1849. Hamilton v. Desjardins Canal Co.

3rdly. That as the company is carried on by vote of the majority, we, the minority, cannot be heard to say that they have acted improperly; and

4thly. That the proceeding by mandamus would have been the more proper course.

The several acts mentioned in the statement of the pleadings, were referred to and commented on.

The statute 9 Vic., ch. 85, makes express provision as to how the funds of the company shall be appropriated, namely, deposited in one of the banks; and it is under this act, principally, that we proceed; and one main ground for our proceeding is, that we contend that the directors are using the funds of the company in a manner not authorised by the act of incorporation, or by the act of 9 Victoria.

It is alleged by the bill, and admitted by the answers, that *Paterson*, who is president of the company, had loaned out large sums of the moneys of the company, and that one sum of £350 remained in his hands, and which has been applied to his own use. It is only necessary to read the several statutes relating to this company, to perceive that this is an improper use of the funds. Such conduct is subversive of the whole scope and purport of the act, which is for the construction of a canal, and not to constitute the defendants bankers, in which capacity they would appear to have acted. Statement.

Jefferys v. *Gurr*,(a) was cited to shew, that where persons in the situation of the defendants have paid moneys over wrongfully, they will be ordered to bring them into court, and that they may proceed at law for recovering back those moneys.

We do not wish the court to distribute the moneys; all that we desire is, that the amount may be brought into court, in order that it may see that the fund is not applied illegally.

It is submitted, that the Attorney-General is not a necessary party. The only object in having him here would be, that he might see that the public interests were properly protected; but surely the fact of one or more stockholders coming forward and filing a bill for the proper application of the funds, is quite as sure a mode of having those funds

(a) 2 B. & Adol. 833.