

clared not to be a charge on the property or land grant, and praying delivery up of same. His bill alleges that shortly after the company was incorporated and before the year 1886, the plaintiff became a shareholder thereof by being the owner of a portion of the capital stock thereof, and has ever since remained on the books of the company a shareholder thereof, and is recognized by the railway company as a shareholder. The bill also alleges that the plaintiff has repeatedly called upon and urged the directors and officers of the company to take legal proceedings to prevent the sale or other disposition of the bonds and to have same declared to be improperly issued, but that they neglected and refused.

Demurrer on two grounds:—1. That the allegation above given of the plaintiff's title is not a sufficient one, and that what is stated is merely a conclusion of law; and (2), that even if the plaintiff is a shareholder the bill does not disclose such a state of circumstances as enables him to sue in his individual capacity.

The term "shareholder" is indefinite; although apparently the allegation of title was not sufficient, yet it was not necessary to a decision and so not decided: *Willburn v. Negleby*, 1 M. & K. 51; *Hamilton v. Desjardins Canal Co.*, 1 Gr. 1; *Banks v. Porter*, 16 Si. 176.

*Held*, 1. that actions by one member of a class on behalf of himself and all others of that class are permissible when the object of the suit is to obtain relief to which the whole class is entitled, and when the members of the class are so numerous that they cannot all be made parties by name (that is, an action might be permissible on the ground of necessity or convenience); but when a company is incorporated and its officers and directors have done or are doing something that is illegal and which affects the whole company, then under ordinary circumstances it is the company that ought to sue in its corporate name.

2. That there might be an exception to the general rule arising from the necessities of the case, and in order that there might not be a failure of justice and in order to prevent oppressive litigation it should not be allowed to prevail in cases where there is no necessity for it, as in this case.

Demurrer allowed with costs.

*Howell*, Q.C., and *Tupper*, Q.C., for plaintiff.

*Ewart*, Q.C., and *Bradshaw*, for defendants.

KILLAM, J.]

[March 4-

RITCHIE v. GRUNDY.

*Mechanics' Lien Act—Agreement waiving lien.*

This was a bill filed to enforce a Mechanics' Lien under the Act, for building an addition to the defendant's residence under a written contract, and for certain extras. The defendant denies completion, and disputes the principal portion of the claim for extras. The contract provided that the payment of \$500 by the defendant, \$100 in cash, \$200 during the process of the work, and \$200 by note six months after the completion of the work. The only evidence offered showed completion and an agreement as to certain extras, for which the plaintiff demanded the six months note for the balance due under the contract and was refused.

*Held* (1), that where, by the agreement of the parties, the price of the work is not payable until the time for enforcing the lien is past, no lien exists.

2. That it is a well-known principle with liens recognized at common law, that a lien does not exist where the contract between the parties or the circumstances are inconsistent with the notion that one was intended.

3. In view of the well-known principle that an action will not lie for a debt until the time for payment has expired, an agreement that there shall be no lien should be implied under a contract merely for payment at a date later than that at which the bill could be filed to enforce the lien.

4. That if the contract is for the giving, within the time for enforcing the lien, a promissory note or other security for the price, the agreement to waive the lien should be considered conditional upon the giving of the note or security.

"In view of certain variations in the contract, the plaintiff was to be entitled to a lien upon the lands described, if upon completion the defendant wrongfully refused to give the note and upon other terms and conditions suited to the peculiar nature of the case."

Amendment allowed upon terms.

*Mulock*, Q.C., for plaintiff.

*Aikins*, Q.C., and *Patterson*, for the defendants.