

The defendants have put in their answers, wherein they affirm their constant readiness to account as the shareholders should require; and aver, that the detailed statement of the affairs of the company is contained in the books, which are always open to the inspection of the corporators. They deny that any personal advantage was acquired by the dealings of the president and directors with the funds of the company, and assert that they acted throughout with a view to the interest of the company; but they at the same time admit that some of the moneys of the company had been retained by the president in his own hands, and that other portions had been loaned to the directors of the company and others, as charged in the bill. The answers disclose the fact, that a new election of directors had taken place between the filing of the bill, and the coming in of the answers; at which election two of the plaintiffs, *Ewart* and *Hamilton*, had been chosen directors, and that *Paterson* had been re-elected president.

1849.

Hamilton
v.
Desjardins
Canal Co.

The defendants deny that the plaintiffs have any equity to institute this suit; they affirm that the frame of the bill is defective; that the corporation should be plaintiffs; and they claim the same advantage as if they had pleaded or demurred.

Judgment.

Upon the coming in of these answers, the plaintiffs have moved that the defendants be ordered to pay into court the various sums mentioned in the notice of motion; and they argue, that they are entitled to this relief upon a two-fold ground: first, because, as trustees, the defendants have been guilty of a gross breach of trust, in dealing with the funds of the company in the manner detailed in the bill; and admitting this by their answers, they must be regarded as confessing the funds to be in their hands; under which circumstances, the order prayed would, as they argue, be in accordance with the settled practice of this court.

Secondly, because, irrespective of the improper dealings with trust funds charged upon these defendants, the 3rd sec. of the 9th Victoria imperatively requires all the revenue of the company to be deposited in one of the chartered banks, and that this court will assist the shareholders in obliging