without such act the city had the power. The same thing is necessarily implied in that provision of the constitution which requires the legislature to "restrict" the power of municipal corporations "to contract debts, borrow money, loan their credit," &c. But the answer to this objection that this act made the issuing of the cemetery bonds illegal, is this: It appears from the case that the city had previously purchased the lot and contracted for that mode of payment. The act of the legislature then could not impair the obligation of that contract, or defeat the party's right to its specific performance. The judgment of the County Court must be reversed and the cause remanded, with directions that the complaint be dismissed.

LEGAL MISCELLANY.

IS A CORPORATION CAPABLE OF MALICE?

The old doctrine, that a corporation aggregate has no soul, and therefore is incapable of a malicious intention, has been described by Erle, C. J., as being rather quaint than substantial; and accordingly, in these days, when substance is preferred to form, and utility to quaintness, it has been held that corporations, especially those of a trading character, have souls, and may therefore be guilty of malice. The number and importance of corporate bodies established for the purposes of trade in modern times, and transacting their business through the agency of servants, have rendered it necessary to relax the old rules existing upon the subject, and to extend to them the maxim "respondeat superior," as if they were private individuals, the only special limitation ingrafted upon their liability being, that the act complained of should be within the scope and purpose of the incorporation. Thus, after being held liable to an action for a false return to a mandamus, *Yarborough* vs. *The Bank of England*, 16 East, 6; for the negligence of their servants, *Scott* vs. *The Mayor, &c., of Manchester*, 2 H. & Norm. 204; 3 Jur., N. S., part 1, p. 590; for an assault, *The Eastern Counties Railway Company* vs. *Broom*, 6 Exch. 314; 15 Jur. part 1, p. 297; for false imprisonment, *Chilton* vs. *The London and Croydon*

Railway Company, 16 M. & W. 212; to an indictment for nonfeasance, *Reg.* vs. *The Birmingham and Gloucestershire Railway Company*, 3 Q. B. 223; and for misfeasance, *Reg.* vs. *The Great North of England Railway Company*, 9 Q. B. 315; 10 Jur., part 1, p. 755, it was decided that an incorporated company might be sued for a libel contained in a message transmitted by their telegraph, the company being incorporated for the purpose (inter alia) of transmitting messages, *Whitfield* vs. *The South-Eastern Railway Company*, 4 Jur., N. S., part 1, p. 688, and that they might also be guilty of acts maliciously committed with a view to injure individuals or rival companies; *Green* vs. *The London General Omnibus Company*, 6 Jur., N. S., part 1, p. 228. In this last cited case, the declaration in substance alleged that the defendants maliciously placed their omnibuses just before and just behind the omnibuses of the plaintiff, (he being a carrier of passengers for hire, &c.,) so as to prevent persons from entering the plaintiff's omnibuses. Upon demurrer, on the ground that a corporation aggregate could not be guilty of a malicious intention, the declaration was supported, and in delivering the judgment of the court, Erle, C. J., said: "The whole of the acts that are charged against the defendants are acts connected with the driving of their vehicles; and this is a company incorporated for the purpose of driving omnibuses, and therefore the actual things done by the defendants are within the purpose of their incorporation. Unless they had been wrongfully done, of course there could be no ground of complaint; but being wrongfully done, we think clearly the action lies. . . . An action for a wrong lies against a corporation where the thing done is within the purpose of the incorporation, and it has been done in such a manner as to constitute what would be an actionable wrong if done by a private individual. . . . There are numerous authorities in support of the principle on which we rely, and, I may add, as an additional reason for our decision, the inconvenience to the public that would arise if we were to hold that these companies, incorporated for the purposes of trade, had a restricted limitation put upon their liability by reason of such incorporation, and were exempt from responsibility because they intentionally wronged the public. We think it extremely important, where such companies admit that

they have in fact intentionally committed a wrong, that the public should have a remedy against them, and not be driven to an action against their servants and others whom they have employed, and who may be entirely incapable of giving the recompense which the law may award."—*Jurist.*

NOTE.—That a corporation aggregate may maintain an action for a libel for words published of them concerning their trade or business, by which they have suffered special damage, was decided, probably for the first time, in the *Trenton Mutual Life and Fire Insurance Company* vs. *Perrine*, 3 Zabriskie, 402. "It cannot be denied," observed Chief Justice Green, in delivering the opinion of the court, "that a corporation may have a character for stability, soundness, and fair dealing, in the way of its trade or business; that this character is as essential, nay more so, to its prosperity and success than that of a private individual; that banks, insurance companies, and money corporations generally, whose operations enter largely into the business of every community, depend mainly upon their reputation in the community for their success, and often for their very existence. Nor can it be denied that the character of corporations is more easily and more deeply affected by false and malicious allegations than that of private individuals; nor that the business of a corporation is more prejudiced by an evil name, by distrust of its responsibility, or of the character of its officers, than that of an individual. If, then, the reputation of a corporation, and that of its officers, be essential to its prosperity, if it may suffer pecuniary loss, and even the utter destruction of its pecuniary interests, from false and malicious representations, why should it not be entitled to pecuniary redress?" (p. 408.) It seems, however, to be admitted in this case, that special damage, directly or naturally from the libel, is necessary to be shown, and that without such an allegation, an action for a libel or slander could not be sustained in such a case. "The reason for the distinction," say the court, "may be found in the fact that a corporation has not, like an individual, any character to be affected by the libel, independent of its trade or business."

On the other hand, it has been held recently that an action of libel would lie *against* a corporation, for a statement in a report by the president and directors of the company, to the stockholders, and afterwards published: *Philadelphia, Wilmington, &c., Railroad Co.* vs. *Quigley*, 21 Howard, 202.

An action of libel may be sustained by a partnership for a publication reflective on their commercial standing. *Taylor* vs. *Church*, 1 E. D. Smith, 279; 4 Selden, 452. But no such action will lie by the members of a company or association, neither being partners nor persons having a community of pecuniary interest, wherein they could sustain damage, as in the case of a hose company. *Giraud* vs. *Beach*, 3 E. D. Smith, 337.—*Wharton's Note*, 4 *Ex., p.* 94.