not a matter of substantial importance, as the subsequent pleas raise precisely the same points. It struck me, when the case came on, that the pretensions of the defendant were quite untenable, and I only allowed evidence of the facts under reserve of the point of the law, whether all that was set up constituted a defence to the action; and a certain proof was made by parole testimony which, even admitting it to the fullest extent, does not by any means prove the facts alleged; but on the contrary fairly disproves them. I do not therefore think it necessary now to go elaborately into the question on which my opinion has not changed since the argument. It must be observed that the defendant's pleas asked for the dismissal of the action on the ground that the company or corporation in question was extinct, and its charter and powers forfeited. The *exception à la forme* was not then before me; the inscription did not reach it; therefore I said then, as I say now, that I have no power, sitting here, to say that a public statute incorporating the plaintiff is to have no effect; and some act of forfeiture ought to be proved under the special laws relating to this subject. I said further that in a suit by a corporation against one of its shareholders for calls due on his stock, it is no answer on his part to say that the corporation is non-existent, if no such proceedings have been taken. It exists in relation to all its members until it has been dissolved by judgment of a competent court. I asked for authority, and was told I should be furnished with authorities against my opinion; but not only are none forthcoming, but, as the defendant's counsel must know, there is an accumulation of direct decisions against him. I have had a list of them before me, and have referred to them to satisfy myself that I was right; and while I was occupied on the subject, I found a case directly in point decided in our own courts. It is a case of *The Connecticut and Passumpsic Rivers Railroad Co.* v. *Comstock*, in which many points were settled, and among them, this one in particular. It was decided by Judges Caron, Drummond, Badgley, and Monk. A case was referred to by the defendant's counsel—a case of *The Union Navigation Company* v. *Couillard* (21 L. C. J. 70); but there, it was only held that a subscriber to a company to be incorporated by letters patent; but who never subscribed nor paid calls after incorporation, is not liable for calls. There is an obvious and essential difference between the two cases. That was an incorporation under the Joint Stock Companies' Incorporation Act (31 Vic. c. 25). The subscriber was misled, and induced to subscribe for stock upon false representations, and the prevailing motive and consideration of the subscription proved unfounded. Here there is nothing of that kind. The 5th section, which is relied on by the defendant, did not operate as a forfeiture, if its provisions were not fulfilled; it only operated as invalidating the proceedings, such as meetings, &c., which should take place contrary to the directions of that section. Therefore, it seemed important that the *exception à la forme* should be properly before the Court, for though the defendant could not ask that the action should be forever dismissed under a forfeiture of the charter that had never been adjudged upon, I would not be prepared to say that he could not ask that the demand *quant à présent* should be stayed, if the proceedings under which these calls have been made were irregular. On that, however, I do not now pronounce; 1st. Because I hold the proof is insufficient; and 2ndly. The preliminary plea only asks for the dismissal of the action for the present, on the ground of an extinction and forfeiture of the charter, which, if true, would deprive the plaintiff of any right of action whatever; and, therefore, it is not properly the subject of a preliminary plea, but is a plea *au fond*. Again, this defendant has paid five calls already, which constitutes an acquiescence as to their being due (for the only ground on which payment was objected to was that these alleged irregularities of the proceedings had extinguished the charter, which is not the case.) The nineteenth section of the joint stock companies' general clauses act, which by one of its provisions is made part of every such charter as this, provides that the certificate of the officer (which is produced) shall be sufficient to entitle the plaintiff to judgment. Judgment, therefore, goes for plaintiff for the amount demanded. There being no motion to reject the evidence, I take it as evidence by consent.

Judgment for plaintiff.

Abbott & Co., for plaintiff.

Loutre & Co., for defendant.