

1849. *Hamilton v. Desjardins Canal Co.* tute these proceedings. In the title of the bill, they are indeed described as shareholders; but that fact is no where distinctly alleged, and the court, consequently, is not informed whether they claim as original shareholders, or as assignees of such; and if as assignees, whether the requirements of the statute have been complied with. In this point of view, *Walburn v. Ingilby*, (a) and *Banks v. Parker*, (b) would seem authorities against the bill. We forbear, however, to give our opinion on this part of the case; because the point was not taken, so far as we recollect, and consequently has not been discussed.

Judgment. We are of opinion, that nothing appears upon the face of this record sufficient to warrant the court in entertaining a suit by the plaintiffs, *on behalf of themselves* and all the other corporators, instead of having all the shareholders made complainants, according to ordinary practice. The introduction of this form of pleading is of comparatively modern date. Not very long since, this bill would have seemed clearly demurrable. The existence of numerous joint stock companies, consisting of a great number of proprietors, would perhaps have rendered its adoption necessary in England, though it had been less sustainable on principle than it really is. Lord *Cottenham*, however, in his judgment in *Walworth v. Holt*, (c) has justified it, not only upon necessity, but also upon principle; and since that case, it has been in very general use—so much so indeed, that it now seldom forms a subject of discussion; and from the absence of comment, a superficial reading of the cases might lead one to conclude that it would be competent to a complainant to adopt this form, without reference to the particular circumstances of his case. It is obvious, however, that this is not so, and that a complainant must follow the established practice, in bringing before the court all the persons on whose behalf the bill has been filed, unless, upon the record, he brings himself within the exception. Although the practice has now become so well established, and the rules which govern it so well observed, that it has been for the most part withdrawn from discussion, yet its existence may

(a) 1 M. & K. 61.

(b) 16 Sim. 176.

(c) 4 M. & C. 619.

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