

feasance as well as nonfeasance and there is nothing in the statute to shew that the legislature intended to restrict the application of the word to the case of nonfeasance. Had this been their intention it would have been easy to express it clearly. The jury notice was therefore struck out.

Bradford, K.C., for plaintiff. *Howitt*, for defendant.

Boyd, C.]

STAVERT *v.* McMILLAN.

[May 23.

Promissory notes—Consideration—Transfer of bank shares—Illegal trafficking by bank in its own shares—Directors—Bond—Notes given to repair wrongdoing—Holder in due course—Notice of illegality.

Action by the curator of the Sovereign Bank of Canada on a promissory note for \$33,110, made by the defendant, a director of the bank, and for interest, etc. The defendant claimed indemnity from the bank, pursuant to an alleged agreement therefor. Several other actions by the same plaintiff against different defendants were tried with this, and the judgment disposes of them all.

BOYD, C.:—That which underlies and affects the whole litigation is a series of dealings by which the money of the Sovereign Bank was used in purchasing shares of its own stock to the extent of about \$40,000. The shares so acquired stood in the names of various nominees of the bank—brokers, officers of the bank, and others—who undertook no personal responsibility and whose names were in some cases used without their knowledge. The whole transaction was managed by the then general manager, Stewart, and there is no doubt that the money was illegally withdrawn from the funds of the bank and used in violation of the statute—the Bank Act, R.S.C. 1906, c. 29, s. 76. The shares were bought to be again sold, and the plan was to keep up the price of the stock and to make possible profits. This process amounted to an illegal trafficking in the shares, was *ultra vires*, in disregard of the public policy forbidding banks to engage in such a line of business, and placed in jeopardy the charter of the bank. . . .

The notes . . . were given for value, represented by the transfer of shares apportioned to each, and in the whole representing in value the \$400,000 of the bank's money illegally expended.

This was, I think, the whole consideration as between the bank and the defendants; but, even if it was only a part, it is enough