

to the general rule in other cases, is received as evidence against the corporation itself. (g) Thus allowing the plaintiff to select from among the corporators such one or more of them as he may think proper to make witnesses, and to extract from them only such proof as may be entirely responsive to his case.

It is now settled, that a corporation may be charged in actions *ex delicto* as well as *ex contractu*, notwithstanding the general rule, that they can only act and bind themselves by means of their corporate seal. For although the members of the body politic, in their corporate capacity, cannot commit a crime, or perpetrate a felony; yet, since the institution is governed by the intellectual agency of natural persons, they may cause it so far to depart from the purposes of its establishment, as, by means of its servants to commit a trespass, or tort, or unlawfully to refuse to make compensation for that by which it had been, upon its own request, materially benefited; and, therefore, redress is allowed to be had against it by an action of trespass, trover, or assumpsit, as may be best suited to the true nature of the case. (h)

The adjudications by which these modes of proceeding have been sanctioned, manifest a sensible and strong disposition in the courts of justice, so to control and modify the ancient distinction between the artificial and natural capacities of those of whom corporations may be composed, as to prevent them from withholding a disclosure of the truth; or from perpetrating wrong and fraud, under cover of their artificial capacity; because of the quaint notion that, as such, they have no soul; or because, in general, they can only act, or bind themselves in the manner prescribed by means of their corporate seal.

On the other hand it may often become necessary to proceed personally against the officers and members of a body politic, who have been entrusted with its concerns, so as to prevent them from exposing its property to seizure and loss by reason of their negligence or contumacy. In a suit against a body politic, which can only be considered as an auxiliary of the government of the Republic, it would certainly be very unjust to seize upon its pro-

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(g) *Fenton v. Hughes*, 7 Ves. 289; *Dummer v. Corporation of Chippenham*, 14 Ves. 253.—(h) *Com. Dig. tit. Franchises*, F. 19; *Yarborough v. The Bank of England*, 16 East. 6; *The Bank of Columbia v. Patterson*, 7 Cran. 299; *McDonough v. Templeman*, 1 H. & J. 156; *The Bank of the United States v. Norwood*, 1 H. & J. 423; *Kennedy v. The Baltimore Insurance Company*, 3 H. & J. 367; *Union Bank of Maryland v. Ridgely*, 1 H. & G. 419.