

certainly affords no precedent for the form of pleading adopted in the case under our consideration. 1849.

Two decisions of the Master of the Rolls have been cited to us—*Coleman v. Eastern Counties Railway Company*, (a) and *Cohen v. Wilkinson*, (b)—which do not seem so plainly reconcilable with Lord Cottenham's judgments. But, as we before remarked, though cases should be found in direct opposition to those upon which we rely, we should hold ourselves bound by clear declaration of law, pronounced by the Lord Chancellor upon appeal, the more especially as those decisions appear to us borne out by reason. But we are not prepared to admit that there exists, even in those cases, a conflict of authority. They are both of a very special nature, particularly that in the *Jurist*; and the defendants seem to have relied much more upon the want of equity than upon the defective form of the record. Indeed, in the latter case the demurrer was only for want of equity. We may observe, too, in passing, that these reports in the *Jurist* would seem to be produced with too much rapidity to allow of that careful statement of the facts and arguments in the cause, requisite to enable those at a distance (and so unaware of much which persons on the spot can without difficulty ascertain) to form a correct estimate of the whole bearing of the case. Take, as an example of the observation, the case cited in the argument—*Lord v. The Copper Miners Company* (c)—and contrast that report with the case in 2 *Phillips*, 740, and one cannot fail to observe how much is to be found in *Phillips* necessary to the elucidation of the judgment, which has been altogether omitted in the *Jurist*.

Hamilton
v.
Derjardins
Canal Co.

Judgment.

Upon the whole case, considering the great difficulties in the way of the plaintiffs' eventual recovery upon this record, as at present framed; the absence of any allegation of title; the absence of any averment, warranting the plaintiffs to sue on behalf of the other corporators; the absence of all reason why the company has not been made complainants; and when we superadd to all these the hesitation which we should feel in ordering this money into court, even though

(a) 10 Beav. 1.

(b) 18 *Jurist*, 641.

(c) 12 *Jurist*, 1059.