1878
*Jan'y 30.
*April 15.

THE TRUSTEES OF SCHOOL SECTION No. 16, SOUTH DISTRICT OF PICTOU COUNTY..... } APPELLANTS;

AND

JAMES CAMERON *et al*.....RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Rev. Stats. N. S. (*4th Series*) *Ch.* 23, *Sec.* 30—*Trespass by Individual Corporators—Plea—Corporation may sue its Members.*

J. C. and *J. A. C.*, while Trustees of School Section No. 16, South District of *Pictou* County, and *N. C.* as their servant, entered upon the school plot belonging to their section, removed the school house from its foundation and destroyed a portion of the stone wall. Subsequently, the Trustees of said School Section brought an action of trespass *quare clausum fregit* and *de bonis asportatis*

*PRESENT:—Ritchie, C. J., and Strong, Fournier, Taschereau and Gwynne, J. J.

against the said *J. C.*, *J. A. C.*, and *N. C.* for injury done to the school house, the property of the section. The Defendants pleaded *inter alia* justification of the acts complained of, asserting that the acts were legally performed by them in their capacity of Trustees. Sub. sec. 4 of sec. 30, ch. 23, Rev. Stats., N. S., (4th series) declares that the sites for school houses shall be defined by the Trustees, subject to the sanction of three nearest Commissioners, residing out of the section. In this case the sanction of the three nearest Commissioners was not obtained.

Held,—On appeal, that under ch. 23 Rev. St., N. S., (4 series), *J. C.*, *J. A. C.*, and *N. C.* were not authorized to remove the school house from its site in the manner mentioned. That Defendants having subsequently abused their right to enter upon the lands of the corporation by an overt act of spoliation, the Plaintiffs, who are a corporate body and are identical with the corporation which existed at the time of the trespass, can maintain trespass against the Defendants for the injury done to the corporate property. That when an action is brought in the name of a corporation without due authority, it is not sufficient for the Defendants to plead that the Plaintiffs did not legally constitute the corporation, but in such a case Defendants ought to apply to the summary jurisdiction of the Court to stay proceedings.

APPEAL from a judgment of the Supreme Court of *Nova Scotia*, making absolute a rule for a new trial.

This was an action brought by the Plaintiffs as Trustees of School Section No. 16, in the South District of *Pictou*, against the Defendants for breaking and entering their close as such trustees, and destroying the foundation walls of the school house of that section thereon erected, and removing and carrying away the same from its lawful site and converting the same to their own use.

The declaration was in the ordinary form in cases of trespass *quare clausum fregit* and *de bonis asportatis* under the *Nova Scotia* law and system of pleading, and the pleas are eight in number.

The Defendants, by their pleas, denied that they committed the trespass as alleged; the Plaintiff's property

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in the land and in the goods; and by their seventh plea asserted a title to the freehold of the said land, and a right of property in the said goods in the Defendants, *James Cameron* and *John A. Cameron*, as being the Trustees (with one *Duncan Macdonald*, who is not a party in the action) of School Section No. 16, South District of *Pictou*, duly elected and appointed under the Statute in that behalf, and the Defendants *James Cameron* and *John A. Cameron* justified the acts complained of by asserting that the said acts were performed by them in their said capacity of Trustees, they having lawful power so to do, and the Defendant *Nathan Cameron* as the servant of the said other Defendants.

By the eighth plea, the Defendants denied the character of the Plaintiffs at the time the trespasses were committed or action brought and their property in the lands and goods, and that the said *James Cameron*, *John A. Cameron* and *Duncan Macdonald* were at the time, &c., Trustees of the said School Section No. 16, duly elected and appointed under the Statute, a body corporate for the purpose mentioned in the Statute, &c.

The evidence showed that the Defendants *James Cameron* and *John A. Cameron*, together with the said *Duncan Macdonald*, had, at the annual school meeting for the said section, held in 1873, been appointed trustees for that section for the ensuing year; that they assumed the duties of that office; that a teacher was engaged by them, and an effort made to open the school. That in December, 1873, and during the currency of their term of office, the Defendants *James Cameron* and *John A. Cameron*, at an informal meeting, and without the concurrence of *Duncan Macdonald*, determined to remove the school house of said section to another site. That a site for the school house of that section had been chosen according to law, and the school house built, and that while *James Cameron* and

John A. Cameron were Trustees the school house was actually removed by them, and a portion of the stone wall was destroyed. That in June, 1874, the Commissioners of Schools for *South Pictou* dismissed the said Trustees, and appointed the Plaintiffs in their stead.

The mode of substituting Trustees and the powers and duties of the Trustees are prescribed by the following sections of chap. 23 of the *Revised Statutes of Nova Scotia* (4th series), secs. 20, 28, 30, 31, 32, 33, 34, which are referred to at length in the judgments of this Court.

The case was tried before Mr. Justice *Macdonald* with a jury, at *Halifax*, on the 25th October, 1875.

At the trial, he recommended a non-suit, and Plaintiffs' counsel having refused to become non-suited, the learned Judge told the jury that it was their clear duty to find a verdict in favor of the Defendants. Notwithstanding the charge, a verdict was rendered for the Plaintiffs, with $150 damages, and the Defendant then moved to set aside the same, on the grounds set forth in the *rule nisi*, and the Court below made the rule absolute.

Mr. *Cockburn*, Q. C., for Appellants:

The Plaintiffs, being legally appointed, represent the section for which, as a corporate body, they act. Their possession is not an individual possession, but the possession of the people whom, in their corporate capacity, they represent; the possession of their predecessors was also only a representative and not an individual possession, and, therefore, in their corporate representative capacity, the Plaintiffs, after their appointment, can maintain trespass for any wrong done to the corporate property by any individual, whether at the time of the wrong done such individual happened to be a member

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of the corporation or not. *Courvell* v. *Woodard* (1); *Brice* on Ultra Vires (2); *Waterman* on Trespass (3).

