

RECENT ENGLISH DECISIONS

dence which is not only satisfactory to us, but was quite satisfactory to the directors—the very same evidence on which they advised the shareholders to act, but the shareholders, in general meeting, over-ruled their directors, and in December last refused to act upon it, and insisted upon going on with the company. Then is not this exactly the case pointed out by Lord Cairns in *Re Suburban Hotel Co.*, L.R. 2 Ch. 737,—‘Where it is impossible to carry on the business for which the company was formed.’ It seems to me it is exactly that case.” Brett, L.J., in concurring, says:—“I think, therefore, the proposition is made out that there was a total absence of possession or right of possession by the company of the subject-matter which they were formed to work, and that there is no reasonable prospect of the company obtaining possession of such subject-matter. Under those circumstances it seems to me that the opinion of the majority of the shareholders is an unfounded opinion, and having come to that conclusion of fact, I think the opinion of that majority ought not to bind the minority.” Lindley, L.J., says:—“It appears to me in substance to come to this, that it is proved by evidence upon which we must act, that the minority have established such a case as entitled them to say to the majority, ‘The undertaking in which we all embarked is proved to be impossible to carry out; we decline to enter into any further speculation, or to join you in trying to get this property from other people and upon other terms.’” But as to the other ground of his judgment, the M.R. and Brett, L.J., agree with Bacon, V.C., the former saying:—“I agree that the mere fact of there being a fraudulent representation, or fraudulent representations, in the prospectus, is not sufficient. A company may, if they think fit, waive the fraud and complete the bargain and go on, or they may vary the bargain on the ground of fraud, and complete it with variations. As to that, the majority of the company in general meeting assembled are the best judges, but where the whole thing is gone

the majority cannot bind the minority to enter into an entirely new speculation, and it never has been so held.”

PROXIES—DEMANDING A POLL.

Before leaving this case a *dictum* of Bacon, V.C., at p. 157, as to the powers conferred by proxy papers, may be mentioned. He says:—“I found they, the proxies, authorize the persons to whom they are addressed, to go to the meeting and there to vote for the person granting the proxies. Can I read in that an authority to take so important a step as to demand a poll? Costs would attend such a proceeding. The proxy-maker would be astonished some day to be served with a bill of costs, and to be told he must pay it because he made somebody a proxy to vote for him.”

MEMORANDUM OF ASSOCIATION—GENERAL WORDS.

Of the next case, *Re German Date Coffee Co.*, p. 169, it seems only necessary to say, after the above long review of the last case, that it is a case of a similar kind, decided on the same principle. In the Court of first instance, Kay, J., after reviewing the *Haven Gold Mining Co.* case, says:—“Therefore the law so far is established thus, that if the whole substratum of the company is gone, it is without sect. 79, ‘just and equitable’ that the company should be wound up.” He then refers to the case of the *Langham Skating Rink Co.*, L.R. 5, Ch. D. 669, as showing where the line is to be drawn, and says:—“I think that shows very plainly where the line is to be drawn, and I take the line to be this, that where on the face of the memorandum you see there is a distinct purpose which is the foundation of the company, then, although the memorandum may contain other general words which include the doing of other objects, those general words must be read as being auxiliary to that which the memorandum shows to be the main purpose, and if the main purpose fails and fails altogether, then, within the language of Lord Cairns in the *Suburban Hotel Co.* case, and within the de-