But in the judicial arena justice is still supposed to be blinded to all consequences of a merely expedient or necessary character. Her maxim still is *fiat justitia ruat cœlum.* And we feel it to be a duty, as well as a pleasure, as conductors of a public journal of jurisprudence to do what in us lies, to stay up and support the hands of the judiciary, in following the right, regardless of consequences. We are content to go for the Government, and the whole Government, so long as it keeps within the field of its legitimate functions. Beyond that, all government, whether under the forms of new or of old organizations, is usurpation and tyranny; and, by God's help, we shall always be willing and ready to expose its short-comings and its over-reachings. I. F. R.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.[1]

Corporations; liability of Directors to Stockholders, for frauds, &c.— The relation between directors of a corporation and its stockholders, is that of trustee and *cestui que trust.* And if the directors pay over the funds in their hands or in the treasury to an individual, upon a pretended claim, which they know, or must be presumed to know, is wholly unfounded in law, it is a breach of trust on their part: *Butts* vs. *Wood.*

Where W., who was secretary and treasurer of a corporation, and also one of the directors, presented a claim to the board of directors for compensation for his services as secretary, which claim was allowed and ordered to be paid, by the votes of the three directors present, W. himself being one of them, his father another, and a relative the third; *Held,* that the transaction challenged the most jealous and severe scrutiny, even if there was legal color for the claim. But that, there being in fact no legal claim, the Court was in duty bound to pronounce the transaction fraudulent and void as against the other stockholders: *Id.*

Held, also, that a stockholder of the corporation could maintain an action in his own behalf, and in behalf of the other stockholders, against the three directors by whom the resolution was passed, to set aside the transaction, as an abuse of trust, and for the repayment of the money: *Id.*

[1] From the Hon. O. L. Barbour; to appear in the 38th volume of his Reports.

Landlord and Tenant.—After an agreement by a landlord to repair is broken, it becomes a chose in action in the tenant's favor, upon which he can maintain an action against the landlord: *Mirick* vs. *Bashford.*

If a grantee in fee of the landlord refuses to recognise any liability to repair, and the tenant, with notice of such refusal, attorns to him and pays him rent, the grantee is not liable on the landlord's contract to repair, if such contract was broken, and the landlord's liability for the breach was complete before the grantee had acquired any legal estate in the premises: *Id.*

If, after a purchaser from the landlord has repudiated the landlord's covenant to repair, and refused to perform it, the tenant avowing his intention to hold the lessor upon his covenant, continues in possession of the premises, attorning to the purchaser by the payment of rent, without objection, as it becomes due, this will be held to be *primâ facie* evidence, at least, of a waiver by the tenant of any claim upon the purchaser, on the landlord's covenant to repair: *Id.*

Agreement—Statute of Frauds.—K., S. & Co., copartners, being indebted to the plaintiffs in the sum of $8207.75, K., one of the firm, agreed, by parol, with the plaintiffs, that in consideration that the latter would receive $10,000 of the bonds of a railroad company, in payment of such indebtedness of the firm, he, K., would, at a future day, at the plaintiffs' request, purchase the same bonds of them, and pay them therefor the said sum of $8207.75. *Held*, that the agreement was within the Statute of Frauds and void, for the reason that it was not in writing, and no part of the purchase-money was paid: *Id.*

Held, also, that the plaintiffs could not recover upon the contract for the purchase of the bonds, without proof of a tender of the bonds, or of a demand upon the defendant of performance: *Id.*

Agreement—Parties.—The defendant, with others, subscribed a paper by which he agreed to pay $200 to the trustees, or a committee to be appointed by the East Genesee Conference of the Methodist Episcopal Church, for the purpose of purchasing land and erecting buildings for a seminary, to be located at D., and to be under the superintendence and control of said Conference. The Conference accepted the trust, and erected the buildings. A seminary was established, and was subsequently duly incorporated. *Held*, that an action upon the subscription paper would lie in the name of the corporation, without any formal direct assign-

ment of such paper from the committee appointed by the Conference: *The Dansville Seminary* vs. *Welch.*

