

pany. Here is no distinct interest in one class of the corporators against another. The course pursued is an injury to the entire body, of which the company itself would seem the natural complainant; but should any good cause be shewn for not making the company plaintiffs, still the present complainants would be under the necessity of proving the correctness of the form used in this bill, which is not in accordance with the general rules of the court. In answer to arguments of this nature urged by the defendants, the plaintiffs' counsel contend, as we apprehend them, that the acts complained against, are the acts of the entire body of directors, and, as such, are the acts of the company; and consequently the company could not appear as complainants upon this record. We heard nothing to convince us that upon the pleadings, as framed, the plaintiffs have a right to sue on behalf of absent parties. The argument of the complainants' counsel seems to us to involve a double fallacy: first, in order to prove the suit rightly constituted, it treats the company and its directors as so completely identified, that the former cannot, *as a company*, complain of the acts of the latter; and yet, for the purpose of relief, it so completely severs the company from the directors, that it expects this court to make a decree against the latter, without any thing alleged or proved to shew us that the majority of corporators concur in asking such relief; the complainants in this bill assuming to themselves the right to represent the body of shareholders. We hold both opinions to be erroneous. We think that the corporators may, under circumstances, use the company's name in complaining of the acts of its own directors; and we are further of opinion that in those cases where, owing to circumstances, the company's name cannot be used, yet, plaintiffs assuming to sue in the form used in this bill, must, in order to entitle themselves to adopt such a course, shew that the majority of corporators concur—except, indeed, where the act complained of is plainly illegal, and so incapable of confirmation.

Before stating the reasons and authorities upon which our opinion has been grounded, we would mention, that the plaintiffs have not shewn upon the record any title to insti-

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v.
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Canal Co.

Judgment.