

ence would also be very important in another respect, for the relation of the directors to the plaintiff would then have been a very different relation; from being a stranger and an outsider, he would have become a shareholder and member of the corporation, and their responsibility to him *qua* shareholder might essentially differ from their responsibility to an individual not a member of the corporation. Therefore I say, the absence of all particularity as to the time of the alleged delinquency on their part must prevent its having any effect whatever as a concealment of facts in the report which, if known to the plaintiff, would have prevented him from buying his stock. The rest of this declaration refers only to what occurred after July, 1872—the buying of the stock, the price paid for it, and the subsequent annual meetings up to 1874 inclusive, what was done at those meetings, and the untruth of the statements and representations they contained. The plaintiff's case, then, as he puts it, is made to rest on the fraud and misrepresentation of the defendants as affecting every part of it; and he brings it under two separate heads: 1st, he says: your misrepresentation of certain facts induced me to buy, and what you represented being false, you are responsible to me for the loss I have suffered through it; and 2nd, he says: after I bought, you continued your frauds and concealment and false reports, and therefore you are further answerable to me personally for the loss I sustained from what you did after I was a shareholder in the bank. The defendants, Starnes, O'Brien and Cuvillier, have pleaded a general denial. The two other defendants, Judah and Hogan, specially deny any fraud or misrepresentation, and any acquiescence in fraud or misrepresentation by them; alleging, on the contrary, that they acted in good faith, and to the best of their judgment; but admitting that they were elected directors, and that the reports were made in the terms alleged. Subsequently, owing to an amendment in the declaration, the two last named defendants pleaded further that the plaintiff had no right of action for what occurred after he became a shareholder. The reports are produced and proved. It further appears by the evidence that during the year 1871 fifty per cent. of the capital was called up by five calls of ten per cent. each, all of which had become due in February, 1872. In April

of that year the defendant Cuvillier owed \$28,565, for calls and interest. For this sum he gave his own promissory note, payable on demand. The amount of this note was placed to his credit in the bank's books, and he then gave a check for it, in payment of the calls. On the defendant Hogan's shares, he only paid two calls in cash not got from the bank; the remaining three calls he arranged for by money advanced to him by the bank on his letter or undertaking, and the amount being placed to his credit, he drew a cheque for what was in arrear, viz.: \$17,700. Starnes did the same thing as Hogan, the amount in his case being \$14,320. These sums amount to \$60,584. The plaintiff deduces from these facts, that this report was absolutely false in several particulars: First, he says that the capital was not paid up, because these payments were merely colourable and collusive, and in reality there was no intention that they ever should be paid at all; and the capital must therefore *pro tanto* be held to have been reduced; 2nd, he contends that these payments—whatever they may have been, whether colourable or not, were overdue before they were made; 3rd, the plaintiff deduces from this state of facts that Starnes' statement that there were no bad or doubtful debts was untrue; and fourthly, he deduces that the \$55,000 odd of profits was also a delusion, because in the calculations showing that amount of profit, these demand notes and letters were included as assets. I am bound to say that from the evidence of record I have no doubt whatever of the mere facts themselves from which these conclusions are deduced by the plaintiff; I have no doubt that the calls were paid by the proceeds of loans or discounts; but as to all the inferences of fraud or collusion and intent never to pay them at all, I think they must be considered with reference to all the evidence in the case, to see if they are just. I am now on the first branch of the case, i. e. the plaintiff's complaint that these were false representations by which he was induced to buy, and by which he has suffered loss. The first thing to look at will be: what is a false representation? how made and to whom? and a second point, one would think, would be: if false statements are made by directors of banks, and adopted by the latter, on whom is the responsibility to fall? on the directors personally, who are agents of the