

corporator to sue, on behalf of himself and others, to impeach *voidable* acts of the directors? It is too apparent for argument, that at the moment the Court of Chancery is pronouncing its judgment in favour of the plaintiff's claim, the majority of the shareholders may be engaged in resolving, and that too conclusively, that the dealings complained of ought not to be disturbed. The objection here is one of substance. The power to affirm or disaffirm *voidable* acts is with the *cestuis que trustent*, the majority of the corporators. If the majority elect to *affirm*, then the plaintiffs, who upon such hypothesis would represent the minority, have no equity. The conclusion is inevitable. Corporators who seek to be relieved from voidable acts of their directors, must first attempt to put the corporation itself in motion. They must ascertain the will of the majority. If that majority elects to disaffirm the acts, it has a right to make use of the corporate name in seeking redress, and is bound to do so. If, on the other hand, it elects to affirm such dealings, no suit indeed can be instituted in the corporate name; but neither should there. The minority have no right to take such a step. We do not mean to lay down this as an inflexible rule. It has its exceptions. But the plaintiff in that case must shew upon the record why he claims to sue in a way unauthorised by the general practice of the court.

1849.

Hamilton
v.
Desjardins
Canal Co.

Judgment.

The principles of reason upon which we found our judgment seem to us fully recognised in decided cases. In *Foss v. Harbottle*, (a) the bill was filed by several persons, on behalf of themselves and all other shareholders of the Victoria Park Company except the defendants (the directors) against the directors. The facts of the case are voluminous and complicated; but it will be sufficient for our present purpose to remark that the company had been incorporated for the constructing a public park in Manchester; that the bill disclosed a series of the most flagrant frauds, by which the defendants, after the company had been projected, had purchased up the lands designed for the park, with a view to their subsequent sale to the company at greatly increased prices; that they had procured

(a) 2 Hare, 461.