

transferred without restriction. If therefore the articles of the association do not impose any particular restrictions upon a transfer that, for instance, it must be subject to approval by the board or otherwise, it may be lawful for a shareholder to transfer his shares out and out to anybody even to a pauper, for the mere purpose of escaping liability, but the transfer must not be colorable or fraudulent, it must be bona fide and absolute and not in trust, but great difficulty is sometimes found in pronouncing whether a transaction of this kind is or is not bona fide and as a consequence there will be found reported cases which are somewhat contradictory. Under the Ontario Joint Stock Companies Act every transfer of shares while calls remain unpaid is wholly without effect. Sec. 48 states that no share shall be transferred until all previous calls thereon have been fully paid in and Sec. 61 states that every shareholder until the whole of his stock has been paid up shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, etc., etc.

It is exceedingly difficult for a member to whom stock has once been allotted to avoid liability to corporate creditors; true he can transfer it but such transfer must be to a bona fide purchaser who intends to pay and has the ability to pay for it, and it is the right and duty of the directors to see that no such transfer is made for the purpose of evading liability and if the directors are misled the transfer can be set aside and in no case is it complete till entered in the company's books and to be of any effect the transfer must be complete before winding up proceedings are taken.

#### CANCELLATION OF ALLOTMENT.

If the stock has been improperly allotted to him, or if there has been fraud or deceit on the company's part in procuring his application for stock or membership in the company his proper course would seem to be a common law action of deceit against the company to cancel the stock but such an action requires the clearest kind of proof to support it—Beatty v.

Nealon, 12 A.R., 50 and 13 S. C. 1. And where a shareholder has bona fide claims against the company either by reason of fraud or misrepresentation or any other cause which would enable the Court to decree such relief, the company has the power to compromise such claims and to relieve the shareholder of his shares—Livingstone v. Temperance Colonization Co., 17 A.R., 379—but the directors cannot cancel stock merely to avoid liability thereon for non-payment of stock or otherwise. A corporation has as incidental to its existence the same power of compromising claims made against it as an individual has, but there must be a bona fide dispute, there must be nothing that would amount to fictitious litigation for the purpose of enabling the shareholder to free himself, and where the law is clear upon a point no settlement or compromise proceeding upon the ground of doubt as to the law can be maintained as such would be merely a colorable agreement—Healey, on joint stock companies, p. 113.

"Cancelled" is an improper term to use with reference to surrendered or forfeited shares. Surrender or forfeiture does not tend to diminution of the capital, all that can be intended by the use of these latter terms is that the shares could be re-allotted to some one else.

There may be retirement from membership in a company on the ground of misrepresentation or otherwise where a shareholder would be in a position to proceed against the company to have his name removed from the list of shareholders; this can be accomplished if there has been any fraud or misrepresentation or designed concealment on the part of the company or its agents by which the member was induced to undertake the liability; frequently such an action or defence as the case may be is based upon a prospectus containing material misrepresentations or concealment of facts; such a contract or subscription for stock, however, is voidable only and is valid until rescinded and the remedy may be barred by laches or acquiescence on the part of the member and there can be no rescission of the agreement after a winding up has commenced either voluntary or at the instance of a creditor.