A corporation may sue its members. See *Field* on Corporations (4).

The act complained of was not done by the Defendants as a corporate act representing the section, but done by them as individuals.

As to the second point, that the Trustees at the time of action, were not the legally appointed trustees of the section, I submit this cannot be raised by the plea fyled in this case. The Board of Commissioners, being a court of competent jurisdiction, their acts, appointments or decrees cannot be impunged except by appeal to the Council of Public Instruction.

Mr. *A. F. McIntyre* for Respondents:

The first point to be determined is whether the acts complained of were done by the Respondents in their corporate capacity of Trustees, or as individuals.

It is a fact that the removal of the school house was decided by a majority of the trustees at a meeting held by them in December, 1873. Under the *Revised Statutes Nova Scotia*, 4th series, c. 1 last sub.-sec. of sec. 7, where a joint authority is given, a majority can act, and by c. 32, sec. 31, power is given to the Trustees to change the site of the school house when they deem it desirable. The approval of their decision by the three nearest Commissioners is only necessary when the site is first chosen. These were, no doubt, the sections the Trustees had in view when they arrived at their determination. There was no necessity for them to keep a record of their proceedings; in such cases it is sufficient to prove the resolution to have been passed by a majority of the Board.

(1) 5 Howard 665.
(2) P. 485.
(3) Vol. 2, p. 231.
(4) Secs. 180 & 361.

In *re Bonnelli's Telegraph Co.* (1); *Darcy* v. *Tamar Ry. Co.* (2).

There is nothing in the *Nova Scotia* Act which requires that a notice in writing should be sent before a meeting is held, as in the *Ontario* Act.

In any case the Defendants *James Cameron* and *John A. Cameron*, being members of a public corporation, incorporated for public purposes, and having public duties to perform, an action of this sort will not lie against them at the suit of the corporation for acts done in their corporate capacity without proof of *mala fides* : *Harman* v. *Taffenden, et al* (3).

The Respondent submits also that the present appeal should be dismissed, because at the time of the alleged trespasses, the Defendants *James Cameron* and *John A. Cameron*, together with the said *Duncan Macdonald*, were the duly elected and acting Trustees of Section No 16, South District of *Pictou* County, and were, as such Trustees, by law vested with the freehold in the lands and the property, in the goods in the pleadings mentioned, and in possession of the same.

THE CHIEF JUSTICE :

By sec. 7, c. 32, *Revised Statutes, N. S.*, 4th series, sec. 7, the Governor in Council is empowered to appoint Commissioners for each District, who shall form a Board of School Commissioners.

By sec. 22 each school section shall have a Board of three Trustees, and no section shall have more than one Board.

By section 28, the Trustees of any section shall be a body corporate for the prosecution and defence of all actions relating to the school or its affairs, and other

(1) L. R. 12 Eq. 246. (2) L. R. 2 Ex. 162.
(3) 1 East 555.

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necessary purposes, under the title of "Trustees of School Section No. ———, in the District (or Districts) of ———," and they shall have power, when authorized by the school meeting, to borrow money for the purchase or improvement of grounds for school purposes, or for the purchase or building of school houses.

By sec. 29, Trustees are authorized to effect insurances on school houses, and sec. 30 declares the duties of the Trustees as follows. *Inter alia* sub-sec. 2:

> To take possession of and hold as a corporation all the school property of the section, or which may be purchased for or given to it for the use or support of Common or Academic Schools.

Sub. sec. 4:

> To determine the sites of school houses, subject to the sanction of the three nearest Commissioners residing out of the section, and in case the three nearest Commissioners do not agree as to the site of a school house, the matter shall be referred to the Board of Commissioners for the District or County in which the school is situate, and their decision shall be final.

The Trustees of School Section No. 16 were possessed of the property on which this school house stood under a deed from *William Thompson* to *James Macdonald*, *Donald Macdonald* and *Peter Ross*, Trustees of School Section No. 16, dated 29th Oct., 1866, whereby *Thompson*, in consideration of $16, bargained and sold to said Trustees and their successors in office the lot in question, to have and to hold the same as school property to said Trustees and their successors in office. At the time of the acts complained of, Defendants *James Cameron* and *John A. Cameron*, and one *Duncan Macdonald*, were the Trustees of School District Sec. 16. *Macdonald* says he had nothing to do with the removal of the school house; that *James Cameron* and *John A. Cameron* came to see him about it after night; said they were going to remove the school house, and asked if he had any objection; he said he had; that it could not

be in a better place; that he saw the Commissioners remove the school house in Dec., 1873.

Peter G. Campbell says:

It was removed the length of itself and 3 or 4 feet more from its old foundation. It was less or more damaged; the stone wall was torn down.

Duncan Cameron says:

I said to *James Cameron* (the morning they commenced to remove the building) surely you are not going to remove the building; he said yes. He said, they had consulted the Board before and they would not heed him. He said they did not consult the Board about removing it; then, I said, you should have consulted the section; he said, we are the section; he said they were about removing it to another site about a mile and a quarter off, and not approved of by the Board.

James Macdonald says:

I saw *James* and *John A. Cameron* in the act of removing the house; *Nathan Cameron* was present with others. The stone foundation was torn down in removing it. It was removed towards the road. I think part of it was on the road. It was left temporarily on the runners. * * * Afterwards, I had a conversation with *James Cameron*. He said he did not consult the Commissioners as he did so previously without good result. * * * The house was thrown off the level so that one corner of the window was an inch open when the other was closed.

William Thomas says:

When the school house was taken off the foundation the windows were twisted. The one end higher than the other. * * * The weather boards and a few shingles were hurt.

Nathan Cameron was the only Defendant examined. He was called for the defence. He says:

They asked me to go and assist them in removing the school house in Dec., 1873. I assisted them. We were to remove it a mile and a quarter away, or less. The Defendants told me that their object was to remove the school house to the church.

