the year 1798; not found in the bank, nor accounted for in any public deposit, or application. On these several points, the following authorities were cited: 3 *State Laws*, 132. 4 *Ibid.* 301. 4 *Vez. j.* 829. *Sayre*, 115. 2 *P. Wms.* 287. 1 *Bous. & Pull.* 419. 422, 3 *State Laws*, 222. *s.* 9, 10. 2 *State Laws*, 753. *s.* 6, 7. 6 *State Laws*, 490. 3 *Dall. Rep.* 500. 2 *Saund.* 411. 1 *T. Rep.* 295. 293. *Bunb.* 275. 337. *Hardr.* 424. 3 *Leon.* 240. *Moor*, 126. 274. 2 *Cha. Ca.* 84. *Show.* 216. 1803.

The COURT, in the charge, directed the jury, in point of law, to confine the responsibility of the sureties, to a deficit occurring during the year, ensuing the date of the bond. But if, from the evidence, they were satisfied, that there was a deficit, during that year, they thought, that a verdict should be in favour of the commonwealth for the amount.

Verdict for the defendants. (1)

M'Kean, (attorney-general) and *Dallas* for the commonwealth. *Rawle*, for the defendants.

Watson *et al. versus* The Insurance Company of North America.

THIS was an action on a policy of insurance, in which the declaration was for a total loss. On the trial, it appeared, that the assured had demanded payment of a total loss, which the defendants refused to pay; but there was no evidence of an actual abandonment, or offer to abandon, to the underwriters, before the suit was instituted; and the proof was of a loss in its nature total. The jury gave a verdict, in favour of the plaintiff, finding damages, as for a partial loss; subject to the opinion of the Court, upon a motion for a new trial, to consider two points reserved: 1st. Whether a previous abandonment, or offer to abandon, was indispensably necessary, to enable the plaintiff to recover in this suit? And, 2d. Whether, on a declaration for a total loss, and proof of a loss in its nature total, the jury can give damages for less than a total loss?

After argument by *M. Levy* and *Lewis*, for the plaintiffs; and by *Moylan*, *E. Tilghman*, and *Ingersoll*, for the defendants, the COURT (consisting of SHIPPEN, *Chief Justice*, and YEATES and SMITH, *Justices*) were of opinion, that the jury might find damages for a partial loss; although the declaration claimed for a total loss; and although there was no proof of an actual abandonment, or an offer to abandon, to the underwriters.

(1) It may be proper to observe, that Mr. *Bayntun* did not appear, nor take defence, in this suit: the proceedings to recover from him having been instituted on the settlement of the comptroller.

But

1803. But BRACKENRIDGE, *Justice*, said, that he thought there was sufficient evidence at the trial, to induce the jury to find an abandonment; and, on that ground alone, he concurred, in refusing a new trial. For, the general ground, on which the opinion of the rest of the Court was founded, did not appear to him so conclusive, and so satisfactory, as it did to them.

Motion for a new trial refused: and judgment ordered on the verdict for the plaintiffs.

Williams *et al.* Executors of Fisher, *versus* Paschall *et al.*

DEBT on an arbitration bond. Upon oyer of the bond and condition, it appeared, that the defendants, as heirs of *Jonathan Paschall*, had entered into a bond, dated the 14th of *September* 1796, in the penal sum of 500*l.*, conditioned for the performance of an award, by arbitrators, mutually named by them and the plaintiffs, to be made "of and concerning all matters in controversy between them respecting a certain bond given by the said "*Jonathan Paschall* to the said *James Fisher* (the testator) and "respecting all accounts, which they the said heirs of *Jonathan* "*Paschall* may exhibit as payments in discharge of the said bond, "and of and concerning all and all manner of actions, &c. &c. respecting the said bond and accounts, &c." The award, which was set forth on the record, after reciting the bond and submission, concludes that "the arbitrators are of opinion, that the defendants "are justly indebted to the plaintiffs in the sum of 310*l.* 11*s.* 4½*d.*" The defendants pleaded specially, "that the plaintiffs ought not "to have and maintain their action aforesaid against them, because they say, that the said arbitrators, in making the said "award, at the time and place aforesaid, from a mere inadvertancy, error, mistake, and misapprehension, of the law and "right and justice of the case, calculated, allowed, and added, "the full interest of six per cent. per annum, on the whole "amount of the principal sum mentioned in the bond, submitted "to their arbitrament, for a long time, that is to say, for twenty-six years and upwards; although, within the same time, many "payments and advances had been made by these defendants, "and on their account, to the said *James Fisher* in his lifetime, "and, after his decease, to the said plaintiffs, on account of the "said bond, to the full amount of the principal and interest due "on the said bond; but on which payments and advances, from "a mere mistake, error, and misapprehension of the law and "right and justice of the case, no interest was calculated, or allowed, by the said arbitrators, in making and forming their "said award: nor were the said payments and advances deducted, as by law and right they ought to have been, from the monies "due