

*Held*, that though the issue of the increased capital stock was irregular and illegal, and apart from the statutes the appellants would, under the authority of *Page v. Austin*, 10 S.C.R. 176, not be liable as contributories in respect to it, yet inasmuch as the only fact in the history of the company which it was pertinent to speak of as a "reorganization" was the transaction in respect to the said issue of increased capital stock, the effect of the Act 54-55 Vict., c. 110, was to validate the new corporation—the subscribers for the new issue of increased capital stock—to make them constituents of the new concern as reorganized, and neither the company itself nor the shareholders holding the new increased capital stock who participated in the passing of the Act, or took the benefit of it by retaining their stock (when, as hereafter mentioned, they might have surrendered it), could be heard to impeach the curative provisions of the legislation.

By s. 4 of 54-55 Vict., c. 110, it was provided that any person then holding shares might surrender within a future period if disposed to withdraw from the new company. Some of the appellants being subscribers to the new stock took advantage of this and surrendered their shares. It appeared that they had never paid the ten per cent. on their shares due by the terms of their subscription at the time of subscribing. To this extent the master had charged them as contributories. The last-mentioned statute, however, provided that the effect of the surrender was to forfeit the shares so that liability thereon should cease.

*Held*, that these appellants were not bound to make good defaults antecedently to the surrender and forfeiture of their shares.

*A. Hoskin, Q.C., and J. M. Clarke* for the contributories.

*N. W. Hoyles, Q.C.,* for the liquidators.

MEREDITH, J.]

[Nov. 1.

KERFOOT v. VILLAGE OF WATTFORD.

*Municipal corporations—Injunction to restrain enforcing by-law—Submitting by-law to vote thrice in one year—Ordinary expenditure.*

Action for injunction to restrain defendants from constructing a drain pursuant to a certain by-law.

The construction of the new drain was necessary from a sanitary point of view, as well as for the purpose of keeping in repair the highway under which a portion of it passed. The local health authorities urged its construction on the defendants, who resolved to construct it, if necessary, as part of the ordinary expenditure for the current year. In June, 1893, however, they submitted a by-law for its construction to the electors, but it was defeated. The defendants, however, nevertheless proceeded with its construction; but in August, 1893, they again submitted the by-law to the vote, when it was carried, and afterwards finally passed. It was clear that the defendants could have constructed the drain as part of the ordinary expenditure of the year without exceeding the statutable limit of taxation.

*Held*, that the first by-law having been defeated did not prevent the submission of the second in the same year. nor did the fact of the work having