Privileged Communications.—A conversation between a person who has been tried upon an indictment and acquitted, and one who was his counsel on the trial, had after the relation of counsel and client has ceased, upon a subject unconnected with that to which the employment of the witness and counsel related, is not a privileged communication: *Mandeville* vs. *Guernsey.*

Measure of Damages—Interest.—Where, in an action to recover the price of wheat delivered under a contract, at a price fixed, the defendant sets up, by way of counter-claim, the damages he has sustained by reason of the plaintiff's refusal to deliver the whole quantity agreed upon, he is, if he establishes such defence, entitled to be allowed as damages the difference between the contract price of the wheat not delivered, and the market value thereof at the time it was to have been delivered, with *interest* on that difference: *Fishell* vs. *Winans.*

Municipal Corporations; Liability for Damages caused by Street Improvements—Distinction between Ministerial and Judicial Acts.—Municipal corporations are not liable in damages for any injury or inconvenience to the owners of property upon the streets of the city or village, resulting from the improvement of the streets, such as grading, paving, laying curb and gutter stones, sidewalks, &c., by authority of law, when there is no negligence or unskilfulness in conducting the work of improvement: *Kavanagh* vs. *City of Brooklyn.*

Incidental damages to the owners of property, resulting from the establishing or altering of the grade of a street, are not to be provided for or paid in any form, but are regarded and treated as *damnum absque injuria*: *Id.*

The fundamental principle that prevails in all the statutes authorizing or providing for the grading, paving, and improving of streets, is that the property thought to be benefited must pay all that is to be paid, and not the municipal treasury: *Id.*

When a duty of a judicial nature is imposed upon a public body, they are exempt from responsibility by civil action for the manner in which the duty is performed. But where a duty purely ministerial is violated or negligently performed by a public body or officer, an injured party may have redress by action: *Id.*

The ordinance of a city corporation, directing the construction of a public improvement, within the general scope of its powers, is a judicial act; but the prosecution of the work is ministerial in its character, and the corporation must see that it is done in a safe and skilful manner: *Id.*

Value of Articles—Opinions of Witnesses.—Although Courts have received evidence of the price paid for the identical property or article in suit, as some evidence of its value, yet, when a large number of articles are sold in the aggregate for a given sum, the opinion of witnesses as to the value of a part of the articles will not be received for the purpose of ascertaining the value of the other part, in an action for the conversion of the latter: *Wells* vs. *Kelsey.*

Insurance—Complaint in Action on Policy.—A complaint in an action on a policy of insurance, must contain an averment of an insurable interest in the plaintiff or in the person for whose benefit the contract was executed: *Freeman* vs. *The Fulton Fire Insurance Co.*

Where the person with whom a contract of insurance was made, and who brings an action upon it, has no interest in the property which would authorize or enable him to make such a contract himself, he is bound to state affirmatively in his complaint, that he acted as the agent of another, whose interest was sufficient to sustain such a contract: *Id.*

Action for Money had and received.—Where A., owing money for services rendered by B., who is in the employ of C., pays the money to C. for such services, as if the latter were entitled to compensation therefor instead of B.; the receipt of the money by C. under such circumstances, while it does not prejudice B.'s right of recovery against A., if he have any, will not make the money B.'s, nor entitle him to maintain an action against C. for money had and received by C. from A. for the plaintiff's use and benefit: *Murphy* vs. *Ball.*

Grant of Land covered with Water—Landlord and Tenant.— When the State makes a grant of land covered with the waters of a bay or navigable river, and the grantee reclaims the land and raises it above the surface of the water in the form of a wharf, it is not a mere *franchise* to collect wharfage, and belonging to the public at large for commercial purposes; but the grantee is invested with all the rights that pertain to the ownership of lands: *The People ex rel. Ward et al.* vs. *Kelsey.*

The failure of a lessor to construct a pier, in conformity with the stipulations of the agreement, though it may constitute a good defence to an

action upon the lease, to recover the rent, is no defence or answer to the claim of the landlord to have the possession restored to him: *Id.*

