

Similar proceedings by directors have been attempted in other companies, the latest analogy being furnished in *Union Fire Insurance Company v. Shoolbred*, 4 Ont. R. 359. An earlier one is reported in *Port Whitby Ry. Co. v. Jones*, 31 U.C.R. 170, where it was held that although directors agreed with a party to take shares to an amount required to organize the company on condition that he should not be liable for calls thereon, such an agreement was in fraud of the Act and could not be availed of; and it was further held that as the party had attended meetings of the company, he could not dispute his being a shareholder, or that he was not liable in respect of the shares subscribed for. In 1840, several directors of a company in England, in order to make up the required number of shares for incorporation, subscribed for stock, and agreed among themselves to vest it in the secretary "in trust for the company;" and they resolved—as in this case—that no calls should be made on such shares. The transfer to the secretary was never executed. Two actions were instituted, one by a shareholder to compel the directors to make calls on themselves and pay up; the other by the directors, to be relieved of their liability, on the ground that they were only trustees for the company, and that the subscription was not *bona fide*. The Court held that the directors, as shareholders, were liable in respect of the deposit and all calls on such shares, and that they could not set up the trust, or claim that the subscription was fictitious and fraudulent for the purpose only of floating the company.

In giving judgment in the first case the Vice-Chancellor said: "The parties became subscribers for these shares; and admitting they did take the shares in trust for the company, they were the holders of these shares and were liable to all those operations that were to be performed by those who held shares. Even to this day there has been no transfer of these shares by the nine subscribers, the consequence of which is, let them state what they please with respect to an acknowledgment of the trust, and an intention to exonerate themselves from any liability as trustees under the provisions of the Act, they are clearly liable when calls are made upon the shareholders;" *Preston v.*

*Grand Collier Dock Co.*, 2 R. & C. Cas. 358. And in the action by the directors to be relieved of the shares, he said: "There is an inference raised from the facts that the original subscription of these persons was bad, and that the original project cannot go on. Whereas it does appear to me that these persons who subscribed are now by law liable to pay the whole amount of their subscriptions, and that they are compelled by law to pay. And it would be no answer to an action to compel payment, to say they intended a fraud to be committed. It would rather make the matter worse;" *Mangles v. Grand Collier Dock Co.*, 2 R. & C. Cas. 366. Later cases negative the lawfulness of persons acquiring shares "in trust" for the company, and I must therefore hold that the shares so acquired by the directors were legal shares, and carried the liability to pay the calls thereon when lawfully made by the bank.

Another ground of defence is that the bank through Allen, its cashier, trafficked in shares; that he bought in from time to time with the bank's money certain shares which were held by him under the title of "A. A. Allen, cashier in trust," and that the account under that name in the deposit ledger was a bank account in respect of these shares.

To give effect to such a defence would be to fly in the face of the express prohibition contained in the 45th section of the Bank Act, which provides that "the bank shall not, either directly or indirectly, purchase or deal in any shares of the capital stock of the bank," a prohibition which has been held by our own Supreme Court to be "a law of public policy in the public interest, and any violation of it necessarily null and void"; *Bank of Toronto v. Perkins*, 8 S.C.R. 640.

Such a buying in of shares by the bank would be practically a reduction of its capital stock without the authority of law, and therefore void. In *Trevor v. Whitworth*, 12 App. Cas. 409, the question was considered in the double aspect of a reduction of the capital and the buying in of the shares by the company for the purpose of selling again. Lord Herschell in giving judgment said that the stringent precautions to prevent the reduction of capital of a limited company would be idle if the company might purchase its own shares wholesale;