The plaintiffs did not become debenture holders until after J. H. S., G. J S., and J. S.

Held, affirming the decision of the Master in Ordinary, that inasmuch as the company did not complain of the transaction, nor any shareholders, it was not competent for the holders of other debentures of the same class (such as the plaintiffs were) to impugn the position of J. H. S., G. J. S. and J. S.

If the directors abused their position, so as to get an advantage at the expense of the company it was for the corporation or its corporators to complain. To permit the plaintiffs to attack on this ground would be to recognize the validity of the transfer of a right of action to complain of a fraud, actual or constructive.

Moss, Q.C., and *T. P. Galt*, for the appeal.

Maclennan, Q.C., and *T. Langton*, contra.

Boyd, C.] [November 11.

FOSTER v. ALLISON.

Admissions before Master—Practice—Necessity of memorandum in writing.

As in the case of admissions between solicitors, so in the case of admissions before the Master, the matter agreed upon should be put into writing and signed. Such indeed was the wisdom of our ancestors, for in an order of 1696 it was provided "when upon reference any matter of fact shall be admitted and agreed to before the Master he shall take memorandum of the fact so admitted and agreed to in his books of minutes, and the party so admitting and agreeing shall subscribe such minutes or memorandum in the presence of the Master, which subscription shall be binding and conclusive to the party on whose behalf the same was so subscribed, so as that the other side shall not be put to any further proof to make good the same."

Proudfoot, J.] [November 11.

WOODWARD v. CLEMENT.

Patent law—Absence of novelty—Mechanical equivalent.

Action for infringement of patent called Arnold's Improved Automatic Boiler. It appeared that the only portion of the defendant's combination which was not identical with the plaintiff's patented machine was a mere variation in arrangement, or a mechanical equivalent of a corresponding portion of the plaintiff's machine—a device containing no element of invention, but effecting the same purpose by a slightly different method.

Held, that the plaintiff was entitled to judgment.

Quære, whether it is correct to say that there can be no infringement of a combination unless the whole be pirated.

Boyd, C.] [Nov. 11.

FUCHER v. TRIBUNE COMPANY.

COPP'S CASE.

Company—Compromise—Contributory.

A shareholder and director who had originally subscribed for $4,000 worth of shares in the company, resisted contribution to more than $2,000 on the ground that his shares had been reduced to this amount by the President of the company with the authority of the Board of Directors. This was alleged to have been done by way of compromise, but there did not appear to be any facts whereon to support such compromise, which was never communicated to or approved by the shareholders.

Held, that whether directors of a company have inherent power to effect compromises or not, in the circumstances of the present case they had no power to bind the company by their unauthorized and uncommunicated action. The alleged compromise manifestly could not have any effect on the rights of creditors antecedent to its date, and very shortly after its date the company became insolvent.

The whole transaction appeared to be rather the cancellation of an actual asset than the compromise of a matter of doubtful obligation.
