

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

spectively or may hereafter respectively become members, next after the following persons, namely:

"1. Those members of such Bar who, prior to the 1st July, 1867, received appointments as Her Majesty's Counsel learned in the law."

"2. Those members of such Bar who, since the 1st July, 1867, were appointed as Her Majesty's Counsel learned in the law under the Great Seal of the Dominion of Canada."

"3. Those members of such Bar, if any, who may lawfully be entitled to rank in precedence over the respective gentlemen above appointed."

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Cases of difficulty on which the textbooks throw little light sometimes occur in practice, where inartificial instruments are given to an unincorporated Company whereby money is secured and made payable to some officer of the company (generally the treasurer), and his "successors in office." The difficulty is, who is the proper person to sue in such cases, and it cannot be said that the law is either very clear or very uniform on the point. The better view seems to be that effect cannot be given to the instrument as it stands. The draftsman has attempted to provide for payment to official successors, which is in law constituting the officer a corporation sole, and this cannot be done by compact or agreement. Such attempts are made in order to vest the right of action in one person, and thus to get rid of the difficulty which would arise by reason of the multiplicity of plaintiffs, if all the shareholders were to sue.

An instructive case on this head of law is *Metcalf v. Brain*, 12 East 406, and at *Nisi Prius*, in 2 Camp. 422, which shews the practice, when the officers are still alive. There a bond was given to a number of persons jointly and severally as

trustees of the Globe Insurance Company, to secure the faithful services of a clerk to that body, which was unincorporated. It was held that the survivors of the trustees named therein could sue for a breach committed at any time during the existence of the company, notwithstanding intermediate changes of the shareholders by death and otherwise. It was said that the instrument contemplated service to be performed to a succession of masters, who might from time to time constitute the company, and that the intervention of trustees removed the legal and technical difficulties attending such a contract made with, or a suit instituted by the company themselves as a natural body. In connection with this subject, the case of *Pigott v. Thompson*, 3 B. & P. 147, is in apparent conflict with the other authorities. There a person had agreed in writing to pay the rent of certain toll-gates to the "Treasurer of the Commissioners," who were by statute empowered to appoint a treasurer. The action was brought by the proper officer of the Commissioners, who was at the date of the contract, and of the commencement of the action, their treasurer. But all the judges agreed that the plaintiff had no cause of action. Alvanley, C. J. said, that the manifest intention of the agreement was that the defendant should pay the money to any person whom the Commissioners should choose to make their treasurer for the time being, but by law a debt is not so assignable. The promise, he said, did not amount to a promise to pay to the person who was the treasurer at that time, and if he had been removed from his office, the payment to him would not have availed the plaintiff. The case turned therefore on want of privity, as was explained by Lord Mansfield, in *Bourne v. Morris*, 2 Taunt. 381, where he said in reference to *Pigott v. Thompson*, "the promise was not made to the trea-