

C. L. Cham.] TROTTER V. TORONTO WATER WORKS COMMISSION—GINTY V. RICH. [C. L. Cham.

slightest degree of mitigating those horrors or rendering them less frequent, they will have deserved well of humanity.

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(Reported for the *Law Journal*, by N. D. BICK,
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TROTTER V. TORONTO WATER-WORKS COMMISSION.

Corporation—Transfer of rights—Liabilities of successors—Amendment.

The defendants were incorporated by 35 Vict. c. 79, and a time was by that Act limited for the completion by them of the water-works. 39 Vict. cap. 64, amended this Act, and by section 4 it was enacted that the time for the completion of the water-works should be extended till December 31, 1877, and that upon that day the said commission and the powers and duties thereof should cease and be determined, and the said water-works should thenceforth be controlled by a committee to be annually appointed for that purpose by the Corporation of the City of Toronto; provided that the provisions of this section, except as to the extension of the time for the completion of the works, should not come into operation unless and until on or before Dec. 31, 1877, the assent of the ratepayers should be obtained thereto. A by-law to this effect was passed. This action was commenced before the passing of the by-law.

Held, 1. On a consideration of all the statutes relating to the defendants that they were properly sued.

2. That though it was not expressly provided that the liabilities of the defendants should be transferred to the city, it was necessarily implied by the transfer of their rights.

3. That under the extensive powers of amendment conferred by recent statutes, there was power to substitute the city as defendants.

[Mr. DALTON.—HAGARTY, C.J.—March 2.

Galt obtained a summons calling upon the defendants and the City of Toronto to show cause why the latter should not be substituted as defendants.

The circumstances under which the application was made appear from the head-note and the arguments.

On the return of the summons,

Bigger showed cause. The plaintiff has been too dilatory in all his proceedings. The writ issued Dec. 8, 1876. The declaration was not filed until Nov. 29, 1877. Issue was

joined on Dec. 22, and on Dec. 31 the defendants ceased to exist. It is said the statute gave the right to sue the Commissioners, but it also takes away the right and leaves plaintiff without remedy. The plaintiff should have brought his action against the city; if not, he is at all events bound by his election in suing the Commissioners. If the amendment asked be made, it will necessitate an entire remodelling of the pleadings.

Galt, contra. All the statutes relating to the Commissioners show that the plaintiff was right in commencing his action against them: 35 Vict. c. 79; 37 Vict. c. 75; 39 Vict. c. 64; 40 Vict. c. 39. The defendants having been dissolved and their rights having been transferred to the city, their liabilities are also transferred: *Cayley v. C. P. & M. R. & M. Co.*, 14 Gr. 571; *Dillon on Corporations*, 2nd ed., sec. 114 and note. Under the provisions of the Administration of Justice Act, this order should be made.

Mr. DALTON.—On a consideration of all the statutes mentioned, I think the plaintiff proceeded properly in issuing his writ against the Commissioners. They are a corporation independent and separate from the city. The words of 39 Vict. c. 64, s. 4, may not be wide enough expressly to transfer the liabilities of the Commissioners to the city, but it follows as a legal effect from the transfer of their rights. This being so, the only question is whether I have power to amend the proceedings by substituting the city as defendants. I think I have this power under the Administration of Justice Act (now C.L.P.A.)

On appeal from this decision,

HAGARTY, C.J., varied this order by providing that if it should be held that the plaintiff should have commenced his action against the city and not against the Commissioners, the plaintiff should be considered as having commenced his action against the city on the date of the order.

Order accordingly.

GINTY V. RICH.

Costs of examination of judgment debtor.

Held, that on an application for that purpose merely, a judgment debtor cannot be ordered to pay the costs of his examination.

Such an order can be made only on an application to commit, and then only by way of punishment.

[Mr. DALTON—March 25, 27.

A summons had been taken out calling upon a judgment debtor to shew cause why he