling Place" became, by the recording of such plat, public highways, though with certain restrictions: *Pettibone and Others* v. *Hamilton*, 40 Wis.

It is settled doctrine in this state, that in the absence of anything in his deed to show a contrary intention, the grantee of a lot in a recorded plat takes to the centre of adjoining public ways, subject to the public easement; and this result is not affected by the fact that the description in the deed as well as the plat gives the dimensions of the lot as it is exclusive of the highway: *Id.*

This doctrine applies in favor of one who took a deed by metes and bounds only, of land which afterwards constituted a distinct lot upon a plat subsequently made and recorded by his grantor: *Id.*

After conveying to plaintiffs all the lots on the east side of said block, and to defendants the whole tract on the west side abutting upon "Darling Place," the proprietors had no further interest in said "place" or said alley; and their deed to defendants of all their interest and title in and to said place and alley does not affect the rights of their respective grantees: *Id.*

While the recorded plat, and the conveyance of lands with reference to it, constitute, as against the proprietors, a valid dedication to the public use of the land marked as public ways, without any formal acceptance by the public, the question whether such acceptance is necessary to render the municipality liable to damages resulting from want of repair of such ways, is not here decided: *Id.*

HUSBAND AND WIFE.

*Alimony*—On the husband's appeal from a judgment of divorce in favor of the wife (which appears to have given all the appellant's property to the respondent by way of alimony), it appearing that the respondent had married again before the time for appeal from the judgment had expired, and that her second husband was still living, this court denied her motion for an order on the appellant to pay her a sum sufficient to enable her to litigate the appeal: *Coad* v. *Coad*, 40 Wis.

JOINT ACTION. See *Equity; Nuisance.*

MUNICIPAL CORPORATION. See *Highway.*

*Improvement of Highways—Assessments on adjoining Owners—Equity.*—It is the settled law of this state, under the provisions of its constitution, that the legislature may authorize municipal corporations to levy special assessments upon the adjoining lots for the improvement of high-

ways within the municipality; and this rule applies to highways by water as well as to those by land: *Johnson* v. *Milwaukee*, 40 Wis.

Under the charter of Milwaukee as amended by ch. 401 of 1870, abutting property could be required to bear the cost of highway improvements only to the extent to which it was actually benefited, which was to be estimated upon actual view by the commissioners of public works; and where it appears that an apparent estimate of benefits, in such a case, rested absolutely on the estimated cost of the improvement, and not upon an actual consideration or estimate of actual benefits, the assessment must be held invalid: *Id.*

Where such an assessment is invalid, equity will restrain the issue of the certificate to the contractor, as a threatened cloud upon the title, and will not delay interference until the lot is advertised for sale: *Id.*

### Nuisance.

*Obstruction of Highway—Rights of Private Owners—Joint action by*—It is settled law of this state, that an obstruction which prevents a lawful use of a public highway, besides being a public nuisance, is a special injury to adjoining lot-owners, entitling them to an injunction against such obstruction: *Pettibone* v. *Hamilton*, 40 Wis.

An averment by such lot-owners that such obstruction will greatly diminish the value of their said lots and buildings, and will greatly increase the liability of said buildings to fire, and will otherwise greatly injure their said property, is a sufficient allegation of special injury: *Id.*

The fact that plaintiffs own severally, and not jointly, the lots and buildings specially injured by the obstruction, will not prevent their joining in an action to restrain it: *Id.*

### Partnership.

*Firm and Individual Debts—Marshalling of Assets.*—A debtor, being a member of an insolvent partnership, conveyed his separate real estate in satisfaction of a debt due to a separate creditor. The real estate exceeded in value, to a considerable amount, the debt for the satisfaction of which it was conveyed. *Held*, that the other creditors had an interest in the excess, and that in equity the property conveyed would be held as a security, first for the debt due to the grantee, and, as to the excess of value, for other debts: *Bailey* v. *Kennedy et al.*, 2 Del. Ch.

The real estate conveyed being the separate property of the co-partner the excess of value was bound, first, for his separate debts, and only after satisfying these was it applicable to the debts of the partnership: *Id.*

### Public Officer. See *Agent.*

### Railroad.

*Negligence—Adjacent Lands or Buildings*—Where there is no direct proof that a building near a railroad is set on fire by sparks from a locomotive, whether it was so set on fire depends on circumstances, and therefore is for the jury: *P. & R. Railroad Co.* v. *Hendrickson*, 80 Penna. St.

Where a barn quite near the track of a railroad was negligently burned by sparks from a locomotive, *Held*, not evidence of contributory negligence that the owner suffered the roof to be in such condition as that it was more liable to take fire than if it had a secure and safe roof: *Id.*

The owner of property near a railroad must take all risks of a proper and careful use of the road, and when a railroad company uses the most approved spark arresters, and proper care and vigilance in running its engines, an adjacent landowner has no remedy for injury to his property by fire thrown from a locomotive. But where actual negligence in running an engine is proved, and loss results, the mere condition of the landholder's property is no defence: *Id.*

In order to hold a landholder for contributory negligence where injury is done to his property by fire from an engine on a railroad, he must have done some act or omitted some duty which is the proximate cause of the injury concurring with the negligence of the railroad company: *Id.*

Farmers may cultivate and use their farms and improvements as is customary amongst farmers, and are not bound to exercise unusual means to guard against the negligence of railroad companies: *Id.*

REMOVAL OF CAUSES. See *Constitutional Law.*

STATUTE. See *Constitutional Law.*

*Statutory Grant—Legislative Intent.*—A grant of land may be made by a law, as well as a patent pursuant to a law: *Ryan et al.* v. *Carter et al.*, S. C. C. S., Oct. Term 1876.

There is no known rule of law requiring the court to interpret the proviso of a statute according to the literal import of the words employed when the evident intention of the legislature is different: *Id.*

## TAXATION.

*Restraints upon.*—The taxing power is vital to the functions of government. It may be restrained by contract in special cases for the public good, where such contracts are not forbidden. But the contract must be shown to exist. There is no presumption in its favor. It is in derogation of public right, and narrows a trust created for the good of all: *West Wisconsin Railway Co.* v. *Board of Supervisors of Trempealeau County*, S. C. U. S., Oct. Term 1876.

TELEGRAPH. See *Agent.*

## TRUST AND TRUSTEE.

*Cy pres Doctrine—Devise void for Uncertainty.*—In defining and enforcing trusts, the courts of this state have only a strictly judicial power, and have not succeeded to the jurisdiction over charities exercised by the English chancellor by virtue of the royal prerogative, under the doctrine of *cy pres*: *Heiss, Executor, &c.*, v. *Murphey and Others*, 40 Wis.

A devise and bequest of real and personal property "to the Roman Catholic orphans" of a certain diocese in this state, with a further provision in the will appointing plaintiff, the Roman Catholic bishop of said diocese, executor and giving him "power to sell the above property and use the proceeds for the benefit of the Roman Catholic orphans," *held* void for uncertainty in the description of the beneficiaries; the class not being sufficiently defined, and no way being provided for selecting the individual beneficiaries from any class; and this uncertainty is fatal, whether the design was to pass the legal title to the beneficiaries, or to the executor in trust for them, or to confer upon the executor a power of sale, &c., in their behalf: *Id.*