

1849. properly applied, as if the Attorney-General were here on the part of the public.—*Scarr v. Trinity College*. (a) In *Bromley v. Smith*, (b) it is stated that where all are parties to the abuse, in that case the Attorney-General must act.

Hamilton
v.
Derjardins
Canal Co.

The proceeding here is as much for the benefit of the Crown as of the stockholders, therefore the Attorney-General is not a necessary party.—*MacMahon v. Upton*, (c) *Franco v. Franco*, (d) and *Poore v. Clark*, (e) were cited on this branch of the argument.

As to the second and third objections, the corporation being managed by a majority of the body of directors, and their conduct having been approved of, and their acts affirmed by a majority of the stockholders, the company could only be made defendants. They are wrong-doers; and could not with propriety have been made plaintiffs. *Mozley v. Alston*, (f) *Lord v. Copper Miners Company*, (g) *Bagshaw v. E. U. R. Company*. (h)

The acts of the directors having been illegal, no affirmation of them by the stockholders can give them validity. In *Preston v. The Grand Dock Collier Co.*, (i) the company were unanimous; but afterwards, one only dissented and filed a bill, and such bill was sustained. On these points, several cases were cited; amongst them—*Cohen v. Wilkinson*, (j) *Applerly v. Page*, (k) *Cooper v. Webb*, (l) *Walworth v. Holt*, (m) *Foss v. Harbottle*, (n) *Attorney-General v. Wilson*, (o) *Ex parte Lacey*, (p) *Ex parte Thwaites*. (q)

As to the fourth ground of objection, we submit, the proceeding by mandamus lies only when there is a right in plaintiff, and no legal or equitable means of enforcing it. No case can be shewn where a mandamus has been granted to compel a party to render accounts to the court of common law. No doubt it would lie to compel the payment of money into court; but here, large profits have been made,

(a) Cambridge, 3 Ansth. 760.

(c) 2 Sim. 473.

(e) 2 Atk. 515.

(g) 12 Jurist, 1059.

(i) 11 Sim. 327.

(k) 10 Jurist, 998.

(l) 11 Jurist, 98, and affirmed on appeal at p. 443.

(m) 4 M. & C. 619.

(o) C. & P. 1.

(q) 1 M. & A. 323.

(b) 1 Sim. 8.

(d) 3 Ves. 75.

(f) 11 Jur. 315, S.C. 1 Phil. 790.

(h) 13 Jurist, 602.

(j) 13 Jurist, 641.

(n) 2 Hare, 461.

(p) 6 Ves. 625.

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