

a bona fide stockholder; *Robson v. Dobbs* (1869) L.R. 8 Eq. 301; *Belmont v. Erie Ry. Co.* (1869) 52 Barb. 637; he must generally shew special injury where the transaction is not ultra vires; *Hill v. Nisbet* (1884) 100 Ind. 341; *Hedges v. Paquett* (1869) 3 Ore. 77; and, the corporation being a trustee for the stockholders, in most cases he must allege and prove that the corporation is unwilling or unable to bring suit. *Hawes v. Oakland* (1881) 104 U. S. 450; *Greaves v. Gouge* (1877) 69 N.Y. 154; *Dumphy v. T. N. Assn.* (1888) 146 Mass. 495. But when the transaction is ultra vires, *Stebbins v. Perry County* (1897) 167 Ill. 567; *Botts v. Simpsonville, etc., Turnp. Co.* (1888) 83 Ky. 54, or the corporation is under the control of the guilty parties, *Brewer v. Boston Theatre* (1870) 104 Mass. 378; *Wickersham v. Crittenden* (1892) 93 Cal. 17; *Rogers v. Ry. Co.* (1898) 91 Fed. 299, such proof is unnecessary. Whether or not an allegation that the directors have been requested to sue and have refused is sufficient, seems to be unsettled, some courts holding that the plaintiff need not apply to a stockholders' meeting, *Gregory v. Patchett* (1864) 33 Beav. 595; *Cook, Corp.* sec. 720, and others, that this is necessary, *Foss v. Harbottle* (1843) 2 Hare. 461; *Bill v. Western Union T. Co.* (1883) 16 Fed. 14, except in the possible case of a fraud which could not be authorized by a majority of the stockholders. *Mason v. Harris* (1879) L.R. 11 Ch. Div. 97. Although there be such an authorization, the plaintiff's right is not impaired, for a majority of the stockholders sustain much the same relation towards the minority as the directors sustain towards all the stockholders. *Farmers', etc., Co. v. New York Ry. Co.* (1896) 150 N.Y. 410; *Erwin v. Oregon, etc., Co.* (1886) 27 Fed. 625. The right of action is not limited to cases of technical fraud, but attaches to every breach of trust, including, it has been held, gross negligence. *Ives v. Smith* (1888) 3 N.Y., Supp. 645.

Fraud exists where the interests of the corporation are deliberately neglected in favour of a personal or other interest. An oppressive scheme of management "so far opposed to the true interests of the corporation itself as to lead to the clear in-