There is evidence as to the deposition of the Trustees and the appointment of others in their stead after the removal; but, in the view I take of this case, all such

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evidence is immaterial and ought not in any way to affect the disposition of this case.

On the trial, Mr. *James* moved for a non-suit on the ground that "a corporation cannot sue itself; no title or possesion proved in the plantiffs; title and possession proved to have been in the Defendants, Trustees, at the time of the alleged injury." The learned Judge recommended a non-suit, and, on Plaintiffs' counsel refusing to become non-suited, the Judge instructed the jury that Defendants, having denied Plaintiffs' possession, it was incumbent on Plaintiffs to prove possession, actual or constructive; that evidence showed Defendants, *James Cameron* and *John A. Cameron* and *Donald Macdonald*, were Trustees at the time and were in the legal possession, the law vesting both the title and possession in them as such Trustees; * * * expressed great doubt as to the dismissal, in which case he said, by this strange action, two of them would be now Plaintiffs, as Trustees against themselves, as individuals, but that it was not necessary to trouble the jury with that question, as their legal possession at the time of the alleged trespass was sufficient defence in this action for acts done, while in such legal possession, by them and Defendant who justified under them. That, if they were guilty of a breach of trust, as such Trustees, as he thought they were, the section had a remedy for such wrong, but certainly not in this form, or style of action. That as the case turned upon a question of law, the facts upon which the legal question depended being admitted on all sides, he had nothing to submit to them, and that it was their clear duty to find a verdict in favor of the Defendants.

Notwithstanding this charge the jury found in favor of the Plaintiffs, and a rule was made absolute by the Supreme Court of *Nova Scotia* to set aside this verdict, and a new trial was granted.

No question was raised as to this being a perverse verdict, and it was not set aside upon that ground, but the judgment appears to proceed on the ground that the Defendants *James Cameron* and *John A. Cameron* were Trustees at the time of the removal, and were at the time in the lawful and exclusive possession as Trustees of School Section No. 16, which, the judgment states, strikes at the very foundation of this suit, and is of itself a fatal objection to it, as it is clear that trespass cannot be maintained against the Defendants for the removal of the school house while they were in the lawful possession of it as Trustees.

While admitting the Defendants may have acted indiscreetly, the judgment goes on to say :

But it must be borne in mind that they were public officers, and if they acted in good faith, though wrong, they cannot be treated as trespassers and held personally responsible for what they did.

I venture humbly to submit that this is all wrong ; that the Defendants in their pleadings, their counsel on the trial, as well as the learned Judge and full Court, have entirely misapprehended this case in dealing with it as if the title and possession of this school property was in the Trustees for the time being personally and as individuals, and not as in a corporate or *quasi* corporate body, and in treating this action as if brought by the Trustees, or those claiming to be Trustees, in their own name as individuals, as if the fee was in the individual Trustees, and as if the action was for a wrong done to the personal title or possession of the individual Trustees, instead of treating the title and possession as being in a corporate or *quasi* corporate body, and the action as brought by such corporation for a wrong done to the title and possession of the corporation.

Under the express terms of the Statute the Trustees of schools are to " take possession of and hold as a corporation all the school property of the section," and the Trustees of any section are declared to be a body cor-

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porate under the title of "Trustees of School Section No. —— in the District (or Districts) of ———" for the prosecution and defence of all actions relating to the school, or its affairs, and other necessary purposes.

The Trustees, therefore, are created a corporation or artificial body, by virtue of which they hold the land like every other corporation.

The title being in the corporation, not in the members of the corporation, the Trustees may change, but the corporation continues, and the title and possession continues in the corporation.

The members, though constituent parts, are not in a legal sense the corporate body, but as it has been expressed, "they are only the elements which form the one artificial body," but entirely distinct from the artificial body endowed with corporate powers; so that the rule that a person cannot be both Plaintiff and Defendant in the same suit, which seems to have embarrassed the counsel and the Court below, has no application to corporations. We have every day's experience of members suing corporations and of corporations suing members, and it is too well established to be now disputed that "suits may be brought for all the variety of causes and in all the various forms, and in the same manner as though the parties thereto were natural persons."

The acts of the Trustees, no doubt, are the acts of the corporation, but only when within the scope of the authority conferred on them by the law establishing the corporation. Their acts are only the acts of the corporation, so far as they have such authority to act by virtue of the powers conferred on them.

The Legislature has only granted to School Trustees in *Nova Scotia* special and limited powers for limited purposes, and one limitation is that they shall not fix or determine, and, a *fortiori*, not change, the site of a school house without the sanction of the Commissioners.

If the Trustees wrongfully deal with the property confided to their care in a manner, not only not sanctioned by law, but contrary to law, as distinguished from mere error, mistake and misapprehension, or simple negligence, they cease to act as Trustees. Their act in such a case is not a corporate act. They become wrong-doers, and cannot justify as Trustees, and, as such, are liable to be sued by the corporation as any other trespasser or wrong-doer having no legal justification for his acts.

If the acts of these Defendants, then, are clearly *ultra vires*, their liability for such acts must be determined by the ordinary principles of law. "In all cases of tort," Mr. *Brice* says, "as an actual wrong-doer is always liable to the injured party, a corporate official necessarily is under personal responsibility."

