been paid, and particularly whether it would have relieved one who had participated in the irregularity from paying his calls.

There is no evidence of any special warranty that certain persons would hold the shares. All that the defendants could claim was that $400,000 had not been subscribed. I may add that no special representations appear to have been made. The objection to the deposit seems to embrace two subjects of complaint—firstly, that there had never been at the time of holding the first meeting $40,000 actually paid up, inasmuch as $4,000 was a loan by the Merchants' Bank to the company on the collateral security of the joint note of Messrs. Gibb and Phillips; secondly, that there never had been at any time $40,000 paid up on the stock at the rate of 10 per cent., and that of the money paid up, portions had been expended properly or improperly by the provisional directors.

With regard to the pretended loan of $4,000 to the company, I think that it is perfectly established that no such loan took place; that Messrs. Phillips and Gibb obtained the money on their own responsibility; and that it was paid over to the credit of the company. The writing of the word "loan" on the company's pass-book was either an error, or a memorandum; but it certainly did not constitute a title to recover back from the company the amount if the note had not been paid. As a fact the note was paid, and by the parties giving it, within a few days, showing the perfect fairness of the transaction.

The second point turns on the words of the statute. I don't think the statute requires anything more than that $40,000 shall be paid on account of stock, and that this shall be deposited in a chartered bank. It is not required that the money so paid shall be a tenth of each share. Again, I do not think it was necessary that the whole $40,000 should remain there until the meeting for the election of directors. The provisional directors were entitled to spend what was necessary for the "management of the affairs of the company," and I do not think that even if they exceeded their powers and expended some of the money in what was not strictly necessary, it would give a shareholder the right to refuse to pay calls, more particularly where the acts of the provisional directors were adopted by the company, as in this case.

The 5th and last objection appears to me to be only another way of testing respondent's pretensions.

The judgment is as follows:

"Considering that the appellant, the Windsor Hotel Company, has proved the material allegations of its declaration, and namely that the respondents have jointly subscribed for 50 shares in the capital stock of the said company of $100 per share, and that they are indebted to the said company for seven calls of ten dollars each on the said 50 shares, to wit, for the 4th, 5th, 6th, 7th, 8th, 9th and 10th calls on said stock, said calls amounting to $3,500;

"And considering that the said defendants have not proved the material allegations of their pleas, and that the said respondents having as shareholders paid the three first calls on the said 50 shares of the capital stock of the said company, part of which were paid after the organization of the said company, cannot now avail themselves of any of the pretended irregularities complained of by their said pleas;

"And considering that there is error in the judgment rendered on the 30th April, 1879, by the Superior Court sitting at Montreal;

"This Court doth reverse the said judgment of the 30th April, 1879;

"And proceeding to render the judgment which the said Superior Court should have rendered, doth condemn the said respondents jointly and severally to pay to the appellant the said sum of $3,500, with interest on $500 from 22nd May, 1876; on $500 from 21st July, 1876; on $500 from 21st September, 1876; on $500 from 21st November, 1876; on $500 from 22nd January, 1877; on $500 from 21st March, 1877, and on $500 from 21st May, 1877, until paid; and doth further condemn the said respondents to pay to the appellants the costs incurred as well in the Court below as on the present appeal."

Judgment reversed.

Abbott, Tait, Wotherspoon & Abbotts for appellants.

Edw. Carter, Q. C., for respondent.

SUPERIOR COURT.

MONTREAL, Oct. 11, 1881.

Before TORRANCE, J.

LA BANQUE D'HOCHELAGA v. THE MONTREAL, PORTLAND & BOSTON RAILWAY CO., and THE CONNECTICUT & PASSUMPSIC RAILWAY CO., opposants.