There are, however, cases *contra*, such as *Thorp* v. *Woodhull*, 1 Sand. Ch. 411 (1844), where a cheque had been given on subscribing for stock, but was never fully paid; and *Philadelphia, etc., R. Co.* v. *Hickman*, 28 Pa. W. 318 (1857), where it was held that, after the complete incorporation of a company, with similar statutory conditions to those referred to, the company might accept payment for stock in labor or materials or in damages which the company was liable to pay, or in any other liability of the corporation, provided there was good faith. But I prefer the law of the prior cases cited, as I find their general reasoning more in harmony with what I believe to be sound law, and also more consistent with the decision of the Court of Appeal in the case cited above.

This is not a proceeding to enforce payment of the promissory note, for there is no jurisdiction in this tribunal under the Winding-up Act to give judgment on independent claims of the bank against its debtors; and a reasonable presumption may be drawn from the evidence in this case that the promissory note was given up or destroyed by the cashier.

The conclusion arrived at is that the giving of a promissory note for the ten per cent. required by the Bank Act to be paid in money, was not a compliance with the statutory condition; and that the respondent, therefore, if he ever validly acquired any shares in the capital stock of the bank, forfeited the same by non-payment of the percentage within the statutory time, and that he is not therefore now liable as a contributory; the motion of the liquidators must therefore be refused.

As to costs, the Bank Act, in equally negative and imperative words to those I have quoted as to the subscription, provides (s. 29) that no assignment or transfer of shares shall be valid unless it is made, and registered, and accepted by the person to whom the transfer is made, in a book or books kept by the directors for that purpose. No transfer of the respondent's shares can be identified in the books of the bank; but the respondent has sought by parol evidence to fit an alleged transfer of his fifty shares on to some one of the many transfers by the cashier which appear in the bank transfer-book. A contract of transfer of shares under the Bank Act as well as a contract of guarantee under the Statute of Frauds, or a contract in a bill of exchange or promissory note, must be in writing, and must contain on its face the evidence of its own identification of the parties to it; and parol evidence to identify other persons as parties to any such contract is inadmissible. The respondent has sought by parol evidence to get rid of the statutory conditions which I have cited. I can only say in the words of Lord Blackburn in *Steele* v. *McKinlay*, 8 App. Cas., 768, referring to a statute quoted: "It was thought by the legislature that there was danger of contracts of particular kinds being established by false evidence, or by evidence of loose talk, when it never was really meant to make such a contract." Nearly all the evidence on behalf of the respondent in this case is an attempt to get rid of the statutory form of transfer, or to induce a finding that some one of the many transfers made by the cashier in his own name, or as an alleged trustee fit on to his shares, is inadmissible.

No transfer of shares, however clearly it may be proved by parol evidence, is valid unless supported by the statutable evidence alone. The respondent, therefore, having rested his defence on evidence which is inadmissible, and having made no inquiry about his liability on his note or transfer of shares since 1880, has presented no merits which entitle him to costs.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Nova Scotia.] [Oct. 30.

HALIFAX STREET RAILWAY *v.* JOYCE.

Appeal—Judgment on motion for new trial—R.S.C., c. 135, s. 24 (d)—Construction of—Non-jury case.

Section 24 (*d*) of the Supreme Court Act (R.S.C., c. 135), allowing an appeal "from the judgment on a motion for a new trial, on the ground that the judge has not ruled according to law," does not give the Supreme Court jurisdiction in a case tried by a judge without a jury, but is applicable to jury causes only, the expression in such section, "that the judge has not ruled according to law," referring to the directions given by a judge to a jury.

GWYNNE, J., *dubitante.*

Appeal quashed with costs.

Russell, Q.C., for the appellant.

Newcombe for the respondent.