I quite agree that, so far as the determination of this case is concerned, it matters not who the individual Trustees now are, or were at the commencement of this suit. If Trustees for the time being, having the right to manage the school affairs and to bring and defend suits in the corporate name, have any reason to complain that the corporate name is being improperly used in the bringing of an action, I can see no reason why the same course would not be open to them that a private individual would have, if his name was used without his consent, viz: by applying to the Court to stay and set aside the proceedings. Be this as it may, all we have now to do is, not to enquire what individual Trustees set the law in motion, but to treat the suit as properly brought in the name of the corporation, and adjudicate on the rights of the corporation; in other words, simply to enquire whether the close of the Plaintiffs has been illegally broken and entered, and the property of the corporation, the school house, has been unlawfully injured and removed, and,

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if so, to ascertain whether the Defendants were guilty of such unlawful acts. Reduced to this point, the result is self evident. These three Defendants, without authority of law, undertook to remove this school house from its site, and did so in a most wilful manner, for it cannot be pretended that they were in ignorance of the law, or the duties and powers of Trustees, but they did it, in fact, in direct defiance of the law. They knew no site could be fixed and determined on without the sanction of the Commissioners, and this they would not even seek to obtain, because, from a previous application, they had evidently discovered that the Commissioners would not sanction their proposed interference. Thus, these Defendants, without such sanction, without taking any action under sub. sec. 4, and without the acquiescence of the third Trustee, in fact, in opposition to him, proceed to remove the school house, drawing it from its foundation and otherwise injuring the foundations and buildings. These three Defendants, then, were violating the law and acting outside of and beyond any power or authority given to Trustees of Schools over school property, and so abused the authority given them by law and became trespassers, and so rendered themselves liable to be sued as such by the corporate body on whose property they so trespassed, which body corporate are the Plaintiffs of record in this suit. The Plaintiffs, then, having suffered wrong at the hands of the Defendants, and the Defendants having wholly failed by plea or proof to justify their conduct, I think the charge of the learned Judge was wrong, and the judgment of the Court below confirming that ruling equally wrong, and that this appeal should be allowed with costs in all the courts.

STRONG, J.:—

There seems to have been a strange misconception of

both the facts and law as regards the first point which is dealt with in the judgment of the Court below, that relating to the Plaintiffs' title to sue. The Plaintiffs are a corporation aggregate incorporated under ch. 32 of the *Revised Statutes of Nova Scotia* (4th series), having necessarily perpetual succession, and not the individual corporators who, at the time the action was brought, happened to compose the corporation. The Plaintiffs sue by their corporate title as "The Trustees of School Section No. 16, South District of *Pictou* County," and the names of the individual Trustees are not once mentioned in the record. It is, therefore, only calculated to confuse the case, and to introduce irrelevant matter into its decision to speak of the Trustees individually as the Plaintiffs, and to enter into an enquiry as to the legality of the dismissal of the former Trustees and the election of those who at present claim to fill the corporate offices.

The corporation which now sues for trespass to the corporate body is identical with the corporation which was seized of that property at the time the wrong complained of was done. The eighth plea does not contain allegations showing that the corporation has ceased to exist, in which case it might have constituted a good defence, but it merely sets up that the persons now claiming to constitute the corporation, in the plea itself miscalled the Plaintiffs, had not been duly elected or appointed to fill the offices of Trustees, and that the old Trustees are still in office.

As the action is brought by the corporation, this is manifestly no defence. If the action was brought without due authority in the name of the corporation, that is not a matter which could properly be raised as a defence on the record, though it might, under proper conditions, have constituted ground for an application to the summary jurisdiction of the Court to stay proceed-

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ings. The 8th plea, which raises this objection is, therefore, irrelevant and bad in substance, and tenders an immaterial issue. It follows that, as a new trial will never be granted for the purpose of re-trying an immaterial issue, one in respect of which a verdict for the Defendant might be followed by a repleader or judgment *non obstante*, there was clearly no ground for a new trial as regards the issue on the 8th plea.

As to the issues on the six original pleas, amounting respectively to pleas of not guilty, and a traverse of Plaintiffs' property and possession in the *locus in quo*, pleaded to each of the three counts of the summons, the evidence was entirely sufficient to warrant a verdict on all these for the Plaintiffs.

There remains the issue on the 7th plea, which is in substance a justification by the Defendants, *James Cameron* and *John A. Cameron*, as corporators at the time of the acts complained of, and by *Nathan Cameron*, the remaining Defendant, as their servant. The evidence shows that the Defendants entered upon the school plot and removed the school house from its foundation, and destroyed part of a stone wall which formed the foundation. This was an act clearly beyond their legal powers. The powers and duties of the Trustees are prescribed by chapter 32 of the *Revised Statutes of Nova Scotia* (4th series), secs. 30 to 34, inclusive, and nothing can there be found authorizing them to remove the school house from its site in the manner mentioned by the witnesses for the Defendants themselves, as well as by those who gave evidence for the Plaintiffs.

Upon the uncontradicted testimony it appears that the school house was actually removed from its foundation and a portion of the stone wall was destroyed, and although no question as to these facts was specifically left, by the learned Judge who tried the cause, to the jury, yet it would, of course, be idle to send the case

back for a new trial in order that a jury might find upon these undisputed facts. Then, the legal consequence of the Defendants acts is that, although they were members of the corporation at the time of the wrongs complained of, and had, for all legal purposes and in the due execution of their duty, a right to enter upon the lands of the corporation, and although their entry, followed by no abuse of authority, must be presumed to be legal and for the purpose of performing their corporate duties, yet, when the entry was followed by a subsequent abuse of authority, they became tresspassers *ab initio*, their wrongful act relating back so as to make the original entry unlawful. This is very old law, for in one of the resolutions of the *Six Carpenters' case* (1), it is laid down that when a party enters under authority of law and is guilty of subsequent abuse, he becomes a tresspasser *ab initio*, though it is otherwise where the entry is by authority of the party.

The entry of the Defendants upon the lands of the corporation, therefore, constituted the trespass for which the Plaintiffs are entitled to recover, and the pulling down the wall and the removal of the school house are the acts of abuse which made the original entry unlawful, and were, also, matters of aggravation to be considered in estimating the amount of damages.

The issue on the 7th plea, which justifies the acts of the Defendants as those which "they had lawful power and authority to do," was, therefore, rightly found for the Plaintiffs, inasmuch as the Defendants showed no justification in law.

The whole case may be summed up in two propositions. The first is that upon which the case of the Appellants is rested in their factum, and which I adopt almost in the words in which it is there propounded. The Plaintiffs are a corporate body and are identical

(1) 8 Rep. 290.

