

1849. form of suit be resorted to, if the powers of the corporation may be called into exercise?"

Hamilton
v.
Desjardins
Canal Co.

This decision, if it stood alone, would seem to us conclusive of the whole case, being an authority in point, and, we think, well founded in reason. But having reference to the observations of Vice-Chancellor *Knight Bruce*, in a very recent case—*Cooper v. The Shropshire Union Railway Company*, (a)—which would seem to throw doubt upon all the preceding decisions, and keeping in view the contrariety, or apparent contrariety, to be found in some of the judgments, we feel it due to the plaintiffs to consider further some of the cases cited.

Judgment.

Mozeley v. Alston, (b) was a bill filed by two corporators, in the Birmingham and Oxford Grand Junction Railway Company, against the directors *de facto*, and the company itself. The statements in this, as in most of the cases cited, are extremely voluminous; but it may be sufficient for our present purpose to state, that the bill alleged an improper intention on the part of the directors, to amalgamate the Birmingham and Oxford Company with the Birmingham, Wolverhampton and Dudley Company, and to sell both to the Great Western Company. That the great majority of the proprietors disapproved of this intention; but that the directors, with a view of defeating the wishes of the proprietary, had refused to ballot out four of their number, as provided by their act of incorporation, and were at the time of filing the bill illegally executing the office of directors, with a view of accomplishing the sale I have mentioned. I was myself present at the argument of this cause, before the Vice-Chancellor of England. It occupied very many days. And certainly, if patient investigation and great ability could ensure a sound decision, this case ought to afford a safe precedent. Having been so fully discussed, and decided too upon appeal, we regard it as of the highest authority. After disposing of the first point—that the plaintiffs could not sue, as they had done, in their individual names—the learned judge proceeds to consider what would have been the effect had they sued on behalf

(a) 13 Jurist, 443.

(b) 1 Phil. 790.

of tl
pany
defe
direc
comp
not
whic
direc
ratio
corpa
And
in Fe
tion
not o
of pu
alleg
same
nothin
porate
bill w
red as
legally
holder
a bill
selves
which
alone,
exists.
Collier
Railw
this p
decide
was d
Chanc
to exis
Chanc
in fact
The co