

Statement of the case.

be inferred that the court had refused to allow anything for demurrage. But on reference to the record, it appears that this sum was allowed by the judge, because he thought that "the result would be about just between the parties on the whole case." The sum reported by the commissioner has not the effect of a verdict. The court may not concur in his conclusions upon the facts reported, and may modify or wholly reject it. The court did not decide that demurrage was not a proper item to be allowed in the computation of damages, but that the amount of his decree was a just allowance for all damages sustained by libellant. On reviewing the evidence, we are satisfied that the sum allowed in the decree was "just between the parties." The report of the commissioner, allowing the whole bill for repairs, was not just, because the repairs necessarily made were chargeable not wholly to the collision, but to the age and previous condition of the boat. The charge for demurrage allowed by him was not justified by the evidence, although there was testimony to support it, such as can always be obtained when friendly experts are called to give opinions. Besides, the libellant withheld the best evidence of the profits made by his boat, which would be found in his own books, showing his receipts and expenditures before the collision.

We believe the decree gave the libellant ample reparation for all damages, as well for demurrage as repairs.

DECREE AFFIRMED.

SEYBERT v. CITY OF PITTSBURG.

An authority given by act of legislature to a city corporation to subscribe for stock in a railway company, "*as fully as any individual*," authorizes also the issue by the city of its negotiable bonds in payment of the stock. The opinion of the Supreme Court of a State taking this view of an act of Assembly passed by that State, approved.

THE legislature of Pennsylvania incorporated a railway company, by act of Assembly, one section of which enacted that any incorporated city should have authority to *subscribe*

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to the stock "as fully as any individual," but the act did not give such cities any power to issue *bonds* in payment of their subscriptions. However, the city of Pittsburg, in Pennsylvania, having subscribed for several shares of the stock, did issue its negotiable bonds in payment of the subscription. Some of these bonds having got into the ownership of the plaintiff, Seybert, and not being paid when due, he sued the city in the Circuit Court of the United States for the Western District of Pennsylvania, upon them; a case being stated for judgment. A person named Reinboth, who also owned some of the bonds, had about the same time sued the city in one of the State courts of Pennsylvania, and the question as to the right of the city to issue the bonds was pending in the Supreme Court of that State when the present case, of Seybert, came on for argument in the Circuit Court below. To expedite a decision, which the parties desired to have, in this, the Supreme Court of the United States, the Circuit Court entered a judgment *pro formâ* in favor of the city; so deciding, for the sake of form, that it, the city, could not, under the powers given, issue its *bonds* for payment of the stock subscribed for. Between the time, however, of this judgment in the court below, and the time when the case was called for argument here, Reinboth's case had been decided in the Supreme Court of the State.* That court said as follows: "The power given to the corporation to subscribe was a power to create a debt, and consequently to give an evidence of the debt. The authority given was to subscribe as fully as an individual; and as an individual (by agreement with the company) could have given his bond, the city corporation had the same power. That grants of powers to corporations are strictly construed in favor of the public, but it would be a perversion of the rule to permit a corporation to use it to defraud its creditors, or protect itself against its own assumed obligations. If they legally owe a debt, it follows that they can give a bond for it."

* Commonwealth, ex rel., Reinboth v. Councils of Pittsburg, 41 Pennsylvania State, 278.

Opinion of the court.

Mr. Knox, for Seybert, submitted the case by brief.

Mr. Justice GRIER delivered, in a few words, the opinion of the court. He stated the case, quoted the language of the Pennsylvania decision as just given, and announced that "as this court fully concur in the construction of the act made by the highest tribunal of the State of Pennsylvania, it was unnecessary to make further remark." That the judgment of the Circuit Court was therefore to be reversed, and judgment entered for the plaintiff on the special verdict.

JUDGMENT ACCORDINGLY.

GREGG v. VON PHUL.

1. Whether a contract to give a deed with "full covenants of seizure and warranty," is answered by a deed containing a covenant that the grantor is "lawfully seized in fee simple, and that he will warrant and defend the title conveyed against the claim or claims of every person whatsoever,"—there not being a further covenant against *incumbrance*, and that the vendor has a *right to sell*—need not be decided in a case where the vendee, under such circumstances, made no objection to the deed offered, on the ground of insufficient covenants, but only stated that he was not prepared to pay the money for which he had agreed to give notes; handing the deed at the same time, and without any further remark, back to the vendor's agent who had tendered it to him.
2. Where a vendor agrees to give a deed on a day named, and the vendee to give his notes for the purchase-money at a fixed term from the day when the deed was thus meant to be given, and the vendor does not give the deed as agreed, but waits till the term that the notes had to run expires, and then tenders it—the purchaser being, and having always been in possession—such purchaser will be presumed, in the absence of testimony, to have acquiesced in the delay; or, at any rate, if when the deed is tendered he makes no objection to the delay, stating only that he is not prepared to pay the money for which he had agreed to give the notes, and handing back the deed offered,—he will be considered, on ejectment brought by the vendor to recover his land, to have waived objections to the vendor's non-compliance with exact time.
3. While it is true that in an executory contract of purchase of land, the possession is originally rightful, and it may be that until the party in possession is called upon to restore possession, he cannot be ejected without demand for the property or notice to quit; it is also true that by a failure to comply with the terms of sale, the vendee's possession becomes tortious, and a right of immediate action arises to the vendor.