

statute in commissioners and their successors, makes them a corporation by implication.

*Semble*—(per Fitzgerald and O'Brien, JJ., George J., *dis-sentiente*), the opposing a bill in Parliament which contemplates a new system of municipal arrangements and taxation is not a proper application of the rates by Town Commissioners, where it is not included among the purposes enumerated in the Act.

[16 W. R. 540; Jan. 14, 15, 17, 1868.]

This was an action for work and labour. It was tried before the Lord Chief Justice at the Kildare Spring Assizes, when the following facts appeared. The plaintiff was a civil engineer. Defendants were seven of the Sligo Town and Harbour Commissioners. They, however, were sued personally, and not in the representative capacity as commissioners. The Act under which the defendants were appointed was the 43 Geo. 3, c. 60, of which, sec. 2 names twenty-four persons; these persons "and their successors to be elected in manner herein mentioned" are declared to be the commissioners under the Act. Section 9 enacts that no act shall be good unless done at a proper meeting; but all powers and authorities granted by the Act may be exercised by the major part who attend those meetings; all orders and proceedings of the majority to have the same effect as if done by all the commissioners. By section 10, no order is to be revoked unless by a meeting of a greater number of commissioners than those who made it; and at a special meeting fourteen days after. By section 11, actions are to be brought in the name of the clerk, or one of the commissioners. By section 20, contracts may be made for paving, lighting, &c., improving the port, &c., or any other matters or necessary things whatsoever, or for any purpose or purposes in execution of the Act." By section 23, contracts are to be signed by the commissioners. By section 28, property of lamps, pavements, &c., vests in commissioners and their successors. Section 29 makes a like provision as to old materials. Section 37 empowers them to purchase lands. By section 132 two separate funds were appointed: 1st. That arising from rates of houses, lands, &c., to be applied for purposes of paving, flagging, lighting, watching, &c., &c., &c., "and for carrying the several purposes of this act relating thereto into execution," and for paying and disbursing wages, &c., &c., "and for no other use, purpose, or intent, whatsoever." 2nd. The dues arising from the harbour; the purposes to which they are to be applied are similarly enumerated and like terms used.

It appeared that, at the close of 1866, certain bills affecting the Town of Sligo were before Parliament; and the plaintiff, who had considerable experience in connection with bills before Parliament, was, in December, 1866, requested by the Secretary of the Commissioners to come to Sligo.

He accordingly proceeded to Sligo, and was present at two meetings of the sub-committee which had been appointed by the Commissioners. None of the defendants were present at either of these meetings. In consequence of a resolution passed at one of these meetings, and of a telegram received from the Commissioners' solicitor, the plaintiff proceeded to London for the purpose of opposing the bill on standing orders. The plaintiff admitted that he considered himself employed by the Commissioners as a body and not by individuals; and that he did not act in any way

upon the faith or credit of the defendants personally. The defendants counsel admitted that the work was done, and that the charges were fair and reasonable. A resolution of the Commissioners was also put in, passed at a meeting at which some of the defendants were present, by which they disapproved of bills. By a subsequent resolution they resolved to oppose the bills, but a protest was entered against the application of the funds to such a purpose. The protest was signed by four of the defendants. The other three defendants were absent from this meeting. None of the defendants had ever personally authorised the plaintiff's employment.

The defendants' counsel asked for a nonsuit, which was refused.

Plaintiff's counsel called upon the learned Judge to tell the jury that if they believed the plaintiff's evidence they should find for him. This his Lordship also declined to do.

His Lordship told the jury that if they were satisfied that the plaintiff was employed by and acted upon the faith and credit of the Commissioners as a body, they should find for the defendants. The jury found for the defendants.

A conditional order for a new trial, on the ground of misdirection of the learned judge, having been obtained in Michaelmas Term,

*S. Walker (Palles, Q. C., with him)* now showed cause. The defendants are sued individually and not as Commissioners. There is no personal liability attachable to them. They protested against the making of the contract for which they were now sued, therefore no question of agency arises here. But independently of that the jury have found that the contract was made with the Commissioners as a body, and they are a corporation under the act. This contract was also *ultra vires*.

*Battersby, Q. C., and Ball, Q. C. (F. L. Dames with them)* in support of the rule. The fact that the person sued dissented from the expenditure of the money does not alter their liability. This case must be decided exactly as if the entire twenty-four Commissioners were sued. The law is that you may sue any number of individuals on an aggregate body, and if the contract has been made in conjunction with others they may plead that as a plea in abatement; *Lefroy v. Gore, 1 Jones & Latouche, 571*. 1. The whole body are personally liable, and can be sued jointly for an act legally done and *ultra vires*. This part of the case is governed by *Horsley v. Bell, 1 Bro. Ch. C. 100 n.*, and *Ambler's Rep. 770*. There it was held that Commissioners of Navigation, under an Act of Parliament, were personally liable for orders signed by them, and that the plaintiff's remedy was not only *in rem* against the rates. This case is confirmed by *Eaton v. Bell, 5 B. & Ald. 34*. And this Act of Parliament, under which the Sligo Commissioners derive their authority, pointedly omits the protection from personal liability to be found in all analogous Acts, and while there is a provision that the Commissioners may sue by their clerk, there is nothing authorising them to be sued. The case of *Colquhoun v. Nolan, 13 Ir. Law, 248*, was an extension of *Horsley v. Bell* to Ireland. It was there decided that Lighting and Paving Commissioners of Cashel under the 9 Geo. IV. c. 82, and 3 & 4 Vict. c. 108, were not a corporation, and were liable personally. This