

of those profits, we desire to obtain an account; not for the purpose of obtaining a share, but simply for the purpose of having the amount paid in, and applied according to the provisions of the acts of the legislature. To show the general purposes for which a mandamus issued, reference was made to *The King v. The Nottingham Water Works*, (a) *Rex v. Windham*, (b) *Gray v. Chaplin*, (c) and *Colman v. Eastern Railway Company*. (d)

On all the facts, as they appear, we submit, that it is shewn that an improper application of the funds has been made; that having shown this, we are entitled to call upon the defendants to account; and the Attorney-General is not a necessary party in any way; that the company must be made parties, and could, under the circumstances here appearing, be made defendants only; and as we desire to ascertain what profits have been made, an account is absolutely necessary, and that for that purpose a mandamus would not have been a proper proceeding.

[*The Chancellor*.—Do I understand you to contend that the mere fact of lending out the funds of the company remaining in hand, is such an illegal transaction that it will give a party a right to come here to have the money paid into court?] Argument.

We submit it is, particularly when it is shown that the loans were made almost entirely to directors of the company; and particularly since the passing of the act 9 Victoria.

Mr. *Burns* and Mr. *Vankoughnet*, for the defendants, referred to and commented on 7 Geo. IV., ch. 18, secs. 17, 18, 19 & 20, and 7 Wm. IV., ch. 5.

By the several acts, the widest discretion is given to the directors as to how they shall apply the moneys of the company in their hands; and the bill does not allege that any money is required to pay for any repairs, or repaying any loan, or that any inconvenience has arisen in consequence of the moneys having been loaned as stated.

We submit that the Attorney-General should have been made a party: the acts provide for loans to be made by government, and that in the event of mismanagement, the government may take possession of the works and receive

(a) 6 A. & E. 355. (b) 1 Cow. 378. (c) 2 S. & S. 267; 13 Jur. 809. (d) 10 Beav. 1.

1849.

Hamilton
v.
Desjardins
Canal Co.