

remedy by garnishment of the demands due to the debtor is an addition, for he never had it before. It may be the legislature considered it would be justice to allow the creditor who should obtain execution upon a suit commenced before the debtor absconded, to have all goods and effects liable to execution held to satisfy the execution prior to the claim of the attaching creditor, and that the attaching creditor might have all other demands not liable to execution held liable to his claim by reason of the attachment and notice to the debtors of the judgment debtor in priority to the execution, but that is not a point for the court to speculate upon. The question here is whether the money, the proceeds of the demand against the Great Western Railway Company, is to be considered as liable to the execution when that money came into the sheriff's hands, though it be admitted, so long as it remained a debt due by the Railway Company, the execution could not touch it. In the case of *Collingridge v. Paxton*, (11 C. B. 683), the court held that bank notes seized by the sheriff could not be treated as liable to seizure on another execution then in his hands against the plaintiff at the suit of another person. Now in this case I apprehend, for the same reason given in that case, the amount of the debt due by the Railway Company, when paid into the hands of the sheriff, could not be said to be money identical in the hands of the sheriff of the judgment debtor. The judgment debtor, or his attaching creditors, would have no claim to the identical bank notes, or gold, or silver, or cheque, or whatever the Great Western Railway Company might have paid the sheriff with. It is in that sense, I think, the legislature meant it, when authority was given to the sheriff to seize money, &c., belonging to the debtor. In this case it appears the sheriff recovered the amount from the Railway Company under the provisions of the 53rd section, and that section says the sheriff shall hold the moneys recovered by him as part of the assets of such absconding debtor, and shall apply them accordingly. The 57th section shews how it shall be distributed.

The goods and effects of the absconding debtor in the hands of the sheriff would be liable to such executions as he might have under the provisions of the 53th section, but I do not think that demands which the execution could not touch can be treated, when the sheriff has obtained payment of them, in the same way. The effect of the several clauses of the act is to constitute the sheriff a trustee for the attaching creditors, and it is in virtue of that capacity cast upon him by the act, that the money due from the debtors of the judgment debtor comes into his hands, and not by virtue of his office of sheriff. The former act provided for the attaching creditor plaintiff collecting the demands from the debtors, and suing them if not paid, and by that means discharging his own demand. If that provision had remained in force, it never could be contended that, as soon as the attaching creditor had obtained payment, the sheriff could take the money out of his hands upon an execution against the debtor in the situation this plaintiff's execution is. It does not appear to me that the effect of substituting the sheriff as the proper person to collect those demands has the effect of altering the law, and saying that when the money has been paid to the sheriff under one authority, it shall be considered the debtor's money so *ear-marked* as that it instantly becomes liable to another species of demand, which could never have touched it but for the circumstances of the legislature constituting the sheriff a trustee to sue for debts instead of allowing every creditor to sue for himself, and in some cases, perhaps, sue for part only, that is, so much as would be sufficient to satisfy a particular demand.

McLEAN, J., concurred.

Judgment for defendant.

### COMMON PLEAS.

TRINITY TERM, 1858

Reported by E. C. JONES, ESQ., Barrister-at-Law.

#### STONEBURGH V. THE MUNICIPALITY OF BRIGHTON.

Contract—Liability of Corporation—Right to Recover.

*Held*, that where plaintiff performed certain public work under contract not made with the municipality, or any of its known officers, but merely with persons in their individual capacity assuming to act as a duly appointed committee, no action lies against the corporation.

Declaration for work, labour, and materials, done and provided

by plaintiff for defendants at their request, and on an account stated. *Plea*, never indebted.

The case was tried before *Draper, C. J.*, at Cobourg, in April last.

The plaintiff proved that in the latter part of the year 1856, certain inhabitants of the village of Smithfield, in the Township of Brighton, petitioned the municipality of that Township respecting the necessity of making some improvements on the bridge across the creek in that village, representing that such repairs were absolutely necessary, and hoping the municipality would appoint a committee for the purpose of superintending the work, and further stating that the bridge in question was the only portion of the road the inhabitants were unable to keep in repair. On the 6th December, 1856, it was resolved by the Municipal Council,—"That the prayer of the petition be granted, and that Messrs. Abigail Smith, Henry Vantapel, and William Dravey be appointed a committee to superintend the said work." None of these three were members of the council; no other entry respecting the matter appears on the corporate books; in a by-law imposing all rates and assessments on the Township for the year 1857, this bridge or work was not mentioned, for it imposed a gross sum, composed of items which had been discussed in the Council and approved. The sums required for different purposes were estimated for, and if adopted were put into the gross sum. The Clerk of the Council said he thought £75 had been estimated for, for the bridge, on a loose piece of paper written by one of the Councillors, but he could not swear it was included in the rates imposed; he thought it had been struck out. One of the Township Councillors swore that the matter was talked of in the Council in 1857, but nothing whatsoever was reduced to writing. He said £75 for this work was included in the gross sum imposed by the by-law spoken of, and that the money had been raised, that is, all imposed by the by-law, he thought, but he did not know it positively. In December, 1857, a demand was made on the Council for £82 10s. for this work, and the Council resolved, "That the Reeve be authorised and required to take legal advice on the resolution appointing a committee to construct a bridge at Smithfield, and if this Council is found liable, that he be authorised to draw an order on the Treasurer in favour of Coulter and Bates for the sum of £82 10s., for the construction of said bridge, and said order to be made payable on the 20th January, 1858." There was no other by-law, resolution, or minute of any kind on the subject.

The committee, however, proceeded and got a plan and a specification for building a stone bridge, and grading the road approaching to it for a distance of 25 rods one way, and 30 rods the other, and for making 108 feet of railing on each side, and employed plaintiff to execute it. One of them proved that they got no specific directions from the Council as to the nature of the work, nor was any sum mentioned as the limit of the expense. They did not even receive a copy of the resolution appointing them, but signed the specifications produced in their own names, and the plaintiff signed them also, in which there was no reference to the municipality. No written contract was produced, or any other memorandum in writing except the specifications; but they, the three persons named in the resolution, engaged the plaintiff to do the work according to a plan and these specifications for the sum of \$330. It was proved that the work was not yet finished, ten or fifteen days' work remaining to be completed, which they thought it better to defer until the spring. The price was sworn to be reasonable, and the work which was done was good.

On this evidence, the learned judge consulted the plaintiff, reserving leave, by consent, to move to enter a verdict for him for £75.

In Easter Term, *Patterson* moved to enter a verdict for plaintiff on the leave reserved.

In Trinity Term, *A. Richards* shewed cause, he cited *Cope v. Thames Haven Dock and Railway Company*, 3 Ex. 841; *Randall v. Trimen*, 18 C. B. 786; *Australian Steam Navigation Co. v. Marzetti*, 11 Ex. 228; *Henderson v. The Australian Steam Navigation Co.*, 5 E. & B. 409; *Reuter v. The Electric Telegraph Company*, 6 E. & B. 341.

*DRAPER, C. J.*, delivered the judgment of the Court.

On this application we have to determine whether the evidence given by the plaintiff shows him entitled to recover the sum of £75.