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with the corporation which existed at the time of the trespass, and although the members of the corporation may have been changed, the possession is, and has always been, not that of the individual corporators, but the possession of the corporation. The Plaintiffs (the corporation) can, therefore, maintain trespass for any wrong done to the corporate property by any individual, whether at the time of the wrong done that individual happened to be a member of the corporation or not. The other proposition, that a wrong was committed by the Defendants at a time when they were members of the corporation, is established by the principle of law already adverted to, that an entry by an individual corporator followed by an overt act of spoliation, makes him a trespasser by relation.

The case of *Harman* v. *Taffenden* (1), cited by the Respondents, has no application here; it was not a case of trespass on the lands of the corporation. The rule of law which I apply does not in any way depend on proof of the intention of the party, either in entering or in committing the subsequent wrongful act. The principle is, that where a party, having an authority derived from the law to make an entry upon lands, commits an unlawful act upon the lands, there arises a presumption of law, one which cannot be rebutted, that he entered with unlawful intent, and that his entry was, therefore, a trespass.

In my judgment, the decision of the Court below must be reversed, and there must be substituted for the rule absolute, a rule discharging the rule *nisi* with costs, and the Appellants must have the costs of this appeal.

FOURNIER, J. :—

L'action en cette cause est pour voie de fait commise

(1) 1 East 555.

par les Défendeurs sur la propriété de l'Appelante, en déplaçant la maison d'école de la section No. 16.

Lorsque ce déplacement a été fait, deux des Défendeurs faisaient eux-mêmes partie du corps des syndics et formaient, lorsque la présente action a été intentée, la majorité de la Corporation qui les poursuit en cette cause.

Les Défendeurs ont répondu à cette action par plusieurs moyens de défense qui peuvent en dernière analyse se réduire aux deux suivants : 1o. Illégalité de la destitution des Intimés comme syndics de la dite Corporation, et conséquemment nullité de la nomination de leurs remplaçants ; 2o. justification des faits qui leur sont imputés comme voie de faits.

Par le ch. 32 des Statuts Refondus de la *N. Ecosse*, (4ème série) réglant l'instruction publique dans cette Province, les syndics de toute section scolaire sont érigés en Corporation sous le titre de "Trustees of School Sec. No..... in the District of ..... (or Districts of).

La 30me sec. définit leur pouvoir ainsi qu'il suit :

30. The duties of the Trustees shall be as follows :

(1). To meet as soon after the annual election or appointment of Trustees, or a Trustee, as practicable, and appoint one of themselves, or some other person, to be Secretary to the Board of Trustees, and to provide him with a suitable blank-book, and instruct him to keep therein and carefully preserve a correct record of all doings of the board.

(2.) To take possession of and hold as a Corporation all the school property of the section, or which may be purchased for, or given to it for the use or support of common or academic schools.....

(4.) To determine the sites of school houses subject to the sanction of the three nearest Commissioners residing out of the section ; and in case the three nearest Commissioners, residing out of the section, do not agree as to the site of a school house, the matter should be referred to the Board of Commissioners for the District or County.

Par leur premier moyen de défense, les Intimés démis,

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illégalement d'après les faits établis sur preuve, veulent faire décider en cette cause la question de savoir qui d'eux, ou de leurs remplaçants, sont les syndics légalement en office. Cette question ne pouvait pas être soulevée d'une manière indirecte comme on a essayé de le faire. Elle devait faire le sujet d'une procédure spéciale. Pour prendre avantage de ce moyen de défense, les Intimés auraient dû se borner à se plaindre que les syndics qui prétendent agir en cette cause au nom de la Corporation ne sont pas légalement revêtus de cette qualité, en accompagnant cette allégation d'une demande de surseoir aux procédés jusqu'à ce que, sur *quo warranto*, cette question eût été décidée. Au lieu de cela, ils ont jugé à propos de plaider au mérite. C'est une règle certaine en matière de plaidoyers, aussi applicable aux Corporations qu'aux individus, que le Défendeur qui plaide au mérite reconnaît la capacité de poursuivre chez son adversaire. Les Intimés doivent en conséquence être considérés comme ayant abandonné ce chef de leur défense et reconnu le droit d'action.

C'est à leur plaidoyer de justification qu'ils doivent maintenant s'entenir. Ils prétendent se justifier en alléguant que c'est en exécution d'une décision prise par eux comme syndics, de changer le site de la maison d'école en question, qu'ils ont agi.

Il n'est pas douteux d'après la preuve que les Défendeurs ont quelque peu déplacé la maison d'école en question; et que dans cette opération le mur des fondations a été endommagé, ainsi que les fenêtres et une partie de la couverture. Ces faits, à moins que les Intimés ne prouvent qu'ils étaient légalement autorisés à agir comme ils l'ont fait, sont certainement suffisants pour constituer une voie de fait donnant lieu à des dommages et intérêts. Mais ils prétendent de plus établir leur justification en alléguant qu'ils étaient, en

leur qualité de syndics, propriétaires et en possession légale de la maison d'école et du lot sur lequel elle est construite, et que par conséquent l'action pour voie de fait ne peut exister contre eux.

Les Intimés, en émettant cette prétention, se trompent sur l'étendue et le caractère du pouvoir que la loi leur attribue sur les maisons d'école. Ils n'en sont que les administrateurs et non pas les propriétaires. Ce ne sont pas les syndics en fonctions qui, aux yeux de la loi, sont les propriétaires et en possession de la maison d'école, mais la Corporation dont ils ne sont que les agents ou représentants. Le parag. 2 de la sec. 31, est clair sur ce point, et indique, comme l'un des devoirs des syndics, la prise de possession *comme corporation* des propriétés scolaires appartenant à la section. "To take possession of, and hold as a Corporation, all the school property of the section....."

