

debar him. *Ashley's Case*, 9 Eq. 263. He may also lose his right of rescission by conduct such as attending or voting at a meeting of the shareholders. *Sharpeley v. Louth*, 2 Ch.D. 664, or by attempting to dispose of his shares or executing a transfer of same. *Crawley's Case*, 4 Ch. 322, or by making a payment on account of the stock. *Shearman's Case*, 66 L.J. Ch. 25. See also *Nelles v. Ontario Investment Association*, 17 Ont. R. 129; Parker & Clark on Company Law, 73.

The payment of money on account of shares, the act of participating in the affairs of the company, the knowingly allowing the name to appear as a shareholder or director and the like have always been considered as important, but not conclusive evidence. Each case must depend upon and be governed by its own circumstances. *Bank of Hamilton v. Johnston*, 7 O.W.R. 111, and *McCallum v. Sun Savings Loan Co.*, 1 O.W.R. 226.

Where a shareholder in an action for calls has put in a counterclaim for rescission, he is entitled to raise all the defences in the winding up that he could have raised in such action. *Re Pakenham*, 6 O.L.R. 582.

A mis-statement of the names of the directors has been held to be a material mis-statement. *Re Scottish Petroleum Co.*, 23 Ch.D. 413. So also a statement that stock has been subscribed when in reality it has been or is to be allowed in paid-up shares to a promoter or vendor. *Arnison v. Smith*, 41 Ch.D. 348.

A statement of intention or words to the effect that something will be done, is not regarded as a statement of fact. *Edgington v. Fitzmaurice*, 29 Ch.D. 459.

Where the statement is ambiguous the applicant is entitled to put any reasonable construction on it, and the company will be bound by such construction. *Arkwright v. Newbold*, 17 Ch.D. 301. A statement that the company's process is a commercial success is regarded as a statement of fact and not an expression of opinion. *Stirling v. Passbury Grains*, 8 T.L.R. 71; *Greenwood v. Leather Shod Wheel Co.* (1900), 1 Ch. 421. For further cases illustrating the principles see *London and Staffordshire Ins. Co.*, 24 Ch.D. 149; *Ross v. Estates Investment Society*, 3 Ch. 682; *Alderson v. Smith*, 41 Ch.D. 348.

If the effect of a document is stated and it is also stated that it may be inspected at a certain place the subscriber is entitled to accept the statement as to the effect of the document. He is not bound to go and examine the documents for himself. *Redgrave v. Hurd*, 20 Ch.D. 1; *Smith v. Chadwick*, 9 A.C. 187.

An unfounded statement recklessly made by the company's agent in order to obtain a subscription for company shares, without any reasonable basis for his opinion, that the company would earn 30 per cent. dividends on its shares, may be relied on as a misrepresentation avoiding the subscription. *Pioneer Tractor Co. Ltd. v. Peebles*, 15 D.L.R. 275.

A subscriber for shares is not precluded from questioning the truth of statements contained in a company prospectus by an admission made