But the construction to be given to the proviso referred to has been judicially determined in the case of *Re Standard Fire Insurance Co.*, 12 App., R. 486.

There, under an analogous provision in an Ontario Act, it was held that persons who had subscribed for stock in that company, but who had not paid the ten per cent. within the time limited by the charter, had not become shareholders, and could not be made contributories under the Winding-up Act.

But it is contended that the condition in the Bank Act has been waived by the respondent in giving his promissory note for the ten per cent. payable on demand, and that the case in the Court of Appeal does not apply.

A promissory note is defined by the Bills of Exchange Act as "an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or bearer"; and the practical question here is whether such a note can be held to be a substantial compliance with the provisions of of the Bank Act as to payment. No decision in our own or in the English courts has been cited in support of this proposition; but I find ample authority and sound principles in the jurisprudence of the United States to guide me as to the right judgment on the question raised.

In *Leighty* v. *Susquehanna Turnpike Co.*, 14 Sergt. and Rawle, 434 (1826), the court, in construing an Act requiring payment in money on subscribing for shares, said: We are of opinion that the giving of a promissory note for the sum which the legislature required to be paid in money at the time of the subscription is not money. A promissory note is not money, only an engagement to pay money at a future time, which perhaps may never be complied with. If such notes were to be taken as money, the policy of the law, which required a payment in money, might be easily defeated. A company, being the mere creature of law, can act in no other manner than as the law prescribes; and cannot be permitted to enter into a contest with the legislature as to the policy or expediency which that legislature has prescribed in the public interest, and for the protection of its creditors.

In *Crocker* v. *Crane*, 21 Wend. (N.Y.) 211 (1839), the Act required a payment of two dollars per share at the time of the subscription for stock, but the directors received endorsed cheques for the subscription. It was held that such a proceeding was a mere evasion of the statute, and that it was a substitution of individual credit for the cash payment, and that a corporation so established never came into legal existence.

In *People* v. *Troy House Co.*, 44 Barb. (N.Y.) 625 (1865), under a similar provision, the learned judge said: "The clear mandate of the legislature must be obeyed. Whenever a substitute for money is tolerated, it is difficult to see why any such substitute which can come under the denomination of property may not be employed; and it necessarily leads to a troublesome examination to ascertain the true value of the proposed substitute. The statute has foreclosed any such device or transaction. Persons interested in the credit and solvency of the corporation, whether as creditors or stockholders, are entitled to this degree of protection, to wit, that the capital shall be originally paid in money. I know of no authority for dispensing with this plain provision of the law."

There are also the cases of *Henry* v. *Vermillion, etc., R. Co.*, 17 Ohio, 187 (1848); *Neuse River Co.* v. *Newbern*, 7 N.C. Jones, 275; and *Wood* v. *Coosa, etc., R. Co.*, 32 Ga., 273, and others to the same effect.

But notes so given for the preliminary subscription of stock are not void, notwithstanding the statutory condition as to membership in the company; but are enforceable by the company to which they have been given.

In *Pine River Bank* v. *Hodsdon*, 46 N.H., 114, an action was brought by the bank to recover a note given for a stock subscription, which the statute required should be paid in money. The defendant set up the provisions of the Act requiring payment in money, and contended that his note was void; but it was held that the illegality of the transaction was no defence to the action by the bank on the note.

So in *McRae* v. *Russell*, 12 Ired. (N.C.) 224, in a similar action, the learned judge said: "It is true the Act says his subscription was void unless he paid the first instalment. That only proves that no recovery could be had *on the subscription.*" But the court held that the note was not void, and that the payee could recover the amount of it.