Ainsi, ils ne sont ni propriétaires ni en possession individuellement comme syndics, mais c'est la Corporation elle-même qui en est propriétaire et en possessions sous le titre que la loi lui a donné. Ils ne peuvent pas se confondre avec la Corporation qui est un être tout à fait distinct des personalités qui la composent. Pour se justifier il leur faudrait non-seulement établir qu'ils agissaient en vertu d'une autorisation de celle-ci, mais aussi faire voir que la loi leur donnait sur la maison d'école une autorité qu'elle leur avait déléguée Pour cela, il aurait fallu prouver qu'une décision prise par les Intimés, comme corporation, avait reçu, conformément au paragraphe 4 de la sec. 30, la sanction des Commissaires les plus proches. Cette preuve n'a pas été faite. En agissant contrairement à la disposition de cette section, il est évident que les Intimés ont outrepassé leurs pouvoirs et commis une voie de fait pour laquelle ils sont responsables.

De plus, il est visible par l'irrégularité des procédés et

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l'empressement manifesté par les Intimés, que ceux-ci prenaient un intérêt plus qu'ordinaire dans le changement du site de l'école de la section. C'est le soir, tard, sans convocation régulière d'assemblée, qu'ils font demander à leur collègue, *Duncan Mac Donald*, s'il concourt dans leurs vues au sujet du transfert de la maison d'école. Sur sa réponse négative, les deux autres défendeurs persistent dans leur détermination. Il n'en est fait aucune entrée dans les régistres, ainsi que l'exige le parag. 1 de la sec. 30. Le lendemain, avec le concours d'un certain nombre d'intéressés, ils se mettent à l'œuvre pour transporter la maison. Cette précipitation et ces irrégularités dans les procédés font voir que les Intimés agissaient comme individus et non comme autorisés par la Corporation. Cette conduite démontre aussi qu'ils avaient dans cette affaire, comme c'est assez souvent le cas dans ces questions, un intérêt qui les faisait agir plutôt comme partisans que comme syndics. C'est précisément pour prévenir ces inconvénients que le parag. 4 a déclaré que dans des affaires de cette nature les syndics ne pourront pas agir sans l'approbation des commissaires les plus proches. Sous ces circonstances, je ne puis faire autrement que d'en venir à la conclusion que les Intimés ont agi individuellement et non comme syndics, ni comme autorisés par la Corporation ; que d'ailleurs eussent-ils ainsi agi en vertu d'une décision prise régulièrement par eux comme Corporation, leur qualité de syndics n'aurait pu les protéger contre les conséquences de leur action, puisque la Corporation dont ils sont membres ne pouvait pas leur communiquer un pouvoir, qu'elle n'a pas. Ce pouvoir, comme on l'a vu par le parag. 4 de la sec. 30 ne peut être exercé sans l'approbation des trois Commissaires les plus proches, résidant en dehors de la section.

Pour ces raisons je concours dans le jugement qui va être prononcé par cette Cour.

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TASCHEREAU, J.:

This is an action of trespass *quare clausum fregit et de bonis asportatis.* The Plaintiffs declare against the Defendants for breaking and entering their close, destroying the foundation walls of a school house thereon erected belonging to them, and removing and carrying away the same from its site. There is some confusion in this case, or, at least, in some parts of it, arising from the fact that the Defendants seem to have forgotten who the Plaintiffs are. By one of their pleas, they deny that the school house in question was the property and in the possession of the Plaintiffs; but, by another plea, they allege that this school house was the property and in the possession of the Trustees of School Section No. 16, South District of *Pictou.* Now, who are the Plaintiffs? No one else than these Trustees in their corporate name and capacity. The Defendants, then, as distinctly as possible, have admitted the Plaintiffs' ownership and possession of this school house, and upon this fact we have consequently nothing to determine. They want us to consider as Plaintiffs certain individuals with whom they contest the position of Trustees. They say to them "We are the Trustees, not you." This is an issue which cannot be determined in this cause, for the very simple reason that these individuals are not the Plaintiffs. The suit is brought by a corporation, and who are the members of that corporation we have nothing to do with here.

The only legal issue raised by the Defendants is, that they were the Trustees of the school when they removed this school house, and that, in doing so, they were acting as such Trustees; that, it is, in fact, the corporation itself which did the acts complained of, and that they are not personally responsible. The Defendants have, in my opinion,

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clearly proved that they were, at the time that the school house was removed, the Trustees of the school with one *Duncan Macdonald*, but they have entirely failed to prove that it was removed by the corporate body known as such Trustees, and not by them in their individual capacity. There is no evidence of any resolution authorizing this removal, no evidence even of a lawful meeting of the Trustees. One evening, about 10 o'clock, two of the Defendants went to *Macdonald*, their third colleague, and told him that they were going to remove the school house, asking him if he had any objections to it. *Macdonald* objected, but, next morning, they set to work. That is the only evidence adduced to prove that their act was the act of the corporation. Is that the way in which a corporate body can act? Can the individual members of a corporation, even though they form a majority thereof, without notice to any one, thus start and go and demolish a house, and bind the corporation by their acts? I do not think so. In a matter of contract, perhaps, a corporation aggregate, acting as such, may bind itself directly and without constituting an agent, but the only mode in which it can do a manual act is by an agent or servant (1). It may by a vote authorize its servant or agent to do an act, and, if this act is a trespass, will bear the consequences thereof (2). Certainly, that agent or servant may be taken amongst its members. But here, this is not the point raised. The Defendants do not pretend that they, individually, have been authorized by the corporation of the Trustees of School Section, number sixteen, South District of *Pictou*, to remove this school house, and that they cannot be sued by the said Trustees, because it is the said Trustees themselves who ordered this removal. But they say, "we were ourselves the trustees, and it is

(1) Angell & Ames on corporations, 186, 229, 279; Waterman on Trespass 927, Vol. 2, par. 927.

