

templated a lease of their work when completed to the Great Western Company. But, as the work advanced, difficulties arose, and the majority of the shareholders at length came to a resolution, that they would not lease the road to the Great Western, but to the Torr Vale Company. The directors, however, were exceedingly anxious to carry out the original arrangement; and with a view, as alleged, of coercing the corporators, were proceeding to construct the work with the broad guage, which would in fact have obliged the company to carry out its contract with the Great Western, inasmuch as the Torr Vale Railroad, having been constructed with the narrow guage, could not have used the Exeter and Crediton Road, if completed as at first designed. Under these circumstances the corporators filed a bill in the name of the company against the directors, and contrary to their wishes. A motion was made to take the bill off the file, not having been authorised by the directors. It was argued that there was no authority to file the bill, and no retainer under the seal of the corporation. Sir *Launcelot Shadwell*, in delivering judgment, said: "that the company had a right to do it (file the bill) in the abstract, cannot, I think, be doubted." And in a subsequent part he says: "it is an extremely difficult thing to do justice to what is called a company, if you are to consider a company as a sort of metaphysical thing, and, according to the description of my Lord *Coke*, having neither body nor soul, and unless you really say that the company must be taken to be identified with the majority of shareholders who constitute the company." And it being urged that the corporators had never passed any resolution authorising the filing of this bill, his honour ordered the motion to stand for eight weeks, in order to allow the corporation time to come to some resolution on the subject. This motion was renewed before Lord *Cottenham* upon appeal, upon the same arguments urged before the Vice-Chancellor; and in the course of his judgment his lordship observed: (a) "it is, however, said that there is no seal affixed, and that there is no retainer for filing the bill;

1849.

Hamilton
v.
Desjardins
Canal Co.

Judgment.

(a) 11 Jurist. 527.