

or purposes in execution of this Act." But on the other hand it is said that the 182nd section enumerates all the purposes to which the rates may be applied, and adds that they are to be applied to "no other use, intent, or purpose whatsoever." Now the purposes to which the rates are applicable include the general words, "and for carrying the purposes of this Act relating thereto into execution." It might be said that these words are large enough to enable the Commissioner to charge the expenses by opposing the bill upon the rates, but it is not necessary to decide that here, as the plaintiff does not seek to charge the rates, but goes against the commissioner individually, and it appears to me that they were empowered to make this contract under the general words of the 20th section, nor does there appear to be anything immoral or improper in the expenditure which would take it out of the general purposes of the act. The cases of *Reg. v. Town Council of Dublin*, and *Bright v. North (ubi supra)* appear to establish this. I am of opinion, therefore, upon the whole case, that the plaintiff is entitled to succeed in this action.

FITZGERALD, J.—This action is brought against seven persons, members of the body of Town Commission of Sligo; they are sued, however, not as commissioners, but individually, and by name, for work and labour done at their request. It appears to me that the plaintiff, in order to succeed here, is bound to establish three propositions. First, that the commissioners are not a corporation; secondly, assuming that to be proved, that the contract in question was one within the scope of the duties of this body; and, thirdly, that, at a meeting duly convened, the Commissioners present, or a majority of them, had not only authority to act for the corporation or quasi-corporate body, as the case may be, but that in addition they had authority, by contracts then entered into, to impose on the absent members of the body or the present dissenting minority a personal, individual, and pecuniary liability, and that liability without any limits whatever as to amount or duration of time. My opinion on the third proposition is so strong that it is almost unnecessary to say anything on the other two purposes, but I may say my impression is, that the Sligo Commissioners are a corporation by implication. We find in the Act the capacity for endless duration and continuance of identity; both personal and real property vests in them and their successors; the members have no personal interest in that property, and their successors hold it and are bound to administer it *quâ* successors. I will only add that in *Colquhoun v. Nolan (ubi supra)*, cited as an authority for the opposite view, the Lord Chief Baron actually describes the Sligo corporation, when he gives an example of a body which could be a corporation: "Where a charter invests a body with certain rights and contemplates the discharge of that body of certain duties, which purposes cannot be carried into effect unless the body are a corporation, there the law would hold them to be a corporation, whatever the words might be, and even if the absence of express terms of incorporation, and in this respect there is no difference in a body incorporated by Act of Parliament." As to the next question, I think it clear beyond doubt that the Commissioners could not employ

one shilling of the town rates to pay the plaintiff. By the 182nd section the purposes are enumerated for which the rates are applicable, and it includes "and for no other purpose." Here we have a statutable provision in the strongest terms, containing both affirmative and negative clauses, which makes it clear to me that this contract was utterly beyond their powers. When we recollect the enormous expenses which attend parliamentary litigation, it seems reasonable to suppose that they have no power to burden the rates or absent individuals with such costly experiments. Upon these questions, however, I express no determination, but rest my judgment on the third and last.

I confess I have great difficulty in understanding this last proposition. It is contended that under section 9 the majority at a duly constituted meeting had power to bind personally and individually every person absent or dissenting. Well, that would be a very hard case, but if the statute says so, we must give effect to it. It is said that the hardship exists here only because the defendants have not pleaded in abatement and joined the rest of the Commissioners; but this is assuming the whole question to be proved, namely, that there was a joint contract made. But in my mind the statute says no such thing. By section 9 it is enacted "and all the orders and proceedings of such the major part of such Commissioners present at such their several meetings, shall have the same force and effect as if the same were made or done by all such Commissioners for the time being." The plain meaning of this section is that the majority binds the minority as Commissioners, and binds all the Commissioners as a body, that after the majority have determined and voted for a measure, the body or its successors shall never afterwards be in a position to say that Act was not binding upon the Town and Harbour Commissioners of Sligo. Something has been said of the hardship of the plaintiff's case. I can see no hardship whatsoever. The plaintiff himself says he did not act on the individual responsibility of the defendants. Either he has a statutable contract with the Commissioners or he has not. If he has not the persons who actually employed him are liable. The case of *Horsley v. Bell (ubi sup.)* has been misinterpreted. If the plaintiff here had sued the persons who actually employed him, although Commissioners, the case would apply. That case merely decides that persons actually making a contract are personally liable although Commissioners, and cannot shelter themselves behind the rates, but it does not follow that persons who never made the contract, nay, who actually protested against it, are liable for acts done by others. Cases were cited to us where members of public companies and club committees were bound by acts of their fellows. These are questions of agency and stand on a distinct footing. I never heard it contended that Town Commissioners were each the agent of the other to bind him even where he disapproves and protests.

O'BRIEN, J.—I agree with my brother Fitzgerald, both in his conclusion, and in the reasons by which he has arrived at that conclusion. I cannot understand how the Commissioners are to be regarded as a corporation for acquiring not only real but personal property, (sections 28 and 29) and not be a corporation for other pur-