(2) Addison on Torts, Par. 977.

as such Trustees and as a corporate body that we did the acts complained of." Now, the law is that the members of a corporation aggregate cannot separately and individually give their consent in such a manner as to oblige themselves as a collective body, for in such a case, it is not the body that acts (1). It is only at a lawful meeting of the corporate body that the corporation can act or do anything. Was it at a lawful meeting of the Trustees of School Section 16, that this school house was removed? Certainly not. If a corporate body could itself commit a trespass in the manner that the act complained of here was done, it might as well be said that it can commit an assault and battery. Yet I do not think that it can be pretended that a corporation can commit an assault otherwise than by its agent or servant (2).

Again, according to the Defendants' contention, if the corporation removed this house, not they, it would follow that if, whilst they were doing so, they had been arrested, the corporation, not they, would have been arrested. Yet, who ever heard of a corporation aggregate being put under arrest? A corporation is a legal person, but, as it has been said, a deaf and dumb person. I might add that it has no hands with which it can remove a house.

Upon these principles, which rule all corporate bodies, I hold that the removal of the school house in question was the personal act of the Defendants; that, as individuals, they never had the possession of it; that it is and was the property and in the possession of the Plaintiffs, and that their acts were a trespass on the Plaintiffs' property.

If the Defendants had pleaded and proved that they

(1) Angell & Ames on corporations, 232.

(2) *Reg.* v. *Pocock*, 17 Q. B. 34.; Grant on Corporations, pp. 1, 2, 3; *Stevens* v. *Midland Counties Railway*, 10 Ex. 352.

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had been duly authorized by the corporation to do this act, and that, in doing it, they were the agents or servants of the corporation, I would be of opinion that the corporation, as the Plaintiffs here, would not have had the right to invoke its want of authority or power to order the act complained of. It could not say to the Defendants: "We authorized you to remove this house, but we had no authority to do so; we ordered you to do it, but we sue you for having done it." But, as I have said it before, that is not the issue raised.

The judgment complained of by the Plaintiffs is, in my opinion, erroneous, and the appeal therefore must be allowed. Rule to be discharged.

GWYNNE, J.:—

By sec. 28 of ch. 32 of the *Revised Statutes* of *Nova Scotia*, the Trustees of school sections are declared to be a body corporate for the prosecution and defence of all actions relating to the school, or its affairs, and other necessary purposes, under the title of "Trustees of School Section No. —— in the District of———," and by sub-sec. 2 of sec. 30, they are empowered to take possession of, and *to hold as a corporation*, all the school property of the section which may be purchased for or given to it for the use or support of common or academic schools, and by sub-sec. 4 of sec. 30 they are empowered to determine the sites of school houses, subject to the sanction of the three nearest Commissioners residing out of the section, and in case these Commissioners should not agree as to the site of a school house, it was enacted that the matter should be referred to the Board of Commissioners for the District or County in which the school house is situate, whose decision should be final.

The above Plaintiffs, in their corporate name and

character, have brought this action *qu. cl. fr.* against three persons, Defendants, and in their declaration complain that the Defendants broke and entered the Plaintiffs' close (describing it) known as the school house lot of Section No. 16, South District of *Pictou* County, and tore down and destroyed the foundation walls of the school house of the said section thereon erected, and removed, tore down and carried away the buildings, wood and logs of the Plaintiffs, and converted the same to their own use, and also that the Defendants removed and carried away the school house of the said section from its lawful site, and converted the same to their own use, and also broke and entered the close of the Plaintiffs (above described), and dug and cut up the soil thereof, and tore down the walls and building, and removed and injured the houses and buildings thereon, whereby the Plaintiffs were deprived of the use of the same, and were prevented from keeping a school therein, and the members of the said school were deprived of the advantage of having a school kept in the said section by reason of the said wrongful acts of the Defendants, and their children were thereby deprived of schooling for a long time.

It cannot be doubted that, if the Defendants, or any of them, committed, or caused to be committed, all or any of the acts complained of, without legal justification, they would be liable to the Plaintiffs in this action, suing as they do in their corporate capacity; and it would be quite immaterial who may have been, or be, the particular individuals comprising the corporation, who are the Plaintiffs, except in so far as the Defendants' plea of justification should occasion any enquiry upon that point. Now, to this declaration the Defendants have pleaded eight pleas, which may be reduced to three, namely: 1st. That the Defendants did not do any of the acts complained of; 2nd. That the close, soil,

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school house, foundation walls and buildings were not, nor was any of them the Plaintiffs' property, as alleged; and 3rd. (which is the Defendants plea of justification set out on the 7th plea), that at the time of the alleged trespass, and until and at the time of action brought, the Defendants *James Cameron* and *John A. Cameron*, and *Duncan Macdonald*, were the Trustees of said School Section No. 16, duly elected and appointed under the Statute in that behalf, and the said land was the freehold of the said *James Cameron*, *John A. Cameron* and *Duncan Macdonald*, as such Trustees, and the said school house and walls, buildings, wood and logs were the property of the said *James Cameron*, *John A. Cameron* and *Duncan Macdonald*, as such Trustees, under the Statute in that behalf, and because it was deemed desirable to change the site of the said school house, and to purchase and accept another site for the said school house, and the said *James Cameron*, *John A. Cameron* and *Duncan Macdonald*, deeming it advisable as aforesaid, and having purchased and accepted another site for said school house, and having lawful and proper authority in that behalf, proceeded to change the site of the said school house, and thereupon the said *James Cameron* and *John A. Cameron*, as such Trustees as aforesaid, in their own right, and the Defendant, *Nathan Cameron*, as their servant, and by their command, entered upon the said close, and, with teams necessary for that purpose, moved the said school house from the place it then occupied towards the site purchased and accepted as aforesaid, doing no more than was necessary for that purpose, and because the said school house was set fire to and burned by some person or persons unknown, accidentally or unlawfully, but without the knowledge of the Defendants, it was not removed to the said site so purchased and accepted as aforesaid, but the Defen-

dants were thereby prevented from so doing, which are the alleged trespasses.

