

Shares of bank stock cannot be declared confiscated for non-payment of calls, without notice putting the owner en demeure.

MACKAY, J. The plaintiff, who in 1876, and up to October, 1880, owned fifty shares in the capital stock of defendant's bank, sues to have certain calls made by the directors, declared irregular, null and void, and certain resolutions by them under which the plaintiff's stock was confiscated in October, 1880, declared illegal, and to have the defendant ordered to restore the said stock and to register plaintiff as owner of it.

Seven calls on the stock appear to have been made by one resolution in July, 1874. That was irregular, says plaintiff; there ought to have been seven resolutions for seven calls, and at seven different meetings; moreover, says the plaintiff, that resolution was abandoned, and it does appear that no action was had under it up to 1880. This calls for observation, as also does the resolution, as it states no amount of any call, nor appoints any place for payment, but my decision will not turn upon this. In January, 1880, the directors made a new call, and for eight instalments, or calls; plaintiff complains again of this, on the ground that by a single resolution such eight calls could not be legally made; besides (says the plaintiff) the resolution in its language is not a call but a resolution to notify of calls that afterwards would be made, but never were made. The declaration complains of a resolution of the 27th of October, 1880, confiscating plaintiff's stock, upon which two thousand nine hundred dollars had been paid; and claims that the resolution and confiscation were illegal. Then the declaration alleges a tender by plaintiff, in November, of \$2,136.50, being for all that possibly could be lawfully claimed by the Bank or be due to complete full payment with interest for all the 50 shares that plaintiff had owned, which tender was refused.

The defendant's plea is very long because it justifies, at length, each and all of the Bank Directors' resolutions and doings, states particulars of all notices given to the stockholders, the plaintiff among them, insists upon the strict formality of all done, claims that plaintiff was wilfully in default, that so he incurred the penalty of confiscation; that the defendants gave all notices public and by registered letters to the plaintiff; that the plaintiff always ac-

quiesced in the calls as made, and promised to pay their amounts, but always has neglected to pay, this because of the low price at which the stock could be bought in the market; the stock has risen, and now, because of that, the plaintiff wants to get it back; that the Directors, in confiscating the plaintiff's stock, acted as they were bound to do, and no more, &c.

Our Bank Act of 34 Vic. (1871) is far less complete than the English Act—the Companies' Act 25-26 Vic. c. 89, to be found in Smitu's Mercantile law. Our Act allows the Directors to make calls, and to sue for them, and to confiscate shares to the profit of the bank, in case of non-payment of calls (Sec. 34). Yet no formalities preliminary to resolution to confiscate are enacted. The 25-26 Vic. orders a notice to pay with a threat of confiscation, after which if the calls due remain unpaid, forfeiture may be made upon a vote of the Directors. Sec. 35 of our Act allows a penalty of 10 per cent. on all shares on which calls are not paid duly, and further the directors may sell by public auction any shares on which calls are unpaid, giving 30 days' public notice of their intention. In the multitude of the remedies that the defendants had towards securing payment of the bank stock they became bewildered apparently, and, so on the 27th October, they confiscated plaintiff's stock without any previous decision to confiscate it if the plaintiff did not pay up. The confiscation is defended by reference to Sec. 34, which says that the directors may confiscate. We have only to read Brais' (the cashier's) deposition, pp. 18, 19, 21, to see that the directors were uncertain as to what rights they possessed, and Brais' notes to the plaintiff are studiously enigmatical. The stock-holders in general meeting had directed the directors to take steps to get in the capital of the bank. Brais writes therefore to plaintiff that if he do not pay, the bank will take legal proceedings to recover the amount. After a while he writes again: "If you do not pay, the account will be sent to our attorneys for collection." Finally he writes: "If you do not pay, the directors will serve themselves as regards you to the privileges that the law gives them."

Confiscation is not favorable. Suppose a banking act to say that the bank might make by-laws to compel payment of the stock, and even confiscate shares on which calls remained