requiring special care, or in other words, the wrong complained of was a misfeasance and not a mere omission. The case of *Weet* v. *Brockport*, 16 N. Y., 161, was also a case where SELDEN, J., who reviewed and discussed all the decisions, said it was not necessary to consider the wrong complained of as a mere neglect of duty, because it was in itself a dangerous public nuisance, created by the corporation, and not in any sense a non-feasance. In *Delmonico* v. *Mayor*, 1 Sand 226, the injuries, though in a highway, consisted in crushing in a vault under the street, by improperly piling earth upon it while excavating for a sewer, and there was also a direct misfeasance.

The cases in which cities and villages have been held subject to suits for neglect of public duty, in not keeping highways in repair, where none of the other elements have been taken into the account, are not numerous, and all which quote any authority professs to rest especially upon the New York cases, except where the remedy is statutory. It will be proper, therefore, to notice what those cases are, and upon what cases they are supported. The only cases of this kind decided in the courts of last resort, that we have been able to find, are *Hutson* v. *Mayor*, 9 N. Y. 163; *Hickox* v. *Plattsburg*, 16 N. Y. 161, and *Davenport* v. *Ruckman*, 37 N. Y. 568. This latter case resembles the one before us very closely in its leading features, and would furnish a very close precedent. It is not reasoned out at all, but refers for the doctrine to the other two cases, and to an authority in 18 N. Y., which does not relate to municipal liabilities. The case of *Hutson* v. *Mayor*, does not attempt to find any distinct foundation for the right of action, but refers to the cases in 3 Hill, and *Rochester White Lead Co.* v. *Rochester*, and *Adsit* v. *Brady*, 4 Hill, 630, as having established the liability. This latter case is disapproved in *Weet* v. *Brockport*, and the others are sustained there on the ground of misfeasance, and as Judge Denio, when the decisions in 16 New York were made, stated that he had not supposed there was any corporate liability for mere neglect to keep ways in repair, it is quite possible that the case of *Hatson* v. *Mayor*, was regarded as distinguishable. The circumstances were very aggravated, as it would seem that the city had left a road too narrow to accommodate a carriage without any paving and without protection against the danger of falling down a deep embankment into a railroad excavation. The report is not as full as could be desired upon the precise state of facts. In the Supreme Court, where the judges differed in opinion (two dissenting), the liability seems, from the view taken of that case by Judge Selden, to have rested on the ground that there had been a breach of private duty and not of duty to the public. If this was the view actually taken, it would not bring the case within the same category with the other road cases. But the case of *Weet* v. *Brockport*, 16 New York, 161, is recognized as the one in which the whole law has been finally settled, and it is upon the grounds there laid down, that the liability is now fixed in New York. The elaborate opinion of Judge Selden, which was adopted by the Court of Appeals, denies the correctness of the dicta in some of the previous cases, and asserts the liability to an action solely upon the ground that the franchises granted to municipal corporations are in law a sufficient consideration for an implied promise to perform with fidelity all the duties imposed by the charter, and that the liability is the same as that which attaches against individuals who have franchises in ferries, toll-bridges, and the like. The principle as he states it, is:

"That whenever an individual or a corporation, for a consideration received from the sovereign power, has become bound by covenant or agreement, either express or implied, to do certain things, such individual or corporation is liable, in case of neglect to perform such covenant, not only to a public prosecution by indictment, but to a private action at the suit of any person injured by such neglect. In all such cases the contract made with the sovereign power is deemed to enure to the benefit of every individual interested in its performance."

(*To be continued,*)

One of Curran's butts in Dublin was a certain Sergeant Kelly, known from an unconscious, but laughable, peculiarity of his as counsellor. Therefore, he was an incarnate *non sequitur*, and never spoke without convulsing the court. "This is so clear a point, gentlemen," he once told a jury, "that I am convinced you felt it to be so the very moment I stated it. I should pay your understandings but a poor compliment to dwell on it even for a minute; *therefore* I shall now proceed to explain it to you as minutely as possible."

Meeting Curran, one morning, near St. Patrick's cathedral, he said to him: "The archbishop gave us an excellent discourse this morning. It was well written and well delivered; therefore I shall make a point to be at four courts to-morrow at ten."

Curran used to tell a story of Lord Coleraine, the best dressed man in England, and a very punctilious fashionable. Being one evening at the opera, he noticed a gentleman enter his box in *boots*, and vexed at what he thought an unpardonable breach of decorum, said to him: "I beg, sir, you will make an apology." "Apology!" cried the stranger, "for what?" "Why," rejoined his lordship, pointing down at the boots, "that you did not bring your horse with you into the box." "It is lucky for you, sir," retorted the stranger, "that I did not bring my *horse whip;* but I will pull your nose for your impertinence."

The two were immediately separated, but not before exchanging cards and settling for a hostile meeting. Coleraine went to his brother George to ask his advice and assistance. Having told the story, "I acknowledge," said he, "that I was the aggressor; but it was too bad to threaten to pull my nose. What should I do?"

"Soap it well," was the cool fraternal advice, "then it will slip easily through his fingers."