

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.]

[Dec. 29, 1893.]

JONES v. MILLAR.

Company—Shareholders—Paid-up stock—Moneys of company in hands of shareholders—Action by execution creditor to recover—Parties—Addition of—Rules 324, 326—Service on added parties.

Where the defendants agreed to take stock in a company about to be incorporated, and arranged that their interest in certain land acquired from them by the company should be applied in payment of their stock, and although it appeared that the company took the land over at a price considerably beyond that at which it was acquired by the defendants, yet, no fraud being shown, it was

Held, that the shares of stock issued to the defendants, pursuant to the arrangement, upon the incorporation of the company, as fully paid-up shares must be treated as such in an action by an execution creditor of the company seeking to make the defendants liable upon their shares for the amount unpaid thereon.

The law upon that subject is the same in this Province as that of England prior to the Companies' Act, 30 & 31 Vict., c. 131.

The plaintiff sought also to recover from the defendants moneys shown to be in their hands which were really the property of the company.

Held, that the plaintiff was entitled to judgment against the defendants for payment to him of such moneys, but the company were necessary parties to the action; and their consent to being added as plaintiffs not having been filed as required by Rule 324 (b), they should be added as defendants.

Held, also, a proper case, under Rules 324 (c) and 326, for dispensing with service upon the company, as the defendants already before the court were directors and the principal shareholders in the company.

W. R. Smyth for the plaintiff.

W. R. Riddell for the defendants.

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BRISTOL AND WEST OF ENGLAND LAND, MORTGAGE, AND INVESTMENT CO. v. TAYLOR.

Principal and surety—Novation—Extension of time—Increase in rate of interest—Reservation of rights against surety.

A new agreement between the debtor and creditor extending the time for payment of the debt and increasing the rate of interest, without the consent of the surety, is a material alteration of the original contract, and releases the surety.