The 8th plea it is unnecessary to set out, for the issue thereby sought to be raised is wholly immaterial to the matters really in issue in this action. The Defendants by that plea, treating the Plaintiffs, who are a corporation suing in their corporate name, as if they were individual persons, deny that such individuals, there being none named as Plaintiffs upon the Record, were ever duly appointed Trustees of the school section, or were such trustees at the time of the alleged trespasses, but that the Defendants *James Cameron* and *John A. Cameron* and one *Duncan Macdonald* were a body corporate for the purposes mentioned in the Statute, and entitled to sue under the title of Trustees of School Section No. 16, &c., &c, and that the said land was the freehold of them, the said *James Cameron*, *John A. Cameron* and *Duncan Macdonald*, as such Trustees.

This plea, as it appears to me, is framed upon a total misconception of the operation of the Statute and of the position, rights, and responsibilities of the particular individuals, who, for the time being, may fill the character of Trustees of the school section. By the Statute the school property is plainly vested, *not* in the *persons* who, for the time being, may be Trustees, as pleaded in this plea, but in the corporation. It is wholly erroneous to describe the property and to plead it as being the soil and freehold of the respective individuals for the time being filling the office of Trustees. Those *persons* have no estate whatever in the school property; it is vested in the corporation, whose agents the persons are. Now, that the agents of a corporation may commit a tort upon the corporate property, for which an action will lie at the suit of the corporation, there can be no doubt; a corporation known as the mayor, aldermen and commonalty of a city may sue persons

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filling respectively the offices of mayor and aldermen of the city for trespass, wrong and injury done to, or for the conversion of, the corporate property. Doubtless, these agents, having, for the time being, control of the corporation, may prevent an action being brought in the corporate name against themselves, but, that action being brought and the Defendants having pleaded to issue, all that we have to do is to determine the issues raised upon the Record before us in bar of the action, which issues must be determined irrespective of any question as to who may or may not have been competent to give instructions for the use of the corporate name for the maintenance of the action.

Now the issues joined, in substance, are, as I have said: 1st. Upon the question whether or not the Defendants, or any of them, did any of the acts complained of? As to the allegation in the declaration "that the Defendants removed and carried away the said school house from its lawful site, and converted the same to their own use," that might have been treated by the Defendants, and would have been treated, as matter of aggravation only, in view of the other matters charged, if the Defendants had not themselves, by their third plea, treated that charge as an independent substantive cause of action (1). It is unnecessary to enquire whether the contention of the Defendants upon this issue is or not correct, namely, that in this connection the word "site" must be construed to mean the whole lot upon a part of which the school house was erected, and not merely that part of the lot within the four walls, which were of stone, built into the ground, and which constituted the foundation of the school house, for the other acts charged, if proved and not justified, are abundantly sufficient to support the verdict rendered in favor of the Plaintiffs. Now,

(1) *Roberts* v. *Taylor*, 1 C. B. 117; *Lane* v. *Dixon*, 3 C. B. 776.

upon the evidence, it is clear, beyond all question, that the Defendants took the school house down from its foundation and removed it for more than the length of itself from off that foundation, and that, in so doing, they broke and tore down the stone walls constituting such foundation, and that the windows were twisted out of place, and that the weather-board and some of the shingles upon the roof of the school house were damaged, and that the building was left in a condition unfit for occupation there as a school house. That these acts constitute an actionable wrong for which damages may be recovered in this action, unless they can be justified, admits of no question.

Then, 2nd, the Defendants have pleaded in bar that the close, soil, school house, walls and buildings were not nor was any of them the property of the Plaintiffs. This plea seems to have been pleaded upon the misconception that some individuals behind the corporation putting it in motion were Plaintiffs, and not the corporation itself, for the Statute clearly vests the school property in the corporation, and that is, in effect, what the declaration alleges and the plea denies. This plea, therefore, must be found in favor of the Plaintiffs. The only question which remains is : Have the Defendants, by their 7th plea, established a justification ? Now, the land is not the freehold of *James Cameron*, *John A. Cameron* and *Duncan Macdonald*, as in this plea pleaded, even though they may have then been the persons filling the office of Trustees, the freehold is in the corporation—Plaintiffs. Moreover, assuming the last named individuals to have been the persons filling the office of Trustees, it appears by the evidence that it is not true, as alleged in the plea, that they had purchased another site for the school house, or that they had lawful power and authority to proceed to change the site of the school house, as they admit by their plea that they did pro-

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ceed to change it; the plea, in short, confesses the commission of all the trespasses charged in the declaration, professing to avoid them as lawful acts done by them in the discharge of the powers attached to their office; but it is clear that they had no such justification as that set up, for the 4th sub-sec. of sec. 30 of the Act required the sanction of three of the nearest commissioners residing out of the section, or. if they did not agree, then the sanction of the Board of Commissioners, whose decision should be final, before the acts which Defendants admit they committed could lawfully be done, and we find by the evidence that the Defendants *James Cameron* and *John A. Cameron*, knowing that the necessary authority had before been refused, despairing of obtaining it, did not again apply for it, but wrongfully, upon their own sole motion, did the acts complained of. It would be singular, as it appears to me, if upon a record raising these issues, all of which must be admitted to have been clearly established in favor of the corporation, a court of law should be disposed so far to countenance injustice as to render any assistance to the Defendants in their endeavor to defeat the corporation from recovering in this action for the wrong and injury done to their property, upon a suggestion that two of the Defendants and another person were, in truth, the only persons competent to set the corporation in motion by an action brought in its name.

The result is that the verdict recovered by the Plaintiffs must be allowed to stand, and that the appeal, which is against a rule which set it aside and granted a new trial, should be allowed with costs, and that the rule itself in the court below, granting the new trial, must be ordered to be discharged with costs.

Appeal allowed with costs.

Solicitor for Appellants: *S. H. Holmes.*

Solicitor for Respondents: *D. C. Fraser.*