Where tenants have taken possession of the demised premises under the lease, and have thus become vested with the term, they cannot refuse to pay the rent, and at the same time retain the possession and enjoyment of the premises against the claim of the landlord: *Id.*

Injunction to prevent a Nuisance.—The existence of the power to compel the *removal* of an obstruction in a navigable river, after it has been created, does not prevent an application to the Court to prohibit the *erection* of such obstruction: *The People* vs. *Vanderbilt.*

If there is no legal authority for the erection of a pier in a navigable river, such pier will be a nuisance *per se*, and no evidence is admissible to show that though illegal, it will do no harm: *Id.*

Probate of Will—Executors, allowances to when chargeable with Interest.—Where the domicil of a testator is in this State, and his will is proved and letters testamentary issued here, where all the personal estate is situated, it is unnecessary for the executor to prove the will in another State, where the real estate of the testator is situated; and he will not be allowed the expenses incurred in doing so on the settlement of his accounts: *Young, Administratrix, &c.*, vs. *Brush et al.*

The distribution of the personal estate in such a case, is to be according to the laws of New York; and a decree of a Court in the State where the real estate is situated, directing the expenses of proving the will there to be paid out of the estate, has no force or validity here, and cannot make those expenses chargeable to the legatees under the will in this State: *Id.*

Where money was deposited by executors in a trust company, under the direction of a referee, and with the consent of the counsel of the opposite party as to the place of deposit, to be applied to the payment of any recovery in the action; it was *held*, that in the absence of any demand of the payment of the money, the executors were not chargeable with a higher rate of interest than was received for the fund while it was deposited in the trust company: *Id.*

Corporation—Election of Directors.—By the charter of an insurance company, it was provided that the rights, powers, and privileges of the company should be vested in a board of directors, to consist of forty persons. Subsequently, the Legislature passed an act authorizing the company to reduce the number of its directors to twenty-one. *Held*, that in the absence of any provision in the act requiring the act of reduction to

be done by the stockholders, at a meeting for that purpose, the power vested in the board of directors: *Matter of the Excelsior Insurance Co.*

Held, also, that an election of directors could not be set aside as void, and a new election ordered, on the ground that there had been no previous action taken by the stockholders, to reduce the number of directors: *Id.*

Held, further, that the neglect or refusal of the stockholders, at such election, to vote for the whole number, did not make the election illegal. Such as had a majority of the votes were elected, and if there were vacancies left in the board of directors, in consequence of the omission to elect the whole number, the board had power to fill them, but not to hold a special election for that purpose: *Id.*

SUPREME COURT OF PENNSYLVANIA.[1]

Pardon; Effect of on Sentence.—A pardon by the governor of a person convicted of fornication and bastardy, when pleaded before sentence, discharges the defendant from liability for costs as well as for the maintenance of the bastard child: *Commonwealth* vs. *Ahl.*

The order of maintenance is a part of the sentence; and until it is pronounced, the right of the prosecutrix to the periodical payment of money does not vest: hence, where the defendant was pardoned before sentence, the Court had no power to make an order of maintenance: *Id.*

Orphans' Court—Bond of Guardian.—The Orphans' Court, after having taken a bond with sureties from the guardian of an infant, has no power to direct the bond to be given up or cancelled while the guardianship remains, and its duties are unperformed: *Newcomer's Appeal.*

Where the bond of a guardian had been improperly marked "*cancelled*," it was not error in the Orphans' Court to order that the word "*cancelled*" be stricken off. *Id.*

Will, Execution of.—Where a will, written in the presence of the testator, and according to his dictation, is executed in accordance with the statutes, it is valid, though not read to or by him: *Hess's Appeal.*

Amendment by striking out the Name of one of two Defendants refused.—D. and H. were sued jointly upon a joint contract, and an award of arbitrators had against H. only, from which he and the plaintiffs separately appealed: on trial and before verdict, the plaintiffs moved to strike

[1] From Robert E. Wright, Esq., State Reporter; to be reported in the 7th volume of his Reports.

