

His condition may have induced some one to attempt the robbery. Under all the circumstances of the case, we think plaintiff ought not to recover.

It is therefore ordered, adjudged and decreed, that the judgment of the District Court be avoided and reversed; and that there be judgment in favor of defendants against the claim of plaintiff and that plaintiff pay the costs of both courts.

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LEGAL MISCELLANY.

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THE JUDGES AND THE NEW PUBLIC BUILDINGS.

[The following letter from Judges SHARSWOOD and HARE, of the District Court of Philadelphia, addressed to Gov. PACKER, fully explains the grounds of their objections to the assumption of the duties of Commissioners for the erection of new public buildings, under the act of the last legislature.]

*Philadelphia, May 26, 1860.*

To his Excellency WM. F. PACKER:

SIR: We have carefully considered the provisions of the act of Assembly entitled "An act providing for the erection of public buildings in the city of Philadelphia," approved April 2, 1860. It constitutes the Judges of the Court of Common Pleas, the Judges of the District Court, the Mayor, and the President of each branch of the City Councils, Commissioners to procure the erection of suitable buildings for the accommodation of the courts and public officers. It requires the Commissioners to decide whether the buildings shall be erected on Independence Square or Penn Square, to adopt a plan, to prepare a contract, to advertise for proposals to build according to such contract, to award the contract at their discretion, to any person or persons, to determine the amount and kind of security to be given by the contractors, and to approve of the sufficiency thereof, to superintend and direct the erection of the buildings, and the fitting them up for the reception of the courts and public officers.

It is clear that the duties thus imposed upon the Commissioners,

are in no respect judicial duties. The mere fact that they relate to court houses does not invest them with that character. It is equally clear that the legislature has no constitutional power to assign any other than judicial functions to the judges of the courts. It is undoubtedly true that while duties not judicial cannot be imperatively prescribed, they may be lawfully accepted and performed. Whether they ought to be in any particular instance, must depend upon their character. When they conflict in any degree with the performance of their proper official duties, the judges not only have the right, but they ought to decline them. The courts of this county have heretofore, in many instances, complied with the requisitions of the legislature in the appointment of persons to fulfill various municipal trusts. But an entirely different case is presented when the judges are required themselves to assume such a trust, to be themselves the Commissioners, to prepare contracts, to award them, and superintend their execution. With great respect for the opinion of the other members of the two courts, who have determined to proceed in the execution of the act, we have come to the conclusion to decline it.

It is scarcely to be expected but that in the progress of a work so large and expensive as this is likely to be, controversies will arise, not only between the city of Philadelphia, whose agents the Commissioners will be, and the contractors, but between the contractors and their employees, as well as strangers. While neither of the courts would be ousted of its jurisdiction, no one of the Commissioners could with propriety sit as a judge upon the trial of cases in which he had taken personally so important a part. In regard to suits involving sums under five hundred dollars, no other court has jurisdiction except those whose judges would be thus actors and witnesses, if not parties to the matters in dispute.

Besides this consideration, which seems to us to be decisive, we invite your attention especially to that provision, by which the contract is required to be carried out under the direction of the Commissioners. What in character and extent, this power of direction is, the act does not define. It cannot be a power to change the plan, or vary the terms of the contract. The legislature cannot

mean that the Commissioners shall direct the contractors what workmen to employ, and of whom to purchase their materials. It must be, that they shall superintend and judge of the quality of the work, and its conformity to the terms of the contract. They must do this *personally* ; for the Board are not authorized by the act to appoint any architect, superintendent, clerk or other officer. Even their secretary, it is carefully declared, shall be one of their own number. We may be allowed to say that, if we could spare the time from our proper judicial duties for the daily supervision which it would require, we do not possess the knowledge and experience necessary for such personal superintendence. It is, in our view, one of the most objectionable of the details of the law, that while by its provisions the buildings are to be erected under the direction of the Board, it has submitted as well their opinion upon the construction of the contract, as their judgment on the quality and materials employed in the work to be reviewed and reversed by a person whose office is in its nature ministerial or executive, while the persons whose acts or directions are reviewed are for the most part, and in our cases particularly, altogether judicial officers. By the eighth section of the act, it is enacted that the last payment shall not be made for construction of said buildings until the Chief Engineer and Surveyor of the city shall certify that the said buildings have been constructed in accordance with the contract. What proportion of the whole contract price the last payment shall be has not been specified in the act ; but the evident intention of the legislature was, that it should be at least so considerable as to form a security for the proper execution of the contract. Yet the decision of the umpire thus constituted will be final and conclusive, at least as regards the contractors, if adverse to them, if not also as regards the city.

We may be permitted to add that from considerations of general public policy we regard it as especially important that the judges of the courts should have no participation whatever in the giving out or direction of contracts or works to be paid from the public treasury. It is not necessary that we should do more than advert to this point ; the evil consequences to be feared from such participation will at once present themselves to every reflecting mind.