

of themselves, and all the other shareholders of the company. He says at page 799, "The complaint against the defendants is, that they are *illegally exercising* the powers of directors, and *illegally retaining* the seal and property of the company. That, if it be an injury at all, is an injury not to the plaintiffs personally, but to the corporation of which they are members. A usurpation of the office of directors, and therefore an invasion of the rights of the corporation; and yet no reason is assigned by the bill why the corporation does not put itself in motion to seek a remedy. And then, after citing the judgment of Sir James Wigram, in *Foss v. Harbottle*, he says, page 800, "The same observation applies with still greater force to the present case, for not only does it not appear that the plaintiffs have no means of putting the corporation in motion, but the bill expressly alleges that a large majority of the shareholders are of the same opinion with them; and if that be so, there is obviously nothing to prevent the company from filing a bill in its corporate capacity to remedy the evil complained of. Such a bill would be free from the objection to which I have referred as existing in this case, for it would be a bill by a body legally authorised to represent the interest of the shareholders generally; but to allow, under such circumstances, a bill to be filed by some shareholders, on behalf of themselves and others, would be to admit a form of pleading which was originally introduced on the ground of *necessity alone*, to a case in which it is obvious that no such necessity exists." But we have been referred to *Preston v. Grand Collier Dock Company*, (a) and *Bagshaw v. Eastern Railway Company*, (b) as direct precedents for the bill in this present case. *Preston v. The Dock Company* was decided in 1840, while the case we have just quoted from was determined in 1847, and upon appeal to the Lord Chancellor; if, therefore, any contrariety should be found to exist, we apprehend that the older case before the Vice-Chancellor must be considered as overruled. But we do in fact find no such contrariety as might at first sight appear. The conflict in the case in *Simons* was not between the

1849.

Hamilton
v.
Desjardins
Canal Co.

Judgment.

(a) 11 Sim. 327.

(b) 13 Jurist, 602.