

CONTRACTS WITH "OFFICERS AND THEIR SUCCESSORS" OF UNINCORPORATED COMPANIES.

suror, though it was a promise to pay to the treasurer." The right of action was therefore vested in the Commissioners themselves, and not in their officers. So long as the particular officer with whom the contract is made remains alive, he may have the right to sue—but upon his death, what then? To borrow the words of Willis, J., in *Hybart v. Parker*, 4 C. B. N. S., 209, if the Court was to hold that the successor of such an officer could maintain the action, it would be trenching upon the prerogative of the Crown by making a new species of corporation—a corporation sole for the purpose of bringing actions. Similar observations were made by the same judge in *Gray v. Pearson*, L. R. 5 C. P. 568, and a general rule laid down as to such cases, that the proper person to bring an action is the person whose right has been violated. See also *Evans v. Hooper*, L. R. 1 Q. B. D. 45, where the Court of Appeal approved of this law. For this reason it was said by the Chief Justice in *Strange v. Lee*, 3 East, 495, that a bond to the persons then constituting a banking-house, and their successors, cannot be admitted, but it may be drawn so as to render the obligee answerable, not only to the present, but to all future partners in the house. And the same difficulty is adverted to by Lord Denman in *Graves v. Colby*, 9 A. & E., 356.

Even if a corporation sole, in the person of the treasurer and his successors could be thus constituted, still it would not give a right to the subsequent incumbent of the office to bring an action in the case supposed; because, if the personal contract were allowed to descend to such successor, the right to recover would remain in abeyance at the corporator's (i.e., officer's) death, until his successor was appointed—and the right when once suspended would not revive. This is the principle laid down in Black-

stone, and adopted by the Court as reasonable in *Houley v. Knight*, 14 Q. B., 240. It is there said that a bond given to a corporation sole, and his successors would enure as a bond to the corporators and executors. On the other hand, property given to a corporation aggregate does not go to executors, but is taken in succession. In the case of a corporation sole, the property would be in abeyance till the successor existed: the corporation aggregate always continues to be the identical grantee or purchaser: p. 253.

The result then is that in the construction of such instruments as we are considering, the words "successors in office" are to be rejected if in law the contract is such an one as will survive and pass to the executors of the obligee. Refer to the language of Coleridge, J., in *Houley v. Knight*, at p. 257. In *Dance v. Girdler*, 1 B. & P. N. R., 40, a bond was granted to twelve persons payable to them and their successors as governors of the society of musicians, conditioned to secure faithful performance of duties by their treasurer. The society was an unincorporated one when the bond was given. Mansfield, C. J., said: The bond is inaccurately drawn, being given to certain persons as governors of the society and their successors. The intention was no doubt that the bond should be payable to those who should succeed the obligees as governors. But this the law does not allow; and the bond can only be considered as given to the twelve obligees, and would ultimately have been payable to the representative of the last surviving obligee. The result in such a case then would be that which is so tersely expressed in Dicey's Book on Parties, p. 128: The right of action on a contract made with several persons, jointly, passes on the death of each to the survivors, and on the death of the last, to his representatives.