

company in liquidation retains its corporate powers including the power to sue, although such powers must be exercised through the liquidator under the authority of the court. The liquidator must sue in his own name or in that of the company, according to the nature of the action: in his own name where he acts as representative of creditors and contributories; in that of the company to recover either its debt or its property.

Where liquidators sued in their own name to recover a debt due to the company:—

It was held that the error was one of form, which the court had power to give leave to amend under articles 516 and 521 of the Code of civil procedure. The defendant having admitted the debt and pleaded set-off, and not having excepted to the form of the action, leave to amend should have been given in the sound exercise of judicial discretion."

Lord Davey there says: "The office of the liquidator has in fact a double aspect. On the one hand he wields the power of the Company, and on the other hand he is the representative for some purposes of the creditors and contributories. There are, therefore, many cases in which he may sue in his own name as, e.g., to impeach some act or deed of the company before winding up which is made voidable in the interest of the creditors and contributories."

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