

480, to show that the words "estate and effects" include all that a testator has to dispose of: *Stokes v. Solomons*, 9 Hare, 75.

Glaspe Q. C., and *Begge*, for the defendant, heiress-at-law, cited *Pogson v. Thomas*, 3 Bing. N. C. 337; *Meads v. Wood*, 19 Beav. 215; *Doe d. Spearing v. Buckner*, 6 T. R. 610; *Coard v. Holderness*, 20 Beav. 147, 3 W. R. 311; *Molyneux v. Roe*, 8 D. M. G. 368, 4 W. R. 539, and argued that the general words "estate and effects" might well be qualified, as in this will, by reason of the trusts declared being applicable only to personal estate.

His Honour said there was no doubt the testator had not present to his mind when he made his will that in fact he was owner of any real property in fee simple. Still, as it is important that wills should be construed on broad general principles, the effect of general words such as *estate and effects* ought not to be cut down by the circumstance that accompanying expressions are applicable to personal estate only. No word could be more proper to pass all that a testator possesses than the word "estate," and though no doubt words of limitation ought to be carefully attended to, where the construction was in other respects doubtful, there was no such even balance of authority here as to require such minute criticism. All the authorities were in favour of including the real estate, except *Pogson v. Thomas* in the Common Pleas, and that case was only reported as a reference from the Master of the Rolls to the judges. And no grounds were given for the decision in the certificate. That case would not be probably followed at this time, and he should declare that the freehold house of the testator passed under the residuary bequest.

IRISH REPORTS.

BOWER V. GRIFFITHS.

Commissioners — Personal liability — Corporation by implication.

(Continued from page 77.)

GEORGE, J., having stated the facts, proceeded:—The question for decision is, whether the defendants are liable, and, if so, in what form? Three modes have been suggested in the arguments, by which it is alleged the plaintiff might assert his claim. First, against the said defendants as a corporation; secondly, against them as Commissioners; and, thirdly, as individuals. If the Commissioners are a corporation it is quite clear that this action will not lie. On that question it is to be observed, on the one hand, that the Act appears undoubtedly to constitute the Commissioners a corporation for the purpose of holding lands: Sections 37 and 47. The act also, while giving the Commissioners power to repair and maintain the streets of Sligo, vests, by the 28th and 29th sections, the necessary materials in the Commissioners and their successors. On the other hand, it is to be observed that the act gives them no corporate name or seal; they are to sue in the name of their clerk or one of their body, and nothing whatever is said as to the method in which they are to be sued, nor is there any means of inferring that they are to be a corporation for general purposes. The 20th section empowers them to make

contracts for paving and lighting and other purposes of this act, and these contracts are, by the 23rd section, to be "signed by the Commissioners." These are certainly not corporate acts. These provisions, taken together, appear to me to constitute the commissioners a corporation for taking lands only, and not for the general purposes of their act. The case of the *Conservators of the River Tone v. Ash*, cited in the argument, only proves that a corporation for the purpose of holding lands may be created by implication. This distinction is well founded on authority. In *Bacon's Admiration*, *Tit. Corporation B.*, it is said, "If the King grants lands to the men or inhabitants of D., *heredibus et successoribus suis* rendering rent; for anything touching these lands this is a corporation, but not to other purposes." The case of *Colquhoun v. Nolan* (*ubi sup.*) also clearly decides that perpetual succession conferred upon a body for certain purposes will not constitute them a corporation for all purposes. I think, then, that the Commissioners of Sligo are not a corporation for other purposes than holding lands, and that they may, therefore, be sued as commissioners by their individual names. Now the plaintiff stated himself, and the jury have found, that the Commissioners did not contract in their individual capacity, and, therefore the only mode in which he can reach them is their liability as Commissioners, whether he sues one, or more than one, or all. The plaintiff here has sued only seven out of the entire body, and he has sued them individually; but it was open to them to plead a plea in abatement, and insist upon having the entire twenty-four joined as defendants for I am of opinion that an act done within the scope of the Act at a legally constituted meeting, bound every one of the Commissioners. It is said that these persons protested, but still they were acting even in that as Commissioners; they had been legally appointed, they had attended some of the meetings, and by the 8th and 9th sections of the Act were bound by the majority. The case of *Horsley v. Bell* has an important bearing on this case. There none of the commissioners sued had signed all the orders sued upon. They had attended some of the meetings however. The case was heard before two Common Law judges and the Lord Chancellor, and Gould, J., said (1 Bro. C. C. 102): "The law raises an assumption to those who have done the meritorious act. It is like a partnership; they who at any time have acted have undertaken a partnership. It should have been of opinion that an action of law would have lain against any one of them, and that he must have sought his remedy against the others." I am of the same opinion in this case. I think the fact of the defendants being acting commissioners bound them to the acts of the majority just as if they had done the acts themselves. The last point I confess has more difficulty for me than the others. It is conceded that the minority could only be bound by an act done within the scope of the authority conferred by the Act of Parliament; and the question arises whether they might legally employ an engineer or other persons to oppose a bill before Parliament interfering with their rights and property. The 20th section empowers the commissioners to make contracts for flagging, cleansing, &c., "or any other matter or necessary thing or things whatsoever, or for any purpose