

1849. clothed by their charter or act of incorporation. If a party will not be allowed to sue on behalf of others without bringing himself within the exceptions, where those others have no corporate character in which they can present their case, *a fortiori*, such a departure will not be permitted in regard to shareholders who have been clothed with a corporate character, and may therefore, unless the contrary be shewn, bring their case before the court without the infringement of any settled rule. In deciding that the shareholders in an incorporated company cannot sue in the form adopted in this case, except upon reason shewn, we of course affirm their right to use the name of the company. We, in fact, distinguish between the members of the company and the directors; we regard the directors as the agents of the company, and where their acts are illegal, fraudulent, or unauthorised, we think that the corporation have a right, like any ordinary individual, to institute proceedings against their agents to correct such abuse. And in coming to this conclusion, we conceive that we infringe no rule of law, but announce a proposition well founded both in reason and on authority. Suppose a charter of incorporation should give to the body of the corporators a right to control the directors, either in all matters committed to their management, or with respect to some particular branch of their duty. Can it be doubted that in such a case the directors would be the mere agents of the body of corporators? Can it be doubted that they would be entitled, in the corporate name, to impeach such acts of their agents? And is it not equally clear that, where the charter of incorporation is silent, the body of corporators must have such power to impeach the fraudulent or illegal acts of their agents? In all matters *left to the discretion* of the directors, upon which they have fairly exercised their judgment, *their* acts would be the acts of the company, and the corporators would be precluded from using the corporate name; but then such acts would be on the hypothesis unimpeachable; no suit could be instituted to reverse them. We shall presently refer to other arguments, upon which we ground our judgment. But as those already advanced apply to those acts

Hamilton
v.
Desjardins
Canal Co.

Judgment.

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