

frame of this suit cannot be sustained whilst that body retains its functions. In order then that this suit may be sustained, it must be shewn either that there is no such power as I have supposed remaining in the proprietors, *or at least that all means have been resorted to and found ineffectual, to set the body in motion.* This latter point is no where suggested in the bill. There is no suggestion that an attempt has been made by any proprietor to set the body of proprietors in motion, or to procure a meeting to be convened for the purpose of revoking the acts complained of. The question then is, whether this bill is so framed as of necessity to exclude the supposition that the supreme body of proprietors is now in a condition to confirm the transactions in question; or, if these transactions are to be impeached in a court of justice, whether the proprietors have not power to set the corporation in motion for the purpose of vindicating its own rights."

A little further on, at page 497, he remarks: "At all events, what is there to prevent the corporators from suing in the name of the corporation? It cannot be contended that the body of proprietors have not sufficient interest in these questions to institute a suit in the name of the corporation."

And again, at page 499: "There is no longer the impediment to convening a meeting of the proprietors, *who by their vote, might direct proceedings like the present, in the name of the corporation, or of a treasurer of the corporation (if that were necessary), or who, by rejecting such a proposal, would in effect decide that the corporation was not aggrieved by the transactions in question.*"

And in disposing of those acts objected to as illegal, and so totally void, and incapable of confirmation by the directors, the learned judge observes, at page 504, "The second point which relates to the charges and incumbrances alleged to have been illegally made on the property of the company, is open to the reasoning which I have applied to the first point upon the question—whether, in the present case, individual members are at liberty to complain in the form adopted by this bill; for why should this anomalous

1849.

Hamilton
v.
Desjardins
Canal Co.

Judgment.