out D.'s name from the record, which was refused and the jury instructed that as there was no evidence against D., their verdict must be for the defendants. On writ of error, *Held*, that as no mistake was alleged in making D. a defendant, and as the plaintiffs had knowledge of the facts from the time of the arbitration, the refusal of the Court below to permit the amendment was in the exercise of a proper discretion, and not error: *Locke et al.* vs. *Daugherty et al.*

Decree of Court below—Construction of Will—Legacy to one by "Name" given to another "by Description."—A testator by will gave a bequest "to Lavinia the daughter of my brother John," deceased; John left no daughter of that name, and the legacy was claimed in right of a daughter of testator's cousin, who bore the proper name: the auditor and the Court below however decreed the legacy to Cassandra Emig, John's daughter, on evidence that the testator mentioned her married name in connection with the legacy at the time of making the will; and that both claimants were god-daughters of testator, a class to whom he had expressed his intention of giving a legacy. *Held*, that in such an equal balance of circumstances the presumption was that the decree of the Court below carried out the intention of the testator, and that where nothing appeared on the record to displace that presumption, the decree would be permitted to stand: *Wagner's Appeal.*

Administrator improperly appointed—Liability of Sureties of—Informal Administration Bond, validity of—Sale after Time fixed in Will valid—Liability of Sureties to Legatee for Interest.—Though an administrator *de bonis non cum testamento annexo* be improperly appointed, yet if he act under the letters granted to him, he and his sureties are liable on their bond to the parties interested in the estate: *Shalter and Ebling's Appeal.*

Though the bond given was in the form of an original administration bond in cases of intestacy, yet the sureties are liable for proceeds of the real estate of the testator sold by the administrator as directed in the will for which he had failed to account: *Id.*

Where the testator directed a public sale of his real estate by his executors, "so that it be within one year" after his decease, the sale by the administrator after the expiration of the year was as effectual as if it had been done by the executors, who had power to sell after the year, the condition being directory only and not a condition precedent: *Id.*

The sureties were liable for a balance of interest due a daughter of tes-

tator, whose share was directed to be charged on the real estate sold, which interest the administrator had received, but had not paid over: *Id.*

Bond of Married Woman.—The bond of a married woman is absolutely void, and so is any judgment on it, whether by warrant of attorney or otherwise: *Steinman* vs. *Ewing.*

A married woman owning real estate in Pennsylvania, sold part of it, and with the proceeds of the land, and of a note given by her, bought property in Maryland and removed there: for this note there was substituted a bond and mortgage upon her remaining land, the proceeds of which on a sale did not discharge the mortgage, but left a deficiency for which the holder of the bond issued a foreign attachment against her. *Held*, that as the debt was not within any of the provisions of the Act of 1848, or covered by any of the decisions of the Courts under that act, the action could not be maintained: *Id.*

Repudiation of Partnership—Contract by Partner.—Where one permits another to buy stock on their joint account in anticipation of forming a partnership, and immediately afterwards repudiates the agreement to become a partner, he is not entitled to any of the property bought, nor are his individual creditors: *Rice* vs. *Shuman.*

What Interest will disqualify Witness—Waiver of Notice of Protest, effect of.—Unless a witness has a direct, certain, and immediate interest in the result of a suit, he is competent. A mere possibility of being sued by the plaintiff in respect to the cause of action for which he sues, will not disqualify. *Scull* vs. *Mason & Co.*

Hence, one of a firm to whom a note payable at a banking-house had been indorsed for collection, is a competent witness to prove demand of payment at the maturity of the note, though demand and protest was not regularly made by a notary until the next day: *Id.*

Where the indorser, on the day the note came due, had indorsed thereon a written waiver of "notice of protest for non-payment in this case," and on the same day demand was made at the banking-house, where answer was made that the drawees had no funds there, he cannot complain in a suit against him by indorsees, that no sufficient demand had been made: and it was not error in the Court to instruct the jury that under the facts of the case there was a substantial demand made, and that the plaintiffs were entitled to recover: *Id.*

Set-off.—Damages for the breach of a partnership contract cannot be