

Mulock, C.J. Ex.D.]

[Feb. 9.]

RE NIAGARA FALLS HEATING AND SUPPLY CO.

Company—Winding-up—Contributory—Shares illegally issued at half price—Liability of subscriber for balance of price—Conduct—Receipt of dividend—Estoppel.

Appeal by J. G. Cadham and others from the report of the local Master at Welland, who placed the appellants upon the list of contributories of the company, in liquidation under the Winding-up Act.

The evidence shews that Cadham agreed to subscribe for four shares of \$50 each in the capital stock of the company, and upon the 17th September, 1906, paid \$200 to the company for eight shares. Thereupon the company issued and delivered to him a certificate, bearing date the 14th September, 1906, to the effect that he was the owner of eight shares of \$50 each in the capital stock of the company. This certificate he accepted and gave to the company a receipt therefor in the following words: "Received certificate No. 28 for eight shares this 17th day of September, 1906. J. G. Cadham." Thereupon Cadham's name was entered in the books of the company as shewing Cadham the holder of eight shares of \$50 each.

On the 19th January, 1907, the board of directors ordered that "a four per cent. dividend be paid per annum based on the said report for three months in which business has been done, namely, October 1st to December 31st, 1906." At this time Cadham was treated by the company as being a shareholder to the extent of \$400, the year's dividend upon which, at the rate of 4 per cent. per annum, would amount to \$16, and, on the 4th of March, 1907, the company issued its cheque of that date upon the Bank of Hamilton, payable to J. G. Cadham or bearer, for \$4, the three months' dividend at the rate of 4 per cent. per annum—the body of the cheque containing the word "dividend." This cheque Cadham received and indorsed, obtaining and retaining the proceeds thereof.

How can he be entitled to retain the dividend and at the same time say that he is not the holder of the shares which alone entitle him to the dividend? Although in the first instance he may not have intended to subscribe for eight shares, yet the company having placed his name upon the lists of members to the extent of eight shares, his subsequent conduct is evidence of an agreement upon his part to become such member, and he is now