

1849. themselves to be elected directors, and had then purchased from themselves for the company these same lands at a large profit; that the funds of the company, not sufficing to pay the purchase money, the directors proceeded to mortgage the lands of the company, for the purpose of raising the requisite funds; and that, although the capital expressly required by the statute had not been subscribed. The plaintiffs in this bill sought to escape from the general rule (according to which the company ought to have been plaintiffs) by an allegation that no mode existed of putting the corporation, as a corporation, in motion, inasmuch as the only mode of calling a general meeting was by means of a notice served upon the directors; and as that body had, by death or otherwise, been reduced below the limited number, there existed in fact no body of directors upon whom notice could be served. Upon these and other grounds, which I need not now enumerate, the plaintiffs sought to establish the right to sue in the form adopted. It will be seen that the acts complained of in that case, (as in the one now before the court,) were in part voidable, because, although fraudulent and improper in trustees, still capable of confirmation by the *cestuis que trustent*, the majority of the corporators; others were altogether void, as contrary to the express provisions of the act of incorporation; and Sir James Wigram, in his judgment, keeps these two classes distinct. The judgment is a very luminous one, and in many parts will be found to have a very strong bearing upon this case; but we shall confine ourselves to a passage or two, which seem to us decisive of the question, if the case cited is to be regarded as law. In arguing with regard to the voidable acts, the learned judge, at page 494, says, "Whilst the court may be declaring the acts complained of to be void at the suit of the present plaintiffs, who in fact may be the only proprietors who disapprove of them, the governing body of the proprietors may defeat the decree by lawfully resolving upon the confirmation of the very acts which are the subject of the suit. The very fact, that the governing body of proprietors assembled at the special general meeting may so bind even a reluctant minority, is decisive to shew that the

Hamilton
v.
De la Roche
Canal Co.

Judgment.

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