

take the consequences of the position they assume. They are estopped to deny the reality of the state of things which they have made appear to exist, and upon which others have been led to rely. Sound ethics require that the apparent in its effects and consequences should be as if it were real; and the law properly so regards it."

In this country a similar rule applies to the letters patent incorporating a company—such letters patent being held to be conclusive evidence that all the preliminary statutory requisites to incorporation had been complied with: *Lake Superior Company v. Morrison*, 22 C.P. 224.

A great deal of evidence has also been given with the object of establishing some infirmities of title to the shares held by the transferrors of those who are now before me as contributories. These infirmities of title could, and ought to have been, investigated by these parties at the time they acquired their shares, or within a reasonable time thereafter. In a large majority of cases they accepted the shares as valid and good; they paid money for them, which went into the capital of the bank, and they received from the bank and accepted share certificates and dividends in cash as the percentage of profit which their shares had realized by the financial operations of the bank. Some of them attended the meetings of shareholders; some granted proxies to directors, some transferred within the month prior to the suspension a portion or all of the shares so held by them in the bank.

After so committing themselves as shareholders, they now contend that their shares never had a lawful existence, that by non-payment of ten per cent. within thirty days after the original subscription, the shares were not lawfully subscribed; that shares subscribed for by the directors to make up the statutory amount were held under an unlawful trust for the bank, and therefore void; that the bank bought and trafficked in its own shares, and that the cashier, Allen, or other transferrors, had not shares to meet the amount or number stated in the transfer to them in the transfer book of the bank.

I had held in *Day's case* that, although the statutory provision requiring payment of ten per cent. within thirty days after subscription,

was part of the contract to the shares, it was competent for the parties to waive it; and that where the money had been paid to and accepted by the bank, and stock certificates had issued recognizing the party as a shareholder and dividends on the shares had been paid to him, both parties were estopped from denying that he was a shareholder in the bank. That judgment has been appealed, but as yet stands unreversed.* I must, therefore, follow it in the other cases before me.

Another contention is that under a resolution of the Provisional Board, dated the 10th January, 1884, certain shares were acquired by the directors in trust for the bank, and that the bank has either been trafficking in its own shares contrary to the express provisions of the Bank Act, or that such shares were never subscribed for *bona fide*. The resolution is as follows: "That it being desirable to commence the organization of the bank without further delay, the directors agree to take up (in addition to their present holdings) the balance of the stock unsubscribed up to \$500,000 in trust, to hold the same for such persons as may desire to subscribe for stock; and such subscriptions by directors in trust shall be cancelled or transferred *pro rata*, so as to reduce or cancel each holding in proportion, it being understood that no calls are to be payable on such trust holdings until such time as the stock is transferred to or taken by other parties."

The design of the directors was to take stock so as to bring the shares up to \$500,000 to enable the bank to go into operation. Several of the directors did so subscribe and did pay certain moneys into the Bank of Montreal as payments on account of the \$100,000 required by the Bank Act.

The "understanding" set out in the resolution as to "trust stock" its "cancellation," unless as prescribed in the Bank Act, and that "no calls are to be payable" may be eliminated out of the resolution as void. The moment each director signed the stock subscription book agreeing to take a certain number of shares, he undertook a personal liability to pay all calls upon such shares, from which he could only free himself under the conditions prescribed by the Bank Act.

* Affirmed 5th October, 1888.