

to the effect that individual shareholders in a joint stock company cannot bring an action against the promoters for damages caused by misrepresentation by the latter as to the prospects of the company when formed, the injury, if any, being an injury to the company, not to the respective shareholders—cannot be taken as an invariable rule on the subject. It has been held in England that if the directors have connived with or participated in the fraud, and being in control of the machinery of the corporation, refuse to bring the action, a court of equity will open its doors to an action by a defrauded shareholder, on behalf of himself and the other shareholders, except the defendants, upon his showing that the directors have refused to allow the action to be brought in the name of the company.¹ And where, as in the Province of Quebec, the Courts combine the jurisdictions, effect would undoubtedly be given to the remedy. In Nova Scotia a shareholder may also sue as trustee for the other shareholders of the company.² But if the action be in reality one on behalf of all the stockholders of the company, it should in the ordinary course be brought in the name of the company; and when brought in the name of a shareholder, to sustain such an action special circumstances must be shown,³ for which purpose it will not be sufficient to show that the company was under the absolute control of the defendant, who induced the subscription to shares by misrepresentations, unless clearly indicated that such control existed at the time the action commenced.⁴ If a plaintiff sues alone when he ought to sue on behalf of himself and others, an amendment will usually be allowed.⁵

It would also seem that any one shareholder can maintain an action against a company to restrain it from doing an act that is illegal or *ultra vires*.⁶ Under section 80 of the Dominion Companies' Act, promoters being rendered liable for omission to state contracts in the prospectus, it has been held under the corresponding

¹ Atwood v. Merryweather, 37 L. J. (Ch.), 35; Knoop v. Boluninck, 23 Atl. Rep., 118; 31 Amer. Law Register, 142.

² Hinchens v. Congreve, 4 Russel, 562; approved in Northup Mining Co. v. Dinock, 27 N. S., at p. 160, 132; Beck v. Kantowing, 3 K. & J., 230.

³ Weatherbee v. Whitney, 30 N. S. R., 49.

⁴ *Ibid.*

⁵ *Ibid.*, at p. 59. See Lindley Companies, 566; Duckett v. Gover, 6 Ch. Div., 82.

⁶ See Hoole v. Gt. West. Ry., 3 Ch. 262; Russell v. Wakefield Waterworks Co., 20 Eq., 481; Simpson v. Westminster Palace Hotel Co., 8 H. L. C., 712.