

Ct. of Ap.]

NOTES OF CASES.

[Ct. of Ap.]

From C. P.]

[March 24.]

PAGE V. AUSTIN.

*Sci. fa.—Shareholder—Joint Stock Co. — Illegally issued stock.*

The Ontario Wood Pavement Company, incorporated under 27-28 Victoria, ch. 23, with power to increase by by-law the capital stock of the Co. so soon as, but not before, the original stock was all allotted and paid up, assumed to pass a by-law increasing the capital stock before the original amount had been paid up. The plaintiff, who was an execution creditor of the Co., whose writ had been returned unsatisfied, instituted proceedings by way of *sci. fa.* against the defendant as holder of shares of the new or increased capital stock.

*Held*, that the by-law so passed by the Company being *ultra vires*, the alleged shares of the defendant had not any existence in law, and, therefore, that the plaintiff failed to establish that the defendant was a shareholder within the statute, and consequently was not entitled to recover; but the appeal being allowed on a ground not taken in the Court below or assigned as a ground of appeal, the Court refused the appellant his costs in appeal.

*C. Robinson, Q.C., and Maclellan, Q.C., for appellant.*

*Bethune, Q.C., contra.*

borrower, and made his mortgage in reliance upon the representations made in the circular,—

*Held*, (affirming the decree of the Court below) that the plaintiff could insist on redeeming his mortgage according to the terms set forth in the circular, such right being sustainable either on the footing of the contract evidenced by the mortgage, the effect of which was to incorporate the rules of the society, while the evidence shewed that what was put forward in the circular as the rule of the society, was one of the rules referred to in the mortgage; or on the footing of a collateral and independant contract.

*Held* also, that, although the mortgage recited that the mortgagor was a member of the society, having subscribed for eighty-eight shares of the stock, which the society had agreed to pay him in advance on receiving that security therefor, etc, yet without express stipulation to that effect, the mortgagor could not be affected by rules made subsequently to the execution of the mortgage, even if he could under the system under which the operations of the society were carried on be considered a member when he had received the amount of his shares; but that at all events his liability could not be extended beyond the clear words of his contract, which did not point to any but the then existing rules.

*Bethune, Q. C., for appellant.*

*Street, for respondents.*

From Chy.]

[March 24.]

HODGINS V. ONTARIO LOAN CO.

*Representation—Collateral contract.*

When a loan company, in order to advertise the advantages of their institution, caused a document to be circulated among the public, the natural meaning of which was that a loan made at the fixed and uniform rate set down in the tables, might by a rule which distinguished the mode of dealing of the society from that of private capitalists, trustees or executors, be paid off at a time and on a scale different from the uniform rate at which the loan was formerly made, in case a contingency happened which made the borrower desire to pay it off, one contingency expressly mentioned being that which had arisen, viz., the means of repaying the loan and where the evidence shewed that the plaintiff became a

From Chy.]

[March 24.]

McCRAE V. WHITE.

*Insolvency—Fraudulent preference.*

The bill in this case was filed by the assignee in insolvency of one Depew, to set aside a mortgage made by the insolvent to the defendant on Oct. 30th, 1879, in contemplation, as it was said, of insolvency, whereby it was alleged that the defendant obtained an unjust preference over the other creditors.

The insolvency occurred on the 21st of following February, nearly four months after the transaction now impeached, thus leaving the onus on the plaintiff.

The defendant was a private banker, who had been in the habit of discounting notes for the insolvent.

The evidence showed that some days prior to the execution of the mortgage impeached, the in