

1849. but though this is so there is a resolution which could be carried into effect by no other mode than filing a bill. *If filing a bill was necessary to prevent the directors from doing what they contemplated, the resolution gave power to file the bill,*" (speaking of the resolution to lease to the Torr Vale Company.) "The question, therefore, is whether, when representation is made by the defendants, stating that they are the corporation, and seeking to stay the proceedings, am I to interfere, without giving the corporation an opportunity of stating whether they assent or not to the proceeding? *In doing so, I should not only be creating a great difficulty, and doing an act of injustice, but I should be laying down a very absurd rule.*"

Hamilton
v.
Desjardins
Canal Co.

Judgment.

We are of opinion, therefore, both upon reason and authority, that the majority of the shareholders in an incorporated company have a right to use the corporate name, in a suit instituted for the purpose of impeaching the acts of its directors, when those acts are either illegal, unauthorised or fraudulent. And we are further of opinion, that having such right, they are bound to adopt that course, unless indeed the majority of the corporators refuse to lend their sanction, or unless no means exist of ascertaining the wish of such majority. In either of these events, it would be competent to the corporators to sue in their individual capacity; but then they would be bound to disclose upon the record the circumstances which necessitated the departure from the ordinary mode of proceeding.

But if our opinion be well founded, where the act impeached is illegal and so absolutely *void*, the argument is *a fortiori* where it is only *voidable*. In the former case, the objection resolves itself into one of form. It does not affect the equity of the plaintiffs. They may have a right to come to the court for relief; but before divesting themselves of their corporate character, and suing in their individual capacity, they must shew that no means existed of setting the corporation in motion; and having failed to do so, the court cannot entertain their application. But in the latter case, the objection is not only one of form, but also of substance. For upon what principle could this court permit a

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