

1849.

Hamilton
v.
Benjardine
Canal Co.

proprietors and the directors, but between two classes of corporators; the one asserting that it should not be bound by having subscribed for a considerable amount of stock, for the purpose of satisfying the orders of the House of Lords, the other contending that such a subscription should be held binding, and that the class of persons so subscribing should be compelled to pay calls *pari passu* with the general shareholders. Such a case is plainly distinguishable from the one now under consideration. We do not in fact see how the record could have been otherwise framed; and when this case was cited to Sir James Wigram in the argument of *Foss v. Harbottle*, he distinguished it upon the grounds we have just mentioned. The plaintiff's counsel, however, relied with great confidence upon the latter case, (*Bagshawe v. The Eastern Railway Company*), as one of recent occurrence and directly in point. We should have been much surprised to find any thing decided by Sir James Wigram overruling his own luminous judgment in *Foss v. Harbottle*, which had been repeatedly cited by the Lord Chancellor with approbation. But upon examination *Bagshawe v. The Eastern Union Railway Company* will be found to be in no degree parallel with the case in *Hare*, or that now before this court. The bill was filed in that case by the plaintiff, not on behalf of himself and all the shareholders in the Eastern Railway Company, but by himself, on behalf of the owners of certain scrip issued by the company under several acts of parliament, for the purpose of raising a sum designed to construct branch roads. The stock of the Eastern Union Company amounted to £7,000,000, while the sum represented by the plaintiff, and those on whose behalf he claimed to sue, amounted to but £300,000. The plaintiffs, if shareholders at all, as in our judgment they were not, could have had no right to use the company's name, for they were in direct conflict with the great mass of the shareholders, in fact the whole proprietary of the Eastern Union Railway Company. In that respect it has a resemblance to *Preston and the Dock Company*, though possibly less questionable—we do not see how the record could have been otherwise framed. But it

Judgment.

certain
adopt

Tw

to us-

and C

recon

we be

opposi

oursel

the L

those

are no

cases,

cial na

dants

equity

in the

We ma

Jurist

to allow

in the c

unawar

difficult

bearing

the case

Compan

Phillips

be foun

judgmen

Upon

the way

as at pre

the abse

sue on bu

reason w

and whe

should fe

(a) 10

E